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.

Navaratnamany Sriramachandran
No. 11A, Kingston Gardens, Colombo 04.

Petitioner

Case No. CA (Writ) 369/2017

Vs.

1. Mr. Vethanayagam
   District Secretary,
   District Secretariat, Jaffna.

2. Mr. Sangarapillai Ravi
   Assistant Director,
   Disaster Management Unit,
   District Secretariat, Jaffna.

3. Mr. Thurairajah Arulraj
   Administrative Officer,
   Valikamam East Divisional Secretariat,
   Kopay.

4. Mrs. Subagini Mathiyalagan
   Divisional Secretary,
   Valikamam East Divisional Secretariat,
   Kopay.

5. The Secretary
   Valikamam East – Puttur Pradeshiya Sabha, Puttur.

6. Valikamam East – Puttur Pradeshiya Sabha, Puttur.

7. Mr. S. Sarvarajah
   Irrigation Engineer,
   Office of the Irrigation Engineer, Pannai, Jaffna.

8. Mr. V. Suthakar
   Chief Engineer (Jaffna),
   Road Development Authority,
   St. Patrick's Road, Jaffna.

9. Officer-in-Charge
   Police Station, Atchchuveli.

10. Ms. Thangamalar
    No. 19, Ramalingam Road, Thirunelveli, Jaffna.

Respondents

Before: Janak De Silva J.

Counsel:

S.N. Vijithsingh for the Petitioner

Milinda Gunethilake SDSG for the Respondents

Argued on: 08.03.2019

Written Submissions tendered on:

Petitioner on 14.06.2019

Decided on: 16.12.2019

Janak De Silva J.

The Petitioner claims to be the absolute owner of the land more fully depicted as lot 2 in plan no. 610 dated 30.06.1976 attested by T. Arumainayagam, Licensed Surveyor containing in extent 8 Lachchams and Five Decimal Eight Kullies (8 Lms and 5.8 Kullies). She claims that the Road Development Authority (RDA) without following proper procedure forcibly used a portion of her land for the widening of the Jaffa-Point Pedro Road in 2012. She did not object to the taking of a portion of her land by the RDA considering the importance and need to widen the road for public interest.

The Petitioner claims that on or about 10th September 2017 she came to know that there was further encroachment onto her land for the construction of a drainage. This time she objected which was not heeded to by the authorities. The Petitioner therefore sought the following relief:

(a) A writ of certiorari quashing the acts or decisions of the 1st to 10th Respondents constructing a drainage on the land belonging to the Petitioner;

(b) A writ of mandamus directing the 1st to 10th Respondents to restore the original state of the land belonging to the Petitioner as described in paragraph 11 of the petition.

The Respondents denied that there has been any fresh encroachment onto the land belonging to the Petitioner. They claim that the drainage was built on the land that was taken over in 2012 to which the Petitioner did not object.

As for the writ of certiorari, the Petitioner has not produced any decision or order of the Respondents to construct a drainage on the land belonging to the Petitioner. Neither did she request the Court to direct the Respondents to produce any such decision or order. On the contrary, the Respondents state that there is no such decision or order made in 2017. In *Weerasooriya v. The Chairman, National Housing Development Authority and Others* [C.A. Application No. 866/98, C.A.M. 08.03.2004] Sripavan J. (as he was then) held that the court will not set aside a

document unless it is specifically pleaded and identified in express language in the prayer to the petition. The prayer for a writ of certiorari must fail on this ground.

As for the writ of mandamus, I am attracted to the proposition that a writ of mandamus can issue directing the State or any of its agencies to restore private property to its previous condition where the State or any of its agencies unlawfully encroaches onto private land and causes damage.

However, in this case the Respondents dispute any such damage other than the construction of a drainage on land that was taken over in 2012 to which the Petitioner, in the greater public interest, did not object. This position is denied by the Petitioner who contends that the drainage was constructed on newly encroached land in 2017.

This then is a disputed question of fact. Our courts have consistently held that it will not exercise writ jurisdiction where the facts are in dispute [*Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri.L.R. 471]. The Supreme Court has in *Dr. Puvanendran and another v. Premasiri and two others* [(2009) 2 Sri.L.R. 107, 2009 BLR 65] held that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.

The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.

In fact, in *Wijenayake and others v. Minister of Public Administration* [(2011) 2 Sri.L.R. 247] this Court held that the material furnished suggest that a title/boundary dispute is agitated before the Kurunegala District Court and as such finality (subject to appeal) of title and boundary of the land in dispute lies in the action filed in the District Court of Kurunegala and that these are all disputed facts which cannot be decided in a writ court.

Therefore, the prayer for the writ of mandamus must also fail.

For all the foregoing reasons, the application is dismissed with costs.

Judge of the Court of Appeal