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

In the matter of an application under and in terms of article 140 of the Constitution of the Republic for Writs of Certiorari and Mandamus.

1. S.A.F Russain
   No. 10, Janapriya Mawatha (D.S Senanayake Mawatha) Panadura.

2. S.A.M. Hafil
   No. 10, Janapriya Mawatha (D.S Senanayake Mawatha) Panadura

PETITIONERS

CA/Writ/433/17

Vs

1. P.H. Colombage, Commissioner of Housing (Western Province), Department of Housing Commissioner (Western Province), No. 89, Kaduwela Road, Battaramulla.

1A. M.M.C.K.K. Mannaperuma
Commissioner of Housing
(Western Province)
Department of Housing Commissioner (Western Province), No. 89, Kaduwela Road, Battaramulla.

2. E. Dayasena, Government Chief Valuer, Valuation Department, No. 748, Valuation House, Maradana Road, Colombo 10.

3. P.D.K. Madurangani, District Valuer, Valuation Department, Western South Regional office, No. 340 3/1, Galle Road, Kaluthara South, Kaluthara.

4. M.C.G Fernando, No. 2/10, 1st Cross Street, Walana, Panadura.

5. M.P.K. Fernando, No. 2/10, 1st Cross Street, Walana, Panadura.

RESPONDENTS

Before:	Dhammika Ganepola, J. Damith Thotawatte, J.
Counsel	Damitha Karunarathne with Minul Muhandiramge and Sandun De Silva instructed by Sanjeewa Kaluarachchi for the 1st t and 2nd Petitioners. Manohara Jayasinghe, DSG for the 1st to 3rd Respondents.
Argument	06-02-2025
Written submissions tendered on:	04-03-2015 By the Petitioner 18-03-2025 On behalf of 1st, 2nd and 3rd Respondents
Judgement Delivered on:	04-06-2025

D. Thotawatte, J.

The 4th and the 5th Respondents are the lawful owners of the commercial premises located at No. 10, Janapriya Mawatha (D.S. Senanayake Mawatha), Panadura (hereinafter mentioned as the premises) presently occupied on rent by the Petitioners, had made an application under Section 18A of the Rent Act No. 7 of 1972 (as amended) seeking permission to demolish the existing building for redevelopment purposes. Although the Petitioners had objected to this application, the 1st Respondent had granted permission for demolition by order dated 25-09-2014 and further ordered the owners to pay Rs. 264,000 as compensation to the Petitioners.

Dissatisfied with the above order, the Petitioners sought judicial review in CA/Writ/427/2014, arguing that the inquiry was flawed, the compensation inadequately calculated, and the market valuation grossly underestimated.

The Petitioner has filed CA/Writ/427/2014 application on 09th December 2014 seeking, *inter alia*, the following reliefs:

b) Grant and issue a mandate in the nature of Writ of Certiorari quashing the order/decision/determination of the 1st Respondent dated 25-09-2014,
c) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st Respondent to conduct a fresh inquiry in terms of Sec. 18A of the Rent Act as amended by Rent (Amendment) Act No. 26 of 2002 to determine the market value of the premises in issue,
d) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st Respondent to call for a report containing the market value of the premises in issue from the 2nd Respondent,

In CA/Writ/427/2014, with agreement of the parties, the Court of Appeal made the following order on 12th January 2015:

A fresh inquiry is to be held by the 1st Respondent that will be limited to two issues.

1. The Commissioner should give reasons as to why she did not make an order under Section 18(A) 2 (b) (i) of the Rent Act at the end of the fresh inquiry.

2. In the event the Commissioner decides to make order under 18 A 2 (b) (ii). She is required to consider the question of the compensation afresh in the light of material that is submitted by the parties based on market value. Commissioner should made available the valuation by the Chief valuer to both parties, for them to lead evidence to come to a fair decision.

   Learned SSC undertakes to instruct the 1st Respondent
   Accordingly, Proceedings are terminated.

I have reproduced Section 18(A) 2 (b) (i) & (ii) of the Rent Act No. 7 of 1972 as amended by the Act No. 55 of 1980 and Act No.26 of 2002

> 18A. (2) (b) (i) order the owner of such building to provide alternate accommodation for the tenant, if any, of such building, In the same vicinity during the period of construction and until the building is completed for occupation or business, as the case may be, or alternatively a sum equivalent to two years' rent in advance to the tenant to enable him to arrange alternate accommodation of a temporary nature until the owner completes the construction of the new building for occupation or business as the case may be: or
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> (ii) order the owner of such building to pay to the tenant thereof, such compensation as the Commissioner determines to be reasonable. For the loss of possession by such tenant; so however that the amount ordered to be so paid shall in no case be less than ten years' annual value of the premises calculated as at the date of the application for demolition or twenty per centum of the market value of the premises as determined by the Chief Valuer as at the date of the application for demolition or rupees one hundred and fifty thousand, whichever is higher,".

The 1st Respondent's commitment to grant a hearing to tenants before demolition is found in Section 18A(1)(b) of the Rent Act, which was introduced by the Rent (Amendment) Act No. 55 of

1980 and further amended by Act No. 26 of 2002. After such a hearing is given and upon the 1st Respondent being satisfied as to the necessary requirements, an order is made authorizing such a demolition. In addition to the demolition authorization, further orders should be made under Section 18(A) 2 (b) (i) & (ii) as necessary to ensure procedural fairness and protection of the tenant.

It appears that the parties in CA/Writ/427/2014 had agreed in court not to have the hearing or inquiry de novo but have a limited inquiry with regard to two issues under Section 18(A) 2 (b) (i) & (ii). Which would mean the inquiry will not revisit the decision to demolish, but will only ascertain whether accommodation for the tenant can be provided in the new building or if that is not possible, to order reasonable compensation for the loss of the tenement.

In the event it is decided to pay compensation, the amount ordered should not be less than;

a) Ten years' annual value of the premises at the date of the demolition application.
b) 20% of the market value of the premises as determined by the Chief Valuer as at the date of the demolition application.
c) Rs. 150,000,

The amount paid should be the highest of the three amounts above. Upon perusal of the relief sought in Prayer (c) and (d) in CA/Writ/427/2014, it is clear that even at the time of filing the application the Petitioners had been agreeable for to accept compensation as against other alternatives and the compensation to be determined at 20% of the market value of the premises. However, the grievance appeared to have been with the valuation.

In appreciation of the above fact, the Court of Appeal has given the following direction:

"… Commissioner should made available the valuation by the Chief valuer to both parties, for them to lead evidence to come to a fair decision".

It is very clear that the Court of Appeal meant for the valuation report to be given to the tenant party, as well as the landlord party, for them to lead evidence so that a fair decision is reached.

Considering the fact that the "decision" has to be taken by the 1st respondent, the purpose of leading evidence should be to elicit such information as would assist the 1st Respondent to come to a fair decision.

In the inquiry held consequent to the order in CA/Writ/427/2014, the District Valuer, Gunaratna, who had submitted the valuation report giving evidence on the 19th August 2015, has stated that there are principles of valuation and this valuation had been done under the Rent Act based on the rent (proceedings of the inquiry annexed marked as P7). She had further mentioned the Deputy Chief Valuer P. Muthukumarana as the person who approved the report.

At the request of the Petitioner, the 1st Respondent has initially summoned (summons annexed marked as P8) the Deputy Chief Valuer P. Muthukumarana to give evidence. Nevertheless, on the next inquiry date of 07-06-2016, the 1st Respondent has refused to allow the Deputy Chief Valuer's evidence to be led on the basis that he cannot allow the valuation report to be challenged and that the order of the Court of Appeal does not impose such a requirement.

The 1st Respondent had thereafter concluded the inquiry by issuing an order dated 23rd November 2016 (annexed hereto marked P11), determining that no alteration would be made to the order of his predecessor dated 25th September 2014, which had been the subject of challenge in CA/Writ/427/2014.

The Petitioners being dissatisfied with the manner in which the second inquiry was held and the resulting order/determination (annexed Marked P11) sought to *re-agitate* the matter in Court of Appeal by filing a motion and affidavit (annexed marked P15 & 16), to "reinstate" the terminated application CA/Writ/427/2014 (hereinafter mentioned as the reinstatement application).

The Court of Appeal, by order dated 18-09-2017, has dismissed this reinstatement application made by via motion and affidavit by refusing to revisit a concluded matter.

Making this order, his Lordship Dehideniya J has stated;

> On entering the terms of settlement, the Court has made a clear order that "Proceedings are terminated". Once the reliefs prayed for are granted and the proceedings are terminated the case comes to an end. The Court cannot revisit the order of the termination on the ground of not conducting a subsequent inquiry in proper manner. The Petitioner must advice himself as to what the remedies available to challenge the subsequent order. Once the proceedings are terminated, the Court becomes functus. *Piyaratana Unnanse v. Wahareke Sonuttara Unnanse* 51 NLR 313 is a case where the finality of a judgment is considered. The Privy Council held in that case that;
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> > *The general rule is clear that once an Order is passed and entered or otherwise perfected in accordance with the practice of the court, the court which passed the Order is functus officio and cannot set aside or alter the Order however wrong it may appear to be. That can only be done on appeal.*

(*emphasis is mine*)

In order to find redress for their grievances, the Petitioners have filed the instant application praying for *inter alia*, the following substantive reliefs:

b) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision/order/determination of the 1st Respondent dated 23rd November 2016, marked P11;
c) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to conduct a fresh inquiry in terms of Section 18A of the Rent (Amendment) Act No. 26 of 2002, to determine the market value of the premises in issue;
d) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to call for a fresh report from the 2nd Respondent (Chief Valuer) containing the market value of the said premises;

It must be observed that the present application concerns;

a) the identical issue of compensation that was addressed in CA/Writ/427/2014;

b) arising from the same factual circumstances;
c) involving the same parties.

The order/decision dated 12-01-2015 of CA/Writ/427/2014 begins by stating that the court has heard all parties in support of the application and the order/decision is delivered with the agreement of the parties. Having agreed to "terms of settlement" (as mentioned in the order dismissing the reinstatement application), dissatisfaction with the implementation of that order/decision cannot give rise to a fresh application intended to set aside (with emphasis on prayer c. and d. of the instant application) the order/decision of this court dated 12-01-2015.

The situation at present is the same as what existed on 18-09-2017 when Court of Appeal dismissed the reinstatement application on the ground that the court was "functus officio". No new facts or material has emerged since then.

His Lordship Dehideniya J in support of his decision has referred to a passage from *Piyaratana Unnanse v. Wahareke Sonuttara Unnanse* which states that the altering or setting aside a previous order can only be done on appeal (emphasis is mine). It must be noted that the Petitioner has not contested the above decision of the Court of Appeal dated 18-09-2017.

To consider any of the reliefs sought by the Petitioner in this instant application would amount to reconsidering the final order in CA/Writ/427/2014 dated 12th January 2015 which is barred by the principle of "Res Judicata". It would appear that after the Court of Appeal refused the Petitioners' attempt to re-agitate the concluded matter, the Petitioners are attempting to achieve the same object by a different route. This court cannot be compelled to adjudicate the same issue repeatedly. The mere fact of filing a fresh application does not cure the want of jurisdiction.

In the circumstances, I hold that the Petitioners are not entitled to any of the reliefs prayed for in the prayer of the Petition and thus, I proceed to dismiss this Application.

Application dismissed without cost

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree

Judge of the Court of Appeal