

**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 Writs of Certiorari, Prohibition and the Mandamus, under and in terms of Article 140 of the Constitution.

**C.A. (Writ) Application
No. 323/2017**

1. K.D.U.D. Perera,
No.125/12/01, Uyana Road, Kothalawala,
Bandaragama.
2. A.A. Sankha Simal,
No. 5B, Kumbukka Road, Weedagama,
Bandaragama.
3. R.N. Ishanka Somaratne,
No.69, Rajagama, Bandaragama.
4. W.L.D. Chandraratne,
No.70, Rajagama, Bandaragama.
5. D.M.D. Chandrasena,
No.68, Rajagama, Bandaragama.
6. Thanuja Damayanthi Nishshanka,
No.64, Rajagama, Bandaragama.
7. M.A. Ranjith Perera,
Rerukana Road, Weedagama,
Bandaragama.
8. M. Isawathie Perera,
125B, Uyana Road, Kothalawala,
Bandaragama.

9. Ishara C. Nanayakkara,
No.438, Havelock Road, Colombo 05.

Petitioners

- Vs -

1. Urban Development Authority,
6th and 7th Floors, "Sethsiripaya",
Battaramulla.
2. S.S.P. Ratnayake,
Director- General,
Urban Development Authority,
6th and 7th Floors, "Sethsiripaya",
Battaramulla.
3. M. Hemanthi,
Deputy Director General (Planning),
Urban Development Authority,
6th and 7th Floors, "Sethsiripaya",
Battaramulla.
4. M. Thuraisingham,
Director General of Irrigation,
Department of Irrigation,
Bauddhaloka Mawatha,
Colombo 07.
5. G.K. Pathmakeerthi,
Director of Irrigation (Colombo),
Irrigation Department,
Former RDI's Office,
Colombo 07.
6. N.C. Samarakkody,
DIE – Kaluthara,
Irrigation Department,

Former RDI's Office,
Colombo 07.

7. Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
8. P.B. Hemantha Jayasinghe,
Director General,
Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.
9. A. Bandaragama Pradeshiya Sabha,
Panadura Road,
Bandaragama.

B. Devendra Perera,
Chairman,
Bandaragama Pradeshiya Sabha,
Panadura Road,
Bandaragama.

C. N.D.I. Swarna K. Perera,
Secretary,
Bandaragama Pradeshiya Sabha,
Panadura Road,
Bandaragama.
10. Sujani Mahesha Silva,
Divisional Secretary,
Divisional Secretariat of Bandaragama,
Kebewa – Bandaragama Road,
Bandaragama.
11. Pujith Jayasundara,
Inspector General of Police,

Sri Lanka Police,
Sri Lanka Police Headquarters,
Colombo 01.

12. N. Rupasinghe,
Secretary,
Ministry of Megapolis and Western
Development,
17th and 18th Floors,
“Suhurupaya”,
Subhuthipura Road,
Battaramulla.

Respondents

Before: C.P. Kirtisinghe – J
Mayadunne Corea – J

Counsel: Nilshantha Sirimanne with Uween Jayasinghe and Deshara
Goonathilake for the Petitioners
Kamran Aziz with Fammula Lathif for the 9A and 9B Respondents
Manohara Jayasinghe, SSC for Respondents

Argued on: 14.03.2022

Decided on: 28.07.2022

C.P. Kirtisinghe – J

The Petitioners state that the Deputy Director (Planning) of the Urban Development Authority has informed the 1st Petitioner by letter dated 04.05.2017 that a decision had been taken to create and impose a reservation extending 50m outwards from the high flood level contour line of the Uyanwatta lake and therefore it was compulsory to reserve the said 50m area extending from the surface of the said lake. Therefore, the Petitioners are seeking for a mandate in the nature of a writ of certiorari for calling and quashing the said purported decision (if any) made by the 1st to 11th Respondents imposing the aforesaid 50m reservation, a mandate in the nature of a writ of Certiorari calling

for and quashing the purported decision (if any) made by the 1st to 3rd Respondents and the Bandaragama Pradeshiya Sabha and by one or more of the Respondents pursuant to the discussion held by them on 03.05.2017 and any decisions pertaining to the prohibition imposed by the Respondents with regard to the right/ entitlement of the Petitioners to develop their privately owned lands which fall within the aforesaid 50m reservation, for a mandate in the nature of a writ of Certiorari calling for and quashing the decision of the 1st Respondent and/ or 3rd Respondent to reject/ refuse the application of the 1st Petitioner to develop his land or a part of it located within the purported 50m reservation, for a mandate in the nature of a writ of mandamus directing 1st to 3rd Respondents and/ or Bandaragama Pradeshiya Sabha and/ or any one or more of the Respondents to proceed to process and reconsider the applications submitted by the Petitioners and/ or other owners of private property located within the purported 50m reservation seeking approval to develop their land on the basis that no such reservation exists and grant approval in accordance with the applicable laws, for a mandate in the nature of a writ of prohibition restraining the 1st to 11th Respondents from constituting, creating, imposing, implementing or enforcing any reservation except in strict accordance with the applicable laws, a mandate in the nature of a writ of prohibition restraining the 1st to 11th Respondents from prohibiting, preventing, unduly restricting the Petitioners and others who own land within the purported 50m reservation from developing and carrying out any construction work on their lands unless and until a declaration in that regard is duly made in strict accordance with the applicable laws, for a mandate in the nature of a writ of prohibition restraining 1st to 11th Respondents from applying the Irrigation Department Circular no. 10 of 1986 and other Gazette notifications mentioned therein to the Petitioners' lands with regard to the imposition of the purported 50m reservation, and for the reliefs prayed for by paragraphs – I and J of the prayer to the petition and for the interim relief prayed for in the prayer to the petition.

Background of the case

The Petitioners state that they own and reside on the lands located adjacent to the Uyanwatta lake in Bandaragama. They hold title to the aforesaid lands having either inherited those lands from their predecessors in title or purchased from third parties. The title of the Petitioners is not in dispute. The Petitioners state that at present the majority of the lands lying adjacent to or surrounding Uyanwatta lake are privately own lands. At no point of time have the Petitioners

who occupy lands surrounding the lake been informed or notified of any acquisition of those private lands by the state or of any attempt to do so. Although there had been attempts to establish a reservation around Uyanwatta lake in the past no such reservation was created. Thereafter, the Divisional Secretary of Bandaragama had informed the Petitioners and other land owners that a joint programme was to be conducted by the Department of Irrigation, the CEA, the UDA, The Agrarian Services Department, The Bandaragama Pradeshiya Sabha, and the Bandaragama Divisional Secretariat for the purpose of surveying the lake with a view to determining/ establishing the sensitive regions of the lake and upon the completion of the joint programme the owners and residents of the private land located adjacent to the lake were informed by the Divisional Secretary that reservations would be created and imposed around the lands surrounding the lake for the purpose of protecting the lake. Thereafter, 56 land owners including some of the Petitioners had submitted their objections to the Divisional Secretary.

The Deputy Director (Planning) of the Urban Development Authority had informed the 1st Petitioner by letter dated 04.05.2017 marked P26 that a decision had been taken to create and impose a reservation extending 50m outwards from the high flood level contour line of the Uyanwatta lake and therefore it was compulsory to reserve the said 50m area extending from the surface of the lake.

The letter dated 04.05.2017 marked P26 reads as follows;

..... එම ලිපිගොනුව පදනම් කරගනිමින් 2017.05.03 වන දින වාරිමාරග දෙපාරතමේන්තුව, මධ්‍යම පරිසර අධිකාරිය, පොලිස් පරිසර ඒකකය හා බණ්ඩාරගම ප්‍රාදේශීය සභාවේ නිලධාරීන්ගේ සහභාගිත්වයෙන් උයන්වත්ත වැව් රක්ෂිත සම්බන්ධයෙන් සාකච්ඡාවක් පවත්වන ලදී. එහිදී තීරණය වූ පරිදි උයන්වත්ත වැව් සඳහා රක්ෂිත සීමාව අධි ගංවතුර මට්ටමේ සමෝච්ඡ රේඛාවේ සිට වැවට එපිටින් මීටර් 50ක දුරක් අනිවාර්යයෙන් තැබිය යුතු බවට තීරණය විය.

ඒ අනුව ඔබ විසින් ඉදිරිපත් කර ඇති බලයලත් මිනින්දෝරු, සිරිල් වික්‍රමගේ මහතා විසින් 2016.09.12 වන දින මැන පිළියෙළ කරන ලද අංක 8526 දරණ 2016.09.12 දිනැති පිඹුරේ උයන්වත්ත වැව් රක්ෂිතය උක්ත පරිදි සලකුණු කර ඉදිරි කටයුතු සඳහා මෙම අධිකාරිය වෙත යොමුකරන ලෙස කාරුණිකව දන්වා සිටිමි.

By the aforesaid letter the Urban Development Authority had informed the 1st Petitioner to demarcate the reservation in the plan submitted by the 1st Petitioner. However, the Petitioners are not seeking to quash that letter. They

are seeking to quash the decision taken by the relevant Authority to create a reservation to a width of 50m.

The Petitioners are seeking to quash the decision taken by the relevant authorities to demarcate and create the aforesaid reservation on the following ground. It is the case of the Petitioners that such a reservation cannot be created and imposed purely on internal administrative arrangements and decisions without complying with the proper legal procedure to implement those decisions. Petitioners state that creation of such a reservation by the State has to be in strict accordance with the provisions of section 49 of the State Lands Ordinance no.8 of 1947. Under the provisions of that Act no state land shall be constituted a state reservation unless any land has been surveyed and depicted on a plan prepared by or under the authority of the Survey General and has been declared a state land under the Land Settlement Ordinance or Waste Land Ordinance or the Land Acquisition Act or the Lands Resumption Ordinance. Petitioners state that the lands owned by them have not been acquired by the State and declared as State lands and the lands have not been duly surveyed. Therefore, the aforesaid decision to create a reservation is not in compliance with the provisions of the State Lands Ordinance, National Environment Act and the regulations marked P9, P16, P17 and P18.

The Petitioners have not tendered to court the decision taken by the relevant authorities following their alleged discussion on 03.05.2017 to constitute and create a reservation to the width of 50m. The Petitioners state that they have requested the Department of Irrigation under the Right to Information Act No. 12 of 2016 to furnish a copy of the aforesaid decision to the Petitioners but the Department of Irrigation has informed that they do not have a copy of the decision with them. The letter P26 had been sent to the 1st Petitioner by the UDA. But there is no proof to show that the Petitioners had asked for a copy of the decision from the UDA. The Petitioners have not moved this Court to call for a copy of the decision before the commencement of the arguments. The Respondents also have not tendered to court any document containing such a decision. However, the Respondents have not specifically denied that such a decision was taken. Without specifically denying that fact 1st to 8th and 10th to 12th Respondents in their statement of objections had stated that the necessity to comply with the Irrigation Circular 10/1986 justifies the demarcation of a reservation in accordance with the terms of the said Circular. Therefore, the Respondents have acted on the assumption that such a decision has been taken.

Therefore, one can come to the conclusion that such a decision had been taken to create a reservation.

The 1st to 8th and 10th to 12th Respondents state that the intended reservation will be created under the provisions of the Irrigation Department Circular no. 10 of 1986. The creation of the reservation is not under the provisions of section 49 of the State Lands Ordinance or section 4 (a) (1) of the Sri Lanka Land Reclamation and Development Corporation Act or Section 23 (y) or 23 (z) of the National Environment Act or any regulations made under that Act.

Clause 4.3 of Circular no. 10 of 1986 reads as follows;

“Where the desired reservations are private lands, and where they are deemed absolutely necessary for the safety and protection of an irrigation work, the acquisition proceedings should be commenced to acquire them for the state.”

If the Respondents are acting under the provisions of that Circular the Department of Irrigation must acquire the private lands coming under the intended reservation before creating the reservation. The Petitioners state that no such step has been taken and the Respondents are not disputing that fact. The Irrigation Department has not yet acquired the private lands that comes within the intended reservation and without doing so a reservation cannot be created under the provisions of the Irrigation Department Circular No. 10 of 1986. Therefore, one can come to the conclusion that although a decision had been taken to create a reservation that decision has not yet been implemented and up to now no reservation has been created. That position is abundantly clear from the statements contained in the statement of objections of the 1st to 8th and 10th to 12th Respondents and in the corresponding affidavit. There the Respondents are referring to an **intended reservation**. That means that no reservation was in existence at the time of the filing of this application. Based on a decision to create a reservation which has not come in to existence the Urban Development Authority has sent the 1st Petitioner the letter marked P26 on the assumption that such a reservation exists, thus violating the rights of the 1st Petitioner.

The Petitioners are seeking for a writ of certiorari to quash the decision to create a reservation of 50m in width mainly on the basis that the relevant authorities have not followed the proper legal procedure to implement that decision. Instead of doing so the UDA had sent the letter P26 to the 1st Petitioner interfering with the rights of the Petitioner to develop his land. The Respondents

have not yet acquired the lands owned by the Petitioners under clause 4.3 of the Circular marked 1R1. The Respondents have not taken any steps under the State Lands Ordinance or under the provisions of the National Environment Act to create and establish the intended reservation. That is the grievance of the Petitioners. They are seeking to set aside the aforesaid decision mainly on that ground. But if the Respondents take meaningful steps to implement the aforesaid decision according to law and follow the proper legal procedure to create the intended reservation then the Petitioners cannot complain against that decision. The learned counsel for the Petitioners submitted that if the land is acquired for a reservation in the legal manner the Petitioners have no objections to that. But the Respondents are not taking steps to acquire the land to avoid the payment of compensation. As a matter of policy several government departments and institutions can get together and take a common decision to face pressing environmental problems. Therefore, there is no necessity to issue a mandate in the nature of a writ of certiorari to quash the decision to create a reservation 50m in width. A mandate in the nature of a writ of prohibition preventing the Respondents from acting on the assumption that there is a reservation in existence would suffice to safeguard the interests of the Petitioners.

The learned Senior State Counsel for the 1st to 8th and 10th to 12th Respondents has drawn our attention to the judgement of **Jayaweera Vs Assistant Commissioner of Agrarian Services Rathnapura 1996 (2) SLR 70**. In that case F.N.D. Jayasuriya – J had held as follows;

“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction – are all valid impediments which stand against the grant of relief.”

The learned Senior State Counsel submitted that if a 50m limit is not there then there will be a disaster. He emphasized that there is a genuine environmental necessity to implement a 50m lake reservation. To substantiate this position the learned Senior State Counsel has drawn our attention to the contents of an affidavit given by one Mr. Jayadheera – the Director of Irrigation Colombo. The Petitioners have objected to this document on the basis that it had been filed two years after the incident and the affirmant is a respondent in this case.

According to the designation, the affirmant is the Director of Irrigation who has an interest in this case. Although he is an expert, he cannot be treated as an independent witness and therefore his report also cannot be treated as an independent report. That affidavit had been affirmed and signed after the Respondents had filed their statement of objection. Therefore, one cannot easily brush aside the assumption that it is a document prepared for the purpose of this case. In that report the affirmant along with two others who are members of a committee recommend the creation of a 50m reservation. Even assuming that there is a necessity to create such a reservation it should be done in a manner prescribed by law. The Respondents and their subordinates acting under them cannot take the law into their hands and act in an arbitrary manner. Without creating and enforcing a reservation in a manner prescribed by law following the proper procedure the Respondents cannot act on the assumption that there is a reservation already in existence and interfere with the rights of the Petitioners. Therefore, I am of the view that this is not a fit case to follow the principles laid down in the case of **Jayaweera Vs Assistant Commissioner of Agrarian Services Rathnapura 1996 (2) SLR 70**.

For the aforesaid reasons, I issue a mandate in the nature of a Writ of Prohibition restraining the 1st to 11th Respondents and their respective servants and agents from prohibiting, preventing or unduly restricting the Petitioners whose lands are situated within the purported 50m reservation from developing the land or carrying out any construction work on their lands on the basis of the aforesaid purported reservation until a declaration in that regard is duly made in accordance with the applicable laws. I refuse to grant the other reliefs prayed for in the prayer to the Petition. Subject to the aforementioned limitation, the Application is allowed without costs.

Judge of the Court of Appeal

Mayadunne Corea – J

I Agree

Judge of the Court of Appeal