

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

*In the matter of an Application for  
Mandates in the nature of Writs of  
Certiorari & Mandamus under and in terms  
of Article 140 of the Constitution of the  
Republic.*

**Court of Appeal Case No.  
CA/WRT/203/20**

A.P. Saman Chandana Kumara  
No: 166/10, College Park,  
Weraganpita, Matara.

**Petitioner**

1. D.H. Udayangani Sandamali,  
Divisional Secretary, Divisional  
Secretariat,  
Pitabeddra.
2. Provincial Land Commissioner,  
Southern Land Commissioner's  
Department,  
Wakwella Road, Galle.
3. Land Commissioner General,  
Land Commissioner General's  
Department,  
1200/6, Rajamalwatta,  
Battaramulla.
4. Surveyor General Survey Department,  
No.150, Kirula Road,  
Narahenpita, Colombo 05.
5. The Attorney General,  
Attorney General's Department,  
Colombo 12.

6. Nilwala Vidulibala Company Pvt Ltd.  
50/08A, Siripa Road,  
Colombo 05.

## **Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel:

Esara Wellala for the Petitioner

Erusha Kalidasa with Chamith Dahanayake for the 6<sup>th</sup>  
Respondent.

Suranga Wimalasena, DSG for 1<sup>st</sup> to 5<sup>th</sup> Respondents

Argued on: 24.02.2023

Written Submissions on:

04.04.2023 (by the 6<sup>th</sup> Respondents)

Decided on:

28.06.2023

### **MOHAMMED LAFFAR, J.**

The Petitioner instituted the instant application seeking *inter alia* orders in the nature of writs of *Certiorari* quashing or amending the Long Term Lease marked 'P8' issued by the 3<sup>rd</sup> Respondent and quashing any decision taken by the Respondents to issue a Long Term Lease, mandates in the nature of writs of *Mandamus* accelerating the decision marked 'P15' and direction to the 4<sup>th</sup> Respondent to make a fresh plan with regard to the land/area in dispute. The Petitioner has also sought directions of this Court on the 1<sup>st</sup> to 4<sup>th</sup> Respondents to tender all documents pertaining to the Long Term Lease marked 'P8'.

The primary crux of this application relates to the Petitioner's complaint that part of his land has been encroached upon by the State and leased to the 6<sup>th</sup> Respondent. The Petitioner submits that he is the owner of the property morefully described in the schedule of the Deed bearing No. 6201 dated 26.07.2009 attested by A. M. G. Karunadasa, Notary Public (marked 'P1'). The Petitioner's predecessor had received the title from the Land Grant '□□□/5/□□□/40309' (marked 'P2B'). The Petitioner asserts that during the

year 2012, the 6<sup>th</sup> Respondent received a long-term Lease from the State (marked 'P8') and that the long-term Lease issued by the 3<sup>rd</sup> Respondent, the Land Commissioner, includes part or portion of the Land that belongs to the Petitioner. However, this position is disputed and contested by all Respondents.

As the matter involves a dispute regarding encroachment of a land/boundary, at this juncture this Court observes that it can only rightfully be determined by way of the relevant Title Plan. However, it is observed that the Petitioner had purchased the land upon a Crown Grant and does not possess or has not submitted the relevant Title Plan. In the absence of such a Title Plan, it is my considered view that this dispute cannot be determined in a fit and proper manner by this Court. It is also noted that the Petitioner had thereafter submitted a Plan prepared by a private surveyor (marked 'P3'). However, since it had not been prepared according to or based upon the Title Plan, it is my view that this plan does not carry any legal validity.

The Petitioner has been remiss in fulfilling his obligation to submit a pivotal plan that is integral to the case. Furthermore, the subsequent plan presented by the Petitioner lacks any substantive merit or relevance for consideration. Therefore, due to a lack of evidence and material documentation, the pertinent facts cannot be established in this Court as the said facts are in dispute. In such an instance this court cannot exercise its writ jurisdiction.

To rightfully determine this dispute regarding the encroachment of land as submitted by the Petitioner, a series of facts need to be determined and established by way of trial. Further, a Commission will have to be issued to the Surveyor General for superimposition of the Plan, Evidence would have to be led to identify certain particulars and establish encroachment. The relevant witnesses will also have to be cross-examined. Therefore, in order to suitably identify and establish the accurate physical boundary of the land in dispute, this dispute ought to be canvassed before the relevant District Court.

Janak De Silva .J in **Rajapaksha Pathiranage Namal Kumara v. Susantha Attanayake (CA (Writ) 240/2017 dated 04.04.2019)** observed as follows with regard to a case in which material facts were in dispute in relation to a boundary dispute:

*“Our courts have consistently held that **it will not exercise writ jurisdiction where the facts are in dispute** [Thajudeen v. Sri Lanka Tea Board and another (1981) 2 Sri. L.R. 471]. The Supreme Court has in Dr. Puvanendran and another v. Premasiri and two others [(2009) 2 Sri.L.R. 107] [2009 BLR 65] held that **the Court will issue a writ only***

***if the major facts are not in dispute and the legal result of the facts are not subject to controversy.***

*The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.*

*In fact, in Wijenayake and others v. Minister of Public Administration [(2011) 2Sri.L.R. 247] where the facts are somewhat similar to the instant case, this Court held that the material furnished suggest that a title/boundary dispute is agitated before the Kurunegala District Court and as such finality (subject to appeal) of title and boundary of the land in dispute lies in the action filed in the District Court of Kurunegala and that these are al disputed facts which cannot be decided in a writ court.*

*Accordingly, I hold that on the facts of the instant case, it is not a fit and proper case to exercise writ jurisdiction in relation to the quit notice marked A3.”*

Further, Administrative Law by H. W. R. Wade and C. .E Forsyth, (9th Ed. at page 260) reads as follows:

*"Although the contrast between questions which do and do not go to jurisdiction was in principle clear-cut, it was softened by the court's unwillingness to enter upon disputed questions of fact in proceedings for judicial review. Evidence of facts is normally given on affidavit: and although the rules of the court made provision for cross-examination, interrogatories, and discovery of documents, and for the trial of issues of fact, the court did not often order them. The procedure was well adapted for trying disputed facts. fI the inferior tribunal had to self-tried them, 'the court will not interfere except upon very strong grounds. There has to be a clear excess of jurisdiction' without the trial of disputed facts de novo. The questions of law and questions of facts were therefore to be distinguished, as was explained by Devilin J. (R. v Fulham etc. Rent Tribunal exp. Zerek).*

*Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there. But where the dispute turns to a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere. Lord*

*Wilberforce R( v Home Secretary Zamir) similarly described the position of the court, which hears applications for judicial review:*

*It considers the case on affidavit evidence, as to which cross-examination, though allowable does not take place in practice. It is, as this case will exemplify, not in a position to find out the truth between conflicting statements.*

*In case of conflict of evidence, the court will not interfere in the decision, where there is evidence to justify a reasonable tribunal reaching the same conclusion."*

I also observe that the 4<sup>th</sup> Respondent has already prepared a plan marked 'R11' in which the Petitioner's land has been distinctively identified. So the required relief sought by the Petitioner against the 4<sup>th</sup> Respondent as per prayer (d) has already been acted upon. However, the Petitioner does not accept this position. Once again, there is a contentious dispute regarding the facts of the case. Consequently, it is necessary to proceed to trial as the conflicting factual allegations require adjudication. The exercise of writ jurisdiction is precluded under these circumstances.

For the above reasons and particularly since material facts are in dispute, I refuse to grant any relief prayed for by the Petitioner. I dismiss the Application of the Petitioner and make no Order as to the costs of this Application.

*Application dismissed.*

JUDGE OF THE COURT OF APPEAL