

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 and Mandamus.

1. Binara Yohan Arumathnithirige,
No. 07, Palatugahawatta, Goviya
Road,
Ahangama.
2. Bikers Café (Pvt) Ltd,
No. 77, Sea Street,
Galle.

PETITIONERS

Vs.

Court of Appeal Case No:
CA/WRIT/0001/2025

1. G.D.S. Wijyantha,
Principal, Ga/Rohana College,
Ahangama.
2. S.W. Snevirathne,
The Provincial Director of Education
– The Ministry of Education
Southern Province,
“Dakshina Paya”, Labduwa,
Akmeemana.
3. Director of Zonal Education,
Zonal Education Office,
Galle.
4. Ranjith Yapa,
The Provincial Secretary of
Education – The Ministry of
Education Southern Province,
“Dakshina Paya”, Labduwa,
Akmeemana.

- 4A. A.U. Welaratne,
The Provincial Secretary of
Education – The Ministry of
Education Southern Province,
“Dakshina Paya”, Labduwa,
Akmeemana.
5. Mr. Kavinga Goonaratne,
Former President,
The School Welfare Society,
Ga/Rohana College,
Ahangama.
6. The Secretary,
The School Welfare Society,
Ga/Rohana College,
Ahangama.
7. The Governor,
Southern Province,
Governor’s Office,
Galle.
8. Senaka Palliyaguruge,
Commissioner of Land,
Land Commissioner’s Office in
Southern Province,
Galle.
9. The Secretary of the Governor,
Southern Province,
Governor’s Office,
Galle.
10. Sumith Alahakoon,
Chief Secretariat,
Southern Province,
Galle.
11. Divisional Secretary,
Divisional Secretariat Office,
Habaraduwa.

12. Commissioner General of Labour,
No. 1200/6, Mihikatha Meduara,
Rajamalwatta Road,
Battaramulla.
13. U.K.R.L.P. Dassanayake,
Assistant Divisional Secretary,
Divisional Secretariat's Office,
Habaraduwa.
14. Kalani Chathurika De A. Jayasekara,
Assistant Director of Zonal
Education,
Zonal Education Office,
Galle.
15. J.K.P. Dilrukshika,
Deputy Director of Education
(National Schools and School
Affairs),
Education Department of Southern
Province, Upper Dixon Road,
Galle.
16. The Secretary of the Southern
Provincial Public Service
Commission,
Ground Floor,
"Dakshina Paya", Labduwa,
Galle.
17. Pradeshiya Sabawa,
Habaraduwa.
18. P.H. Ireka Dilrukshi,
Secretary, Pradeshiya Sabawa,
Habaraduwa.
19. Hon. Dr. Harini Amarasuriya,
Minister of Education,
Isurupaya,
Battaramulla.

RESPONDENTS

- Before:** Mayadunne Corea, J
Mahen Gopallawa, J
- Counsel:** Saliya Pieris, P.C. with Geeth Karunarathna and Jagadeesha Ranasinghe for the Petitioners.
Mihiri de Alwis, S.S.C. for the 1st to 4th and 7th to 20th Respondents.
Chandima Weerakkody for the 6th Respondent instructed by Mary T. Dickman.
- Supported on:** 16.03.2026.
- Order delivered on:** 08.05.2026.

Mayadunne Corea J

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

- “b) *Issue a mandate in the nature of a Writ of Certiorari, quashing the said decisions of the Zonal Director of Education of the Southern Province (the 3rd Respondent) and the Director of Education of the Southern Province (the 2nd Respondent) envisaged in the documents marked ‘P17’ and ‘P18’ cancelling the recommendation for the said project*
- c) *Issue a mandate in the nature of a Writ of Certiorari, quashing the said decision of the Secretary to the Ministry of Education of the Southern Province (the 4th Respondent) envisaged in the documents marked ‘P20’ cancelling the recommendation and approval for the said project*
- d) *Issue a mandate in the nature of Writ of Mandamus compelling the Minister of Education (the 19th Respondent) and the Director of Education of the Southern Province (the 2nd Respondent) to take steps in terms of section 10 and the other provisions of the Assisted School and Training Colleges (Supplementary Provisions) Act, No. 08 of 1961 to take steps to divest the subject matter described in the 1st schedule hereto”*

The facts of this case, in brief, are as follows. Upon a request from the 1st Respondent, the 2nd, 3rd and 4th Respondents approved the “Urumayaka Asiriya” project in concurrence with the School Development Society of the Galle/Rohana College, Ahangama, to lease out the school’s land for a vehicle parking center and for the provision of ancillary services, in order to generate revenue to be utilised for the development of the school. The 1st Petitioner was awarded the said project. Thereafter, on 29.01.2024, the 5th and 6th Respondents entered into a lease agreement with the 1st Petitioner for a period of 12 months. It is common ground that the said land is state land pursuant to section 4 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act. It is also common ground that the said land had not been used for academic purposes although it belongs to the school but, had been used as a car parking area of the school. It was the contention of the learned State Counsel that on this basis, a proposal had been made to commence the project “Urumayaka Asiriya” to lease out the land for vehicle parking and earn an income for the benefit of the school.

Subsequently, it is alleged that the 1st Petitioner requested the 7th Respondent that the land be given on a long-term lease to the 2nd Petitioner, Bikers Café (Pvt) Ltd of which the 1st Petitioner allegedly is a shareholder and director. The 4th and 10th Respondents informed that they had no objection to the land being used for any other purpose since the land was no longer being used for educational purposes and there was no intention to use it for such purposes in the future. Thereafter, the 7th Respondent granted approval for the possession of the land to be handed over to the 11th Respondent and to be utilised for such other purposes. According to the Petitioners, arrangements were being made to give the land on a long-term lease to the 1st Petitioner on a preferential basis.

However, by letter dated 24.06.2024 (P17), the 14th Respondent cancelled the recommendations for the “Urumayaka Asiriya” project on the basis that action had been taken contrary to the instructions given. Similarly, by a letter dated 18.10.2024 (P18), the 15th Respondent, cancelled the recommendations for the said project. Further, the 4th Respondent too, by letter dated 29.10.2024 (P20), cancelled the approval granted for the project. Hence, this Writ Application.

The Petitioners’ contention

The Petitioners contend that cancelling the recommendations and approval for the project is ultra vires, arbitrary, unreasonable, and are in violation of the principles of natural justice.

The Respondents' contention

The Respondents raised several objections pertaining to the issuance of notice and argued that;

- The 2nd Petitioner does not have locus standi
- The Petitioners' rights are based on a lease agreement.
- Misrepresentation and suppression of material facts.
- The Petitioners have failed to come to Court with clean hands.

I will now consider the Petitioners' contentions with the Respondents' objections.

Analysis

It is common ground that by the Gazette no. 12998 dated 28.03.1962, the land (hereinafter referred to as 'the corpus') was vested with the Galle/Rohana College. The said corpus is in extent of 20 perches. It is not disputed that the said plot of land had been originally used as a playground for the school and the said ground is situated opposite to the school, on the sea side of the Colombo-Matara Road. The Petitioners contend that upon a request by the school and the School Development Society, the Society sought to commence a project called "Urumayaka Asiriya" to have a vehicle parking area and the ancillary facilities for such a parking area. It appears that a request had been made by the principal of the school for the above project and to credit the monies earned for the development facilities of the school. It appears that upon a request of the principal and upon the recommendation of the Provincial Director of Education, the Secretary to the Ministry of Education, Southern Provincial Council had given approval for such a project (P4 dated 11.12.2013). Thereafter, by the document marked P5, approval has been sought to handover the said lot to the 1st Petitioner to commence the vehicle parking facility with ancillary services by installing temporary containers. However, it is unclear whether the approval sought in document P5 was granted, as no material to that effect has been tendered before the Court.

The 1st Petitioner enters into a lease agreement

While approvals had been sought as stated above, the 1st Petitioner has entered into a lease agreement with the Chairman and Secretary of the School Development Society to lease out the property in question (P6). As per the said document, the lease has been entered into by the 1st Petitioner and, there is no reference or mention of the 2nd

Petitioner. Further, the lease has been signed by the 1st Petitioner and there is no seal of the 2nd Petitioner nor any material to show that the lease agreement has been entered into on behalf of the said Petitioners. The said lease is only for a period of 1 year, commencing on 01.02.2024 and is to be terminated on 31.01.2025. Further, there is a specific condition which reads as follows:

“මෙම බද්දට යටත් ස්ථානයේ වාහන නැවැත්වීමේ පහසුකම් ද ඊට අදාළ පහසුකම් සේවය සැපයීම් පමණක් සිදු කෙරෙන ආයතනයක් ලෙස පවත්වාගෙන යාමට කටයුතු යෙදෙන බවට බදු ගැනුම්කරු එකඟ වේ. එසේම මෙම දේපලෙහි ස්ථිර ගොඩනැගිලි ඉදි නොකිරීමට ද බදු ගැනුම්කරු එකඟ වේ.”

As per this clause, it is clear that the Petitioners should only use the said premises for vehicle parking and for ancillary facilities and are barred from constructing permanent buildings or structures. It is also observed that either party can terminate the lease by giving one months’ notice. There is also a clause to say that the 1st Petitioner, who is the lessee, should not sub-let the premises.

However, upon signing the said lease agreement, it appears that in contravention of the provisions contained in the lease agreement, the 1st Petitioner, stating that he is the director of the 2nd Petitioner, had sought from the Governor of the Southern Province to lease out the said land on a long-term lease for a development related to tourism. The said clause in the document seeking approval reads as follows:

“උක්ත කරුණ සම්බන්ධව 2024 ජූනි මස 19 වන දින “බයිකස් කැල” පුද්ගලික සමාගමෙහි අධ්‍යක්ෂ ජනරාල් යොහාන් අරුමනන්තිරිගේ මහතා විසින් ම වෙත යොමු කරන ලද ලිපිය හා සබැඳේ,

02. එකී ලිපියට අනුව ගා/ රෝහණ මහා විද්‍යාලයට අයත් අහංගම කන්ද පිහිටි පිටවත්ත ඉඩම සංචාරක කමර්තනය ආශ්‍රිත සංවර්ධන කටයුත්තක් සඳහා දීර්-ග කාලීන බදු පදනමට ලබා දෙන ලෙස මා විසින් ඉල්ලීමක් සිදුකර ඇත.”

Thereafter, the Secretary of the Ministry of Education, Southern Province has written to the Governor stating that he recommends the possession of the land be handed over to the Divisional Secretary and thereafter, for it to be used for any other purpose. This letter is dated 05.07.2024. On 24.07.2024, the Secretary to the Ministry of Education, Southern Province had informed the Divisional Secretary that the Governor had approved the possession of the land to be handed over to the Divisional Secretary as it is not being used for any educational purpose. Thereafter, by letters marked and tendered as P12, P13a, P13b, P13c and P13d, requests had been made to several state institutions to obtain recommendations for the particular land to be given on a long-term lease to the 2nd Petitioner, whose director is the 1st Petitioner. Thereafter, on 08.10.2024, the Central Environmental Authority had informed the Secretary to the

Pradeshiya Sabha Habaraduwa, the 18th Respondent, that since a construction had already commenced in the said land without the recommendation of Central Environmental Authority, the Central Environmental Authority has declined to give a recommendation. However, it has been observed that since the said land is within the sea shore, there are certain conditions to be complied with and as reiterated, there is a requirement to obtain an environmental protection license.

By P14d, the Secretary to the Habaraduwa Pradeshiya Sabha had informed the Divisional Secretary that subject to the 1st Petitioner obtaining the necessary approvals from the relevant authorities, the Pradeshiya Sabha has no objection for the proposed tourism development project to be commenced on the said land.

Report called from the Provincial Land Commissioner

Thereafter, a report had been called from the Southern Provincial Land Commissioner's Department which had compiled and tendered the report marked as P15. Among the recommendations, the Provincial Land Commissioner in his report has specifically mentioned that the land in question is state land and therefore, the corpus could only be used for the purposes of the school or for the purposes of the Education Department and has further observed, that there is no right for the Provincial Education Department or the Divisional Secretary to alienate the said land other than for the purpose that is mentioned above.

While this process was ongoing, apparently on 24.06.2024, the Zonal Director of the Zonal Education Office, Galle had observed that, as the project had commenced contrary to the advice and the requirements given, they are cancelling the approval granted for the said project (P17).

Further, the Director of Education by letter dated 18.10.2024 addressed to the Secretary to the Ministry of Education, Southern Province, had informed that, as the principal of the said school had violated the conditions pertaining to the project to lease out the land, upon inquiry from the Zonal Director of Galle, he had been informed that the said project is not in operation from 12.06.2024. Accordingly, the Director of Education had withdrawn the recommendation given on 22.11.2023, following which the principal of Galle/Rohana College requested that the project be suspended by his letter dated 27.10.2025.

At the submission stage, the 1st Petitioner submitted that his relationship with the Respondents had commenced with the signing of the lease agreement marked and tendered as P6 which was specifically for a period of one year, for the purpose of a vehicle parking project. However, the Petitioners seem to have deviated from the said lease agreement. Within 6 months of signing of the said lease agreement, they decided to circumvent the School Development Society and had written directly to Governor seeking to obtain the said land for a completely different purpose, namely, for a tourism development project.

Further, the 1st Petitioner's request had been to grant a long-term lease to the 2nd Petitioner, a private company named Bikers Café (Pvt) Ltd. Thereafter, as per the letters referred to in the above paragraph, all communications had been to obtain a long-term lease in favor of the 2nd Petitioner pertaining to a tourism development project, which is completely contrary to the objectives in the lease agreement entered into which is marked and tendered as P6.

At this stage, it is pertinent to note that it appears that even the lease agreement that the School Development Society and the 1st Petitioner had entered into marked P6 is without any approval. This Court observes with concern that in the instant case before us, the School Development Society had entered into a lease agreement with the 1st Petitioner to alienate state land without any approval, which is in blunt violation of the legal provisions governing state land. Be that as it may, it was contended by the learned State Counsel that P6 too had later been cancelled.

Cancellation of the lease agreement

By the document marked P17, the Director of Education, Galle has informed that although recommendations had been called to start a project called "Urumayaka Asiriya" to have a purported vehicle parking center and ancillary facilities on the basis of giving the revenue earned to the School Development Society, it is observed that the project is carried out contrary to the recommendations.

Therefore, the Director of Education has cancelled the said recommendation to commence the project "Urumayaka Asiriya". It appears that by P18, the Education Director, Southern Province had informed the Secretary to the Ministry of Education, Southern Province that, for reasons stated in the letter P18, they are cancelling the recommendations made for the above project. Upon the receipt of letter P17, the 1st Respondent by his letter dated 25.10.2024 had taken steps to suspend the project.

Thereafter, the School Development Society, by its letter dated 12.11.2024, has terminated the lease agreement entered into by the School Development Society and the 1st Petitioner. However, it is submitted that the 1st Petitioner has been in possession of the land even after the termination of the project and had been carrying on constructions on the corpus. The above circumstances had prompted the Ministry of Education, Southern Province to inform the 1st Petitioner to stop illegal construction on the premises.

Further, the Secretary to the Pradeshiya Sabha, Habaraduwa had written to the 1st Petitioner by letter dated 23.12.2024 marked and tendered as P25 to remove the illegal constructions and notice had been given to the 1st Petitioner to the effect that the failure to remove the illegal construction would result in the institution of legal action within 7 days.

At the hearing, the learned Counsel for the Petitioner submitted that after entering into the lease agreement marked and tendered as P6, they had spent a considerable sum of money (Rs. 30 million as per paragraph 34 of the Petition) for the said project. However, the 1st Petitioner has failed to provide any documentation to substantiate this contention. The Petitioner has tendered photographs of the corpus marked as P23a to P23e which clearly depicts that the 1st Petitioner has constructed permanent structures on the premises. As contended by the learned State Counsel, this Court observes that this is a violation of clause 6 of the lease agreement marked and tendered as P6. Hence, the 1st Petitioner himself, by his own conduct, has violated the clauses of the lease agreement.

The Petitioners' main contention is that the decisions to cancel the recommendation by P17 to P20 are ultra vires, arbitrary and unreasonable. I observe that P17 is not a letter addressed or copied to the 1st Petitioner. It is a letter addressed to the Ministry of Education, Southern Province by the Zonal Director of Education. The document marked and tendered as P18 is also addressed by the Director of Education, Southern Province, to the Ministry of Education, Southern Province. P20 is a letter addressed by the Secretary to the Ministry of Education, Southern Province. None of these three letters are addressed or copied to 1st Petitioner. Hence, the manner in which the Petitioners obtained these documents have not been established or pleaded. Yet, the Petitioners are seeking to quash the said letters. The Petitioners have failed to establish any illegality in the said letters and, the said letters for the reasons stated, have cancelled the recommendation made for the project "Uruguay Asiriya".

The 2nd Petitioner is not a party to the lease agreement entered marked as P6 which was the lease to commence the project "Uruguay Asiriya", the car parking project. In the

absence of the letters sought to be quashed being even addressed to the Petitioners, in my view, the Petitioners have no locus standi to challenge the said letter. In any event, the Petitioners have not established any illegality for the said letters to be quashed.

The document marked and tendered as P19 is a letter written by the principal of Galle/Rohana College informing to suspend the project on the basis that the recommendations to proceed with the project have been cancelled. In reading letters P17 to P19 and as in P19, it is specifically stated that recommendations pertaining to the project have been revoked. In my view, the Petitioners have failed to establish any illegality in the said letter. This Court also observes that the 2nd Petitioner to this application has no locus standi to file this case as the 2nd Petitioner is not a party to the lease agreement marked and tendered as P6. In any event, P6 has now been terminated and there is no material tendered to this Court to establish that the Petitioners have challenged the said termination. I will now consider the objections raised by the Respondents.

Do the Petitioners have locus standi to file this application?

As stated above, this Petition has been filed by the 1st and 2nd Petitioners. As per the submissions of the learned Counsel for the Petitioners, their legal relationship with the Respondents is based on the document marked and tendered as P6. The document P6 is a lease agreement entered into between the 1st Petitioner and the School Development Society. The 2nd Petitioner is not a party to the lease agreement, nor does the lease agreement contemplate that it is leased on behalf of the 2nd Petitioner. Hence, the 2nd Petitioner has no locus standi to file this application. Even though, the learned Counsel submitted that the 1st Petitioner is a director of the 2nd Petitioner, the said nexus was not established by the forms under the Companies Act. Hence, in my view the objection based on the locus standi has to succeed.

Alternative remedy

It was conceded at the submissions stage that the Petitioners' rights are based on the document marked and tendered as P6. The parties are not at variance that the document P6 is a lease agreement. Hence, the Petitioners' rights are based on a lease agreement. The relationship between the 1st Petitioner and the Respondents is contractual. This Court has constantly held that when the parties' relationship is contractual, a Petitioner's application for a Writ has to fail.

In *Jayaweera v. Wijeratne* (1985) 2 SLR 413, the Court held where the dispute centers on a breach of contract, even if it involves an alleged breach of natural justice by a public authority, a Writ would not lie. The Court noted;

"Where the relationship between the parties is a purely contractual one of a commercial nature neither certiorari nor mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles 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, it is stated;

"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".

Without prejudice to the above, I observe that the Petitioners have breached the conditions of the lease agreement, as observed above, and in any event, the said lease agreement has been now terminated.

Futility

As stated above, even if the lease agreement upon which the Petitioners claim their rights are not terminated, it stands valid only for a period of one year. Hence, on the face of the said lease agreement, it expires on 25.01.2025. Hence, there is no lease agreement between the parties at the date of filing this application. Hence, the Petitioners' contention that the decision to terminate the lease agreement is bad in law becomes futile as in any event, at this stage, there is no valid lease agreement. It is also pertinent to note in the absence of any extension of the lease, the lease would have come to an end as it is for a specific time period.

Suppression and misrepresentation of facts

Although the Petitioners contend that they entered into a lease agreement valid for one year, they have failed to disclose the same, the Petitioners were acting in breach of that

very agreement when they attempted to secure a long-term lease through the Governor's office for an entirely different purpose, namely, a tourism development project.

In my view, this is a suppression of a material fact. Further, the Petitioner has failed to plead that they have, in violation of the said lease agreement, made permanent constructions, which is reflected by their own documents namely, the photographs marked and tendered as P23a to P23e. Hence, in my view, the Respondents' objections of the Petitioners' failure to come with clean hands and the Petitioners' breach of *uberrima fides* has to succeed.

As observed in *Blanca Diamonds (Pvt) Ltd v. Wilfred Van Else & others* (1997) 1 SLR 360,

"In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose (uberrima fides) all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in Alponso Appuhamy v Hettiarachchi, Justice Pathirana, in an erudite judgement, considered the landmark decisions on this province in English Law, and cited the decisions which laid down the principle when that a party is seeking discretionary relief from the Court upon an application for a writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to this Court"

In the fundamental rights case of *Liyanage and Another v. Ratnasiri Divisional Secretary, Gampaha and others* (2013) 1 SLR 6, it was held;

"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"

It is also observed that the learned Counsel for 6th Respondent contended that although the 1st Petitioner argues that he obtained the lease based on a tender process, the 1st Petitioner has failed to submit the tender application forwarded by him or any material to demonstrate that there was a valid tender process and the said tender has been awarded to him. Further, as I have made my observations above, I wish to reiterate that the School Development Society cannot float a tender to lease state land. The learned

Counsel for the 6th Respondent further submitted that if there was a tender, the Petitioner should have submitted the letter awarding the tender to him which has not been submitted to this Court. Hence, it was his contention that the entire process which culminated in P6 is only a lease which lacks statutory flavor.

The prayers of the Petitioners

The Petitioners are seeking a Writ of Certiorari to quash the decisions of the Zonal Director of Education and the Director of Education, Southern Province (3rd and 2nd Respondents) as depicted in documents P17 and P18. However, the Petitioners have failed to establish any illegality in the said documents. Further, as I have stated above, the said two documents are not addressed or copied to the Petitioners and the manner in which the Petitioners obtained the said two documents are not pleaded. Hence, the Petitioners are inviting this Court to quash the decisions contained in two documents which are neither addressed to them nor accompanied by any explanation as to how those documents were obtained.

The Petitioners also seek to quash the decision contained in letter P20. Once again, the Petitioners have failed to establish the illegality of the said letter and also failed to explain how they came into possession of the said letter which is neither addressed nor copied to them. Yet he seeks the decision contained in the letter addressed to a third party to be quashed. The Petitioner also seeks a Writ of Mandamus against the 19th Respondent compelling him to take steps under section 10 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act to divest the state land. However, the Petitioners have failed to establish any legal right for the said state land, nor any right accrued to him to get the land divested to him. It is trite law that for a Writ of Mandamus to be sought, the Petitioners should demonstrate a legal right owed to him and that it has been refused to be granted. In my view, the Petitioners have failed to establish either of them in seeking a Writ of Mandamus as prayed in prayer (d). Hence, the said prayer has to fail.

Conclusion

I have considered the submissions made by all Counsels and the documents tendered. In my view, the Petitioners by their conduct have disintitiled themselves of the reliefs prayed. Further, the Petitioners have failed to establish a *prima facie* case to obtain formal notice on the Respondents. Accordingly, for the above-stated reasons, I refuse to issue formal notice on the Respondents and proceed to dismiss this Writ Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal