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 *Writ of Mandamus* under article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Piyasena Subasinghe,
1367/1, Subasinghe Mawatha,
Pannipitiya.

PETITIONER

CA/ WRIT/ 483/ 2010

Vs,

1. Kanthi Kodikara,
   Hon. the Mayor,
   Urban Council,
   Maharagama.

2. Urban Council,
   Maharagama.

RESPONDENTS

And now,

1. Waduwawarage Badrani Manel Perera Seneviratne,
   136/2, Sangamitta Mawatha,
   Bogahawatta Road,
   Pannipitiya.

2. Poramba Liyanage Hemawathie,
   136/7, Sangamitta mawatha,
   Bogahawatta Road,
   Pannipitiya.

3. Nanayakkara Dolage Abeysena,
   1363/5, Sangamitta Mawatha,
   Bogahawatta Road,
   Pannipitiya.

INTERVENIENT- PETITIONERS

Vs,

Piyasena Subasinghe,
1367/1, Subasinghe Mawatha,
Pannipitiya.

PETITIONER-RESPONDENT

Vs,

1. Kanthi Kodikara,
   Hon. The Mayor,
   Urban Council,
   Maharagama.

2. Urban Council,
   Maharagama.

RESPONDENTS- RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA) &**

H.C.J. Madawala J

Counsel: Rohan Sahabandu PC with D. Prerera, S. Withanage,and Uditha Collure for the **Intervenient-Petitioners,**

Uditha Egalahewa PC with Sumedha Mahawanniarachchi for the **Petitioner,**

S.K. Wikremarchchi with K. Alwis for **Respondents-Respondents,**

Argued on: 09.09.2015

Written Submissions on: 13.11.2015

Judgment on: 18.12.2015

Order

Vijith K. Malalgoda PC J (P/CA)

Intervenient–Petitioners to the present application namely Waduwawarage Badrani Manel Perera, Poramba Liyanage Hemawathie and Nanayakkara Dolage Abeysena had come before this court to intervene to a Writ Application filed before this court by Petitioner-Respondent Piyasena Subasinghe seeking inter alia,

c). Grant a *Writ of Mandamus* against the Respondents directing them to erect a board at the beginning of the road in question indicating the name thereof as "Subasinghe Mawatha" and use the said name for the purposes of rates and taxes and in all official communications pertaining to the said road.

The said Petitioner–Respondent had filed the present action before this court and supported for notices on 20.10.2010. Court issued notices on 1st and 2nd Respondents returnable for 29.11.2010. When the said matter came up for notice returnable on 29.11.2010, the 1st and 2nd Respondents were represented by counsel, and the said counsel had brought to the notice of court of a motion filed by

his instructing attorney along with the statement of objection and an affidavit from the 1st Respondent.

In the said documents tendered, the Respondents have informed that they have no objection to the relief being granted as prayed for in paragraph 'c' of the prayer.

In view of the submissions made by the parties supported by the statement of objection and the affidavit of 1st Respondent, Court made order granting the relief prayed for, i.e. "a *Writ of Mandamus* against the Respondents directing them to erect a board at the beginning of the road in question indicting the name thereof as 'Subasinghe Mawatha' and to use the said name for the purpose of rates and taxes and in all official communications pertaining to the said road" and accordingly the proceeding were terminated.

On 11th August 2011 a Petition and affidavit was filed before this court by 28 Intervenient - Petitioners seeking intervention to the said case, which was a matter concluded 9 months before,

However by motion dated 16th September 2011 the instructing attorney had moved this court to mention the said case before this court in order to withdraw the said application for intervention with liberty to file fresh application.

The said motion for withdrawal was supported before court on 29.09.2011 and the application for intervention by 28 Intervenient-Petitioners were withdrawn with liberty to file fresh application.

On 16.12.2011 three Intervenient-Petitioners have come before this court and filed papers for intervention. The said application for intervention was supported before this court on 16.02.2012 and court decided to issue notices on the Petitioner-Respondent and Respondents-Respondents.

Both the Petitioner-Respondent and Respondents-Respondents have filed objection for the said intervention and the matter was supported before us to consider granting intervention.

As observed by me earlier, out of the 28 parties who came before this court in September 2011 only 3 parties seek intervention now. At the inquiry before us the main argument of the intervenient party was that there was collusion between the Petitioner and the 1st Respondent, where the 1st Respondent had suppressed a decision by the Maharagama Urban Council to re-name the road in question as "Sangamitta Mawatha" and agreed in court to erect a board at the beginning of the road as "Subasinghe Mawatha" and to use the said name for all official purposes.

There was no material placed before this court by the Intervenient –Petitioners, that the said conduct of the 1st Respondent (as alleged by the Intervenient-Petitioners) was questioned before the Urban Council and her conduct was challenged. Out of the 28 parties who came forward, only 3 parties have now come before this court which is a minority. The three Intervenient-Petitioners who have come before this court are not members of the 2nd Respondent and therefore they are total outsiders to the so called decision by the 2nd Respondent Urban Council.

The Intervenient-Petitioners have submitted some documentation to show that the said road was also referred to as "Sanmitta Mawatha" during this period but this court is not inclined to consider them at this stage, since what is required now is to consider the application for intervention.

In the case of ***Harold Peter Fernando Vs. The Divisional Secretary Hanguranketha and two others 2005 BLR 120*** *CA 456/2003* it was held that,

I. 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 be followed by this court in dealing with a application inter alia for prerogative Writs, do not provide for third party interventions in these proceedings.

II. There is no corresponding provision in the Constitution or any other Law seeking to confer on a third party a right of Article 134 (3) of the Constitution, as it illustrates the restraint that is exercised by even apex court of the country in dealing with

applications for third party intervention in the context of the supervisory jurisdiction of court which is exercised with a view of keeping administrative authorities within their lawful bounds.

When reaching the said decision Marsoof J discussed several decisions by the Court of Appeal and preferred to follow strict adherence to the Rules of this court.

In the case of ***Government Dental Therapist Association V. George Fernando Director of Health Services*** CA Application *86/93* CA minutes dated 27.07.1994 Amir Ismail J observed "Each of the Intervenient –Petitioners in the present case cannot be said to be a meddlesome busy body or a meddlesome interloper who do not have sufficient interest in the **pending application**. I would therefore adopt the liberalized rule 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 a **pending writ application** and this basis permit intervention. (emphasis added)

Even if this court decides to follow the liberalized rules in permitting intervention, I observe that the Intervenient-Petitioners to the present applications will not succeed in their application for intervention.

The present case is not a pending case but it is a concluded case. The Intervenient-Petitioners have supported the present application for intervention 15 months after the conclusion of the Writ Application.

As pointed out by me earlier, Intervenient–Petitioners have failed to establish that they have a sufficient interest in the said case. The mere allegation that there was collusion between the Petitioner-Respondent and 1st Respondent –Respondent and that the said road was also referred to as 'Sangamitta Mawatha' is not sufficient to establish "sufficient interest" in this matter for the Intervenient-Petitioners to intervene.

It was further observed by this court that the Intervenient-Petitioners are total out siders to the so called decision by the 2nd Respondent Urban Council and therefore the Intervenient –Petitioners have failed to establish that they have a sufficient interest or they are a party which can assist the court to come to a correct decision.

This court is also mindful of the fact that this case is a concluded case now.

In the case of the Board of ***Trustees of the Tamil University Movement Vs. F.N de Silva and Another 1981 (1) Sri LR 350*** full bench of the Supreme Court held.

This is a supervisory power and not an appellate jurisdiction. The matter has not come up to the Court of Appeal by way of Appeal from the Order of the Labour Tribunal, but it has originated in the Court of Appeal itself by virtue of what may be termed as original jurisdiction of that court. In respect of applications for *Writ of Habeas Corpus or Quo Warrantor* for instance there need not be any prior proceedings in a Court or Tribunal. A final order is made. In the case of *Writ of Certiorari* if a Writ is allowed the order complained, of is quashed and that is final. Refusal is equally final. As far as the Court of Appeal is concerned its order ends the dispute which is the subject of the application...

For the reasons discussed above, I see no merit in the application for intervention by the Intervenient-Petitioners and therefore dismiss the application for intervention by them. Intervention not allowed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE CUORT OF APPEAL