

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

**Court of Appeal Case No.**

**CA/WRT/0131/2021**

**Asuramuni Niluka Dilhani Silva,**  
No. 1/11, Galle Road, Pinwatta  
Panadura.

**Petitioner**

**Vs**

1. **Weliwita Kankanamge Janaka,**  
No. 09, Galle Road,  
Pinwatta,  
Panadura.
2. **Panadura Pradeshiya Sabha,**  
Wadduwa Sub Office,  
Wadduwa.
3. **Urban Development Authority,**  
6<sup>th</sup> & 7<sup>th</sup> Floors,  
Sethsiripaya,  
Battaramulla.

4. **Road Development Authority,**  
Maganeguma Mahamedura,  
No: 216, Denzil Kobbekaduwa Mawatha,  
Koswatta,  
Battaramulla.

**Respondents**

1. **L. H. Nuwan Sanjaya Fernando,**  
Secretary,  
Pradeshiya Sabha,  
Panadura Pradeshiya Sabha,  
Wadduwa Sub Office, Wadduwa.
2. **Special Commissioner,**  
Panadura Pradeshiya Sabha,  
Wadduwa Sub Office,  
Wadduwa.

**Added Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Varuna De Saram instructed by Manjula Balasooriya for  
the Petitioner.

Hurshid Maharooof with Ijaz Azmy instructed by  
Ms. Nadeeka Senanayake for the 2<sup>nd</sup> Respondents.

1<sup>st</sup> Respondent is absent and unrepresented.

Supported on: 23.01.2024

Decided on: 28.03.2024

**MOHAMMED LAFFAR, J.**

I heard the learned Counsel for the Petitioner in support of this Application. I heard the learned Counsel for the 2<sup>nd</sup> Respondent, Panadura Pradeshiya Sabha as well.

The Petitioner, in the amended Petition dated 01-11-2022, asserts that he is the owner of the premises more fully described in the first schedule to the deed of gift-bearing No. 4262 dated 28-07-1999 attested by Ranjith Rodrigo, Notary Public marked P1. The 1<sup>st</sup> Respondent is the owner of the property adjoining the premises of the Petitioner. By letter dated 28-05-2015 (P5), the Petitioner informed the 2<sup>nd</sup> Respondent that the 1<sup>st</sup> Respondent is attempting to obtain a building permit to construct a commercial building that contravenes various regulations. When the Petitioner became aware that the 2<sup>nd</sup> Respondent had approved the said commercial building, by letter dated 25-08-2017 (P8), the Petitioner requested the 2<sup>nd</sup> Respondent to cancel the same. In response to P8, the 2<sup>nd</sup> Respondent by letter dated 11-09-2017 (P9), informed the Petitioner that the said approval had been granted under reference No. BA/224/2016 subject to the conditions therein. The Petitioner further asserts that on 26-10-2018 the 1<sup>st</sup> Respondent had commenced construction of the said commercial building obstructing the servient right of the Petitioner. By letter dated 06-02-2019, the Petitioner requested the 2<sup>nd</sup> Respondent not to extend the approval granted to the 1<sup>st</sup> Respondent as there was a case pending in the District Court in this regard. Since the 2<sup>nd</sup> Respondent failed to comply with the request made by the Petitioner, the Petitioner instituted an action in the District Court of Panadura in the case bearing No. 3492/SPL against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents praying, *inter-alia* ;

1. For an Order that the said construction is illegal.
2. For an interim injunction restraining the 1<sup>st</sup> Respondent from carrying on the said construction until the final determination of the case.
3. For a permanent injunction preventing the 1<sup>st</sup> Respondent from carrying on the construction in dispute.

The learned District Judge refused to issue the said interim injunction and the said case is pending in the District Court of Panadura in respect of the remaining reliefs prayed for.

The Petitioner states that the building permit and the site plan, marked as P49 and P50 respectively, are contrary to the regulations and provisions of the law as described in paragraphs 64 and 65 of the amended Petition.

In those circumstances, in the instant Application, the Petitioner is seeking, *inter-alia*, the following relief.

1. A Writ of Certiorari quashing the approval given by the 2<sup>nd</sup> Respondent dated 30-12-2016.
2. A Writ of Mandamus directing the 2<sup>nd</sup> Respondent to not issue approvals required to carry out the construction in dispute.
3. A Writ of Mandamus directing the 2<sup>nd</sup> Respondent to take necessary steps to remove any illegal structures constructed by the 1<sup>st</sup> Respondent.
4. A Writ of Prohibition prohibiting the 2<sup>nd</sup> Respondent from extending the approval given to the 1<sup>st</sup> Respondent.

A Petitioner who is seeking relief in an Application for the issue of a Writ is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief the Court has the discretion to deny him relief having regard to his conduct, delay, laches, waiver, and submission to jurisdiction which are all valid impediments that stand against the grant of relief. (Vide: **Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another**)<sup>1</sup>.

Generally speaking, Courts will not issue writs when the alternative remedies are provided in law. The Court of Appeal in **Tennakoon Vs. The Director-General of Customs**<sup>2</sup> held that,

*“the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction”.*

In the case of **Ishak Vs. Laxman Perera**<sup>3</sup> Tilakawardane J (P/CA) observed that

*“the Petitioner has already instituted action, therefore no writ lies.”*

Admittedly, in the Application at hand, the Petitioner has already instituted action in the District Court of Panadura seeking the same substantial relief that has been prayed for in the prayers to the amended Petition. As such, it appears to this Court that the Petitioner has exhausted the alternative remedy provided by law and therefore, he is not entitled to invoke the discretionary jurisdiction of this Court by way of Writ.

Moreover, in paragraph 64 of the amended Petition, it is asserted that the impugned document marked as P49 does not contain the assessment number of the premises in dispute, the type of building to be constructed and the sketch indicating access to the said building. Similarly, the site plan marked as P50 is not in accordance with the regulations as per the facts stated in paragraph 65 of

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<sup>1</sup> 1996 (2SLR) p70.

<sup>2</sup> 2004 (1SLR) p53.

<sup>3</sup> 2003 (3SLR) p18.

the amended Petition. Hence, it is manifestly clear that the facts in the instant application are in dispute. The disputed facts are to be established with oral and documentary evidence before the trial Court, which can not be proved in writ courts. In this regard, I refer to the judgment of **Thajudeen Vs. Sri-Lanka Tea Board**<sup>4</sup> where the Court of Appeal 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.”*

For the above reasons, I am of the view that the Petitioner is not entitled to proceed with this Application. Thus, the notices are refused and the Application is dismissed with costs fixed at Rs. 30,000/- payable by the Petitioner to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

*Notices refused. Application dismissed with costs.*

**JUDGE OF THE COURT OF APPEAL**

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<sup>4</sup> 1981 (2SLR) 471.