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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writs of *Certiorari*, Prohibition and *Mandamus*.

Pastor Krishnamurthi Prabhakaran,
Secretary,
Gethsemane Gospel Church,
No. 16, Averiwatte Road,
Wattala.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/501/2023

1. Wattala-Mabole Urban Council,
   Old Negombo Road,
   Wattala.

2. A.S.S. Sandaruwan,
   Secretary,
   Wattala-Mabole Urban Council,
   Old Negombo Road,
   Wattala.

3. Chief Valuer,
   Department of Valuation,
   No. 748, Valuation House,
   Colombo.

4. Assistant Commissioner of Local Government,
   Kachcheri Complex,
   Gampaha.

5. Commissioner of Local Government,
   Department of Local Government,
   Western Province,
   204, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

6. Minister of Public Services, Provincial Councils and Local Government,
   No. 330, Union Place,
   Colombo 02.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	N.M. Shaheid with Zaid Ali for the Petitioner. Sumith Senanayake, P.C. with Kavindi Kodithuwakku and Nisali Balachandra for the 1st and 2nd Respondents. Dr. Peshan Gunaratne, S.C. for the 3rd to 6th Respondents.
Argued on:	12.02.2026.
Written Submissions:	For the Petitioner on 06.03.2026. For the 1st and 2nd Respondents on 04.03.2026. For the 3rd to 6th Respondents on 25.02.2026.
Decided on:	27.05.2026.

Mayadunne Corea J

The Petitioner in this application sought, *inter alia*, the following reliefs:

"*b) Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the office of the 2nd Respondent reflected in letter dated*

31.03.2021 (P13) and/or any decision touching upon and/or referable to such purported decision.

c) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the office of the 2nd Respondent reflected in letter dated 10.12.2022 (P18) and/or any decision touching upon and/or referable to such purported decision*

d) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the 2nd Respondent reflected in a letter dated 19.04.2023 (P20) and/or any decision touching upon and/or referable to such purported decision*

e) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the 2nd Respondent reflected in a letter dated 10.07.2023 (P24) and/or any decision touching upon and/or referable to such purported decision*

f) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the 2nd Respondent reflected in a letter dated 10.07.2023 (P25) and/or any decision touching upon and/or referable to such purported decision*

g) *Issue a mandate in the nature of a Writ of Certiorari quashing the purported decision of the 2nd Respondent reflected in a letter dated 27.07.2023 (P28) and/or any decision touching upon and/or referable to such purported decision*

h) *To call for and quash by way of a mandate in the nature of a Writ of Certiorari, the purported resolution/decision of the 1st Respondent dated 29.11.2022 and/or any decision touching upon and/or referable to such purported decision*

i) *Issue a mandate in the nature of a Writ of Mandamus compelling or directing 1st and/or 2nd Respondent and/or any one or more of them to act in terms of the provision of the Urban Councils Ordinance, No. 61 of 1939 (as amended) including especially section 145(2) thereof*

j) *Grant and issue a mandate in the nature of Writ of Prohibition prohibiting the 1st and 2nd Respondents and/or any other Respondents and/or any person(s) seeking to act under or through them from purporting to act in pursuance of purported resolution no. 510 dated 29.11.2022*

k) *Grant and issue a mandate in the nature of Writ of Prohibition prohibiting the 1st and 2nd Respondents and/or any other Respondents and/or any person(s) seeking to act under or through them from seeking to evict and/or disturb the peaceful use and enjoyment by the Gethsambe Gospel Church, the premises described in the Schedule to lease agreement bearing no. 1528 (P11) in a manner contrary to law*"

The facts of this case, in brief, are as follows. The Gethsamane Gospel Church entered into a lease agreement dated 10.06.2011 with the 1st Respondent for the period until 19.11.2034. The premises was initially leased out at a monthly rental of Rs. 32,000. Subsequently, by letter dated 31.03.2021 (P13), the 2nd Respondent informed the Petitioner that the monthly lease rental was revised to Rs. 375,000 pursuant to a letter from the Department of Government Valuation. Accordingly, the Petitioner was directed to settle the outstanding arrears of rent from 2011, amounting to a sum of Rs. 40,807,662.27.

The Petitioner states that he made several requests to the Respondents to reconsider the increased rental and the outstanding rent. Thereafter, by letter dated 10.12.2022 (P18), the 2nd Respondent informed the Petitioner to be present at the 1st Respondent's office with a security deposit amounting to three times the monthly rent in order to update the conditions of the agreement since the 1st Respondent had passed a resolution to implement the new assessment.

Furthermore, by letter dated 19.04.2023 (P20), the 2nd Respondent informed the Petitioner that a sum of Rs. 1,551,158.6 was outstanding as at 19.04.2023, and that the same should be settled on or before 22.05.2023. Subsequently, by letter dated 10.07.2023 (P24), the 2nd Respondent notified the Petitioner that the lease agreement is subject to revision once every five years, whereby a new lease amount shall be implemented, and accordingly, that the lessee is bound to pay such amount. Finally, by letters dated 10.07.2023 (P25) and 27.07.2023 (P28), the 2nd Respondent informed the Petitioner to settle the outstanding amounts, and that a failure to do so would result in the premises being sealed followed by an institution of legal action. Hence, this Writ Application.

The Petitioner's contention

The Petitioner challenged the acts of the Respondents on the following grounds:

- The Respondents have acted contrary to the provisions of the Urban Councils Ordinance, No. 61 of 1939.
- The Church (lessee) has neither breached any condition of the lease agreement nor has it breached any by-laws of the Urban Council, warranting a cancellation of the lease agreement.
- The Respondents have acted in breach of the principles of natural justice.
- The acts of the Respondents are illegal, arbitrary, ultra vires, capricious and are in furtherance of collateral/extraneous motives.

The Respondents' contention

The 1st and 2nd Respondents raised the following objections:

- The Respondents have acted in accordance with the terms and conditions of the lease agreement.
- Condition 1(iv) of the lease agreement provides that if the monthly rental is altered following a report issued by the Provincial Council or Chief Assessor, the amended monthly rental shall be paid together with arrears.
- The Petitioner has failed to resort to the alternative remedies available to him.
- The relationship between the parties is contractual.
- The Petitioner has failed to comply and complain.
- The Petitioner is guilty of suppression and misrepresentation.
- Laches.

I will now examine the Petitioner's contentions along with the Respondents' objections.

It is common ground that the relationship between the Petitioner and the Respondent are based on the lease agreement entered between the parties. It is also common ground that the building in dispute is owned by the 1st Respondent. On 10.06.2011, the Petitioner has entered in to a lease agreement marked and tendered as P11 with the 1st Respondent to lease out the said property. It is not disputed that the parties are bound by the covenants in the lease agreement and, of the contents and the execution of the lease agreement. The said lease is for the duration of approximately 30 years and would end only on 19.11.2034.

Is the decision to increase lease rental bad in law?

The Petitioner strenuously contended that as per the lease (P11), the Petitioner was required to pay a sum of monthly rental of Rs. 32,000. However, it was the contention that the Petitioner has been informed by the 1st Respondent that the lease rental is now increased to a sum of Rs. 375,000. Hence, the Petitioner's main contention is that the said increase is illegal, and is in violation of the conditions envisaged in the lease agreement.

Let me consider whether, as per the lease agreement, the 1st Respondent has the right to increase the lease. As agreed by parties, none of the parties are challenging the validity of the lease agreement (P11). Hence, both parties are bound by the covenants of the lease agreement. As per the lease agreement, except for three shops on the ground floor of the premises, the ground, first, second and third floors have been given on lease to the Petitioner, and the premises have been given to conduct a business approved by the 1st Respondent. The said clause states as follows;

> *"දැනට පහත මහලේ වීථිෘතව ඇති කඩ කාමර තුන (03) හැර සම්පූර්ණ පහත මහල හා සම්පූර්ණ පළමු සහ දෙවන සහ තෙවන මහල් ඇතුලත් දේපල කොටස බද්දට දීමට එකඟවන අතර ඒ අනුව වත්තල මාබෝල නගර සභාව විසින් සුදුසු යැයි අදහස් කරන්නාවූ ඕනෑම ව්‍යාපාරයක් කරගෙන යාමට අවශ්‍ය අවසර ලබා දීමටත් එකඟ වේ."*

As per this clause it appears that the Petitioner has been given the said premises to conduct a business. Also, except for three shops, the ground floor and three other floors have been given on rent to the Petitioner. It is common ground that the building is in a highly commercial area and is called the "New Shopping Complex". Hence, it is clear that part of the shopping complex has been leased to the Petitioner to conduct business. However, the Counsel for the Petitioner conceded that they are not using the said premises to conduct a business but instead, has converted it into a prayer center of the Gethsemane Gospel Church. The parties have also conceded that a sum of Rs. 2,764,816 had been paid by the Petitioner to the 1st Respondent as key money and thereafter, the Petitioner has agreed to pay a monthly lease rental of Rs. 32,000. Interestingly, in clause 1(iv) of document marked as P11, parties have agreed to subject the value of the lease rental to the valuation report sent by the chief valuer. The said clause reads as follows; 1(iv)

> "*ඉහත සඳහන් මාසික බදු කුලිය සම්බන්ධයෙන් පළාත් සභාවේ සභ/හෝ ප්‍රධාන තක්සේරුකරුගේ වාර්ථාව ලැබීමෙන් පසු කිසියම් වෙනසක් ඇතිවුනහොත් එකී මාසික බදු*

කුලිය ගෙවීමටත් මෙකී ගිවිසුම ලියා අත්සන් කළ දිනයේ සිට එයට හිඟවී ඇති මුදල් ගෙවීමටත් බදු ගිවිසුමේ සංශෝධනයන් සකස් කර ඇති අත්සන් කර දීමටත් බදු ගැණුම්කාර පාර්ශවය එකඟ වේ."

As per this clause both parties are not in dispute that the rental is based on the chief valuer's valuation and, it appears that, although in the lease agreement the petitioner has agreed to pay a sum of Rs 32,000 as lease rental, as per clause 1(iv), the said lease rental is subject to valuation of the chief valuer. Upon receipt of the chief valuer's valuation, the 1st Respondent has increased the lease rental, and this clause clearly states that the Petitioner undertakes to pay the difference of rental if the lease rental is increased by the chief valuer. Further, the Petitioner has also agreed to pay the said difference from the date of signing of the lease agreement. Both parties conceded that the initial lease rental of Rs. 32,000 had been determined and the lease was entered into before the chief valuer had valued and determined the monthly lease rental. The Counsel for the Respondent submitted this to be the reason for inclusion of clause 1(iv). Further, by clause 2(ඇ), the lessee has agreed to maintain the building without changing its structure and also not to make any improvements or new constructions without obtaining the prior written consent of the 1st Respondent.

This Court observes that under clause 2(ඕ), although the Petitioner can utilise the premises, it has to be for a legal business purpose. The said condition reads as follows:

"*(ඕ) මෙකී දේපල තමන්ගේ ඕනෑම නීත්‍යානුකූල ව්‍යාපාරික අවශ්‍යතාවන් උදෙසා පාවිච්චියට යොදා ගැනීමෙහිලා බදු ගැණුම්කාර පාර්ශවයට අභිමතය ඇත නමුත් පොදු ජනතාවට හානිදායක වන ආකාරයට හෝ නීතිය මගින් ප්‍රකාශිත කාරණා වලට පටහැනි කටයුත්තකට යොදා ගත නොහැක.*"

The clauses 2(ක) and (කා), specifically state that the valuation of the lease has to be amended every five years and upon valuation of the chief valuer the lessee is bound to pay the said lease rental. Clauses 2(ක) and (කා) read as follows;

