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

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

CA (Writ) No: 21/2018

1. Environmental Foundation (Guarantee) Limited
   3A, 1st Lane, Kirulapone,
   Colombo 05.

2. Mr. I. A. Percy Perera
   Chairman
   "Thalangama Wewa Ashritha Grameeya Thethbim Arakshaka Ha Kalamanakarana Kamituwa"
   435/B, Akuregoda,
   Thalangama South,
   Battaramulla.

3. Mr. E. O. Samarakkody
   Secretary
   "Thalangama Wewa Ashritha Grameeya Thethbim Arakshaka Ha Kalamanakarana Kamituwa"
   435/B, Akuregoda,
   Thalangama South,
   Battaramulla.

PETITIONERS

Vs.

1. Central Environmental Authority
   104, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

2. Professor R. K. Lal Mervin Dharmasiri
   Chairman,
   Central Environmental Authority
   104, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

2A. Chandrarathne Pallegama
   Chairman,
   Central Environmental Authority
   104, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

2B. Isuru Devapriya
   Chairman,
   Central Environmental Authority
   104, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

2C. Chandrarathne Pallegama
   Chairman

Central Environmental Authority
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.

3. P. B. Hemantha Jayasinghe
Director General,
Central Environmental Authority
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.

4. Kaduwela Municipal Council
Kaduwela Municipal Council
Kaduwela.

5. W. G. Chandana Pushpakumara
58/09, Muttetugoda Road,
8th Lane,
Thalahena,
Malambe.

RESPONDENTS

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

Counsel:	Thishya Weragoda for the Petitioners Ranga Dayananda for 1st – 3rd Respondents Ruwan De Silva for 4th Respondent Ranil Samarasooriya with Isuru Somadasa for the 5th Respondent
Argued on:	31/03/2022
Written Submissions:	Tendered by the 5th Respondent 02/09/2022 Tendered by the 1st, 2nd, and 3rd Respondents on 02/09/2022 Tendered by the Petitioner on 01/09/2022
Decided on:	27.10.2022

Mayadunne Corea J

The facts of the case briefly are as follows;

The Petitioners submit that Thalangama Lake and its environs are a preserved wetland and submits that there are 41 plant species and 90 bird species and 12 species of reptiles and 10 species of mammals and 15 freshwater species have been found from the tank and its environs (A2). The said area consists of paddy fields which are irrigated by the Thalangama tank. The area has also an important flood retention capacity within the Greater Colombo flood retention area. Accordingly, the Minister of Environment and Natural Resources by an order dated 23.02.2007, published in the Gazette Extraordinary No. 1487/10 dated 05.03.2007, has declared the Thalangama tank and its environs as an 'Environmental Protection Area' under sections 24C

and 24D of the National Environmental Act No 47 of 1980 (A4). The said Gazette has specified the permitted uses of the protected zone under Schedule 2.

It is common ground that the 5th Respondent had commenced construction in or around July 2016 within the protected area. The Petitioners allege that upon subsequent inspection, they have found that there had been the illegal filling of land within the Thalangama environmental protected area, including construction. After several complaints were made, especially to the 1st,2nd, 3rd, and 4th Respondents, the Petitioners submit that they have not received a positive response. In the meantime, the 5th Respondent was constructing a house within the said protected zone. Hence, this application for a writ of mandamus and a writ of prohibition.

Petitioners Complaint to Court

The Learned Counsel for the Petitioners submits that, despite their repeated complaints to 1st, 2nd, and 3rd Respondents, to preserve and protect the 'Thalangama Environmental Protection Area', described in the Gazette marked A4, the 5th Respondent had commenced a construction within the said area. After several inquiries being conducted by 1st 2nd and 3rd Respondents, no meaningful legal steps have been taken to protect the said area. The Petitioners have sought the following reliefs from this Court.

a) Issue an order in the nature of a Writ of Mandamus compelling the 1st and/or 2nd and/or 3rd Respondents to take appropriate legal steps to preserve and protect the "Thalangama Environmental Protection Area" more fully described in the Gazette Extraordinary No. 1487/10 dated 05/03/2007 marked as "A6".

