

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

In the matter of an application for Writ of *Certiorari* and *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.
CA (PHC) 0053/22

Rohitha Nandalal Jayawardena,
No 06, Kudagama, Hatton.

Petitioner

High Writ Application No.
HC/NE/01/2020(Writ)

Vs

1. S.Balachandran (Chairman),
2. A.P.M Palms (vice Chairman),
3. M.D.K.Karunasiri (Member),
4. A.Nandakumar (Member),
5. R.Rameswari (Member),
6. K.Balasubramaniam (Member),
7. A.P. Anura De Silva (Member),
8. M.Gunasundaram (Member)
9. A. Keshawa Murthi (Member)
10. S.Ratnakumar (Member)
11. M.R. Wijayanandan (Member)
12. Chandiramathi (Member)
13. Girty Somapala (Member)
14. S. Shiwadharshani (Member)
15. R.M.S. V. Ratnayake (Member)
16. P.Subramaniam (Member)

Hatton Dikoya Urban Council,
Hatton.

17. The Secretary,

Hatton Dikoya Urban Council,
Hatton.

18. Hatton Dikoya Urban Council,
Hatton.

19. Assistant Commissioner of Local
Government,
Assistant Commissioner of Local
Government' Office, Bambarakale,
Nuwaraeliya.

20. Commissioner of Local Government,
Commissioner of Local Government'
Office, Department of Provincial
Council, Central Provincial Council
Complex,
Pallekele Kundasale.

21. Hon. Attorney General,
Attorney General's Department,
Colombo 12

Respondents.

AND NOW

In the matter of an Appeal under
section 9(b) of the of High Court of the
Provinces (Special Provisions) Act No.
19 of 1990 against the order of the
Provincial High Court of the Central
Province held in Nuwara Eliya dated
17/12/2021 in exercise of Writ
Jurisdiction under Article 140 and
154P(4)(b) of the Constitution of the

Democratic Socialist Republic of Sri Lanka.

Rohitha Nandalal Jayawardena, No 06,
Kudagama,
Hatton.

Petitioner-Appellant

Vs.

1. S.A. Ashoka Karunaratna
(Chairman),
2. P. Surendran (vice Chairman).
3. A.Nadakumar (Member)
4. Mrs. K.A.Kanchana Sandamali
Siriwardana
(Member)
5. Anthony Elmo (Member)
6. M.Y. Mohamed Mawjood (Member)
7. S. Logeshwaran (Member)
8. S.A.Nuwan Priyadarshana Mendis
(Member)
9. P.K.C. Jayantha Dharmapriya
(Member)
10. P.H. Kumudini (Member)
11. S. Kesavamoorthy (Member)
12. S. Prabakaran (Member)
13. E.J.W.G.Kahawattage (Member)
14. A. Chandrakala (Member)
15. A.R.M. Niyas (Member)
16. -----
Hatton Dikoya Urban Council,
Hatton.

17. The Secretary, Hatton Dikoya Urban Council, Hatton.
18. Hatton Dikoya Urban Council, Hatton.
19. Assistant Commissioner of Local Government, Assistant Commissioner of Local Government' Office, Bambarakale, Nuwaraeliya.
20. Commissioner of Local Government, Commissioner of Local Government' Office, Department of Provincial Council, Central Provincial Council Complex, Pallekele Kundasale.
21. Hon. Attorney General, Attorney General's Department, Colombo 12.

Respondent-Respondents.

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : P. Peramunugama instructed by
Ranganath Peiris for the Petitioner-Appellant.

Dilantha Sampath, S.C. for the 19th, 20th and 21st Respondents-Respondents.

Janajith De Silva with Roshini Rathnayake for the Respondents-Respondents.

Argued on : 16.03.2026

Written Submissions

of the Petitioner- Appellant

tendered on : 08.09.2025

Written Submissions

of the Respondents-Respondents

tendered on : 16.01.2026

Decided on : 11.09.2026

K. M. S. DISSANAYAKE, J.

The Petitioner-Appellant(hereinafter called and referred to as “the Appellant”) seeks in the instant appeal, to set aside the order dated 17.12.2021 (hereinafter called and referred to as “the HC order”) made in the exercise of the writ jurisdiction vested in her by Article 154P(4)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as “the Constitution”) by the learned High Court Judge of the Central Province holden at Nuwara Eliya (hereinafter called and referred to as “the learned High Court Judge”) dismissing the application preferred by the Appellant to the High Court of the Central Province holden at Nuwara Eliya (hereinafter called and referred to as “the High Court”) for a mandate in the nature of a writ of *mandamus* compelling the 17th and 18th Respondents-Respondents (hereinafter called and referred to as “the 17th and 18th Respondents”) to grant the Appellant the lease-hold rights of the boutique room bearing No. 16(9) situated in the Old Public Market, Hatton (hereinafter called and referred to as “the boutique room”) and also a mandate in the nature of a writ of *certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room.

The facts relevant to the instant appeal may be briefly, set out as follows;

The Petitioner had instituted the instant writ application in the High Court seeking *inter-alia*, mandates in the nature of a writ of *mandamus* and a writ of *certiorari* of kind as prayed for in prayer to the petition filed thereat against the 17th and 18th Respondents on the premise that the Petitioner had after having obtained possession of the boutique room from one Ekanayake Munasighe, been in possession of the boutique room since 01.07.1993, initially, carrying on the business of a welding workshop and thereafter, a grocery shop therein, paying monthly rentals due thereon, to the 18th Respondent in the name of the said Ekanayake Munasighe without any obstruction and also paying monthly rental to the said Ekanayake Munasighe due thereon, until he was asked by the 17th Respondent in his letter dated 23.01.2020 (ඉප9) to vacate the boutique room and surrender the possession thereof; and that the Appellant had in pursuant to the letter addressed to the Ekanayake Munasighe dated 22.06.2017 (ඉප6) requesting him to come along with the lease agreement entered between himself and the Hatton Dickoya Urban Council (18th Respondent) in proof thereof, on the day specified therein, and that; the Appellant upon receipt of the said letter (ඉප6) had informed the Hatton Dickoya Urban Council that the said Ekanayake Munasighe had not come to the boutique room for a number of years; and that the Appellant had afterwards, sent a letter dated 22.07.2017 (ඉප7), to the 19th Respondent-Assistant Commissioner Local Government of Nuwara Eliya requesting him to issue a lease agreement in his name to the boutique room in terms of the Circular bearing No. 2016/3 dated 17.03.2016 (ඉප8) thus, granting him the lease-hold rights thereof, in view of the fact that the said Ekanayake Munasighe had not come to see him for a number of years; and that the Appellant had paid monthly rental due on the boutique room for the year 2019 without any arrears to Hatton Dickoya Urban Council; and that however, the 17th Respondent acting maliciously, and illegally, had in his letter dated 23.01.2020 (ඉප9), asked the Appellant to vacate the boutique room and surrender the possession thereof although, lease-hold rights of the boutique room ought to have been granted to him in terms of section 19 of the said Circular; and that as evident from report of the monthly meeting of the Hatton Dickoya Urban Council-18th Respondent (ඉප15), the Hatton Dickoya Urban

Council-18th Respondent had made a decision to transfer the lease-hold rights of the boutique room to the said Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room.

The relief prayed for in prayer ‘ඇ’ of the petition furnished by the Appellant to the High Court in the instant writ application reads thus;

“17 හා 18 වන වග උත්තරකරුවන් විසින් දැනටමත් සොලමන් මුණසිංහලාගේ තනුජා ප්‍රියදර්ශනී වෙතබදු ඔප්පුවක් ලබා දී ඇත්නම් එය අවලංගු කර බල රහිත කර සර්වයෝරාජී රිටි ආඥාවක් ලබා දෙන ලෙසත්”

What has thus, been asked for by the Appellant in prayer ‘ඇ’ of the petition as quoted above, was a mandate in the nature of a writ of *certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room **only** and not to quash the decision that had admittedly, been made by the Hatton Dickoya Urban Council at its monthly meeting held on 11.11.2019, and contained in **ප්‍ර15**, to amend the lease-hold rights of the boutique room that had originally, been in the name of the said Solomon Munasinghalage Ekanayake Munasighe-the lawful lessee thereof, in the name of his daughter the said Solomon Munasinghalage Tanuja Priyadarshani, by virtue of which (**ප්‍ර15**) the purported lease agreement had come into being which clearly, and unequivocally, shows that the Appellant had not in any manner, sought in the instant application a mandate in the nature of a writ of *certiorari* to quash the purported decision in the first place, that had admittedly, been made by the Hatton Dickoya Urban Council at its monthly meeting held on 11.11.2019, and as contained in **ප්‍ර15**, to amend the lease-hold rights of the boutique room that had originally, been in the name of the said Solomon Munasinghalage Ekanayake Munasighe-the lawful lessee thereof, in the name of his daughter the said Solomon Munasinghalage Tanuja Priyadarshani before the Petitioner has asked for a mandate in the nature of a writ of *certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of

the boutique room **only** and hence, it clearly, appears that the purported decision (ඉ15) would still, remain intact and unaffected even if the High Court decides to grant a mandate in the nature of a writ of *certiorari* to annul the purported lease agreement as prayed for in prayer 'ඇ' of the petition as quoted above.

Hence, it clearly, appears that the mere issuance of a mandate in the nature of a writ of *certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room **only** as asked for by the Appellant in prayer 'ඇ' of the petition as quoted above, would certainly, serve no meaningful purpose in law in the absence of an order in the nature of a writ of *certiorari* quashing the purported decision (ඉ15) in the first place, and therefore, the mere issuance of a mandate in the nature of a writ of *certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room **only** as asked for by the Appellant in prayer 'ඇ' of the petition as quoted above, without first quashing the purported decision (ඉ15) by way of a mandate in the nature of a writ of *certiorari* would be futile for; the said decision (ඉ15) would remain intact and unaffected notwithstanding the order of the High Court granting a mandate in the nature of a writ of *certiorari* of kind as asked for in prayer 'ඇ' of the petition as quoted above.

I would therefore, hold the Appellant's application for a mandate in the nature of a writ of *certiorari* of kind as asked for in prayer 'ඇ' of the petition as quoted above, is not entitled to succeed in law in view of the doctrine of futility and therefore, the Appellant's application ought to have been rejected on this ground alone.

There is a further point why the Appellant's application for a mandate in the nature of a writ of *certiorari* of kind as asked for in prayer 'ඇ' of the petition as quoted above, is not entitled to succeed in law.

It may now, be examined.

As stated above, what has thus, been asked for by the Appellant in prayer ‘අ’ of the petition as quoted above, was a mandate in the nature of a writ of *Certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room **only**.

However, it is significant to observe that the said Solomon Munasinghalage Tanuja Priyadarshani had not been made a party to the instant application preferred to the High Court by the Appellant praying *inter-alia*, for a mandate in the nature of a writ of *certiorari* to annul the lease agreement if any, that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room **only**.

What then, is the effect that would derive in law by not making the said Solomon Munasinghalage Tanuja Priyadarshani a party to the instant application, viewed in the light of the relief prayed for in prayer ‘අ’ of the petition as quoted above?; In other words, Is the instant application bad in law **for want of necessary parties?** As rightly, observed by the learned High Court Judge. [Emphasis is mine]

It may now, be examined.

It was held in **Hatton National Bank PLC Vs Commissioner General of Labour and Others. [CA (Writ) Application No. 457/2011; CA Minutes of 31st January 2020]**; that, “It is trite law that any person whose rights are affected by an order that a petitioner is inviting a Court of law to make in his favour is entitled to be named as a party and is entitled to be heard, before Court makes any order adverse to such person. **The rule is that all those who would be affected by the outcome of an application should be made respondents to such application.**” [Emphasis is mine]

It was held in **Gnanasambanthan v Rear Admiral Perera and others [1998] 3 SLR 167 at 172** that “it is both the law and practice in Sri Lanka to cite necessary parties to applications for Writs of *Certiorari* and *Mandamus*”.

In the decision in **Wijeratne (Commissioner of Motor traffic) Vs. Ven, Dr. Paragoda Wimalasena Thero and 4 others**, [2011] (2) SLR 258 at page 267, the following two rules were laid down by Court with regard to naming of necessary parties;

1. **The first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application.** If the act sought to be impugned had been done by one party on a direction given by another party who has power granted by law to give such direction, the party who had given the direction is also a necessary party **and the failure to make such party a respondent is fatal to the validity of the application.** [Emphasis is mine]
2. The second rule is that those who would be affected by the outcome of the writ application should be made respondents to the application.

It was held in **Dominic V. Minister of Lands and Others**, (2010) 2 SLR 398, that, "In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings.....Persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide Prabodh Derma v. State of Uttara Pradesh also see Encyclopedia of Writ Law By P.M. Bakshi)In view of the above authorities it is clear that the failure to name the necessary parties....as parties in this application is fatal."

In the case of **Abeywardane and 162 others vs. Stanley, Wijesundara, Vice Chancellor, University of Colombo and Another** [1983] 2 Sri LR 267 at 291 it was held that, "The whole petition is directed against the 115 students

of the North Colombo Medical College. Both the final relief and the Interim order asked for by petitioners are intended to achieve one object, namely, the exclusion of the 115 students from the 2nd MBBS examination. According to the affidavit of Dr. Ratnavale, who is the Director of the North Colombo Medical College, the 115 students have followed the approved courses of study, have applied to the University of Colombo to sit the 2nd MBBS examination, have paid the requisite examination fees, and have received their admission cards from the University of Colombo for the said examination. There is no doubt then, that if this Court were to issue a Mandamus as prayed for by the petitioners, the 115 students would be adversely affected. If as contended by learned Counsel for the petitioners, the 115 students have no legal right to sit the 2nd MBBS examination, this is all the more reason we should have them before us and hear them, before we make an order against them. To use the words of Cayley, C. J. in effect we are asked by the petitioners to pronounce an opinion upon a disputed examination, without large section of the students, who propose to sit the examination, being parties to the proceedings or having had any notice on them. This we cannot do."We hold that the 115 students of the North Colombo Medical College are necessary parties and the failure to make them respondents is fatal to the petitioners' application".

It was held in **Rawaya Publishers and Others v. Wijedasa Rajapaksha and Others, [2001] (3) SLR 213, at page 216**, that, "In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings. In the case of *Udit Narayan Singh v. Board of Revenue* it has been held that where a writ application is filed in respect of an order of the Board of Revenue not only the Board itself is necessary party but also the parties in whose favour the Board has pronounced the impugned decision because without them no effective decision can be made. If they are not made parties then the petition can be dismissed in limine. It has also been held that persons vitally affected by the

writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide **Prabodh Derma v. State of UttaraPradesh** also see Encyclopedia of Writ Law By P. M. Bakshi)” [Emphasis is mine].

See also; **Jayawardena_and Another Vs. Pegasus Hotels Of Ceylon Ltd. And Others [2004] 2 Sri. LR 39.**

It is trite law that, in the context of writ applications, a necessary party is one without whom no order can be effectively made; and that, a proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings and hence, persons vitally affected by the writ petition are all necessary parties; and that, if their number is very large, some of them could be made respondents in a representative capacity.

It is thus, well established that any person whose rights are affected by an order that a petitioner is inviting a Court of law to make in his favour is entitled to be named as a party and is entitled to be heard, before Court makes any order adverse to such person. **The rule is that all those who would be affected by the outcome of an application should be made respondents to such application and the failure to make them respondents is fatal to the petitioners' application** [Emphasis is mine]

The said Solomon Munasinghalage Tanuja Priyadarshani whose rights are no doubt, going to be seriously prejudiced and affected by an order that the Appellant in the instant application invited the High Court to make in his favour in the instant application as enumerated above, for the reason that the kind of the order asked for by the Appellant would if granted by the High Court annul the lease agreement that had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room and as such the said Solomon Munasinghalage Tanuja Priyadarshani is entitled to be named as a party and is entitled to be heard, before the High Court makes any order adverse to her for; the established rule **is that all those who would be affected by the outcome of**

an application should be made respondents to such application and the failure to make them respondents is fatal to the petitioners' application
[Emphasis is mine]

It clearly, appears upon a careful examination of the averments in the petition filed in the High Court by the Appellant on its totality that the Appellant had been fully, and totally, aware even at the time of the preferring the instant application to the High Court that the lease agreement had already, been granted by the 17th and 18th Respondents to Solomon Munasinghalage Tanuja Priyadarshani in respect of the boutique room and as such the said Solomon Munasinghalage Tanuja Priyadarshani had been the lawful tenant of the boutique room even at the time of the institution of the instant application before the High Court for kind of relief as enumerated above, by the Appellant.

Furthermore, the Respondents had clearly, and unequivocally, confirmed in their respective statement of objections filed before the High Court that it was so.

However, it is significant to observe that at no stage of the proceedings before the High Court, had the Appellant made an iota of an attempt to make the said Solomon Munasinghalage Tanuja Priyadarshani a party to the instant application knowing fully well aware that her right is going to be seriously, affected by a kind of the order sought by him in prayer 'ඇ' of his petition as enumerated above and therefore, she was indeed a necessary party to the action brought before the High Court by him.

Nonetheless, the Appellant had not made any endeavour to make the said Solomon Munasinghalage Tanuja Priyadarshani a party to the instant application filed by him before the High Court thereby, clearly, depriving of her right to be heard against the instant application and hence, his failure to make her a party to the instant application filed by him before the High Court, is fatal to the instant application and as such it ought to have been dismissed by the High Court *in-limine* for want of necessary parties.

I would therefore, hold that the instant application filed before the High Court by the Appellant for the specific relief as prayed for in prayer 'ඇ' of his petition

as enumerated above, ought to have been rejected by the High Court on the grounds so enumerated by me as aforesaid *in-limine*.

The resultant position being that, the Appellant is not entitled to the relief sought by him in the prayer ‘ඇ’ of his petition filed in the High Court too, namely; “17 හා 18 වන වග උත්තරකරුවන් වෙත 2016/3 යටතේ මධ්‍යම පළාතේ පළාත් පාලන දෙපාර්තමේන්තුවේ වක්‍ර ලේඛයේ නියම කර ඇති පරිදි පෙත්සම්කරුහට හැටන් පොදු වෙළඳ සැලේ අංක 16 (9) දරණ පැරණි වෙළඳ සංකීර්ණයේ බදු අයිතිය ලබා දෙන ලෙසට මැන්ඩාමුස් රිට් ආඥාවක් නිකුත්කරන ලෙසත්.”; for the reason that the granting of the relief as prayed for in prayer ‘ඇ’ of the petition is solely, dependent upon the granting of the relief as prayed for in prayer ‘ඇ’ of his petition as enumerated above in the first place.

Nowhere in the petition filed in the High Court, had it been averred by the Appellant that he had made an application during the period material to the instant application filed before the High Court by the Appellant, to the Hatton Dickoya Urban Council-the 18th Respondent requesting it to grant him the lease-hold rights of the boutique room under and in terms of section 19 of the said Circular (පෙ8).

Besides, the Appellant had adduced no material to the High Court to show that the said Ekanayake Munasighe had failed to prove before the Hatton Dickoya Urban Council-18th Respondent that he had been the lawful tenant of the boutique room as required by the said Circular (පෙ8). Instead, the Hatton Dickoya Urban Council-18th Respondent had acted on the basis that the said Ekanayake Munasighe had been the lawful tenant of the boutique room as evident from his own document annexed to his Petition marked as (පෙ15) by the Appellant as rightly, observed by the learned High Court Judge.

Hence, I would see no illegality and/or irrationality and/or procedural impropriety in the decision made by the Hatton Dickoya Urban Council-18th Respondent which is contained in (පෙ15), to amend the lease-hold rights of the boutique room that had originally, been in the name of the said Solomon Munasinghalage Ekanayake Munasighe-the lawful lessee thereof, in the name

of his daughter the said Solomon Munasinghalage Tanuja Priyadarshani as rightly, held by the learned High Court Judge.

I would therefore, hold that the Appellant is not entitled to the relief as prayed for in prayer 'ඇ' of his petition as enumerated above even on the factual matrix of the instant application as enumerated above, as rightly, held by the learned High Court Judge.

As laid down by Supreme Court in the case in **Credit information Beaure of Sri Lanka Vs. Messrs Jafferjee and Jaferjee 2005[1] SLR 89**, at page 93, there is rich and profuse case law on the *mandamus* on the conditions to be satisfied by the applicant and that one of the conditions precedent to the issue of *mandamus* appear to be that an application must be preceded by a distinct demand for the performance of the duty.

Even, if it is to be assumed for the sake of the argument for a moment without conceding that the Appellant had a legal right to compel the Hatton Dickoya Urban Council-18th Respondent to grant him a lease-hold rights of the boutique room yet, the Appellant is not entitled to succeed in his application for writ of *mandamus* as prayed for in prayer 'ඇ' of his petition as enumerated above in the absence of proof of a legal demand made by him to the Hatton Dickoya Urban Council-18th Respondent thereon, and the refusal of it by Hatton Dickoya Urban Council-18th Respondent for; the Appellant had adduced no material to the High Court to show that he had made a demand to that effect and the Hatton Dickoya Urban Council-18th Respondent had refused it.

I would therefore, hold that the instant application for a writ of *mandamus* as prayed for in prayer 'ඇ' of his petition is not entitled to succeed on this further ground too, as enumerated above, in addition to the ground already, enumerated above by me.

For the reasons stated above, I would hold that the Appellant was not entitled both in fact and law to any of the relief as prayed for in prayers 'ඇ' or 'ඇ' of his petition filed before the High Court as rightly, held by the learned High Court Judge.

In the circumstances, I would see no legal basis whatsoever, to interfere with the HC order.

I would thus, affirm the HC order.

In the result, I would dismiss the appeal with costs fixed at 50,000/- to be payable by the Appellant to the Hatton Dickoya Urban Council-the 18th Respondent only.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL