

1963

Present : Herat, J.

A. G. PEIRIS, Petitioner *and* K. V. M. GUNASEKERA *and* another,
Respondents

*S. C. 243 of 1963—In the matter of an Application for a Mandate
in the nature of a Writ of Quo Warranto under Section 42 of
the Courts Ordinance*

Quo warranto—Refusal of writ on the ground of futility.

A writ of *quo warranto* will not be granted if at the time of issuing the writ the grant of the writ has become, in the opinion of the Court, futile.

The petitioner applied for a writ of *quo warranto* on the ground that the 1st respondent was not the lawful holder of a certain appointment. Before the application was listed for argument the appointment of the 1st respondent was revoked by the appointing body (the 2nd respondent).

Held, that, in the circumstances, the issue of the writ of *quo warranto* was futile.

APPPLICATION for a writ of *quo warranto*.

H. W. Jayewardene, Q.C., with *Nimal Senanayake* and *Prins Rajasooriya*,
for the Petitioner.

V. Tennekoon, Deputy Solicitor-General, with *H. L. de Silva*, Crown
Counsel, for the Respondents.

September 3, 1963. HERAT, J.—

This is an application by the petitioner for a writ of *quo warranto* against the two respondents. The application arises under the following circumstances: The petitioner, at all relevant times, was functioning as the Village Headman of Hunupitiya in Siyane Korale West. He has not been dismissed from service or compulsorily retired on the ground of age, but it is stated that he has been sent on retirement on the ground of abolition of office.

The first respondent was appointed Village Headman of Hunupitiya as from 1st May 1963 by the second respondent who is the Government Agent of the Western Province. The petitioner states that the office he held has not, in fact, been abolished and he neither was dismissed nor retired on the ground of age or inefficiency or on any other legal ground. He states that he still continues to hold the office of Village Headman of Hunupitiya and that the first respondent is a usurper of the office in question.

The petitioner, by his petition, prays "for a declaration that the first respondent is not the lawful holder of the office of Village Headman of Hunupitiya and not entitled to function in such capacity". On these averments this Court issued notice upon the respondents. Affidavits were filed and the matter was listed for argument on or about the 24th August 1963. However, the first respondent filed an affidavit to the effect that his appointment had been revoked with effect from 17th August 1963 by the second respondent and that with effect from that date, namely the 17th August 1963, he no longer claimed to be the Village Headman of Hunupitiya or was functioning as such. This fact is not disputed by the parties.

Now, the granting of a writ of *quo warranto* is a matter, which is in the discretion of this court and, in our opinion, this court will not grant such a writ if at the time of issuing the writ the grant of that writ has become, in the opinion of this court, futile. The very purpose of this application, as shown in the words quoted above from the prayer of the petition and in fact from the nature of the application itself, is to remove some usurper who is usurping or in unlawful occupation of a public office.

In the instant case, on the admitted facts, from the 17th August 1963 the first respondent, against whom the writ is sought, is not usurping the public office in question and not, in fact, in unlawful occupation of that office. The issue of the writ would therefore be, in our opinion, futile. There may be circumstances in appropriate cases where after notice has issued there may be a change of circumstances, but the court may still issue a writ if valid grounds existed at the time the notice was issued for the writ to be granted. There may be cases where despite the change of circumstances the granting of a writ has not become futile. It is not necessary to discuss those circumstances any further in this case. It is sufficient to find that in view of the present case the granting of the writ has become futile and for that reason we exercise our discretion in refusing the application. In all the circumstances of the case we direct that each party should bear his own costs.

ABEYESUNDERE, J —I agree.

Application dismissed.