

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

In the matter of an application In terms
of Article 140 of the Constitution of Sri
Lanka for Mandate in the nature of a
Writ of Mandamus.

CA Writ Application No.934/2008.

1. W.K. Somaratne
No.271, Sumanathissa Mawatha
Nawagamuwa, Ranala.
2. M.W.G. Perera
No.516/4, Thalangama North,
Battaramulla.
3. V,O. Balasuriya
No.829/ A, Thalangama North
Malabe.
4. D.C. Perera
No.07, Thalahena, Malabe.

Petitioners

Vs.

1. Hon. Minister of Local Government
Ministry of Local Government &
Provincial Councils, No.330, Union
Place, Colombo 02.

2. The Secretary
Ministry of Local Government &
Provincial Councils, No.330, Union
Place, Colombo 02.
3. Hon. Chief Minister and the Minister
Of Local Government - Western
Province
'Shrawassthi Mandiraya', 32, Sir
Marcus
Fernando Mawatha,
Colombo 07.
4. The Secretary
'Shrawassthi Mandiraya', 32, Sir Marcus
Fernando Mawatha,
Colombo 07.
5. The Commissioner of Local
Government -
Western Province, Department of Local
Government (Western Province),
Independent Square, Colombo 07.
6. Kaduwela Pradeshiya Sabha,
Kaduwela.
7. G.H. Buddadasa
The Chairman, Kaduwela Pradeshiya
Sabha, Kaduwela.

Respondents

BEFORE : S.SRISKANDARAJAH, J (P/ CA).

COUNSEL : Dr.Jayatissa de Costa PC with L.N.Silva
for the Petitioners.
Janak de Silva SSC with N.Jayathilaka
for the 1st to 5th Respondents.
Ananda Kasturiarachchi with Theja Malavarachchi,
For the 6th Respondent
Faizer Marker,
for the 7th Respondent

Argued on : 08.09.2010

Written Submission : 06.03.2012 (Petitioners)
27.01.2012 (1st to 5th Respondents)
02.03.2012 (7th Respondent)

Decided on : 20.09.2012

S.Sriskandarajah, J,

The Petitioners in this application claim that they are permanent residents in the territorial limits of Kaduwela Pradeshiya Sabha as well as tax payers of the Kaduwela Pradeshiya Sabha. The 6th Respondent is the Kaduwela Pradeshiya Sabha, which is a body corporate which was established in terms of Pradeshiya Sabha Act No.15 of 1987. The 7th Respondent is the Chairman of the 1st Respondent Kaduwela Pradeshiya Sabha, and the Chief Executive Officer of the said Pradeshiya Sabha. The Petitioners have filed

this application claiming that they have interest in the affairs of the Kaduwela Pradeshiya Sabha and, as such, they have a right to inquire into and question various mal-practices which had taken place in the said Pradeshiya Sabha. The Petitioners submitted that in terms of the provisions of Section 2 of the Western Province Authority to Inspect the Administration of Local Authorities Statute No.4 of 1991, read with Section 185 of the Pradeshiya Sabha Act No.15 of 1987, the 3rd Respondent, being the Minister of Local Government in the Western Province, has the authority to inspect and inquire into complaints of mismanagement of the said Pradeshiya Sabha. The Petitioners contended, the 7th Respondent was served with a Charge Sheet. The Petitioners submitted that the 3rd Respondent who is the Chief Minister of the Ministry of Local Government, is under a duty to act according to the provisions of the aforesaid law to inquire into the said Charge Sheet issued on the 7th Respondent Chairman and to take steps to remove him from office in terms of Section 2(1)(i) of the said statute. For this purpose he had to appoint an inquirer in terms of Section 2(2) of the statute to inquire into the allegations made against the 7th Respondent to facilitate the 3rd Respondent to act against the 7th Respondent.

The Petitioners in this application are seeking a writ of mandamus compelling the 3rd Respondent to appoint an inquirer to inquire into allegations made against the 7th Respondent in terms of Section 2(2) of the said statute and to compel the 3rd Respondent to suspend the 7th Respondent Chairman from office.

It is important to note that the holder of the office of Chairman in the said Pradeshiya Sabha, the said 7th Respondent, who was charged, had ceased to hold the said office. The said Pradeshiya Sabha was dissolved and it was converted to a Municipal Council, and the election in the said Municipal Council had been held.

According to the provisions of the said statute and the Pradeshiya Sabha Act No.15 of 1957, after an inquiry by the 3rd Respondent, against a complaint of the Chairman, the 3rd Respondent could make orders either to remove the Chairman from office or to dissolve the said Pradeshiya Sabha. In the present instance, the 7th Respondent Chairman who was the Chairman of the said Pradeshiya Sabha is no more holding the said office, and the said Pradeshiya is also not in existence and, in these circumstances the 3rd Respondent cannot act under the said provisions of the law to deal with the 7th Respondent in relation to any mal-practices committed by the 7th Respondent in the said Pradeshiya Sabha. But, in any event, it was submitted by the Respondents that the present holder of the 3rd Respondent's office took measures to re-issue the Charge Sheet to the 7th Respondent, and the 7th Respondent tendered his explanation to the Charge Sheet and, after considering the explanation, the 3rd Respondent decided that there was no necessity to proceed under the Administration of Local Authorities Statute No.4 of 1991 of the Western Provincial Council.

In the above circumstances, as the Pradeshiya Sabha in which the 7th Respondent was the Chairman is not in existence, this court cannot issue a writ of mandamus as prayed for by the Petitioners. This court dismisses this application without costs.

President of the Court of Appeal