

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 Mandamus in
terms of Article 140 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.*

C A (Writ) Application

No. 466 / 2008

1. S A J T Chandralatha,
53/1,
Pelpolawatte,
Meegoda,
Godagama.

PETITIONER

-Vs-

1. Homagama Pradeshiya Sabha,
Homagama.

2. Handapangodage Ruwan Proboda
Pieris,
Chairman,
Pradeshiya Sabha
Homagama.

2A. Hema De Silva,
Secretary,
Pradeshiya Sabha,
Homagama.

3. Hema De Silva,
Secretary,

Pradeshiya Sabha,
Homagama.

4. Urban Development Authority
"Sethsiripaya"
Battaramulla.

5. K M K Wimalaweera,
53/2/A,
Pelpolwatte,
Meegoda,
Godagama.

6. Nimal Perera,
Chairman,
Urban Development Authority,
"Sethsiripaya",
Battaramulla.

6 A. Ranjith Fernando,

Chairman,

Urban Development Authority,

"Sethsiripaya",

Battaramulla.

RESPONDENTS

Before: A H M D Nawaz J

P. Padman Surasena J

Counsel: Shantha Jayawardena with Chamara Nanayakkara for the
Petitioner.

Wickum De Abrew DSG, for the 4th, 6th and 6th Respondents.

Other Respondents are absent and unrepresented at the
argument.

Argued on: 2017 – 01- 24.

Decided on : 2017 - 06 - 29

JUDGMENT

P Padman Surasena J

The Petitioners have invoked the writ jurisdiction of this court praying for writs of Certiorari, Prohibition and Mandamus. However in view of the objections filed by the Respondents, learned counsel for the Petitioner, at the time of argument of this case before this court on 2017-01-24, informed this Court that he would only be pursuing the prayer (g) of his petition which is to the following effect;

(g) "Grant and issue a mandate in the nature of writ of Mandamus directing the 1st – 4th and 6th Respondents or anyone or more of them, to take steps according to law to have the 5th Respondent's construction at 53/2/A, Pelpolawatte, Meegoda, Godagama demolished in so far as it is in violation of the Planning and Building Regulations and/or Clause 51 of the said Regulations;"

It is to be noted at the outset that subsequent to this Court issuing notices on the Respondents after this case was supported in this Court, 4th 5th and 6th Respondents have filed their statements of objections. The Petitioner had thereafter filed his counter affidavit. However the Respondents, with the exception of 4th, 6th and 6A Respondents who are represented by the Deputy Solicitor General, did not participate at the argument stage of this case.

It was shown to the satisfaction of this Court that the 5th Respondent had constructed a building along the boundary of the Petitioner's land violating clause 51(1) of the Building and Planning Regulation produced marked **P 2** which requires such construction to be away from the boundaries of the adjoining lands. The said regulation has been made by the Honourable Minister of Local Government Housing and Construction under section 21 of the Urban Development Law No. 41 of 1978 read with section 8 of that law.

It is to be noted that the 5th Respondent had commenced this construction, which is a two storied building, somewhere in the years 2005/ 2006¹. The foundation of this building is shown to be less than 1 Meter away from the

¹ Paragraph 9 of the petition & paragraph 7 of the statement of objections filed by 5th Respondent.

Petitioner's boundary. The walls built on this foundation have windows also. The said windows open towards the Petitioner's land, as has been shown in the photographs produced marked **P 3 (a)**, **P 3 (b)**, **P 3 (c)** and **P 3 (d)**.

According to section 8 of the Urban Development Authority Law, no person shall carry out or engage in any development activity in any development area except under the authority and in accordance with the terms and conditions of a permit issued in that behalf by the Urban Development Authority (hereinafter sometimes referred to as UDA). It is to be observed that the Gazette dated 1986-03-10 bearing No. 392/9, produced marked **P 2**, has promulgated the regulations with regard to development activities and the procedure for obtaining approval for such activity.

It is to be noted that it is the position of the 5th Respondent that the construction he has engaged in, is a construction that has been duly approved after necessary investigation and site inspection carried out by an authorized officer of the 1st Respondent Pradeshiya Sabha. The Petitioner

has stated that the said approval was granted on 2004-11-04 and the said construction commenced in January 2005².

In contrast to the above, the position taken up by the 1st – 3rd Respondents is that no building plan for the development activity under challenge in this case has ever been approved. Thus the purported approved building plan produced marked **P 16** cannot have any validity. This position is further buttressed by the fact that the 1st -3rd Respondents had even proceeded to lodge complaints at the Criminal Investigations Department urging an investigation presumably as to how the document marked **P 16** had been obtained.

It transpires from the perusal of the purported building plan application submitted by the 5th Respondent produced marked **P 17** that the proposed house is to be constructed at Batiya Watte, Thumbowila, Piliyandala. That address does not come under the geographical jurisdiction of Homagama Pradeshiya Sabha.

Further according to the deed No. 16 attested on 2004-03-17 by Manannalage Niranjali PushpaKumari Notary Public, produced marked **5 R 1**, the 5th Respondent had purchased this land in December 2004. However

² Paragraph 7 & 8 of the statement of objections filed by the 5th Respondent.

the purported building plan which the 5th Respondent claims to have been approved shows clearly that plan had been approved on 1994-11-24.

Thus, it has become clear before this Court that the 5th Respondent does not possess any valid permit for the construction of this building and that by that construction the 5th Respondent has manifestly violated the rights of the Petitioner.

Section 28A of the UDA Act empowers the UDA to take variety of steps including demolition of any such unauthorized construction. This power has been delegated to the local authorities. The 1st Respondent is the local authority of the area in which this unauthorized building has been constructed.

The petitioner has shown to the satisfaction of this Court that she has a legal right of demanding that an action according to law be taken to redress the violations of her rights of enjoyment of her property. The Respondents (except the 5th Respondent) are the statutory authorities charged with the sole power to take necessary action according to law, to protect the rights of the Petitioner which has been adversely affected by the unlawful constructions done by the 5th Respondent. Thus, the said

Respondents have a legal duty to take all actions necessary to enforce the law.

In the case of Vasana Vs. Incorporated Council of Legal Education and others³ Gamini Amaratunga J stated as follows; "... A writ of mandamus is available against a public or a statutory body performing statutory duties of a public character. In order to succeed in an application for a writ of mandamus the petitioner has to show that he or she has legal right and the respondent corporate, statutory or public body has a legal duty to recognize and give effect to the petitioner's legal right. .."

The Supreme Court endorsed the above view in the judgment it delivered in the case of Wannigama Vs. Incorporated Council of Legal Education and others⁴. The Petitioners in this case has established both the above requirements before this Court.

In these circumstances and for the foregoing reasons we decide to grant the prayer (g) of the petition. Thus, a mandate in the nature of a writ of Mandamus directing the 1st – 4th, 6th and 6A Respondents or anyone or

³ 2004 (1) SLR 163

⁴ 2007 (2) SLR 281

more of them, to take steps according to law to have the 5th Respondent's construction at 53/2/A, Pelpolawatte, Meegoda, Godagama demolished in so far as it is in violation of the Planning and Building Regulations and/or clause 51 of the said Regulations, is hereby issued.

The Petitioner is entitled to a cost of Rs. 75,000/= payable by the 5th Respondent.

Writ of Mandamus issued.

JUDGE OF THE COURT OF APPEAL

A H M D Nawaz J

I agree,

JUDGE OF THE COURT OF APPEAL