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 Application No:

CA/WRT/511/2025

1. **Mohammad Ismail Adbul Majeed**
   Secretary
   168B, Haijar Road,
   Sainthamaruthu - 12

2. **A. M. Nizreen**
   No. 151D, Old Post Office Road,
   Sainthamaruthu

3. **M. C. Farook**
   119, Osman Road,
   Sainthamaruthu- 06

4. **U. L. M. Haniffa**
   No. 405 A/1, VH Road,
   Sainthamaruthu- 11

5. **Mohamed Ismail Nifais**
   No. 250 B, Orabi Pasha Road,
   Sainthamaruthu- 01

6. **M. S. Rawsook**
   No. 71, AL Hilal Road,
   Sainthamaruthu -11

7. **M. M. Rafeek**
   191A, Orabi Pasha Road,
   Sainthamaruthu- 01

8. **M. I. Uthumalebbe**
   498, Hospital Road,
   Sainthamaruthu- 07

9. **A. M. Jaufer**
   153, VH Road,
   Sainthamaruthu- 14

10. **A. A. A. Gafoor**
    605, Kaliyana Road,
    Sainthamaruthu- 14

11. **U. L. A. Wahid**
    No. 46, Mounzy Road,
    Sainthamaruthu- 05

12. **A. Ahamed Lebbe**
    No. 316/A, Osman Road,
    Sainthamaruthu- 07

13. **M. M. M. Ismail**
    No. 302/C, Kaliyana Road,
    Sainthamaruthu- 02

14. **M. S. M. Naleer**
    No. 25/B, P. M Road,
    Sainthamaruthu- 06

15. **A. C. Mohammed**
    No. 486, Hospital Road,
    Sainthamaruthu- 07

PETITIONERS

Vs.

1. **M. L. M. H. M. Mohideen Hussain**
   Chairman

   And 52 others

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J (President C/A)- Acting.**
K. P. FERNANDO, J.

Counsel: N. M. Shahid with Z. Ali, instructed by Rashad Ahmed for the Petitioners.

Z. Zain, DSG for the State.

M. M. F. Shafeena for the 1st to 7th Respondents.

M. S. F. Suraiya for the 11th Respondent.

K. V. S. Ganshraja with S. G. Begum, V. Loganatahn, S. Sangeeth and P. Sudarshan, instructed by M. Mangaleshwary Shankar for the 12th to 53rd Respondents except the 26th and 38th Respondents.

Supported on: 04. 06. 2025

Decided on: 16. 06. 2025

MOHAMMED LAFFAR, J. (President of The Court of Appeal- Acting)

The Petitioners are seeking, *inter alia*, a mandate in the nature of a Writ of *Certiorari* to quash the decision of the Wakf Board dated 18.02.2025 (marked P24), by which special trustees, whose names are reflected in document P25, were appointed. Furthermore, the Petitioners are seeking an interim order, *inter alia*, restraining the special trustees (the 12th to 53rd Respondents) from functioning as special trustees of the Sainthamaruthu Maligaikadu Grand Jummah Mosque.

We heard the learned Counsel for the Petitioners in support of this application. We heard the learned Deputy Solicitor General for the State and the Learned Counsel for the 1st to 7th Respondents as well.

The Petitioners comprise some of the former trustees of the said Mosque. Upon the expiration of their tenure, and in view of certain irregularities, the Wakf Board, by its decision dated 18.02.2025 (P24), appointed special trustees with specific directions for a limited period of one year, effective from 18th February 2025. The special trustees were directed to:

1. Update the jama'ath and marikkayas register

2. Finalise the accounts pertaining to the Mosque
3. To finalise the list of properties and/or assets belonging to the Mosque
4. To draw up a constitution based on past practices
5. To conduct the election according to the past practice within their term

Having scrutinised the Order made by the Wakf Board; it is abundantly clear that the special trustees have been appointed for a short period in order to regularise the affairs of the Mosque. In these circumstances, it appears to this Court that there is no necessity to quash the decision of the Wakf Board dated 18.02.2025. If the impugned decision of the Wakf Board is quashed, the Mosque would be left without a functioning administrative body and would be unable to carry out its duties. Furthermore, the Petitioners, who are the former trustees of the Mosque, have no legitimate right to continue managing the affairs of the Mosque, as their tenure has come to an end. In terms of the provisions of the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956 (as amended), the Wakf Board is vested with the power to appoint trustees to administer Mosques within the purview of the said Act.

Having examined the documents and the impugned Order of the Wakf Board, it is manifestly clear that the special trustees have been appointed in the interest of the Mosque and for the benefit of the members of the jama'ath.

Be that as it may, it is trite law that when an alternative remedy is provided by statute, parties are generally required to exhaust such remedy before invoking the writ jurisdiction of this Court. The writ jurisdiction, particularly the issuance of prerogative writs such as *certiorari* or *mandamus*, and *prohibition* is a discretionary remedy. It is not conferred as of right but is to be exercised by courts with caution, circumspection, and only when no efficacious alternative mechanism is available to address the alleged grievance. Alternative remedies are statutory mechanisms provided by the legislature such as appeals, revisions, reviews, or representations to higher administrative authorities, which offer aggrieved parties a structured process to ventilate and redress their grievances.

It is pertinent to note that the principle requiring parties to exhaust alternative remedies before invoking the writ jurisdiction of this Court is not a mere procedural formality, but one deeply rooted in the common law tradition. The origins of this doctrine can be traced back to the jurisprudence of the King's Bench in England, where the prerogative writs, such as *habeas corpus*, *certiorari*, *mandamus*, and *prohibition*, were historically issued in exceptional circumstances to check administrative excess or illegality. As governance grew more complex and specialized administrative bodies emerged, English courts

began to recognize the practical necessity of requiring litigants to first resort to the remedies provided within the statutory or administrative frameworks.

As early as the 18th century, in ***R v. Morley (1760)[1],*** the English courts signaled the importance of pursuing available statutory recourse prior to seeking prerogative writs. This approach was more definitively articulated in ***R v. Middlesex Justices (1840)[2]***, where the court refused to intervene via *habeas corpus* on the ground that an adequate statutory appeal process existed. Over the passage of time, this principle evolved to become a cornerstone of administrative law, emphasizing both judicial restraint and respect for the institutional autonomy of administrative and quasi-judicial bodies.

The decision in ***R v. Commissioner of Police of the Metropolis, ex parte Blackburn [1968][3]*** crystallized the modern form of the doctrine in the United Kingdom. Therein, the Court reaffirmed the discretionary nature of writs and emphasized that their issuance may justifiably be declined when an adequate alternative remedy exists. This principle has since been consistently followed, notably in ***R (G) v. Governors of X School [2011][4]*** and ***R (O) v. Secretary of State for the Home Department [2016][5],*** where the UK Supreme Court held that the petitioners, respectively a suspended teacher and an asylum seeker, ought to have availed themselves of internal appeal procedures and statutory appellate mechanisms before turning to the courts for relief.

The doctrine is similarly entrenched in American jurisprudence under what is known as the "exhaustion doctrine." Early decisions such as ***United States v. Sing Tuck*** **(1904)[6]** and ***Prentis v. Atlantic Coast Railway*** **(1908)[7]** laid down the principle that judicial recourse must be preceded by the exhaustion of administrative procedures. In ***Myers v. Bethlehem Shipbuilding Corp.*** **(1938)[8]**, the U.S. Supreme Court reiterated that courts must defer to the administrative process where statutory remedies are provided. This principle was ultimately codified in the *U.S. Administrative Procedure Act of 1946*, which made exhaustion of remedies a statutory prerequisite to judicial intervention.

---

[1](1760) 2 Burr 1040
[2] 1840) 11 Ad & E 273
[3] [1968] 2 QB 118
[4] UKSC 30; 1 AC 167.
[5] UKSC 19; 1 WLR 1717.
[6] 194 U.S. 161.
[7] 211 U.S. 210.
[8] 303 U.S. 41

The overarching rationale across these jurisdictions is clear, to preserve the extraordinary nature of judicial review, to avoid premature disruption of specialized administrative processes and to prevent the judiciary from becoming a forum of first instance in matters that fall within the purview of designated statutory authorities

This principle was lucidly explained by the Indian Supreme Court in ***Whirlpool Corporation v. Registrar of Trademarks, Mumbai***[9], where it was held that although Article 226 jurisdiction is wide, courts would not entertain writs where an effective and efficacious alternative remedy exists, except in exceptional cases, such as where there is a breach of natural justice, lack of jurisdiction, or a constitutional challenge.

> *"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

Further, in the case of ***Harbanslal Sahnia v Indian Oil Corpn. Ltd***[10], the Supreme Court of India held that;

> *"In an appropriate case, in spite of the availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is a failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

Our own jurisprudence has echoed this restraint. In the case of ***Somasunderam Vanniasingham Vs. Forbes and others***[11] the Supreme Court observed that;

[9] [(1998) 8 SCC 1]
[10] 2003) 2 SCC 107
[11] 1993 (2) SLR 362.

> *"A party to an arbitration award under the Industrial Disputes Act is not required to exhaust other available remedies before he could challenge illegalities and errors on the face of the record by an application for a writ of certiorari. This is so even though he had the right to repudiate the award under section 20 (1) of the Industrial Disputes Act. A settlement order should not itself be hastily regarded as a satisfactory alternative remedy to the Court's discretionary powers of review. There is no rule requiring the exhaustion of administrative remedies."*

Per Bandaranayake J.

> *"As I have said there is no rule requiring alternative administrative remedies to be first exhausted without which access to review is denied. A Court is expected to satisfy itself that any administrative relief provided for by statute is a satisfactory substitute to review before withholding relief by way of review."*

Similarly, in ***Ishak v Laxman Perera***[12] it was held that

> *"where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a discretionary decision."*

The logic and reasoning behind this principle is not merely technical, it is grounded in respect for legislative intent and administrative autonomy. By compelling parties to first engage with the alternative remedies available, courts preserve their extraordinary jurisdiction for truly exceptional circumstances and prevent their docks from being flooded with matters that ought to be resolved through designated statutory forums.

However, it must be stated that the existence of an alternative remedy does not constitute an absolute bar to invoking the discretionary jurisdiction of this Court. Nevertheless, where an alternative remedy is available, and a petitioner nevertheless seeks to invoke the writ jurisdiction, there are two preconditions that must be satisfied:

1. The petitioner must provide cogent and satisfactory reasons for failing to exhaust the alternative remedy available in law; and
2. The petitioner must establish that the alternative remedy is not an equally efficacious or adequate remedy.

[12] 2003 (3) SLR 18

It is only when both these preconditions are strictly satisfied that this Court may be persuaded to exercise its discretionary jurisdiction in favour of the petitioner. The burden lies squarely on the petitioner to demonstrate both grounds with conviction.

In the instant matter, the alternative remedies provided under the Muslim Mosques and Charitable Trusts or Wakfs Act have not been pursued by the Petitioners. Section 14(1A) of the said Act empowers the Wakfs Board to revoke the appointment of a trustee at any time if it is satisfied that the appointment was made by reason of a mistake of law or fact. The said section reads as follows:

> *"(1A) The board may at any time after the appointment of a person as trustee of a Mosque revoke his appointment if it is satisfied that such appointment was made by reason of a mistake of law or of fact. Where the board decides to revoke the appointment of any person as a trustee it shall by notice in writing addressed to such person-*
>
> *(i) inform him of the revocation of his appointment as trustee, and*
>
> *(ii) require him to return to the board the instrument of appointment issued to him, and upon receipt of such notice such person shall comply with such requirement."*

Accordingly, it was incumbent on the Petitioners, prior to invoking the writ jurisdiction of this Court, to have first made an application to the Wakfs Board under Section 14(1A) if they were of the view that the appointment in question was erroneous in law or fact. However, no such application appears to have been made.

Moreover, Section 9H of the Act provides for an appellate mechanism whereby any person aggrieved by an order or decision of the Wakfs Board may appeal to the Wakfs Tribunal. Yet again, the Petitioners have failed to invoke this appellate jurisdiction.

It is manifestly clear that the aforementioned provisions constitute adequate and effective statutory remedies provided by the legislature. The Petitioners have neither resorted to these remedies nor furnished this Court with any explanation as to why such remedies were not pursued. In the absence of any justification for this omission, this Court cannot be invited to exercise its discretionary jurisdiction under Article 140 of the Constitution.

At this juncture, the Court is reminded of the observations of the Court of Appeal in ***Jayaweera V. Asst. Commissioner Of Agrarian Services Ratnapura And Another***[13] where it was held that

> *"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari 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, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."*

For the foregoing reasons, I am of the view that the Petitioners have failed to satisfy the requirements necessary to invoke the writ jurisdiction of this Court. Accordingly, notice is refused. The application is dismissed. No costs.

Application dismissed. No Costs.

President of the Court of Appeal (Actg)

K. P. Fernando, J.

I agree.

Judge of the Court of Appeal

[13] [1996] 2 SLR 70