

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

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

1. Kanthi Podimenike Godakumbura,
26/22/1, Vimukthi Lane,
Anuradhapura.
2. Kumarasinghe Jayathilake
Mudiyanselage Jayatissa,
26/22/3, Vimukthi Lane,
Anuradhapura.

PETITIONERS

CA (Writ) Application No: 242/2014 Vs.

1. Anuradhapura Municipal Council,
Anuradhapura.
2. Municipal Commissioner,
Anuradhapura Municipal Council,
Anuradhapura.
3. Land Commissioner General,
Land Commissioner General's Department,
"Mihikatha Medura",
No. 1200/6, Rajamalwaththa Road,
Battaramulla.
4. Divisional Secretary,
Nuwaragam Palatha East,
Divisional Secretariat,
Nuwaragam Palatha East,
Anuradhapura.

5. Upali Dharmasiri Bandara,
26/22/2, Vimukthi Lane,
Anuradhapura.

RESPONDENTS

Before : A.L. Shiran Gooneratne J.

Counsel : T. Weragoda for the Petitioner.

Dharshana Kuruppu with T. Dissanayake for the 1st and 2nd
Respondents.

Isuru Somadasa for the 5th Respondent.

Argued on : 11/01/2018

Written Submissions of the Respondents filed on: 29/03/2018

Judgment on : 01/06/2018

A.L. Shiran Gooneratne J.

The Petitioners, have invoked the jurisdiction of this court, to seek a mandate in the nature of writ of mandamus to compel the Respondents to remove all unauthorized obstructions in the proposed roadway on Vimukthi Mawatha, Stage II, Anuradhapura, and to compel the said Respondents to demarcate the proposed roadway marked "H" in plan No. Aa/NPE/2012/618-619, marked X6, (hereinafter sometimes referred to as the "alternative plan"). The Petitioner has also sought a mandate in the nature of writ of Mandamus to compel the 3rd and 4th Respondents to hold a Land Kachcheri in terms of Section 20, of the Land Development Ordinance.

The Petitioners submit that after receiving notice in terms of Section 42A, of the Municipal Councils Ordinance, several parties including the 5th Respondent, failed to demolish unauthorized structures obstructing the proposed roadway and the 1st and/ or 2nd Respondents have failed to take necessary steps to have the said unauthorized structures demolished in terms of the said Act.

After several failed attempts by the Petitioners to resolve this issue, the 2nd Respondent by letter dated 20/04/2012, marked X5(b), has notified the 2nd Petitioner that the matter would be resolved by an alternative plan, as proposed by the Urban Development Authority, (UDA). The said alternative plan drawn and proposed by the UDA has been approved by the planning committee of the 1st Respondent. By letter dated 10/09/2013, marked X7(b), the 2nd Respondent has approved the said plan for implementation. As pleaded in paragraph 22, the Petitioners through their Attorney-at - Law has made a demand from the 2nd Respondent by letters of demand marked X11 and X12, to effectuate the said plan forthwith.

However, it is observed that, the 1st Respondent by letter dated 10/09/2013, has informed the said Attorney -at- Law, that the Municipal Council Anuradhapura would take appropriate steps to demolish the unauthorized structures, once the Urban Development Authority submits the alternative plan. Presently, the alternative plan is with the planning committee, of the 1st Respondent, pending approval.

The Respondents raised a preliminary objection to this application, on the basis that the Petitioners have failed to add the necessary parties to this Petition and therefore, the action should be dismissed in limine.

In the case of *Wijeratne Vs. Ven Dr. Paragoda Wimalawansa Thero and others, (2011) 2 SLR 258*, the Supreme Court considered the effect of necessary parties to an application, where the court held, that;

“those who would be affected by the outcome of the writ application should be made respondents to the application”

In paragraph 4, the petitioner admits that there were several disputes between the residents of Vimukthi Mawatha, Stage II, Anuradhapura, in relation to the road reservation and the unauthorized constructions on the said road reservation. The 5th Respondent is one of the residents of Vimukthi Mawatha, Stage II. According to the pleadings of the Petitioner, it is observed that including the 5th Respondent there are several other residents who are obstructing the demolition of the unauthorized structures on the proposed roadway. This is observed in the 3rd paragraph of letter dated 31/10/2013, written by the 3rd Respondent to the 4th Respondent marked X8. Therefore, the relief sought by the Petitioners would not only affect the 5th Respondent, but several other residents of Vimukthi Mawatha, Stage II, who are not before Court. The Petitioner has identified only the 5th Respondent as a resident who was served with a notice in terms of Section 42A, of the Municipal Councils Ordinance. Failure to identify all

necessary parties, will not only leave the dispute unresolved but also create multiple avenues of litigation from affected parties.

However, it is important at this stage to consider whether, the Petitioners have a legal right to compel the Respondents to clear all obstructions from the roadway, according to plan marked X6, in terms of the relevant statutory provisions.

It is an admitted fact that the Petitioners, the 5th Respondent and all other parties in possession of allotments of land in Vimukthi Mawatha, occupy allotments of land, unlawfully. As pleaded in paragraph 3 of the Petition, subsequent to an inquiry held by the 3rd Respondent in terms of the Land Development Ordinance No. 19 of 1935 (as amended), the Petitioner and several other parties have been considered to be given permits in terms of Section 19 of the said Act. However, as of now, no permits under the said Act have been issued to any of the parties. The Petitioners submit that, the disputes between residents of Vimukthi Mawatha regarding the road reservation and unauthorized constructions have not been referred to a land Kachcheri under the Land Development Ordinance. It is observed that, by this application the Petitioners are not challenging the non-granting of the permits to the said lands nor have the Petitioners placed on record any supporting evidence for the Court to make any direction to hold a Land Kachcheri to sought out the issue of land allotments.

The Petitioners are seeking to compel the relevant Authorities to remove unauthorized obstructions in order to proceed with the proposed roadway. However, in the absence of a clear legal right to occupy the land allotments, the Petitioner cannot compel the authorities to perform a specific statutory duty to demolish the said unauthorized structures.

It is observed, that the Petitioners have no clear legal right to compel the 1st and 2nd Respondents, to remove unauthorized structures obstructing the roadway, since the Petitioners are not in lawful possession of the said allotments of land. Their rights, if any, would be decided upon the awarding of a permit, in terms of the Land Development Ordinance. Therefore, there is no legal duty thrust upon the 1st and the 2nd Respondents to remove unauthorized obstructions on the proposed roadway. However, the 1st and 2nd Respondents are directed to speedily resolve the issue of demolition of the unauthorized structures in Vimukthi Mawatha, Stage II according to the Law.

It is noted that in spite of the undertaking given to court, the Petitioners have failed to file written submissions in support of this application.

In the circumstances, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL