

1961

Present : Weerasooriya, J.

VINNASITHAMBY, Petitioner, and JOSEPH *et al.*, Respondents,
S. C. 100—*Application for a Writ of Mandamus on A. A. Joseph
Assistant Commissioner of Local Government, Jaffna, and another*

Mandamus—Addition of necessary parties—Permissibility.

In an application for a writ of *mandamus* it is open to the petitioner to move that further parties be added as respondents (if they are necessary parties), provided that on the date on which the application is made to add the parties the substantive application before the Court is not ready for inquiry.

APPPLICATION for a writ of *mandamus*.

Izadeen Mohamed, with *H. D. Thambiah*, for petitioner.

B. C. F. Jayaratne, Crown Counsel, for respondents.

E. R. S. R. Coomaraswamy, with *R. Manickavasagar*, for parties noticed.

Cur. adv. vult.

December 21, 1961. WEERASOORIYA, J.

The only question that was argued when this matter was taken up on the 8th December, 1961, was whether it is now too late for the petitioner to have the parties-noticed added as respondents to the application. Counsel for the petitioner concedes that these parties are necessary

parties and should have been made respondents to the application when it was filed. Counsel for the parties-noticed relied on the case of *Goonetilleke v. Government Agent, Galle*¹, for the submission that it is too late for the petitioner to move to add fresh parties. In that case an application to add a necessary party was refused by Keuneman, S.P.J., on the ground that it was made at too late a stage. It is not clear, however, from the judgment what stage the proceedings had reached on the date when the application was refused. If all the preliminary steps had already been taken (such as the filing of objections and affidavits by the respondents) and the matter was ready for inquiry into the substantive application before the Court, I would respectfully agree that it was too late for the petitioner to have moved that further parties be added.

When the application in the present case was listed on the 16th June, 1961, learned Crown Counsel who appears for the two respondents on the record raised a preliminary objection that certain necessary parties had not been made respondents. It was in view of that objection that counsel for the petitioner moved the Court that the Chairman and Vice-Chairman of the Karachchi Village Committee be added as parties, and notice was thereupon ordered on them to show cause why they should not be added. It would appear, however, that on the date on which the preliminary objection was raised the matter was not ready for inquiry, neither respondent having up to then filed any statement of objections or affidavit in regard to the substantive application before the Court.

No hard and fast rule can, of course, be laid down as to when an application for the addition of necessary parties, when made prior to the date of inquiry, should be allowed or refused. In the present case, no grounds were urged by Mr. Coomaraswamy, who appeared for the parties-noticed, other than the decision in *Goonetilleke v. Government Agent, Galle (supra)*, as to why the petitioner's application that they be added should be refused. I have not referred to certain other cases cited by Mr. Coomaraswamy as they are not directly in point.

I would order that the parties-noticed be added as the 3rd and 4th respondents subject, however, to the following terms to be complied with by the petitioner: He will deposit in Court a sum of Rs. 1,000/ and enter into a bond hypothecating the same as security for any costs which he may be ordered to pay in these proceedings to the respondents (including the 1st and 2nd respondents). The petitioner is required to take these steps on or before the 15th January, 1962, and on his failure to do so the application for the writ of mandamus will stand dismissed with costs. If the petitioner complies with these terms a further two weeks' time is given to the respondents (including the 1st and 2nd respondents) to file their objections and affidavits, if any. The matter will thereafter be listed for inquiry as early as possible.

I make no order as to the costs of the 8th December, 1961.

Addition of further parties allowed.

¹ (1946) 47 N. L. R. 549.