

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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writs of *Certiorari* and Prohibition.

1. Sinnathamby Sivakumar
No.321, Main Street,
Chenaikudiyiruppu- 1A, Kalmunai,
Amparai, Kalmunai.
2. Kathiramalai Rajakulendran
No.321, Main Street,
Chenaikudiyiruppu- 1A, Kalmunai,
Amparai, Kalmunai.

PETITIONERS

Vs.

**Court of Appeal Case No:
CA/WRIT/159/2024**

1. K. Thanapalasundaram
Divisional Secretary,
Divisional Secretariat,
Eravurpattu,
Chenkaladi
2. The Regional Forest Officer,
Regional Forest Office,
Pullumalai,
Chenkaladi.
3. District Forest Officer,
District Forest Office,
Batticaloa.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: K.V.S. Ganesharajan with Vithusha Loganathan instructed by K. Narmadha for the Petitioner.
Pulina Jayasuriya, S.C. for the Respondents.

Supported on: 27.11.2025.

Order delivered on: 30.01.2026

Mayadunne Corea J

The Petitioners filed a Petition dated 29.02.2024. However, before supporting it, the Petitioners filed another amended Petition dated 20.06.2024 and supported the said amended Petition. In the said amended Petition, *inter alia*, the Petitioners pleaded the following reliefs:

- “b) a mandate in the nature of a writ of a certiorari quashing the Notice to Quit dated 31/01/2024 marked “P14” issued by the 1st Respondent,*
- c) a mandate in the nature of writ of prohibition prohibiting the 1st Respondent from taking any steps on the basis of the said Notice to Quit dated 31/01/2024 marked “P14” issued by the 1st Respondent,*
- e) a mandate in the nature of writ of prohibition prohibiting the 1st Respondent from taking any further steps or proceeding with the said case bearing No.43937/MISC/2023 in the Magistrate’s Court of Eravur,*
- g) a mandate in the nature of writ of prohibition prohibiting the 1st Respondent from interrupting, disturbing and interfering with the ownership and/or possession and/or the Agricultural Farm Project of the Petitioners and their employees, agents and servants,*
- i) a mandate in the nature of writ of prohibition prohibiting the 2nd and 3rd Respondents from interrupting, disturbing and interfering with the ownership and/or possession and/or the Agricultural Farm Project of the Petitioners and their employees, agents and servants,*
- k) a mandate in the nature of writ of prohibition prohibiting the 2nd and 3rd Respondents from interrupting, disturbing and interfering with the work*

of the Petitioners and/or their employees, agents and servants in the subject land,

- m) *a mandate in the nature of a writ of a certiorari quashing the decision of the 1st Respondent to initiate proceedings bearing No.43937/MISC/2023 and including the land described in the Notice to Quit marked “P14” in the said proceedings filed in terms of the State Lands (Recovery of Possession) Act as amended before the Magistrate’s Court of Eravur”*

The facts of the case briefly are as follows. The Petitioners submit that they have purchased a land by the name of ‘Puththampuri’ in the year 2023 and commenced a project and cultivated the said land. However, on or about 31.01.2024, one Vasanthapragash, who was working on the land, had been served with a notice under the State Lands (Recovery of Possession) Act and had been requested to stop clearing the land on the premise that the said land belongs to the Forest Department. However, the said Vasanthapragash is alleged to have informed the officers that the said land is not state land but private land. Further, it was submitted that the said Vasanthapragash had proceeded with clearing the land, which resulted in the 1st Respondent serving a quit notice and subsequently filing action in the Magistrate’s Court under the State Lands (Recovery of Possession) Act against the said Vasanthapragash. It was the contention of the Petitioners that the 1st Respondent had disputed the Petitioners’ title and had come to the conclusion that the *corpus* is state land and also that it is part of a dense forest. Hence, this Writ Application to quash the said quit notice.

The Petitioners’ contention

The Petitioners contend that the 1st Respondent, knowing that the subject land (hereinafter called the ‘*corpus*’) was a private land, had acted arbitrarily and/or capriciously and/or without jurisdiction, and issued a notice to quit and thereafter instituted proceedings in the Magistrate’s Court, which is bad in law.

At the commencement, the Petitioners submitted that they would support the Application without giving notice to the Respondents.

Analysis

The Petitioners submit that they became the owners of the *corpus* by virtue of the Deed of Transfer No. 17805 (P1). The said deed was executed on 18.10.2023. Further in the

Petition, the Petitioners' pedigree is given¹. As per the submissions, it appears that the Petitioners' title is derived from a Deed of Gift bearing No. 6227, which does not recite the title of the donor but states that the Deed of Gift is executed in favour of the donor's daughter-in-law. Among the lands gifted in the Schedule to the deed, an undivided 1/3rd share of the *corpus* containing 450 Acres is given to the donee and the said deed is executed on 09.01.1946. This Court observes that the next deed the Petitioners rely on to demonstrate the title is executed on 01.09.2014 and the Schedule bears the *corpus* in the extent of an undivided 1/3rd share of the *corpus* in the extent of 450 Acres. It is pertinent to note that the Petitioners did not disclose to this Court as to whether the predecessor to the Petitioners' title has declared the said land under the Land Reform Law No. 1 of 1972 as amended (herein referred to as 'LRC Law') coming into operation and whether the title devolved as 1/3rd of the total extent was subject to the LRC Law. Hence, whether the said land was vested with the LRC was not disclosed by the Petitioners.

Further, this Court also observes that, although the Petitioners submitted that the *corpus* was purchased by the Petitioners through the deed marked as P1 and, and though the attestation states that the vendor has acknowledged the passing of consideration, the notary has endorsed that no consideration had passed before her at the time of the execution of the deed. Leaving it as it may, let me now consider whether the Petitioners have satisfied this Court as to their right to file this Application.

Locus standi of the Petitioner

The Petitioners concede that the impugned quit notice marked as P14 was not given to them but sent to one A.Vasanthapragash. It is the contention of the Petitioners that said Vasanthapragash is the son of the 2nd Petitioner.² However, the Petitioners have failed to tender any birth certificate or an Affidavit from the said Vasanthapragash to demonstrate the relationship of Vasanthapragash and 2nd Petitioner. In the absence of such, this Court finds the said assertion of the Petitioners to be an unproven statement. This is aggravated by the document marked P12, which is a statement made by the said Vasanthapragash to the police. In his statement, Vasanthapragash asserts that he is the owner of the land and that he is cultivating his private land; nowhere does he acknowledge that the land belongs to his father, nor does he state the name of the father. Even if I am to assume that the father, the 2nd Petitioner, had transferred the land to Vasanthapragash, no such transfer deed was tendered to this Court. In any event, it was not the contention of the Petitioners.

¹ Paragraph 3 of the Petition.

² Paragraph 7 of the Petition

Thus, in this Application, the Petitioners, without establishing their relationship to Vasanthapragash are seeking a Writ of *Certiorari* to quash the quit notice received by a third party. It is also observed that the Petitioners have even failed to name the said Vasanthapragash as a party to this Application. The Petitioners have also failed to explain the reason as to why the said recipient of the quit notice has failed to file a Writ Application on his own. Especially, if the land which is the subject of the quit notice, is the same land purchased by him as stated in P12. Hence, in my view, the Petitioners have failed to establish that they have *locus standi* to have and maintain this Writ Application. This takes me to the next ground that I should consider: whether all necessary parties are before this Court.

Necessary parties

As I have observed above, in the document marked as P12, the said Vasanthapragash has made a statement to the police admitting the land to be his, the translation of the statement is marked as E-P12. Further, in the said statement, the said Vasanthapragash states he has bought the land in an extent of 28 Acres and further 2 Acres from three different persons. Further, the quit notice has been sent to the said Vasanthapragash. In the given circumstances, in my view, the said Vasanthapragash is a necessary party to this Application as the Order sought by the Petitioners is directly affecting the said Vasanthapragash. The Petitioners have also failed to explain their failure to name the said Vasanthapragash as a party to this Application.

The failure to name necessary parties to a Writ Application is detrimental to the Writ Application. His Lordship Justice J.A.N. De Silva, J (P/CA) (as he was then) in ***Rawaya Publishers and other v. Wijedasa Rajapaksha, Chairman and others*** 2001 (3) SLR 213 held that,

“In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings”

The contradictory positions taken by Vasanthapragash in P12 takes me to the next ground the Petitioners have failed to address this Court, namely, whether the Petitioners misrepresented facts to this Court.

Misrepresentation of facts

As stated above by P12, the recipient of the quit notice has admitted to having purchased the *corpus*. However, in the Petition³, the Petitioners claim that they have purchased the *corpus*. The Petitioners have failed to explain this vital contradiction in their pleadings or even at the submission stage. If I am to consider that the document marked as P12 by the Petitioners is correct, then there is a clear misrepresentation by the Petitioners in paragraph 1 of the Petition when describing the title and ownership of the *corpus*.

It is a trite law that a party seeking to invoke the discretionary Writ jurisdiction must not misrepresent material facts to this Court. If parties misrepresent facts to this Court, it is fatal to their Application. This Court in ***S. A. V. Inoka Sanjeevanie v. National Water Supply & Drainage Board and others*** CA WRT 366/24 decided on 07.10.2025 held,

“When a petitioner makes an application for a writ to invoke this Court’s discretionary jurisdiction, such petitioner enters into an understanding or an agreement with the Court which requires the petitioner to act with uberrima fides. Therefore, such petitioner is required to place before Court all relevant facts material to the issue at hand. The failure to place such material fact/s, as well as misrepresentation of facts, will both result in the denial of the relief so sought by such petitioner. The issue of suppression or misrepresentation of fact and the lack of uberrima fides thus will be an issue primarily between the Court and the petitioner as opposed to it being between the parties.”

Further, in the case of ***Namunukula Plantations Limited v. Minister of Lands and others (2012) 1 SLR 376*** it was held that

“It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”

³ Paragraph 1 of the Petition

Identification of the *corpus* is disputed.

It is also observed that in the Schedule of the title deed, marked P1 depicts the boundaries of the Petitioners' land. However, the said boundaries are quite different from the boundaries stated in the quit notice. Thus, the identification of the *corpus* becomes a disputed fact. If the Petitioners claim title to the land pursuant to P1, the Petitioners should establish that fact by evidence in a competent Court. This becomes relevant as the Divisional Secretary claims the *corpus* to be state land while the Petitioners claim the land as theirs. As per the document marked P20, it is apparent that the Divisional Secretary has instituted action under the State Lands (Recovery of Possession) Act, No. 7 of 1979 (as amended) to take possession of the land.

I have also considered the report of the Gramasevaka of the Marappalam Division, which is on page 13 of the document marked P19-E. In the said report, the Grama Nildhari too has acknowledged that more than 20 Acres of dense forest had been cleared by Vasanthapragash. Nowhere does he state that the land is private land nor does he state that there is a dispute pertaining to the title of the land. It also contradicts the Petitioners' contention that they have cleared their land. The Petitioner submitted that they had sought clarification from the Land Commissioner pertaining to the *corpus* and received a reply which states that the land is private land (P18A). The English translation is marked and tendered as E-P18A. However, the Counsel concedes that the said letter tendered to the Court does not describe the land. Hence, whether the said letter refers to the *corpus* in dispute or any other land cannot be verified.

Conclusion

Considering the submissions made by the learned Counsel for the Petitioners and the documents tendered, it is apparent that there is a dispute pertaining to the title of the *corpus*. However, as stated above, the Petitioners should seek a resolution to the said dispute through leading of evidence in an appropriate Court. Other than the title dispute, the Petitioners do not contend any ground to quash the quit notice. In any event, as per P19, it is evident that the 1st Respondent, at present has taken steps to file action in the Magistrate's Court of Eravur. The Petitioners have failed to demonstrate any ground to quash the quit notice marked P14. As stated above, other than attacking the view of the 1st Respondent pertaining to the title, the Petitioners do not allege any illegality in the said notice. The Petitioners also seek a Writ of Prohibition against the 1st Respondent from taking any steps or proceeding with the case bearing no 43937/MISC/2023. Once the case is filed in the Magistrate's Court, it is within the purview of the learned Magistrate, who is not a party to this Application.

Accordingly, in my view, the Petitioners have failed to establish any ground that warrants the intervention of this Court, nor have the Petitioners established a *prima facie* case to issue formal notice on the Respondents. Therefore, for the above stated reasons, this Court is not inclined to issue formal notice on the Respondents and proceed to dismiss this Application. However, in parting with this Order, I must also state that this Order should not be a bar for the Petitioners to vindicate their title in a Court of law if they so desire.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal