

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

CA Writ 78/17

1. Amithodana Muchalinda Bandara Sudarshana
Mullegama, No. 1/1A, Atapattu Road, Dehiwala.

And 13 others.

PETITIONERS

VS

1. Dehiwala - Mount Lavinia Municipal Council,
Galle Road, Dehiwala
2. Dhammika Muthugala
Municipal Commissioner,
Dehiwala - Mount Lavinia Municipal Council,
Galle Road, Dehiwala.
3. Urban Development Authority
"Sethsiripaya", Battaramulla.
And 07 others.

RESPONDENTS

C.A. (Writ) Application No.78/2017

BEFORE : **P. PADMAN SURASENA J (P/CA) AND
A.L. SHIRAN GOONERATNE J**

COUNSEL : Thishya Weragoda with Piyumi Jayawarhane
and Chinthaka Sugathapala for the Petitioners

W. Dayaratne PC with Nadeeshan Kekulawala
for the 1st and 2nd Respondents

Faisz Musthapha PC with Neranjana
Arulpragasam for the 10th Respondent
instructed by G.G. Arulpragasam

Suneth Balapatabendi SDSG for the 3rd – 9th
Respondents

ARGUED AND
DECIDED ON : 02.04.2018

P. PADMAN SURASENA J (P/CA)

Learned President's Counsel on behalf of the 10th respondent submits to Court that the 10th respondent will not erect any building in terms of the Building Permit **P 9(a)** or the Development Plan **P 9(b)**. The 10th respondent however, does not concede the position that the roadway is less than 20 feet (6 meters)

and the 10th respondent reserves the right to make a fresh application according to law for a building permit and a development plan.

Learned Counsel for the petitioners states that the petitioners take the position that Atapattu Road is less than 6 meters in width as envisaged by the document marked **P 13** and the Survey Plan made by the Licensed Surveyor, Gamini B. Dodanwela tendered by the 1st and the 2nd respondents by motion dated 05.06.2017. The petitioners further wish to reserve their right to prefer a fresh application, if the necessity arises.

Order

From the submissions made by the learned Counsel for the contesting parties this Court gathers that the 10th respondent (on his own undertaking) will not be proceeding with the relevant construction as per the Building Permit produced marked **P 9(a)** and the Plan produced marked **P 9(b)** and the petitioner is contended with that arrangement.

This Court has not considered the question of the width of the relevant road (Atapattu Road) and hence there is no finding or pronouncement on that issue.

The 10th respondent is directed to abide by the undertaking given. This Court is of the view that it is not necessary to have this case pending any further in this Court. Therefore, the Court decides to terminate the proceedings.

PRESIDENT OF THE COURT OF APPEAL

A.L. SHIRAN GOONERATNE J

I agree.

JUDGE OF THE COURT OF APPEAL

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