

**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 Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Bogawantala Tea Estates PLC,
No. 153, Nawala Road,
Narahenpita, Colombo 05

PETITIONER

C.A. Case No. WRT/0377/21

Vs.

1. Sri Lanka State Plantations Corporation,
No. 21, Miraneeya Street,
Colombo 12.
2. Janatha Estates Development Board,
55/75, Vauxhall Lane,
Colombo 12.
3. Hon. Dr. Ramesh Pathirana,
(ceased to hold office)
Minister of Plantation Industries,
11th Floor, Sethsiripaya 2nd Stage,
Battaramulla.
- 3A. Hon. Samantha Vidyaratne,
Minister of Plantations and Community
Infrastructure,
11th Floor, Sethsiripaya 2nd Stage,

Battaramulla.

4. Land Reform Commission,
No. 475, Kaduwela Road,
Battaramulla.

5. Nilantha Wijesinghe,
(ceased to hold office),
Chairman,
Land Reform commission,
No. 475, Kaduwela Road,
Battaramulla.

5A. R.K. Nihal,
Chairman
Land Reform commission,
No. 475, Kaduwela Road,
Battaramulla.

6. Hon. S.M. Chandrasena,
(ceased to hold office),
Minister of Lands,
Ministry of Lands,
“Mihikatha Medura” Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

6A. Hon. Kuragamage Don Lalkantha,
Minister of Agriculture, Livestock
Development, Land and Irrigation,
Ministry of Lands,
“Mihikatha Medura” Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

7. Hon. Mahindananda Aluthgamage,
(ceased to hold office),
Minister of Agriculture,
Ministry of Agriculture,
No. 80/5, Govijana Mandiraya,
Rajamalwatta Lane,
Battaramulla.

7A. Hon. Kuragamage Don Lalkantha,
Minister of Agriculture, Livestock
Development, Lands and Irrigation,
No. 80/5, Govijana Mandiraya,
Rajamalwatta Lane,
Battaramulla.

8. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Sanjeewa Jayawardena, PC with Rukshan Senadeera, instructed by Amila Kumara, for the Intervenient-Petitioner.
Anuruddha Dharmaratne with N. Bandara and U. Walgampaya, for the Petitioner-Respondent.
Pulina Jayasooriya, SC, for the 1st, 3rd, 6th, 7th, and 8th Respondents.
Rasika Dissanayake for the 2nd Respondent.
Ruwantha Cooray, instructed by Tharaka Jayasekara, for the 4th and 5th Respondents.

SUPPORTED ON : 01.07.2025

DECIDED ON : 15.07.2025

ORDER ON INTERVENTION**K.M.G.H. KULATUNGA, J**

1. The substantive matter had been set for judgement when an application for intervention was made by the intervenient petitioner, Blackwater Tea (Pvt.) Ltd (hereinafter referred to as 'the intervenient'). As such, the delivery of the judgement had been postponed and time granted for the respondent parties to file objections and the intervenient to file counter affidavits. Accordingly, objections and a counter affidavit have been filed, and the application for intervention was taken up for support on 01.07.2025.
2. The present application is preferred by the petitioner-respondent, Bogawantalawa Estates PLC (hereinafter referred to as 'the petitioner'), is in respect of an issue arising out of lease agreements between the petitioner and the 3rd respondent Land Reform Commission (LRC). The corpus is described in the Schedule to the Petition. The said land is a part of a larger land, owned by the 1st respondent, SLSPC, as evident from the Schedule, the land in issue in the present application, is called and known as Bogawanakelle (also known as Aldie and formally known as Cannan Estate) and also the land called Bogawantalawa. The intervenient has no connection, right, title, or interest to the corpus of this writ application. The intervenient is said to be the owner of a land called Glencairn Upper Division, and claims to have purchased the said land from one Podi Manika. The said land originally had been LRC land then allotted to said Podi Manika. The intervenient has obtained title to the said land by a transfer deed, marked and produced as Y-3. It is common ground and the learned President's Counsel for the intervenient conceded that the corpus of the present application is different and distinct land from the corpus of the District Court matter which the intervenient has instituted. The intervenient has no right, title, or interest in respect of the corpus of this writ application and the

intervenient thus could not be directly affected or prejudiced by any Order that may be made at the conclusion of this application.

3. In the substantive writ application, the petitioner is seeking a writ to quash the cancellation of lease agreements and as stated above, the intervenients do not have any right, title or interest in respect of that corpus. As such, any order made in the said writ application will have no bearing on the intervenient and the intervenient's rights will not be in anyway prejudiced by the outcome of the said application. This position was accepted and conceded by the learned Counsel for the intervenients. The learned Counsel did submit that the intervenient would be prejudiced in some derivative form. It is common ground that the substantive relief arises out of and is in respect of the lease agreements marked P-4 (i) to P-4 (x), and P-5 (i) to P-5 (xviii). The intervenient has instituted action in the District Court of Hatton, bearing no. L/968/2023, dated 23.07.2023, seeking a declaration that the intervenient is the lawful owner of the land depicted in the Survey Plan No. 3663 dated 07.10.2019 prepared by Licensed Surveyor, Shubhani P. H. Tennakoon.
4. According to the written submission tendered on behalf of the intervenient, the legal basis for the intervention is that, *certain interruptions made by the petitioner-respondent Bogawantala Estates PLC, to the possession of the land of the intervenient, which is named as Glencairn Upper has been leased out to the intervenient-petitioner; and that the vagueness of the relief sought by the petitioner would adversely affect the relief sought in the District Court action.*
5. The intervenient is seeking from this Court a pronouncement or an observation, based on a purported submission made by the learned Counsel for the petitioner Bogawantala Estates PLC that the lands of this writ application is different and distinct from the corpus of the

District Court action, and that the petitioner has no claim over the lands in Glencairn Upper Division.

6. As to the legal position of intervention, it is well settled that neither rules nor statute provide for any provision for intervention in writ applications. **Harold Peter Fernando vs. The Divisional Secretary of Hanguranketha and two others** 2005 BLR 120, confirms that in writ applications, there is no provision in the Constitution or any other law seeking to confer on a third party a right of audience in the Court of Appeal in the context of such application. Justice Marsoof held thus,

“(a) the Court of Appeal (Appellate Procedure) Rules, 1990 made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka setting out the procedure to be followed by this Court in dealing with applications inter alia for prerogative writs, do not provide for third party interventions in these proceedings.

(b) there is no corresponding provision in the Constitution or any other law seeking to confer on a third party a right of audience in the Court of Appeal in the lines of Article 134(3) of the Constitution, as it illustrates the restraint that is exercised by even the apex court of the country in dealing with applications for third party intervention in the context of the supervisory jurisdiction of court which is exercised with a view of keeping administrative authorities within their lawful bounds.”

7. Then, in **Chitra Weerakoon and Another vs. Bandaragama Pradeshiya Sabhawa**, CA/WRT/586/2007, CAM 22.11.2011, 2012 BLR 310, a divisional bench of three judges of the Court of Appeal held that the Court of Appeal Rules do not provide for third-party interventions in prerogative writs and that applications for such interventions are not possible. Justice Ranjith Silva opined that a Court cannot permit outsiders to offer the respondents in a writ application

‘moral support’ or ‘cheer’ such respondents along in his battle with the petitioner.

Then, in **Tyre House (Pvt) Ltd. vs. Director General Customs**, CA Application No. 730/95, CAM 05.06.1996; Justice Dr. Ranaraja, whilst holding that intervention cannot be allowed in writ applications in the absence of specific rules providing for and permitting third parties to intervene in such applications went on to observe that such intervenents, having no common interest with the petitioner, cannot be considered as being aggrieved persons.

In **M.D. Chandrasena and two others vs. S.F. de Silva** 63 NLR 143, it was held that, in an application for a writ in the nature of mandamus or certiorari, persons other than those who are parties to the application are **not** entitled to take part in the proceedings as intervenents. While it was argued that English common law rules for prerogative writs should apply, the Court clarified that while English common law is resorted to for principles, and held that, *“It has never been the practice of this Court to allow persons other than those who are parties to the application for writs to intervene in the proceedings. Learned Counsel for the intervenient was unable to cite any judicial decision which has recognised the principle that under the English common law an intervenient may appear in such applications.”*

8. However, in the following decisions, applications for intervention were allowed under special circumstances: **Mahanayake Thero, Malwatte Vihare vs. Registrar General and others** (1937) 39 NLR 186; **Jetwing Hotel Management Service (Pvt) Ltd. vs. Securities and Exchange Commission and others** CA Writ 293/2009; **Jayawardane vs. Minister of Health and others** CA Writ 978/2008; and **Government School Dental Therapists Association et al vs. George Fernando, Director General of Health Services** CA Writ 861/1993.

The land alienated by the 4th respondent to the intervenient and the corpus in the District Court matter is a different and distinct land from that is the subject matter of the lease agreements in this writ application. The land of the intervenient is not an adjacent land either. This is clearly evident on a comparison of the two Schedules and the respective boundaries described therein. The intervenient's substantive position is that the outcome of the writ application may affect the title and interest of the intervenient in respect of his land and the intervenient in these circumstances is interested in participating in the writ application. As the two lands are different and distinct, the writ issued in respect of one land cannot and will not affect the title or interest of the other land. However, the intervenient may be interested to participate in the application. Being so interested is not by itself sufficient.

9. In the aforesaid decision of **Government School Dental Therapists Association et al vs. George Fernando, Director General of Health Services** (CA Writ 861/1993) Justice Ameer Ismail, allowing the application for intervention, opined as follows:

“The learned Counsel for the intervenient petitioners submitted that although the rules do not provide for the intervention of any party in a pending writ application, yet as the supervisory writ jurisdiction of this Court is for the public good, any interested party with a legitimate interest should be permitted the opportunity of participating in the proceedings and being heard.”

According to which, an application for intervention by an interested party with a legitimate interest may be considered favourably. A party may be interested and may be desirous of intervening due to various reasons. That *per se* will not make such a person *a party interested with a legitimate interest* to entitle him to so intervene. To my mind, a party with a legitimate interest for the purposes of intervention, should be a person who is a necessary party to such writ application. At least, such

intervenient should establish that such party will be directly prejudiced by the issue of the writ in such application.

10. If an application for intervention is allowed, such intervenient will invariably be added as a party respondent to the said application. Intervention applications are not allowed merely to allow third parties to get an audience or to support another respondent. On a consideration of the aforesaid series of decisions, it is apparent that an intervention application would be considered favourably if and only if such party is in the position and status of a necessary party.
11. That being so, as admitted by both parties, including the intervenient, the corpus as described in the Schedule of this writ application and the corpus in the District Court action are different and distinct. In such circumstances, the intervenient is neither an affected party nor a necessary party to this writ application. The intervenient is in no way directly affected by whatever may be the outcome of this writ application. The intervenient may have some other litigation with the petitioner Bogawantala Estates PLC in a different forum in respect of a different land. That does not make the intervenient an interested party whose interest suffices to justify the permitting of the intervention as prayed for.
12. This application for intervention is misconceived and I see no legal basis to allow the same. Accordingly, this application is refused and dismissed, however subject to costs fixed at Rs. 25,000/= to be paid to the petitioner-respondent by the intervenient-petitioner.

JUDGE OF THE COURT OF APPEAL