

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Application for orders in the nature of Writs of *Certiorari*, *Mandamus* and *Prohibition* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Suppiah Jeyaratnam
Labukkale Estate, Lower Division,
Labukelle.

CA (Writ) application No: 129/2024

PETITIONER

-Vs-

1. The Land Reform Commission,
475, Kaduwela Road,
Battaramulla.
2. Geethanjalie Senevirathne,
Director,
Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
3. Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
4. Hemantha Jayasinghe,
Director General,
Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
5. Honourable Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Counsel: K.V.S. Ganesharajan with Jeyarasa Mathura, Vithusha Loganathan, and

Sangeeth instructed by M. Mangaleswary Shanker for the Petitioner.

Panchali Witharana, SC for the Respondents.

Supported on: 04.06.2025

Order delivered on: 17.07.2025

S. U. B. Karalliyadde, J.

This Order pertains to the issuance of formal notices of this Writ Application on the Respondents. The facts of the case in a nutshell are as follows. By the letter dated 30.10.2007 marked as P1(A), the Land Reform Commission, the 1st Respondent (the LRC) has informed the Petitioner that it has decided to west 8 Acres from the land called Protoff Watte, which belongs to the LRC on lease for five years. The Petitioner made the relevant payment (P1(B)) to the LRC for the lease. On 23.04.2021, the LRC surveyed and divided the entire land, which consisted of 16 Acres and subdivided it into four lots by the surveyor plan No. 3846 marked as P2. The LRC by letter dated 15.03.2021 marked as P3(A) once again showed its willingness to lease out Lot 3 in the extent of 5 Acres in the plan marked P2 to the Petitioner, subject to the revised payments, and he paid the revised payment (P3(B)). However, the LRC delayed executing the document for lease, and therefore, the Petitioner started cutting trees and clearing the land for agricultural and cultivation purposes.

In the meantime, the Petitioner received an undated letter marked as P5 from the LRC, wherein it was stated that the Divisional Secretariat had instructed the LRC not to lease out the said land, for the reason that further clearing of the land will lead to the environmental problems and threat of getting dried the water springs which the residents living in the areas below the said land getting water. By the letter marked as P5, the LRC informed the Petitioner to immediately stop the unauthorised clearing of the land and to obtain permission from the 3rd Respondent, the Central Environmental Authority (the CEA), to continue the project. By the letter dated 15.06.2023 marked as P6(A) the CEA informed the Petitioner to refrain from or stop the development activities in the said land as prior approval of the appropriate project approving agency is necessary for such project under the Part IVC of the National Environmental Act, No. 47 of 1980 (as amended) (the Act) in terms of the Gazette No. 772/22 dated 18.06.1993 marked as P6(B). Thereafter, the Petitioner, by the letter dated 21.06.2023 marked as P7(A) informed the CEA that he had started clearing the land for agricultural and cultivation purposes after making the relevant payments to the LRC expecting to get the land on lease and he did not carry out any project stipulated in the letter marked as P6(A).

A case has been filed by the Petitioner against the LRC and the CEA in the District Court of Nawalapitiya seeking reliefs, *inter alia*, a declaration that the Petitioner is entitled to clear and cultivate the subject land, a declaration that the Petitioner hold the right and title to cultivate the said land without any interference from the LRC and the

CEA for the entire period covered by the receipts issued for payments made to the LRC, a declaration that the LRC and the CEA have no legal authority to obstruct or prevent the Petitioner from clearing or cultivating the said land and declaration that the LRC or the CEA, and/or their agents, employees, or servants have no lawful right to interfere with or obstruct the Petitioner been clearing or cultivating the said land. By the letter dated 07.02.2024 marked as P9, the CEA ordered the Petitioner under section 24B(1) of the Act to refrain from or stop clearing the land. Under the said circumstances, the Petitioner has instituted the instant Application seeking reliefs, *inter alia*, a Writ of Certiorari to quash the documents marked as P5, P6(A) and P9. The Petitioner argues that there is no legal obligation to get the approval under the Act as the said land is used for cultivation purposes and not for any project specified in the Gazette marked as P6(B). Therefore, he argues that the documents marked as P5, P6(A) and P9 are illegal, unlawful, irrational and had been issued by the LRC and CEA *ultra vires* its powers.

First, this Court will see whether it is necessary to obtain prior approval of the CEA under the Act. In terms of Section 23AA(1) of the Act, any Government Department, Corporation, Statutory Board, Local Authority, Company, Firm or an individual is required to obtain approval under the Act for the implementation of ‘prescribed projects’. In terms of Section 23Z, the ‘prescribed projects’ under Part IVC of the Act are published in the Gazette by the order of the Minister. The ‘prescribed projects’ under Section 23Z of the Act have been published in the Gazette marked as P6(B). The contention of the Petitioner is that he cleared the land for cultivating vegetables, and

therefore it does not come under any of the projects mentioned in the Gazette marked as P6(B). Both letters marked as P6A and P9 set out the reason as to why the Petitioner is required to obtain prior approval under the Act. The relevant part in the letter marked as P9 reads thus,

“වර්ෂ 1988 අංක 56 සහ 2000 අංක 53 දරණ පනත් මගින් සංශෝධිත පරිදි වූ 1980 අංක 47 දරණ ජාතික පාරිසරික පනතේ 23 බ වගන්තිය යටතේ ප්‍රකාශිත අංක 859/14 දරන 1995.02.23 දිනැති ගැසට් පත්‍රය මගින් සංශෝධිත අංක 772/22 සහ 1993-06-24 දින දරණ අතිවිශේෂ ගැසට් පත්‍රයේ උපලේඛනයේ I වන කොටසේ 05 වන අයිතමයේ සඳහන් පරිදි හෙක්ටයාර 50 කට වැඩි භූමි ප්‍රදේශයක් එළි කිරීම යන ව්‍යාපෘතිය. අංක 772/22 සහ 1993-06-24 දින දරණ අතිවිශේෂ ගැසට් පත්‍රය ප්‍රකාරව එකී ගැසට් පත්‍රයේ උපලේඛනයේ II වන කොටසේ 32 වන නියෝගයේ සඳහන් පරිදි 1 වන කොටසේ සඳහන් සියලුම ව්‍යාපෘති හා ව්‍යාපාර ඒවායේ විශාලත්වය නොසලකා උපලේඛනයේ III වන කොටසේ සඳහන් ප්‍රදේශයක් ඇතුළත සම්පූර්ණයෙන්ම හෝ කොටසක් පිහිටා ඇත්නම් එවැනි ව්‍යාපෘති සඳහා ඉහත කී ජාතික පාරිසරික පනතේ IV ඇ කොටස යටතේ අනුමැතිය ලබා ගත යුතුය.

ඒ අනුව ඉහත කී ගැසට් පත්‍රයේ උපලේඛනයේ III වන කොටසේ 2 වන නියෝගයේ සඳහන් සංවේදී කලාපයක් වශයෙන් පාංශු සංරක්ෂණ පනත යටතේ (450 වැනි අධිකාරය) යටතේ ප්‍රකාශිත බාදනය විය හැකි ප්‍රදේශයක් වන මධ්‍යම පළාතේ නුවරඑළිය දිස්ත්‍රික්කය තුළ මෙම ව්‍යාපෘතියට අදාළ ඉඩම පිහිටා ඇත. එවැනි අවස්ථාවකදී ඉහත කී ගැසට් පත්‍රයේ ප්‍රතිපාදන අනුව ඉඩමෙහි හෝ ව්‍යාපෘතියෙහි විශාලත්වය නොසලකා ඉහත කී ජාතික පාරිසරික පනතේ IV ඇ කොටස යටතේ අනුමැතිය ලබා ගත යුතුය.”

Therefore, the approval is necessary for the projects and undertakings set out in the Schedule to the Gazette marked as P6(B). In terms of the letters marked as P6(A) and P9, clearing of the land by the Petitioner comes under item 5 in Part I of the Schedule to the Gazette marked as P6(B) as a project involving the “clearing of land areas exceeding 50 Hectares”. Part II of the Schedule stipulates that the approval is necessary for “all projects and undertakings listed in Part I, irrespective of their magnitudes and irrespective of whether they are located in the coastal zone or not, if located wholly or partly within the areas specified in Part III of the Schedule”. It is evident from the Gazette marked as P6(B) that, irrespective of the scale of the projects specified under Part I of the Schedule to the Gazette, approval must be obtained under Part IV C of the Act if it is an area that is specified under Part III of the Schedule. According to the letters marked as P6(A) and P9, the land is situated in the Nuwara Eliya District of the Central Province, which has been declared as an erosion-prone area under the Soil Conservation Act (Chapter 450), and is identified as a sensitive zone under Regulation 2 in Part III of the Schedule to the above-mentioned Gazette. Furthermore, in terms of the Soil Conservation Regulations, No. 01 of 2009 made under Section 4 of the Soil Conservation Act, No. 25 of 1951 (as amended), published in the Gazette Extraordinary No. 1633/4 dated 21.12.2009, the conservation areas are specified in the schedule to the Soil Conservation Regulations. Accordingly, conservation areas are specified in the Gazette Extraordinary No. 1550/9 dated 22.05.2008. In terms of the Gazette Extraordinary No. 1550/9, all areas of land situated within the Central Province, in the

Administrative Districts of Kandy and Nuwara Eliya, are declared as conservation areas.

It is evident from the plan marked as P2 and letters marked as P6(A) and P9, that the land in question is situated in the Nuwara Eliya District of the Central Province.

Considering the above-stated facts, it is the view of this Court that prior approval is required to clear the land, and therefore it is not illegal, unlawful, irrational or *ultra vires* the powers of the CEA to send the letters marked as P6(A) and P9.

Further the Petitioner, in the Petition, contends that by the letter marked as P5, the LRC made a decision not to lease out the subject land, and further, informed the Petitioner to discontinue the clearing of the said land on the basis that such clearing cannot be carried out without a valid licence. However, a plain reading of the letter marked as P5 does not disclose any such decision by the LRC to refuse to issue the lease. Rather, the said letter merely records that, during the process of considering leasing out, the LRC had received a communication from the Divisional Secretariat highlighting concerns regarding potential environmental hazards arising from the clearing activities on the land. The letter specifically notes that, since possession of the land has not yet been transferred, the ongoing clearing activities should be treated as unauthorised. Accordingly, the letter marked as P5 only directs the Petitioner to cease further clearing of the land and states that, should the Petitioner wish to proceed with the proposed project, he may do so upon obtaining the necessary approval from the CEA. Therefore, it is the view of this Court that sending P5 is not illegal, unlawful, irrational or *ultra vires* the powers of the LRC.

It is trite law that prerogative Writs are discretionary remedies, and in *P. S. Bus Co., Ltd. v Members and Secretary of Ceylon Transport Board*¹, it was held that prerogative writs will not be issued as a matter of routine, as a matter of course or as a matter of right. Defining the grounds of judicial review in the case of *Council of Civil Service Unions v Minister for the Civil Service*², Lord Diplock listed three grounds for courts to consider when issuing prerogative writs, namely, illegality, irrationality and procedural impropriety. As stated above, neither the LRC nor the CEA had acted *ultra vires* its powers, nor the documents marked as P5, P6(A), and P9 are illegal, unlawful or irrational.

As it may be, the Petitioner brings forth the argument that according to the Surveyor Report dated 19.04.2023 marked as P10(A), the land stipulated in plan marked as P2 does not come within the forest zone of P. P. Nu 2291. It appears to be an attempt by the Petitioner to assert that the land in question does not fall within the conservation area and/or an area contributing to the water supply of the Ramboda Waterfall. Nevertheless, this Court will consider the contention of the Petitioner. The Petitioner states that in terms of the Surveyor Report marked as P10(A), after superimposition, it has been confirmed that lot A of the survey plan No. NU/KTW/2023/163 dated 19.04.2023 marked as P10(B) (consists of Lot 1 and 2 of the plan marked as P2) and survey plan No. NU/SG(P)/03/337 dated 19.04.2023 marked as P10(C) (consists of

¹ [1958] 61 NLR 491.

² (1985) AC 374 (HL).

Lots 3 and 4 of the plan marked as P2), does not come within the forest zone of P. P. Nu 2291. Petitioner further states that by the letter dated 02.05.2023 marked as P11, the Senior Superintendent of Surveys has informed the Assistant Director of the LRC that the survey plan marked as P10(B) does not come within the forest zone of P. P. Nu 2291. Even though the Petitioner states that the land depicted in the plan marked as P2 does not fall within the forest zone of P. P. Nu 2291, one cannot dispute the fact that the land is situated in the Nuwara Eliya district, which is declared as a conservation area as stated above. If the Petitioner wishes to dispute the fact that the land is situated outside of a conservation area, this Court is of the view that it should be done by adducing evidence before a proper forum and not in a writ court. Therefore, this Court cannot agree with the said contention of the Petitioner.

Considering all the above-stated facts and circumstances, this Court decides that this is not a fit case to issue formal notices on the Respondents. Therefore, this Court refuses to issue formal notices on the Respondents and decides to dismiss this Application. Application dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL