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

In the matter of an Application for Orders in the nature of Writs of Mandamus in the terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Vitharanalage Samanthi Sriya Kumudini Fernando
No.225/B,
Dambaduraya,
Seeduwa.

PETITIONER

CA/WRIT/494/22

Vs.

1. Multi-Purpose Co-Operative Society,
   Katana.

2. Ms. S. Swarnalatha,
   Co-Operative Development Assistant Commissioner Gampaha,
   Walawwatta,
   Keedagahammulla,
   Gampaha.

3. G.G. Dayarathne alias Hettiarachchige Dayarathne,
   Arbitrator,
   151/B, Ambalangoda,
   Rukmale,
   Veyangoda.

4. Mrs. Ruwini A. Wijayawickrama,

Co-Operative Development Commissioner and Co-operative Society,
Registrar of Western Province,
Co-operative Development Department,
(Western Province)
P.O. Box 444,
Duke Street,
Colombo 01.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Lakshan Dias, AAL with Ms. Imasha Fernando, AAL instructed by Ms. Dayani Panditharathne, AAL for the Petitioner.

Ms. P. Jayasekera, SC for the 1st, 3rd and 4th Respondents.

Written Submissions: By the Petitioner filed on 27/02/2026
By the Respondents – Not filed.

Argued On : 01/08/2025, and 18/11/25.

Judgement On : 12/03/2026.

Dr. Sumudu Premachandra J.

1] The backdrop of this application is as follows: The Petitioner originally owned 20 perches of land, which she mortgaged in 2009 to settle a debt. To resolve financial difficulties, she later entered into an agreement with the Cooperative Society to pay off her original mortgage. However, she alleges that during the execution of new deeds in 2010, she was misled and pressured by officials and a Notary Public into signing documents she was not allowed to read, which she later discovered supposedly named her as a guarantor for a third party's loan.

2] The Petitioner claims that the Cooperative Society and its officials engaged in a fraudulent scheme to split her land into two separate lots (1A and 1B) without her consent or a physical survey. She asserts that a licensed surveyor and the former president of the society colluded to forge plans and documents. These actions resulted in the Petitioner unknowingly "transferring" a portion of her property and being held liable for a loan taken by another individual, Leonard Rex. She maintains she never signed any guarantee for him and only discovered the discrepancy years later.

3] While the Petitioner was working abroad in Croatia in 2019, she learned that the property was facing foreclosure. Upon returning to Sri Lanka in 2021, she found that the Katana Multipurpose Cooperative Society had initiated proceedings in the District Court of Negombo to seize the land, claiming an unpaid debt of over 1 million rupees. She also discovered that an arbitral award had been issued against her back in 2013. The Petitioner argues she was never notified of this arbitration, never given a chance to present her case, and was thus denied her right to natural justice.

4] The Petitioner seeks a Writ of Certiorari to quash the 2013 arbitral award and a Writ of Mandamus to compel the authorities to hold a fair and legal inquiry. She maintains that the entire process was a "prima facie fraud" designed to illegally acquire her land through collusion and administrative neglect.

5] Therefore, the petitioner prays to this court to;

a) Issue notice to all respondents.

b) Grant an interim relief to a stay order on the Hon. District Judge of Negombo dated 11/10/2019 of case number SPL/3687/19 order of seize and auction petitioner's property until the final determination of this case.

c) Grant an order in the nature of Writ of Mandamus to the 1st and 2nd respondent to ordering to hold a fair and just arbitration.

d) Grant an order in nature of Writ of Certiorari to quash the decision of the arbitrator marked as P-5 (P-5 of case No. SPL/3687/19) bearing No. G42814 dated 27/07/2013.

e) Grant costs.

f) Grant such other and further relief as to your Lordship's Court shall deem meet.

6] The central argument of the petition is the gross violation of the principles of natural justice. The Petitioner discovered in 2021 that an arbitral award (marked "P-8") had been issued against her in 2012 regarding her property. She maintains that she was never notified of the arbitration proceedings, was not given an opportunity to be heard, and was never served with the resulting award. This lack of notice effectively condemned her unheard, which the submissions argue is a fatal flaw in any quasi-judicial process.

7] The submissions rely on established administrative law to argue that a decision reached in breach of natural justice is a nullity. The Petitioner relies on ***Sundarkaran v. Bharathi and Others*** [1989] 1 SLR 46, where AMERASINGHE. J cited with approval the words of Lord Wright in ***General. Medical Council v. Spackrrian*** [1943] A.G. 627. 644; [1963] 2 All E.R. 66 H.L;

> *"If the principles of natural justice are violated in respect of any decision it-is,, indeed, immaterial whether the same decision would have been arrived at in the absence of the essential principles of justice. The decision must be. declared no decision."*

8] The above decision established that if natural justice is violated, the decision must be declared void regardless of whether the same result might have been reached otherwise. Thus, regardless of the outcome, all parties must be heard.

9] In ***Sarath Amunugama and Others v. Karu Jayasuriya*** [2000] 1 SLR 172, Amerasinghe, Actg. CJ considered the rule audi alteram partem (the right to be heard) as the "essence of natural justice" and a cornerstone of the rule of law.

10] The Petitioner argues that since the arbitrator derived power from a statutory framework (Co-operative Society Statute), he is bound to act fairly and is subject to the judicial oversight of the Court of Appeal.

11] I now consider the merits of this application. The Petitioner seeks a Writ of Certiorari to quash the arbitral award "P-8" and a Writ of Mandamus to compel the 1st Respondent (Co-operative Development Commissioner) to perform their statutory duty by ensuring a fair arbitration process.

12] The Petitioner highlights that the arbitrator's failure to notify the Petitioner strikes at the root of the decision-making process, rendering the foreclosure proceedings unlawful. The relief is framed as corrective, aiming to restore procedural balance and protect the Petitioner's proprietary rights without causing prejudice to unnamed third parties.

13] The Petitioner's main relief prayed for was;

> *"Grant an order in nature of Writ of Certiorari to quash the decision of the arbitrator marked as P-5 (P-5 of case No. SPL/3687/19) bearing No. G42814 dated 27/07/2013"*

14] When I consider P-5, P-5 is the Petitioner's letter dated 18/11/2015, which was sent to Cooperative Society Demanhanidaya. Thus, there is nothing to quash in P-5. It is clearly seen that the prayer is wrong.

15] In ***Dayananda vs Thalwatte*** [2001] 2 Sri LR 73, it was held that;

> *"It is necessary for the Petitioner to specify the writ he is seeking supported by specific averments why such relief is sought. Even though the Petitioner has set out in the caption that "In the matter of an application … for writ of quo warranto and prohibition" there is no supporting averment specifying the writ and* ***there is no prayer as regards the writ that is being prayed for****.* ***The failure to specify the writ therefore renders the application bad in law****"*

16] Further, in ***Port Junk Dealers Association and others vs Marine Environment Protection Authority and others***, CA (Writ) Application No: 220/2016, Decided on: 29/05/2020, His Lordship Arjuna Obeyesekere, J held if there is no specific prayer, the application is bad in law. His lordship noted;

"Although it is clear from the pleadings that the Petitioner is complaining about the vires of the actions of the Respondents, this Court is in agreement with the learned Senior State Counsel that this Court cannot grant a Writ of Certiorari, in the complete absence of a prayer to that effect. This situation must however be distinguished from a situation where there is a specific prayer for a Writ of Certiorari, and the power of Court to issue the said Writ of Certiorari, albeit in a modified form, in such situations. It is therefore the view of this Court that paragraph (II) of the prayer is misconceived in law, and that this Court cannot grant the said relief."

17] It should be stressed that when a Petitioner invokes the extraordinary remedy of Writ jurisdiction of the Court of Appeal under Article 140 of the Constitution, it is imperative for the Petitioner to show her grievances and the reliefs that she is praying for. The Petitioner cannot plead for an appropriate order without specifying what is to be quashed. Our superior courts, on many occasions, have held that in the absence of any clear and specific reliefs prayed, or if the prayer becomes vague, no writ can be granted. In this circumstance, for the said reason, this Application will fail. Mere assertion in the written submission mentioning P5 is clerical mistake cannot be treated as a valid amendment to the pleadings. If mistake is happened, it should be corrected with leave of the court and notice to the opposing parties. In the case in hand, correct procedure was not followed. Thus, we hold that the prayer is wrong.

18] It is seen further that the Petitioner has sought to quash P-8, the Arbitrator's decision. On the face of the case record, it is seen that only P1 to P7 are marked as documents. In paragraph 36, it is mentioned that P-8 is marked and pleaded "as part and parcel of this application. There is no reservation to tender P-8 later on. In the petition, the Petitioner has mentioned that she has not received P8. Thus, the petition is ex facie defective and must be dismissed.

19] In consideration of Rule 3 (1) of the Court of Appeal (Appellate Procedure) Rules 1990. In that section, it says;

"Every application made to the Court of Appeal for the exercise of powers vested in the Court of Appeal by article 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of the documents material proof such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek leave of court to furnish such ***documents later. Where a petitioner fails to comply with the provisions of this Rule, the court may, ex mero muto or instance of any party, dismiss such application****."* [Emphasis is added]

20] This Rule clearly stipulates rules relating to the filling of writ applications under Article 140 of the Constitution. Thus, it shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of the documents which is material proof of such an application (or duly certified copies thereof) in the form of exhibits. Therefore, filing with supportive documents is sine qua non. If any inability occurs, the right to tender those documents is specifically reserved.

21] In the instant application, P-8 was not tendered, although it was commented in paragraph 36 of the petition dated 22/12/2022. The Petitioner, in the written submission, has stated that P-8 was tendered. P-8 is supposed to be the arbitrator's order. It is seen that in the journal dated 20/03/2024, the Learned State Counsel informed that they have not received P-8, and the Counsel for the Petitioner agreed to hand over a copy immediately. It is further seen that by way of motion dated 15/05/2024 of the Petitioner, a clear copy of P-8 was tendered. Moreover, P-8 was tendered by 04/08/2023, by way of a motion. As seen till then, P-8 was not tendered. There was no reservation to tender P-8 subsequently; thus, the Petitioner has violated rule 3(1) of the Court of Appeal (Appellate Procedure) Rules 1990.

22] In the case of ***Shanmugavadivu v Kulathilaka*** [2003] 1 Sri LR 215, her Ladyship Justice Bandaranaike (as she then was) held that Rule 3(1) (A) was imperative and there were only limited circumstances in which noncompliance with the said Rule would not leave to the dismissal of the case.

23] In ***Dr. H. Amarathunga vs The Monetary Board of Central Bank and others***, C.A. (Writ) Application No: 0319/2017, Decided on: 22/02/2024, His Lordship R. Gurusinghe J clearly made the reasons as to why documents should be tendered and why it is mandatory as below;

> *"In a trial before an original court where documents are likely to be tested by cross-examination, documents furnished to this court appended as exhibits to the pleadings in writ application are not so tested and must be prima facie self-proving; hence originals or certified copies are mandated. In a writ application, questions of fact can be resolved on the basis of documents and affidavits filed in Court, and* ***therefore, tendering of original documents or certified copies is mandatory.*** *Rule 3(1) imposes a mandatory requirement that; "the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits" shall accompany the petition.*

The petitioner has not complied with Rule 3(1). The petitioner has not sought leave of court to furnish documents later. In the circumstances, the petitioner is in breach of Rule 3(1). Substantial compliance with the Court of Appeal (Appellate Procedure) Rules 1990 ***is mandatory, and the failure to do so will result in the dismissal of the case in limine****."* [Emphasis is added]

24] Be that as it may, according to P-4, the Petitioner has mortgaged the impugned property to the Multi-Purpose Co-Operative Society, Katana, the 1st Respondent, by Mortgage Deed bearing No. 1110; she said while executing the deed, it was never read to her (vide paragraphs 15 to 18 of the petition). But she has not complained about this incident to anybody and now claims it is not her act. This is a plea of non-est factum. In ***JAYASIRIWARDENA v. PIYARATNE*** [2004] 1 SLR 37, DISSANAYAKE, J. held that *"A plea of non est factum will rarely succeed if a document was signed by an adult or a literate person".* The Petitioner is a grown-up adult, and we cannot believe she was misled by the Respondents. Moreover, these facts cannot be agitated in this forum as the facts are disputed; whether she signed or not without being cross examined and calling other attesting witnesses and the Notary.

25] In the judgment of ***Thajudeen Vs. Sri-Lanka Tea Board*** [1981] 2 SLR-471, where the Court of Appeal held that;

> *"Where the major facts are in dispute and the legal result of the facts is subject to controversy and 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, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available."*

26] Lastly, the Petitioner says that the impugned P-8 was made without notice to her, violating the rules of natural justice. Her claim was that arbitration proceedings were taken ex parte against her. The impugned proceedings were conducted by an arbitrator, and the application of the rules of natural justice was to be considered on the premise of the arbitration rules. In ***Russell v Duke of Norfolk*** [1949] 1 All ER 109, an English law case, it is established that natural justice is not a rigid formula but depends on the circumstances of the case, the nature of the inquiry, and the rules of the tribunal. It was held that

administrative tribunals must act fairly, but procedures need not mimic court trials. Upon careful perusal of P-8, only an award is tendered; the award does not say that it was made ex parte. However, R-8 and R-9 show the Defendants of the Arbitration Proceedings were duly noticed.

27] This court is of the view that, in writ jurisdiction, the burden of proving that natural justice was denied lies primarily on the Petitioner, mainly, the person who was affected by the decision and is challenging it**.** The applicant must not only allege a violation of the principles of natural justice, such as *audi alteram partem* (right to be heard) or *nemo judex in causa sua* (rule against bias), but must also provide evidence to substantiate that a procedural unfairness occurred. Once it is established, the contrary must be proved by the opposing party.

28] In ***Wimalawathie and Others vs Thotamuna and Others*** [1998] 3 Sri LR 1, Dr. Ranaraja, J held that;

> *"The **affidavit filed by the Process Server is prima facie evidence** of the fact that summons was duly served on the defendants mentioned therein and there is a presumption that summons was duly served. Accordingly, **the burden shifts on to the defendants to prove that no summons had been served**."* [Emphasis is added]

29] R-8 and R-9 proves that the Defendants, including the Petitioner were notified. Thus, mere assertion that she was not served is not enough to apply breach of natural justice.

30] In ***Kumudu Samanthi Akmeemana v. Hatton National Bank and Others***, decided on 30/04/2021, Arjuna Obeyesekere, J., P/CA. held that;

> *"The petitioner denies having signed the said Deed of Transfer, even though the said deed had been attested by the same Attorney-at-Law before whom all other deeds and agreements relating to the said properties had been signed by the petitioner. The jurisdiction of this Court under Article 140 of the Constitution is to examine whether a statutory authority has acted within the four corners of its enabling legislation. It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact. Therefore, this Court cannot in these proceedings determine whether the Petitioner has in fact signed the said Deed or not."*

31] Further, in ***Mohamed Ismail Fairoze Hameed and other vs Union Bank of Colombo PLC and other***, CA WRIT NO: 805/2023, Judgment On: 08/05/2024, the court held;

“We hold that, to prove the fact that the Respondent has not sent the notice to the 2nd Petitioner which is disputed by the Respondent the most appropriate procedure to prove such dispute is an action by way of regular procedure before an Appropriate Court of first instance, not by this Court. For that reason, we refuse this application.”

32] Moreover, in the case of ***Jayatilake and Another V, Kaleel and Others*** [1994] 1 SLR 319, it was held that,

"while natural justice entitles a person to a fair and accurate statement of the allegations against him, the mere fact that he had not been given formal notice of all the matters in which his conduct was to be called in question, did not necessarily entitle him to contend that the inquiry was breach of the audi alteram partem rule”

33] It is seen in the P-8, the right to appeal is given against the said order. It says **“මෙම තීන්දුවට විරුද්ධව අභියාචනා කරන්නේ නම් එය ස. කො . /රේ (බ.ප.) වෙත ලිකිත හේතු සහිතව 2013.09.26 දිනට පෙර...(ඇප සහිතව) ...ඉදිරිපත් කර යුතු බව දෙපාශර්වයට දැනුම් දෙමි.”** When the alternative remedy is available, no writ will lie. (Vide; ***Thajudeen Vs. Sri-Lanka Tea Board*** (supra).

34] For the aforesaid reasons, we are of the view that the Petitioner has no right in law for the reliefs claimed in her application. Thus, the application is dismissed. We make no order for costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL