

**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 Writ of Certiorari & Prohibition in  
terms of Article 140 of the constitution.

1. Mrs. J.M. Malani Hemalatha  
22 K.M Post,  
Nagawila,  
Andigama
  
2. Mr. R.M.P Joseph Perera  
22 K.M Post,  
Nagawila, Adigama

**Petitioners**

CA (Writ)  
Application No – 213/18

- **Vs** -

1. Divisional Secretary,  
Divisional Secretariat,  
Pallama
  
2. Provincial Land Commissioner,  
Provincial Land Commissioner Department,  
North Western Province  
P.O. Box 46, 03<sup>rd</sup> Floor,  
Provincial Council Complex,  
Kurunegala.
  
3. Land Commissioner General,  
Land Commissioner General Department,  
“Mihikatha Madura”  
No 12006, Rajamalwaththa Road,

Battaramulla

4. Dona Mariya Fladees Lihinikaduwa  
Roman Catholic Church  
Mudalakkuliya  
Anamaduwa.

### **Respondents**

Before: C.P. Kirtisinghe – J  
Mayadunne Corea – J

Counsel: Vishva Vimukthi for the Petitioners.  
M. Jayasinghe, SSC for the Respondents.

Argued on: 16.03.2022

Decided on: 28.07.2022

#### **C.P. Kirtisinghe – J**

The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are seeking for a mandate in the nature of a writ of certiorari quashing the order of the 1st Respondent cancelling the permit dated 02.07.2015 contained in the document P10A, a mandate in the nature of a writ of certiorari quashing the order of the 1st Respondent cancelling the permit dated 02.07.2015 contained in the document P10B, a mandate in the nature of a writ of certiorari quashing the decision of the 2<sup>nd</sup> Respondent dated 31.08.2015 contained in P13, a mandate in the nature of a writ of certiorari quashing the order of the 1<sup>st</sup> Respondent cancelling the permit dated 21.07.2015 contained in P19, for a mandate in the nature of a writ of certiorari quashing the decision of the 2<sup>nd</sup> Respondent dated 20.08.2016 contained in P22, for a mandate in the nature of a writ of prohibition prohibiting the Respondents from alienating the lands depicted in P1A, P1B and P1C and for the interim relief they had prayed for.

It is the case of the Petitioners that they were authorized and legally entitled to occupy the lands depicted in the permits marked P1A, P1B and P1C by virtue of those permits. Permit P1A and P1B had been issued to the 1<sup>st</sup> Petitioner and the permit P1C had been issued to the 2<sup>nd</sup> Petitioner. Petitioners state that they were in occupation of those lands in compliance of the conditions stipulated in those permits and developed those lands. Petitioners state that they made applications to obtain grants in place of their aforesaid permits. The Petitioners had received forms of notice to cancel the permits P1A and P1C. Thereafter, the Petitioners had participated in an inquiry to show cause for the non- cancellation of the permits and the Petitioners became aware that the decision to issue notice of cancellation of permits was taken as a consequence of a complaint made by the 4<sup>th</sup> Respondent. The Petitioners state that one Janaka Ariyaratne who was known to the Petitioners as a neighbour and who was also a close associate of the 4<sup>th</sup> Respondent requested from the 1<sup>st</sup> Petitioner to use her Permit P1A to obtain a loan from a bank and the 1<sup>st</sup> Petitioner had handed over her original permit to Ariyaratne. Ariyaratne died without returning the original document of P1A. At the inquiry the 4<sup>th</sup> Respondent had tendered the original of P1A to the 1<sup>st</sup> Respondent which the 1st Petitioner had handed over to the deceased Ariyaratne. The 4<sup>th</sup> Respondent had also handed over to the 1<sup>st</sup> Respondent the document marked as P8 which indicated that the 2<sup>nd</sup> Petitioner had transferred the land described in permit P1A to Ariyaratne for a consideration of Rs. 500,000.00. However, the Petitioners state that the document P8 does not contain the signatures and the handwriting of the Petitioners and the 4<sup>th</sup> Respondent had failed to establish the authenticity of that document. Petitioners state that despite the authenticity of P8 and other documents, the 1<sup>st</sup> Respondent took the decision to cancel the permits marked P1A and P1C heavily relying on the statements made by the 4<sup>th</sup> Respondent at the inquiry without verifying the credibility of the statements and the authenticity of the documents.

Thereafter, the Petitioners had appealed to the 2<sup>nd</sup> Respondent, the Provincial Land Commissioner against those decisions. The 2<sup>nd</sup> Respondent had informed the 1<sup>st</sup> Respondent that the aforesaid permits should be cancelled and the Petitioners had appealed to the 3<sup>rd</sup> Respondent Land Commissioner General against the decision of the 2<sup>nd</sup> Respondent. Thereafter, the 1<sup>st</sup> Respondent had taken a decision to cancel the permit P1B after an inquiry and the Petitioners had appealed to the 2<sup>nd</sup> Respondent against that decision. The 2<sup>nd</sup> Respondent had affirmed the decision of the 1<sup>st</sup> Respondent and the Petitioners had

appealed to the 3<sup>rd</sup> Respondent against the decision of the 2<sup>nd</sup> Respondent. The 3<sup>rd</sup> Respondent had inquired all three appeals together. The 3<sup>rd</sup> Respondent had affirmed the decisions of the 1<sup>st</sup> Respondent.

It is the case of the Petitioners that the 1<sup>st</sup> Respondent's decision to cancel the permits is illegal, unlawful and *ultra vires*. Petitioners state that the conduct of the 1<sup>st</sup> Respondent exhibited that the 1<sup>st</sup> Respondent took the impugned decisions in a biased, arbitrary and malicious manner in order to favour the Church and the 4<sup>th</sup> Respondent. Therefore, the rules of natural justice had been violated by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and they had acted in a preconceived mind against the Petitioners.

The Petitioners state that they were not in violation of any conditions of the permits and they cultivated the lands. The Petitioners received coconut plants from the Coconut Development Board after satisfying the board and the Respondents failed and neglected to consider such credible evidence and cancelled the permits on the ground of failure to develop the lands.

When one considers the affidavits and the documents tendered by the Petitioners and the documents tendered by the Respondents it is apparent that the Petitioners have not come to Court with clean hands and they have failed to disclose the material facts. They have willfully suppressed material facts.

It is not a disputed fact that the two original permits issued in respect to the two lands were in possession of the 4<sup>th</sup> Respondent. The 1<sup>st</sup> Petitioner had taken up two different stands on two occasions regarding the dispossession of the permits from her custody. Once she has told the 1<sup>st</sup> Respondent that she lost the original permits due to a domestic mishap – a cat had littered inside the box containing the permits. She had informed that fact to the Divisional Secretary and obtained copies of the permits. Thereafter, after seeing the permits in the 4<sup>th</sup> Respondent's possession at the Divisional Secretariat the 1<sup>st</sup> Petitioner had changed her stand and had told the Divisional Secretary that she gave the permit to Janaka to facilitate him to obtain a loan from a bank and she thinks that the 4<sup>th</sup> Respondent had got the permits from Janaka. Therefore, it is manifestly clear that the 1<sup>st</sup> Petitioner has not come to court with clean hands.

The 4<sup>th</sup> Respondent has told the Divisional Secretary that the permits were handed over to her by the Petitioners after accepting money for the two lands and thereafter, she entered into possession. The Petitioners are disputing those facts. In P14, the 4<sup>th</sup> Respondent had told the Police that she purchased the land

belonging to the 2<sup>nd</sup> Petitioner after paying Rs.1,100,000.00 and the 2<sup>nd</sup> Petitioner gave her the permit applicable to the land and thereafter, the 4<sup>th</sup> Respondent's possession is disturbed by the 2<sup>nd</sup> Petitioner. These facts are also in dispute. Although the 2<sup>nd</sup> Petitioner had denied the fact that he accepted money from the 4<sup>th</sup> Respondent in his statement to the police marked P15 and although the 1<sup>st</sup> Petitioner in her statement to the Divisional Secretary marked R2a had denied that the 4<sup>th</sup> Respondent paid money for the land belonging to the 1<sup>st</sup> Petitioner, the 2<sup>nd</sup> Petitioner had told the Divisional Secretary at the inquiry that the 4<sup>th</sup> Respondent had made a part payment to the 2<sup>nd</sup> Petitioner. In P16, the Petitioners' own document, the Divisional Secretary had stated that the 2<sup>nd</sup> Petitioner had revealed at the inquiry that the 4<sup>th</sup> Respondent did not pay the full consideration for the land as agreed upon between the parties but only paid a part of it. According to the contents of that document the 2<sup>nd</sup> Petitioner had admitted the fact that the 4<sup>th</sup> Respondent had paid some money in respect of this land transaction. The Petitioners have not denied this fact specifically. The 2<sup>nd</sup> Petitioner has not explained why such a statement was recorded by the Divisional Secretary in that document. The Petitioners have failed to produce the proceedings at the inquiry to show that such a statement was not made by the 2<sup>nd</sup> Petitioner. That is a suppression of a material fact.

In the document marked R2a the 1<sup>st</sup> Petitioner had stated before the Divisional Secretary that the 4<sup>th</sup> Respondent is in possession of the 1<sup>st</sup> Petitioner's land and the 4<sup>th</sup> Respondent is preventing the 1<sup>st</sup> Petitioner from entering into the land. But there is no evidence to show that the Petitioners had made a complaint to the Police or to the Grama Sevaka of the area against this conduct of the 4<sup>th</sup> Respondent. The Petitioners have failed to disclose the fact why such a complaint was not made. That is a suppression of a material fact by the Petitioners and it is a willful suppression of a material fact.

In the case of **Jayaweera Vs Assistant Commissioner of Agrarian Services Rathnapura and another 1996 (2) SLR 70 F.N.D.** Jayasuriya – J has held as follows;

“I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the court has a discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief. Applying these principles, I hold that this court is not disposed to

grant the Petitioner discretionary relief upon this application in view of inordinate delay and laches in filing the application in Court.”

In the case of **W.S. Alphonso Appuhamy Vs L. Hettiarachchi (Special Commissioner Chilaw), and another 77 NLR 131** Pathirana – J held that “when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with *uberrima fides*.”

In the case of **Castelli Vs Cook (1849) 7 Hare, 89, 94** Wigram V.C. has stated as follows:-

“A Plaintiff applying *ex-parte* comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact had been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go.”

In the case of **Blanca Diamonds Private Limited Vs Wilfred Van Els (1997) 1 SLR 360**, F.N.D. Jayasuriya – J held as follows:-

“The principle is that ‘when a party is seeking discretionary relief...upon an application for a writ of *certiorari*, he enters into a contractual obligation with the Court when he files an application in the Registry and in terms of that contractual obligation he is required to disclose *uberrima fides* and disclose all material facts fully and frankly to [the] Court....[When] the petitioner...has been remiss in its duty...and obligation to Court...the Court is entitled to raise the matter *in limine* and to dismiss the application without investigating into the merits of the application’.”

In the case of **Biso Menika v Cyril de Alwis and others (1982) 1 SLR 368**, Sharvananda – J observed as follows:-

“A person who applies for the extra-ordinary remedy of Writ must come with clean hands and must not suppress any relevant facts from Court. He must refrain from making any misleading or incorrect statements to Court.”

Dr. Sunil Cooray in his “**Principles of Administrative Law in Sri Lanka**” 4<sup>th</sup> Ed., **Vol. 2 at page 1162** states as follows:-

“A petitioner seeking an order in the nature of a prerogative writ whom the Court finds has wilfully suppressed or misrepresented a material fact, will, irrespective of the merits, be refused the writ for that reason alone. A party applying for a prerogative writ is under a duty to the Court to disclose all material facts within his knowledge, and this duty of disclosure is similar to the duty on a party applying for an injunction. ‘The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked’ has been pointed out in applications for prerogative writs as well as in applications for injunctions.”

In **Halsbury Laws of England – Vol.11, 3<sup>rd</sup> Ed. Page 71, para 128** it is stated “on an application for relief the utmost good faith is required and if the applicant in his affidavit suppress the material facts the Court will refuse an Order without going into the merits.”

For the aforementioned reasons, it is abundantly clear that the Petitioners have not come to Court with clean hands. The Petitioners have failed to disclose all material facts and the Petitioners have willfully suppressed material facts. Thus, the Petitioners have not acted with *uberrima fides*. When one takes into consideration the conduct of the two Petitioners, that conduct will disentitle them to the remedy they are seeking. Therefore, the Petitioners are not entitled for a mandate in the nature of a writ of certiorari which is a discretionary remedy of this Court and the Court will not go into the merits of the application, but will dismiss it without further examination.

The learned Counsel for the Petitioners has submitted that if the administrative officers having a duty to act judicially are required to set forth in writing the mental processes of reasoning which have led them to the decision, it would to a large extent help to ensure performance of the duty to act judicially and exclude arbitrariness and caprice in the discharge of their functions. The public should not be deprived of this only safeguard. The learned Counsel for the Petitioners has drawn our attention to the judgment of **Herath Mudiyansele Dingiri Banda Vs The Land Commissioner General and 4 others C.A. 293/2007 Writ** decided on 28.11.2012. In that case, the order which cancelled the permit did not contain reasons for cancelling the said permit other than merely restating the same grounds in the notice of cancellation. Gunaratne – J held that it was an inadequately and improperly reasoned decision. In this case, the Divisional Secretary has not given adequate reasons for the cancellation of the

permit. The Divisional Secretary has merely stated that the Petitioners had violated a condition of the permit and they have failed to comply with a condition of the permit. The Divisional Secretary had failed to disclose that condition.

However, in view of the aforementioned conclusion that I have arrived to the effect that this Court should not go into the merits of this Application, it will only be an academic exercise to go into that question.

For the aforementioned reasons, I refuse to grant mandates in the nature of a writ of certiorari and prohibition as prayed for by the Petitioners in the prayer to the Petition. The Application of the Petitioners is dismissed without costs.

Judge of the Court of Appeal

Mayadunne Corea – J  
I agree

Judge of the Court of Appeal