

**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  
Prohibition under and in terms of Article 140  
of the Constitution of the Republic.

1. Abdul Majeedu Amsudeen,  
No. Muththu Nagar,  
China Bay,  
Trincomalee.
2. Muhammathu Sulthan Najimudeen,  
No. 169, Muththu Nagar,  
China Bay,  
Trincomalee.

**PETITIONERS**

**Court of Appeal Case No:**  
**CA/WRIT/432/24**

**Vs.**

1. Sri Lanka Ports Authority,  
Level 07,  
No. 464, T.B. Jaya Mawatha,  
Colombo 10.
2. Hon. Nimal Siripala de Silva,  
Minister of Ports, Shipping and  
Aviation,  
Ministry of Ports, Shipping and  
Aviation,  
No. 19, Chaithya Road,  
Colombo 01.
3. Regional Manager,  
Sri Lanka Ports Authority,  
China Bay,  
Trincomalee.

4. Hon. Senthil Thondaman,  
Governor- Eastern Province,  
Governor's Secretariat,  
Lower Road,  
Orr's Hill,  
Trincomalee.
5. P. Dhaneshvaran,  
Divisional Secretary,  
Divisional Secretariat Town and  
Gravets,  
Trincomalee.
6. Randika Thushan,  
Officer-in-Charge  
Police Station,  
China Bay,  
Trincomalee.
7. T. Tharshanandan  
Agrarian Development Officer (ADO),  
Agrarian Services Center,  
Uppuveli.

**RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Mahanama de Silva with Ayendri de Silva instructed by Nadeeka Senanayake for the Petitioners.  
Dr. Asanga Gunawansa, P.C. with Dilshan Jayasuriya and Anish de Silva instructed by Nithi Murugesu and Associates for the intervenient Petitioner.  
Zuhri Zain, D.S.G. for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents.

**Supported on:** 26.03.2025

**Decided on:** 23.05.2025

## **Mayadunne Corea J**

The Petitioners seek the following reliefs among others.

*“b) issue a writ in the nature of a Writ of Certiorari quashing the said vesting Order made by the then Hon. Minister of Trade and Shipping and published in Gazette No. 314/10, dated 12<sup>th</sup> September 1984, in so far as the said vesting order relates to the lands cultivated by the petitioners and the other farmers whose names appear in List P-1 and morefully described in schedule 08 to the said vesting order produced marked P-6,*

*c) Issue a writ in the nature of a Writ of Prohibition, prohibiting the 01<sup>st</sup> Respondent Authority from enforcing and /or taking any action in relation to, and/or taking possession of, the lands which are cultivated by the Petitioners and others and which are included in the lands described in schedule 08 to the Vesting Order, published in Gazette No. 314/10 dated 12<sup>th</sup> September 1984 and produced marked P-6,”*

Before the commencement of support, a Petition was filed for intervention, and to expedite the matter the Court suggested and the parties agreed to support the intervention application and the main Application simultaneously. However, the need to consider the said application to intervene would arise only upon the Petitioners satisfying this Court to issue formal notice on the merits of the main Application. Hence, before I consider the submissions of the intervening parties, I will consider the submissions of the Petitioners and the Respondents to the original Petition filed.

The facts of the case are briefly as follows. The Petitioners state that they are farmers and cultivate paddy in Muththunagar. They state that some of them reside in the highland area of the said land. It is their contention that in 1972 people were settled in the said land. They submit that the land that they are cultivating, and residing had been vested with the 1<sup>st</sup> Respondent (sometimes referred to as ‘the SLPA’). The 1<sup>st</sup> Respondent had instituted action under the State Lands (Recovery of Possession) Act, No. 07 of 1979 to evict the Petitioners. Hence this Writ Application.

### **The Petitioners’ case**

The Petitioners in this Application are challenging the Vesting Order whereby the land was vested with the 1<sup>st</sup> Respondent.

The Petitioners allege that the Vesting Order is bad in law as the then Minister had exceeded his powers in issuing the said Order. Therefore, they are contending that the Respondents should be prohibited from attempting to obtain possession through the cases filed in the Magistrates' Court.

### **Respondent's objections**

The Respondents have raised several objections on the maintainability of this Application and the said objections *inter alia* are as follows:

- The Petitioners have no *locus standi* to file this Application.
- Unexplained and unacceptable delay.
- Misrepresentation and suppression of facts.
- The Petitioners have not come to Court with clean hands.

This Court will now consider the Petitioners' arguments with the objections raised by the Respondents.

### **The vesting of the land**

The parties are not at variance that the said land in dispute (hereinafter called 'the land') was State land. The parties also agree that in this instance there was no acquisition of land, but the land was always State land. In 1984, the land had been vested with the 1<sup>st</sup> Respondent by Gazette No. 314/10 dated 12.09.1984 marked as P6.

It is this Gazette that the Petitioners are seeking to impugn. Pursuant to section 24 (1) of the Sri Lanka Ports Authority Act, No. 51 of 1979 (hereinafter referred to as 'SLPA Act') the then Minister of Trade and Shipping has made the said Order of vesting the State land with the SLPA. As per the submissions of the learned DSG, a total of 2827 Acres of State land has been vested with the 1<sup>st</sup> Respondent. The Petitioners' main contention is that the Minister is empowered to vest land pursuant to section 24 (1) of the SLPA Act, only for the purposes of the ports. Hence, it is his contention that the powers of the SLPA are given in section 6 of the SLPA Act and therefore, the vesting of land should be strictly limited only for a purpose enumerated under section 6 of the Act. This would be an appropriate time to consider section 24 (1) of the SLPA Act and section 6 of the SLPA Act.

Section 24 of the SLPA states as follows:

*“24. Power of the Minister to vest Land of the Republic in the Ports Authority.*

*(1) Notwithstanding anything in the Crown Lands Ordinance or any other written law, where the Minister considers that any land of the Republic is required by the Ports Authority for the purposes of its functions the Minister may, with the concurrence of the Minister in charge of the subject of Lands, by Order (hereafter in this Act referred to as a. “Vesting Order”) Published in the Gazette, vest such land in the Authority with effect from such date as shall be specified in the Order, subject to such restrictions or conditions, if any, as may be so specified.”*

Section 6 of the SLPA Act states as follows:

*“6. (1) Subject to the provisions of this Act it shall be the duty of the Ports Authority-*

*(a) to provide in any specified port, efficient and regular services for stevedoring, lighterage, shipping and transhipping, landing and warehousing of dry and wet cargo and cargo in bulk; for wharfage, the supply of water, fuel and electricity to vessels, for handling petroleum, petroleum products and lubricating oils to and from vessels and between bunkers and depots; for pilotage and the mooring of vessels; for diving and under-water ship repairs and for other services incidental thereto;*

*(b) to provide in any specified port, efficient and regular tally and protective services;*

*(c) to regulate and control navigation within the limits of, and the approaches to, the specified ports;*

*(d) to maintain port installations and to promote the use, improvement and development of the specified ports;*

*(e) to co-ordinate and regulate all activities within any specified port excluding the functions of the Customs;*

*(f) to establish and maintain on and off the coast of Sri Lanka such lights and other means for the guidance and protection of vessels as are necessary for navigation in and out of the specified ports;*

*(g) to perform such other duties as are imposed on the Ports Authority by this Act;*

*(h) to conduct the business of the Ports Authority in such manner and to make in accordance with this Act such charges for services rendered by the Authority as*

*will secure that the revenue of the Authority is not less than sufficient for meeting the charges which are proper to be made to the revenue of the Authority, to replace assets, make new investments and to establish and maintain an adequate general reserve; and*

*(i) to endeavor to manage the specified ports and each of them as a self supporting enterprise in accordance with the provisions of this Act.”*

As per section 24(1) of the SLPA Act, if the Minister considers that any land of the Republic is required by the Ports Authority for “*the purposes of its functions*” pursuant to section 24, by a Vesting Order published in the Gazette, he has the power to vest such land with the 1<sup>st</sup> Respondent. The said Vesting Order may have to specify if there are any restrictions or conditions. Upon vesting, the SLPA receives absolute title over the land specified therein. Hence, the Minister has the power to vest the land with the SLPA.

However, the learned Counsel for the Petitioners contended that this power should be exercised and the land should be vested only for the purposes of the functions of the SLPA. Accordingly, it is his contention that the duties and functions of the 1<sup>st</sup> Respondent are stipulated by Act, No. 51 of 1979. According to section 6, it appears that among other things one of the functions is landing and warehousing of wet cargo and cargo in bulk. It is apparent that to carry out the said functions the 1<sup>st</sup> Respondent requires land. The said section cannot be interpreted narrowly. It is observed for the supply of water, fuel, petroleum, etc., there should be sufficient storage and for the said storage there should be land available. It was the contention of the Petitioners that handling petroleum, petroleum products, water, and fuel enumerated in the section means only providing these facilities. This Court disagrees with the said submission as the plain reading of the section clearly demonstrates that, to supply the said services, there should be storage, and for storage, land is needed.

