

**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 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. 435 / 2013

Manilal Ravi Ratnayaka,  
Apartment 104 - 5/1,  
Sri Uttarananda Mawatha,  
Colombo 03.

And of

Penthouse No 126,  
Grenfell Tower,  
London,  
W 111 JO,

England.

**PETITIONER**

-Vs-

1. Condominium Management  
Authority,  
National Housing Department  
Building,  
1<sup>st</sup> Floor,  
Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.
  
2. The Board of Management,  
Condominium Management  
Authority,  
National Housing Department  
Building,  
1<sup>st</sup> Floor,

Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.

3. G U Upawansa,  
General Manager,  
Condominium Management  
Authority,  
National Housing Department  
Building,  
1<sup>st</sup> Floor,  
Sir Chittampalam A Gardiner  
Mawatha,  
Colombo 02.

4. Kapila Gamage,  
Chairman,  
Condominium Management  
Authority,

National Housing Department

Building,

1<sup>st</sup> Floor,

Sir Chittampalam A Gardiner

Mawatha,

Colombo 02.

5. Math Housing (Pvt) Ltd,

No 6/2,

Cambridge Place,

Colombo 07.

6. Management Corporation,

Condominium Plan No 41-2008,

No 104,

Sri Uttarananda Mawatha,

Colombo 03.

7. Sivasinnaiahnathan Selvaratnam,  
Chairman,  
Math Housing (Pvt) Ltd,  
and  
Chairman,  
Management Corporation,  
Condominium Plan No 41 2008,  
No 104,  
Sri Uttarananda Mawatha,  
Colombo 03.

8. Suwaneetha Gressel Selvaratnam,  
Director,  
Math Housing (Pvt) Ltd,  
and  
Member,  
Management Corporation,  
Condominium Plan No 41-2008,  
No 104,

Sri Uttarananda Mawatha,  
Colombo 03.

9. S Mansoor,  
Director,  
Math Housing (Pvt) Ltd,  
and  
Member,  
Management Corporation,  
Condominium Plan No 41-2008,  
No 104,  
Sri Uttarananda Mawatha,  
Colombo 03.

10. Hon. Attorney General, Attorney  
General's Department, Hulftsdorp,  
Colombo 12.

**RESPONDENTS**

**Before: P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel: Lakshman Keerthisinghe for the Petitioner.

Dilshan Jayasinghe with Hiran Jayasinghe for the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup>  
Respondents.

Asanga Gunawansa with Hemaha Perera and Nimna  
Premathilaka for the 5<sup>th</sup> Respondent.

Arjuna Obeysekera SDSG for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

Argued on : 2017 - 11 - 01

Decided on : 2018 - 02 - 23

JUDGMENT

**P Padman Surasena J (P/CA)**

When this case was taken up for argument on 2017-11-01 learned Senior  
Deputy Solicitor General at the very commencement raised a preliminary

objection to the maintainability of this case. It was his submission that the relief, the Petitioner had sought from this application has been granted as the 1<sup>st</sup> to 4<sup>th</sup> Respondents had conducted and concluded an inquiry in terms of section 6 (m) of the Common Amenities Board (Amendment) Act.

Learned counsel for the 5<sup>th</sup> Respondent and the learned counsel for the 7<sup>th</sup> 8<sup>th</sup> and 9<sup>th</sup> Respondents also associated themselves with the preliminary objection raised by the learned Senior Deputy Solicitor General. Court heard the submissions of all counsel pertaining to the said preliminary objection and reserved its order and hence the need for this order.

Petitioner in this application has sought "... a writ of Mandamus directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to perform the statutory function imposed on the 1<sup>st</sup> Respondent by section 6 (m) of the Condominium Management Authority Law so known by section 3 (a) of the Common Amenities Board (Amendment) Act No. 24 of 2003...." The Petitioner has prayed this writ to compel the 1<sup>st</sup> Respondent "... to resolve the dispute between the Petitioner as an owner of a condominium parcel and the 6<sup>th</sup> to the 9<sup>th</sup> Respondents as representing the Management Corporation under the said law by making the necessary orders as to payment of the legitimate dues, if any, as determined after such inquiry...."



Learned Senior Deputy Solicitor General drew the attention of this Court to the document produced Marked **R 1** which is the report of the inquiry conducted by the 1<sup>st</sup> Respondent with regard to the dispute complained by the Petitioner. 1<sup>st</sup> Respondent after the said inquiry has come to a finding. It is at page 13 of the said report.

However it is the contention of the learned counsel for the Petitioner that the 1<sup>st</sup> Respondent had failed to resolve the dispute between the Petitioner and the 6<sup>th</sup> to 9<sup>th</sup> Respondents although it had conducted an inquiry with regard to the complaint made by the Petitioner.

It is to be borne in mind that the mandate that the Petitioner has prayed for is a writ of Mandamus. Writ of Mandamus could only be issued to compel a statutory functionary to perform a statutory duty imposed on him by law. Indeed the prayer of the Petition is couched in that way. That is "..... writ of Mandamus directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to perform the statutory functions imposed on the 1<sup>st</sup> Respondents by section 6 (m) of the Condominium Management Authority Law so known by section 3 (a) of the Common Amenities Board Act No. 24 of 2003.."

Petitioner has not specified how this Court could compel the Respondents to resolve the dispute between the Petitioner and the Respondents.

1<sup>st</sup> Respondent indeed had conducted the inquiry which the Petitioner had insisted that the 1<sup>st</sup> Respondent should conduct. The Petitioner has prayed for a writ of Mandamus from this Court with a view to compel the 1<sup>st</sup> Respondent to conduct that inquiry. As at present, the fact is that the 1<sup>st</sup> Respondent has indeed conducted and concluded that inquiry.

The Petitioner has filed this application on 2013-12-10. The report of the inquiry produced marked **R 1** is dated 2016-01-13. Petitioner at no stage has challenged the findings of this report. This report and the findings being a decision taken long after filing this application cannot be considered in this application. It is not open for the Petitioner to challenge the said findings in this application.

For the foregoing reasons this Court is of the view that there is nothing left for the consideration of this Court with regard to the application for a writ of Mandamus.

Writ jurisdiction of this Court is a discretionary jurisdiction.

It appears that the Petitioner is interested in getting this Court to

"...resolve the dispute between the Petitioner as an owner of a condominium parcel and the 6<sup>th</sup> to the 9<sup>th</sup> Respondents as representing the Management Corporation under the said law by making the necessary orders as to payment of the legitimate dues, if any, as determined after such inquiry..."

What the Petitioner at this moment complains is that his prayer in the following terms namely "to resolve the dispute between the Petitioner as an owner of a condominium parcel and the 6<sup>th</sup> to the 9<sup>th</sup> Respondents as representing the Management Corporation under the said law by making the necessary orders as to payment of the legitimate dues, if any, as determined after such inquiry...." has not been fulfilled by the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

However the Petitioner has qualified that prayer by the phrase "... as determined after such inquiry...."

As has been stated before, it is a fact that the 1<sup>st</sup> Respondent has conducted an inquiry and made a determination. The Petitioner had not challenged the said determination to date. This Court cannot compel the 1<sup>st</sup>

to 4<sup>th</sup> Respondents to come to a determination which is favourable to the Petitioner.

In these circumstances, this Court is of the view that there is no basis for this Court to allow this application to be further pending before this Court. Therefore this Court upholds the preliminary objection raised by the learned Senior Deputy Solicitor General and proceed to dismiss this application without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**