

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

Court of Appeal Case No.

CA/WRT/0747/2023

W. W. A. K. J. Fernando,
737, Dematapitiya Junction
Meda Katuneriya
Katuneriya.

Petitioner

Vs.

1. **KUGAN SULOJANI,**
Divisional Secretary,
Divisional Secretariat,
Vengalacheddikulam.
2. **P. S. M. Charles**
Hon. Governor of Northern Province,
Governors Secretariat,
Old Park, Kandy Road,
Chundukuli,
Jaffna.
3. **P. A. Sarachchandra,**
District Secretary,
District Secretariat,
Vavuniya.
4. **Sivanathan Gajendran,**
No. 353, Veerapuram,
Neriyakulam.

5. **Parakrama Wanigasingha,**
Divisional Forest Office,
Kandy Road,
Vavuniya.
6. **Harin Fernando,**
Hon. Minister of Tourism and Lands,
No 696/4, Maradana Road,
Colombo 10.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Saliya Pieris PC with Rukshan Mendis for the Petitioner.
Y. Selvanantnan S.C. for the Respondents.

Supported on: 28.11.2024

Decided on: 24.01.2025

MOHAMMED LAFFAR, J.

I heard the learned Presidents Counsel for the Petitioner in support of this application. I heard the learned State Counsel for the Respondents as well. The Petitioner is seeking a mandate, *inter alia*, in the nature of a Writ of Certiorari quashing the decision of the 1st Respondent to issue the quit notice marked P15 against the Petitioner requiring him to vacate the land in dispute.

Admittedly, the divisional secretary of Vengalacheddikulam had issued a quit notice marked as P15 under Section 3 of the State lands (Recovery of Possession) Act No 07 of 1979(as amended) to the Petitioner compelling the Petitioner to hand over the vacant possession of the land in dispute. The Petitioner is challenging the said quit notice on the footing that the subject matter is a private land owned by him. In order to substantiate the contention of the Petitioner, certain title deeds were produced. As such, the threshold issue in this application is whether the land in dispute is a State land or private land.

It is settled law that when an effective and alternative remedy is provided for in law, this Court will not exercise its Writ jurisdiction. In terms of Section 12 and 13 of the said Act, the Petitioner is entitled to institute proceedings in a civil Court against the State for the declaration of title and for compensation which is the adequate alternative remedy provided in law.

In **Pinnaduwege Baby Mallika Chandraseana Vs C.W Abey Suriya**¹ this Court held that,

“Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him.”.

Moreover, when the major facts are in dispute the Writ Court will not exercise its Writ jurisdiction. Admittedly, the central issue in this application is whether the land in dispute is private land owned by the Petitioner or a state land. This major issue must be established with oral and documentary evidence. The title deeds and title plans are to be examined, and the title plan has to be superimposed on the Surveyor Generals plans. There is an obligation on the part of the Court to investigate the title of the Petitioner. The oral and documentary evidence are to be cross examined. All these procedures are to be followed not in a Writ Court, but in a trial Court.

In the case of **Thajudeen Vs. Sri-Lanka Tea Board**² this court held that;

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”

The Supreme Court in **Francis Kulasoorya Vs. OIC- Police Station-Kirindiwela**³ observed that;

“Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute.”

¹ CA/WRIT/457/2019

² [1981] 2 Sri LR 471

³ SC Appeal No. 52/2021. SC Minute of 14-07-2023

Also in **Dr. Puvanendran Vs. Premasiri**⁴ the Supreme Court held that;

“The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”

Thus, having scrutinised the Petition, affidavit, documents and the submissions of both Counsel, on the foregoing reasons, I hold that there is no basis to issue notices on the Respondents. The notices are refused and the Application is dismissed.

Application dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

⁴ 2009- 2SLR-p107