

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

In the matter of an application for a Writ of Mandamus under Article 140 of the Constitution of the Republic of Sri Lanka.

S. H. S. E. Rosa
No. 572, Pitipana, Negombo.

Petitioner

Case No. C. A. (Writ) Application 399/2017 Vs.

1. Urban Development Authority
6th and 7th Floors, 'Sethsiripaya', Battaramulla.
2. Jagath Munasinghe
Chairman,
Urban Development Authority,
6th and 7th Floors, 'Sethsiripaya', Battaramulla.
3. L. M. Samantha Kumara
Deputy Director,
Urban Development Authority – Gampaha,
3rd Floor, Pradeshiya Sabha Building,
Miriswatta, Gampaha.
4. Urban Council, Katunayake Seeduwa, Seeduwa.
5. D. M. D. B. Dissanayake
Secretary and the Officer exercising the powers
and functions of the Katunayake Seeduwa Urban
Council,
Katunayake Seeduwa Urban Council, Seeduwa.
- 5A. W. Sarath Pieris
Chairman of Katunayake Seeduwa Urban
Council,
Katunayake Seeduwa Urban Council, Seeduwa.
6. G. R. S. Perera
No. 380, Baseline Road, Seeduwa.
7. Sumedha Ratnayake
Director General,
Urban Development Authority,
6th and 7th Floors, 'Sethsiripaya', Battaramulla.

8. Chandana Liyanarachchi
Working Director,
Urban Development Authority,
6th and 7th Floors, 'Sethsiripaya', Battaramulla.

Members of the Board of Management of the Urban Development Authority other than the 2nd and 7th Respondents

9. Dr. I. H. K. Mahanama
Secretary,
Ministry of Lands,
'Mihikatha Medura', Land Secretariat,
No. 1200/8, Rajamalwatte Ave., Battaramulla.
10. H. T. Kamal Pathmasiri
Secretary,
Ministry of Provincial Councils and Local
Government,
No. 330, Union Place, Colombo 02.
11. H. Hemal Kasthuriarachchi
Additional Director General,
Department of Public Enterprises,
Ministry of Finance & Mass Media,
The Secretariat, Colombo 01.
12. T. D. S. P. Perera
Additional Secretary (Industrial Development),
Ministry of Industry and Commerce,
No. 73/1, Galle Road, Colombo 03.
13. A. T. L. P. Samarasinghe
Additional Secretary (Technical),
Ministry of Transport and Civil Aviation,
No. 1, D. R. Wijewardena Mawatha, Colombo 10.
14. B. G. S. Gunathilaka
Additional Secretary (Administration),
Ministry of Health, Nutrition and Indigenous
Medicine,
'Suwasiripaya', No. 385, Rev. Baddegama
Wimalawansa Thero Mawatha, Colombo 10.

15. L. S. Palansuriya
Chairman,
National Housing Development Authority,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
16. B. B. I. A. Perera
Asst. Director (Planning),
Ministry of Power and Renewable Energy,
No. 72, Ananda Coomaraswamy Mawatha,
Colombo 07.
17. Chandana Ranasinghe
No. 1/7 A, Church Road, Eldeniya, Kadawatha.
18. Eng. Preethi Sanath Panawennage
Director General and CEO,
Arthur C. Clarke Institute for Modern
Technologies,
No. 272, Bandaranayake Mawatha, Katubedda,
Moratuwa.
19. A. G. Muditha Malika Wimalasuriya
Director,
Department of Meteorology,
Bauddhaloka Mawatha, Colombo 07.
20. H. Hewage
Addl. Secretary (Administration & Finance),
Ministry of Education,
'Isurupaya', Battaramulla.
21. Madhawa Waidyaratne
Addl. Secretary,
Ministry of Megapolis & Western Development,
'Suhurupaya', 17th Floor, Battaramulla.
22. Vidya Dilruk Amarapala
Adviser to the Hon. Minister,
Ministry of Megapolis & Western Development,
'Suhurupaya', 17th Floor, Battaramulla.
23. W. D. A. Sunil Perera
General Manager,
Reclamation & Development Company Ltd,
Kirimandala Mawatha, Nawala.

Respondents

Before: Janak De Silva J.

Counsel:

Chandana Wijesooriya with Nilanga Perera for the Petitioner

Nuwan Pieris SC for the 1st to 3rd and 7th to 23rd Respondents

Pulasthi Rupasinghe with Nilma Abeysuriya for the 4th and 5A Respondents

Sandamal Rajapakse with Saman Abeywickrama for 6th Respondent

Argued on: 07.03.2019

Written Submissions tendered on:

Petitioner on 05.03.2019 and 07.06.2019

1st to 3rd Respondents on 17.05.2019

4th and 5A Respondents on 05.03.2019

6th Respondent 06.03.2019 and 07.06.2019

Decided on: 02.10.2019

Janak De Silva J.

The Petitioner claims that the 6th Respondent has made unauthorised constructions on the land and premises described more fully in the schedule to the amended petition dated 14.03.2018 and seeks to enforce the provisions in section 28A of the Urban Development Authority Law No. 41 of 1978 as amended (UDA Act).

The 4th and 5th Respondents, to whom the power to act under section 28A of the UDA Act was delegated by the 1st Respondent at one point of time have admitted in their objections that an inquiry was held and it was found that there is in fact unauthorised constructions on the land and building in issue [P10, paragraph 6 of statement of objections and P12]. It is further stated that by P14 the 4th Respondent informed the 1st Respondent of the aforesaid unauthorised constructions and to take action accordingly since by then the power delegated to the 4th Respondent was withdrawn and reverted to the 1st Respondent [4R1 and 4R2].

The 6th Respondent denies that he has made any unauthorised constructions.

Locus Standii

The learned counsel for the 6th Respondent submitted that the Petitioner has no *locus standii* to maintain this application. He relied on the following dicta of Sansoni J. in *Weerasinghe v. Samarasinghe* (68 N.L.R. 361 at 366):

“There is no need for Mandamus, because there is nothing to suggest that the 2nd respondent has failed or will fail to do his duty at the appropriate time. In point of law the petitioner has no status to make the application for a Mandamus, because no duty is owed to him by the 2nd respondent, and the petition should fail on this ground also.”

It was further submitted that this application was filed by suppressing vital material facts in particular the long-standing civil litigation with the 6th Respondent and that the Petitioner is only a meddlesome busybody who instituted this application at the expense of the Petitioner.

That appears to have been the traditional and more conservative view on the question of standing.

Lord Denning, in *R v. Paddington Valuation Office & Another Ex parte Peachey Property Corporation Ltd.* [(1966) 1 QB 380 at 401] held:

“The Court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done.”

In *Premadasa v. Wijeyewardena & Others* [(1991) 1 Sri LR 333 at 343] Tambiah C.J. echoed a similar judicial approach when he stated:

“The law as to locus standi to apply for certiorari may be stated as follows: The writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application.”

However, the modern approach to standing is more liberal and expansive. Wade & Forsyth, *Administrative Law* (9th Edition) page 680 states:

“Judges have in the past had an instinctive reluctance to relax the rules about standing. They fear that they may ‘open the floodgates’ so that the courts will be swamped with litigation. They fear also that cases will not be best argued by parties whose personal rights are not in issue. But recently these instincts have been giving way before the feeling that the law must somehow find a place for the disinterested or less directly interested citizen in order to prevent illegalities in government which otherwise no one would be competent to challenge.”

Our Constitution and system of government are founded on the Rule of Law; and to prevent the erosion of that foundation is the primary function of an independent judiciary [*Premachandra v. Major Montague Jayawickrema and Another* (1994) 2 Sri.L.R. 90 at 102]. Although the contours of the meaning of rule of law has evolved ever since Dicey first propounded it in his celebrated treatise *Law of the Constitution* its primary meaning is that everything must be done according to law. In that context it cannot be said that the Petitioner as a citizen of this country is a busybody merely because he is seeking to enforce the law. Every citizen has a right to demand that the law be applied to all even where he does not have a personal interest in the matter for it is only when the law is applied to all equally that egalitarianism becomes ingrained in our social fabric.

In any event it cannot be said that the Petitioner has no interest in ensuring that the constructions done at the disputed premises be according to law. It is true that the Petitioner filed a *rei vindicatio action* against the father of the 6th Respondent one Richard Perera which was dismissed and the Petitioner tried unsuccessfully to appeal against the said judgment to the Civil Appellate High Court and then the Supreme Court.

However, it was admitted during the trial by the said Richard Perera that he came into occupation of the premises in suit as the tenant of one Barbara Lilian Fernando. There is also no dispute that the 6th Respondent continues to occupy the premises in dispute as a tenant of the heirs and successors of the said Barbara Lilian Fernando [Issue no. 19 and answer thereto].

The Petitioner filed the action on title allegedly derived from the said Barbara Lilian Fernando. The action was dismissed as the Petitioner failed to establish his title. Nevertheless, during the trial, the 6th Respondent indicated that he was willing to become the tenant of the Petitioner. In fact, the 6th Respondent continues to deposit the monthly rent for the premises in dispute with the 4th Respondent in favour of the heirs and successors of the said Barbara Lilian Fernando.

The 1st to 3rd Respondents did not file objections and have in the written submissions stated that they are not objecting to the grant of relief as prayed for in prayer (b) to the amended petition.

A writ of mandamus can be issued on a legal person [*Abayadeera and 162 Others v. Dr. Stanley Wijesundera, Vice Chancellor, University of Colombo and Another* (1983) 2 Sri.L.R. 267].

For all the foregoing reasons, I issue a writ of mandamus on the 1st Respondent directing it to take necessary steps in terms of section 28A of the UDA Act in respect of the premises described in the schedule to the amended petition dated 14.03.2018.

Application allowed to the extent set out above. The Petitioner is entitled to his costs from the 6th Respondent.

Judge of the Court of Appeal