### **The distance between the vested land and the port**

The thrust of the Petitioners’ argument was based on the distance of the land vested with the SLPA and therefore, it was contended that due to the distance the land cannot be used for any function of the port. The learned DSG disagreed with this argument based on distance and submitted that the land in question is in fact close to the Trincomalee Port and argued that the Petitioners’ contention is not tenable. This Court observes that section 24 of the Act does not state that the vesting can be done only pertaining to lands that are adjacent to a port. The words used are “*that any land of the Republic*”. Hence, in my view, the distance to the land from the port is irrelevant and

should not be the criteria to determine whether the Minister has exceeded his powers under section 24.

The learned DSG also brought to the attention of the Court that the port of Trincomalee is in an odd shape, has a unique geographical location and features, further the Gazette Notification marked as P6 and especially Schedule 8 where one of the boundaries of the acquired Lot extends up to the sea. Hence, it was contended that the said land so vested is adjacent to the port and is bordering the sea. The Petitioners have failed to demonstrate the exact location of the land with a survey map, and hence, failed to establish their contention that the land is 18 km away from the port. This position was vehemently denied by the learned DSG. Especially this Court observes that in the absence of any material to establish the exact location of the vested land, the distance between the land and the port becomes a disputed fact. The Petitioners' main contention is that due to the distance from the land to the port, it cannot and should not be considered as a land wanted for the usage of the port within the meaning of section 6. Thus, it is clear that the learned Counsel for the Petitioners' main argument is based on the distance from the land to the port and it is his contention that the distance alone should be a decisive factor in coming to a conclusion to impugn the Gazette (P6).

It is trite law that when material facts are in dispute, a Writ Court is reluctant to grant the reliefs prayed for. The learned Counsel for the Petitioners was not in a position to explain or demonstrate with maps or survey plans, his contention pertaining to the distance to the land. This failure becomes crucial in view of the fact that one of the boundaries of the land vested in the Gazette extends up to the sea. The learned Counsel for the Petitioners tendered a sketch marked as P2 to demonstrate the location of the land which was challenged by the learned DSG. I do find that the said sketch, which has no author, does not give a clear picture of the location of the land.

The Court has considered the case of ***Kumudu Akmeemana v. Hatton National Bank & others CA Writ 72/2020, decided on 30.4.2021*** where it was held that

*“The jurisdiction of this Court under Article 140 of the Constitution is to examine whether a statutory authority has acted within the four corners of its enabling legislation. It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact. Therefore, this Court cannot in these proceedings determine whether the Petitioner has, in fact, signed the said Deed or not.”*

In this instance, the Gazette vesting the land to the SLPA had been issued in 1984. Hence, as submitted, at that time it had been considered by the Minister that the said land was required for the purposes of the port. The Petitioners have failed to impugn this position. In any event, it was not the contention of the Petitioners that the Vesting Order was wrong, as the land was not needed for any purpose the Act has enumerated.

The Petitioners in any event have failed to tender any documents or make submissions to demonstrate that, at the time of vesting the land, it was done so with a motive to use it for any other purpose other than what is contemplated in the Act. Therefore, making the publication of the Gazette by the Minister, an act exceeding his powers. In my view, the Petitioners have failed to demonstrate that the land when it was vested with the SLPA in 1984 was not needed for the functioning or for purposes of the port.

The DSG also contended that this land was vested in the year 1984, however, due to the communal disturbance that prevailed at that time and the looming threat of an attack on the Trincomalee port, the said land had not been fully utilized for the purpose it was intended for. It was her contention that the SLPA was in a position to utilize the land only after the end of the communal disturbance in the year 2009. It was argued that the 1<sup>st</sup> Respondent became aware of the Petitioners' unauthorized occupation only upon the attempt to utilize the said land. The Respondents also submitted that as there were certain unauthorized structures constructed within the vested land, the SLPA, on sympathetic grounds, is in the process of releasing part of the land so vested.

This Court will now consider whether the Petitioners have *locus standi* to file this action.

### **The locus standi of the Petitioners**

The Petitioners are alleged to be farmers who have settled or are in possession or cultivating the land. The parties are not in dispute that prior to the Vesting Order, the land in question was State land. It is also not disputed that an occupant who is in possession of State land can possess the said land legally only with the permission of the State. The learned Counsel appearing for the Petitioners conceded that none of the Petitioners are in possession of any valid permit to possess the land. Though the learned Counsel for Petitioners argued that the Petitioners had settled in the land for a long period of time, the Petitioners were not in a position to demonstrate their long occupation by any independent evidence. Subsequent to the vesting, the Petitioners have had no valid authority or permission from the SLPA to possess the land. I have

carefully considered the wording of the vesting Gazette, and by the said Gazette the 1<sup>st</sup> Respondent obtained clear title with no encumbrances. Hence, in the absence of any permit or grant, the Petitioners become unauthorized occupants of the vested land.

It is also the contention of the Petitioners that most of the land is occupied for cultivation and only the high ground is possessed for residential purposes. However, this contention too was not established with any documentary or independent evidence. If the Petitioners were in occupation for the time period stated and had constructed their residences, this could have been established by utility bills or even by a simple certificate of occupation by the Grama Niladhari of the area. The Petitioners had annexed a birth certificate of one of the Petitioners and submitted the said birth certificate states that the said Petitioner was born in Muththunagar. However, the Petitioners failed to establish whether by the said Vesting Order, the entire village of Muththunagar has been vested or only the lands situated in part of the Muththunagar area had been vested. Upon inquiry by the Court, the Petitioners Counsel was not in a position to clarify this question. In the absence of clarity, this Court observes the said birth certificates serves little purpose and at this stage, the only conclusion the Court can arrive at is that a person with the name in the birth certificate has been born in Muththunagar. However, it does not suggest the birth was within the vested land. Accordingly, in the view of Court, the Petitioners have failed to submit any document to demonstrate the occupation of part of the land for residential purposes. In any event, in the absence of any material to demonstrate that the Petitioners have a valid permit to occupy the said land and without any material to substantiate the oral submissions. After giving due consideration to the above stated facts in my view the objection based on the Petitioners' *locus standi* has to succeed.

In coming to this conclusion, this Court has considered the decisions in ***Ariyaratne and others v Inspector General of Police and others (2019) 1 SLR 100*** where it was stated that:

*“With regard to locus standi, the doctrine of legitimate expectation operates where an aggrieved person does not have a proprietary or personal right stricto sensu which gives him the locus standi to challenge a decision of a public authority under the other grounds recognized by administrative law. In such situations the doctrine operates to confer locus standi to an aggrieved person to seek judicial review where he only has a ‘legitimate expectation’ that a public authority will act in a particular way. Thus in O’Reilly v Mackman, Lord Diplock said that in public law a person who held a legitimate expectation had ‘sufficient interest’ to challenge the legality of a public authority’s decision.”*

This takes me to the next objection raised on undue delay.

### **The delay**

In this Application, the Petitioners are attempting to quash the Vesting Order marked as P6. The said Order has been published on 12.09.1984. As per the Vesting Order, the land has been vested with the 1<sup>st</sup> Respondent with effect from 15.03.1984. After a long slumber of nearly four decades, the Petitioners have awakened and are attempting to challenge the Vesting Order which is nearly forty years old. The Petitioners' attempt to explain the delay on ignorance cannot be accepted as ignorance of the law does not help a litigant. The Petitioners themselves have tendered to Court the Gazette through which the vesting of the land with the SLPA was published. Hence, the Respondents have published the vesting order in the Government Gazette, thus, the vesting of the land is not done secretly.

Further, the learned Counsel for the Petitioners himself stated that the Petitioners had attempted to obtain permits for the land which clearly establishes that the Petitioners were aware that they were unauthorized occupants. If the Petitioners who are alleged to occupy the State land vested with 1<sup>st</sup> Respondent were in occupation of the lands for forty years and with the knowledge that they were unauthorized occupants, they should have taken steps to obtain valid permits and regularize their occupation. Though the Petitioners' Counsel contended that the Petitioners had endeavored to do so but was futile, no documentary evidence was submitted to establish the same other than the document marked P5 which is dated 26.03.2024.

In any event, the Vesting Order has been published in the Government Gazette, and the Petitioners after forty long years are attempting to impugn the said Gazette. In my view, the Petitioners have failed to give any acceptable explanation to purge delay in challenging the Gazette at the time of publication. There is no valid acceptable explanation as to why the Petitioners were sleeping over their alleged rights for forty years. It is trite law that delay will negate the reliefs claimed by Petitioners.

In *Biso Menike v Cyril de Alwis 1982 1 SLR 368* it was held

*“ The proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleepover his rights without any reasonable excuse the chances of his success in a writ application dwindle, and*

*the Court may reject a writ application on the ground of unexplained delay” .....an application for a writ of certiorari should be filed within a reasonable time from the date of order which the applicant seeks to have quashed”.*

### **Misrepresentation and suppression of facts.**

The Petitioners’ contention that the land in question contains paddy fields cultivated by the Petitioners and also some of the Petitioners have animal farms were vehemently denied by the Respondents. It is observed that the Petitioners have failed to substantiate this argument with independent evidence. The Petitioners have failed to demonstrate the cultivation of paddy and the existence of paddy fields at least by photographic evidence. Though the Petition tendered to Court, photographic evidence from P7a to P13 to demonstrate the presence of the party seeking to intervene, they failed to demonstrate, the cultivation of paddy and the existence of paddy fields within the land vested with the SLPA.

In the absence of any photographic evidence or any material to substantiate the submissions of the Petitioners’ Counsel, pertaining to the cultivation, the learned DSG invited the Court to come to the conclusion that the said contentions of the Petitioners are serious misrepresentations of the actual facts. It is trite law that in a Writ Application, the burden of proof is with the Petitioner. In the instant case, this Court observes the Petitioners have failed to discharge the said burden of proof as they have failed to substantiate their arguments with supportive material.

In coming to the above conclusion, the Court has considered the case of *Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others SC Appeal 10/2009 decided on 15.12.2014*, where it was held that, “*The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies*”. This decision was followed in the cases of *Wickrama Arachchi Athukoralage Asantha Udayakara v. Inspector General of Police, York Street CA Writ 725/24 decided on 30.01.2025* and *Lanka Electricity Company (Private) Limited v. Commissioner General of Labour and others CA Writ 120/2024 decided on 26.11.2024*.

Further, this Court would also wish to highlight that as submitted by the learned DSG the Petitioners have failed to disclose to this Court, that pursuant to filing action under State Lands (Recovery of Possession) Act the Magistrates’ Court at the conclusion of

the inquiry has issued the Writ to eject the unauthorized occupants. These facts have not been disclosed to this Court, thereby, the Petitioners have suppressed material facts to Court. The Petitioners failed to respond to this argument.

In *Liyanage and Another v Ratnasiri Divisional Secretary, Gampaha and others (2013) 1 SLR 6* it was held that,

*‘It is now a well-established principle that when an applicant has suppressed or misrepresented the facts material to an application and when there is no complete and truthful disclosure of all material facts, the Court will not go in to the merits of the relevant application, but will dismiss it in limine’*

In my view, the Petitioners have failed to negate the allegation of not coming to Court with clean hands.

The Petitioners in paragraph 28 of the Petition have pleaded that a Farmers’ Association of the Muththunagar village has filed two Fundamental Rights Applications in the Supreme Court. However, they have failed to disclose the particulars of the said cases. The learned DSG appearing for the Respondents contended that some of the Petitioners in the said Fundamental Rights cases are also Petitioners in the present case. It was further argued that the main relief sought in this case is also the subject matter of the Fundamental Rights cases. Hence, the argument that since the Fundamental Rights Applications were filed before the Petitioners filed this Application, they were aware of the grounds, and of the reliefs pleaded in the Fundamental Rights Applications. Yet, the Petitioners failed to disclose this important fact to this Court. It is observed that even at the submission stage, the Petitioners were silent on the existence of the Fundamental Right Applications until it was raised by the Respondents’ Counsel and then too the said contention was not answered by the Petitioners. Hence, the argument that the Petitioners are attempting to have two bites at the same cherry in two different forums without disclosing the same.

Further, the learned DSG’s submitted that the Fundamental Rights Application and the subject matter of this Writ Application is both on the vesting of the land with the SLPA and subsequent process to evict the Petitioners, which was not denied by the Petitioners. Hence, in my view, the Petitioners ought to and there was a duty cast on them to disclose the particulars pertaining to the Fundamental Right Application in detail. The failure to do so by the Petitioner in this instance amounts to a grave suppression of material facts.

The Petitioners in one paragraph have merely pleaded that they were aware of an Association that has filed a Fundamental Rights Application. The Petitioners' silence on the Respondents' allegation that some of the Petitioners were parties to the said Fundamental Rights Application also does not help them in convincing this Court of their inability to disclose material facts. Hence, in my view, the objection raised by the Respondents on suppression of facts has to succeed.

After considering the submissions of the learned Counsel for the Petitioners and the Respondents and considering the material submitted to this Court and for the above-stated reasons, this Court is of the view that the Petitioners have failed to satisfy this Court that there is a *prima facie* case to be looked into. Accordingly, for the above-stated reasons I am refusing to grant formal notice and proceed to dismiss this Application.

Since this Court has now declined to issue formal notice, I see no reason to consider the Application to intervene.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**