

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

Case No: CA-Writ-0437-20

In the matter of an Application for mandates in the nature Writs of Certiorari, Prohibition and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Dr. Lindamulage Tiraj Niroshan Silva,
No. 3/5, Melvil Lane,
Samudra Malwatha,
Panadura.

PETITIONER

Vs.

1. Municipal Council of Moratuwa,
Galle Main Road,
Moratuwa.
2. K.A Thilakarathne,
Municipal Commissioner,
Municipal Council of Moratuwa,
Galle Main Road. Moratuwa.
3. Mrs. A.L.C.S Perera,
Surveyor General,
Surveyor Generals Department,
No.150, Kirula Road, Colombo 10.
4. IP Anil Masakorale,
OIC-Police Station,
Egoda Uyana, Moratuwa.
5. C.D. Wickramaratne,
Inspector General of Police (Acting),
Police Head Quarters,
Colombo 01.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Chrishmal Warnasuriya with T. Amirthalingam instructed by Ms. Mayomi Ranawaka for the Petitioner.

Sandun Senadhipathi for the 1st and 2nd Respondents.

S. Wimalasena, Deputy Solicitor General for the 3rd - 6th Respondents.

Argued on: 31.05.2023

Decided on: ~~06.05.2023~~ 23 - 6 - 2023 5/5

M.T. MOHAMMED LAFFAR, J.

On 10-12-2020, the Court directed the 1st and 2nd Respondents to maintain the status quo as it prevails as at 12.00 noon of 10-12-2020. On 30-03-2021, the said Order was extended until the next date. Similarly, on 06-12-2021, 25-03-2022, 29-07-2022, 29-11-2022, 16-12-2022 and 15-02-2023 the Order directing the 1st and 2nd Respondents to maintain the status quo of the subject matter had been extended until the next date.

When the matter was mentioned on 10-03-2023 for the objections of the Respondents, the learned Counsel for the Petitioner moved to extend the said Order and whereas the Court declined to extend the same.

In this scenario, by way of motion dated 22-03-2023, the learned Counsel for the Petitioner moved to support the prayer (e) of the Petition dated 06-12-2020, which reads thus;

(c). Grant and issue the following Interim Orders. *inter-alia*, that:

- i) Directing the 1st and 2nd Respondents to immediately issue directions to all of its Agents and Servants to cease and desist from any further entry or activity on the Petitioner's lands and premises bearing No. 2810 as morefully described in deeds bearing No. 955 dated 27-11-2020, No. 799 dated 18-03-2018 and No. 801 dated 31-03-2018 marked as P2a, P2b and P2c.
- i) Directing the 4th and 5th Respondents to act according to law forthwith, place under arrest all such persons engaged in unlawful activity in the Petitioner's lands and premises bearing No. 2810 as morefully described in deeds bearing No. 955 dated 27-11-2020, No. 799 dated 18-03-2018 and No. 801 dated 31-03-2018 marked as P2a, P2b and P2c and report such facts to the Hon. Magistrate having jurisdiction of the area and afford the Petitioner all such protection in law as necessary.

In this regard, on 31-05-2023, we heard the learned Counsel for the Petitioner in support of the said Application. We heard the learned Counsel for the 1st and 2nd Respondents and the learned Additional Solicitor General for the 3rd to 6th Respondents as well. The learned Counsel for the 1st and 2nd Respondents and the learned Additional Solicitor General are objecting to the issuance of the interim Orders on the basis that the learned District Judge of Moratuwa has refused to issue an Interim Injunction against the Respondents in case No. DLM. 971/21 instituted by the Petitioner.

Admittedly, the Petitioner has already instituted action in the District Court of Moratuwa in case No. DLM 971/21 seeking *inter-alia*, that;

“ ආ) මෙම දේපලෙහි මායිම් නිර්ණය කිරීම සඳහා මුල් අවස්ථාවේදීම කොමිසමක් පත්කරන ලෙසට නියෝගයක් නිකුත් කරන ලෙසත්,

ඇ) ඉහත 1 සිට 5 දක්වා වූ විත්තිකරුවන්ට පැමිණිලිකරුගේ උපලේකනාගත දේපලෙහි දකුණු මායිමෙන් දිවෙන ගාලුපාරේ සිට මුහුද දක්වා වූ මාර්ග අයිතියක් නොමැති බවට ප්‍රකාශන ආඥාවක් පැමිණිලිකරුගේ වාසියට ප්‍රදානය කරන ලෙසත්,

ඈ) මෙම ඉඩමේ හිමිකම පැමිණිලිකරු සතුවන බවට ප්‍රකාශන ආඥාවක් පැමිණිලිකරුගේ වාසියට ප්‍රදානය කරන ලෙසත්,

ඉ) 1 සිට 5 දක්වා විත්තිකරුවන් පැමිණිලිකරුට අයත් ඉහත කී දේපලට ඇතුළුවීම, පැමිණිලිකරුට අයත් උපලේකනාගත දේපලේ දකුණු මායිමේ පිහිටි අඩි තුනක පාර පුළුල් කිරීම හා දිගු කිරීම වළක්වාලමින් මුල් අවස්ථාවේදීම වාරණ නියෝගයක් ප්‍රදානය කරන ලෙසත්,

ඊ) 1 සිට 5 දක්වා විත්තිකරුවන් පැමිණිලිකරුට අයත් ඉහත කී දේපලට ඇතුළුවීම, පැමිණිලිකරුට අයත් උපලේකනාගත දේපලේ දකුණු මායිමේ පිහිටි අඩි තුනක පාර පුළුල් කිරීම හා දිගු කිරීම වළක්වාලමින් වළක්වාලමින්මෙම නඩුව අසා තීන්දුවක් ලබාදෙන තෙක් අතුරු තහනම් නියෝගයක් ප්‍රදානය කරන ලෙසත්, වේ.

උ) ඉහත 6 වන විත්තිකරු විසින් මෙහි උපලේකනයන්හි විස්තර කරන දේපල සම්බන්ධයෙන් නිවැරදි කඩස්තර සිතියමක් සකස් කරන තෙක් 7 වන විත්තිකරු පැමිණිලිකරුගේ අයිතිවාසිකම් වලට පටහැනි වූ කවර වූ හෝ කියාවක් සිදුකිරීමෙන් වළකාලමින් පැමිණිලිකරුගේ වාසියට අතුරු තහනම් නියෝගයක් ප්‍රදානය කරන ලෙසත්,”

It appears to this Court that the Petitioner in the instant Application is seeking the same interim reliefs from this Court that he failed to obtain from the District Court.

Having scrutinized the documentary evidence and the affidavits tendered by both parties, the learned District Judge has declined to issue interim injunctions against the Respondents. It is trite law that, when the Petitioner has already invoked the alternative

remedy provided in law he is precluded from invoking the jurisdiction of this Court which exercises discretionary jurisdiction.

In **Linus Silva Vs. The University Council of Vidyodaya University**¹ it was observed that;

"the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy."

It is settled law that, invoking the writ jurisdiction is not a right of the Petitioner, which is a discretionary remedy that could be granted by Court.

In **Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another**², the Court of Appeal decided that:

"There is a presumption that official and legal Acts are regularly and correctly performed. It is not open to the Petitioner to file a convenient and self-serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi-judicial act or judicial act. If a litigant wishes to contradict the record he must file necessary papers before the Court of first instance, initiate an inquiry before the Court and thereafter raise the matter before the Appellate Court so that the Appellate Court Page 10 of 14 would be in a position on the material to make an adjudication on the issues with the benefit of the Order of that Court."

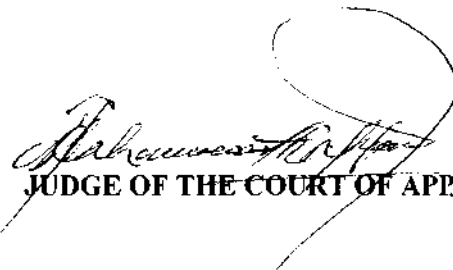
¹ 64 NLR 104.

² (1996) 2 SLR 70.

In the case of *Jayaweera Vs. Asst. Commissioner of Agrarian Services Ratnapura and others*³, Jayasuriya, J. observed that;

"A 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 the 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."

In these circumstances, the Application made by the Petitioner seeking interim reliefs as prayed for in the prayers to the Petition ~~is~~ refused.


JUDGE OF THE COURT OF APPEAL

S.U.B. Karalliyadde, J.

I agree.



JUDGE OF THE COURT OF APPEAL

³ 1996 (2) SLR 70.