

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

In the matter of an application in terms of Article 138 of the Constitution invoking the revisionary jurisdiction of Your Lordships Court seeking to revise the Order dated 20.01.2014 of the High Court of the North Western Province Holden in Kurunegala in case No:HCW 4/2013.

Agampodi Ashoka Somaratne Mendis  
No.09, Neatland Estate, Kalugamuwa.

**Petitioner-Respondent-Petitioner-  
Petitioner**

**Court of Appeal Case No. CA(PHC)APN 27/2014**

**High Court Kurunegala Case No. HCW 4/2013**

**HCW 14/2012**

**NWP/HCCA/32/2011**

**Vs.**

1. Ambegoda Liyanage Methsiri

Uyandana Mallawapitiya,

Kurunegala.

Through Samarakom Mudiyansele

Peiris Abeyratne his duly appointed  
Attorney

No.208, Puttalam Road,

Kurunegala.

2. Dammulla Arachchige Nihal Premaratne  
No.208,Puttalam Road,Kurunegala.

**Petitioners-Respondents-Respondents**

3. G.K.S.Chandralatha  
Municipal Commisioner  
Municipal Council  
Kurunegala.
- 3A. R.M.W.S.Samaradiwakara  
Municipal Commissioner,  
Municipal Council,  
Kurunegala.
- 3B. Pradeep Thilakerathne  
Municipal Commissioner,  
Municipal Council Kurunegala.
04. P.W.Senarathna  
Chief Valuer  
Department of Valuation  
Valuation House  
Maradana.
05. Anuradha Senevirathna  
District Valuer  
Government Valuation Department  
North Western Regional Office  
No. 257, Negambo Road,

Kurunegala.

Presently, Kandy Road, Kurunegala.

06. Kurunegala Municipal Council

Kurunegala.

6A.R.M.W.S. Samaradiwakara

Municipal Commissioner

Municipal Council

Kurunegala.

6B. Pradeep Thilakerathne

Municipal Commissioner

Municipal Council Kurunegala.

**RESPONDENTS-RESPONDENTS-**  
**RESPONDENTS-RESPONDENTS**

**Before:** K.K. Wickremasinghe J.

Janak De Silva J.

**Counsel:**

Suren De Silva for Petitioner-Respondent-Petitioner-Petitioner

Lakshman Perera P.C. with Jagath Wickremanayake for 1<sup>st</sup> and 2<sup>nd</sup> Petitioners-Respondents-  
Respondents

Ranil Prematilleke for 3B and 6B Respondents-Respondents-Respondents-Respondents


Chaya Sri Nammuni for 4<sup>th</sup> and 5<sup>th</sup> Respondents-Respondents-Respondents-Respondents

**Written Submissions tendered on:**

Petitioner-Respondent-Petitioner-Petitioner on 13.03.2018

1<sup>st</sup> and 2<sup>nd</sup> Petitioners-Respondents-Respondents on 13.03.2018

**Argued on:** 01.02.2018

 **Decided on:** 19.<sup>07</sup>~~06~~.2018

**Janak De Silva J.**

This Order is on the application made by the Petitioner-Respondent-Petitioner-Petitioner (Petitioner) for interim relief in terms of paragraphs (f) and (g) of the Amended Petition which reads:

- (f) issue an interim order restraining the 6<sup>th</sup> Respondent from approving any building plans or documents submitted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as the owners of the land and premises forming assessment no. 52, Colombo Road, Kurunegala pending the final determination of this application;
- (g) issue an interim order staying the operation of that part of the aforesaid Order of the learned High Court Judge dated 20.01.2014 ["A3"] in HCW 4/2013 setting aside/cancelling the settlement reached/undertaking provided by the 3<sup>rd</sup> and 6<sup>th</sup> Respondents on 22.02.2013 in the writ application numbered HCW 14/2012 and concluded on 22.01.2013 on the undertaking provided by the 3<sup>rd</sup> and 6<sup>th</sup> Respondents pending the final determination of this application.

The case of the Petitioner is that he is one of the co-owners of the land and premises bearing assessment no. 52, Colombo Road, Kurunegala by virtue of Deed bearing no. 7555 dated 13.03.2009. Accordingly, he made an application to the 3<sup>rd</sup> Respondent to have his name entered in the assessment register maintained at the Kurunegala Municipal Council, the 6<sup>th</sup> Respondent, to pay rates and taxes. After obtaining legal advice from the lawyer of the 6<sup>th</sup> Respondent, the 3<sup>rd</sup> Respondent requested the 4<sup>th</sup> Respondent to reconsider the view previously taken and to

consider whether the name of the Petitioner can be registered in respect of the land in dispute. Thereafter, by letter dated 28.11.2011 the 3<sup>rd</sup> Respondent informed that the name of the Petitioner has been entered in the assessment register.

However, subsequently the Petitioner was informed by the 3<sup>rd</sup> Respondent that the 4<sup>th</sup> Respondent had cancelled the report dated 13.07.2011 by his letter dated 24.11.2011 and the letter dated 28.11.2011 is cancelled by the 3<sup>rd</sup> Respondent. Hence the writ application bearing no. HCW/14/2012 was filed by the Petitioner seeking the following relief:

- (a) A writ of Certiorari quashing the decisions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the said application (3<sup>rd</sup> to 5<sup>th</sup> Respondents in this application) dated 21.11.2011 and 24.11.2011 cancelling the registration of the name of the Petitioner in the assessment register at the Municipal Council of Kurunegala,
- (b) A writ of mandamus directing the 1<sup>st</sup> Respondent in the said application (3<sup>rd</sup> Respondent in this application) to register the name of the Petitioner in the assessment register at the 4<sup>th</sup> Respondent in the said application, Municipal Council of Kurunegala (6<sup>th</sup> Respondent in this application),
- (c) Interim order preventing the 1<sup>st</sup> and 4<sup>th</sup> Respondents in the said application (1<sup>st</sup> and 4<sup>th</sup> Respondents in this application) and/or their servants and/or agents from granting planning permission to any person or persons to build on the land at No. 52, Colombo Road, Kurunegala pending the final determination of that application.

On 22<sup>nd</sup> January 2013, that case was settled on an undertaking provided by the 3<sup>rd</sup> and 6<sup>th</sup> Respondents that the name of the Petitioner will be entered in the assessment register with respect to property bearing assessment no. 52, Colombo Road, Kurunegala.

The Petitioner submits that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners-Respondents-Respondents (1<sup>st</sup> and 2<sup>nd</sup> Respondents) who were not parties to the initial writ application bearing no. HCW 14/2012 had made an application citing the very caption and case number along with a new case number HCW 04/2013 claiming that the "order" made by the learned High Court Judge on 22.01.2013 was per incuriam as necessary parties had not been heard before making the said "order". The Petitioner submits that on 19.03.2013, the learned High Court Judge had proceeded to make order, based

on an "agreement" reached between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and 3<sup>rd</sup> and 6<sup>th</sup> Respondents that there will be no changes made to the assessment register maintained by the 6<sup>th</sup> Respondent in relation to the disputed property until a determination is made as to the ownership of the said property. The Petitioner claims that this was done without notice to him.

The Petitioner submits that thereafter he filed papers in the said case stating his case. The learned High Court Judge had on 20.01.2014 delivered order setting aside/cancelling the settlement reached on 19.03.2013 in HCW 4/2013 on the basis that the said order is per incuriam as the Petitioner had no notice of the said application and also proceeded to set aside /cancel the settlement reached by the 3<sup>rd</sup> and 6<sup>th</sup> Respondents and the Petitioner on 22.01.2013 in application bearing no. HCW 14/2012 as it had been made without the necessary parties. It is against this order that the Petitioner has filed this revision application and sought interim relief. The Petitioner has also filed an appeal against the said order bearing no. CA(PHC) 17/2014 which is pending before this Court.

In *Weerawansa and Others v. Attorney General* [(2006) 1 Sri. L. R. 377 at 384] Sarath N. Silva C.J. stated as follows:

"In considering the nature and the extent of the interim relief to be granted it is relevant to advert to the criteria generally applicable to the grant of interim relief. The criteria that is generally applicable is to be discerned from the judgments of this Court constituting precedents that date to the judgment in the case of *Jinadasa vs. Weerasinghe*. The criteria fall under 3 different heads. I would summaries the criteria under the following heads:

(i) Prima Facie Case

The party seeking interim relief should make out a strong prima facie case of an infringement or imminent infringement of a legal right. That, there is a serious question to be tried in this regard with the probability of such party succeeding in establishing the alleged ground of illegality.

(ii) Balance of Convenience

Under this head the main factor to be considered is the uncompensatable disadvantage or irreparable damage that would result to either party by granting the interim relief or the refusal thereof.

(iii) Equitable Considerations

This involves the consideration of the conduct of the respective parties as warrants the grant of interim relief.

***Prima Facie Case***

In this regard, it is observed that the Petitioner has failed to add the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as parties to the application bearing no. HCW 14/2012 in the High Court of Kurunegala although he was aware that their names had been registered in the assessment register maintained by the 6<sup>th</sup> Respondent. An important rule regarding the necessary parties to an application for a writ of certiorari is that is that those who would be affected by the outcome of the writ application should be made respondents to the application. [Amaratunga J. in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267]. Failure to do so can result in the application been dismissed in limine. The Petitioner has failed to do so.

This is an application in revision. In *Perera v. Peoples Bank* [(1995) 2 Sri. L. R. 84] the Supreme Court held that revision is a discretionary remedy and the conduct of the party invoking this jurisdiction is a matter which is relevant. In this case, the Petitioner has surreptitiously obtained certain reliefs in HCW 14/2012 in the High Court of Kurunegala without making the 1<sup>st</sup> and 2<sup>nd</sup> Respondents parties despite their rights been affected by the said application.

The purported settlement entered in HCW 14/2012 in the High Court of Kurunegala between the Petitioner and the 3<sup>rd</sup> and 6<sup>th</sup> Respondents on 22.02.2013 in the writ application numbered HCW 14/2012 also appears to have been done by the 3<sup>rd</sup> and 6<sup>th</sup> Respondents acting under dictation. In particular, it was done even though the State raised an objection that necessary parties have not been made Respondents, which objection the learned High Court Judge also overlooked.

The dispute between the Petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents is essentially on the title to the disputed premises. The Petitioner can seek to vindicate his title to the disputed premises against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in appropriate proceedings and also apply for interim relief in the said proceedings. Therefore, there is no irreparable or irremediable damage caused to the Petitioner by this Court refusing interim relief.

The remedy by way of judicial review is not the forum to resolve disputes as to title to immovable property which invariably involves disputed facts [*Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri. L. R. 471, *Dr. Puvanendran and another v. Premasiri and two others* (2009) 2 Sri. L. R. 107]. Yet, the Petitioner sought to do just this in HCW 14/2012 in the High Court of Kurunegala and indeed was successful by way of a purported settlement. The granting of interim relief in terms of prayer (g) will result in this Court giving effect to a wrong procedure.

The Petitioner has also suppressed the fact that he has not prosecuted his title against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents predecessor in title in case no. 5322/L though he had the opportunity to do so. It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts [*W. S. Alphonso Appuhamy v L Hettiarachchi* (77 NLR 131 at 135-6)]. In fact, in *Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others* [(2005) 1 Sri.L.R. 67] this Court held that if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the application but will dismiss it without further examination.



The power of attorney holder of 1<sup>st</sup> and 2<sup>nd</sup> Respondents have filed an affidavit dated 26.09.2016 wherein it is stated that building plans for the land in dispute has already been approved by the 3<sup>rd</sup> and 6<sup>th</sup> Respondents. Copies of the approved building plan and building permit have been annexed. Therefore, I am of the view that interim relief as prayed for in prayer (f) does not arise for consideration.

For the reasons set out above, I am of the view that the Petitioner has not made out a strong prima facie case of an infringement or imminent infringement of a legal right and that there is no serious question to be tried in this regard with the probability of the Petitioner succeeding in establishing the alleged ground of illegality.

***Balance of Convenience***

The balance of convenience is not in favour of the Petitioner as he can seek to vindicate his title to the disputed premises against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in appropriate proceedings and also apply for interim relief interim relief in the said proceedings.

***Equitable Considerations***

The equitable considerations are also not in favour of the Petitioner as his conduct is unmeritorious as explained above.

For the foregoing reasons, the interim relief sought by the Petitioner is refused with costs.

Judge of the Court of Appeal

**K.K. Wickremasinghe J.**

I agree.

Judge of the Court of Appeal