

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

In the matter of an Application in the nature of Writ of Mandamus under Article 140 of the 1978 Constitution.

1. Mayadunnage Gunasena  
Senasilu, No. 86/1, Madagamuwa,  
Post Narammala.
2. Dr. M. S. S. Mayadunna  
Lot No. 91, Daba Kandawatte,  
Boyagane.

CA (Writ) Application No: 84/21

Petitioners

Vs.

1. Kurunegala Pradeshiya Sabha  
Malpitiya Boyagane,  
Kurunegala.
2. Achala Nimantha Wickramathilaka  
Chairman,  
Kurunegala Pradeshiya Sabha,  
Malpitiya Boyagane,  
Kurunegala.
3. Sudrama Herat  
Technical Officer,  
Kurunegala Pradeshiya Sabha,  
Malpitiya Boyagane,  
Kurunegala.

4. Hon. Attorney General  
Attorney General's Department,  
Hulftsdorp, Colombo 12.

Respondents

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

**Counsel** : P. K. Prince Perera with S. Panchadsaram for the  
Petitioners.  
Thusitha Wijekone for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.  
Amasara Gajadeera, S. C for the Respondents.

**Written Submission** : Petitioners : 17.07.2023  
**tendered On** Respondents : 11.09.2023

**Decided On** : 20.09.2023

**Dhammika Ganepola, J.**

The 1<sup>st</sup> Petitioner is the owner of Lot No.91 Of Dambakanda Estate which is depicted in plan No. මු.පි.කු.1977 marked P1. The said Dambakanda Estate depicted in the P1 holds a separate roadway (Lot 46 of plan P1) and drainage system. Both the roadway and the drainage system are currently owned by the National Housing Development Authority. These have, so far, not been acquired by the 1<sup>st</sup> Respondent Pradeshiya Sabha. The Eastern boundary of the 1<sup>st</sup> Petitioner's land is the common road which is the Western boundary of Lots Nos.88 and 89 of the P1. Simply put, Lot No. 91 and Lots No. 88 & 89 of P1 are located on either side of the common road.

Following an inspection, the 2<sup>nd</sup> Respondent had ordered a 'hume pipe' to be installed across the common road in between lots 91 and 89 of P1. The Petitioners submit that as a result of putting up a such culvert the ground floor of the Petitioners' house gets flooded by water during rainy days. The Petitioners contend that in terms of Sections 79 and 80(2) of the Pradeshiya Sabha Act No.15 of 1987, the 1<sup>st</sup> Respondents owed a mandatory legal and public duty to provide a substituted system. This would have been done by putting

concrete 40 meters along the earth drains on both sides of the road. However, the Petitioners claim that the Respondents have failed to do so. Hence putting up a hume pipe culvert across the common road by the 1<sup>st</sup> Respondent is a breach of a legal and public duty. Based on the above grounds, the Petitioners in this application seek writs of mandamus directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to remove the hume pipe culvert, close the drainage which was placed across the middle of the roadway, and put the concrete on both sides of the existing earth drain.

Both the Petitioners and the Respondents agreed that this matter we dealt with and determined solely based on written submissions and accordingly all parties have filled written submissions.

It is on the common ground that the common roadway (Lot 46) depicted in plan P1 which is vested with the National Housing Development Authority has not been acquired by the 1<sup>st</sup> Respondent Pradeshiya Sabha yet. However, the National Housing Development Authority is in the process of transferring the common areas depicted in Plan P1 including said roadway to the 1<sup>st</sup> Respondent and it has no objection to any development activities in the said common areas in Plan P1 being carried out by the 1<sup>st</sup> Respondent until such transfer (see R1). Therefore, it is clear that the 1<sup>st</sup> Respondent has all the authority to make any development in the common areas depicted in plan P1.

Under Section 79 of the Pradeshiya Sabha Act, 1<sup>st</sup> Respondent Pradeshiya Sabha is empowered to make drains as it may appear to be necessary for the effectual draining of any area. Said Section is as follows,

**79. Pradeshiya Sabha to make public drains.**

*The Pradeshiya Sabha may from time to time cause to be made, altered or extended such public, main or other drains, sewers and watercourses as may appear to be necessary for the effectual draining of any area within the Pradeshiya Sabha area, and, if necessary, the Pradeshiya Sabha may carry them through, across, or under any street or any cellar or vault which is under any of the streets, and after reasonable notice in writing in that behalf, into, through, or under any closed or other lands whatsoever, doing as little damage as may be and making full compensation for any damage done.*

It is important to note that the Eastern side of the common roadway (Lot 46) is located at a significantly higher elevation compared to the Western side where the Petitioners' land is situated. Hence the natural water flows from the Eastern side to the Western side of the roadway. Under such circumstances, the 1<sup>st</sup> Respondent has constructed the hume pipe culvert across the roadway to accommodate the flow of water without retaining or flooding. Therefore, I am of the view that the 1<sup>st</sup> Respondent has acted within his authority.

It is observed that the 1<sup>st</sup> Respondent has taken steps to prevent the dispatch of wastewater to the said drain by the occupants in the surrounding area. As depicted in the photographs marked P4, P5, P8 and P9 submitted by the Petitioners as well as the photographs marked R2 to R7 submitted by the Respondents, it is observed that there are drains along both sides of the roadway and there is no likelihood for water to spill over

onto the Petitioners' land. There is no material before this Court to conclude that the water flowing through the hume pipe would cause any damage to the Petitioners' land and the ground floor of their house is getting flooded due to the mere construction of the impugned culvert. However, it is observed, the findings of this Court may not impede the Petitioners from seeking appropriate relief in respect of any new developments in this regard.

The Petitioners further claim that the 1<sup>st</sup> Respondent has a legal obligation to provide a 'substituted system' as per Section 80(2) of the Pradeshiya Sabha Act. However, the said section applies only in situations involving repairs, alterations, and discontinuances of drains and not otherwise. The instant application is in respect of putting up a new culvert. Section 80(2) stipulate as follows,

***80. Duty of Pradeshiya Sabha to repair, alter and discontinue drains.***

*(2) Where, by reason of the discontinuance, closing up, destruction or alteration of any drain, culvert, gutter or watercourse, any person is deprived of the lawful use thereof, the Pradeshiya Sabha shall with due diligence provide an effective substitute therefore.*

In the above circumstances and the reasons given the Petitioners have failed to satisfy that there is a breach of legal or public duty owed by the 1<sup>st</sup> Respondent. Accordingly, I am not inclined to grant any relief prayed for the Petition. I order no cost.

*Application is dismissed.*

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal