

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

**Case No. CA (Writ) 78/2017**

01. Amithodana Muchalinda Bandara Sudarshana Mullegama,  
No.1/1A, Atapattu Road, Dehiwala.

02. Himadu Kaushale Ranaweera,  
No.1/B, Atapattu Road, Dehiwala.

03. Janaka Liyanagama,  
No.7, Atapattu Road, Dehiwala.

04. Maha Bandarage Ananda Lakshman Bandara,  
No.9, Atapattu Road, Dehiwala.

05. Mohamed Hussein Mohamed Naufer,  
No.10, Atapattu Road, Dehiwala.

06. Moratota Mudiyanseelage Thilak Samaratunga,  
No.10/1, Atapattu Road, Dehiwala.

07. Michael Francis,  
No.12, Atapattu Road, Dehiwala.

08. Akhter Hussein Saifudeen,  
No.12A, Atapattu Road, Dehiwala.

09. Hemamala Sandaseelie Weerasooriya,  
No.16/2, Atapattu Road, Dehiwala.

10. Kapila Gamini Gunaratne,  
No.19, Atapattu Road, Dehiwala.

11. Dona Shayamalie Samanlatha Kosgamage,  
No.19/2, Atapattu Road, Dehiwala.

12. Addara Arachchige Rshine Duleeka Perera,  
No.37 /1, Jayanthi Road, Dehiwala.

13. Lansakara Herath Mudiyanseelage Ruwan Menike,  
No.37 /1-1/1, Jayanthi Road, Dehiwala.

14. Weerasinghe Arachchige Ranjith Weerasinghe,  
No.37/4, Jayanthi Road, Dehiwala.

**PETITIONERS**

**Vs.**

01. Dehiwala - Mount Lavinia Municipal Council, Galle Road, Dehiwala.

02. Dhammika Muthugala,  
Municipal Commissioner,  
Dehiwala- Mount Lavinia Municipal Council,  
Galle Road, Dehiwala.

03. Urban Development Authority  
"Sethsiripaya", Battaramulla.

04. Jagath Nandana Munasinghe,  
Chairman, Urban Development Authority,  
"Sethsiripaya", Battaramulla.

05. S.S.P. Rathnayaka,  
Director General, Urban Development Authority,  
"Sethsiripaya" , Battaramulla.

06. Patali Champika Ranawaka,  
Hon. Minister of Megapolis and Western Development,  
7th and 18th Floors, "SUHURUPAYA", Subhuthipura Road,  
Battaramulla.

07. N. Rupasinghe,  
Secretary, Ministry of Megapolis and Western Development,  
7th and 18th Floors, "SUHURUPAYA", Subhuthipura Road,  
Battaramulla.

08. Faiszer Musthapha,  
Hon. Minister of Provincial Councils and Local Government,  
No.330, Dr.Colvin R. De Silva Mawatha (Union Place), Colombo 02.

09. H.T. Kamal Pathmasiri,  
Secretary, Ministry of Provincial Councils and Local Government,  
No.330, Dr.Colvin R. De Silva Mawatha (Union Place), Colombo 02.

10. Greenfield Real-estate Lanka (Pvt) Ltd,  
11 B, Tissa Mawatha, Dehiwala.  
And  
No.6, Atapattu Road, Dehiwala.

**RESPONDENTS**

**Court of Appeal case No. CA 78/2017 Writ**

**Before** : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J,

**Counsel** : Chinthaka Sugathapala, Iresh Seneviratne and Thishya Weragoda  
for the Petitioner.

**Decided on** : 08/09/2017

**A.L. Shiran Gooneratne J,**

This is an application seeking the grant of an interim order in terms of prayer (f) to the Petition.

Heard Counsel for the Petitioner and Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 10<sup>th</sup> Respondents to the Petition.

The Petitioner contends that they became aware of the 10<sup>th</sup> Respondent seeking to build a condominium building of 6 floors, including the ground floor, at premises bearing assessment No. 6, Atapattu Rd, Dehiwala, in violation of the Urban Development Authority publication titled “Planning and Building Regulations, 2008-2020” marked P 12. Reference is made to schedule 8 marked P 12 (b) of the said publication which contains the Specifications for the maximum

number of floors in terms of regulations 32.4 (A) of the said publication, which is applicable within the 1<sup>st</sup> Respondent Municipal Council area.

In terms of the said regulation marked P 12 (b), the minimum Road width required for the construction of a building consisting of 6 floors (ground floor plus 5 floors) is 6 meters.

Plan bearing No. 3142 dated 16/01/2017 marked P 13 depicts Atapattu Road starting from Quarry Road. According to the said plan Atapattu Road does not at any point have a width of 6 meters as required for the construction of a building of a ground floor plus 5 floors.

The Petitioner contends that the premises bearing assessment No. 6 where the Development is taking place, the Road width is 5.10 meters and therefore by granting approval for the said building the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have acted unlawfully.

The 10<sup>th</sup> Respondent in their statement of limited objections states that approval was granted to construct 15 apartment units in a total of six floors including the ground floor car park was approved in accordance with the applicable planning and building Regulations. The 10<sup>th</sup> Respondent in the said limited objections has marked and produced as A 2 (a) survey plan No. 4473 which shows that the street lines of Atapattu Road is 30 feet (9.144 meters) wide.

In the said survey plan marked A 2, the street line along Atapattu Road adjacent to the proposed development area bearing assessment No. 6 can be

clearly observed as 30 feet (9.144 meters). “Street Line” in the regulations marked P 12 is defined as “a line or lines defined on one or both sides of any street, existing to show its future width or to show the width of a future street.....” As pointed out earlier, the requirement contemplated in schedule 8 of the regulations marked P 12 (a), is regarding the minimum Road width for the construction of a building. Therefore a street line width cannot be considered as satisfying the condition of the minimum road width required to construct a building as contemplated, in terms of schedule 8 of the regulations marked P 12 (b).

In terms of the said schedule the minimum Road width required to Developments with 6 floors (ground floor plus 5 floors) is 6 meters, as such the permit holder has failed to satisfy the said requirement.

Accordingly we are the view that the Petitioners have established a prima facia case to grant an Interim order as prayed for. Accordingly the interim order sought in terms of prayer (f) is granted.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL