

**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 and/or Prohibition in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka*

C A (Writ) Application No. 359/ 2014

W D Gunaseeli Perera,  
No. 262,  
Depanama,  
Pannipitiya.

**PETITIONER**

Vs.

1. Peoples Bank,  
Head Office,  
14<sup>th</sup> Floor,  
No. 75,  
(P O Box 728),  
Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.

2. K W M M Sarojini,  
Legal Officer/ Inquiring  
Officer,  
Peoples Bank,  
Land Redemption  
Department,  
No 220,  
Deans Road,

Maradana,  
Colombo 10.

3. Nanayakkara Atalugamage

Chintha Nadee de Silva  
Jayasinghe,  
197/2,  
Rathmaldeniya Watta,  
Arawwala,  
Pannipitiya.

4. Subasinghe Gamaralalage

Gunawardene Subasinghe,  
197/2,  
Rathmaldeniya Watta,  
Arawwala,  
Pannipitiya.

5. Gamini Senarath,

Chairman,  
Peoples Bank.

6. Jehan P Amaratunga,  
Director.

7. Ms Lakshmi Kumari  
Sangakkara,  
Director.

8. Mrs Dharma N Gammanpila,  
Director.

9. Mr Pawara Dassanayake,  
Director.

10. G K D Amarawardena,  
Director.

11. R M P Ratnayake,  
Director.
12. Piyadasa Kudabalage,  
Director,  
All Directors of the Peoples  
Bank ,  
No 75,  
Sir Chittamapalam A  
Gardiner Mawatha,  
Colombo 02.
13. Karunasena Jayavila,  
Peoples Bank,  
Land Redemption  
Department,  
No 220,  
Deans Road,  
Maradana,

Colombo 10.

14. Hemasiri Fernando,  
Chairman,  
Peoples Bank,  
No 75,  
Sir Chittampalam A  
Gardiner Mawatha,  
Colombo 02.
15. Jehan P Amaratunga,  
Director.
16. Chrishmal Warnasuriya,  
Director.
17. Ms G D C Ekanayake,  
Director.

18. Janaka Sugathadasa,  
Director.

19. Felician Perera,  
Director.

20. Sanjaya Galaboda,  
Director.

21. K Rajendran,  
Director.

22. Dr Aminda M Perera,  
Director.

23. Anton S Hemantha,  
Director.

24. Ranjith Asoka,

Director.

Directors of the Peoples

Bank, No 75,

Sir Chittamapalam A

Gardiner Mawatha,

Colombo 02.

**RESPONDENTS**

**Before:      P. Padman Surasena J (P/C A)**

**A L Shiran Gooneratne J**

Counsel:    Ranjan Suwandarathne PC with Yowin Mathugama for the  
Petitioner.

Sunil Abeyratne with Thashira Gunathillake for the 1<sup>st</sup> and 5<sup>th</sup> -  
21<sup>st</sup> Respondents.

Thushani Machado for the 3<sup>rd</sup> Respondent.

Argued on :      2018 - 03 - 09

Decided on      :    2018 - 08 - 09



JUDGMENT**P Padman Surasena J (P/C A)**

The Petitioner in this application prays for the following relief;

- I. a writ of Certiorari to quash the decision contained, in the letter dated 2013-12-30 and also in the Gazette notification bearing No. 1852/35 dated 2013-03-05,
- II. a writ of Prohibition to restrain the 1<sup>st</sup> and 5<sup>th</sup> to 12<sup>th</sup> Respondents from taking any steps towards the enforcement of the order referred to in the said letter dated 2013-12-30 produced marked **A 21**,

When this Court took this case up for argument on the 9<sup>th</sup> March 2018 learned Counsel for the 3<sup>rd</sup> Respondent and the learned counsel for the 1<sup>st</sup> and 5<sup>th</sup> to 21<sup>st</sup> Respondents raised certain preliminary objections against the maintainability of this application before this Court.

It was pointed out by the learned counsel for the 3<sup>rd</sup> Respondent that the main prayer in this application is for a writ of certiorari to quash the decision contained in the Gazette notification bearing No. 1852/35 dated 05-03-2013. It was further pointed out by the learned counsel for the 3<sup>rd</sup> Respondent that the said Gazette has been issued by the Hon. Minister of

Finance who is not a party to this application. It is therefore the submission of the learned counsel for the 3<sup>rd</sup> Respondent that the Petitioner seeks to quash the vesting order issued by the Hon. Minister of Finance without making the said Hon. Minister a party to this application. Since the Petitioner has failed to add all necessary parties to this application, the learned counsel for the 3<sup>rd</sup> Respondent submits that this court should not permit the Petitioner to maintain this writ application.

Learned President's Counsel for the Petitioner concedes that according to settled legal principles referred to in the judicial precedence, a Court exercising powers of judicial review cannot quash a vesting order issued by the Minister without making the relevant minister a party to the relevant application.

In these circumstances, this Court cannot entertain the application of the Petitioner any further.

However, the learned President's Counsel for the Petitioner makes an application to amend the Petition by making the Hon. Minister a party at this stage. Learned Counsel for the Respondents have raised their objections to the said application.

This Court observes that the Petitioner has filed this application on the 20<sup>th</sup> October 2014. This Court also observes that the learned Counsel for the Petitioner has moved time to file an amended caption on 13-02-2015. The Petitioner had indeed filed an amended caption on the 25<sup>th</sup> March 2015.

Petitioner has again moved to file an amended caption on the 18<sup>th</sup> June 2015 and indeed filed the 2<sup>nd</sup> amended caption on the 29<sup>th</sup> June 2015.

It was on the 4<sup>th</sup> September 2015 that this Court, upon this application being supported for notices by the learned counsel for the Petitioner, had decided to issue notices on the Respondents.

Thereafter, with filing of pleadings being completed this Court has fixed this case for argument for the 28<sup>th</sup> November 2016. Thereafter, this Court having re-fixed the argument of this case several times namely, 6<sup>th</sup> April 2017, 14<sup>th</sup> September 2017, and had re-fixed it for the 9<sup>th</sup> March 2018 on which date this Court took this case up for argument. It is thereafter (i.e. almost 5 years after filing of the petition), that the Petitioner is now requesting permission to add the party, which is the most crucial party to this application. That is also after the Respondents had raised objections to the maintainability of this application on the basis that the said party is not before Court.

The petitioner has not adduced any acceptable reason for the said lapse on his part. The Petitioner has not explained to the satisfaction of this Court as to why she has failed to add the most crucial party to this application even when the consequence of such failure was within her knowledge.

The Petitioner has failed to rectify this error even when she was granted time at several occasions to redesign the caption. She has failed to check whether all-requisite parties have been named as respondents. Petitioner has also not explained the delay incurred in making the instant application to amend the caption again.

In the case of Dominic Vs Minister of Lands and others<sup>1</sup> His Lordship Sriskandarajah J having considered the judicial precedence pertaining to the above question had held that an application made at the stage of argument to add some new respondents as parties to the case will be allowed only if the case is not yet ready for final disposal by Court. He had further held that once the final hearing of the application by Court commences, such an application made thereafter would be refused, as it is a belated application.

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<sup>1</sup> 2010 Sri. L. R. 388.

In these circumstances and for the foregoing reasons this Court has no basis to allow the application made by the learned President's Counsel for the Petitioner to add a totally new party to this application at this stage. Thus, this Court decides to refuse the said application.

This Court cannot continue to entertain this application in the absence for the Hon. Minister who had issued the vesting order, which the Petitioner seeks to quash. Therefore, this Court decides to uphold the preliminary objection raised by the learned counsel for the 3<sup>rd</sup> Respondent and hold that this application cannot be maintained.

Hence, this Court decides to dismiss this application in limine with costs.

Application dismissed in limine with costs.

**PRESIDENT OF THE COURT OF APPEAL**

**A L Shiran Gooneratne J**

I agree,

**JUDGE OF THE COURT OF APPEAL**