

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*.

Court of Appeal Case No:
CA/WRIT/253/2026

G.W. Sumith,
No. 78/15A,
Executive Quarters,
Sri Lanka Railway Protection Service,
Colombo Fort.

PETITIONER

Vs.

1. Hon. Bimal Rathnayake,
Minister of Transport, Highways and
Urban Development,
2. Mr. Kapila Perera,
Secretary,
Ministry of Transport, Highways and
Urban Development,

1st and 2nd Respondents are of:
Ministry of Transport, Highways and
Urban Development,
7th Floor, Sethisiripaya Stage II,
Battaramulla.

3. Mr. K.R. Padmapriya,
General Manager of Railways,
4. Mrs. P.P. Damayanthi,
Additional General Manager of
Railways (Administration),

5. Mr. P.D.S.B. Chandrasena,
Additional General Manager of
Railways (Operation),
6. Mr. R.M.N.K.S. Kanchana,
Deputy General Manager of Railways
(Administration),
7. K.S. Nayanthi,
Assistant Director (Administration),

*3rd, 4th, 5th, 6th and 7th Respondents are
of:
Railway Headquarters,
Olcott Mawatha,
Colombo 10.*

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Dimarsha Marso instructed by Bhagya Pieris for the Petitioner.
Dr. Peshan Gunaratne, S.C. for the Respondents.

Supported on: 13.05.2026.

Order delivered on: 26.06.2026.

Mayadunne Corea J

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

- “c) *Grant a mandate in the nature of a Writ of Certiorari quashing all the letters
of eviction dated 27.08.2025, 09.11.2025, 13.01.2025, 24.02.2026,*

25.02.2026, 20.03.2026, and any other letter in relation to the Petitioner being requested to vacate his current quarters in Colombo, Fort (No. 78/15A)

- d) Grant a mandate in the nature of Writ of Prohibition prohibiting one or more or all the of the Respondents and/or their subordinate officers from evicting the Petitioner form his current living quarters in Colombo, Fort (No. 78/15A)*
- e) In the alternative, grant a mandate in the nature of a Writ of Mandamus directing one or more or all of the Respondents to fulfil their statutory duty and assign the Petitioner a suitable living quarter considering the tenure of his service, his position as a Deputy Security Superintendent, and the health of his wife and children”*

The facts of this case, in brief are as follows. The Petitioner is a Deputy Security Superintendent of the Sri Lanka Railway Protection Service under the Sri Lanka Railway Department. By letter dated 26.07.2024, the Petitioner was allocated to the Colombo Fort (Executive Grade) Railway Quarters (no. 78/15A) for a period of five years. The said quarters are allocated for the Security Superintendent. However, it is alleged that as the then Security Superintendent was residing at another Executive Grade quarters in Slave Island, the quarters at the Colombo Fort were allocated to the Petitioner.

It is alleged that by letter dated 27.08.2025, the 3rd Respondent requested possession of the quarters at Slave Island occupied by Security Superintendent. However, the 3rd Respondent subsequently rejected the same and instead expressed interest in the quarters at Colombo Fort occupied by the Petitioner, ordering him to vacate the said quarters immediately and attempting to reassign him to a quarter in Dematagoda (P10a, P10b, P10c, P10d and P10e dated 09.11.2025, 13.01.2026, 24.02.2026, 25.02.2026 and 20.03.2026 respectively). Hence, this Writ application.

The Petitioner’s contention

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

- In accordance with Chapter XIX of the Establishments Code, the 3rd Respondent has a statutory duty to allocate suitable Executive Grade quarters for the Petitioner,

considering the tenure of his service, his position and the ill health of his wife and children.

- The 3rd Respondent resides at his private residence while keeping the quarters reserved for him vacant, yet insists that the Petitioner vacate his quarters, thereby demonstrating malice, arbitrariness, and abuse of authority.
- The attempts by the Respondents to evict the Petitioner from his quarters at Colombo Fort, despite full knowledge of his service records and the ill health of his wife and children, are arbitrary, irrational, capricious, and illegal.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner is not entitled to the quarters he is occupying.
- The Petitioner has failed to follow the comply and complain procedure.
- Misrepresentation of facts.
- Suppression of material facts.
- The Petitioner has failed to invoke the jurisdiction of this Court with clean hands.

Now I will consider the contention of the learned Counsel for the Petitioner along with the objections of the learned State Counsel for the Respondents.

Analysis

The Petitioner summarised all his contentions to one question namely, whether the impugned letters in prayer (c), calling for the eviction of the Petitioner, is illegal.

The following facts were not in dispute:

- The Petitioner had been given Fort railway quarters no. 78/15A.
- The Petitioner has been asked to vacate the said quarters upon being offered quarters at the Dematagoda housing scheme bearing house no. C26.
- The Petitioner has failed to occupy the said newly allocated house at Dematagoda and instead, he is still in occupation of house no.78/15A.

The Petitioner's entitlement to a house

The learned Counsel for the Petitioner submits that the Petitioner is entitled to an official residence, and when he was transferred to Colombo, he held the post of Assistant Security Superintendent in the Sri Lanka Railway Protection Service. By the letter marked and tendered as P1, he had been transferred to Colombo. It is his contention that he was given the post of Deputy Security Superintendent when he was transferred to Colombo which is disputed by the learned Counsel for the Respondents. However, upon a close reading of letter P1, it appears that the purpose of the said letter was to direct the covering-up of the duties of the Deputy Security Superintendent, the said post having fallen vacant consequent to the retirement of the officer who was serving in that position. The said letter reads as follows:

“සහකාර ආරක්ෂක අධිකාරී ලෙස කටයුතු කරනු ලබන 90947 ජේ.ඕ. එන්. එස්. පියසේන මහතා 2024 04.14 දින සිට විශ්‍රාම යාම හේතුවෙන් පුරප්පාඩු වන නියෝජ්‍ය ආරක්ෂක අධිකාරී (ආවරණ) තනතුරේ කටයුතු සඳහා රාජකාරි අවශ්‍යතාවය මත දු.සා.ගේ අංක ප. 09/1876/2019(iv වෙළුම) තාව හා 2024.03.25 දිනැති ලිපියට අනුව 2024.04.12 දින සිට ක්‍රියාත්මක වන පරිදි කටයුතු කරන ලෙසට ඔබව මෙයින් දන්වා සිටීම.”

Hence, in the circumstances the learned State Counsel denied that the Petitioner had been appointed to the post of Deputy Security Superintendent but, contended that he had only been appointed to cover the duties for the said post. It was the contention of the Petitioner that he was entitled to the official quarters. However, the Petitioner failed to demonstrate any provision which enabled him to occupy the official quarters nor, did the Petitioner tender to this Court his letter of appointment as an Assistant Security Superintendent which is the substantial post held by him until the receipt of P1. The learned State Counsel submitted that the said letter would have shed light on his claim for an entitlement of a residence. Be that as it may, he further submitted that there are two types of quarters that are allocated namely, the designated quarters and the common quarters. However, as the Petitioner's post is the post of Assistant Security Superintendent and is only covering up the duties for Deputy Security Superintendent he is not entitled to the designated quarters, but, was only allocated common quarters. It was the State Counsel's contention that the house he was given falls within the designated quarters. He further drew the attention of this Court to Chapter XIX clause 4.1.1 of the Establishment Code which reads as follows; *“an officer will not be considered eligible for a grade of quarters higher than that appropriated to him in terms of section 3”* and further, submitted that under clause 6:15, any officer who is allocated to quarters should vacate the said quarters at the end of the period of tenure or when he is ordered to do so. The said section reads as follows:

“An officer should vacate quarters at the end of the period of tenure or when ordered to do so by the Allocating Authority.”

It was his contention that, although Quarters No. 78/15A had been allocated to the Petitioner, the Petitioner did not fall within the category of officers eligible to occupy the said quarters, as they were designated for officers holding a higher grade. In the absence of any material to establish the Petitioner’s entitlement, I observe the learned State Counsel’s said contention has not been challenged by the Petitioner. Be that as it may, the Petitioner contends that he was transferred to Colombo and upon his transfer he was allocated railway quarters no.78/15A.

Let me now consider the letter in which the Petitioner has been allocated the house. The said letter is marked as P8. The said letter commences by stating that on the request of the Petitioner, he has been allocated house no.78/15A for a period of five years from 02.08.2024. Hence, the Petitioner contends that he is entitled to occupy the said house for a period of five years. However, upon perusing the said letter further, I observe that the said house has been allocated for a period of five years subject to the conditions stipulated. Condition 4 of the said letter stipulates the instances where the possession of the house has to be returned. For a better understanding, the said portions of P8 are reproduced here.

“අංක 78/15 A දුම්රිය නිවාසය වෙන් කිරීම

කොළඹ කොටුව දුම්රිය ස්ථාන පරිශ්‍රයේ පිහිටි අංක 78/15 A දුම්රිය නිවාසය ඔබගේ ඉල්ලීම අනුව, ඔබට, ඔබගේ කලත්‍රයාට දරුවන්ට සහ ඔබෙන් යැපෙන්නන්ට පමණක් පදිංචිය සඳහා 2024.08.01 දින සිට වසර 05ක කාලයක් සඳහා පහත සඳහන් කොන්දේසිවලට යටත්ව වෙන්කර ඇති බව මෙයින් දන්වමි. අධීක්ෂණ කළමනාකරු (ගොඩනැගිලි) - මරදාන වෙතින් නිවාසයේ යතුර බාර ගන්න.

02. ඔබ මෙම නිවාසයේ පදිංචිය සඳහා අධීක්ෂණ කළමනාකරු (ගොඩනැගිලි) - මරදාන වෙතින් නිවාසයේ යතුර බාරගත් දිනය මා වෙත ලිඛිතව දන්වා එවිය යුතුය. එමෙන්ම වාර්ෂික ස්ථාන මාරුවීමක්/ විනය චෝදනාවක් මතසේවයෙන් පහ කිරීමක්/ සේවය හැර යාමකදී හෝ විශ්‍රාම යාමේදී නිවාසය අදාළ අධීක්ෂණ කළමනාකරු (ගොඩනැගිලි) - මරදාන වෙත භාරදී ඒ බව මා වෙත දැන්විය යුතුය.

03. ආයතන සංග්‍රහයේ XIX පරිච්ඡේදයේ 05 වන ඡේදය ප්‍රකාරව නිවාස කුළිය අයකර ගනු ඇත.

04. ඔබ වෙත මෙම නිවාසය වෙන් කරනු ලබන්නේ සේවයෙන් විශ්‍රාම ලැබූ විට, ස්ථාන මාරුවීම ලැබූ විට, සේවයෙන් පහ කළ විට, නිවාසයේ බදු කාලය අවසන් වූ විට, රැකියාවක් ලබා විදේශ රටක සේවය සඳහා යෑමට සිදුවූ විට හෝ ආපසු දෙපාර්තමේන්තුවට අවශ්‍ය යැයි දන්වනු ලබන ඕනෑම අවස්ථාවක නිවාසය ආපසු බාරදීමේ කොන්දේසිය මතය. එවැනි අවස්ථාවකදී නිවාසය හිස්කර ආපසු බාර දීමට ඔබ අපොහොසත් වුවහොත් ඔබට විරුද්ධව විනයානුකූල පියවර ගනු

ලබන අතර, දණ්ඩණිය නිවාස කුලියද අයකර ගැනීමට ඔබ යටත් වනු ඇත. ඊට අමතරව රජයේ නිවාස සන්නිකය පවරා ගැනීමේ පණත යටතේ ඔබ නිවාසයෙන් ඉවත් කිරීමටද කටයුතු කරනු ඇත.”

A plain reading of the said section clearly demonstrates that the Department of Railways has the right to request the house at any given time and, upon receiving such a request, it is the duty of the said occupant to comply with the said request. Further, it contemplates being subject to penal and disciplinary actions which culminate in instituting proceedings under Government Quarters (Recovery of Possession) Act. The last paragraph of the said letter informs the Petitioner to hand over the house that he is already in occupation before accepting the new house. It appears by this clause that the Petitioner is in occupation of government quarters. Accordingly, it appears that the Petitioner was in possession of government quarters even prior to shifting to the disputed quarters. While the Petitioner contends that he is entitled to occupy the said house as per his position, the learned State Counsel submits that he is not entitled to occupy the said house as it falls within the designated quarters or scheduled quarters as contemplated in under clause 1.1 of Chapter XIX of the Establishment Code. It was further contended by the learned State Counsel that the said bungalow, being a scheduled official residence, was required for the use of the 3rd Respondent, as it had been designated as the official quarters of the General Manager of Railways.

The parties are not at dispute that the 3rd Respondent's position is higher in grade than the Petitioner. However, in the absence of the Petitioner submitting any material to establish his entitlement as per his grade to occupy the said premises, he has failed to establish his entitlement under the Establishment Code for the disputed quarters. The Petitioner's contention of his entitlement to occupy the disputed quarters without interruption for five years pursuant to P8 is not tenable as, the said allocation is conditional and the said letter clearly demonstrates that the Railway Department, at any time, can request for the house.

The Petitioner was given alternative accommodation

It is also observed that the Petitioner has been requested to hand over the house, and has been offered alternative accommodation. The letter P9, which had been issued after one year of allocating the house to the Petitioner, states that the house meant for the General Manager of Railways had been allocated to the Petitioner on a temporary basis. However, as the General Manager needs the said house, a request has been made to the Petitioner to hand over the said house. This letter further states that the Petitioner has been given the

house on a temporary basis as the house meant for the Petitioner had been occupied by another Deputy Security Superintendent who has since retired.

However, by letter dated 25.02.2026, marked and tendered as P10, the Petitioner has been informed that he has been allocated house no. P26 from the Dematagoda housing scheme. Hence, it is apparent that the Petitioner has been requested to hand over the house only upon the allocation of another residential house. It appears that the Petitioner has failed to comply with the said request. This takes me to the first objection raised by the Respondents, which is whether the Petitioner has failed to comply and complain.

The Petitioner's failure to comply and complain

It is trite law that, if the Petitioner is dissatisfied with the orders of the hierarchy he should first comply and then complain. This has been discussed in the case of ***Deshabandu Tennakoon v. B.A. Aruna Indrajith Buddhadasa, Magistrate CA Writ 168/25, CA Minutes 17.03.2025***, where the Court held:

“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.”

Even though the Petitioner had been requested to hand over the house by letter dated 27.08.2025 (P9), as it has not been complied with, a reminder has been sent on 11.09.2025 (P10a). A further reminder has been sent on 13.01.2026 (P10b). Thereafter, another letter had been sent on 24.02.2026 informing the Petitioner to accept the keys of the newly assigned apartment and the said apartment has been allocated to him from 24.02.2026. This has been followed by further letters marked as P10(a) – (e).

The letters P10d and P10e, have been replied to by the Petitioner by P11a where he has given several excuses stating that he needs to occupy the house allocated to him and further suggesting to the Railway Department to allocate to him a separate house. Subsequently, it appears that the Petitioner has sent several appeals to the Deputy Minister of Transport, Highways and Civil Aviation and to the General Manager of Sri Lanka Railways. However,

the learned State Counsel submits, without complying with the request to hand over the house and with direct violation of condition 4 of P8 through which he was allocated the disputed premises, the Petitioner is still in forcible occupation of the house in dispute.

The learned Counsel for the Respondent also submits the Petitioner has suppressed material facts to the Court.

Suppression of material facts

It is the contention of the learned State Counsel that the Petitioner had not been offered the disputed house but, he had requested for the said house. To establish this contention the Counsel draws the attention of this Court to the first paragraph of document P8 by which the house was allocated to the Petitioner. The said sentence reads as follows:

“අංක 78/15 A දුම්රිය නිවාසය වෙන් කිරීම

කොළඹ කොටුව දුම්රිය ස්ථාන පරිශ්‍රයේ පිහිටි අංක 78/15 A දුම්රිය නිවාසය ඔබගේ ඉල්ලීම අනුව, ඔබට, ඔබගේ කලත්‍රයට දරුවන්ට සහ ඔබෙන් යැපෙන්නන්ට පමණක් පදිංචිය සඳහා 2024.08.01 දින සිට වසර 05ක කාලයක් සඳහා පහත සඳහන් කොන්දේසිවලට යටත්ව වෙන්කර ඇති බව මෙයින් දන්වමි.”

The Petitioner too relies on the document P8 to establish his entitlement to the said house. However, as contended, it appears that the said premises in dispute had been allocated to the Petitioner upon his own request. It appears that this was the reason for making letter P8 conditional and for imposing the conditions set out in clause 4 thereof. The Petitioner nowhere in his Petition has disclosed the fact that he has requested for this house. The Petitioner never denied the contents of P8 and challenged that he had not requested for the house. In the circumstances, this Court is inclined to agree with the submissions of the learned State Counsel that the Petitioner has requested for the house in dispute. In my view, this amounts to a suppression of material facts relevant to the determination of this case, particularly in light of the Respondents’ position that the house in question was not intended for officers holding a post of the grade occupied by the Petitioner.

The Petitioner should have clearly pleaded that the house was allocated to him on his own request, and in his pleadings, he must have pleaded that the said house had been allocated to him by P8 subject to several conditions, one being that he must vacate the said house

upon request of the Railway Department. It is trite law that a Petitioner who suppresses facts from this Court, disentitles him from any relief from this Court.

In the case of **W. S. Alphonso Appuhamy v. Hettiarachchi** 77 NLR 131, the Court held;

"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a Writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington - Ex-parte Princess Edmond de Poignac – (1917)2 Kings Bench Division 486. Although this case deals with a Writ of prohibition the principles enunciated are applicable to all cases of Writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a Writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".

In **Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others** (2005) 1 SLR 67 it was held that the Court would not go into the merits of the case if there is no full and truthful disclosure of all material facts. The Court held;

"The 1st Respondent has also taken up a preliminary objection on the basis that the Petitioners have suppressed or misrepresented material facts. This by itself is a serious obstacle for the maintenance of the Petitioners' case. Our Courts have time and again emphasized the importance of full disclosure of all material facts at the time a Petitioner seeks to invoke the jurisdiction this Court, by way of Writ of certiorari, mandamus or any other remedies referred to in Article 140 of the Constitution."

Hence in my view, the Petitioner, by his own conduct, has disentitled himself from the reliefs sought.

I have also observed that the Petitioner has been requested to vacate the house only upon offering him an alternative house, and the house has been requested to be given to a officer who is higher in grade than the Petitioner namely, the General Manager of the Railway. I also observe that the Petitioner's principal contention for retaining possession of the disputed house is that it is convenient for him, his wife, and his sons, particularly in view of their medical requirements. Hence, it appears that the Petitioner's contention is that the location of the house in Slave Island is convenient for the above two reasons. In response, the learned State Counsel submitted that the new house allocated to the Petitioner is not out of the city of Colombo but is within Colombo and is just a short distance from the disputed house as it is at the housing scheme in Dematagoda. Hence, the learned State Counsel contends that no inconvenience would be caused to the Petitioner, either in terms of distance or location.

Let me now consider the prayers of the Petitioner.

Prayers of the Petitioner

By prayer (c), the Petitioner is seeking to quash the letters of "eviction" dated 27.08.2025, 09.11.2025, 13.01.2026, 24.02.2026, 25.02.2026 and 20.03.2026. However, the Petitioner has failed to establish any illegality in the said letters, especially in view of clause 4 of P8 whereby the house was allocated to him. I have also observed in the impugned letters that the Department of Railways has given a reason as to why the disputed house is required to be handed over. The learned State Counsel also contended that P9, P10a, P10b, P10c, P10d and P10e are the letters contemplated in the said prayer. However, it is the contention of the State Counsel that no steps have been taken to legally evict the Petitioner although the Department of Railways has the legal right to do so. However, in the absence of any illegality in the said letters, prayer (c) has to fail.

By prayer (d), the Petitioner is seeking reliefs in the nature of Writs of Prohibition prohibiting the Respondents from evicting the Petitioner. However, in view of clause 4 of document P8, it appears that the Department of Railways has the right to request for the possession of the house and has provided the Petitioner with an alternative residence. However, the Petitioner has not complied with any of the said letters requesting him to handover the possession of the disputed house. Thus, the Petitioner has violated clause 4 of the letter through which he was allocated the house. When an employee is occupying government quarters forcibly in violation of the conditions of allocation of the house, the

Respondents have the right to evict such person to get possession of the government quarters. A Writ of Prohibition mainly is sought to prevent a public authority or body exercising a public function from engaging in an illegal act or to prevent acts of *ultra vires*. However, as contended by the Counsel for the Respondent, in this instance the Petitioner has failed to establish that any steps taken to evict the Petitioner who is forcefully occupying the government quarters in contravention of the condition of allocation is doing an illegal or *ultra vires* act. Hence, in my view, prayer (d) has to fail.

By prayer (e), the Petitioner is seeking a Writ of Mandamus to direct the Respondents to offer him suitable living quarters. In response, the Respondents offered and allocated to him a house by letter P10d. Further, the Respondents submit that the allocated house is befitting of the Petitioner's grade. In the absence of any challenge to the said contention and in the absence of any material to challenge the said contention submitted to this Court, in my view, prayer (e) has to fail.

The Petitioner also submitted that the Respondents are acting with malice towards the Petitioner. However, the Petitioner in his Petition has failed to demonstrate any malicious act towards the Petitioner, especially in the context of the Petitioner himself violating condition 4 of P8. It was brought to the attention of this Court that the Petitioner filed documents marked X1, X2 and X3 by way of motions without seeking the approval of this Court. The learned Counsel for the Respondent urged this Court to reject these motions as it had been tendered to this Court without any permission.

This Court also observes that pursuant to rule 3(8) of the court of appeal rules once the Petition has been filed and the Writ application is listed, if any additional document are to be filed, it should be done with the approval of this Court.

I am mindful that ***Samarakoon Singappuli Arachchige Chandrapala v. Development Assistant, Mahaweli Authority of Sri Lanka*** (CA Writ No. 626/2023, Order dated 07.11.2024) took the view that, Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 has no application to Writ applications instituted under Articles 140 and 141 of the Constitution. Having had the benefit of hearing the learned Counsel, and upon further consideration, I wish to clarify that Rule 3(1) expressly applies the Court of Appeal (Appellate Procedure) Rules 1990 to applications under Articles 140 and 141, whereas Rule 3(15) extends their application, *mutatis mutandis*, to other applications before this Court. Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules 1990 reads as follows:

“3.

- (1) (a) *Every application made the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified-copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero motu or at the instance of any party, dismiss such application.”*

Accordingly, Rule 3(8) applies to Writ applications made to this Court under Articles 140 and 141 of the Constitution. Rule 3(8) reads as follows:

- “(8) *A party may, with the prior permission of the Court, amend his pleadings, or file additional pleadings affidavits or other documents, within two weeks of the grant of such permission, unless the Court otherwise directs. After notice has been issued, such permission shall not be granted ex parte.”*

In the case of ***Shanmugavadivu v. Kulathilake* 2003 (1) SLR 215**, the Appellant had failed to comply with Rule 3(1)(b) read with Rule 3(1)(a) of the said Rules by not filing all material documents together with the application, nor explaining the omission and seeking leave of Court to file such documents at a later stage. Rather, the Appellant amended the petition without notice to the Respondent and without the leave of Court, filing one further document with the amended petition and the balance documents only with the counter-objections. The Supreme Court held:

“In a situation where an application was made to the Court of Appeal without the relevant documents being annexed to the petition and the affidavit but has stated the reason for such inability and sought the leave of the court to furnish such documents on a later date, the court could have exercised its discretion and allow the Petitioner to file the documents on a later date. However on this occasion as pointed out earlier, no such leave was sought by the appellant and in the circumstances, the Court of Appeal could not have exercised its discretion in terms of Rule 3 (1)(a) and 3(1)(b) of the Court of Appeal (Appellate Procedure) Rule.”

Conclusion

I have considered the submissions made by the Counsel for the Petitioner and the State Counsel and the documents tendered. In my view, the Petitioner has failed to establish a *prima facie* case. Accordingly, for the aforesaid reasons, this Court refuses to issue formal notice and proceeds to dismiss this Writ application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal