

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

1. Mohamed Sali Nazeera Begam
2. Shazna Begum Thahir
3. Shanaz Begum Thahir
4. Mohamed Shaklen (minor)
5. Mohamed Shahid (minor)

All of 404 Bauddhaloka Mawatha  
Colombo 7.

**Petitioners**

C.A/WRIT/App/No.13/2012

Vs

1. Vladimir Mikhaylov

His Excellency the Ambassador for  
the Russian Federation in Sri  
Lanka, No. 62 Sir Ernest de Silva  
Mw Colombo 7.

And four (04) others

**Respondents**

BEFORE	:	S.SRISKANDARAJAH, J (P/CA) DEEPALI WIJESUNDARA, J
COUNSEL	:	Crishmal Warnasuriya for the Petitioner
Supported on	:	19.01.2012

Decided on : 21.02.2012

**S.Sriskandarajah.J**

The Petitioner in this application is seeking a writ of mandamus in prayer (b) of the Petition. The directions sought in the said prayer are of a general nature. The Petitioner has failed to establish that he has a legal right to seek those directions and the relevant respondents have a corresponding legal duty to perform. The condition precedent to issue of mandamus is that the applicant for an order of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought. In order ,therefore that a mandamus may issue to compel something to be done under a statute it must be shown that the statute imposes a legal duty; Halsbury's Law of England III rd Edition Volume II Page 104.

*In Credit Information Bureau of Sri Lanka V Messrs Jafferjee & Jafferjee (Pvt) Ltd [2005] 1 Sri L R 89* at 93 the Supreme Court held:

"There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent to the issue of Mandamus appear to be :

- (a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought (*R v Bamstaple Justices*<sup>Y1</sup>)  
The foundation of Mandamus is the existence of a legal right (Napier Ex parte)<sup>(2)</sup>
- (b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.
- (c) The legal right to compel must reside in the Applicant himself (*R v Lewisham Union*)<sup>(3)</sup>
- (d) The application must be made in good faith and not for an indirect purpose
- (e) The application must be preceded by a distinct demand for the performance of the duty
- (f) The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ.
- (g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.

(h) The conduct of the Applicant may disentitle him to the remedy, (i) It would not be issued if the writ would be futile in its result.

(j) Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.

The above principles governing the issue of a writ of Mandamus were also discussed at length in P. K. Benarji Vs H. J. Simonds(4). Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. **The court will not grant a Mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.**" (Emphases added)

The Petitioner has sought a writ of certiorari to quash a decision contained in news published in a news paper. The Petitioner has failed to annex the decision or determination but they annexed the news item stating that the Russian Ambassador Vladimir Mikhaylov said that the land purchased in Colombo by his government 25 years ago, is being utilized for construction of a self contained complex of building s including the Chancery, residence and sports and education facilities for the staff of the embassy.

This statement is in relation to a land belongs to the embassy and the use of this land is subject to the local rules and regulation on planning. The Petitioner has not shown violation of any rule or regulation for this court to consider issuing notice to the Respondents in this application. For the same reasons a writ of prohibition is also not available in the given circumstances.

Hence this court refuses notice.

President Court of Appeal

Deepali Wijesundara, J

I agree,

Judge of the Court of Appeal