

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

**Court of Appeal Writ
Application Number :
CA / WRT / 298/2023**

*In the matter of an application for
mandates in the nature of a Writ of
Certiorari under and in terms of the
provisions of Article 140 of the
Constitution.*

Hetti Arachchige Don Lalindra
Chandrarathna,
28, P.B.A. Weerakoon Mawatha,
Kandy.

Presently of :

Tranvagen 65, 14172 Segeltorp,
Sweden.

(Appearing by way of his Power of
Attorney Holder :

Hettiarachchige Don Kavindra
Kumararathna,
No. 28, Weerakoon Garden, kandy)

Petitioner

Vs.

1. Sri Lanka Mahaweli Authority,
500, T.B. Jaya Mawatha,
Colombo 10.
2. Jayathilakage Prasanna Jayathilake,
The Resident Project Manager,
Sri Lanka Mahaweli Authority,

System D, Medirigiriya.

2A Hemantha Jayasinghe,
The Resident Project Manager,
Sri Lanka Mahaweli Authority,
System D, Medirigiriya.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Sapumal Bandara with Gangulali de S.
Dayarathna and Lakshitha Edirisinghe
instructed by Manjula Balasooriya for the
Petitioner.

Shemanthi Dunuwille, S.C. for the Respondents

Written Submissions : Petitioner filed on 05.08.2025

Supported on : 07.07.2025

Decided on : 02.09.2025

K. Priyantha Fernando, J.(CA)

The Petitioner has instituted this application by the Petition dated 12.09.2023.

On 07.07.2025 when this matter was to be supported before this Court, the learned State Counsel for the Respondents raised a preliminary objection on the maintainability of this action due to the availability of alternative remedies.

Thereafter, the Court fixed the matter for Order and directed the parties to file their written submissions.

The preliminary objection is because the Petitioner has already sought sufficient alternative relief against the Quit Notices.

THE PETITIONER'S POSITION:

The relief sought by the Petitioner are for an interim relief and a Writ of Certiorari quashing and declaring null and void the Quit Notices dated 14.05.2019 and 23.09.2019.

The Petitioner states that the grandfather of the Petitioner acquired title to the land known as "Chundankadu" in 1960. Upon the demise of the Petitioner's grandfather, the Petitioner's father succeeded to the property by way of paternal inheritance. The Petitioner's father subsequently divided the land into three portions: one portion was given to the Petitioner, another to the Petitioner's father's sibling, and the third portion was distributed among members of the local farming community.

The Petitioner's father executed a Deed of Gift transferring the first portion of the land, described in the First Schedule, to the Petitioner. Thereafter, the Petitioner executed a Deed of Declaration to further affirm and clarify title to the said land and remained in uninterrupted possession.

A small portion of the land, described in the Third Schedule, was vested with the Sri Lanka Army in 1983 by the Petitioner's father for the purpose of maintaining an army camp. Between 1983 and 2015, the Sri Lanka Army occupied this portion and erected several permanent structures. After the end of the armed conflict, all such permanent constructions except one were removed or demolished.

In 2016, the Petitioner has observed officials from the Mahaweli Development Authority inspecting the portion of the land previously used by the Army. The Petitioner promptly instructed the officials to cease the inspection.

Subsequently, a survey plan marked P5, prepared by the Department of Survey, depicted a portion of the Petitioner's land. It was apparently created following the said inspection. The plan illustrates three lots, with Lot 10036, located in the land known as "*Chundankadu*," being the subject of quit notices issued.

Two quit notices were issued to the Petitioner by the 2nd Respondent, directing the Petitioner to vacate the land described in the Third Schedule.

Thereafter, the 2nd Respondent (Resident Project Manager of Sri Lanka Mahaweli Authority) instituted action against the Petitioner in the Magistrate's Court under Case No. 61770. The learned Magistrate ordered that the Petitioner and the Petitioner's dependents be ejected from the premises in accordance with Section 10(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979.

Aggrieved by this Order, the Petitioner filed a revision application before the Provincial High Court of Trincomalee, bearing No. HCR/REV/MC/623/2020. However, the learned High Court Judge dismissed the revision application by way of an Order. The Petitioner, being dissatisfied with that decision, now seeks appropriate reliefs from this Court.

Regarding the Preliminary Objection,

The Petitioner submitted that the Quit Notices have not been the subject matter of litigation or the relevant appeals. He submitted that issuance of Quit Notices by the 2nd Respondent has been under Section 3 of the State Lands (Recovery of Possession) Act, while the 2nd Respondent's application to the Magistrate's Court has been made under Section 5 of the same Act; thus, although the results sought in both instances are the same, the issuance of a Quit Notice by the 2nd Respondent is distinctly different from an order given by a learned Magistrate under Section 10 of the same Act.

Neither in the Revision application before the Provincial HC of the Eastern Province in case No. HCR/REV/MC/623/2020 nor in the appeal No. CA/PHC/203/2023, the Petitioner has sought to quash the Quit Notices.

As such, at the conclusion of the appeal, even this Court sets aside the order of the learned Magistrate, the previously issued Quit Notices dated 14.05.2019 and 23.09.2019 will continue to remain in force.

Nevertheless, it is settled law that when an effective and alternative remedy is provided for in law, this Court will not exercise its writ jurisdiction.

In terms of Section 12 and 13 of the said Act, the Petitioner is entitled to institute proceedings in a civil Court against the State for the declaration of title and for compensation which is the adequate alternative remedy provided in law.

In ***Pinnaduwege Baby Mallika Chandraseana Vs C.W Abey Suriya***¹ this Court held that,

“Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him.”.

The attention of the Court was drawn to the following case law in support of Petitioner’s position:

Bandaranayake J. in Somasundaram v. Forbes and Others- [1993] 2 SLR 362; where the appropriateness of a writ of Certiorari was assessed where the right to repudiate an arbitration award was available, quoted Indian Constitutional Law by S.M. Mehta in his book Indian Constitutional Law 1990 Edition at page 334:

“The existence of an alternative remedy may be a ground for refusing a writ of certiorari, where the defect of jurisdiction is not patent on the face of the record and fundamental rights are not involved. This is a rule of convenience and not a rule of law and hence certiorari may be issued even when an

1 CA/WRIT/457/2019

alternative remedy is available. Thus, an alternative remedy that is not speedy, effective or adequate is no ground for refusing a writ of certiorari”

It was further held that:

“A statutory remedy may be for a different purpose being usually an appeal on the merits whereas the ordinary discretionary remedy of review is for prevention of illegality.... A Court is expected to satisfy itself that any administrative relief provided for by the statute is a satisfactory substitute to review before withholding relief by way of review.”

Recently, former Chief Justice Jayasuriya PC., in **Jayalath Perera v. Vice Admiral W.K.J. Karannagoda and Others**-SC Appeal 11/2017 decided on 11.01.2023, was of the view that the mere availability of an alternative remedy, does not oust the jurisdiction of this Court.

“One possible ground that would militate against the issuance of the writ, is the availability of an adequate alternative remedy as opposed to a mere alternative remedy. Furthermore, in my view, it would not be correct to hold that the existence of even an adequate alternative remedy would ‘oust the jurisdiction’ of the Court of Appeal. The existence of an adequate alternative remedy and the application being presented to the Court of appeal seeking a writ of certiorari without having exhausted such available remedy would only be a ground on which the Court may in the exercise of its discretion refuse to grant relief. Furthermore, after having sought an alternative administrative remedy and having been unsuccessful in securing relief, there is no bar for the aggrieved party to seek judicial relief, provided he can satisfy Court of the existence of grounds for the grant of relief”.

Thus, it is seen that after being unsuccessful in securing relief in the Magistrate Court, there is no bar for the Petitioner to seek judicial review, provided he can satisfy Court of the existence of grounds for the grant of relief.

ARE THE MAJOR FACTS IN DISPUTE?

When the major facts are in dispute the Writ Court will not exercise its Writ jurisdiction.

Admittedly, the central issue in this application is whether the land in dispute is private land owned by the Petitioner or state land. This major issue must be established with oral and documentary evidence. The title deeds and title plans are to be examined, and the title plan must be superimposed on the Surveyor Generals plans.

There is an obligation on the part of the Court to investigate the title of the Petitioner. The oral and documentary evidence are to be cross examined. All these procedures are to be followed not in a Writ Court, but in a trial Court.

In the case of ***Thajudeen Vs. Sri-Lanka Tea Board***² this court held that;

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”

2 [1981] 2 Sri LR 471

The Supreme Court in ***Francis Kulasooriya Vs. OIC- Police Station-***

Kirindiwela³ observed that;

“Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute.”

In the instant application, the Petitioner’s sole substantial relief is to get a Writ of Certiorari to quash and declare null and void the Quit Notices issued by the 2nd Respondent.

While granting such relief, this Court must be satisfied with the ownership of the subject matter or the land, i.e. the fact that the land described in the 3rd Schedule to the petition is owned by the petitioner. Fulfilling of obligation on the part of the Court to investigate the title of the Petitioner should be by way of leading oral and documentary evidence subject to cross examination. All these procedures are to be followed not in a Writ Court, but in a trial Court.

Therefore, it is the view of this Court that the since the major facts relating to the ownership of the subject land is in dispute, this Court is not inclined to issue formal notices to the Respondents. Accordingly, the application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal

3 SC Appeal No. 52/2021. SC Minute of 14-07-2023