

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

In the matter of an application for a mandate in the nature of writs of *certiorari*, *prohibition* and *mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CASE NO: CA/WRIT/506/2015

Refai Thareeq Association of Sri Lanka,
No. 30, Rifai Thangal Lane,
Colombo 12.

PETITIONER

VS.

1. The Commissioner of National Housing,
National Housing Development Authority,
Sethsiripaya,
Battaramulla.
2. D. Nandanie Samarawickrema,
The Director (Housing),
National Housing Development Authority,
Sethsiripaya,
Battaramulla.
- 2a. A.N.R. Weerasekara,
The Director (Housing),
National Housing Development Authority,
Sethsiripaya,
Battaramulla.
3. Habib Tayoob,
23/4, Sri Sarotha Mawatha,

Gangodawila,
Nugegoda.

4. Aba Mohomed Tayoob,
200, 200/1, Messenger Street,
Colombo 12.
5. Sriyawathie Gje Baksh (Deceased)
200, 200/1/1, Messenger Street,
Colombo 12.
- 5a. Sabeena Munthaz Thayoob
- 5b. Shakeela Mumthaz Thayoob
- 5c. Mohamed Zarneer Thayoob
- 5d. Mohamed Imran Khan Thayoob

All are at,
200, 200/1/1, Messenger Street,
Colombo 12.

6. Ganje Savai Tayoob (Deceased)
200, 200/1/1, Messenger Street,
Colombo 12.
- 6a. Gnei Nizam Savai,
200, 200/1/1, Messenger Street,
Colombo 12.
7. Ahamed Tayoob,
200, 200/1/1, Messenger Street,
Colombo 12.
8. Aameena Aba Sulaiman,
200, 200/1/1, Messenger Street,
Colombo 12.
9. Abdul Sathar Aba Sulaiman,
200, 200/1/1, Messenger Street,
Colombo 12.
10. Tharik Thauba Aba Sulaimna,
200, 200/1/1, Messenger Street,
Colombo 12.

11. Shakeela Gaje Baksh,
200, 200/1/1, Messenger Street,
Colombo 12.
12. Sameer Gaje Baksh,
200, 200/1/1, Messenger Street,
Colombo 12.
13. Imran Gaje Baksh,
200, 200/1/1, Messenger Street,
Colombo 12.
14. Mohomad Haneef Tayoob,
200, 200/1/1, Messenger Street,
Colombo 12.
15. Ummul Karamath Tayoob,
200, 200/1/1, Messenger Street,
Colombo 12.
16. Kairoon Nissa Tayoob,
200, 200/1/1, Messenger Street,
Colombo 12.
17. Niyamath Tayoob,
200, 200/1/1, Messenger Street,
Colombo 12.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Rasika Dissanayake for the Petitioner.

V. Thevasenathipathy for the 5a, 5c, 5d, 11th, 12th, and
13th Respondents.

Written Submissions

tendered on: 11.09.2020 - on behalf of the Petitioner.

09.09.2020 - on behalf of the Respondents.

Decided on: 27.04.2021.

MOHAMMED LAFFAR, J.

The Petitioner in this application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking the discretionary remedies of writs of certiorari and mandamus.

It is an undisputed fact that the 1st Respondent, in terms of the provisions of the Ceiling on Housing Property Law¹, has taken a decision to vest the property in dispute. The said decision is marked as P20. It is the contention of the Petitioner that the said decision is bad in law and unreasonable on the basis that the said determination was made by the 1st Respondent without any notice to the Petitioner. Thus, the petitioner is praying *inter alia*, for:

1. *A mandate in the nature of a writ of certiorari quashing the decision marked P20.*
2. *A mandate in the nature of a writ of Mandamus compelling the 1st Respondent to hold an inquiry in terms of the Provisions of the Ceiling on Housing Property Law, as directed by the Court of Appeal in case No. CA/Writ/648/2007.*

Subsequently, the Attorney General who appears for the 1st and 2nd Respondents, by a motion dated 06.07.2018, informed Court that the said document marked P20 will be withdrawn in view of a fresh inquiry which the 1st Respondent is willing to conduct.

When the matter was mentioned in Court on 30.03.2021, the learned Deputy Solicitor General appearing for the 1st and 2nd Respondents informed Court that the said Respondents are withdrawing the impugned document marked P20 and holding a fresh inquiry with notice to the interested parties. In the circumstances, the learned Counsel for the Petitioner moves to withdraw the petition.

At this juncture, the learned Counsel for the 5a, 5c, 5d, 11th and 12th Respondents objected to the said application made by the learned Deputy

¹ Act No. 04 of 1988

Solicitor General and the subsequent application made by the Counsel for the Petitioner to withdraw the application.

This order is in respect of the objection raised by the learned Counsel for the 5a, 5c, 5d, 11th and 12th Respondents.

The Petitioner is seeking the discretionary remedies against the 1st and 2nd Respondents by way of a writ of certiorari to quash the document marked P20 and a writ of mandamus for a fresh inquiry². Strictly speaking, the instant application is between the Petitioner and the 1st and 2nd Respondents. The 1st and 2nd Respondents are withdrawing the impugned document marked P20 and consented to hold a fresh inquiry with all necessary parties.

In the circumstances, it is abundantly clear that there is no case before Court for adjudication. The 1st and the 2nd Respondents, against whom the reliefs have been sought for, have every right to give consent to the judgment. Similarly, the Petitioner has right to withdraw his case. The 5a, 5c, 5d, 11th and 12th Respondents have no legal right to object to the motion filed by the State and the application made by the Petitioner to withdraw the application.

Further, the allowance or rejection of a Petitioner's application to withdraw an action for the issue of a writ, is a matter exclusively within the discretion of this Court (vide *Premadasa vs. Wijeyewardena and Others*³, *Tod-Heatley vs. Barnard*⁴).

Furthermore, this Court is mindful of the fact that, since the 1st and 2nd Respondents are withdrawing the impugned document marked P20 with the undertaking of having a fresh inquiry - notice to all necessary/interested parties, there will be no prejudice to the 5a, 5c, 5d, 11th and 12th Respondents.

² Vide prayers 'c' and 'd' of the Petition dated 15.12.2015.

³ [1991] 1 Sri LR 333

⁴ [1890] W.N. 13 C.A

Hence, this Court is of the considered view that the said objections raised by the learned Counsel for the 5a, 5c, 5d, 11th and 12th are baseless and misconceived in law.

For the foregoing reasons, the motion dated 06.07.2018 filed by the State to withdraw the impugned document marked P20 and to hold a fresh inquiry is allowed. The application made by the learned Counsel for the Partitioner to withdraw the petition (the instant application) is also allowed.

Accordingly, the Petition is dismissed subject to the aforesaid undertaking given by the State.

The objections of the learned Counsel for the 5a, 5c, 5d, 11th and 12th Respondents are overruled.

Let the parties bear their own costs.

The Proceedings are terminated.

Judge of the Court of Appeal

K. K. A. V. SWARNADHIPATHI, J.

I agree.

Judge of the Court of Appeal