

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

In the matter of an application for writs
of prohibition and mandamus made
under and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

1. Aslam Othman,
149 Kew Road,
Colombo 02.
2. Mohamed Hassein Mohamed
Naufer,
211/T, Jumma Masjid Road,
Maligawatte,
Colombo 10.
3. Abdul Azeez Sheikh Nihar
84/20 B Maligawatte Lane,
Colombo 10.

And 8 others.

Petitioners

C.A. (Writ) Application No. 93/2014

Vs.

1. The Colombo Municipal Council
Town Hall,
Colombo 07.

2. His Worship A.J. M. Muzzammil,
The Lord Mayor of Colombo,
The Colombo Municipal Council
Colombo 07.

And 7thers

Respondents

Before : **SISIRA J DE ABREW, J. (P/CA)&
P.W.D.C. JAYATHILAKE,J.**

Counsel : Heaaz Hizbullah with Nadun
Wijesiriwardena for the Petitioners

S.J. Mohideen for the 1st, 2nd and 3rd
Respondents

S.A. Parathalingam P.C. with N.K.
Parathalingam for the 5th Respondent

Argued &
Decided on : 28.04.2014.

Sisira J de Abrew, J.(P/CA)

Heard both counsel in support of their cases.

Mr. Mohideen appearing for 1st , 2nd and 3rd Respondents makes
submissions. Mr. Parathalingam P.C. appearing for 5th Respondent
makes submissions.

Petitioners complain that the 5th respondent has encroached on to the Muslim Burial Ground, Maligawatta which is the subject land in this case. Counsel for the Petitioners further submits that the petitioners have filed a case in the District Court of Colombo to get a declaration that the 5th respondent has encroached on to the Muslim Burial Ground, Maligawatta. According to the submissions made by both parties, Colombo Municipal Council, the 1st respondent has issued a development permit in 2009 in favour of the 5th respondent to construct a building on the land of the 5th respondent. Petitioners complain that the 5th respondent has encroached on to the Muslim Burial Ground, Maligawatta and has constructed the building. Petitioners seek a stay order preventing the 1st – 4th respondents from extending the existing permit and/or granting a development permit to the 5th respondent. In the case filed in the District Court of Colombo, the petitioners have asked an interim injunction preventing the 5th respondent from constructing the building.

Petitioners' case depends on the question whether the 5th respondent has encroached on to the Muslim Burial Ground, Maligawatta which is the subject matter in this case. This question must be decided by the District Court. This Court has no jurisdiction to decide whether the

5th Respondent has encroached on to the said land or not. If the 5th respondent has encroached on to the said land, Colombo Municipal Council (the 1st Respondent) will not be in a position to issue a permit or to extend the existing permit. The said decision must be taken up by the Municipal Council on the decision of the District Court.

In this circumstances, we see no reason to issue notice on the respondents. In our opinion, the petitioners have not established a case to issue notices on the respondents.

For the above reasons we refuse to issue notice on the respondents and dismiss the petition of the petitioner.

PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL

/mds