"*(ක) සෑම වසර පහ (05) කට වරක් තක්සේරුකරු විසින් මෙකී දේපල සඳහා නියමිත බදු කුලිය සංශෝධනය කරනු ලබන අතර එකී බදු කුලිය ගෙවීමට බදු ගැණුම්කාර පාර්ශවය බැඳී සිටී.*

(කා) සෑම වසර පහ (05) කට වරක් තක්සේරුකරු විසින් මෙකී දේපල සඳහා නියමිත බදු කුලිය සංශෝධනය කරනු ලබන අතර එසේ නමුත් දැනට බලපවත්නා බදු කුලිය වත්තල මාබෝල නගර සභාව නියම කරන දිනයකදී ප්‍රධාන තක්සේරුකරු විසින් අදාල කුලිය

සංශෝධනය කළ හැකි අතර ඉන් අනතුරුව පෙර සඳහන් පරිදි වසර පහ (05) කට වරක් ප්‍රධාන තක්සේරුකරුගේ කුලී සංශෝධනය ගෙවීමට බදු ගැණුම්කාර පාර්ශවය බැඳී සිටී."

It appears that as per these two clauses, the parties have agreed that the lease rental is subject to the chief valuer valuing the premises every five years and, upon the said valuation, the lessee has agreed to pay the newly valued lease rental. Parties also were not at variance that as per clause 3 of the lease agreement, if the lessee is in breach of payment of the lease rental or in breach of any of the conditions, the lessor has the right to terminate the lease after giving six months prior notice. Hence, this Court observes that among other things, in the event of the Petitioner breaching any of the conditions of the lease agreement or if he fails to pay the lease rental as agreed by document P11, the 1st Respondent has the right to act in pursuance of the lease agreement and terminate the lease. The learned Counsel for the 1st Respondent submitted that as they had failed to obtain the chief valuer's valuation when entering the lease, they had inserted clause 1(iv) and in pursuance of the said clause in 2021, they had obtained a valuation from the chief valuer who had valued and determined the lease to be Rs. 30,075,000. Thus, by P13, the 1st Respondent has invited the Petitioner to pay the said sum. It is observed that as per the lease agreement, the parties have agreed to submit the rental to be determined by the chief valuer upon a valuation. Accordingly, the lease was increased on the valuation report. Hence, in my view, the 1st Respondent has not breached the terms of the lease agreement in obtaining the valuation report or in increasing the lease rental. Therefore, the Petitioner's contention that the increase of the lease rental is illegal cannot be sustained.

The Petitioner also contended that in obtaining the valuation, the 1st Respondent should have drawn the chief valuer's attention to the fact that the premises are being used for religious purposes namely, to conduct services for the church. Reverting back to the lease agreement P11, I do not find a clause in the lease agreement to support the contention of the Petitioner. In my view, the 1st Respondent is only required to obtain a valuation and a determination of the rental as per the lease agreement. In doing so, it was brought to the attention of this Court that the valuer had obtained the information of the commercial building which would obviously reflect that it was being used for a church. However, in obtaining the valuation, in my view, the 1st Respondent need not inform that the premises are used for the purpose of a church. I come to this conclusion in considering the provisions of the lease agreement itself as the lease agreement contemplates the premises to be leased out to conduct a business and it does not contemplate a commercial building to be utilised for a religious purpose. It is clear that the building is a commercial building and it is not disputed that it is in a commercial area and, as per the clauses in the lease agreement, it has been given out for business purposes. However, it appears, that the Petitioner instead of

utilising the premises for business purposes has used the premises for religious purposes, which is a violation of the lease agreement P11. In considering the amount of the lease rental, the Petitioner did not contest the methods used for the valuation by the chief valuer, nor did the Petitioner contest that the valuation report is not by the chief valuer. The Petitioner has not contested the valuation of the chief valuer, but is only contending the increase of the rental based on the valuation. The Petitioner's next contention was that the increase of rental is in violation of section 145(2) of Ordinance No. 61 of 1939. This would be an appropriate moment to consider the said section.

Application of section 145(2)

Let me now consider the submission of the Petitioner whereby he contended that increase of rental of urban council property should be subject to section 145(2) Urban Council Ordinance No. 61 of 1939 as amended. The said section, is reproduced below and reads as follows;

> *"145.*
>
> *(2) The rent payable under any lease referred to in subsection (1) shall be such reasonable sum as may be determined by the Council, and shall be revised every five years. For the first period of five years such rent shall not exceed ten per centum of the cost of providing such accommodation, and in the case of every subsequent period of five years it shall not exceed ten per centum of the average net annual profits derived from the accommodation leased for the previous five years."*

In my view, the argument of the Petitioner above is based on a narrow of interpretation of section 145(2). Section 145 has to be read with section 144. The marginal note to section 144 refers to the refusal of license to existing private markets. It is clear that the property in dispute is not a private market as the Petitioner has not disputed the ownership of the property. As per the lease agreement marked as P11, the property is owned by the 1st Respondent. Further, section 145(1) applies to markets established over 30 years. The Petitioner nor Respondents have tendered any documents to demonstrate that the premises in dispute is over 30 years. As per the submission of the Counsel for Petitioner, the property is a newly constructed property. The learned Counsel for the 1st Respondent conceded that this section will not apply to the said property as it is not over 30 years. It is also observed that section 145(2) contemplates of lease rental which are determined by the council. In the instant case before me, parties do not dispute that they have agreed the valuation of the

property to be determined by the chief valuer and also under subsection (2), there is a scheme given on the modality of increasing the lease rental. The learned Counsel for the Respondents argued that as per the modality, even if we are to assume that section 145(2) applies, then it should not exceed 10% of the average net annual profit derived from the accommodation leased for the next five years. Both Counsel conceded that the Petitioner does not get a profit from conducting the religious services. Hence, the modality provided under subsection (2) would not apply. It was also argued that since the premises are less than 30 years from being established, in any event, section 145(2) does not apply to the said premises.

In my view, if the Petitioner contends that section 145(2) applies, then the burden is on the Petitioner to establish the said ground. It is trite law that the burden of proof in a Writ application lies on the Petitioner. Hence, if the Petitioner asserts that the premises in question are more than 35 years old and therefore, section 145 is attracted then, the burden is on the Petitioner to establish the said grounds.

In 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".*

However, in the instant case the Petitioner has failed to discharge the said onus. This Court also observes that in view of the Respondents contending that the premises are less than 30 years of establishment, in the absence of any material to demonstrate when the said premises were constructed and established and in view of the fact that the 1st Respondent denied it to be constructed prior to 30 years, the construction and the establishment of the market become a disputed fact. As section 145 is attracted only for markets established over 30 years, this becomes a disputed material fact. It is trite law that when facts are in dispute, the Writ Court would be reluctant to exercise its discretionary power.

Now I will consider the objections raised by the Respondents.

The Petitioner's rights are accrued on a contract

Both parties at the commencement conceded that their relationship is based on the document marked as P11 which is a lease agreement. Hence, the said lease agreement stipulates the modality of valuation, the increase in lease rentals, and the purposes the premises should be used and the right to terminate the said lease. Hence, it is clear that by impugning the enhancement of the lease rental, the Petitioner is attacking a clause of the lease agreement whereby he had agreed for the increase of lease rental upon the valuation of the chief valuer every five years. This argument is completely based on the lease agreement P11 which is a commercial contract between the parties. If there is a breach of the said contract the said breach has to be established through evidence in an appropriate forum which is not the Writ Court.

In the case of ***Jayaweera v. Wijerathne*** **(1985) 2 SLR 413**, the Court held that "*where the relationship between the parties is purely a contractual one of a commercial nature neither Certiorari nor Mandamus will lie to remedy grievances arising from an alleged breach of contract of failure to observe the principle of natural justice even if one of the parties is a Public Authority*".

Further, in ***Gawarammana v. Tea Research Board and others*** **(2003) 3 SLR 120**, the Court held:

> "*(i) The employment of the petitioner under the Tea Research Institute was contractual and as such no writ lies to remedy grievances from an alleged breach of contract or failure to observe the principles of natural justice.*
>
> *(ii) Powers derived from contract are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power*."

In my view the 1st Respondents contention that the Petitioner by this application is attempting to challenge or enforce a contract has to succeed.

Is there a violation of P11?

As I have extensively dealt with above, the document marked as P13 emanates from a condition contained in the lease agreement. Hence, in my view the contention that the 1st Respondent in increasing the value of the lease rental has violated the lease agreement P11, cannot be sustained. I further observe that in fact by not utilising the said premises as contemplated in the clauses of P11 for business purposes, the Petitioner has violated the clauses of the lease agreement.

The Petitioner has failed to comply and complain

The learned Counsel for the 1st Respondent strenuously argued that the Petitioner has agreed in the lease agreement to revive the lease rental every five years upon the valuation of the chief valuer. The said increase had been affected in 2021 and communicated by P13. However, up to date the Petitioner has failed to pay the increased lease rental. Further, Counsel for the 1st Respondent submitted that, by P28, the 1st Respondent had informed the Petitioner that, although the increase in lease rental had been communicated through P13 in 2021, upon considering the representations made by the Petitioner, a decision had been taken to give effect to the said valuation and the increased lease rental only from 01.01.2023. Hence, they had informed by P28, to pay the new lease rental with effect from 01.01.2023. Further, it was submitted that in the said letter, the Petitioner had been informed of the said amount that was due and the repercussions that would follow in the event of failure to comply with the enhanced lease rental. It is common ground that the Petitioner had failed to honour P28 and failed to pay the revised lease rental, thereby failing to comply with the lease agreement P11. It is observed by this Court that the Petitioner brought to our attention that the Petitioner had attempted to pay 7 months rental at the rate of Rs. 32,000 for the year commencing from 2023, and the 1st Respondent had not accepted the said cheque. The reason for not accepting the said cheque is given in document P28, namely, when a newly revised lease rental is operative from January 2023, the 1st Respondent had refused to accept payment calculated on the basis of the rental amount prior to the revision. The Counsel for the Petitioner failed to demonstrate with any material his attempt to pay the new revised rental. Hence, the 1st Respondent's contention that the Petitioner has failed to comply and complain, is upheld.

In the case of ***Deshabandu Tennakoon v. Hon. B.A. Aruna Indrajith Buddhadasa, Magistrate and 13 others*** **CA Writ 168/2025, CA Minutes 17.03.2025**, the Court held that:

> "*The principle of comply and complain is a well-established and globally recognized doctrine that upholds the integrity of the judicial system. It mandates that individuals must first comply with a Court order, even if they believe it to be unjust and then seek redress through proper legal avenues if they wish to challenge it*."

Further, in the case of ***H.P.D.S. Gunawardena v. G.D. Upali Dharmasena*** **CA PHC 92/2015, CA Minutes 24.03.2022**, the Court held:

> "*Another point to consider is that one who complains must do so after complying. In other words, comply and complain is a golden rule observed by our courts*."

<u>Willful suppression of material facts and misrepresentation</u>

The Petitioner in his Petition has failed to disclose that as per the contract marked P11, there was a condition to revise the lease rental every five years and that the Petitioner had agreed to the said term and entered into the lease agreement P11. The Petitioner has also suppressed the fact that as per P11, upon the receipt of the revised valuation, the Petitioner was bound to pay the difference of lease rental contemplated under clause 1(iv) of the lease agreement. However, I observe that the Petitioner has annexed the lease agreement marked as P11 among other documents. In my view, this not sufficient. In the instant case, the Petitioner is specifically pleading that the raise in the lease rental is bad in law. In the ~~sad~~ said context the clause in the agreement that empowers the 1st Respondent to call for fresh valuation every five years and to determine the lease rental becomes a relevant factor. In my mind, the said crucial factor should have been specifically pleaded by the Petitioner as a separate averment. The Petitioner has failed to do so.

The importance of specific and clear pleadings was discussed in the case of ***Dayananda v. Thalwatte*** **(2001) 2 SLR 73**, where the Court held that:

> "*An aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari and if the application is to compel an authority to perform a duty he would ask for*

a writ of mandamus and similarly if an authority is to be prevented from exceeding its jurisdiction the remedy of prohibition was available. Therefore it is necessary for the Petitioner to specify the writ he is seeking supported by specific averments why such relief is sought. Even though the Petitioner has set out in the caption that "In the matter of an application... for writ of quo warranto and prohibition" there is no supporting averment specifying the writ and there is no prayer as regards the writ that is being prayed for. The failure to specify the writ therefore renders the application bad in law."

This non-disclosure in my view is a serious suppression of a material fact. A fact that directly affects and contradicts the Petitioner's contention that the 1st Respondent had arbitrary increased the valuation. In my view, the said objection therefore, has to succeed. It is also pertinent to note that suppression and misrepresentation of material facts disentitle a Petitioner from obtaining the relief that is sought. This Court has constantly held that, a Petitioner cannot succeed if there is suppression of material facts. In coming to this conclusion, I have considered the case of ***Namukula Plantations v. Minister of Lands*** **(2012) 1 SLR 365**, where the Supreme Court held that:

"*It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence*".

Further, in the case of ***Major Jagath Madawattage v. Secretary, Ministry of Defence and 9 others*** **CA Writ 211/2015, CA Minutes 12.09.2019**, the Court held that:

"*Suppression of material facts warrants dismissal of the writ application in limine without going into the merits of the matter*".

Prayers of the Petitioner

Let me now examine the reliefs sought by the Petitioner.

The Petitioner is challenging the decision reflected in the documents marked as P13 and P18. In my view, the said document is a reiteration of a clause of the lease agreement which empowers the 1st Respondent to revise the lease rental pursuant to a valuation of the chief valuer. Further, the Petitioner has failed to demonstrate any illegality in the said documents. Hence, prayers (b) and (c) have to fail.

In prayer (d), the Petitioner is impugning the document marked as P20 which is a letter whereby the 1st Respondent is seeking the Petitioner to pay the arrears lease rentals. To consider the accuracy of this document, the Petitioner nor the Respondents have tendered any document to demonstrate that the Petitioner has paid all dues as per the lease agreement. The onus of proof in a Writ Application lies with the Petitioner. Hence, if the Petitioner, as argued, contends that he has paid all dues and that document P20 is therefore erroneous and bad in law, it is incumbent upon the Petitioner to prove such assertion. However, in the instant case, the Petitioner has failed to discharge the said burden. Hence, prayer (d) has to fail. The Petitioner has failed to demonstrate any illegality in prayers (e), (f) and (g).

By P24, the Petitioner has been given a further grace period and has been informed that the new rental will come in to operation only with effect from 01.01.2023. As discussed above in this judgment this is a relief offered to the Petitioner as by clause 1(iv) the Petitioner had agreed to pay the difference of rental pursuant to a valuation with effect from the commencing date of the lease agreement.

Prayer (h) has to fail as the said prayer is vague and the way it is pleaded it appears that the Petitioner itself is unaware of what he is seeking to quash.

Prayer (i) has to fail since, as stated above in this judgement, I have held that section 145(2) of Ordinance No. 61 of 1939 does not apply to the instant case.

In view of the clauses in the lease agreement, in my view, prayers (j) and (k) have to fail as the Petitioner has failed to demonstrate the illegal act the Respondents are contemplating in taking steps to evict the Petitioner for violation or non-compliance with the conditions stipulated in the lease agreement marked P11.

Conclusion

I have considered the material tendered to this Court and the submissions of the Counsel. However, for the aforesaid reasons, in my view, the Petitioner has failed to establish any ground that warrants the intervention of this Court by exercising the Writ jurisdiction. It is also pertinent to note that the Petitioner by his own conduct has disentitled himself from obtaining any reliefs. Accordingly, I proceed to dismiss this Writ application. The costs are to be borne out by the respective parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal