

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

In the matter of an application for  
a Writ in the nature of a Writ of  
Mandamus in terms of Article 140  
of the Constitution of the  
Democratic socialist Republic of Sri  
Lanka.

**C.A. Writ Application**

**No. 314/2016**

1. Sunil Anthony Embuldeniya,  
No. 108, 'St Agnes',  
Elipichchawatte Road,  
Welivita, Kaduwela.
2. Denzil Boniface Wickramasinghe,  
No. 108/A, Elipichchawatte Road,  
Welivita, Kaduwela.
3. Niranjana Christopher  
Wickramasinghe,  
No. 110/G, Elipichchawatte Road,  
Welivita, Kaduwela.
4. Kamal Roshan Jaya,  
No. 110/I, Elipichchawatte Road,  
Welivita, Kaduwela.

5. Hewa Thantirge Gamini Sudesh  
Kumara Perera, No. 112/B/1,  
Elipichchawatte Road,  
Welivita, Kaduwela.
6. Nawala Wattage Sunanda Sujith  
Perera, No. 107/A/1,  
Elipichchawatte Road,  
Welivita, Kaduwela.

**Petitioners.**

Vs.

1. The Secretary to the Minister,  
Ministry of Urban Development,  
'Sethsiripaya'  
Battaramulla.
2. The Chairman,
3. Director General –UDA,
4. The Director –UDA (Planning)
5. The Director – UDA (Enforcement),
6. The Deputy Director – UDA  
(Planning Committee) Kaduwela.

**All of;**

Urban Development Authority,  
'Sethsiripaya', 7<sup>th</sup> Floor,  
Battaramulla.

7. The Secretary to the Minister  
Ministry of Megapolis and Western

Development,  
Suhurupaya, 17<sup>th</sup> Floor,  
Battaramulla.

8. Director General  
Central Environmental Authority
9. Director – Western Provincial Office  
of Central Environment Authority,
10. Director Complaint Unit of the  
Central Environment Authority,  
**All of;**  
'Parisara Piyasa'  
No. 104, Denzil Kobbekaduwa  
Mawatha, Battaramulla.
11. Divisional Secretary  
Kaduwela Divisional Secretariat,  
Malambe.
12. Director General  
Irrigation Department,  
No. 230, P.O. Box 1138,  
Buddhaloka Mawatha,  
Colombo 07.
13. Director General  
Disaster Management Centre,  
**No. 120/2, Vidya Mawatha,**  
Colombo 07.

14. Commissioner of Local Government,  
Department of Local Government  
(Western Province)  
No. 2, Cambridge Terrace,  
Colombo 07.
15. The Commissioner,  
Municipal Council,  
Kaduwela.
16. The Engineer,  
Municipal Council,  
Kaduwela.
17. Officer in Charge (O.I.C.)  
Police Station,  
Mulleriyawa. (Angoda)
18. D.L.S. Ranaweera (The Developer)  
No. 75, 'Nihathamanie',  
Welivita,  
Kaduwela.
19. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents.**

**C.A. Writ Application No. 314/2016**

Before : Vijith K. Malahoda, P.C., J (P/CA) &  
S. Thurairaja, P.C., J.

Counsel : Hiran de Alwis with Heshan thambimuttu for  
the Petitioner.  
Farzana Jameel, P.C. A.S.G. for 1<sup>st</sup> to 12<sup>th</sup>  
Respondents.  
A. Kasturiarachchi for the 15<sup>th</sup> and 16<sup>th</sup>  
Respondents.  
S.A. Parathalingam, P.C., with Niranjana  
Arulpragasam and Manduka Perera for  
18<sup>th</sup> Respondent.

Inquiry concluded : 07.12.2016.

Written Submissions

of the Petitioner : 25.01.2017.

Order on : 31.03.2017.

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**Order on interim relief.**

**S. Thurairaja, P.C., J.**

There are six petitioners in this application and sought the following relief from the Court.

- (a) *that For a Writ in the nature of a Writ of Mandamus directing the 1<sup>st</sup> to 17 Respondents to perform their duties by preventing the construction and the operation of the unauthorized warehouse of the 18<sup>th</sup> Respondent at Elipichchawatte Road, Welivita, Kaduwela.*
- (b) *to issue an Interim Order preventing the 18<sup>th</sup> Respondent carrying on further constructions in the alleged unauthorized warehouse and further businesses at the said premises at Elipichchawatte Road, Welivita, Kaduwela.*
- (c) *to issue an Interim Order directing the 1<sup>st</sup> to 17<sup>th</sup> Respondents to prevent the 18<sup>th</sup> Respondent from conducting any business activities at the warehouse premises at Elipichchawatte Road, Welivita, Kaduwela the subject matter hereof till the hearing and final determination of this application.*

The Counsel for the Petitioner supported the application for notice on the 03.10.2016 and reserved their rights to support for the interim relief. On 26.10.2016 when the case was mentioned for notice returnable the Counsel for the Petitioner moved Court, that he wants to support for the interim relief. Accordingly the matter was fixed to support for interim relief on 07.12.2016. On that date all Counsels made submission and moved time to file written submissions. To file

written submissions the case was mentioned on 24.01.2017 there the Counsel for the 15<sup>th</sup> and 16<sup>th</sup> Respondents moved time to file written submissions, time granted till 17.02.2017. On that date the Counsel for the 15<sup>th</sup> and 16<sup>th</sup> Respondents informed Court that they will not be filing written submissions. Anyhow the Additional Solicitor General who is appearing for the 1<sup>st</sup> to 12<sup>th</sup> and 19<sup>th</sup> Respondents moved further time to file written submissions and time granted till 09.03.2017. When the case was called on 09.03.2017 Counsel moved time to file written submissions and the Court granted time till 17.03.2017. After all written submissions the matter is fixed for order on interim relief.

Counsel for the Petitioner submits that he is supporting for the interim relief as prayed in para 'C' and 'B' and submits that the Court to order the 1<sup>st</sup> to 17<sup>th</sup> Respondents to prevent the 18<sup>th</sup> Respondent from any construction and any business activities in the warehouse at Elipichchawatta Road, Welivita, Kaduwela.

Comparing the final relief prayed in para 'A' and the interim relief in para 'c' are almost identical. Prayer 'B' of the petition of the petitioners speak of preventing the 18<sup>th</sup> Respondent carrying on further constructions in the alleged unauthorized warehouse and further businesses at the Elipichchawatta Road, Welivita, Kaduwela. Comparing the main relief prayed in paragraph 'A' it appears almost identical relief as prayed as final relief.

This order only deals with the application for interim relief, hence I do not venture into the discuss entire materials before the Court. I consider only very limited materials, which are directly relevant to the interim relief.

The Additional Solicitor General in her objections submitted that the interim relief claimed is virtually get the final relief.'

A.S.G. submits that the interim relief as prayed in the first part of the prayer 'b' does not arise because the construction was completed therefore issuing a stay order will not serve any purpose. It is confirmed by Counsel for the Petitioner as well as the Counsel for 18<sup>th</sup> Respondent. The Counsel for the Petitioner submits that construction will not be considered concluded until Certificate Of Confirmation (COC) been issued, in this case there is no COC produced in Court therefore the construction must be stopped. Considering all submissions, for the purposes of interim relief, COC, in my view is only procedural matter. There is no construction to be stopped at the juncture.

Staying the business of the 18<sup>th</sup> Respondent is final relief claimed by the petitioner and the petitioners to show by doing/continuing with business may cause irreparable damages to the petitioners immediately.

All Counsels have made very lengthy submissions on these issues.



The granting of Interim Relief.

In the case of **Duwearachchi vs Vincent Perera** (1984 (2) SLR 94) has laid down three principles which Courts should consider when they are called upon to decide the issuance or non-issuance of a stay order. This has been followed consistently thereafter and recently in the cases of:

(a) **Ceylon tobacco Company PLC vs Maithripala Sirisena and others** (CA Writ Application No. 336/2012–CA Minutes 22.02.2013)

(b) **Natwealtha Securities Limited vs the Monetary Board of Sri Lanka and others.** (CA Writ Application No. 335/2015 – CA Minutes of 29.03.2016).

*The three principles are as follows:*

(a) *Will a final order be rendered nugatory if the Petitioner is successful?*

(b) *Where does the balance of convenience lie?*

(c) *Will irreparable or irremediable mischief or injury be caused to either party?*

The view taken by the Indian Supreme Court In Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., AIR 1999 SC 3105 was that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions, which are as below:

The Counsel for the Petitioner submits that the principle of wrongdoer is applicable in this application and made following submissions.

*It is for this reason that the Courts of Sri Lanka have upheld and brilliantly conceived the salutary principle of Law namely "that a wrongdoer should not get any benefit from it's own wrongdoing". The concept of unjust enrichment is also enshrined in our common Law. These principles of Law permeate the entire jurisprudence of our country and has been safe guarded by our Courts.*

*The said principle was reiterated and set out in an Interim Injunction case which was decided in the Court of Appeal in the case of Seelawathie Mellawa V Millie Keerthiratne 1982 1SLR – 1 SLR 384 in relation to a Lease and eviction of a business pending the final determination of the case and the Interim Order was upheld that a wrongdoer should not benefit form his wrongdoing.*

The learned ASG and Counsel for the 18<sup>th</sup> Respondent vehemently refuted the allegation and submits that the said wrongdoer principle will not be applicable in this case.

It is should be noted that the Petitioner in para 30 of the petition submits to Court as follows:

*"The Petitioners plead that the 18<sup>th</sup> and 19<sup>th</sup> - Respondents is named only purposes of notice."*

Considering the submissions, I find that the 18<sup>th</sup> Respondent is the developer of the land who seems to be the main or one close to the main Respondent, as per the submissions of the Respondents the said premises is presently leased to Fortune - Agro Industries (Pvt) Limited and that person is not been made as a party in this application. The Respondent submits that this application *per se* is misconceived because the relevant and important parties are not before the Court. At this juncture, I do not wish to make any decision in this regard but for limited purposes paragraph 30 of the petition and the prayer appears to be contradicting to each other. The Petitioner is seeking to stop the business of the 18<sup>th</sup> Respondent or his lessee and has not made them as substantial party to this application.

The available materials before the Court convince us that the construction *per se* is completed and the Company is running the business. Therefore the major relief claimed by way of interim relief will be futile.

As held in the case of **P S Bus Company vs. Ceylon Transport Board**, 62 NLR 491, a Writ will not issue if it is vexatious or futile.

The Counsel further submitted the principle of Certiorarified Mandamus and made lengthy submissions of this concept and its applicability in this case. Considering the prayers of interim relief, I think the Court should not consider the concept of Certiorarified Mandamus at this juncture.

Considering all submissions the Court is not satisfied that there is need of issuing interim relief at this juncture. Application for interim relief is refused and the matter is fixed for argument.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda, P.C., J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL

*Akn*