

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

*In the matter of an application for Orders in the  
nature of Writs of Certiorari, Prohibition and  
Mandamus under and in terms of Article 140 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

Amila Sampathsiri Perera  
No.4A, Beach Road,  
Mount Lavinia.

CA/WRIT/443/2021

**Petitioner**

Vs.

1. Ceylon Electricity Board  
No.50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 2.
2. Mr. Bandara  
Deputy General Manager,  
Western Province South I,  
Ceylon Electricity Board,  
Dehiwala.
3. M. L. A. A. Chandranath  
Chief Engineer (Construction),  
Western Province South I,  
Ceylon Electricity Board,  
No.75/1, Attidiya Road,  
Rathmalana.
4. H. R. Himali Karunarathna  
Divisional Secretary of Ratmalana,  
Divisional Secretariat,  
Ratmalana.

5. Urban Development Authority  
6<sup>th</sup> and 7<sup>th</sup> Floor, Sethsiripaya,  
Battaramulla.
6. Dehiwala-Mount Lavinia Municipal  
Council,  
Dehiwala.
7. Vesta Homes Pvt Ltd,  
No.9, 42<sup>nd</sup> Lane,  
Colombo 6.
8. S. Vaikudan  
Manager-Administration,  
Vesta Homes Pvt Ltd,  
No.4, Beach Road,  
Mount Lavinia.
9. Condominium Management Authority,  
Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 2.
10. Public Utilities Commission of Sri  
Lanka  
6<sup>th</sup> Floor, BOC Merchant Tower,  
St. Micheal's Road, Colombo 3.
11. Janaka Rathnayake,  
Chairman,  
Public Utilities Commission of Sri  
Lanka, 6<sup>th</sup> Floor, BOC Merchant  
Tower,  
St. Micheal's Road,  
Colombo 3.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Shantha Jayawardena for the Petitioner

Navodi De Zoysa, SC for the 1<sup>st</sup>-5<sup>th</sup> and 9<sup>th</sup>-12<sup>th</sup> Respondents.

B.A.G.R. Sriyananda and Janaki Hapuarachchi for the 6<sup>th</sup> Respondent.

N.R. Sivendran with Renuka Udumulla and Fihama Harifa for the 7<sup>th</sup> and 8<sup>th</sup> Respondents.

**Argued on** : 17.05.2022

**Decided on** : 07.06.2022

**Sobhitha Rajakaruna J.**

The Petitioner owns and has been residing at the land depicted in Plan No. 5/1984 marked 'P1(a)' as Lot 2, for approximately 19 years with his family. Around December 2017, the 7<sup>th</sup> Respondent Vesta Homes Pvt Ltd ('Vesta Homes') commenced constructing a condominium apartment complex at No.4, Beach Road, Mount Lavinia, which is the land on the western boundary of the Petitioner's land. The original building plan for the proposed construction was approved by the Urban Development Authority ('UDA') on 16.11.2017.

The Petitioner learned of the proposed construction of a transformer room for the installation of an electric transformer on location 'A' (as depicted in the sketch marked 'P7'), which is 0.5 feet away from the Petitioner's boundary wall. Therefore, the Petitioner complained to the Mount Lavinia Police and the Ceylon Electricity Board ('CEB') objecting the proposed construction due to the purported threat posed to the Petitioner's family and property. The Divisional Secretariat then conducted a field inspection with the participation of the CEB on 25.02.2021 resulting in Vesta Homes agreeing to install the electricity transformer at an alternate location. The Divisional Secretary thus wrote the letter dated 08.03.2021 to the CEB recommending the installation of the electricity transformer at the alternate location 'B' (as depicted in the sketch marked 'P7'), which was agreed upon by Vesta Homes.

However, location 'B' contravened the Urban Development Authorities Regulation 37(1)c, for being a proposed construction which was within the boundary line. Therefore, the Dehiwala-Mount Lavinia Municipal Council and UDA did not grant approval for the installation of the electricity transformer at the proposed location 'B'. Moreover, the Divisional Secretary by the letter dated 19.05.2017 requested the CEB to consider an alternative location for the installation of the electricity transformer. Further, on 05.07.2021, the Divisional Secretary informed the CEB by the letter marked 'P9' to consider and take necessary steps to install the electricity transformer at a suitable location, which the Divisional Secretariat did not have the necessary technical knowledge to determine.

On the first date of support of the instant application, it was submitted on behalf of the Respondents that the transformer room has been proposed to be constructed at the new location 'C' (as depicted in the sketch marked '1R1'), which is 2 feet away from the Petitioner's boundary wall, maintaining a distance of 9.5 feet between the electricity transformer and the Petitioner's boundary wall. Though the proposed location 'C' was recommended by the CEB and approved by the UDA, the Petitioner asserts that the location 'C' proposes building the transformer room on the originally objected location 'A' with a slight change in dimensions.

The Petitioner objected to the CEB on 12.08.2021 against the construction of the transformer room and the installation of the electricity transformer, requesting it to be installed beyond 10 meters from his residence. The said objection was also forwarded to the Chairman of the UDA, the Chairman of the Condominium Management Authority and the Chairman of the Public Utilities Commission. As a result, the CEB informed the Divisional Secretary of the Petitioner's objection, requesting the Divisional Secretary to conduct a field inspection and submit her recommendations on 19.08.2021. Further, on 30.08.2021, the CEB informed Vesta Homes that the installation of the electricity transformer has been suspended until the receipt of the Divisional Secretariat's recommendations. However, the Divisional Secretary by her letter marked 'P13', referred to her letter dated 05.07.2021 marked 'P9' and informed the CEB that it is the CEB that possesses the necessary technical knowledge to make such recommendation thus, the CEB may take the appropriate steps in that regard. Accordingly, the CEB now recommends the installation of the electricity transformer at location 'C'.

The Petitioner in the instant application seeks for a Writ of Certiorari quashing the decision of the 5<sup>th</sup> Respondent granting approval for Vesta Homes to install the electricity transformer at location 'A'. The Planning and Building Regulations 2008-2020 (marked 'R23') of the Dehiwala-Mount Lavinia Municipal Council Area in Regulation 10(b)xi of Part I provides:

10. A plan of any land submission, land development or building or building works submitted under the Law shall, include following details recommended columns and symbol.

(b) A floor plan of each storey and flat roof of the building containing or showing-

xi. the position of parking bays, ramps, landings, standby generators, electrical transformers, security huts etc. and in the case of building categories of intermediate rise and above, it shall be provided with a space for LP Gas central distribution point.

Thus, it is mandatory to identify the location proposed for the installation of an electricity transformer in a building plan, and no such location was identified by Vesta Homes in the building plan marked 'P22'. In the above circumstances, I am of the view that not including the location of the electricity transformer in P22 and including the location after the 5<sup>th</sup> Respondent approved 'P22' is unlawful and accordingly, the approval granted in favour of 'P22' is irregular. In the circumstances, I issue a writ of certiorari as prayed for in Prayer (f) of the Petition of the Petitioner.

Now I advert to the events that transpired at the hearing of this Application. The CEB now recommends the installation of the electricity transformer at location 'C' of the sketch marked '1R1' and the Respondents, particularly Vesta Homes (7<sup>th</sup> Respondent), submit that a distance of 9 feet will be maintained between the Petitioner's boundary wall and the edge of the electricity transformer. The amended building plan No.03/CO/DMMC/BA/49/17 marked '5R1' was authorized by the UDA by the building permit issued on 28.03.2022 marked '5R2'. The said amended building plan (which was issued after filing this Application) provides for a fully insulated transformer room with 27cm thick walls to be built at location 'C'. However, in light of the Petitioner's objection, Vesta Homes has agreed, in open court, to increase the thickness of the eastern wall of the transformer room from 1 foot to 1½ feet. The court makes an

observation that if the Respondents do not follow the said amended building plan and not fulfill the assurance in respect of the thickness of the wall, a prejudice would be caused to the Petitioner. In view of the assurance given by the Respondent in open court there is no need to consider issuance of a writ of mandamus as prayed for in the prayer of the Petition.

Application is partly allowed.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**