

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

In the matter of an application for writs of Certiorari, Prohibition and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Pussellawa Plantations Limited,
Level 11, FLC Tower,
19, Dudley Senanayake Mawatha,
Colombo 8.

PETITIONER

Case No: CA/WRIT/132/2015

Vs.

1. Hon. Minister of Plantation Industries,
55/75, Vauxhall Lane,
Colombo 02.

1A. Hon. Gayantha Karunathillake, MP
Minister of Lands and Parliamentary
Reforms,
“Mihikatha Medura”, Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,
Baththaramulla.

2. Land Reform Commission,
C 82, Gregory's Road,
Colombo 07.

3. **Janatha Estate Development Board,**
55/57, Vauxhall Lane,
Colombo 02.
4. **Hon. The Attorney General,**
Attorney General's Department,
Colombo 12.
5. **Delgollalage Sandasiri Lakshman**
Weeraratne,
"Malani Wasa", Navgala,
Warakapola.
6. **Delgollalage Induka Tissa Kumara**
Weeraratne,
"Malani Wasa",
Navgala,
Warakapola.

RESPONDENTS

Before : A.L. Shiran Gooneratne J.

Counsel : T. Weragoda for Petitioner.

Dr. Sunil Cooray with A.W.D.S. Rodrigo for the 2nd Respondent.

Navin Marapana with Mr. Uchitha Wickramasinghe for the 5th and 6th Respondents.

Nayomi Kahawita, SC for 1st, 3rd and 4th Respondents.

Supported on : 09/01/2018

Decided on : 23/02/2018

Order

A.L. Shiran Gooneratne J.

By this application, the Petitioner has sought for an order of Writ of Certiorari and a Writ of Prohibition among other reliefs, against the 2nd Respondent (Hon. Minister of Plantation Industries) to quash decisions made under the Land Reform Law No. 01 of 1972.

When the Petition was mentioned for support on 28/6/2017, Counsel appearing for the 5th and 6th Respondents raised two preliminary objections to the maintainability of this application and objected to the issuance of notice to the Respondents on the basis that, the 1st Respondent is not properly named and also that the said Respondent is not a juristic person. The State Counsel appearing for the 1st, 3rd and 4th Respondents and Senior Counsel appearing for the 2nd Respondent did not associate themselves with the said objection raised by the 5th and 6th Respondents.

The said objections are based on two grounds namely that,

- Article 170 of the Constitution excludes a “Minister” from the definition of “Public Officer” and therefore the said application is in violation of Part (IV), Rule 5(2), of the Court of Appeal (Appellate Procedure) Rules 1990.
- The 1st Respondent is not a juristic person in terms of the law and therefore the application is void ab initio.

Learned Counsel for the Petitioner has sought permission of Court to amend the caption of the Petition. Therefore, the preliminary issue for

determination before this court is, whether the court at this stage could permit the Petitioner to amend the caption.

When this application was listed for support on 5/5/2015, the Petitioner was directed to issue notice on the Respondents and support application. However on 9/10/2015, when this application came up for support, the Counsel for the Petitioner moved to amend the caption. Thereafter due to various reasons this case was not taken up for support. Meanwhile the 5th and 6th Respondents appearing on notice on 28/6/2017, supported the said preliminary objection.

For ease of reference, I produce below *sub rule (1), (2) and (3) of Rule 5(2) of Part IV, of the Court of Appeal (Appellate Procedure) Rules 1990*, referred to by the Petitioner.

05. (1) This rule shall apply to applications under Articles 140 and 141 of the Constitution, in which a public officer has been made a Respondent in his official capacity, (whether on account of an act or omission in such official capacity, or to obtain relief against him in such capacity, or otherwise).
- (2) A public officer may be made a Respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a Respondent cannot be sufficiently

identified in the manner, it shall be sufficient if his name is disclosed in the averments in the Petition.

- (3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name designation, description, or address of such Respondent, if the Court is satisfied that such Respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The Court may make such order as it thinks fit in the interest of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any such omission, defect or irregularity.

In terms of sub rule 5(3), an application filed under Article 140 and 141 of the Constitution, to amendment pleadings for any omission, defect or irregularity to the name, designation description or address of such pleadings, the Court is vested with discretion to permit such party to rectify the said irregularity in the interest of justice.

The Petitioner in the original caption to the Petition has named the 1st Respondent as the Minister in charge of Plantation Industries. The impugned order sought to be challenged before Court is an order by the 1st Respondent, Minister, made under Section 27A (4) of the Land Reform Law No. I of 1972. The 1st Respondent, Minister, is in charge of the subject, functions, and is also empowered to perform relevant statutory duties in terms the said law. The amendment sought

by the Petitioner is to identify the said 1st Respondent by name. Accordingly, if the Court is satisfied that the said amendment would sufficiently identify the Minister in charge to further the cause of justice of all relevant parties to this application, the proposed amendment should be permitted in terms of the said rule. Therefore, permitting the amendment of the caption in my view, does not in any manner pervert the course of justice or prejudice the interest of the respective parties to this application.

For the reasons stated above, the amendment to the caption is allowed. In the circumstances, the Petitioner is directed to pay costs fixed at Rs. 25,000/-.

JUDGE OF THE COURT OF APPEAL