

**KUMARA  
v.  
THE MAYOR, RATNAPURA MUNICIPAL COUNCIL  
AND OTHERS**

SUPREME COURT  
FERNANDO, J.  
ISMAIL, J. AND  
WEERASURIYA, J.  
SC SLA NO. 254/2002  
C.A APPLICATION NO. 1103/2000  
27TH JANUARY, 2003

*Writs of certiorari and mandamus - Failure to perform duty is a precondition for issue of writ.*

The petitioner applied for certiorari and mandamus against the 1st respondent Mayor of the Ratnapura Municipal Council (the Mayor) for an order to allocate shop No.41 in a new shopping complex constructed by the Municipal Council. The Court of Appeal dismissed the application on the ground that the Mayor had given an undertaking that the petitioner would be allocated a shop which undertaking the Mayor was willing to honour.

**Held :**

There was no reason to interfere with the judgment of the Court of Appeal.

**APPLICATION** for leave to appeal from the judgment of the Court of Appeal.

Dr. Jayatissa de Costa with Chandana Gunaratne for petitioner.

K. Indatissa for 1st respondent.

Cur.adv.vults

May 12, 2003.

**FERNANDO, J.**

The petitioner applied for *certiorari* and *mandamus* against the 1st respondent, the Mayor of Ratnapura, in order to secure the allocation to him of Shop No. 41 in a new shopping complex constructed by the Municipal Council. He pleaded that he had surrendered the premises formerly occupied by him, in order to enable the new complex to be constructed, upon a promise that he would be allocated Shop No. 41.

The Court of Appeal dismissed his application on the ground that “there had been an undertaking given by the 1st respondent, despite the request by the petitioner for Shop Nos. 41 and 42 ... that he would be *allocated a shop*, which undertaking the 1st respondent is still willing to honour in terms of P8”.

The petitioner applied for special leave to appeal. After both Counsel were heard, they informed Court that they wished to explore a settlement on the basis of paragraph 20 of the 1st respondent’s statement of objections – which referred to that undertaking. Accordingly, order was reserved but the parties were given time till 21.02.2003 to file written terms of settlement.

No terms of settlement have been filed.

We see no reason to interfere with judgment of the Court of Appeal. Special leave to appeal is refused without costs.

**ISMAIL, J.** – I agree.

**WEERASURIYA, J.** – I agree.