

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

*In the matter of an Application for
mandates in the nature of Writs of
Certiorari and Mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C A (Writ) Application

No. 25 / 2017

1. Mahesh Lalchand Hirdaramani,
No. 58,
Ward Place,
Colombo 07.
2. Jayantha Fernando,
58 / 6,
Ward Place,
Colombo 07.

3. Dr. D.N. Pieris,
58 / 6,
Ward Place,
Colombo 07.
4. Mrs. Anne Leilamani Pereira,
56 1/2 A,
Ward Place,
Colombo 07.
5. Drushika Amirthanayagam,
N0. 56/ 1,
Ward Place,
Colombo 07.
6. Lilani Anne de Silva,
70/ 5,
Ward Place,
Colombo 07.
7. Krishniji Jeevamani Madanayake,
No. 93,
Rosmead Place,

Colombo 07.

8. Nirmal Anurudha Madanayake,

No. 21,

Anderson Road,

Colombo 5.

9. Nipuna Yatawara,

No. 87,

Rosmead Place,

Colombo 07.

10. Mrs. J G Kodikara

No. 87,

Rosmead Place,

Colombo 7.

PETITIONERS

-Vs-

1. The Urban Development

Authority,

"Sethsiripaya",

Battaramulla.

2. The Colombo Municipal Council,
Town Hall,
Colombo 7.
3. The Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 7.
4. The Central Environmental
Authority,
104,
Denzil Kobbekaduwa Mawatha,
Battaramulla,
Sri Lanka.
5. Prime Lands Residencies (Pvt),
Limited.
No.75,
D.S. Senanayake Mawatha,
Colombo 08.

6. Hon. Patali Champika

Ranawaka,

Minister of Megapolis and

Western Development,

Ministry of Megapolis and

Western Development,

18th Floor,

"Suhurupaya",

Sri Subuthipura Road,

Battaramulla.

7. Hon. Faizer Mustapha,

Minister of Provincial Councils

and Local Government,

Ministry of Provincial Councils

and Local Government,

No. 330,

Dr. Colvin R. de Silva Mawatha,

Colombo 02.

RESPONDENTS

Before: L T B Dehideniya J

P. Padman Surasena J

Counsel: Chandaka Jayasundera with Chinthaka Mendis for the
Petitioners.

Manohara Jayasinghe SC for the 1st & 4th Respondents.

Ranil Samarasuriya for the 3rd Respondent.

Romesh De Silva PC with Ali Sabry PC, Sugath Caldera and
Ruwantha Cooray for the 5th Respondent.

Oral submissions made on : 2017 - 04 – 05 &
2017 – 05 – 17

Decided on; 2017-06-28

ORDER

P Padman Surasena J

Petitioners in this application, has sought inter alia, Writs of Certiorari and
Mandamus in terms of Article 140 of the Constitution of the Democratic

Socialist Republic of Sri Lanka. As they also have sought interim reliefs in their prayers, this Court heard the submissions of learned counsel representing all the concerned parties in this case. They had subsequently filed their written submissions also. Thus this Court will have to first decide whether this Court should issue notices on the Respondents.

All development activities within the city of Colombo are expected to be carried out according to the 'City of Colombo Development Plan'.

'City of Colombo Development Plan (Amendment) - 2008' is a plan to amend the 'City of Colombo Development Plan 1999' approved on 15th March 1999 by the Minister of Housing and Urban Development by virtue of the powers vested in him under section 8F of the Urban Development Authority Law No. 41 of 1978.

The Petitioners in this case sought to argue that the drafters of clause 5 of the said Development Plan which is to the effect that '... The mixed Development Zone along the Western side of the Galle Road, the Commercial Zone along the Southern side of the Ward Place and Special Mixed Residential Zone along both sides of Havelock Road extend up to the end of the front lots having a frontage from each of those roads...' intended only the front portions of the lands along the Ward Place to be

developed as a Commercial Zone. It is the submission of the Petitioners that it is irrational to assume that by the inclusion of clause 5, the drafters intended that the Commercial Zone be allowed to extend from the Ward Place frontage of the plots of said lands right up to their rear boundary, as depicted in the printout of the Ariel view of the Ward Place areas produced marked **P2**¹.

It is therefore the Petitioners' submission that the 1st Respondent has erred in granting the approval for the 5th Respondent to construct an apartment complex consisting of 38 floors on the irrational basis that the said premises is wholly located within the Commercial Zone.

It is in the above backdrop that the Petitioners in their application have prayed inter alia, for

- i. A writ of certiorari to quash the Preliminary Planning Certificate marked "**P 5**" issued by the 1st Respondent;
- ii. A writ of certiorari to quash the Development Permit marked "**P 6**" issued by the 2nd Respondent;

¹ Paragraph 8(b) of the petition.

- iii. A writ of certiorari to quash the Environmental Recommendation dated 23rd August 2016 marked "**P 11**" issued by the 4th Respondent.

It is to be observed that clause 5 of the said Development Plan has references to 3 areas namely

- I. the Western side of the Galle Road - mixed Development Zone,
- II. the Southern side of the Ward Place - Commercial Zone and
- III. both sides of Havelock Road - Special Mixed Residential Zone.

It is apparent that the wording 'extend up to the end of the front lots having a frontage from each of those roads' in the said clause 5 is a phrase common to all 3 areas referred therein and hence is applicable to the lands situated in the Southern side of the Ward Place. Therefore, those lands could be permitted to be developed as being part of Commercial Zone referred therein. It is the view of this Court that it is not open to interpret the reference in the said Clause '..... extend up to the end of the front lots having a frontage from each of those roads...' as having meant only the front portions of those lands facing the Southern side of the Ward Place. Further such interpretation is not possible as there is no yardstick to

ascertain as to how one could demarcate such front portion from the whole block as the land in question is just one block of land. Petitioners have failed to offer any explanation in this regard.

In these circumstances and for the foregoing reasons we see no basis or justification for this Court to issue notices on the respondents.

Therefore we refuse to issue notices on the respondents and decide to dismiss this application. However we make no order for costs.

JUDGE OF THE COURT OF APPEAL

L T B Dehideniya J

I agree,

JUDGE OF THE COURT OF APPEAL