

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

1. Walli Amma Neelamegam,
2. Mahalingam Neranjan,
No. 54/34, Athkam Newasa,
Wilfred Pura, Hatton.

Petitioners

CASE NO: CA/264/2016/WRIT

Vs.

Land Reform Commission,
P.O. Box No. 1526,
Hector Kobbekaduwa Mawatha,
Colombo 7,
and 5 others.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: P. Peramunugama for the Petitioners.

Dinesh Vidanapathirana for the 1st and 2nd
Respondents.

Indula Ratnayake, S.C., for the 3rd and 4th
Respondents.

Achini Dulangika for the 5th and 6th Respondents.

Written Submissions:

by the 1st and 2nd Respondents on 08.06.2018

by the 3rd Respondent on 11.06.2018

by the Petitioners on 28.06.2018

Decided on: 25.07.2018

Samayawardhena, J.

The two petitioners filed this application seeking (a) a writ of certiorari quashing the decision of the 1st respondent-Land Reform Commission to execute the deeds in respect of the land depicted in Plan No. 2023 marked X11 in the names of the 5th and 6th respondents; and (b) a writ of mandamus compelling the 1st respondent to hold a proper inquiry and execute the deed in respect of the said land in the name of the 1st petitioner. The respondents have filed objections to this application.

In the first place, in relation to the first relief, no such decision has been tendered by the petitioners for this Court to quash by way of certiorari. There has necessarily to be a formal decision or determination before a writ of certiorari could issue quashing that decision or determination. As that situation has not yet arisen, the application is premature. (*Amirthalingam v. Priyasekera*¹)

The 1st and 2nd respondents with their objections have tendered two documents marked 1R1 and 1R2 to say that full investigation including field visit was carried out with regard to claims and complaints of various parties including those of the 1st petitioner in respect of this land, and the 1st petitioner was even represented by an Attorney-at-Law at the said inquiry. Notwithstanding the 1st petitioner now says that her lawyer was not given a proper hearing, there is no affidavit from the said lawyer to that effect. During this inquiry it has *inter alia* been revealed that the 1st petitioner is living in another plot of land and also rented out a three-storeyed house apparently put up in a different plot of land- vide paragraph 14 of 1R1. The petitioners may not agree with these findings but the correctness of these findings cannot be tested before this Court

¹ [1980] 2 Sri LR 285

in exercising writ jurisdiction. (*Ekanayake v. People's Bank*², *Thajudeen v. Sri Lanka Tea Board*³)

In any event, 1R1 and 1R2 are not decisions but inquiry notes with recommendations made to the Chairman-Land Reform Commission by the Director-Investigations for the former to take suitable decisions and as such not amenable to certiorari. (*Fernando v. Jayaratne*⁴)

Hence application for certiorari shall fail.

For this Court to issue a writ of mandamus compelling the 1st respondent to hold a proper inquiry and to execute the deed in the name of the 1st petitioner, the 1st petitioner shall satisfy this Court that she has a legal right to the performance of that legal duty by the 1st respondent. If no such legal right with corresponding legal duty can be established, no mandamus will lie. Mandamus is not meant to create a legal right but to restore a party who has been denied that right. (*Mageswaran v. University Grants Commission*⁵, *Perera v. National Housing Development Authority*⁶, *Wannigama v. Incorporated Council of Legal Education*⁷, *Janak Housing (Pvt) Ltd v. UDA*⁸, *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd*⁹) Insofar as mandamus is concerned, the 1st petitioner fails at the threshold level itself as she has unable to show any such legal right in her favour with the corresponding legal duty cast on the 1st respondent to perform it.

² [2005] 2 Sri LR 94

³ [1981] 2 Sri LR 471

⁴ (1974) 78 NLR 123

⁵ [2003] 2 Sri LR 282

⁶ [2001] 2 Sri LR 50

⁷ [2007] 2 Sri LR 281

⁸ [2008] 2 Sri LR 302

⁹ [2005] 1 Sri LR 89

In the counter affidavit the petitioners have *inter alia* stated that there was a legitimate expectation that the land would be given to her. But there are no documents originated from the respondents making some promise or giving some undertaking that the land would be given to her. Indecipherable document marked X2 issued at the request of the 1st petitioner for a different purpose cannot be construed as such.

Hence application for mandamus cannot succeed.

Application of the petitioners is dismissed but without costs.

Judge of the Court of Appeal