

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

1. Gunasinghe Arachchige Saman,
No. 39, Opposite Sellakatharagama,
Maya Maha Vidyalaya,
Sellakatharagama.
 2. Naotunnage Manjula,
No. 17/5, Sellakataragama,
Kataragama.
- Petitioners

CASE NO: CA/432/2015/WRIT

Vs.

Urban Development Authority,
6th & 7th Floors,
Sethsiripaya,
Battaramulla,
and 3 others.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Dr. Edward Samarasekera for the Petitioners.
Nayomi Kahawita, S.C., for the Respondents.

Argued on: 14.05.2018

Written Submissions:

by the Petitioner on 13.06.2018

by the Respondent on 22.06.2018

Decided on: 29.06.2018

Samayawardhena, J.

The two petitioners are traders. They along with other traders have been carrying on business of selling items in the old shopping complex targeting devotees visiting Sellakatharagama until they were shifted to the new shopping complex. On their choice, in the new shopping complex, the petitioners have got shops in front of the entrance to the Sellakatharagama main Devalaya.

The possession of the shops has been handed over to them in December 2011, and in the same month, the 1st respondent UDA, according to the petitioners, has put up a concrete layer along the boundary of the new complex and erected a small bund on top of it leaving two small entrance points to the complex from Devalaya side, and thereafter erected an iron fence next to the bund leaving only two entrance gates obstructing free access from the Devalaya side to the new shopping complex whilst leaving an unobstructed free access from the Buttala-Kataragama main road.

Thereafter hawkers, according to the petitioners, have put up unauthorised structures along the iron fence and started business aiming at the devotees.

In a case filed in the Magistrate's Court of Tissamaharama, No. BR 31338/15, the Magistrate's Court has ordered to remove the said unauthorised traders, but according to the petitioners this order has not been fully implemented by the relevant authorities including the 1st respondent.

Then in the year 2014, the petitioners say, the 1st respondent erected flower shops along the road leading to the Devalaya.

The petitioners state that these things taken cumulatively caused great financial loss to them due to devotees not patronizing their shops in the new shopping complex.

The gravamen of the complaint of the petitioners is that the respondents breached the legitimate expectation of the petitioners that their potential customers would have undisrupted access to their shops from the Devalaya side, and the 1st respondent would make constructions according to Plan P4 where there is no indication of putting up of an iron fence along the boundary of the shopping complex, which prevented free access by the devotees to the petitioners' shops.

In that backdrop, the petitioners seek mandates in the nature of writ of mandamus directing the 1st-3rd respondents (a) to remove the unauthorised traders and their unauthorised structures in terms of the order of Magistrate's Court of Tissamaharama referred to above (b) to remove the iron fence erected around the new shopping complex contrary to Ground Plan P4 released prior to leasing out the new shopping complex and (c) to restore the entrance to the Sellakatharagama new shopping complex from the Devalaya side to have free access to the shopping complex.

I have no hesitation to conclude that no mandamus can be issued on the above grounds.

It is elementary that the petitioner must show that he has a legal right to the performance of a legal duty by the party against whom mandamus is sought. Mandamus is not intended to create a right but to restore a party who has been denied his legal right. (*Mageswaran v. University Grants Commission*¹, *Perera v. National*

¹ [2003] 2 Sri LR 282

*Housing Development Authority*², *Wannigama v. Incorporated Council of Legal Education*³, *Janak Housing (Pvt) Ltd v. UDA*⁴, *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd*⁵) The petitioner manifestly fails in this requirement.

On the other hand, the petitioners cannot say that they had a legitimate expectation that no fence would be erected along the boundary of the shopping complex from the Devalaya side.

The alleged legitimate expectation is basically founded upon Plan P4. P4 is not a complete Plan, and, in any event, it is, at best, not a Ground Plan as the petitioners seem to suggest, but a Building Plan. In a Building Plan boundaries are not shown.

It is highly unreasonable to claim that the authorities shall not put up a fence along the boundary of the new shopping complex as it is disadvantageous in terms of profits for some shop owners including the two petitioners.

If the authorities have not carried out the Magistrate's Court order in relation to evacuating the unauthorised hawkers, the petitioners can inform it to the Magistrate's Court which made the order and take appropriate steps.

Application of the petitioners is dismissed with costs.

Judge of the Court of Appeal

² [2001] 2 Sri LR 50

³ [2007] 2 Sri LR 281

⁴ [2008] 2 Sri LR 302

⁵ [2005] 1 Sri LR 89