

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

In the matter of an Application for Writs of Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CASE NO. WRIT/202/2020

1. Blue Mountain Properties [Private] Limited
No. 37, High Level Plaza,
Delkanda, Nugegoda
2. Dr. Hiranya Saumi Hettiarachchi
No. 37, High Level Plaza,
Delkanda, Nugegoda

PETITIONERS

Vs.

C.D. Wickremarathne
The Inspector General of Police [Acting]
Police Headquarters
Colombo 1

RESPONDENT

AND NOW BETWEEN

1. Ruwan Keragala,
No. 1/6, De Silva Road, Kalubowila.
2. Mohamed Ziyah Zahir,
No. 67 A/1, Kawudana Road,
Aththidiya, Dehiwala.
3. Mohamed Ilyas Mohamed Imthiyas,
No. 40, De Vos Lane, Colombo 14.

4. A.R.J.P. Niyas,
No. 12/A, Kalinga Mawatha, Colombo 05.
5. Saroshinie
Lourdes De Mel, No. 185/5,
Rajagiriya Road, Rajagiriya.
6. Fathima Rusla Hassan,
No. 16/3D, Park Road,
Off Allen Avenue, Dehiwala.
7. Lakshman Withanachchi,
No. 109, Oruwala, Athurugiriya.
8. Mohamed Sufian Mohamed Kaleel,
No. 4/3, Edmond Residencies,
No. 291/15, Edward Avenue,
Havelock Town, Colombo 06.
9. Korenchige Surendra Gayan Jayasena,
No. 92, Thembiligasmulla Road, Makola.
(Appearing through his Power of Attorney
holder Buddika Indrajith Samarawickrama of
No. 23/16C, Ruhunupura, Battaramullla.)
10. Ramya Rohini Hettige Amarasena, No. 8, 1/1,
Skyline Residencies, Magazine Road,
Colombo 08.
11. Manique Dilani Nanayakkara, No. 26/4, 4
Lane, Epitamulla Road, Pitakotte.
12. Mahesha Payadini Samaraweera, No. 26/4, 4"
Lane, Epatamulla Road, Pitakotte.
13. Gampolage Duneesha Roshanthie De
Fonseka, No. 24, Haverstock Road,
Bristol, BS 4 2BZ UK.

AND

No.37, Eluwila, Panadura.

(Appearing through her power of Attorney
Rohantha De Fonseka of No.37, Eluwila,
Panadura,)

14. Rishviraj Ives Fernandopulle,
No. 19, Skelton Gardens,
Colombo 05.
15. Asiri Samantha Abeygunawardena, No.
155, Gorge E. De Silva Mawatha, Kandy.
16. Wijemuni Upul Wasantha De Zoysa, Near
Bo tree, Thiththagalla Road,
Thiththagalla, Ahangama.
17. Kalubowilage Chandra Iranganie
Christian, No. 4/2, Marys Tower,
No.46, Marys Road, Colombo 07.
18. Sharnee Tanya Pereira, No. 49/2,
Medawelikade Road, Rajagiriya.
19. Shaluka Francis Jayamanne,
No. 82, Church Road, Wattala.
20. Suraj Pradeep Kumar Ranasinghe,
No. 4, Kashyapa Road, Kalubowila,
Dehiwala.
21. Ahamed Ismail Mohamed Rizvi,
No. 4/7, Weerakoon Gardens, Kandy.
22. Mathi Vathani Ponnampalam,
No. 14/3, Park Heights, 143, Park Road,
Colombo 05.

23. Tharangie Neranjala Rajapaksha,
No. 100/1 A, Ganegoda, Dompe
24. Jayasuriya Arachchige Don Kasun Nuwan
Perera, No. 265/2, Dutugemunu Mawatha,
Bollegala, Gonawala
25. Sagarie Sulochana Ranasinghe nee Lankapura,
No. 112,
Wewalduwa, Kelaniya.
(appearing through her Power of Attorney
Holder, Ranasinghe Arachchige Sarvadarshi
Jagadeesha Ranasinghe of No. 112,
Wewalduwa, Kelaniya)
26. Umar Ali Hyder Ali,
No. 410/12, Galle Road, Kollupitiya, Colombo
03. (appearing through his Power of Attorney
Holder, Hyder Ali Sameer Ali of No. 410/12,
Galle Road, Kollupitiya, Colombo 03)
27. Ekanayake Athukoralalage Don Charudaththa
Chandabanu Ekanayake,
No.88, Mable Cooray Mawatha, Kandy

INTERVENIENT-PETITIONERS

Vs.

1. Blac Mountain Properties Priva
No. 37, High Level Plaza, Delkanda, Nugegoda
2. Dr. Hiranya Saumi Hettiarachchi,
No. 37, High Level Plaza, Delkanda Nugegoda

PETITIONER-RESPONDENTS

C.D. Wickremarathne,
The Inspector General of Police [Acting],
Police Headquarters, Colombo 1

RESPONDENT-RESPONDENT

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Shivan Cooray for the Intervenant-Petitioners (in Petition dated 06.05.2021
for intervention)

Suriyabandara Gunasekera instructed by Lasantha Balasooriya for the
Intervenant-Petitioner (in Petition dated 18.07.2022 for intervention)

Ms. Faisza Markar with Zainab Markar instructed by Ms. Dilini Gamage for
the Petitioner-Respondent

S. Balapatabendi, PC, ASG with Sabrina Ahamed, SC for the Respondent-
Respondent

Written submissions tendered on:

31.08.2022 by the Intervenant-Petitioner (in the Petition dated 06.05.2021 for
intervention)

09.09.2022 by the Petitioner-Respondent

04.10.2022 by the Intervenant-Petitioner (in Petition dated 18.07.2022 for
intervention)

Argued by way of written submissions

Decided on: 10.11.2022

S.U.B. Karalliyadde, J.

This Order is pertaining to the Applications for intervention of 27 Petitioners in the Petition dated 01.06.2021 and the Petitioner in the Petition dated 02.08.2022 to the action. The facts of the case relevant to this Writ Application are as briefly as follows;

The 1st Petitioner-Respondent is a Company registered by the name of Blue Mountain Properties (Pvt) Ltd, (hereinafter referred to as the Company) under the Companies Act, No. 7 of 2007 (hereinafter referred to as the Companies Act). The 2nd Petitioner-Respondent is the Chairman and Margining Director of the Company. The Company has engaged in the business of real estate which, *inter alia*, included the sale of lands and apartments/condominiums built by the Company. The Company entered into agreements related to the real estate businesses with the owners of the lands and buyers of the apartments/condominiums in various parts of the country. Due to the financial difficulties faced by the Company for various reasons since 2018, it could not act upon those agreements and consequently the Company defaulted its creditors. Then the creditors lodged complaints against the Company and its Directors in various Police satiations in the country and the Police commenced investigations about those complaints and reported the facts to the relevant Magistrate's Courts. A detailed list of cases which the Police commenced investigations are annexed to the Petition to this Writ Application marked as P-4. While the facts remained as such, the Company instituted an action bearing No. HC (Civil) 60/2019/CO before the Commercial High

Court of the Western Province (exercising its Civil Jurisdiction) holden in Colombo under and in terms of Part IX and section 520 of the Companies Act with a view to entering into a compromise plan marked as P7 with 1735 out of its creditors within the meaning of section 247(b) of the Companies Act and compromise was entered. In view of the compromise plan marked as P7 entered on 12.09.2019 that action was withdrawn and the Court terminated the proceedings on that day. Nevertheless, even though, at the beginning, 92.4% of those creditors consented to the compromise plan proposed by the Company later some of them disputed the terms of the compromise demanding preferential treatment outside the approved compromise. The approved compromise plan, therefore, did not materialize. Then the Company made an Application in the action above-mentioned before the Commercial High Court to withdraw the Application dated 12.09.2019 for the withdrawal of that action but, the Court refused that Application. The Company therefore, filed another action bearing No. CHC 04/2020/CO in terms of section 256 of the Companies Act in the same Commercial High Court seeking an Order declaring that the compromise plan marked as P7 entered in the action bearing No. HC (Civil) 60/2019/CO binds all the parties to that action. Then the Court acting under section 256(2)(a) (in the action bearing No. 04/2020/CO) ordered to serve notice of the Application on all the creditors and since there were over 1000 creditors, the Court ordered the notice to be published in daily newspapers in three languages. Then the Company took steps as directed by the Court, but none of the creditors objected to the Application of the Company. Therefore, acting under section

256(1)(f) of the Companies Act, the Court declared that the compromise plan marked as P7 entered between the Company and the 1735 creditors hereinbefore mentioned is binding on them.

Even though, the facts remained as above-mentioned the Police continued the investigations against the Company, its Directors and the 2nd Petitioner. This Writ Application is filed seeking Writs of Prohibition restraining the Inspector General of Police (Acting) who is the Respondent to the writ Application from taking any steps regarding the complaints made by the creditors mentioned in the list marked as P-4 and the parties to the compromise plan marked as P7. The Intervening-Petitioners allege that they are the creditors of the Petitioners. But they are neither in the list marked as P-4 nor the parties to the compromise plan marked as P7. In the limited statement of objections of the Respondent for the interim relief sought by the Petitioners state that from/around March 2019 (i.e.; even before instituting the 1st action before the Commercial High Court) several Police stations across the country received complaints against the Petitioners regarding irregular financial property transactions consequent to which the Police commenced investigations and reported the facts to the relevant Magistrate's Courts.

When referring back to the Applications for intervention, the Petitioners are objecting to those applications on the basis that the Petitioners to the Applications for intervention have no *locus standi*, in the sense that they do not have sufficient interest in the Writ Application. The position of the Petitioners is that the intervening Petitioners are neither

parties to the compromised plan entered before the Commercial High Court marked as P7 nor the complainants in the list of cases/B reports contained in the document marked as P4. On the other hand, the contention of the Intervient Petitioners is that since they are creditors of the Petitioners, they have an interest in the Writ Application and therefore, they are entitled to intervene in the case.

At this stage, it is relevant to focus the attention of the Court to the permeant reliefs sought in the prayers to the Petition dated 29.07.2022 to this Writ Application. The Petitioners seek Writs of Mandamus restraining the Respondent from taking any steps in pursuance of the list of cases/B Reports contained in P4 and the compromise plan marked as P7 entered in the Commercial High Court. In the written submissions, the Petitioners have stated that they have no objection for taking legal actions by the Respondent against them in respect of any other complaints made or will be made by any creditors who are not parties to the compromise plan marked as P7 or the persons who are not connected to the list marked as P4. It seems to the Court that the intervening Petitioners are not parties to neither P4 nor P7. Therefore, they have no right to intervene to this Writ Application. They may have causes of action against the Petitioners arising from the transactions they had with the petitioners regarding the real estate businesses. Nevertheless, those causes of action have no relevance to the reliefs sought against the Respondent by the Petitioners in this Writ Application.

The Court of Appeal Rules 1990 made under Article 136 of the Constitution do not provide for third party interventions. It was held in the case of *M. D. Chandrasena and Two Others Vs. S. F. De Silva (Director of Education)*¹ that in an application for a Writ of Mandamus or Certiorari, persons other than those who are parties to the application are not entitled to take part in the proceedings as intervenients. It was further held that in Sri Lanka even though, the English Common Law principles applies in deciding whether those writs should be issued or not, and the English rules made by the Courts in England permits the Court to allow interventions those provisions have no application to Sri Lanka. That position was endorsed by Saleem Marsoof.J. in the judgment of *Harold Peter Fernando Vs. The Divisional Secretary of Hanguranketha and two others*² as follows;

“ 1) *The Court of Appeal rules, 1990, made under article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka setting out the procedure to be followed by this court in dealing with applications inter alia for prerogative writs, do not provide for third-party interventions in the proceedings,*

2) *There is no corresponding provision in the Constitution or any other law seeking to confer or a third-party of audience in the Court of Appeal in the lines of Article 134 (3) of the Constitution, as it illustrates the restraint that is exercised by the apex Court of*

¹ (1962) 63 NLR 143.

² (2005) BLR 120.

the country in dealing with applications for third-party intervention in the context of the supervisory jurisdiction of Court which is exercised with the view to keeping administrative authorities within their lawful bounds” (at page 120).

In the case of *Tyre House (PVT) Ltd Vs. Director General Customs*³ it was held that interventions cannot be allowed in Writ Applications in the absence of specific rules formulated by the Supreme Court providing for the procedure permitting third parties to intervene in Writ Applications. In the case of *Weerakoon & Another Vs. Bandaragama Pradeshiya Sabahawa*⁴ W.L. Ranjith Silva, J. analyzing the aforementioned two judgements held as follows;

“In this context, it is pertinent to note that the Court of Appeal (appellate Procedure) Rules, 1990 made under Article 136 of the Constitution of the Democratic socialist Republic of Sri Lanka setting out the procedure to followed by this Court in dealing with applications inter alia for prerogative writs, do not provide for third-party interventions in these proceedings. (at page 311)”

In *Meditech Devices (Pvt.) Ltd Vs. Director, Medical Technology & Supplies*⁵ the Court held that the rules of the Court of Appeal do not provide to allow interventions in Writ matters. In *Amarakoon Dissanayake Wimalasena Vs. Priyaratne Wickaramage*⁶ this Court held that after the divisional bench decision of the Court of Appeal in

³ C.A. Application No. 730/95 (CA minutes dated 05.06.1996).

⁴ C.A. Writ Application No.586/ 2007 (Decided on 2011-11-22) (2012 BLR 310).

⁵ CA. Writ Application No. 99/2014 (Order dated 26.01.2017)

⁶ CA. Writ Application No.173/2015

Weerakoon Vs. Bandaragama Pradeshiya Sabhawa the law is settled that no intervention is permitted in the Writ applications.

The learned Counsel appearing for the intervenient Petitioners who filed their intervention application dated 06.05.2021 has relied on the Supreme Court judgement in the case of *Maha Nayaka Thero, Malwatta Vihara Vs. Registrar General et al*⁷ argues that intervention is possible in writ matters. In that action Maha Nayaka Thero of Malwatta Vihara sought a Writ of Mandamus on the Registrar General to compel him to exercise his powers under the Buddhist Temporalities Ordinance by modifying the Register of Bhikkus in terms of a communication from the Petitioner to the effect that a certain priest had been expelled by him from the priesthood. Intervention application of the expelled priest in question was allowed by Court without any objection taken in that behalf. But in the case at hand, the Petitioners strenuously object to the applications for intervention on the ground that they have no locus standi for the reason that they do not have sufficient interest in this Writ application. Therefore, since the Petitioners are objecting to the applications for the intervention, the decision in 39 NLR 186 has no application to the action at hand.

Under the above stated circumstances, the Court cannot be considered the Intervenant Petitioners as necessary parties to adjudicate the dispute in the instant writ Application

⁷ (1938) 39 NLR 186.

and therefore, the applications for intervention cannot be allowed. Therefore, the Court refuses the Applications for intervention. No costs ordered.

Application for intervention dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL