

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

In the matter of an application for prerogative Writs in the nature of Certiorari and Prohibition under and in terms of Article 140 of the Constitution.

1. Gamarallage Somawathie,
2. P.A. Chandi Jeewanthi Shalika
Ratnawardane,
3. P.C. Sampath Dilruk
Ratnawardane,
4. P.A. Padmika Nalin
Ratnawardane,

All are at,

No.E 215/1, Balakotuwa Place,
Kachcheri Godalla, Ruwanwella.

Petitioners

C.A. (Writ) Application **69/2012**

Vs.

1. Divisional Secretary,
Divisional Secretariat,
Ruwanwella.

2. Superintendent of Survey,
Divisional Survey Office,
Ruwanwella.
3. Senior Superintendant of Survey,
District Survey Office,
Kegalle.

Respondents

Before : Deepali Wijesundara, J &
M.M.A.Gaffoor, J.

Counsel : Rasika Dissanayake for the Petitioner.
M. Unamboowa, SDSG for the Respondent.

Argued on : 14.10.2016

Decided on : 17.11.2016

M.M.A.Gaffoor, J.

The petitioners have filed this application against the Respondents seeking a Writ of Certiorari and a Writ of Prohibition.

The Writ of Certiorari is sought on a document which is part of the Magistrate's Court record marked "P2" which is the certificate under which proceedings were initiated in the Magistrate Court of Ruwanwella.

No writ of certiorari can be issued on the said document for the reason that the said document was only a certificate filed in the Magistrate Court and since then there has been supervening judicial order that is in force.

If the petitioners had some grievance with regard to the certificate filed by the 1st Respondent they could have, if at all, come to Court in the very first instance available to them. They have not done so. They have waited till the Magistrate acted on the said certificate and issued the order for ejection to come to Court.

Therefore, when this Petition was filed the certificate was no longer operational or effective in law as the Magistrate has made an order which was operational and effective.

It is trite law that an application for a writ of certiorari is available only in respect of an order or decision which either imposes an obligation or involves civil consequences to a person or alters his legal position to his disadvantage. This has been held in several cases:

Vide: **G.P.A. Silva and other vs. Sadiq and others** – (1978/79/80) volume 1 SLR 66 and **Dayananda vs. Thalwatte** – (2001) 2 SLR 73 at page 80 and **Mendis Fowzie and others vs. Goonewardana, G.P.A. Silva** – (1978/79/80) volume 2 SLR 80.

With regard to the writ of prohibition the petitioners are seeking an order restraining the respondents from acting on a judicial order to eject them. A Writ of Prohibition is available only to prevent an illegal or unlawful or ultra vires action by an administrative body. It cannot therefore apply when the

Respondents are acting to give effect to a judicial order and so long as the said order remains valid and lawful and has not been set aside by a higher court. Any person who gives effect to or acts on the strength of a judicial order or acts on the said order cannot be said to have acted illegally. Accordingly as the Magistrate's order is valid, inforce and has not been set aside by a higher courts no writ of prohibition will lie against the Respondents as prayed for.

Furthermore, the order of the Magistrate will be enforced not by the Respondent but by the fiscal of the Magistrate's Court of Ruwanwella and the fiscal has not been made a party to this case. With regard to the writ of prohibition Lord Atkin in the famous judgment **R vs. Electricity Commissioners, Ex Parte London Electricity Joint Committee Company (1920) Ltd. (1924) 1KB 171 at 206** stated that a writ of prohibition is available where a public authority exceeds its jurisdiction. Giving effect to the order of the Magistrate is not an illegal act in excess of authority.

Accordingly this writ application is liable to the dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundara, J

I agree.

JUDGE OF THE COURT OF APPEAL