

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

In the matter of an application for Writ of Mandamus and Writ of Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Pandikoralalage Nilamani Ianthi Rranasinghe,  
No.409/14C,  
E.W.Perera Mawatha,  
Pitakotte.

**Petitioner**

**C.A. Writ No.06/2023**

Vs

1. Saman Ranjan Ratnayake.  
421/1/B,  
E.W.Perera Mawatha,  
Pitakotte.
2. I.M.V. Premalal,  
Mayor,  
Sri Jayawardenapura Kotte Municipal  
Council,  
No.06, Nawala Road,  
Rajagiriya.
3. R.A.Shalika S. Ranaweera,  
Municipal Commissioner,  
Sri Jayawardenapura Kotte Municipal  
Council,  
No.06, Nawala Road,  
Rajagiriya.
4. J. Thivahar,  
Municipal Engineer,  
Sri Jayawardenapura Kotte Municipal  
Council,  
No.06, Nawala Road,  
Rajagiriya.
5. Mr. Nimesh Herath,  
Chairman,  
Urban Development Authority,  
6<sup>th</sup> and 7<sup>th</sup> Floors,

“Sethsiripaya”,  
Battaramulla.

6. Urban Development Authority,  
6<sup>th</sup> and 7<sup>th</sup> Floors,  
“Sethsiripaya”,  
Battaramulla.

### **Respondents**

Before : **N. Bandula Karunarthna, J. (P/CA)**  
**M.Ahsan R.Marikar, J.**

Counsel : Ranjan Gunarathna with H.G.H. Chathuri instructed by Sarath  
P.Walgamage for the Petitioner.

Dr. Sunil Cooray with Diana Stephinie Rodrigo for the 01<sup>st</sup>  
Respondent.

Senani Dayaratne with Nishadi Wickramasinghe and Jayamini  
Tennekoon for the 02<sup>nd</sup> to 04<sup>th</sup> Respondents.

Shehan Soyza, SC for the 05<sup>th</sup> and 06<sup>th</sup> Respondents.

Argued on : 21.03.2023

Decided on : 25.05.2023

**M. Ahsan R. Marikar, J.**

### **Introduction**

- 1) The Petitioner had instituted this action against the Respondents seeking to invoke the writ jurisdiction of this court to restrain the 1<sup>st</sup> Respondent from constructing a building on the 1<sup>st</sup> Respondent’s land violating the building regulations enacted by the Urban Development Authority Gazette No. 392/9 dated 10<sup>th</sup> March 1996 and sought the reliefs prayed for in the prayer of the petition dated 9<sup>th</sup> January 2023.

- 2) The instant matter to be considered is that, can the notices prayed for by the Petitioner and the interim orders sought be granted or not.
- 3) It is to be noted that the 2 restraining orders prayed for in the prayer (e) and (f) of the petition dated 9<sup>th</sup> January 2023 are arising out of a dispute between two private individuals. That is a fact to be considered in deciding whether the said interim orders can be issued or not.

**Facts pertinent to the Petitioner's application**

- 4) The contention of the Petitioner is that the Petitioner is the joint owner with her husband of the property whose blind wall faces the rear of the 1<sup>st</sup> Respondent's house which is under construction.
- 5) The Petitioner had made complaints to the 2<sup>nd</sup> Respondent by letter dated 25<sup>th</sup> August 2020 that the 1<sup>st</sup> Respondent had constructed a building on his land violating the building regulations enacted by the Urban Development Authority.
- 6) The said violations are as follows;
  - (i) The Petitioner states that under Section 26(1) of the UDA Gazette 'there shall be the rear of every building and belonging exclusively to it an open space not less than 3 meters extending along the entire width of the building.' The said provisions are violated by the 1<sup>st</sup> Respondent.

- (ii) Further, Section 61, 62 and 51(2)(b) are violated by the 1<sup>st</sup> Respondent by constructing a toilet, a septic tank and a soakage pit within the 3 meter area.
  - (iii) The 1<sup>st</sup> Respondent has failed to provide adequate drainage facilities to drain off and convey the rain water from the roof or other approved outlets causing dampness to the walls or foundations of the Petitioner's building and failed to take steps to safe guard the health of the Petitioner and the other occupants of her premises from the noxious odours emanating from the toilet constructed within the 3 meter open space.
- 7) The said facts are supported by the photographs marked and produced as X1, X2 and X6. Beside these facts the Petitioner had contended the 1<sup>st</sup> Respondent was in the process of building a 4 storied building without obtaining the necessary approval. The foundation laid by the 1<sup>st</sup> Respondent is only for a two storied building. In the event such a building collapses it will cause damages to the Petitioner's property.
- 8) Consequent to the complaint made by the Petitioner to the 2<sup>nd</sup> Respondent, the said complaint had been referred to the 4<sup>th</sup> Respondent who is the engineer of the 2<sup>nd</sup> Respondent, the Municipal Council.
- 9) After the said complaint the 1<sup>st</sup> Respondent had partially demolished the disputed toilet. However, the walls of the roof of the toilet were re-erected on 11<sup>th</sup> February 2021.

- 10) Although the Petitioner had complained several times to the 2<sup>nd</sup> Respondent, the 2<sup>nd</sup> Respondent had failed to take any action as promised. Subsequently, the Petitioner by the letter dated 2<sup>nd</sup> February 2022 had brought to the notice of the 2<sup>nd</sup> Respondent and the other officers of the 2<sup>nd</sup> Respondent's Municipal Council that the 1<sup>st</sup> Respondent had commenced the construction work in violation of the approved building plan.
- 11) As a result of the continuation of the said construction the Petitioner had to face immense hardship and had caused damages to the Petitioner's property as referred to in paragraphs 12 to 21 of the petition.
- 12) On the said grounds the Petitioner had sought the reliefs prayed for in the prayer of the petition dated 9<sup>th</sup> January 2023 to invoke the writ jurisdiction of this court.

**Limited Objections of the 1<sup>st</sup> Respondent**

- 13) The 1<sup>st</sup> Respondent had contended that he is an employee of the Ceylon Electricity Board and his wife is employed at the Inland Revenue Department. He has denied the position taken by the Petitioner and stated that he had obtained proper permission and approval from the Municipal Council of Kotte to construct the house.
- 14) The 1R7 plan and 1R11 and 1R11(a) documents will prove the approval granted by the Municipal Council for the construction of his house.

- 15) The unauthorized toilet referred to by the Petitioner had been demolished by the 1<sup>st</sup> Respondent. That is shown in 1R9 photographs. Presently, there is a temporary toilet for the workers to use until the building is completed.
- 16) The 1<sup>st</sup> Respondent had stated from the date the 1<sup>st</sup> Respondent commenced the construction of the house, the Petitioner had objected unnecessarily and had made complaints to the Municipal Council delaying the 1<sup>st</sup> Respondent's construction.
- 17) The 1<sup>st</sup> Respondent and his spouse being government servants had obtained loan facilities and are constructing this house to occupy with their children.
- 18) The Petitioner's complaint and harassment will delay the process of the construction and the 1<sup>st</sup> Respondent had to meet unnecessary expenditure and grave damage due to the conduct of the Petitioner.
- 19) The said facts are supported by 1R1 to 1R14(e) documents.
- 20) On that the 1<sup>st</sup> Respondent had moved to dismiss the application made by the Petitioner.

**Limited Objections of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents**

- 21) The 2<sup>nd</sup> to 4<sup>th</sup> Respondents had also filed limited objections and submitted that the Petitioner had willfully suppressed and misrepresented facts and the entire application of the Petitioner is misconceived in law.
- 22) Further, the 2<sup>nd</sup> to 4<sup>th</sup> Respondents have acted in accordance with the Urban Development Authority Planning and Development regulation 2021 which is marked and produced as R2.

- 23) The said Respondents have contended that the 1<sup>st</sup> Respondent had acted complying to the aforesaid regulation and the approved plan.
- 24) Therefore, the certificate of conformity was awarded for the said construction.
- 25) Further, the documents marked as R1 to R3 will prove that the 2<sup>nd</sup> to 4<sup>th</sup> Respondents have not violated any provisions of the Urban Development Authority Planning and Development Regulations.
- 26) On the said grounds the Respondents have moved to dismiss the application made by the Petitioner.

**Disputed Facts**

- 27) When this matter was supported on 21<sup>st</sup> March 2023 parties were heard and all the parties agreed to conclude the matter by way of written submissions.
- 28) In considering the petition, limited objections and the documents to arrive at the conclusion I have to consider the following disputed points.
  - (1) Is the 1<sup>st</sup> Respondent constructing a house where his rear end is facing the blind wall of the Petitioner?
  - (2) Has the 1<sup>st</sup> Respondent violated the Urban Development Authority Planning and Development Regulations?
  - (3) Is the 2<sup>nd</sup> to 4<sup>th</sup> Respondents bound to take steps for the complaints made by the Petitioner? If not, is the Petitioner entitled to invoke the writ jurisdiction of this court?

**Is the 1<sup>st</sup> Respondent constructing a house where his rear end is facing the blind wall of the Petitioner?**

- 29) There is no dispute that the 1<sup>st</sup> Respondent is constructing a house where his rear side is facing the blind wall of the Petitioner.
- 30) That fact is supported by the documents marked as R1 to R12(c) where the Municipal Council of Kotte had approved the plan for the said construction.

**Has the 1<sup>st</sup> Respondent violated the Urban Development Authority Planning and Development Regulations?**

- 31) The Petitioner has emphasized that the 1<sup>st</sup> Respondent had violated the provisions of the Urban Development Authority Planning and Development Regulations and stated Regulation 26(1) of Urban Development Authority Gazette No.392/9 specifies 'there shall be in the rear of every building and belonging exclusively to it an open space of not less than 3 meters extending along the entire width of the building'.
- 32) Further, Section 51(2)(b) and Section 62 of the said Gazette notification had been referred to by the Petitioner and contended the said provisions are violated by the 1<sup>st</sup> Respondent when constructing the building.
- 33) Furthermore, the 1<sup>st</sup> Respondent had built a septic tank, soakage pit and a toilet within the 3 meter space between the blind wall of the Petitioner and the Respondent's house.
- 34) On perusal of X7 to X19 documents it is obvious the Petitioner had made several complaints to the Municipal Council on the aforesaid unauthorized



toilet and the Municipal council had taken steps to demolish the said construction.

- 35) Limited objections filed by the 1<sup>st</sup> Respondent had attached 1R9 photographs to prove the said toilet which had been built is demolished.
- 36) When observing the complaints made by the Petitioner against the 1<sup>st</sup> Respondent and in considering the interim relief sought in prayer € and (g) on the face of it, it shows that it is a private dispute between the Petitioner and the 1<sup>st</sup> Respondent.
- 37) For the said interim reliefs, writ jurisdiction cannot be granted as the said disputes are between two private individuals. The Petitioner has to seek the said reliefs in a different forum.
- 38) Beside these facts the 2<sup>nd</sup> to 6<sup>th</sup> Respondents had never complained that the 1<sup>st</sup> Respondent had violated any provisions of the approved plan.
- 39) Therefore, I am of the view that the violations contended by the Petitioner had not been proven in this case by the Petitioner.

**Is the 2<sup>nd</sup> to 4<sup>th</sup> Respondents bound to take steps for the complaints made by the Petitioner? If not, is the Petitioner entitled to invoke the writ jurisdiction of this court?**

- 40) As stated above the Petitioner had made several complaints to the 2<sup>nd</sup> Respondent against the construction of the 1<sup>st</sup> Respondent's building.

- 41) As per the documents provided X1 to X22(a) it is proven that the 2<sup>nd</sup> Respondent had taken steps considering the complaints made by the Petitioner.
- 42) However, subsequently the 2<sup>nd</sup> Respondent had approved the development permit/amendment to the development permit which is marked and produced as R3.
- 43) Other than the complaints and the photographs which were sent to the Municipal Council there is no iota of evidence produced by the Petitioner for this court to invoke the writ jurisdiction that the 1<sup>st</sup> Respondent is engaged in illegal constructions and that the 2<sup>nd</sup> Respondent had not taken any steps to restrain the said constructions.
- 44) As per the facts and documents the 1<sup>st</sup> Respondent had followed the regulations. On that, the Municipal Council had approved the building plans by 1R11 and 1R11(a). This fact is supported by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents producing the document R3.
- 45) In the said circumstances we do not see any grounds to invoke the writ jurisdiction of this court on the aforesaid facts.
- 46) It is decided in the case **Counsel of Civil Service Unions V. Minister of the Civil Service (the GCHQ case)**<sup>1</sup> by Lord Diplock that;

*“Where, having classified the three grounds upon which administrative action is subject to judicial review, namely 'illegality', 'irrationality' and 'procedural impropriety'... by 'illegality' as a ground*

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<sup>1</sup> [1984] 3 All ER 935.

*for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making”.*

- 47) Lord Diplock had specified that the judicial review can be subject to namely illegality.
- 48) When considering the aforesaid decision in the event the 1<sup>st</sup> Respondent had committed any illegal act or violated the terms and conditions of the building permit it is up to the 2<sup>nd</sup> Respondent to take necessary action against the 1<sup>st</sup> Respondent. However, the 2<sup>nd</sup> to 4<sup>th</sup> Respondents have specifically stated that the 1<sup>st</sup> Respondent has not violated any conditions of the building permit issued to him. In the said circumstances there is no illegal act committed by the 2<sup>nd</sup> to 5<sup>th</sup> Respondents to consider judicial review under writ jurisdiction.
- 49) Besides these facts, in the judgement of **Mendis V. Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and others**<sup>2</sup> it was held that;

*“Writs come within the purview of administrative law which is a branch of law that has been developed by courts for the control of the exercise of governmental or statutory powers by mainly public authorities.... Writs of Certiorari and Prohibition are instruments of Public Law to quash and restrain illegal governmental and administrative action.”*

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<sup>2</sup> [1995] 2 Sri LR 284.

50) In the said judgement Justice Sarath Silva had reiterated that Certiorari and Prohibition are instruments of public law to quash and restrain illegal governmental actions. In the instant action the Petitioners complaint is against the conduct of the 1<sup>st</sup> Respondent which is a private dispute between them and it cannot be considered in this forum.

**Conclusion**

51) In view of the aforesaid facts and the documents we do not see any reason to invoke the writ jurisdiction of this court. On that we dismiss the petition dated 9<sup>th</sup> January 2023 subject to payment of cost for the Respondents.

Judge of the Court of Appeal

N. Bandula Karunaratna J. (P/CA)

I agree.

President of the Court of Appeal