

**IN THE COURT OF APPEAL OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI**

In the matter of an application for a *Writ of Certiorari* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application
No. 441/2015

Thelge Chandrasiri Peiris

No. 08, Sunanda Niwasa Road,
Katukurunda South,
Moratuwa.

PETITIONER

-Vs-

1. **Commissioner of Title Settlement**
Land Title Settlement Department,
No. 1200/6, "Mihikatha Madura",
Rajamalwatta Road,
Battaramulla.
2. **Deputy Commissioner of Title Settlement**
Divisional Officer,
No. 22, Idama, Moratuwa.
3. **Deepika P. Vithanachchi**
Registrar of Title,
Title Registration Office,
Delkanda, Nugegoda.
4. **Maddumage Manoj Prabashwara Fernando**
No. 123, Egoda Uyana Road,

Moratuwa.

5. Lindamulage Shelton Silva

No. 123, Egoda Uyana Road,

Moratuwa.

(Substituted as 6A Defendant in the District Court in place of Galagedarage Ghanawathi)

6. Gongawalage Don Inoka Bernadeth

No. 123/2, Egoda Uyana Road,

Moratuwa.

7. Sembakutti Kankanamage Nandawathi Silva

No. 123/3, Egoda Uyana Road,

Moratuwa.

8. Muthuthanthri Bastiange Sujeewa Kumudusiri Fernando

No. 124, Egoda Uyana Road,

Moratuwa.

9. Muthuthanthrige Linton Perera

No. 124, Egoda Uyana Road,

Moratuwa.

10. Muthuthanthrige Nuwani Seelin Perera

No. 127, Egoda Uyana Road,

Moratuwa.

**11. Hathurusinghe Arachchige Shirani
Kusumalatha**

No. 123/7, Egoda Uyana road,

Moratuwa.

(Substituted as 11A Defendant in the District Court in place of Muthuthanthri Bastinge Jagath Kumaasiri Fernando)

12. Warnakulasooriya Wannakuwatta Waduge
Karunarathne Mervin Fernando

No. 123/8, Egoda Uyana Road,
Moratuwa.

13. Bandula Thilak Ubhayawarna

No. 1125/1, Egoda Uyana Road,
Moratuwa.

14. Gamage Somawardhena

No. 121, Egoda Uyana Road,
Moratuwa.

15. Gamage Sudarshika Somawardhana

No. 123/8, Egoda Uyana Road,
Moratuwa.

16. Gamage lalith Somawardhana

No. 109, Sulalith,
Egoda Uyana, Moratuwa.

17. Hon. Attorney General

Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE

:

A.H.M.D. Nawaz, J.

COUNSEL

:

Nimal Jayasinghe for the Petitioner.

K.V. Sirisena for the 4th to 14th Respondents.

Susantha Balapatabendi, SDSG for 1st, 2nd, 3rd and
17th Respondents.

Gunasinghe Hewage for the 15th and 16th
Respondents.

Argued and

Decided on : 16.01.2019

A.H.M.D. Nawaz, J.

By a Petition dated 09.11.2015, the Petitioner seeks to quash the determinations made by the Commissioner of Land Settlement (CTS) under Section 14 of the Registration of Title Act, No. 21 of 1998 (the Act). The aforesaid Act contains a comprehensive scheme to effect registration of title with relevant provisions that empower the registration of title subsequent to a cadastral survey. The material scheme, in my view, all begins with Section 11 of the Act. In terms of Section 11 of the said Act, the Commissioner of Title Settlement (CTS) shall request the Surveyor General to prepare cadastral maps for the areas specified in the Minister's order which is made under Section 1 and upon such request the Surveyor General shall cause such cadastral maps to be prepared and certified copies thereof to be issued to Commissioner of Title Settlement (CTS). In terms of Section 12 of the said Act, the Commissioner of Title Settlement shall, on receipt of such certified copies of cadastral maps publish a notice in the *gazette*, calling for any claimant to the land parcel specified in such notice to submit his claim within the prescribed time from the date of publication of such notice. Subsequent to receipt of claims the Commissioner of Title Settlement shall cause an investigation to be conducted in order to determine the genuineness or otherwise of the claims made in response to the notice under Section 12 - see Section 13 of the Act. It is upon the conclusion of the investigation mandated by Section 13 that the Commissioner of Title Settlement shall publish in the *gazette* the determination thereon - (the order of Declaration - Section 14).

The Petitioner in this case seeks to have determinations made under Section 14 quashed and it has to be noted that these determinations have been published in *gazettes* which have been appended to this petition as P26 to P30. The Determinations have been published as far back as 2011, 2013, 2014 and 2015 in *gazettes* bearing Nos. 1705/14, 1854/25, 1841/31, 1796/24 and 1913/25.

The petitioner alleges that these determinations had been published for issuance of certificates of title in favour of the 8th, 10th and 11th Respondents to this case. But there is nothing in the petition disclosed to demonstrate that the Petitioner or his legitimate rights have been prejudiced by the issuance of these certificates in respect of the aforesaid Respondents.

Any party seeking to obtain relief by way of *certiorari* has to satisfy the Atkininan formula postulated in *Rex vs. Electricity Commissioners* (1924) 1 KB 171 where the prejudice to one's right was predicated as a condition precedent to the issuance of writ of *certiorari*.

“Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority....”

In the circumstances this application for *certiorari* to quash the declarations published under Section 14 has to fail.

There is a far more difficult hurdle that the Petitioner has to overcome.

Learned Senior Deputy Solicitor General points out that Section 22 of the Registration of Title Act, No.21 of 1998 provides an alternative and adequate remedy to the Petitioner. In terms of this section if the claimant or the Petitioner is indeed aggrieved by the order of declaration made by Commissioner General of Title Settlement under Section 14 of the Registration of Title Act, No.21 of 1998, it is open to him to prefer an appeal against such declaration within the prescribed period to the District Court having jurisdiction for the area where land parcel is situated.

There is a catena of cases that bar discretionary remedy such as a writ of *certiorari* when is an efficacious and alternative remedy provided for in a statute-see *Dedigama v Preventive Officer, Sri Lanka Customs and Others* (2004) Sri.LR 37.

Even on this ground the application for *certiorari* must fail. The petitioner no doubt makes reference to a pending partition action that has been instituted in the District Court of Moratuwa in respect of this land and it is not clear upon a perusal of the pleadings filed in this case whether the land which the Petitioner has sought to partition in the

District Court of *Moratuwa* has been impacted upon by any of the title certificates that have been issued in this case. This Court took pains to identify the land belonging to the Petitioner in any of the determinations given by the 1st Respondent and it was unable to do so.

In any event this raises disputed questions of fact which could be effectively adjudicated upon only in the District Court which the Petitioner enjoys by virtue of section 22 of the Act.

In these circumstances, this Court takes the view there is no *prima facie* case of an act or decision that has been made out to be *ultra vires* and this Court proceeds to dismiss this application for *certiorari*.

JUDGE OF THE COURT OF APPEAL