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*, Prohibition and *Mandamus*.

Mr. Palippody Jeyatheeswaran,
Nochchimunai, Batticaloa.
Presently at
Lunchwisenstrasse 30, 8051 Zurich,
Switzerland.

PETITIONER

Court of Appeal Case No:
CA/WRIT/646/2021

Vs.

1. Mr. Vanniyasingam Vasuthevan,
1A. Mrs. Shivapiriya Vilvaratnam,
Divisional Secretary,
Divisional Secretariat,
Manmunai North,
Batticaloa.

2. Mrs. H.D. Asinsala Seneviratne,
2A. Mr. D.M.R.C. Dasanayake,
2B. Mrs. Valarmathy Ravindran,
Provincial Land Commissioner,
Department of Land Administration,
Eastern Province Orr's Hill,
Trincomalee.

3. Mr. G.D. Keerthi Gamage,
3A. Mr. K.D. Bandula,
3B. Ranaweera Arachchilage Chandana Saman Ranaweera Arachchi,
Land Commissioner General,
Land Commissioner General Department,
"Mihikatha Madura",
No. 1200/6, Rajamalwaththa Road,
Battaramulla.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Uditha Egalahewa, P.C. with Vishwa Vimukthi for the Petitioner
Shemanthi Dunuwille S.C. for the Respondents

Argued on: 14.05.2025.

Written Submissions: For the Petitioner on 28.04.2025.

Decided on: 30.01.2026.

Mayadunne Corea J

The Petitioner in this Application, inter alia, sought the following reliefs:

> "*c) Issue a Writ in the nature of Certiorari quashing the decisions contained in P19*
>
> *d) Issue a Writ in the nature of Certiorari quashing the decisions contained in P20*
>
> *e) Issue a Writ in the nature of Prohibition prohibiting taking any steps in accordance with the decisions contained in P19*
>
> *f) Issue a Writ in the nature of Prohibition prohibiting taking any steps in accordance with the decisions contained in P20*
>
> *g) Issue a Writ in the nature of Mandamus directing the Respondents to implement the decisions reflected in P12, P16 & P17 in terms of section 20 of the Land Development Ordinance*"

The facts of the case briefly are as follows. On 02.03.1990, the Kalmunai Divisional Secretariat had issued the Petitioner with a permit to a land called "Wembabhumi" situated at Periyanilawanai Grama Niladhari Division in Karaiwapattu. However, in or around 2005, the officers at Kalmunai Divisional Secretariat used the said land to construct an apartment complex for displaced tsunami victims. It is alleged that on 10.04.2012, the Petitioner filed a complaint at the Kalmunai Divisional Secretariat, and the Divisional Secretary, by letter dated 30.12.2014, recommended the predecessor of the 3rd Respondent to grant an alternative land to the Petitioner.

The Petitioner states that the Divisional Secretary had recommended the grant of an alternative land to the Petitioner from a different Divisional Secretariat due to the absence of a suitable, alternative land in Kalmunai, and that the predecessor of the 3rd Respondent had approved the said recommendation by letter dated 23.02.2015. Thereafter, the 2nd Respondent identified an alternative land in Thiraimadu in the Divisional Secretariat area of the 1st Respondent, and directed the 1st Respondent to identify a land of 1 acre to be granted to the Petitioner. Nevertheless, the 1st Respondent had failed to comply with the said direction despite several reminders. Eventually, by letter dated 30.01.2018, the 1st Respondent informed the 2nd Respondent of the unavailability of a suitable land.

Thereafter, the 2nd Respondent called for a report from the land officer, who conducted a field visit in Thiraimadu and identified suitable alternative land in the area. Hence, the 2nd Respondent advised the 1st Respondent on multiple occasions to grant 1 acre of land to the Petitioner. However, the 1st Respondent failed to comply and instead replied that only 20 perches could be alienated.

The 3rd Respondent called for a meeting at the Land Commissioner General's Department, following which it was decided, *inter alia*, that a maximum of ½ an acre of land identified by the 2nd Respondent must be granted to the Petitioner, and directed the 1st Respondent to comply with the same. According to the Petitioner, the 1st Respondent delayed the implementation of the above directions on the basis that the Petitioner was a foreign national. Subsequently, on 14.07.2021, at a meeting summoned by the Secretary to the Ministry of Home Affairs, the Respondents had decided to grant 20 perches to a close relative nominated by the Petitioner. The minutes of the meeting are marked as P19. Accordingly, the 1st Respondent by letter dated 28.07.2021 (P20) directed the Petitioner to nominate a family member.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The 1st Respondent is biased towards the Petitioner.
- The Petitioner is a Swiss national only with effect from December 2020. The Petitioner received the said permit for the land in Kalmunai on 02.03.1990. Further, the Petitioner is presently having dual citizenship. and therefore, the Petitioner's Swiss nationality is of no relevance.
- The acts of the Respondents are contrary to the Land Development Ordinance No. 19 of 1935 (hereinafter referred to as 'LDO').
- The acts of the Respondents are in violation of the legitimate expectations of the Petitioner.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner's Application is futile.

- The necessary parties are not before Court.
- The Petitioner has failed to disclose material facts.
- The Petitioner is guilty of laches.
- Section 22 of the Land Development Ordinance provides that state land cannot be given to foreign nationals.

Analysis

If I am to summarise the Petitioner's grievance in seeking a Writ, as per the submission at the hearing, a representation had been made to the Petitioner to be given an alternative land in lieu of the land that had been taken by the state for the construction of a housing project for the families affected by the tsunami. The land that had been taken is in excess of 1A and after several meetings the Petitioner had been offered a 20P lot without consulting him which decision is impugned on the basis that it is irrational, illogical and unreasonable, and hence, bad in law.

It is common ground among the parties that the Petitioner possessed a permit in the year 1990 bearing number AM/L/8/KP/253 to the extent of 1A, 1R and 20P. The Petitioner contends that he had developed the said land and cultivated the land until there was a threat to his family by the LTTE. It is alleged that his father who was a gramasevake was killed and he himself was shot and wounded in Colombo in the year 2005. As per the submissions it is clear that, at the time of the Petitioner being shot and wounded, he was not residing in the said land. It is also contended that thereafter the Petitioner had been hospitalised and in September 2005 in fear of his life he had migrated to Switzerland. The Petitioner does not disclose whether the permit is an annual permit or long-term permit granted under the LDO. However, it is the contention of the Respondents that the permit had been an annual permit and it had been cancelled. This Court observes that none of the parties have tendered a copy of the permit to this Court. Thus, the Court is not in a position to identify the permit that had been issued to the Petitioner. Further, though the Respondents contend that the said permit had been cancelled, no documents were tendered to establish the said cancellation, nor any material placed to demonstrate that there had been an inquiry before the decision to cancel the said permit.

It is common ground that the said land had been utilised to construct a housing scheme for the tsunami-affected families, Hence, the said land is now unavailable. However, as the

cancellation of the permit is not the issue before this Court in the present application, keeping the said fact as it may, let me now consider the contention of the Petitioner.

The Petitioner's request for an alternate land

Following the end of the armed conflict the Petitioner had made a request to the Lessons Learnt Reconciliation Commission (hereinafter referred to as 'LLRC') pertaining to the state using his land without informing him. It is his contention that the LLRC recommended that he be given an alternate land. However, no documents pertaining to this recommendation were presented to Court. Nevertheless, as per the document marked as P1, it is clear that the Petitioner had made a complaint to the Kalmunai Divisional Secretary seeking compensation for the permit land that had been taken to construct the tsunami housing project and it also refers to a complaint made by the Petitioner to the LLRC and confirms the recommendation to explore the possibility of allocating an alternate land to the Petitioner, even if it is located in a different area.

Upon the receipt of this letter, the Land Commissioner by his letter dated 23.02.2015 marked as P2 has approved the said suggestion. Thereafter, various correspondences had taken place between the Provincial Land Commissioner, Land Commissioner and the Divisional Secretary of Kalmunai pertaining to obtaining a suitable land for the Petitioner. By his letter dated 27.11.2017 marked as P4 the Divisional Land Commissioner had requested to find a suitable land in the extent of 1A and this letter had been copied to the Petitioner. It appears that the Provincial Land Commissioner had sent several letters informing of his decision to give an alternative land. This position is reflected in the letter dated 12.03.2018 marked as P5(b). Thereafter, several correspondences had been exchanged between the Provincial Land Commissioner, Commissioner General of Lands, and the Divisional Secretaries of Manmunai and Kalmunai between the period 2018 to 2021 (P6(b), P7, P8, P9, P10, P11, P12, P13, P16, P17, P18, P19, P20). It is observed that all these letters had been copied to the Petitioner.

Among the above-mentioned correspondences by P7(a) the Divisional Secretary of Manmunai had informed that due to the scarcity of state land they were in a position to provide a land in the extent of 20P to be given to the Petitioner. However, by letter dated 17.12.2018 (P9) the Provincial Land Commissioner had informed the Land Commissioner General that in view of the extent of land that had been taken from the Petitioner the extent of land that had been offered would cause an injustice to the Petitioner. Thereafter, by the

document marked P10(a) dated 14.06.2019, the Divisional Secretary of Manmunai had changed his decision and reduced the extent of the land offered to 10P and that too for residential purposes. Due to the dispute in the extent offered, the Land Commissioner General had called a meeting of all stakeholders and had decided to allocate a land based on valuation, namely a land with a similar value to the land that had been originally given to the Petitioner but had been taken to construct the tsunami housing project and subject to a maximum extent of a 1/2A to the Petitioner (P12). In observing the minutes attached to the document marked and tendered as P12, it appears that the parties have come to a conclusion to allocate a land that had already been identified. The minutes state as follows:

> *"පාලිප්පොඩි ජෙයදීශ්වරන් මහතා වෙත බලපත්‍රයක් මගින් ලබා දී තිබූ ඉඩමට අදාළ 2005 වසරේ තක්සේරුව ලබා ගැනීම*
>
> *එම තක්සේරුවට අනුරූප වන පරිදි විකල්ප ඉඩම් කොටසක්, රජයේ ඉඩම් ආඥා පනතේ විධිවිධාන ප්‍රකාරව ලබා දීමට පහත පරිදි කටයුතු කිරීම*
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> *I. දැනටම පළාත් ඉඩම් කොමසාරිස් විසින් නිරදේශ කර ඇති ඉඩමෙන්, 2005 වෂර්යේ තක්සේරුව මත උපරිම අක්කර 1/2 කට යටත්ව ලබා දීම.*
> *II. තක්සේරුවට අනුව තව දුරටත් ඉඩම් වෙන් කිරීමක් අවශ්‍ය වන්නේ නම්, එම ප්‍රමාණය රජයේ ඉඩම් සහිත වෙනත් ප්‍රදේශයකින් ලබා දීම සලකා බැලීම"*

It appears that at this meeting, the parties have come to the conclusion to value the land that had been originally given to the Petitioner as per the valuation in 2005, and to give an alternate land of equal value, but the extent to be limited to a maximum of ½A. This decision has been made at a meeting attended by the Land Commissioner General, Additional Secretary Land and Land Development, Land Commissioner, Divisional Secretory - Kalmunai, Deputy Regional Land Commissioner, Deputy Director Land Acquisition and the Janapada Niladahri of Manmunai representing the 1st Respondent. It is observed that these minutes are signed by the Land Commissioner General himself. However, this decision has not been implemented.

It is pertinent to note in the absence of the original permit, it is not clear whether the said permit was an annual permit that had to be renewed yearly, or a long-term permit. Hence, this Court is not in a position to determine whether the Petitioner was entitled in law to an alternate land. However, it is also pertinent to note that as per the above-mentioned marked documents tendered to this Court, it appears that all the state officers including the Land Commissioner General had come to a conclusion and a decision was made to the effect that the Petitioner should be given an alternate land. Further, at the hearing all Counsel

conceded that the Petitioner should be given an alternate land. Hence, this Court would not dwell on the said question.

Impugned document P19

The Petitioner's contention is that despite the decision to give the Petitioner an alternate land, under the terms stated in P12, a second meeting was held on 14.07.2021, presided over by the Secretary to the Ministry of Home Affairs, at which a decision was arrived at, that was contrary to the decision marked as P12. At the second meeting held on 14.7.2021, the Respondents had agreed to ask the Petitioner to nominate a close relative to alienate the land and had limited the extent to 20P, subject to a maximum of ½A. The Petitioner states that this decision has been taken on the premise that the Petitioner is not a citizen of this country and hence, is not entitled to obtain state land and also it is contended that the extent has been reduced to 20P. It is his contention that before this decision was taken, he should have been given a hearing. Thus, it is his contention that the said decision is bad in law. For a better understanding, I will now reproduce the said decision contained in P19. Which reads as follows;

- *"දීර්ඝ-සකාලීනසාධාරනවිසඳුමක් ලබා නොදී ඉදිරියට ඇදී යන මෙම ගැටලුව කඩිනමින් විසඳා අවසන් කල යුතු බව තීරණය විය.*
- *පාලිප්පොඩි ජෙයදීශ්වරන් මහතා ට, ඔහුට හිමි විය යුතු ඉඩම් කොටස පවරා දීම සඳහා ඔහුගේ සමීප ඥාතියෙක් නම් කල ලෙස දැනුම් දීම.*
- *එම නම් කිරීම ලැබුණු විගස හඳුනා ගෙන ඇති පර්-වස් 20 ක් (ඉඩම් කොමිසාරිස් ජනරාල් විසින් 2020.01.27 දින ඉඩම් කොමසාරිස් ජෙනරාල් දෙපාර් තමේන්තුවේ පවත්වා ඇති ඒකාබද්ධ සාකච්ජා වේදී තීරණය කර ඇති පරිදි උපරිම අක්කර1/2 කට යටත්ව) ඉඩම් සංග්‍රහ අඥා පනත් ප්‍රකාරව ඔහුගේ පවත්නා ආදායම් මට්ටම සලකා ලබා දීම.*
- *ඉල්ලුම්කරු විසින් මේ සඳහා සුදුසු ඥාතියෙකු නම් කිරීමෙන් පසු සති භයක් තුල ඉඩම් පැවරීම ප්‍රාදේශීය ලීකම් විසින් සිදු කර අවසන් කල යුතු අතර, අදාළ ප්‍රගතිය සති දෙකකට වරක් මෙම අමාත්‍යාංශය වෙත දැන්විය යුතුය."*

On a careful consideration of the submissions of the learned State Counsel, I find the reason to name a relative, had been taken on the basis that the Petitioner is not a citizen of the country. It is also pertinent to note that this is the main objection raised by the Respondents in this case. The Respondents' contention is that since the Petitioner has obtained a citizenship of another country, he ceased to be a citizen of Sri Lanka, and section 22A of the LDO precludes land being alienated to a person other than a citizen. How ever as they

have taken a decision to grant an alternative land to the Petitioner, it was submitted that they had requested the Petitioner to nominate a relative for the said purpose. The relevant section of the LDO reads as follows:

> *"NO State land shall be alienated to any person other than a person who is a citizen of Sri Lanka. Any alienation of land made in contravention of the preceding provisions of this section shall be null and void."*

But was the Petitioner, at the material time, a citizen of a different country?

To find an answer to the above, I have considered the document marked as P14 which is the document that prompted the Respondents to come to the conclusion that the Petitioner is no longer a citizen of this country and hence is not entitled to obtain state land. The said document under the column 'Nationality' clearly states the nationality is Sri Lankan. It only confirms that the Petitioner is domiciled in the country that issued the said document. In any event as correctly observed by the Counsel for the Petitioner, this question would not arise now as the Petitioner has obtained dual citizenship (P24). Hence, the decision to nominate a relation becomes bad in law. In any event, when the Respondents had taken a decision to grant an alternate land to the Petitioner, requesting the Petitioner to nominate a relation other than himself to benefit from the said decision is unknown to law and therefore becomes bad in law.

Objections of the Respondents

The Respondents raised a preliminary objection pertaining to the want of necessary parties. However, as per the submissions of the State Counsel it is evident that the decision to grant an alternate land has been taken by the Land Commissioner General and the land is within the jurisdiction of 1st Respondent's Divisional Secretariat. Hence, the said objection is not tenable. The Respondents also raised an objection on the basis that the Petitioner had only an annual permit but had not disclosed the same. I would agree with first part of the objection that the Petitioner has not specified whether the permit he had was an annual permit or a long-term permit. However, in the absence of both parties not tendering a copy of the permit this Court is not in a position to consider whether the said permit is an annual permit or a long-term permit, hence I am not inclined to accept the said objection. In any event whether the permit was an annual permit or a long-term permit would not arise as

the Respondents themselves have taken a decision to offer an alternative land to the Petitioner.

The next objection that the Petitioner is a foreign national would not arise as he has obtained dual citizenship. The Respondents contended that when they took the decision depicted in documents marked as P3, P4, P6(a), P6(b), P8, P9 they were unaware of the fact that the Petitioner is a foreign national. However, it is pertinent to note that there is no material submitted to Court as to the exact date the Petitioner became a foreign national or obtained the citizenship of another country. Neither party has addressed this issue with supportive documentary evidence. In my view, if the Respondents were aware of the date that the Petitioner had become a citizen of a foreign country and if it was subsequent to taking the decisions reflected in the above marked documents, then the Respondents should have tendered the said evidence to this Court which they have failed to do. Further, this Court observes that the Petitioner in paragraph 36 has pleaded that he became a Swiss national in the year 2020. However, the above-mentioned documents are dated prior to 2020. Hence, the Respondents' argument that they would not have taken the decision reflected in the above-mentioned marked documents if they knew the Petitioner to be a foreign national has to fail as all those documents are dated prior to 2020. Further, even the document P12 has been prepared in January 2020 while the Petitioner according to his pleadings admits he became a citizen of Switzerland only in December 2020. Hence, in my view, there is no hindrance for the Respondents to give effect to the decisions taken in P12 as at that time, the Petitioner was a Sri Lanken citizen.

Let me now consider the prayers of the Petitioner.

Prayers of the Petitioner

The Petitioner's main grievance is the decision taken in the document marked P19 to nominate a relation to provide an alternate land. As this Court has already held that said decision is bad in law, the Petitioner's prayer (c) has to succeed. Since this Court has answered prayer (c) in the affirmative, prayers (d), (e) and (f) would not arise.

The Petitioner by prayer (g) is seeking a Writ of Mandamus to implement the decisions taken in P12, P16 and P17. As per the submission of the learned Counsel, the Respondents have not refused to implement the decision in P12 as even in P19 which is the last decision

taken, the Respondents have re-iterated the extent of the land to be given as stated in the decision in P12(i).

Further, as per the submissions, although the original decision to give the Petitioner 20P of land had been taken by letter dated 17.12.2021 marked as P7(a), the Petitioner had not sought to quash the said decision. Further, I observe that P7(a) had been copied to the Petitioner. There was no evidence presented to this Court that he had objected to the proposition of offering him an alternate land in the extent of 20P. Further, the Petitioner had not denied the receipt of P7(a) but had relied on the said document by marking it as a "P" document. Further, it is observed that the document P12 does not contemplate the extent of land the Petitioner should be given. In fact, what the said document states is to make a valuation pertaining to the land that had been given to the Petitioner as per the year 2005 and to offer an alternate piece of land which should correspond with the said value subject to the land parcel not exceeding ½A. In my view, the said decision reflects the extent of land to be tied to the value of the Petitioner's original land which he possessed by a permit as per the year 2005. Hence, it could be 10P, 20P subject to a maximum of ½A which would correspond to the said value. Hence, as contended by the State Counsel, the Respondents have not refused to comply with the said decision.

It was also held in ***Rasammah & another vs A.P.B.Manmperi*** **65 NLR V 77 at page 313** quoting S.A.de Smith that:

> "*The general rule is that the applicant before moving for the order, must have addressed a distinct and specific demand or request to the Respondent that he perform the duty imposed upon him, and the Respondent must have unequivocally manifested his refusal to comply*."

In ***Samynathan v Whitehorn*** **(1934) 35 NLR 225, 228**, Justice Poyser cited Shott on Mandamus and Prohibition;

> *"If the duty be of a judicial character, a mandamus will be granted only where there is a refusal to perform it in any way: not where it is done in one way rather than another, erroneously instead of properly. In other words, the Court will only insist that the person who is the judge shall act as such; but it will not dictate in any way what his judgment should be. If however the public act to be performed is of a purely ministerial kind, the Court will by mandamus compel the specific act to be done in the manner which to it seems lawful."*

Similarly, in ***Bank of Chettinad v. Tea Controller*** **(1935) 15 CLR 72, 75**;

> *"Now, it is the law that where the proper office or tribunal determines a matter within its jurisdiction and in doing so exercises his discretion, his decision, no matter however erroneous, cannot be reviewed by process of mandamus, but if there is a refusal to perform his duty or exercise his jurisdiction or discretion on the question before him, the case would be different."*

This Court has constantly held that in the absence of a refusal, the Writ Court would be reluctant to issue a writ of Mandamus. It is also pertinent to note that by P16 and P17 the Commissioner General of Land has not taken a decision or given an order to take disciplinary action against the 1st Respondent. The letter states that the Commissioner General may have to take steps if a party is not willing to comply with the Land Commissioner General's advice. Further, the said P16 and P17 are communications between the Commissioner General of Land and the 1st Respondent. In my view, the Petitioner has failed to establish the legal right that has been accrued to him to implement the document P16. The document P17 cannot be implemented in view of the decision reflected in P19 as the Land Commissioner himself had been present at the said meeting and had jointly taken the decision reflected in P19. Hence, in my view, the decision to implement P17 within the stipulated time has been vitiated by a committee where the Land Commissioner himself was present. Hence, this Court is not inclined to grant the relief prayed in prayer (g).

<u>Conclusion</u>

Accordingly, for the above stated reasons, this Court proceeds to issue a Writ of Certiorari quashing the decision in P19. Since I have issued a Writ of Certiorari quashing P19, the prayers (d), (e) and (f) will not arise.

For the reasons stated above, I am not inclined to issue a Writ of Mandamus as prayed for in prayer (g). However, the learned State Counsel has conceded that they are willing to offer an alternate land. The Respondents should act according to law in giving alternate land to the Petitioner.

This Court also observes with dismay the acts of the 1st Respondent especially in view of the comments made by the Land Commissioner General pertaining to the conduct of the 1st Respondent and observe that the conduct of the 1st Respondent cannot be condoned.

The Petitioner has partly succeeded in this Writ Application. Therefore, I do not wish to order costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal