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

CA (Writ) No. 299/2021

Commander M. S. D. Perera, NRX 1229
No. 220, Shanthasiri, Wevita, Bandaragama.

PETITIONER

Vs.
1. Commander of Sri Lanka Navy
Sri Lanka Navy Headquarters
Sri Lanka Navy.

2. Commodore K. K. I. U. Casiwatte, NRX 0652
President of the Court Martial Sri Lanka Navy Headquarters
Sri Lanka Navy.

3. Commodore (C.E.) H. S. Balasooriva.
NRC 0730
Member of the Court Martial Sri Lanka Navy Headquarters
Sri Lanka Navy.

4. Captain (E.) T. G. S. K. Udugamage,
NRE 0962

Member of the Court Martial Sri Lanka Navy Headquarters
Sri Lanka Navy.

5. Commodore Chethiya Gunasekere, NVA 5872
Judge Advocate
Sri Lanka Navy Headquarters
Sri Lanka Navy.

RESPONDENTS

Before: M. T. MOHAMMED LAFFAR, J.
S. U. B. KARALLIYADDE, J.

Counsel: Saliya Pieris, PC with Varuna De Seram and Nisal Hennadige for the Petitioner

Ruwantha Cooray, instructed by Kethakee Siriwardana for the 1st and 2nd Respondents

N. de Zoysa, S.C. for the 10th Respondent

Faisz Musthapha P.C. with Keerthi Thillakratne for the 13th Respondent.

Supported on: 08.08.2023

Decided on: 28.08.2023

MOHAMMED LAFFAR, J.

When this matter was mentioned on 08-08-2023, the learned Counsel for the Respondents raised preliminary legal objections as to the maintainability of this Application on the basis that;

1. The impugned decision made by the Land Reform Commission (LRC) dated 26-02-2013 had already been determined by this Court in Applications No. Writ/270/13, 271/13 and 272/13.
2. The impugned decision made by the Land Reform Commission (LRC) dated 26-02-2013 that is being challenged by the Petitioners in the instant Application is not in force. A fresh decision made by the LRC dated 06-04-2023 is being challenged by the Petitioners before this Court in Application No. Writ/263/23. In this context, the instant Application is futile.

The LRC, on 26-02-2013, decided to transfer the land in dispute to one Jayasundara Mudiyanselage Migara (14th Respondent) or to a suitable 3rd party (paragraph 43 of the Petition). Being aggrieved by that decision, the Petitioners invoked the Writ jurisdiction of this Court in Applications No. Writ/270/13, Writ/271/13 and Writ/272/13, seeking Mandates *inter-alia* in the nature of a Writ of Mandamus prohibiting the LRC from transferring the subject matter to a 3rd party and a Writ of Mandamus compelling the transfer of the subject matter to the Petitioners. The said Applications were dismissed by the Court of Appeal on 15-10-2019. Being aggrieved by that Judgment, the Petitioners sought Special Leave to Appeal from the Supreme Court, whereas the Supreme Court refused to grant leave to appeal (SC-SLA. No. 415/2019).

Thereafter, the 14th Respondent, in Application bearing No. Writ/191/2021 invoked the Writ Jurisdiction of this Court seeking *inter-alia*, a Writ of Mandamus directing the LRC to implement the impugned decision dated 26-02-2013 to transfer the subject matter to the 14th Respondent and a Writ of Prohibition restraining the LRC from transferring the subject matter to a third party. The Court of Appeal allowed the Application on 03-08-2022.

In the instant Application, the Petitioners are seeking, *inter-alia*, a Writ of Certiorari to quash the decision dated 26-02-2013 of the LRC to transfer the corpus to the 14th Respondent or a 3rd party. In those circumstances, it is the

considered view of this Court that the instant Application is misconceived in law and facts, and futile on the basis that;

1. The Applications made by the Petitioners, namely Writ/270/13, Writ/271/13 and Writ/272/13, challenging the impugned decision of the LRC dated 26-02-2013 had already been dismissed by this Court, and therefore, the Petitioners are precluded from challenging the same decision in the instant Application.

2. In Application bearing No. Writ/191/2021, the Court of Appeal had already issued a Writ of Mandamus directing the LRC to implement the impugned decision dated 26-02-2013 to transfer the subject matter to the 14th Respondent and therefore, in the Application in hand, this Court has no jurisdiction to issue a Writ of Certiorari to quash the said decision of the LRC.

Moreover, It transpired that the LRC has taken a fresh decision on 06-04-2023 to transfer the subject matter to Jayasundara Mudiyanselage Miniruwanthi, Ajith Kumara Nawalage and the 14th Respondent which is being challenged by the Petitioners in Application bearing No. Writ/263/23 that is pending before this Court. As such, it is abundantly clear that the LRC is not implementing the impugned decision dated 06-04-2013. Hence, the reliefs sought by the Petitioners in this Application are futile.

It is trite law that a Writ will not be issued where it would be vexatious or futile. A Writ of Certiorari will not be issued to quash a particular exercise of power if it is futile to do so because it is no more operational or it has had its effect.

In **Samsudeen Vs. Minister of Defence and External Affairs**[1], it was held that

"a writ of mandamus will not be issued if it will be futile to do so and no purpose will be served."

and further in **Siddeek v. Jacolyn Seneviratne** [2]

"Certiorari being a discretionary remedy will be withheld if the nature of the error does not justify judicial intervention. Certiorari will not issue where the end result will be futility, frustration, injustice and illegality."

[1] 63 NLR 430
[2] 1984 - Volume 1 , Page No - 83

For the foregoing reasons, the preliminary legal objections are upheld and accordingly the Application is dismissed with costs fixed at Rs. 75,000/-.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL