

**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
Mandamus under and in terms of Article 140
of the Constitution of the Democratic
Socialist Republic of Sri Lank.

CA (Writ) Application
No. 69/2013

A.M. Podihamine,
Ellagama, Diyatalawa.

PETITIONER

-Vs-

1. T.P.A. Hemakumara,
Divisional Secretary,
Haputale.
2. The Commissioner of Land Uwa Province,
Provincial Land Commissioner's Office,
Kachcheri, Badulla.
3. The Commissioner General of Land,
Land Commissioner General's Department,
No.1200/06, Rajamalwatta Road,
Battaramulla.

RESPONDENTS

And Now between

Ruwan Pathiranage Don Chandrasena,
Wawewatta, Ellagama,

Diyatalawa.

INTERVENIENT-PETITIONER

-Vs-

A.M. Podiamine,

Ellagama, Diyatalawa.

PETITIONER-RESPONDENT

1. **T.P.A. Hemakumara**
Divisional Secretary,
Haputale.
2. **The Commissioner of Land Uwa Province,**
Provincial Land Commissioner's Office,
Kachcheri, Badulla.
3. **The Commissioner General of Land,**
Land Commissioner General's Department,
No.1200/06, Rajamalwatta Road,
Battaramulla.

RESPONDENT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J,
COUNSEL	:	Sanath Weerasinghe for the Intervenant-Petitioner. W. Dayaratne, PC with D. Dayaratne for the Petitioner-Respondent. Yuresha Fernando, SSC for the Respondents.

Decided on	:	28.02.2017
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A.H.M.D. Nawaz, J.

This is an application for intervention made by the Intervenant-Petitioner praying to be made a Respondent and permitted to file a statement of objections to the main application before this Court. The main application has been filed by the Petitioner-Respondent (one A.M. Podihamine) alleging *mala fides* against the 1st Respondent (Divisional Secretary, Haputale) and by her amended petition dated 25.03.2013, the said Podihamine has prayed for;

- (i) a writ of certiorari to quash a notice served on her to quit a land depicted as Lot 782 in final village plan No. 387 and the consequent order by the learned Magistrate of Bandarawela dated 22.03.2013 to eject her from that land upon the said quit notice,
- (ii) a writ of mandamus to compel the 1st, 2nd and 3rd Respondents (Divisional Secretary, Haputale, The Commissioner of Lands, Uva Province and the Commissioner General of Lands respectively) to issue a permit for the Petitioner in respect of the said Lot 782.

The amended petition filed by Podihamine (who has since become the Petitioner-Respondent to the application for intervention) contains a long narrative of how she came to possess this land in question - a land situated in the village of Ella Aluthwela in the Divisional Secretariat of Haputale in the District of Badulla, which has been depicted as Lot 782 in the final village Plan No. 387. Podihamine's version is that she purchased this land from an original permit holder called Juwanis Appuhamy in 1977 and since then she has been living on the land having constructed her dwelling and engaged in cultivation and plantation on the land. According to her amended petition for writs of certiorari and mandamus, she chronicles a long narrative beginning with the son of the original permit holder one R.P. Gunasekara making an attempt to evict her from the land when Gunasekera's mother (the widow of Juwanis Appuhamy) became a permit holder. Thereafter began a history of litigation between the widow of Juwanis Appuhamy and the Petitioner who is the vendee of the land in question from Juwanis Appuhamy. The long and short of

the main application for judicial review by the Petitioner is that she was served with a quit notice issued by the 1st Respondent that has resulted in the consequent order of the Magistrate to eject her from the land. Whilst Podihamine-the Petitioner to the main application-prays that these two orders be quashed by certiorari, she has also applied for a writ of mandamus to compel the issuance of a permit in her favor in respect of Lot 782-the land in question.

The principal argument inherent in the tenor of the application for the aforesaid writs appears to be premised on legitimate expectation of a permit that the Petitioner Podihamine alleges has been promised to her. On a *prima facie* case being made out that the petitioner's ejectment was sought and obtained by the 1st Respondent whilst the petitioner had entertained a legitimate expectation of a substantive benefit in the form of a permit, this Court issued a stay order on 05.04.2013 in terms of paragraph "d" of the prayer to the petition, staying all further proceedings in M.C. Bandarawela Case No. 49528 until the final determination of the application. This Court observes an appearance of a Counsel for the proposed Intervenant Petitioner for the first time on the following notice returnable date namely 06.05.2013. On the date fixed for support of the intervenient petition on 05.08.2013, State Counsel for the Respondents informed Court that the Divisional Secretary would hold an inquiry in relation to the land in dispute giving an opportunity to anyone who was having a claim or interest in the subject-matter to be heard at the inquiry. The learned State Counsel also informed this Court that the application for writs against the Respondents would not be an impediment to an appropriate order being made at the conclusion of the proposed inquiry by the Divisional Secretary. Upon that notification, the Intervenant Petitioner reserved his right to support his application for intervention on a later date-vide Journal Entry dated 5/08/2013.

When this matter came up later on 28.01.2014, the learned State Counsel notified this Court that there was no possibility of a settlement in the matter and moved for time to file objections on behalf of the Respondents. Since the intervenient petition

had not yet been supported by that time, there was an application on the part of the Petitioner to file a statement of objections to the intervenor's petition and upon the lodgment of the statement of objections, the Intervenant Petitioner has also filed a counter objection to the statement of objections of the Petitioner.

Subsequently, the Intervenant Petitioner and Petitioner have both filed written submissions for and against the grant of intervention. It has to be pinpointed at this stage that the Respondents to the main application for certiorari and mandamus are yet to file their statement of objections on the merits of the petitioner's case for writs of certiorari and mandamus.

When the matter was taken up for inquiry into the application for intervention on 15.05.2015, the Court directed a fresh inquiry to be held into the rival claims put forward by both the Petitioner Podihamine and the Intervenant Petitioner Chandrasena with regard to the subject matter in dispute lot No.782.

The Court also ordered an opportunity to be afforded to both parties to lead evidence on their respective claims and a determination to be made finally with a view to a recommendation, whether any person would be entitled to a permit which they claimed.

The decision maker was entitled to exercise his discretion in favour of the Petitioner or the Intervenant Petitioner in arriving at his conclusions -vide J.E dated 15.05.2015.

When this matter came up again in 28.09.2015, the parties informed court that the Respondents had not come to a conclusion at the inquiry and they moved that the inquiry as regards intervention be proceeded with.

The basis for intervention as averred in the intervenient petition dated 18.06.2013 is that the Intervenant Petitioner is a son of Ruwan Pathiranage Don Juwanis Appuhamy and R.A. Isabel Perera who were permit holders of portions of lands which included Lot No. 782 as depicted in final village Plan No. 387.

The Intervenant Petitioner being the son of the original permit holders also narrates the litigation that had long continued between the Petitioner and his mother and he concedes that the Petitioner's possession of the land in question was affirmed by the Provincial High Court of Uva Province exercising civil appellate jurisdiction.

Subsequent to the demise of his mother R.A. Isabel Perera who was not the permit holder at the time of her demise, the Intervenant Petitioner had made a request of the Respondents that he be issued with a permit in respect of Lot No. 782 and in his intervenient petition dated 18.06.2013 before this Court, he has also listed a long line of relevant correspondence marked IP7-IP19. According to the Intervenant Petitioner, this series of correspondence suggests evidence of the fact that all necessary steps have been taken to issue him with a permit in respect of the said Lot No. 782 and he is emphatic that in making the application to this Court, the Petitioner has suppressed this fact which he alleges is within the knowledge of the Petitioner.

In the circumstances the Intervenant Petitioner contends that he is *vitalily concerned* in the matter and therefore he is a necessary party who has not been cited as a Respondent. According to the Intervenant Petitioner, he needs to intervene in order to safeguard his rights and interests.

The Petitioner Podihamine has filed a statement of objections to the intervenient petition and written submissions against the application of the Intervenant Petitioner (Chandrasena) for intervention. Thus the Petitioner Podihamine joins issue with Chandrasena on Chandrasena's attempt to become a respondent.

Explaining the list of documents filed by the Intervenant Petitioner namely IP7-IP19, the Petitioner contends that these documents demonstrate a series of unconscionable attempts by the Intervenant Petitioner to collaterally attack the judgment of the Civil Appellate High Court which rejected his mother's *rei vindicatio* action for want of title. In her statement of objections filed by Podihamine, she has also raised a preliminary objection that the Intervenant Petitioner cannot have and

maintain this application for intervention and it should be dismissed *in limine* for the following reasons;

- a) The Intervenient Petitioner's application for intervention is barred in law as the Court of Appeal (Appellate Procedure) Rules of 1990 which set out the procedure to be followed by the Court in dealing with applications for prerogative writs do not make provisions for third-party interventions in such proceedings.
- b) The aforesaid legal position has been laid down in unequivocal terms by W.L. Ranjith Silva J. in *Weerakoon and Another v. Bandaragama Pradeshiya Sabawa*.¹
- c) The aforesaid legal position has been uniformly followed by this Court in refusing applications for intervention in writ applications as evidenced by the subsequent judgments of the Court in C.A. (Writ) 96/2013, C.A. minutes 25.02.2014 and C.A. (Writ) 453/2007, C.A. minutes of 25.02.2014.

As opposed to the above line of argument put forward by the Petitioner, the Intervenient Petitioner has submitted the following decisions that permitted interventions.

- a) *Mahanayaka Thero, Malwatta Vihara v. Registrar-General Association et al*,²
- b) *The Government Dental Therapist Association et al v. George Fernando, Director of Health Services et al*,³
- c) *Jetwing Hotel Management Services (Pvt) Ltd., v. Securities and Exchange Commission and Others*,⁴
- d) *Jayawardena v. Minister of Health and Others*.⁵

¹ 2012 B.L.R 310.

² 39 N.L.R 186.

³ CA (Writ) Application 293/09 decided on 27th July 1994.

⁴ CA (Writ) Application 293/09 decided on 31st May 2010.

⁵ CA (Writ) Application 978/2008 decided on 21st May 2009.

But for the purposes of this application, the crucial question that needs to be posed is whether, on the facts and circumstances of this particular case, where the Petitioner has sought both a writ of certiorari and a writ of mandamus, the participation and assistance of the intervenor Chandrasena is necessary and essential in order to adjudicate upon the issues immanent in the two reliefs that the Petitioner Podihamine has sought.

I am disinclined to think that the presence of the intervenor is necessary for this purpose. The scope of inquiry in prerogative writs is whether the Respondents have acted *ultra vires* or they owe a duty imposed by law. On the facts and circumstances of this case, I am of the view that the availability of the writs sought could efficaciously be adjudicated upon without the participation of the Intervient-Petitioner. In the circumstances, the application for intervention is rejected.

JUDGE OF THE COURT OF APPEAL