IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an Appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/APPEAL/71/2024

SC/SPL/LA/133/2020

CA/WRIT/117/2015

1. S.S.A.U.S.A.C. Udayar
   No. G13,
   Getaberiya, Aranayake.

2. S.S.A.U.S. Razik Udayar
   No. G13,
   Getaberiya, Aranayake.

PETITIONERS

Vs.

1. Mohamed Subair Mohamed Kiyas Marikkar
   No. 325, Dippitiya,
   Aranayake.

2. People's Bank
   No. 75,
   Sir Chittampalam A. Gardiner Mawatha,
   Colombo 02.

3. Inquiry Officer/Senior Legal Officer
   Land Redemption Department,
   People's Bank,
   No. 220, Deans Road,
   Colombo 10.

4. The Hon. Attorney General
   Attorney General's Department
   Hulftsdorp Street,

Colombo 12.

5. Hon. Mangala Samaraweera
   Minister of Finance
   Lotus Road,
   Colombo 01.

RESPONDENTS

AND NOW BETWEEN

1. S.S.A.U.S.A.C. Udayar
   No. G13,
   Getaberiya, Aranayake.

2. S.S.A.U.S. Razik Udayar
   No. G13,
   Getaberiya, Aranayake.

PETITIONERS-APPELLANTS

Vs.

1. Mohamed Subair Mohamed Kiyas
   Marikkar
   No. 325, Dippitiya,
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   No. 220, Deans Road,
   Colombo 10.

4. The Hon. Attorney General
   Attorney General's Department
   Hulftsdorp Street,
   Colombo 12.

5. Hon. Mahinda Rajapaksha
   Minister of Finance
   Lotus Road,
   Colombo 01.

RESPONDENTS-RESPONDENTS

Before: Mahinda Samayawardhena J.

Dr Sobhitha Rajakaruna J.

M. Sampath K.B. Wijeratne J.

Counsel: Mahanama De Silva with Saradi Kamalathunga for the Petitioners-Appellants.

Priyantha Gamage for the 1st Respondent-Respondent.

Dr. Sunil Abeyratne with Buddhika Alagiyawanna for the 2nd and 3rd Respondents-Respondents.

Rajitha Perera, DSG for the 4th Respondent-Respondent.

Written Submissions: Petitioners- Appellants – 13 September 2024, 14 October 2025

1st Respondent-Respondent – 15 August 2024, 08 October 2025

2nd & 3rd Respondents-Respondents – 15 October 2025

4th Respondent-Respondent – 22 September 2025

Argued on: 12 September 2025

Decided on: 11 May 2026

Dr Sobhitha Rajakaruna J.

The Petitioners-Appellants ('Appellants') instituted the above styled application in the Court of Appeal seeking, inter alia, a writ of certiorari to quash the Order made by the Minister of Finance (the President at the time), published in Gazette Extraordinary No. 1893/14 dated 17 December 2014 (marked 'B11a'). The said Order was issued in terms of Section 72 of the

Finance Act No. 11 of 1963, whereby the People's Bank (the 2nd Respondent-Respondent) was vested with the properties described in the schedule thereto.

At the threshold, the Respondents-Respondents ('Respondents') raised preliminary objections and moved for the dismissal of the application in the Court of Appeal in limine. The principal objection urged was that the Appellants' application was futile, since the Appellants had failed to challenge the antecedent determination made by the Board of Directors of the 2nd Respondent-Respondent ('2nd Respondent') Bank to acquire the premises in question. It is observed that the impugned order published in the Gazette marked 'B11a' was made by the said Minister consequent upon such determination. Furthermore, that determination itself was based on the recommendation of the 3rd Respondent-Respondent ('3rd Respondent'), following the statutory procedure relating to the redemption of property.

The 2nd and 3rd Respondents submitted that Section 72(1) of the Finance Act clearly provides that, where the Bank determines that any premises shall be acquired for the purposes of that Part of the Act, the Chairman of the Board of Directors shall notify such determination to the Minister. It was contended that the statute does not require the Bank as an institution to make such notification; rather, the obligation lies specifically upon its' Chairman, who shall cause such determination to be notified to the relevant Minister.

The Respondents further contended that, in the absence of a challenge to the said determination of the Board of Directors, the quashing of the Gazette 'B11a' alone would be of no practical consequence, as the underlying determination would continue to subsist. Additionally, it was argued that the failure to implead the members of the Board of Directors, including its Chairman, constituted non-joinder of necessary parties, which is fatal to the application.

The Appellants, on the other hand, submitted that the legislative intent underlying Section 71 of the said Finance Act is to afford relief to persons belonging to low-income groups who have lost residential or agricultural lands through mortgage. They contended that this matter does not fall within such a category. The Appellants further asserted that the application made by the 1st Respondent-Respondent to the 2nd Respondent Bank for redemption of the land was

not bona fide, and that the statutory requirements had not been satisfied. They also claimed to be bona fide purchasers of the land in question.

The 4th Respondent-Respondent advanced the position that the application before the Court of Appeal was inherently futile, as the relief sought did not finally adjudicate the rights of the Appellants nor resolve the dispute relating to the redemption of the subject property. In support, reliance was placed on judicial authorities, including ***Perera v People's Bank Land Redemption Department and Others*** [1985] 1 Sri L.R. 39, ***V. Ramasamy v Ceylon State Mortgage Bank*** [1976] 78 NLR 510, and ***Rican Lanka (Pvt) Ltd. v People's Bank*** (C.A. Minutes 03.03.2004).

Upon consideration of the preliminary objections, and having regard to authorities such as ***Sideek v Jacalyn Seneviratne and Others*** [1984] 1 Sri L.R. 83 and ***Ratnasiri and Others v Ellawala and Others*** [2004] 2 Sri L.R. 180, the Court of Appeal, by its order dated 22 June 2020, upheld the objections and dismissed the application of the Appellant, in limine. The Court held that the failure to challenge the determination of the Board of Directors rendered the application futile, as such a determination would survive even if the Gazette marked 'B11(a)' were to be quashed. The Court further held that the non-joinder of the members of the Board of Directors constituted an additional ground for dismissal.

Aggrieved by the said judgement, the Appellants sought and obtained Special Leave to Appeal from this Court on the following Questions of Law set out in paragraph 54 of the Petition dated 31 July 2020:

a. Has the Court of Appeal erred in law in holding that the application of the Appellants is futile since they have failed to challenge the determination made by the Board of Directors of the 2nd Respondent?
b. Since, if the recommendation/order made by the 3rd Respondent Inquiry Officer was quashed in the connected application number CA/106/2012 (as prayed for by the Appellants), the determination made by the Board of Directors of the 2nd Respondent Bank as well as the vesting order 'B11a' made by the Minister would be a nullity and of no for so avail in law, and as such, has the Court of Appeal erred in law that application is futile?

c. In as much as the 2nd Respondent Bank is a party to the application, has the Court of Appeal erred in law in holding that the members of the Board of Directors are necessary parties to the application?

At the outset, it is necessary to consider the concept of "futility" in the context of Judicial Review. Although the aforementioned judicial decisions have addressed this principle, no exhaustive definition has been articulated. 'The reasons why a court generally will not make a futile order have not been well articulated. It may be that the courts consider the rationale for this principle to be self-evident'[1].

Futility in Judicial Review is best understood as a discretionary doctrine whereby a court may decline to grant relief where such relief would serve no practical purpose or confer no meaningful benefit upon the Petitioner. When exercising such discretion, judicial abdication and judicial usurpation play a vital role. The term 'abdication' is derived from Latin, meaning renouncing authority. Matthias Klatt[2] states in his article 'Positive rights; Who decides? Judicial review in Balance' in *International Journal of Constitutional Law* (2015) Vol. 13 No. 2, 354–382, that judicial abdication occurs when courts refrain from protecting positive rights properly. 'Judicial usurpation' results in too much control, whereas abdication results in too little control. Together, both embody the opposite extremes of the range. The above article suggests that we are left with the task, then, of finding the correct balance between the two poles of usurpation and abdication, bringing about the correct intensity of control.

Additionally, the doctrine of exhaustion of remedies requires that an applicant exhaust all available statutory or administrative remedies before seeking judicial relief through a writ. The underlying purpose of this rule is to prevent premature judicial intervention and to afford administrative bodies the initial opportunity to correct their own errors or decisions. Similarly, the said doctrine is adopted when further administrative remedies would be futile or excessively burdensome. However, courts have recognised exceptions to this doctrine

[1] Normann Witzleb, 'Equity does not act in vain: An analysis of futility arguments in claims for injunctions', *Sydney Law Review*, Vol. 32:503, p503. Normann Witzleb is a Senior Lecturer, Monash University School of Law. An earlier version of the article was presented at the Sixth International Remedies Discussion Forum, Université Paul Cezanne Aix-Marseille III, Aix-en-Provence (France), 5–6 June 2009.
[2] Professor of Public Law, EU Law, Public International Law, and Jurisprudence, University of Hamburg, Germany. Email: matthias.klatt@jura.uni-hamburg.de.

where immediate judicial intervention is warranted due to urgency or to prevent the infringement of any right of the applicant.

By wide reading, it is observed that a court exercising equitable jurisdiction has discretion, according to law, to refuse relief, such as specific remedies, if granting the order would serve no real practical purpose. Whether a claim is dismissed as futile depends on how likely it is that the order will provide meaningful benefit to the applicant, weighed alongside other discretionary factors. An order is considered futile when it cannot effectively protect the claimant's rights or deliver a real benefit. Therefore, courts generally require a genuine likelihood that the order will be enforceable and produce a useful outcome, placing the burden on the applicant to demonstrate this. A court exercising Judicial Review jurisdiction must strike a careful balance between undue restraint (judicial abdication) and excessive intervention (judicial usurpation). Relief ought not to be refused merely because enforcement may be difficult or uncertain; however, where it is evident that the grant of relief would not effectively protect the applicant's rights or yield any tangible benefit, the court is justified in refusing such relief. In essence, an application should not be dismissed even when the criteria for futility are met, as upholding such objection is at the discretion of court based on the circumstances of each case.

In light of the above, the relief sought by the Appellants in the Court of Appeal does not conclusively determine their rights nor resolve the dispute concerning the redemption of the subject property. Even if the impugned Gazette marked 'B11a' were to be quashed, the underlying determination of the Board of Directors would remain intact and operative. Moreover, the Petitioners have failed to establish that the relevant Minister has issued the said Gazette 'B11a' by wholly or in part assuming a jurisdiction which he does not have or exceeding that which he has or acting contrary to principles of natural justice. In these circumstances, the grant of relief in the respective application for Judicial Review in the Court of Appeal would not produce any meaningful or effective result. Accordingly, I am in agreement with the Court of Appeal that the said application is futile, and its determination in that regard is sound in law.

However, I am unable to agree with the Court of Appeal's finding that the failure to implead the members of the Board of Directors constitutes a fatal defect. Modern administrative law

has evolved to recognise that, depending on the specific circumstances, writs may be issued against juristic persons and public bodies without the need to name individual office-bearers, provided that such entities are properly before the court.

His Lordship Justice A. H. M. D. Nawaz in ***N. Ekanayake v Hon. Attorney General***, CA/Writ/58/2012 decided on 25 April 2016 rejecting the argument of the respective respondent that mandamus cannot lie against a public body such as the Sri Lanka Ports Authority, decided: "the law seems to have moved away; and today a juristic person, no less than a natural person, can be commanded by mandamus to carry out its public duty". Another significant decision was made by His Lordship Justice Mahinda Samayawardhena in ***Methodist Trust Association of Ceylon v Divisional Director of Education of Galle and others,*** CA/Writ/192/2015, decided on 08 January 2019. His Lordship Justice Samayawardhena has held that it is a myth that mandamus can only be issued against natural persons; mandamus, like any other prerogative writ, can be issued against natural, juristic or non-juristic persons, including tribunals, corporations, public bodies, public officials identified by their official designations, provided the other requirements to issue mandamus are fulfilled. His Lordship has categorically decided that the only exception to Rule 5 (of the Court of Appeal- Appellate Procedure- Rules 1990) is Rule 5(5), which is applicable only in respect of applications filed before 31 December 1991.

His Lordship Justice Samayawardhena even in ***Wickramamthanthrige Viraj Amanda Wickramasinghe v Minister of Education and Others*** CA/Writ/230/2016 decided on 08.01.2019, after considering the preliminary objection that the 1st to 3rd respondents against whom mandamus has been sought are not natural persons in order to avail the issuance of a writ of mandamus, has concluded pronouncing that such objection is baseless as the Court of Appeal (Appellate Procedure) Rules 1990 "speak of the exact antithesis, i.e., the Rules say that the petitioner need not specify and identify the respondents by names.".

Subsequently, a divisional bench of the Court of Appeal in ***Ven. K. Wacheeswara Thero and others v Dharmasena Dissanayaka, Chairman - The Public Service Commission and others***[3] has

[3] *Ven K Wacheeswara Thero and others v Dharmasena Dissanayaka, Chairman - The Public Service Commission and others* CA/WRIT/45/2019 (decided on 30/03/2023). The bench comprised of Sobhitha Rajakaruna J, M. T. Mohammed Laffar J and Mayadunne Corea J.

taken a momentous approach against the traditional grounds used to issue writs of mandamus. The Court analysed the above two judgements as well as the cases of ***N. Ekanayake v Hon. Attorney General***[4], ***Dhilmi Kasunda Malshini Suriyarachchi v Sri Lanka Medical Council and others***[5], ***Methodist Trust Association of Ceylon v Divisional Director of Education of Galle and others***[6], ***Wickramamthanthrige Viraj Amanda Wickramasinghe v Minister of Education and Others***[7], ***Abayadeera and 162 others v Dr Stanley Wijesundera, Vice Chancellor, University of Colombo and another***[8] and the alleged judicial precedent enunciated in many cases, including ***Haniffa v The Chairman, UC Nawalapitiya***[9].

Accordingly, the divisional bench held in the said ***Ven. K. Wacheeswara Thero*** case:

> 'On a careful consideration of the above legal antecedents together with the relevant jurisprudence and for the reasons set out above, I have come to the conclusion that it is not essential to name a respondent in person in an application seeking orders in the nature of a writ of Mandamus and it can even be issued against juristic persons/public bodies such as corporations, tribunals, local government institutions or against any person holding a post of a public nature and who has been sufficiently made a respondent in his official capacity or by reference to his official designation. The above conclusion is always subject to the other established requirements that should be fulfilled by a petitioner when seeking a writ of Mandamus. Similarly, when such a respondent has been named in person in an application for writs of Mandamus, the substitution should be allowed when he or she ceases to hold office.

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[4] *N Ekanayake v Hon Attorney General,* CA/Writ/58/2012 decided on 25/04/2016.
[5] *Dhilmi Kasunda Malshini Suriyarachchi v Sri Lanka Medical Council and others* CA/Writ/187/2016 decided on 31/01/2017.
[6] *Methodist Trust Association of Ceylon v Divisional Director of Education of Galle and others* CA/Writ/192/2015 decided on 08/01/2019.
[7] *Wickramamthanthrige Viraj Amanda Wickramasinghe v Minister of Education and Others* CA/Writ/230/2016 decided on 08/01/2019.
[8] *Abayadeera and 162 others v Dr Stanley Wijesundera, Vice Chancellor, University of Colombo and another* (1983) 2 Sri LR 267.
[9] *Haniffa v The Chairman, UC Nawalapitiya* 66 NLR 48, *Samarasinghe v De Mel and another* (1982) 1 Sri LR 123; *Abayadeera and 162 others v Dr. Stanley Wijesundera, Vice Chancellor, University of Colombo and another* (1983) 2 Sri LR 267 (n 109); *Shums v People's Bank and others* (1985) 1 Sri LR 197; *Kamil Hassan v Fairline Garments (International) Ltd and Two others* (1990) 1 Sri LR 394; *Dayaratne v Rajitha Senaratne, Minister of Lands and others* (2006) 1 Sri LR 7; *Dhilmi Kasunda Malshini Suriyarachchi case* (n 106); *Methodist Trust Association of Ceylon case* (n 107); *Wickramamthanthrige Viraj Amanda Wickramasinghe case* (n 108); *Rupahinge Nayanananda Indrakumara v Land Reform Commission and others* CA/Writ/271/2013 decided on 15/10/2019.

> However, the prerogative nature of issuing writs should not be undermined at any cost, and thus, the Review Court should be able to deviate to a certain extent from the above conclusions as it thinks fit in the interest of justice.'

The rationale and the dicta of the said ***Ven. K. Wacheeswara Thera***'s case should be adopted in determining the instant Application. Based on the specific circumstances of this case, the 2nd Respondent Bank, as a juristic entity, sufficiently represents the interests of its Board of Directors, and no prejudice is occasioned by the omission to name them individually.

Nevertheless, this conclusion does not alter the aforesaid ultimate outcome, as the application of the Appellants in the Court of Appeal is unsustainable on the grounds of futility, addressed previously.

Accordingly, the above Questions of Law (a) and (b) are answered in the negative, in favour of the Respondents, and Question (c) is answered in the affirmative, in favour of the Appellants. For the foregoing reasons, the Appeal is dismissed, to the extent mentioned above.

Judge of the Supreme Court

Mahinda Samayawardhena J.

I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne J.

I agree.

Judge of the Supreme Court