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 Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Lakshman Nanayakkara,
   No. 23/2/A,
   Raja Mawatha,
   Rathmalana.

PETITIONER

CA No. CA/Writ/0444/2020

v.

1. Land Reform Commission**,**
   No. 475,
   Kaduwela Road,
   Baththaramulla.

2. The Chairman,
   No. 475,
   Kaduwela Road,
   Baththaramulla.

RESPONDENTS

And Between

1. Vocational Training Authority of Sri Lanka,
   354/2, 4th Floor,
   Nipunatha Piyasa,
   Elvitigala Mawtha,

Narahenpita,
Colombo 05.

2. The Chairman,
354/2, 4th Floor,
Nipunatha Piyasa,
Elvitigala Mawtha,
Narahenpita,
Colombo 05.

INTERVENIENT PETITIONERS

BEFORE : M. Sampath K. B. Wijeratne J. &
Wickum A. Kaluarachchi J.

COUNSEL : N. Kahawita, SC and A. Weerakoon, SC for the Intervenient-Petitioners.

Maheesha Dushyanthi for the Petitioner.

Harishke Samaranayake for the 1st and 2nd Respondents.

DECIDED ON : 28.06.2023

M. Sampath K. B. Wijeratne J.

Introduction

This is an application by the Petitioner seeking *inter-alia*, writs of *mandamus* directing the Respondents to issue a deed of exchange to the Petitioner, to take necessary legal action and to duly implement the provisions contained in Section 14 of the Land Reform Commission Act No. 1 of 1972.

Factual background

The Petitioner is one of the sons of Charles Nanayakkara who owned lands approximately in the extent of 1622 Acres ('P 1'). These lands were vested in the Land Reform Commission (hereinafter referred to as the 'LRC') by operation of Land Reform Commission Law No.1 of 1972. Subsequently, the

Petitioner made a request to the 1st and 2nd Respondents to release the lands in favour of the seven children of the late Charles Nanayakkara, in terms of Section 14 of the LRC Act. The Respondents acceded to the request and agreed to transfer lands containing an extent of 125 Acres among the said children. According to the Petitioner, the Respondents *inter alia* decided to exchange the land called Gallindawatta in Galle in an extent of 3 Acres in favour of the Petitioner in lieu of the land called Athhondagala Nindagama which was vested in the LRC from Charles Nanayakkara. The Petitioner was informed to pay the difference in the value of the two lands and to produce a survey plan. Thereafter, the Petitioner paid the relevant charges for the land valuation ('P 10'). Consequently, the Petitioner had been asked to prepare a deed of exchange in favour of the Petitioner and accordingly, the Petitioner handed over the draft deed to be signed by the Respondents. But the Respondents failed to hand over the signed deeds back to the Petitioner and the Petitioner made inquiries from the Respondents regarding the delay ('P11' and 'P 12'). Upon the failure of the Respondents, the Petitioner instituted these proceedings against the LRC and its Chairman seeking writs of *mandamus* compelling the issuance of the deed of exchange in favour of the Petitioner and other consequential reliefs.

The Intervenient Petitioners, the Vocational Training Authority of Sri Lanka (hereinafter referred to as the 'VTASL') and its Chairman made an application on 19th January 2023 seeking to intervene in the instant application.

The 1st and 2nd Respondents, LRC, and its Chairman filed their objections on 9th February 2023 with regard to the Petitioner's application and disclosed that the land named Gallindawatta was alienated to the VTASL on a decision taken in or around 19th August 2010 and upon payment of all dues, an extent of 13A. 03 R. 39.7 P. was alienated with the VTASL. However, the Respondents admit that no deed was executed in favour of VTASL.

Accordingly, the Respondents submitted that the land called Gallindawatta has already been alienated to VTASL in 2010 and therefore, cannot alienate again to the Petitioner.

Nevertheless, the Respondents admitted that a deed of transfer was signed in favour of the Petitioner. When the Respondents were made aware that the land

had already been alienated to the VTASL, the 2nd Respondent had to hold issuing the deed[1].

It was further submitted that consequent to the alienation of the land to VTASL, at the request of the 1st Respondent VTASL agreed to release a portion of the land to build an eye hospital. The Respondents submitted that due to an administrative error, the Respondents proceeded to release the same portion to the Petitioner.

The Petitioners who sought to intervene in this matter submitted that, their interests would be gravely prejudiced if their intervention is not allowed. The Petitioners who sought to intervene have submitted the document marked 'X3' in proof of the fact that they have deposited three million thirteen thousand five hundred eleven rupees (Rs. 3,013,511.00) with the LRC as far back as 28th January 2009.

Analysis

I will now turn to the question of whether the intervention of parties is permitted or not in writ applications.

It appears that there were two schools of thought regarding the intervention of parties in writ applications. I would call that the lenient approach and the strict approach.

I will start the analysis with the divisional bench decision of this Court in the case of *Weerakoon and another v. Bandaragama, Pradeshiya Sabhawa (C.A.)*[2] (hereinafter referred to as *'Weerakoon* case'). In this case, the Court of Appeal having considered a number of decisions of this Court and of the Supreme Court pertaining to the intervention of parties in writ applications, refused the application made for intervention.

Mahanayaka Thero, Malwatta Vihare v. Registrar General (S.C.)[3] is a previous decision that was considered in the above judgment as well. This was an application for a writ of *mandamus* and the Supreme Court allowed the party to intervene and was also allowed to submit an affidavit. It is pertinent to note that at the time this judgment was delivered, the apex Court of this country was the Privy Council, and therefore, the persuasive value of this

[1] Paragraph 20(a) of the Objections.
[2] 2012 (B. L. R.) 310, decided on 22nd November 2011.
[3] 39 N.L.R. 186.

judgment of the Supreme Court is of a judgment of this Court. On the other hand, as it was observed by His Lordship Saleem Marsoof J., sitting in Court of Appeal (as His Lordship then was) in the case of *Harold Peter Fernando v. Divisional; Secretary, Hanguranketha and two others (C.A.)*[4] (hereinafter referred to as *Harold Peter Fernando* case) this is not a judgment on the question as to whether intervention should be allowed or not. Nevertheless, the fact remains that the Court allowed a party to intervene in the writ application.

Another such case is *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero (S.C.)*[5]. On a careful consideration of this case, it appears that the Supreme Court has only considered the question of making necessary parties to a writ application and had not determined the issue of intervention of parties in a pending writ application. The Supreme Court, without determining the issue of intervention, directed the Court of Appeal to hear and decide the matter relating to intervention, before proceeding to hear the Petitioner's application on the merits. Accordingly, the above case cannot be considered a decision of the Supreme Court wherein a party was allowed to intervene in a writ application.

N. D. Chandrasena and two others v. S. F. de Silva (Director of Education) (S.C.)[6] (hereinafter referred to as *N. D. Chandrasena* case) is a case where a party sought a writ of *certiorari* and *mandamus* against the Director of Education. During the pendency of the application a party sought to intervene and was objected to by the Petitioner. The Supreme Court upheld the objection and concluded that in applications for writ of *mandamus* or *certiorari* persons other than the parties to the application are not entitled to intervene. It was further, observed that although the Rules made by Courts in England allow intervention in applications for writ of *mandamus*, the Rules formulated by the Supreme Court of Sri Lanka do not enable intervention.

Same as the aforementioned case, at the time this decision was made, Supreme Court was not the apex Court of this country and it was the Privy Council. Therefore, the persuasive value of this decision is also similar to a decision of the present Court of Appeal.

[4] 2005 [B. L. R.] 120.
[5] [2011] 2 S.L.R. 258, Supreme Court minutes dated 29th July 2009.
[6] 63 N. L. R. 143.

In the aforementioned case of *Harold Peter Fernando*[7] His Lordship Saleem Marsoof J., has held that 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. Further, His Lordship observed that Article 134 (3) of the Constitution provides that the Supreme Court may in its discretion grant any other person a hearing as may appear to the Court to be necessary, in the exercise of his jurisdiction under that Chapter but, there is no such corresponding provision in the Constitution or any other law in respect of the Court of Appeal.

In the divisional bench decision of this Court in the case of *Weerakoon*[8] Their Lordships followed the same line of reasoning and held that the Court of Appeal (Appellate Procedure) Rules, 1990 do not provide for third-party interventions in writ applications.

In the above case His Lordship Ranjith Silva J., has cited the judgment in the case of *Tyre House (Pvt) Ltd v. Director General Customs (C.A.)*[9] wherein His Lordship Dr. Ranarajah J., has observed that intervention 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. The facts of the case, as stated by His Lordship Ranjith Silva J., are that the person who sought to intervene neither had a common interest with the Petitioner nor, had an interest in preventing the abuse of power by the Director General of Customs. The Court observed that Court cannot permit outsiders to offer the Respondent moral support or cheer him along in his battle with the Petitioner.

Jetwing Hotel Management Service (Pvt) Ltd v. Securities and Exchange Commissioner and others (C.A.)[10] is a case where Sathya Hettige J., followed the decision in the case of *Jayawardane v. Minister of Health and others (C.A.)*[11] wherein His Lordship concurred with Anil Gunarathne J.

[7] *Supra* note 4.
[8] *Supra* note 2.
[9] CA. Application No. 730/95, Court of Appeal minutes dated 5th June 1996.
[10] CA. (Writ) Application No. 29/31, Court of Appeal minutes dated 31st May 2010.
[11] CA. (Writ) Application No. 978/2008, Court of Appeal dated 21st May 2009.

His Lordship Ranjith Silva J., commenting on the aforementioned two judgments wherein their Lordships allowed parties to intervene in writ applications, observed that both decisions are *per-incuriam* and are obnoxious to the Rules. Further, His Lordship has stated that in the judgment of the latter case, the binding judgment of the Supreme Court, *N. D. Chandrasena*[12] was not followed and no reasons for deviating from the Supreme Court judgment were assigned. His Lordship observed that it is totally repugnant to the principles of *stare decisis.* Further, His Lordship observed that the judgment in *Harold Peter Fernando v. Divisional; Secretary, Hanguranketha and two others (C.A.)*[13] and *Tyre House (Pvt) Ltd v. Director General Customs (C.A.)*[14] had not even been cited. His Lordship commenting on the judgment went on to state that the only matter considered in the judgment was whether the party seeking to intervene was a necessary party, ignoring the Rules. Further, His Lordship observed that in writ applications it is strictly prohibited for the Court to decide on controversial issues where the facts are in dispute. Finally, this Lordship Ranjith Silva J., refused the application for intervention.

Upon careful consideration of the Divisional Bench decision of this Court in the aforementioned case of *Weerakoon*[15]*,* I observe that their Lordships have refused the application of the Petitioner who sought to intervene on the basis that the Rules do not provide for such a cause. His Lordship has also stated that if a necessary party has not been added, then the Respondent could take up that objection and it would be fatal to the application of the Petitioner. Further, in consideration of the facts of the case, His Lordship has stated that in particular, the Petitioner who sought intervention has not alleged that the Petitioners are acting in collusion or in conniving with the Respondents. Therefore, it appears that His Lordship has also reflected on the facts of the case in arriving at the conclusion. Be that as it may, the *ratio decidendi* of the judgment is that the Rules do not provide for intervention.

In the more recent case of *Meditek Devices (Private) Limited v. Director, Medical Technology and Supplies, and others (C.A.)*[16] (hereinafter referred to as *Meditek Devices (Private Limited)* case) another division of this Court considered the judicial precedents in favour of, as well as against the

[12] *Supra* note 6.
[13] *Supra* note 4.
[14] *Supra* note 9.
[15] *Supra* note 2.
[16] CA. Writ Application No. 99/2014, Court of Appeal minutes dated 26th January 2017.

intervention of parties in writ applications. His Lordship Thurairajah J., sitting in Court of Appeal (as his Lordship then was) considered the decision in the case of *Government School Dental Therapist Association v. Director General of Health Services and others*[17] wherein Court allowed intervention on the basis that;

'Each of the Intervenient Petitioners in the present case cannot be said to be a different "meddlesome busybody" or a "meddlesome interloper" who does not have a sufficient interest in the pending application. I would therefore adopt the liberalized rules in regard to the standing of a party entitled to seek a remedy to the case of an intervenient who similarly has a sufficient interest in the subject matter of pending writ application and on that basis to permit the intervention.'

In the above case, His Lordship Ismail J., sitting in Court of Appeal (as His Lordship then was) has allowed a Registered Trade Union and a Dental Surgeon to intervene in the writ application filed by another Trade Union and three of its members. His Lordship Ismail J., has cited observations made by His Lordship Wanasundara J., in the case of *Jayanetti v. Land Reform Commission (S.C.)*[18] wherein His Lordship made the following observations regarding the Rules in dealing with a question of addition of parties in a fundamental rights application.

'As far as the rules go, it would appear that they deal with the bare skeleton of procedure relating to a proceeding under Article 126. Part VI of the Rules which deals with these procedural matters consists of only four Rules, i.e Rules 63-66. It is inconceivable that these four Rules are comprehensive and all-embracing and can provide for every situation that could arise in the exercise of our jurisdiction under Article 126. Incidentally, even the Civil Procedure Code with more than 800 sections is said not to be exhaustive.'

It was further observed,

'This is an extensive jurisdiction and it carries with it all implied powers that are necessary to give effect and expression to our jurisdiction. We would include within our jurisdiction, inter alia, the power to make interim orders and to add persons without whose presence questions in issue cannot be completely and effectually decided.'

[17] CA. Writ Application No. 861/93, Court of Appeal minutes dated 25th July 1994.
[18] [1984] 2 S. L. R. 172 at p.179.

In my view, the above observations made by the Supreme Court in a fundamental rights application cannot be applied in an application for a prerogative writ. As I have already stated above, the Supreme Court has an extraordinary discretionary power under Article 134 (3) of the Constitution to grant a hearing to persons that the Court of Appeal doesn't have.

In *Jayawardhane v. Ministry of Health and others (C.A.)*[19] the Court allowed the intervention on the ground that,

'What the court at this point of time needs to consider is whether the intervenient party is a necessary party and having such a party in the case would in all circumstances assist court in considering the merit and demerits of the application before court'.

Ramsamy v. Ceylon State Mortgage Bank (S.C.)[20] is another case where the Supreme Court allowed a party to be added as a Respondent. In this case, the application to add a party was resisted on the ground that the Petitioner is guilty of *laches*. Nevertheless, the Supreme Court has ruled against it. Furthermore, as I have already stated in this order, the Supreme Court has a wide discretion in terms of Article 134 (3) of the Constitution to give a hearing to any person.

In *Illandari Dewage Ransinghe and others v. Commissioner General of Excise and others and Udawaththe Nanda Thero and others (S.C.)*[21] Court allowed the intervention and observed that;

'There is no specific rule of court in the court of appeal rules in Sri Lanka which governs the issue the intervention applications by third parties in Writ applications. However, our courts have considered the issues of sufficient cause and interest of affected parties in exercising the inherent and discretionary power of the court to allow their intervention applications.'

The decisions in the aforementioned two cases of *Weerakoon*[22] and *N. D. Chandrasena* was also considered in *Meditek Devices (Private Limited).*

In the case of *Dr. Shayamal Buddjima Jayasinghe v. Anura Jayawickrama, Secretary, Ministry of Health and others (C.A.)*[23] the decisions in the cases of

[19] CA. Writ Application No. 978/2008, Court of Appeal minutes dated 21st May 2009.
[20] [1976] 78 N. L. R. 510 at p. 517.
[21] CA. Writ Application No. 127/10, Court of Appeal minutes dated 11th May 2011.
[22] *Supra* note 2.
[23] CA. Writ Application No. 408/2015, Court of Appeal minutes dated 11th January 2017.

N. D. Chandrasena[24] and *Weerakoon*[25] were followed and the application for intervention was refused on the ground that Rules do not provide for interventions in writ applications. It was cited the following extract from the judgment of His Lordship Thambiah J., in the case of *N. D. Chandrasena.*

'For the additional reason that the recognition of such a *principle would open the floodgates,* as *it were,* to a *torrent of similar applications, and thus impede the functioning of the courts.'*

It was also considered the judgment in the case of *Janaka Lakshman Pallewela v. Dr, Ajith de Mendis*[26] wherein the lenient approach was adopted and allowed the intervention.

Another case considered was *State Graphite Corporation v. Fernando*[27]. However, this was not a case where a party was allowed to intervene in a pending writ application but, a case where the Respondent was allowed to make a counterclaim for a writ of *mandamus* in the application for a writ of *certiorari.*

Finally, concurred with the decision in the case of *Weerakoon*[28] wherein Their Lordships considered a series of judgments on the lenient approach as well as the strict approach and held that the Rules do not provide for intervention of parties in writ applications.

Focusing on the issue of *stare decisis*, in the case of *Walker Sons & Co. (U.K.) Ltd. v. Gunathilake and Others (C.A.),*[29] Thamotheram J., having considered the judgment by Basnakyake C.J. in the case of *Bandahamy v. Senanayake (S.C.),*[30] observed that as a rule, two judges sitting together follow the decision of two judges and where two judges sitting together are unable to follow a decision of two judges, the practice is to reserve the case for the decision of a fuller bench.

Therefore, the doctrine of *stare decisis* demand that this Court must follow the judicial dicta of this Court as well as of the higher Courts. As it was

[24] *Supra* note 6.
[25] *Supra* note 2.
[26] CA. Writ Application No. 453/2007, Court of Appeal minutes dated 21st March 2013.
[27] [1981] 2 S.L.R. 401.
[28] *Supra* note 2.
[29] [1978-79-80] 1 Sri.L.R. 231.
[30] 62 N.L.R. 313.

observed by His Lordship Soza J., sitting in the Court of Appeal (as His Lordship then was) in the case of *Ramanathan Chettiar v. Wickramarachchi and others* that:[31]

'*The doctrine of stare decisis is no doubt an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs as well as a basis for the orderly development of legal rules.'*

I, therefore, find that it is pertinent for this Court to consider in this order the binding effect of the aforementioned judicial precedents. As I have already stated above, almost all the aforementioned judgments delivered by the Supreme Court were delivered at a time the Supreme Court was not the apex Court of this country. Therefore, the binding effect of these judgments on this Court is equivalent to another judgment delivered by this Court. Even otherwise, the Supreme Court possesses a special power under section 134 (3) of the Constitution to give a hearing to a person. The other orders cited above were delivered by two judges sitting in the Court of Appeal and therefore, have the same persuasive value as an order delivered by two judges sitting together in this Court. As it was held in the aforementioned case of *Walker Sons & Co. (U.K.) Ltd. v. Gunathilake and others (C.A.)*[32] if another two judges sitting together are unable to agree, the practice is to reserve the matter for a decision of a fuller bench. However, as I have stated above in this order, there are conflicting decisions by the Court of Appeal by two judges sitting together in favour as well as against the intervention of parties. Therefore, two judges sitting together are at liberty to follow either of those two conflicting decisions. But, as of today, there is a decision by a Divisional Bench of this Court in the case of *Weerakoon*[33] where the question on the intervention of parties in writ applications had been specifically decided. Their Lordship delivering the judgment identified the question before their Lordship in the following manner[34].

[31] [1978-79] 2 Sri.L.R. 395, at p.410.
[32] *Supra* note 29.
[33] *Supra* note 2.
[34] Ibid at p. 311.

'*The question before this Court is whether the intervenient Petitioner is entitled to make this application for intervention in the absence of any provision in the Rules of this Court enabling a party to intervene in writ applications*'

In determining the above question, Their Lordships have held that the Court of Appeal (Appellate Procedure) Rules, 1990 do not provide for third-party interventions in writ applications. In the judgment delivered by His Lordship Ranjith Silva J., His Lordship considered the observations made by His Lordship Thambiah J., in the aforementioned case of *M. D. Chandrasena*[35], to the effect that English common law has been adopted by our Courts to determine the principles that should guide the Court in either granting or refusing the writs of *mandamus* or *certiorari* but, it has never been the practice of this Court to allow persons other than those who are parties to the application for prerogative writs to intervene in proceedings. Further, His Lordship Thambiah J., had reached the conclusion that the rules established by the English courts enabling the Court to allow a party sought to intervene to take part in proceedings initiated by way of writ of *mandamus,* clearly have no application to Sri Lanka.

Nevertheless, a possible argument is that since our own Rules do not provide for intervention, English Rules should apply as a *casus omisus.* Focusing on this question, the Supreme Court of Sri Lanka is empowered to make Rules under Article 136 of the Constitution governing our own procedure *inter alia* with regard to the writ applications. Nevertheless, the Rules made in respect of applications made to the Court of Appeal do not contain Rules enabling a person to make an application to intervene in an application for a writ of *mandamus* or *certiorari* to which he is not a party. The aforementioned judgments demonstrate that the controversy over interventions in writ application existed for well over eight decades. Yet, the fact that the Supreme Court did not make any Rules allowing interventions. Even when the Court of Appeal Rules, of 1990 were promulgated, such Rules were not made.

The decision in the case of *Weerakoon*[36] had been followed by the Court of Appeal in the subsequent cases *inter alia* of *Dr. Shayamal Buddjima*

[35] *Supra* note 6.
[36] *Supra* note 2.

Jayasinghe case, *Meditek Devices (Private) Limited* case, *K. Gunapalan v. Hon. Minister of Rural Economic Affairs*[37] and *Amarakoon Dissanayake Wimalasena v. Piyaratne Wickramage, Manager Special Development Services Society*[38]case.

However, in the more recent case of *Teejay Lanka PLC v. Center for Environmental Justice*[39] another division of this Court declined to follow the Divisional Bench decision in the case of *Weerakoon* and allowed a party to intervene. The view expressed was that as it was interpreted by the Privy Council in the case *Nakkuda Ali v. Jayaratne*[40] the term '*according to law'* in Section 42 of the Court Ordinance should mean the relevant Rules of English common law and therefore, this Court must resort to the Rules of English common law in deciding a person's entitlement to intervene in a writ application. At present the power to issue mandates in the nature of writs is governed by Article 140 of the Constitution and the same term *'according to law'* is found in the said Article as well.

However, in the judgment of *M.D. Chandrasena*, cited above in this case, His Lordship Thambiah J., observed that it is only the principles regarding the issuance of writs are governed by the English common law and not the procedure set out in Rules. As far as procedure is concerned, we have our own Rules promulgated under Article 136 of the Constitution. This view had been re-affirmed by three judges of this court in delivering the Divisional Bench judgment in the case of *Weerakoon*.

Furthermore, the judgment does not assign any reasons for deviating from the previous precedents. This affects the rule of *stare decisis.*

Hence, I am not inclined to accept the reasoning in the aforementioned case of *Teejay Lanka*.

In this backdrop, I observe that the Divisional Bench that delivered the judgment in *Weerakoon*[41] case and Their Lordships who followed the said decision in their subsequent judgments have lost sight of the judgment of the

[37] CA. Writ Application No. 431/2016, Court of Appel minutes dated 7th June 2018.
[38] CA. Writ Application No. 173/2015, Court of Appel minutes dated 3rd July 2018.
[39] CA. Writ Application No. 340/2020.
[40] [1950] 51 N. L. R. 457.
[41] *Supra* note 2.

Supreme Court in the case of *J.S. Dominic v. Hon. Jeevan Kumarathunga, Minister of Lands and others (S.C.)*[42]. In this case, His Lordship Saleem Marsoof J., (N.G. Amaratunga J. and C. Ekanayake J. agreeing) has departed from His Lordship's earlier decision in the case of *Harold Peter Fernando*[43] and allowed two parties to intervene in an application for a writ of *certiorari*.

In the former case, special leave to appeal was granted, *inter alia*, on the specific question of whether the Court of Appeal erred in dismissing the application to add the two named parties. Answering the said question, His Lordship Saleem Marsoof J., analysed the relevant facts extensively and concluded that the Court of Appeal erred in not allowing the intervention.

It is important to note that His Lordship did not address the issue of lack of rules for intervention in this decision, which His Lordship did in the previous decision.

No doubt can exist, *J.S. Dominic v. Hon. Jeevan Kumarathunga, Minister of Lands and others (S.C.)*[44] being a Supreme Court judgment is a judicial precedent binding upon this Court. However, in my view, this is not a case where the general question of the intervention of the parties in writ applications is discussed and therefore cannot have a general application. Yet, this is an authority for the proposition that parties can be added in writ applications.

Next, I will consider the issue of not naming necessary parties in a writ application. If a party whose presence is really necessary is not named as a Respondent, the Petitioner runs the risk of his application being dismissed. *Rawaya Publishers and others v. Wijedasa Rajapaksha, Chairman Sri Lanka Press Council and others (C. A.)*[45], *Arulsamy v. Upcountry People's Front and others (C. A.)*[46] and *Ghananasanbanthan v. Rear Admiral Perera and others (C. A.)*[47] provide judicial precedent for this proposition. In my view, when an application is dismissed on a technicality as such, the Petitioner is left

[42] S.C. Appeal No. 83/08, S.C. minutes dated 7th December 2010.
[43] *Supra* note 4.
[44] *Supra* note 42.
[45] [2001] 3 Sri L. R. 213 at 216.
[46] [2006] 3 Sri L. R. 386.
[47] [1998] 3 Sri L. R. 169.

without recourse. As opposed to this, frivolous applications for intervention could be remedied by ordering costs.

As far as I am concerned, the aforementioned two propositions, dismissing a writ application for want of parties and allowing interventions cannot stand together. Those are in conflict with each other. In view of the conflicting judgments on these issues, from my standpoint, this is a matter that needs to be resolved either by a Divisional Bench of this Court or by the Supreme Court.

In the recent case of *Porakara Mudiyanselage Aruna Samantha Kumara v. T. A. C. N. Thalangama, Returning Officer, Gampola Urban Council*[48] His Lordship Arjuna Obeysekere J., sitting in the Court of Appeal (as his Lordship then was) answered the above question in a progressive manner. His Lordship cited the observations made by His Lordship Janak de Silva J., in the case of *Hatton National Bank PLC v. Commissioner General of Labour and others*[49] wherein it was observed, '*the rule is that all those who would be affected by the outcome of an application should be made Respondents to such applications*.' His Lordship added that, *'the position therefore is that if a necessary party is not made a Respondent, the application is liable to be dismissed in limine. I use the word liable as, for reasons that I would advert to later, it is a decision that is within the discretion of Court that must be exercised judicially having carefully considered the facts and circumstances of each case. I shall now consider the factual circumstances of the first objection.'*

Accordingly, in a situation where the Petitioner and the Respondents act in collusion and/or connivance, the Court could dismiss the petition on that ground alone.

Having analysed as above, His Lordship allowed the parties to intervene in this case. However, His Lordship alluded that, *'I must state that my conclusion may have been different if the impugned decision had been taken by an individual and that person had not been named a party, or there was no application to add necessary parties or the application to add necessary parties had not been made in a timely manner.'*

[48] CA (Writ) Application No. 238/2020, Court of Appeal minute dated 21st May 2021.
[49] CA (Writ) Application No. 457/2011, Court of Appeal minute dated 31st January 2020.

Accordingly, the view expressed by His Lordship is that whether to allow intervention or not depends on the facts of each case.

Falling to the facts of the case at hand, the Petitioners sought to intervene in this application in order to present their case that the land had already been alienated to the VTASL and on the said ground to resist the application of the Petitioner[50]. However, the Respondents have already divulged those facts to this Court and tendered the relevant documents as well. More importantly, the Respondents have resisted the application of the Petitioner on the basis that the land is already alienated to VTASL[51]. Therefore, I am of the view that by rejecting the application of the Petitioners who sought intervention, their rights will not be affected. Hence, the intervention of Petitioners is unwarranted.

In light of the above analysis, I dismiss the application made by the Petitioners sought to intervene. No costs.

The substantive application will be fixed for argument.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL

[50] The Petition for intervention dated 19th January 2023.
[51] Paragraph 11(a) at the objections dated 9th February 2023.