b) Issue an order in the nature of a Writ of Mandamus compelling the 1st and/or 2nd and/or 3rd Respondents to take steps to institute legal action against the 5th Respondent under section 24B of the National Environmental Act No. 47 of 1980 (as amended) as indicated by the documents marked A9 with regard to the 4th Respondent's illegal activities within the "Thalangama Environmental Protection Area" more particularly the land identified as lot X5A in the Plan No. 6494 marked A13.

c) Issue an order in the nature of a Writ of Mandamus compelling the 1st and/or 2nd and/or 3rd Respondents to take necessary legal steps to restore the "Thalangama Environmental Protection Area" more particularly the land identified as lot X5A in Plan No. 6494 marked A13 to its original pristine condition as far as attainable.

d) Issue an order in the nature of a Writ of Mandamus compelling the 4th Respondent to take steps under Section 42H of the Municipal Council Ordinance to demolish the illegal construction erected by the 5th Respondent in the land identified as lot X5A in Plan No. 6494 marked A13.

e) Issue an order in the nature of a Writ of Prohibition against the 4th Respondent preventing the 4th Respondent from issuing any development permits and/or certificate of conformity in respect of any land falling within the "Thalangama Environmental Protection Area" more fully described in the Gazette Extraordinary No. 1487/10 dated 05/03/2007 marked as "A6".

Among other things, the Respondents filed their objections and the 5th Respondent in his objections has taken the following preliminary objections to this application.

i. The Petitioners have failed to describe the public duty the Respondents have failed or refused to discharge and have failed to specify the relevant law.
ii. The Petitioners have misquoted relevant sections of the law on which he relies.
iii. Petitioners have not named the necessary parties thus the application is misconceived in law.

This Court will consider the said objections elsewhere.

This Court observes that it is common ground that the 'Thalangama Environmental Protection Area' has been established under section 24C and section 24D of the National Environmental Act by the Gazette Extraordinary No. 1487/10 dated 05.03.2007. The said Gazette and the existence of the said area have not been challenged.

At the argument stage, the Petitioners submitted that due to inadvertence, certain markings of the documents are not reflected properly in the body of the petition and sought to correct the same, namely, the marked documents in prayers (c), (d), (e), (f), (g) and (h) as A6, A13, A13, A13, A6,

and A6 respectively and in the same way be hereinafter referred to as A4, A6, A6, A6, A4, and A4 respectively.

However, to avoid confusion, this Court has referred to the documents in the same way which has been marked and tendered to Court.

Gazette No 1487/10

As per the said Gazette, any planned scheme or project within the aforesaid protection area which is in conflict with the provisions of the Act and the Gazette, will cease to operate from the date of the said Gazette. The sole authority to exercise power and discharge its functions within the limits of the 'Environmental Protection Area' had been entrusted to the Central Environmental Authority. As per the Gazette, the powers and functions of the Central Environmental Authority pertaining to the area, among other things state as follows;

"***The powers and functions of the Central Environmental Authority (Permitted Uses) shall in relation to the aforesaid environmental protection area, be limited to those specified in Schedule II to this Order and shall be exercised and discharged in accordance with the conditions specified in Schedule III hereto."***

The boundaries of the said 'Environmental Protection Area' are reflected in Schedule I of the said Gazette.

The parties were not at variance that the construction of the 5th Respondent is being carried out within the area covered under Schedule I.

Schedule II of the said Gazette stipulates the permitted usage of the area within the described zone depicted in Schedule I. Schedule II of the said Gazette also includes types of constructions that are permitted within the protected area.

Schedule II reads as follows;

Permitted uses,

1. The cultivation of paddy.
2. Fishing.
3. Natural trails.

4. Construction of the towers for the observation of Birds.
5. An Environmental Educational Information center and sales outlet.
6. Construction of a Security Post.

The said Gazette also specifies the conditions subject to which the permitted usages can be carried out. The said conditions are stipulated under schedule III of the said Gazette and among other things reads as follows;

- *……The permitted uses should be carried out in consultation with the Central Environmental Authority (CEA), the Urban Development Authority (UDA), the Agrarian Development Department (ADD), the Department of Irrigation (ID), the Sri Lanka Land Reclamation and Development Corporation (SLLR & DC), and the relevant Local Authorities and in keeping with the general standards applicable hereto.*
- *The prior approval of the CEA should be obtained for any development of any infrastructure facilities.*
- *If the permitted uses described in Schedule II is a prescribed project under Part IV C of the National Environmental Act, approval should be obtained accordingly*
- *If the proposed project is not prescribed under the Part IV C of the National Environmental Act, an Environmental Assessment should be carried out (in accordance with the provision of Section 10H of the National Environmental Act) for evaluation prior to granting the approval of the CEA.*
- *The report will be evaluated by an appropriate committee appointed by the CEA.*
- *A Monitoring Committee will be appointed to monitor the project activities.*

Keeping this in mind, now this Court will consider the purported construction.

The 5th Respondent purchased land within the said protected zone (5R2) on 31st May 2012, which is after Gazette A4 came into force. Subsequently, he made an application to the 4th Respondent to construct a house on his property. As contended by the 5th Respondent, the 4th Respondent has approved his development permit for the construction of a two-storied house (5R3, 5R4, and 5R4A). However, it is pertinent to note, that as per the development permit issued by the 4th Respondent, (5R4) it has two specific conditions among other things which state as follows,

05. නාගරික සංවර්ධන අධිකාරියේ සැලසුම් සහ සංවර්ධන රෙගුලාසිවලට පටහැනි වන සංවර්ධනයක් / ඉදිකිරීමක් සඳහා මෙම බල පත්‍රය කිසිවිටෙකත් අවසරයක් නොවන බව සැලකිය යුතුය.

09.මෙම ඉදිකිරීම / සංවර්ධනය, වෙනත් අධිකාරියකින් හෝ යම් ආඥාපනතකින් බලපත්‍රයක් ලබාගත යුතු කාර්යයන් සඳහා පාවිච්චි කරනු ලබන්නේ නම්, එවැනි අවස්ථාවකදී මෙම අවසරය අදාල පරිදි එකී බලපත්‍ර ලබා ගැනීමේ කොන්දේසි වලට යටත් වේ.

Subsequent to the said permit being issued, the 5th Respondent contends that he had commenced the construction of his house.

The 5th Respondent has never denied that the purported construction is not within the protected zone. However, he contends that he has obtained the necessary approval from the 4th Respondent for the construction. It is evident with the material placed before this Court, that the 5th Respondent's construction is within the 'Thalangama Environmental Protection Area' as stipulated in the Gazette A4. This is also corroborated in the objections of 1st to 3rd Respondents where in paragraph 13, the said Respondents have admitted that the 5th Respondent's property, which would be described hereinafter as 'subject land' is situated within the 'Thalangama Environmental Protection Area'.

This Court observes that as per Schedule II of the Gazette, construction of a dwelling house is not permitted. 1st to 3rd Respondents in their objections have specifically stated that they have not given approval to the 5th Respondent for any development activities. As per A4, any development activities to be carried out should be done in consultation and with the approval of the Central Environmental Authority, the Urban Development Authority and the Agrarian Development Department, the Department of Irrigation, and the Sri Lanka Land Reclamation and Development Corporation, in addition to the relevant approvals of the local authority. It is also clear that prior approval of the CEA should be obtained and an Environmental Assessment should be done before any development of infrastructure facilities commences.

The Petitioners have failed to submit to this Court, any approval given by the above entities and has failed to demonstrate that he had even attempted to obtain the approvals of the above entities.

At this stage, it will be pertinent to consider sections 24C and section 24D of the National Environmental Act (as amended) which reads as follows,

Section 24C

1) *The Minister may by Order published in the Gazette declare any area to be an environmental protection area (hereinafter referred to as a "protection area")*

2) *an Order under subsection (1) declaring an area as a protection area, shall define that area by setting out the meters and bounds of such area.*

Section 24D

(1) *where an area has been declared to be a protection area, the Minister may by Order published in the Gazette declare that any planning scheme or project in a protection area under the provisions of any law which is in conflict with any provisions of this Act, shall cease to operate in that area.*

(2) *So long as an Order under subsection (1) is in force, the Authority shall be responsible for physical planning of such area in accordance with the provisions of this Act.*

(3) *Notwithstanding the provisions of subsection (1) the Minister may, at the request of the Authority, declare from time to time by Order published in the Gazette, that with effect from such date as shall be specified in such Order, the Authority shall cease to be the authority responsible for the planning in such protection area.*

(4) So long as an Order under section 24 being in force in relation to a protection area no person other than the Authority shall exercise, perform and discharge any powers, duties and functions relating to planning and development within such protection area.

According to the said provisions, it is clear that as long as the Gazette declaring the protected zone is in force, The National Environmental Act will supersede the application of the provisions of any other law that are in conflict with the provisions of the Environmental Act.

This Court also observes that as long as the Gazette is in force, the sole authority that has the power pertaining to exercising performing and discharging any powers, duties, and functions in

relation to planning and development within such protection area is vested with the Central Environmental Authority. There was no material placed before this Court to demonstrate, that the Authority had ceased to be the authority responsible for the planning and protection of the zone.

Thus, the Petitioner's construction does not fall within schedule II of the Regulations published in the Gazette marked A4. Hence, the construction of a house within the protected area does not fall within the permitted usage.

Schedule III of the said Gazette, subjects even the permitted uses under strict conditions. It stipulates that approvals that have to be obtained prior to the commencement of any construction. In our view, since the construction of a house does not fall within the permitted uses, obtaining the approvals of the relevant authorities will not rise, as, in our view, the approvals contemplated under schedule III are applicable only to the permitted uses.

In the absence of any material submitted to this Court pertaining to the power of delegation, by the Central Environmental Authority, it is safe to come to the conclusion that the planning and development within the protected zone are vested with the 1st Respondent.

The learned Counsel for the Petitioners contended that in or around 2016, the 1st Petitioner had been informed by the 2nd Petitioner about the commencement of construction within the protected area by the 5th Respondent. The said development plan was tendered to this Court (A6).

It was also submitted that prior to the 1st Petitioner being informed, the 2nd Petitioner had informed various authorities pertaining to the attempts of construction (A7, A8). As a result of this, the 3rd Respondent after a site inspection directed the 5th Respondent to stop the alleged illegal activities (A9). It is also observed that as per A9, at the time the site inspection was carried out, the construction had been at the commencement stage, that is, laying of the foundation.

However, it is submitted by the Petitioners, that instead of halting the construction subsequent to A9, the construction had gathered speed and the 1st Petitioner had been compelled to bring this to the attention of the 3rd Respondent (A10). Subsequently, as there had been no progress, the 3rd Petitioner by letter dated 10.8.2016 (A11) had once again informed the 1st Petitioner.

The complaint unit of the 1st Respondent had thereafter informed the Director of the Natural Resources Management Unit, of the 1st Respondent to take necessary action pertaining to the complaint by the 1st Petitioner by its letter dated 12.08.16 (A12). It is also pertinent to note that the building permit the 5th Respondent had obtained from the 4th Respondent dated 17.06.2016 (5R4) had been recalled by the 4th Respondent by letter dated 26.09.16 (A14). Accordingly, it is observed that the 5th Respondent had been informed to surrender the building approval permit issued by the 4th Respondent to cancel the same within three months of it being issued, on the basis that the land the permit had been issued for development, falls within the protected zone.

Further, by the said letter of cancellation, the 4th Respondent had informed the 5th Respondent that, as the construction work is in its preliminary stages, all construction work should be stopped and has requested the 5th Respondent to hand over the original development permit back to the 4th Respondent. There is no material to demonstrate that this order has been complied with by the 5th Respondent. In the said circumstances, it is the contention of the Petitioners that the 1st to 4th Respondents have failed to take any legal action as contemplated under the Act against the 5th Respondent, and the 5th Respondent is carrying on the development work in violation of the Gazette marked A4 and provisions of the National Environmental Act.

According to 1R2, it is clear that the officers of the 1st Respondent had visited the site of the alleged construction as far back as the 10th of June and being satisfied that the construction work is being carried out within the protected zone, had instructed the 5th Respondent to stop the unauthorized construction. This establishes that the 5th Respondent had failed to obtain the prior approval of the approving authority for the development work within the protected area. The Court also observes that as per 1R2, when the officers of the 1st Respondent visited the site, the construction had been at its initial stages as visible in the photographs. The construction of the house was still at the stage of cutting and laying the foundation and ground clearance. The field inspection report clearly indicates that the field officer had telephoned the 5th Respondent and had informed him to stop the construction of the house as it does not fall under the permitted use within the environmental protected area. The 5th Respondent has failed to contradict this evidence.

The 1st Respondent has also held a meeting with the stakeholders to resolve the issues pertaining to the Environmental Protection Area (1R3 and 1R4). At the said meeting, the issue pertaining to

the construction of the 5th Respondent had been specifically discussed and recommendations to rectify and stop any further construction had been made. It is pertinent to note that the officers of the 4th Respondent had attended the said meeting. At the said meeting, a decision had been taken for the 4th Respondent to submit all building plans to the planning committee of the 4th Respondent, to enable them to reconsider the building plans that had already been approved, within the protected area and if in violation of the regulations pertaining to the protected area, to cancel such approvals in violation. (1R4).

Subsequently, on 26.07.2016, the Environmental Management and Assessing Committee of the 1st Respondent had written to the 4th Respondent and informed that despite the 4th Respondent being informed of the protected zone on 19.4.2007, the 4th Respondent had approved the development plan of the 5th Respondent to construct a house within the protected zone on 17.06.2017.

The officers of the 4th Respondent further extended the development permit issued to the 5th Respondent subsequent to being present at the special meeting held on 24.06.2016. Thus, disregarding and violating the decisions taken at the said meeting.

As per the material submitted to this Court, we observe with dismay that the 4th Respondent being aware of the establishment of the 'Environmental Protection Zone' had not only approved the development plan but after attending the stakeholders' meeting, had extended the development permit by one year. This Court also observes that this extension was given after the 4th Respondent had sought to cancel the development permit and had informed the 5th Respondent to stop the construction. The 4th Respondent has failed to explain this action.

Is the construction illegal?

The 5th Respondent contended that he had obtained the necessary approval from the 4th Respondent and as the 4th Respondent was aware of the existing 'Environmental Protection Zone' when they approved his development plan, his construction does not become an illegal construction. This Court observes that the said permit does not give a blanket approval for development, especially Clause 5 and 9 which subjects the permit to the Urban Development Authority regulations, other authorities, and provisions of other relevant statutes.

The 5th Respondent argued that they had obtained the required building permit from the 4th Respondent and had also obtained an extension of time for the construction of the house and therefore the said construction cannot be an illegal construction. This Court cannot agree with the said submission of the learned Counsel for the 5th Respondent, as by the letter dated 26.09.16 (A14), the 4th Respondent had sought to cancel the development permit and issued an order specifically to halt all development work in the disputed land. As per the submission of the Petitioner, even if this Court is to consider that the Petitioner was holding a valid permit for his construction, with the said cancellation, the validity of the permit ceases to exist. Therefore the 4th Respondent cannot grant any further extensions, to a permit that has ceased to hold any validity. Subsequently, an inspection had been carried out by the following officers,

- Officers of the Central Environmental Authority
- Officers from Divisional Secretariat Kaduwela
- Public Health Inspector Battaramulla
- Technical Officer Kaduwela Municipality
- Representative of the Irrigation Department
- Assistant Superintendent Wildlife Conservation Department

where it was found that the construction of the 5th Respondent had by now completed the laying of the concrete slab for the first floor (1R6). It was the contention of 1st to 3rd Respondents that thereafter, they had sought a land use plan from the Land Use Policy Planning Department and were awaiting a reply without taking any further action.

It is observed that the construction in dispute clearly falls within the 'Environmental Protected Area' and the development that can take place within such as area is clearly depicted in the Gazette marked A4. Thus, the construction of a house is not permitted usage.

In our view, for the development of the 5th Respondent to attract any legality, he should have obtained the approvals of the approving agencies, in compliance with Schedule III of the Gazette. The 5th Respondent has failed to produce any of the approvals other than the building permit obtained from the 4th Respondent. The 1st to 3rd Respondents had clearly stated that they have not given approval for the said development. There was no Environmental Assessment tendered to this Court, nor have any approvals of the relevant stakeholders stipulated in the Gazette produced before this Court. Thus, the said construction within the meaning of sections

24C and 24D read with Gazette marked as A4, becomes an illegal construction. It is also pertinent to note that in addition, the 5th Respondent had failed to submit to this Court, the Certificate of Conformity issued by the 4th Respondents for the construction, to attract any legality as he claims.

Respondents' objections.

Now, this Court will consider the objections raised by the 5th Respondent.

The 5th Respondent as well as the 1st to 3rd Respondents raised an objection against the granting of a writ of mandamus under section 24B of the National Environmental Act. It was the contention of the 5th Respondent that there is no requirement to grant the said relief as the 5th Respondent has temporarily suspended the remaining construction of his residence. As submitted by the Petitioners, we also find that the 5th Respondent has failed to establish to this Court that he has temporarily suspended the construction. 5th Respondent has failed to demonstrate to this Court, that he has even surrendered the development permit issued to them by the 4th Respondent. No independent reports have been filed to demonstrate the suspension of the construction. It is observed that despite the officers of the 1st Respondent informing the 5th Respondent to stop the construction (1R2) when it was at the initial stages, the 5th Respondent had proceeded with the construction. Thus, in the absence of any material to substantiate the suspension, and in view of the photographic evidence the Petitioner has tendered to this Court, the said objections have to fail.

1st to 3rd Respondents too raised objections pertaining to prayer (d) of the application. The said objection is based on the premise that the Petitioners have only sought a writ of mandamus to institute legal action. It was the contention of the said Respondents that before instituting the action in the Magistrates Court, section 24B (1) should be complied with and a directive should be issued. On careful analysis of section 24B, we do agree that 24B (1) is a condition precedent to institute litigation. As per the plain reading of the section, failure to comply with such a directive will only result in litigation. The Petitioners' response was that 1st to 3rd Respondents have already issued a directive which is depicted in A9 and in the said directive it has been specifically stated that failure to comply with the said directive would result in legal action. In

response, 1st to 3rd Respondents contended that it was not a notice dispatched under 24B (1), if we are to agree with the said contention, then the 1st to 3rd Respondents should have explained the purposes of sending A9 and under what provision it was sent, the said explanation was never tendered to Court. As submitted by the Petitioners, this Court observes that there is no format for the notice under section 24B (1) prescribed in the Act.

This Court observes that the legislature in its wisdom has provided provisions under section 24B to prevent incidents of the very nature that is before this Court. What the Petitioners have sought, is a writ of mandamus to compel the 1st to 3rd Respondents to constitute legal proceedings under section 24B. They have not sought a specific order to be given under section 24B (2). The plain reading of section 24B demonstrates that 24B (1) is a condition precedent to section 24B (2). Hence the institution of legal proceedings commences with the directives issued under section 24B (1). Section 24B (2) contemplates the proceedings before the Magistrate for failure to comply with the directives issued under subsection (1). Therefore, in our view, we are unable to agree with the 1st to 3rd Respondents' submission, that the Petitioners should have sought first the notice to be issued. What the prayer seeks is legal action against the 5th Respondent under section 24B which includes 24B (1) and (2). Thus, the said objection of the 1st to 3rd Respondents under section 24B has to fail. If the document marked as A9 is not the notice contemplated under the Act, then there is nothing preventing the 1st to 3rd Respondents from issuing such a notice now. When we come to this conclusion, we have also considered the fact that as discussed earlier, the 5th Respondent has not submitted any independent evidence to demonstrate that the construction is suspended. Thus, in the absence of a court order, there is no guarantee that the self-declared suspension of construction would continue to be in effect.

The 5th Respondent raised another objection pertaining to prayer (f) whereby the Petitioners have sought a writ of mandamus compelling the 4th Respondent to take steps against the 5th Respondent according to section 42H of the Municipal Council Ordinance, to demolish the illegal construction erected. It was the contention of the 5th Respondent that the plan is not marked as A13 but A6 therefore, the said relief cannot be granted. However, in our view, the corpus has been sufficiently identified by the plan number and the lot. Also, the Petitioner by

filing a motion has rectified the inadvertent defects in the marking of documents. Accordingly, as contended by the Petitioners, the said typographical error will not defeat the relief sought. The Petitioners also submit that the Municipal Council Ordinance does not have a 42H and the power to demolish unauthorized construction is given under section 42A. In response, the Petitioners argued that the disputed land is situated in the area which falls under section 3 of the Urban Development Authority Act and the powers to implement the said provisions are delegated to the 4th Respondent. It is also submitted that under section 28A of the Urban Development Authority Act, the 4th Respondent is empowered to take action against the 5th Respondent.

The 5th Respondent argued that for section 28 of the Urban Development Authority Act to apply, the construction should have been without a permit or in violation of the permit conditions. It is their contention that they commenced the construction on a valid permit by the 4th Respondent. However, as discussed earlier in this Judgment, sections 24C and D of the National Environmental Act, read with the Regulations published in the Gazette marked A4, clearly demonstrates that the sole authority to approve any planning or development is the Central Environmental Authority and any development should be done with the approval of the Central Environmental Authority in compliance with the requirements and provisions of the Act and the Regulations.

In the development approval granted to the 5th Respondent, it is clearly stated that it is subject to the approval of other authorities and other relevant laws. Thus, in the absence of approval by the Central Environmental Authority, and the other stakeholders stipulated in the Gazette and following an Environmental Assessment, this clause is breached and therefore the validity of the permit is affected. This Court also takes into cognizance, document A14 whereby the 4th Respondent has prohibited any development and sought to cancel the permit. Accordingly, in our view, the 5th Respondent's argument that his construction was done with a valid permit, too has to fail.

The 5th Respondent also argued that when the 4th Respondent originally issued the permit 5R4 on 17th June 2015, they had not informed him about the impediment to construct within the protected zone. This submission also has to fail, as the 4th Respondent, subsequently by A14, has specifically informed about the 'Environmental Protection Zone' and sought to cancel the permit which had been done within 3 months of the issuance of the said permit. The 5th Respondent also contended that they had not received document A14. We find that the 5th Respondent's address is clearly given in document 5R4, which is the development permit issued by the 4th Respondent. The 4th Respondent had sent document A14 whereby they sought to cancel the permit also to the same address. Also, the 1st to 3rd Respondents have clearly established through the field inspection reports and the photographs, that the 5th Respondent had been informed, and should have sufficient knowledge that his purported construction was in violation of the National Environmental Act read with the Regulations in the Gazette marked as A4. As per the field inspection Report, the officers who conducted the inspection have noted that they have informed the 5th Respondent through the phone to stop the construction as it falls within the protected area. Therefore, this Court is unable to agree with the 5th Respondent that he had not been informed of the cancellation of his permit.

All the Respondents have submitted to this Court that the 1st prayer in the petition as prayed for is vague and too wide for it to succeed. This Court observes that as per sections 24B, C and D read with Regulations in the Gazette marked as A4, it is the bounded duty of the 1st, 2nd and 3rd Respondents to protect and preserve the 'Thalangama Environmental Protection Area'. The said power is granted in the statute itself. The legislature in its wisdom has drafted laws for a purpose and in this instance, it had been entrusted to the 1st Respondent to implement the law.

However, as pointed out by the Respondents, the Petitioners have not specifically averred the public duty as stated in the law, that have been not implemented by 1st to 3rd Respondents in the prayer. What has been prayed for is to "take appropriate legal steps" and "necessary legal steps" which in the mind of this Court is too vague. In this instance we take the guidance of **Rev Battarammille Seelarathne v Ceylon Electricity Board and 33 others CA 213/2017 decided on 19th July 2017** whereby the court held, ***"Prayer (f) is for a mandate in the nature of a writ of***

mandamus directing the 3rd to 7th Respondents to perform its duties with regard to the Procurement Process in this action as stipulated in Articles 156C (1), 156C (2), (a), (b), (c), (d) and (e) of the Constitution. This is a vague application. The duty that he is directed to perform must be clearly indicated because the writ of mandamus is always followed with a threat of punishing the person for not obeying the Court order if he fails to perform the duty that he is directed to perform. Therefore, the Court cannot direct a person to "perform its duties with regard to the Procurement Process" unless the duty is correctly specified.

We find that prayers (c) and (g) are too vague and too wide. Prayer (c) is vague and does not specify the specific legal step that the Petitioners are contemplating the Respondents to take. Granting relief under prayer (g) would restrain the 4th Respondent from issuing any development permits even if they are in conformity with sections 24C and D read with the Gazette Regulations marked A4, especially the development permits which have the approval of the Central Environmental Authority and the relevant approval agencies even for the permitted uses contemplated under the Regulations. Accordingly, we are not inclined to grant the reliefs prayed in prayers (c) and (g).

However, this Court wishes to place on record, that the 4th Respondent should consider and strictly comply with the Regulations in the Gazette marked A4 and provisions prescribed under sections 24C and D of the National Environmental Act, before embarking on granting development permits pertaining to the 'Thalangama Environmental Protection Area'. This Court also observes that the root cause for this application is based on the 4th Respondent who has approved and issued 5R3 and 5R4 in sheer disregard of the Regulations published in the Government Gazette and the provisions of the National Environmental Act. As per the material submitted to this Court, deplorably, the 4th Respondent had issued the development permit in violation of the provisions of the Environmental Act and Regulations marked A4 knowing that it was a protected zone as it had been informed of the protected zone by communication dated 19.04. 2007 (1R5). It is also pertinent to place on record that the 4th Respondent has failed to explain any of its actions pertaining to the issuance of the development permit to the 5th Respondent. Thus, on the available material, the only conclusion this Court can come to, is that

the 4th Respondent has issued the development permit to the 5th Respondent and granted an extension to a canceled permit in complete disregard of the prevailing law for the best reasons known only to them.

The learned Counsel for the Petitioners at the conclusion of his submission, submitted to Court that he is no longer pursuing relief (f) in the petition. We also observe that in the absence of not pursuing relief (f) and for the reasons stated above, relief (e) has to fail.

The 1st Respondent is the statutory authority entrusted with granting approvals for planning and development within the protected zone. The 2nd and 3rd Respondents are respectively the Chairman and Director General for the said authority who will have to give instruction to take necessary steps as mandated in the National Environmental Act and in this instance the Regulations published in the Gazette.

Therefore, for the aforesaid reasons, this Court issues a writ of mandamus compelling the 2nd and/or 3rd Respondents to take steps to institute legal action against the 5th Respondent under section 24B of the National Environmental Act No. 47 of 1980 as amended, and as per the law.

We refuse to grant the reliefs prayed for in prayers (c), (e), (f), and (g).

Even though the Petitioners have made this application for the betterment of society at large, in this instance we will not award any costs.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal