

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

In the matter of Application under article 140 of the Constitution for Orders in the nature of writs of *certiorari* and *prohibition* against the Municipal Commissioner of the Municipal Council of Negombo and others.

C.A. Writ Application No:

CA 383/2017

1. H.D.P. Antony,
President of the Negombo Businessman Association,
No. 53/1, Grand Street, Negombo.
2. Mohan De Silva,
Secretary of the Negombo Businessmen Association,
Appollo Colour Lab, Near Railway Station,
Negombo.
3. Negombo Business Man Association,
Appollo Colour Lab, Near Railway Station,
Negombo.
4. Nimal Abeysinghe,
President of the Negombo Municipal Shopping Complex Trade Association,
No. 511/07, Finco State, Dalupatha,
Negombo.
5. Nilan Fernando,
Secretary Negombo Municipal Shopping Complex Trade Association,
Archbishop Nicholas Marcos Fernando

Mawatha, Kadolkale, 2nd Stage,
Negombo.

and others.

Petitioners

Vs.

1. Municipal Council of Negombo,
Office of the Municipal Council,
Negombo.
2. K.S.C. Sugath Kumara,
Municipal Commissioner,
Negombo Municipal Council,
Negombo.
3. B.N.V. Fernando,
Deputy Municipal Commissioner,
Negombo Municipal Council,
Negombo.
4. Secretary,
Negombo Municipal Council,
Office of the Municipal Council,
Negombo.
5. Lal Fernando,
Alas Road, Negombo.

and others.

Respondents

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

&

A.L. Shiran Gooneratne J.

Counsel : Dr. Sunil Coorey for the Petitioner.

Supported on : 24/11/2017

Decided on : 29/11/2017

Order

A.L. Shiran Gooneratne J.

Heard Counsel for the Petitioner in support of paragraph (e) and (f) to the Petition, ex parte, on the ground of grave urgency;

- (e) for interim relief by way of an order on the 2nd and/or 3rd and/or 4th Respondent's to stay the decision to lease out the payments to sell goods along the streets within the authority of the 1st Respondent (Municipal Council of Negombo) for the period 1st to 31st December 2017,
- (f) for interim relief by way of an order on the 5th Respondent (Lal Fernando), restraining him of selling goods or causing or permitting others to sell goods of any payment aforesaid.

The Negombo Municipal Council by tender notice dated 25/10/17, marked X2, has called for tenders to lease out the payments for selling of goods during the 1st to 31st of December 2017.

The Petitioner submits that due to the leasing out the said payments for the selling of goods during the said period within the municipal limits in Negombo, inter alia, would cause sever conjunction on the streets resulting in the inconvenience to the general public and the loss of business to the Petitioners and further submits that the said leasing out of the payments is ultra vires the powers exercised by the 1st to 4th Respondents.

Under rule 2 (1) (a) of the Court of Appeal (Appellate Procedure) Rules – 1990

Interim relief may be granted although such notice has not been given to some or all of the Respondents if the court is satisfied ----- that the matter is of such urgency that the applicant could not reasonably have given such notice; -----

In a fit case, the power to grant interim relief, after an ex parte hearing has been recognized by court on the ground of grave urgency. However, a matter of such urgency should be recognized on reasonable cause, in favour of the Petitioner, to support such application without notice to the Respondents.

The Petition was filed on 21/11/17 and supported on 24/11/17. The interim reliefs prayed for are to restrain the 2nd and /or 4th and /or 5th Respondents leasing out the payments to the 5th Respondent or to some other party. The Petitioners and the said Respondents are all resident within the city limits of Negambo. The rule is that an application for interim relief shall be made with notice to the Respondents. In the exception, the Petitioners have failed to address court as to the reason the Petitioners could not have given such notice to at least one or more Respondents, where the Petitioners were resident within close proximity to the Respondent's and with reasonable time to do so.

Therefore, we are of the view that the application for interim relief on the ground of grave urgency does not favour the Petitioners.

In the circumstances the application for interim relief is refused.

Issue notice on the Respondents.

JUDGE OF THE COURT OF APPEAL

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

I agree.

PRESIDENT OF THE COURT OF APPEAL