

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

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

C.A. (Writ) Application

No: 0485/2019

K.L. Gunasekara,
No. 17,
Dharmashoka Place, Kinigama,
Bandarawela.

PETITIONER

Vs.

1. M.J.D. Fernando,
General Manager of Railways,
Sri Lanka Railways Head Quarters,
Colombo 10.

- 1A. H.M.K.W. Bandara,
General Manager of Railways,
Sri Lanka Railways Head Quarters,
Colombo 10.

- 1B. J.I.D. Jayasundara,
General Manager of Railways,
Sri Lanka Railways Head Quarters,
Colombo 10.

- 1C. Ravindra Pathmapriya,
General Manager of Railways,
Sri Lanka Railways Head Quarters,
Colombo 10.
2. G. Gamage,
Additional General Manager of Railways,
Sri Lanka Railways Head Quarters,
Colombo 10.
- 2A. H.N.S.P.K. De Silva,
Additional General Manager of Railways,
Sri Lanka Railways Head Quarters,
Colombo 10.
3. A.D.G. Senevirathne,
Transport Operation Superintendent (Land),
Sri Lanka Railways Head Quarters,
Colombo 10.
- 3A. N.J. Indipolage,
Transport Operation Superintendent (Land),
Sri Lanka Railways Head Quarters,
Colombo 10.
4. G.W.S. Sisira Kumara,
Commercial Superintendent (Land),
Sri Lanka Railways Head Quarters,
Colombo 10.

- 4A. P.D.S. Bandara,
Commercial Superintendent (Land),
Sri Lanka Railways Head Quarters,
Colombo 10.
5. W.S. Chandana,
Deputy Commercial Superintendent (Land),
Sri Lanka Railways Head Quarters,
Colombo 10.
- 5A. W.G. Ananda Karunaratna,
Deputy Commercial Superintendent (Land),
Sri Lanka Railways Head Quarters,
Colombo 10.
6. H. Liyanagamage,
Land Officer (Way and Works),
Sri Lanka Railways Head Quarters,
Colombo 10.
- 6A. Anjana De Silva,
Land Officer (Way and Works),
Sri Lanka Railways Head Quarters,
Colombo 10.

7. W.G. Ananda Karunarathna,
Regional Superintendent of Railway,
Railway Station,
Nawalapitiya.

- 7A. K.P.N.S. Lionel Singha,
Regional Superintendent of Railway,
Railway Station,
Nawalapitiya.

8. D.W.N Amarasena,
District Engineer (Upper Division),
Railway Station,
Naanu Oya.

- 8A. D.M.P.S. Bandara,
District Engineer (Upper Division),
Railway Station,
Naanu Oya.

9. W.P.M. Fernando,
Chief Engineer (Way and Works),
Sri Lanka Railways Head Quarters,
Colombo 10.

- 9A. E.M.P.S.K. Deegala,
Chief Engineer (Way and Works),
Sri Lanka Railways Head Quarters,
Colombo 10.

10. L.P. Jayampathy,
The Secretary,
Ministry of Transport and Civil Aviation,
7th Floor, Sethsiripaya Stage II,
Battaramulla.

10A. Ranjith Ganganath Rubasinghe,
The Secretary,
Ministry of Transport and Civil Aviation,
7th Floor, Sethsiripaya Stage II,
Battaramulla.

10B. Prof.Kapila C.K. Perera,
The Secretary,
Ministry of Transport and Civil Aviation,
7th Floor, Sethsiripaya Stage II,
Battaramulla.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Upul Jayasuriya, P.C. with Laknath Senevirathne for the Petitioner.
Prabhashanee Jayasekara, S.C. for the Respondents.

Argued on : 11.12.2025

Written Submission

Tendered on : 27.01.2026 by the Petitioner
09.03.2026 by the Respondents

Decided on : 13.03.2026

Adithya Patabendige, J.

The Petitioner was recruited to the Sri Lanka Railway Service as a clerical labourer on or about 17th February 1975 and was employed as a Technician (Trolley rider) at the time of his retirement on 05th June 2016.

Factual Background

The Petitioner states that he developed a plot of land owned by the Sri Lanka Railway Department, which is the subject of this application. According to the Petitioner, he developed the land with the verbal approval of the authorities, based on the assurance that the land would later be leased to him, and he specifically stated that the **FPL** (Foreman Plate Layer) Bandarawela had sent a letter to the then General Manager of the Railway (GMR) dated 31st July 1991 marked **P1**.

Additionally, the predecessor of the 4th Respondent informed the Petitioner that the aforementioned request was under review, marked **P2**.

The Petitioner states that he commenced construction of a house in the subject matter of this application.

In the meantime, the Petitioner was informed by the GMR in his letter dated 04th October 2007, marked **P5**, to vacate the premises and hand over the vacant possession. The Petitioner states that vacant possession was handed over to the Station Master at Bandarawela.

Thereafter, the matter was brought to the attention of the Parliament Advisory Committee on Transport, which decided that further action should not be taken until a policy decision was made on this issue. Accordingly, the GMR (covering) directed that the keys be returned to the occupants as per the documents marked **P6** and **P7**. Accordingly, the keys were returned to the Petitioner by the 1st Respondent (vide. **P8**).

The Secretary to the President issued a circular No. SP/RD/02/10 dated 03rd February 2010 marked **P9** relating to the proper management of State lands. According to the Petitioner, the said circular empowered the General Manager of Railways to lease such lands for a period not exceeding five years, subject to the Railway Department's right to recover possession.

Thereafter, the Petitioner, together with four other employees, addressed a letter dated 26th March 2013, marked **P11**, to the 1st Respondent requesting that the lands occupied by them

be granted on lease. The 1st Respondent made a minute on the said letter directing the relevant officer to examine the matter and report the lease amount payable for leasing the subject land to the Petitioner, and referred the matter for necessary action.

Subsequently, the 1st Respondent appointed a committee to investigate the feasibility of granting leases of the lands occupied by the Petitioner and other similar categories of employees. The committee submitted its report dated 07th February 2014, marked **P12**, recommending that the lands be granted on lease.

Following the said recommendation, the 1st Respondent, by letter dated 16th June 2014, marked **P13**, forwarded the matter to the Minister of Transport and Railways, seeking approval to grant the lands occupied by the Petitioner and others on lease under utility charges, which was the usual practice adopted by the Railway Department for leasing such lands.

The Petitioner also relies on a Cabinet Memorandum dated 17th March 2016, marked **P15**, and the Cabinet approval dated 07th April 2016, marked **P16**, relating to the proposal to grant leases of certain railway reservation lands occupied by unauthorized dwellers in the Haputale - Badulla area.

The Petitioner retired from the service on the 05th of June 2016, and the letter issued on his retirement by the District Engineer marked **P17**.

After his retirement, the GMR issued a charge sheet against the Petitioner, marked **P18**, requiring him to show cause as to why his pension and gratuity should not be withheld on account of an alleged offence of unauthorized possession of Railway land committed during his employment in the Railway Department.

According to the Petitioner, the matter was thereafter referred to the Divisional Committee of Lease to consider the viability of granting leases of the lands occupied by the Petitioner and other similarly situated persons. Subsequently, the Cabinet of Ministers appointed a Ministerial Sub-Committee on 15th February 2018, to consider the issue of unauthorized dwellers occupying railway reservation lands (vide **P20**).

Being aggrieved by the charge sheet issued, marked **P18**, the Petitioner attended the inquiry and submitted his representations through the Defense Officer.

Thereafter, by letter dated 25th September 2019, marked **P22**, the 1st Respondent directed the Petitioner to vacate the land and hand over possession of the premises.

The Petitioner states that he had constructed a house on the said land using bank loans and his personal savings, and that he continues to repay the loan obtained for that purpose.

The Petitioner, therefore, contends that if he is evicted from the premises without being granted a lease, he and his family would suffer serious and irreparable prejudice, particularly as he has no alternative residence.

The Petitioner therefore argues that the impugned decision contained in the letter dated 25th September 2019 marked **P22**, directing him to vacate the premises, is arbitrary and unreasonable and defeats the legitimate expectation created by the conduct of the authorities.

Reliefs Sought by the Petitioner

- A mandate in the nature of a *writ of certiorari* to quash the charge sheet dated 26th April 2017, marked **P18**, and the decision dated 25th September 2019, marked **P22**,
- A mandate in the nature of a *writ of prohibition* preventing the Respondents from conducting a disciplinary inquiry and/or evicting the Petitioner from the disputed land,
- A mandate in the nature of a *writ of mandamus* directing the Respondents to implement the promise stipulated in documents marked **P6, P7, P8, P9, P10, P11, P12, P13, P15, P15a, P16, P20**, and take steps to pay pension and gratuity to the Petitioner forthwith or within a period of time as deemed reasonable by this Court,
- Other incidental reliefs.

Position of the Respondents

The Respondents deny that the Petitioner has any lawful right to occupy the land in question. It is their position that the land forms part of the railway reservation belonging to the State and that the Petitioner, who was an employee of the Sri Lanka Railways, has occupied the said land without obtaining any permit or lease from the competent authority.

The Respondents further stated that the Petitioner had constructed a house on the said land without lawful authority.

The Respondents contend that several notices were issued requesting the Petitioner to vacate the premises and that the impugned quit notice was issued by the General Manager of Railways in terms of the provisions of the **State Lands (Recovery of Possession) Act No.7 of 1979**. The Respondents further submit that the Petitioner cannot claim any legitimate expectation to remain on the land, as no representation was made, nor any approval granted, authorizing the Petitioner to occupy or lease the said property.

Issues for Determination

According to the factual matrix of the case, the issues to be determined are as follows.

- Whether the Petitioner's occupation of railway reservation land was lawful.
- Whether the Petitioner has established a legitimate expectation to obtain a lease of the said land.
- Whether the Petitioner has established any legal right in respect of pension and gratuity in the context of Section 12 of the Minutes of Pensions.
- Whether the impugned decision marked **P22** is liable to be quashed in the exercise of writ jurisdiction.

The Petitioner's Occupation in the Disputed Land

The Respondents deny that the Petitioner has any lawful right to occupy the land. They maintain that the land forms part of the railway reservation belonging to the State and that the Petitioner has occupied the said land without any permit, lease, or authorization from the competent authority.

The Respondents further state that the Petitioner, being an employee of the Railway Department, was fully aware that the land constituted railway reserved land and that he had been instructed not to construct any structures thereon. Despite such instructions, he proceeded to construct a house.

The Respondents contend that the impugned quit notice was issued in terms of the **State Lands (Recovery of Possession) Act No. 7 of 1979**, and that the Petitioner cannot claim any legitimate expectation to remain on the land in the absence of any representation or approval granting him such a right.

It is the position of the Respondents that disciplinary action was instituted against the Petitioner due to unauthorized occupation and construction of a house on railway property, which constitutes a grave offence under the Establishment Code and applicable Safety Rules. The Petitioner was served with the charge sheet dated 26th April 2017 (marked **P18**), and a disciplinary inquiry was conducted. The Respondents further state that the Petitioner participated in the inquiry proceedings without any objection and that no final disciplinary decision had yet been made at the time of filing the application.

The Respondents also rely on letters issued by the Secretary to the Ministry of Transport and Civil Aviation dated 30th September 2015 (marked **1R1**) and 11th March 2016 (marked **1R2a**), directing disciplinary action against railway employees who were in unauthorized occupation of railway lands. They further refer to a Cabinet Memorandum dated 11th January 2018 (marked **1R3**) addressing encroachments on railway lands and the need to deal with such matters in the public interest.

Preliminary objections were also raised to the maintainability of the application, including prematurity, laches, availability of alternative remedies, and lack of a clear legal right.

Disciplinary Proceedings - Prematurity of Challenge

According to the letter dated 27th June 2016, marked **P17**, the Petitioner retired from service with effect from 5th June 2016, having completed the compulsory retirement age of sixty years, subject to Section 12 of the Minutes of Pension. For ease of reference, Section 12 of the Minutes of Pensions states as follows.

- **Section 12(1)**

Where a public officer retires from the public service while disciplinary proceedings are pending against him or her, or where disciplinary proceedings are contemplated for misconduct committed during his or her service, the Government may withhold or reduce the

pension or gratuity, either permanently or for a specified period, after giving the officer an opportunity to show cause.

- **Section 12(2)**

Where the Government considers that the pension or gratuity should be withheld or reduced, the officer shall be given an opportunity to submit a written explanation within the period specified.

- **Section 12(3)**

The Government may, pending the completion of the disciplinary proceedings, direct that the whole or any part of the pension or gratuity be withheld.

Thus, Section 12 expressly recognizes the authority of the Government to initiate or continue disciplinary proceedings against a public officer even after retirement, where the alleged misconduct relates to his or her period of service, and to withhold pensionary benefits pending the outcome of such proceedings.

Under Section 12(1) of the Minutes of Pensions, when a public officer retires while disciplinary proceedings are pending or contemplated, the Government may withhold or reduce the Pension or gratuity.

The legality of serving a charge sheet to a public officer under Section 12 of the Minutes of Pension was discussed in the following cases;

Wilbert Godawela V.S. D. Chandradasa and Others (1995) 2 SLR 338

Mohammed Nizwar Ismail v Abdul Majeed and Others SC FR Application 389/2015

Importantly, the disciplinary proceedings have not yet culminated in a final determination regarding the withholding or reduction of the Petitioner's pension or gratuity.

It is a well-established principle of judicial review that courts ordinarily decline to interfere with ongoing disciplinary proceedings at an interlocutory stage, particularly where the statutory process has not reached a final decision. Judicial review is directed at the legality of decisions rather than the mere initiation of proceedings.

Intervention at this stage would effectively pre-empt the statutory process specifically contemplated by Section 12 of the Minutes of Pensions and would deprive the competent

authority of the opportunity to reach a final determination after considering the Petitioner's explanation.

Furthermore, Section 12 itself provides a procedural safeguard by requiring that the officer be afforded an opportunity to show cause before any adverse decision is taken. The Petitioner, therefore, has an adequate opportunity to vindicate his position within the framework of the disciplinary proceedings.

Accordingly, this Court holds that the Petitioner has not established any legal basis to quash the charge sheets or the pending disciplinary proceedings at this stage.

Legitimate Expectation

The fundamental requirement for invoking the doctrine of legitimate expectation is the existence of a **clear representation, promise, or established practice made by a public authority** from which the expectation arises.

vide.

Council of Civil Service Unions and Others v Minister for the Civil Service (1985) AC 374

Attorney General of Hong Kong v NG Yuen Shiu (1983) 2 WLR 735

M.R.C.C. Ariyaratne & Others v N.K. Illangakoon & Others SCFR444/2012 decided on 30th July 2019.

In the present case, the Petitioner relies on several documents and administrative developments, including the discussions before the Parliamentary Advisory Committee on Transport, the letters marked **P7** and **P8**, and the direction given by the 1st Respondent in document **P11**, requesting the relevant officer to determine a lease amount in respect of the land in question.

However, upon examination of these materials, it becomes apparent that none of them amounts to a clear and unequivocal representation by GMR that the Petitioner would be granted a lease of the said land.

The decision of the Parliamentary Advisory Committee merely indicated that eviction should not proceed until a policy decision was taken, which cannot reasonably be interpreted as an unconditional promise that the land would eventually be granted to the Petitioner.

Similarly, the direction contained in **P11**, requesting the 5th Respondent to determine a lease amount and report, merely reflects an administrative step taken for the purpose of considering the Petitioner's request. Such a step does not constitute an express assurance or promise that a lease would necessarily be granted.

Furthermore, the documents relied upon by the Petitioner do not demonstrate the existence of a consistent past practice of granting leases to railway employees occupying railway reservation lands in similar circumstances. On the contrary, the Respondents have maintained that railway lands can only be leased upon compliance with the applicable legal and administrative procedures. The Petitioner has produced documents marked **P26a** to **P26i**, which, according to him, demonstrate that certain other persons who were occupying railway lands had been granted leases by the Railway authorities.

However, the production of a few isolated instances of leases granted to other individuals is not sufficient to establish the existence of a consistent past practice or policy of granting leases to all persons occupying railway reservation lands.

The doctrine of legitimate expectation requires proof of a clear representation or regular and consistent course of conduct by the authority.

The documents marked **P26a** to **P26i**, even if accepted at face value, merely indicate that leases had been granted in certain individual cases. They do not demonstrate the existence of a general policy or consistent administrative practice of granting leases to railway employees occupying railway lands without lawful authority.

Furthermore, the grant of a lease in an individual case may depend on several factors, including the nature of the land, administrative approval, compliance with applicable regulations, and the requirements of the Railway Department. Such isolated instances cannot be treated as a binding representation or established practice capable of giving rise to a legitimate expectation.

Accordingly, the documents relied upon by the Petitioner, marked **P26a** to **P26i**, do not establish the existence of a representation or established practice sufficient to satisfy the first essential requirement of the doctrine of legitimate expectation.

In these circumstances, the materials relied upon by the Petitioner, taken either individually or collectively, do not disclose a clear representation, promise, or established practice capable of giving rise to a legitimate expectation.

Improvements carried out on railway reservation land, in the absence of prior lawful approval from the competent authority, cannot by themselves found a legitimate expectation of continued occupation or entitlement to a lease.

Accordingly, the essential requirements of the doctrine of legitimate expectation are not satisfied in the present case.

In these circumstances, the issuance of the letter marked **P22**, requiring the Petitioner to vacate the premises, cannot be regarded as illegal, irrational, or otherwise unlawful.

Relief Sought in Paragraphs (c), (d), and (e) of the Prayer of the Petition

A careful reading of paragraphs (c), (d), and (e) of the prayer shows that the Petitioner seeks to challenge both the proposed eviction from the premises and possible disciplinary action, treating both as consequences of the letter dated 25th September 2019 marked **P22**.

However, **P22** is solely an eviction-related administrative communication requiring the Petitioner to vacate the premises.

The letter itself does not include any disciplinary order against the Petitioner. Therefore, the challenge to **P22** should be considered an administrative decision related to the occupation of railway land rather than a disciplinary order.

Even though **P22** itself does not contain disciplinary action, the Petitioner is asking the Court to prevent possible disciplinary action.

In the absence of any lawful authority for the Petitioner's occupation of the railway reservation land, the direction issued by the Respondents requiring the Petitioner to vacate the said premises cannot be regarded as unlawful or unreasonable so as to warrant the intervention of this Court by way of writ jurisdiction.

Writ of Mandamus

The Petitioner seeks a mandate in the nature of a *writ of mandamus* directing the Respondents to implement the alleged promises relied upon by the Petitioner in documents marked **P6, P7, P8, P9, P10, P11, P12, P13, P15, P15a, P16, and P20**.

For the completeness of the judgment, it is useful to examine the above documents briefly.

P6 – minutes of the Cabinet sub-committee dated 06th April 2009,

P7 – directions of the GMR (covering) to hand over the keys to occupants, including the Petitioner,

P8 – The confirmation letter that the keys were handed over to the occupants,

P9 – the Circular dated 03rd February 2010 issued by the Secretary to the President,

P10 – the letter written by the Deputy Commercial Superintendent,

P11 – the letter written by the Petitioner,

P12 – report on unlawful construction in the railway reservation in Bandarawela,

P13 – the letter written by the GMR to the line minister,

P15 – Cabinet memorandum,

P15a – the letter written by Minister Nimal Siripala de Silva to the Cabinet,

P16 – Cabinet decision dated 07th April 2016,

P20 – Cabinet decision dated 15th February 2018.

A careful examination of the above documents reveals that they primarily consist of administrative correspondence, reports, recommendations, committee deliberations, and Cabinet-level policy considerations regarding the broader issue of the occupation of railway reservation lands by certain persons.

However, none of the aforesaid documents contain a clear and enforceable direction requiring the Respondents to grant a lease of the subject land to the Petitioner.

It is well settled that a *writ of mandamus* will issue only where the Petitioner establishes a clear legal right in his favour and a corresponding public duty on the part of the Respondents.

The documents relied upon by the Petitioner do not create any such legal right and/or public duty. At best, they demonstrate that the issue relating to the occupation of railway reservation lands had been considered at various administrative and policy levels, and that the Petitioner's request had been taken into consideration by the authorities.

Such administrative correspondence, recommendations, or Cabinet-level discussions cannot be construed as creating a binding legal obligation upon the Respondents to grant a lease of State land to the Petitioner.

On the other hand, Section 12 of the Minutes of Pensions does not create an immediate or absolute entitlement to pension benefits where disciplinary proceedings are pending. Rather, it vests discretion in the Government to determine the matter upon completion of such proceedings after affording the officer an opportunity to show cause. Until that process is concluded, no enforceable legal right accrues to the Petitioner. As a writ of mandamus issues only to compel the performance of a public duty corresponding to an existing legal right, the Petitioner is not entitled to such relief at this stage.

Accordingly, the Petitioner has failed to establish a clear legal right and/or public duty enforceable by way of a *writ of mandamus*.

Alleged Discriminatory Treatment

The Petitioner contended that a certain other officer, namely, A.M.S Abeysinghe, who was occupying lands in a railway reservation, had been granted a lease marked C6 by the Railway Department and that the Petitioner had therefore been subjected to discriminatory treatment.

It is a well-settled principle that an administrative irregularity or concession granted in another cannot be relied upon as a basis to compel the authorities to repeat the same course of action. A claim of equality cannot be founded upon an alleged illegality or administrative irregularity.

Conclusion

Before concluding, it must be acknowledged that the Petitioner has served the Railway Department for a long time and has occupied the disputed land for many years. However, judicial review focuses on the legality of administrative actions rather than the merits or sympathetic aspects of the case. In the absence of a clear legal right in favour of the Petitioner and a corresponding public duty on the part of the Respondents, this Court cannot compel the authorities to grant a lease of State land nor restrain them from exercising their lawful powers.

For the foregoing reasons, I hold that the Petitioner has failed to establish any grounds warranting the intervention of this Court in the exercise of its writ jurisdiction.

Accordingly, the application for *Writs of Certiorari, Prohibition, and Mandamus* is refused and dismissed.

In the circumstances of the case, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL