

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 and *prohibition* in terms of  
Article 140 of the Constitution.

1. Azra Jafferjee  
5 Layards Road, Colombo 5.
2. Deshamanya Abbasally Akbarally  
15 Layards Road, Colombo 5.
3. Mansoor Abbasally Akbarally  
51 Layards Road, Colombo 5.
4. Hatim Abbasally Akbarally  
90/1 Layards Road, Colombo 5.

CA (Writ) No. 227/2018

5. Hussain Akbarally  
78 Layards Road, Colombo 5.
6. Abdul Latiff Mohamed Hussein  
7 Layards Road, Colombo 5.
7. Eric Jeyakumar Hensman  
16/1 Layards Road, Colombo 5.
8. Thilak Godamanna  
84 Layards Road, Colombo 5.
9. Iranganie Basnayaka  
80-D, Layards Road, Colombo 5.

10. Damitha Sriyani Perera  
80-C, Layards Road, Colombo 5.

**PETITIONERS**

-Vs-

1. Colombo Municipal Council  
Colombo Municipal Council,  
Town Hall, Colombo 7.
2. The Municipal Commissioner,  
Colombo Municipal Council,  
Town Hall, Colombo 7.
3. Blue Ocean Breeze (Pvt) Ltd  
32, Second Floor,  
Galle Road, Dehiwala.
4. The Honourable Attorney General  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before** : Dhammika Ganepola, J.

**Counsel** : Geoffrey Alagaratnam, PC with Luwie  
Ganeshathasan for the Petitioners.  
Ranil Samarasooriya and Wimukthi  
Weragama for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents.

Pasindu Vidyanandage instructed by  
Vidanapathirana Associates for the 3<sup>rd</sup>  
Respondent.

Shemanthi Dunuwila, SC for the State.

Written Submissions : Petitioner : 06.08.2019  
tendered on 1<sup>st</sup> & 2<sup>nd</sup> Respondents : 26.02.2024  
  
Decided on : 17.02.2025

Dhammika Ganepola, J.

***Factual matrix of the application***

The Petitioners in the instant application are all either owners or residents of the premises situated at Layards Road, Colombo 5, where the subject premises bearing no. 15A is also situated at. The Petitioners state that from latter part of 2016, the 3<sup>rd</sup> Respondent was pursuing the construction of a high-rise building at the subject premises in contravention of the applicable building regulations including the City of Colombo Development Plan (Amendment) 2008.

The 1<sup>st</sup> to 6<sup>th</sup> petitioners together with several other residents of Layards Road filed an application bearing no. CA (Writ) 194/2017 in the Court of Appeal seeking a Writ of Certiorari quashing any preliminary planning clearance or any other document issued in respect of the subject premises and a Writ of Prohibition prohibiting any further planning clearance or building permit being issued in respect of the subject premises. However, pending said application, the 3<sup>rd</sup> Respondent obtained the Development Permit (**A3**) dated 28.12.2017 for the construction of 14 storied high-rise building on the subject premises.

The Petitioners state that the Petitioners have come to know that the 1<sup>st</sup> Respondent has issued the above permit **A3** when it lacked power i.e. either delegated or otherwise, to issue the same and with an ulterior motive and *mala fides*. Further, the 1<sup>st</sup> Respondent had submitted (in its limited objections filed in CA (Writ) 194/ 2017) a document different to

the permit **A3** claiming that such document (A13) is the Development Permit issued to the 3<sup>rd</sup> Respondent. Accordingly, the Petitioners claim that the purported Development Permit **A3** is invalid, void in law, arbitrary, fraudulent and is *ultra vires*.

While Permit **A3** bears the no. 16789 and sets out the date of the 3<sup>rd</sup> Respondent's building application (**A12**) as 01.02.2017, the Permit marked **A13** bears a different and subsequent no. i.e. 16791 and a different date as the date of the building application i.e. 30.01.2017. It is submitted that such contention of the Respondents gives rise to a legitimate suspicion in relation to the authenticity and reliability of the document and the *bona fide* intentions of the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents.

The Petitioners further state that the 1<sup>st</sup> Respondent claims that the purported Development Permit **A3** has been issued under the power delegated to the 1<sup>st</sup> Respondent by the Urban Development Authority (UDA) in terms of Section 23(5) of the Urban Development Authority Law (UDA Law). However, it is submitted that the 1<sup>st</sup> Respondent did not in the first instance have any authority or power whatsoever to issue the said Development Permit **A3** as per the communication dated 23.01.2017 (**A10**) by which the UDA recalled the authority delegated to the 1<sup>st</sup> Respondent with effect from 01.02.2017. The building application **A12** has been submitted to the 1<sup>st</sup> Respondent only on 01.02.2017. The necessary charges/fees in respect of the said building application have been paid on 01.02.2017. It is submitted that even if the building application **A12** was physically submitted to the 1<sup>st</sup> Respondent prior to 01.02.2017 as per the communication **A10**, the 1<sup>st</sup> Respondent had no authority to charge fees in respect of building application **A12**. Consequently, the Petitioners argued that the Development Permit **A13** too is invalid, void in law, arbitrary, fraudulent and is *ultra vires*.

Accordingly, in the instant application, the Petitioners seek *inter alia* Writs of Certiorari quashing the purported Development Permits **A3** and **A13** and the Writ of Prohibition prohibiting the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents from accepting any building applications and/or processing such applications and /or issuing any building permit/approval.

The 1<sup>st</sup> and the 2<sup>nd</sup> Respondents state that the 1<sup>st</sup> Respondent received the building application dated 23.01.2017 (**1R1**) from the 3<sup>rd</sup> Respondent

on 30.01.2017. The processing fee of the said building application was calculated on 30.01.2017 but has been paid on the 01.02.2017. By a communication dated 23.01.2017, the UDA has informed the 1<sup>st</sup> Respondent that the powers have been delegated to the 1<sup>st</sup> Respondent by the UDA for, *inter alia*, the acceptance of building applications, the processing of such applications and charging the relevant fees and the issuance of Development Permits in respect of certain types of developments have been withdrawn and recalled to the UDA with effect from 01.02.2017. However, such withdrawal applied only to the building applications that were submitted after 01.02. 2017. Accordingly, the 1<sup>st</sup> Respondent claim that it continued to process the above building application **1R1** which was received on 30.01.2017.

The aforesaid building application **1R1** had been considered by the planning committee of the 1<sup>st</sup> Respondent Council at their meeting held on 21.12.2017 and decided to grant a Development Permit to the 3<sup>rd</sup> Respondent based on such application. The Development Permit has been made in four copies and each of the said copies has distinct and consecutive running numbers. One such copy is released to the developer, i.e. 3<sup>rd</sup> Respondent, another copy is sent to the UDA and the third copy is sent to the Assessor's Department of the 1<sup>st</sup> Respondent Council and the fourth copy is retained by the City Planning Division of the 1<sup>st</sup> Respondent Council. The documents marked **A3** and **A13** are one of each such copies issued in respect of premises at No. 15 A, Layards Road, Colombo 5. The date 01.02.2017 which appears on document **A3** as the date on which the application was handed over to the 1<sup>st</sup> Respondent, is a typographical error made when preparing the Development Permit which was subsequently corrected. Hence, it is claimed that the typographical error in **A3** and the different numbers in **A3**(16789) and **A13** (16791) is not a consequence of any fraudulent activity. Accordingly, the Respondents move that the application of the Petitioners be dismissed.

On 16.11.2023 all parties agreed to dispose this application by way of written submissions. Although the parties initially agreed to abide by the judgement to be delivered in the case bearing no. CA(Writ) 194/2017, subsequently the parties requested for a separate judgement.

### ***Authority of the Respondents to issue Development Permits***

The Petitioners submit that such authority to accept, charge fees for and to process building applications and issue and extend Development Permits in respect of constructions including constructions that are over four floors and 4000 sq. ft. and premises in extent over 40 perches had been withdrawn from the 1<sup>st</sup> Respondent with effect from 01.02.2017 by the UDA as per the communication dated 23.01.2017 (A10). The Petitioners contend that as per the building application (A12), such application had been submitted to the 1<sup>st</sup> Respondent by the 3<sup>rd</sup> Respondent on 01.02.2017 and the approval for the same had been granted on 28.12.2017. Furthermore, the payment relating to the building application had been made on 01.02.2017. The Development Permit (A3) was issued by the 1<sup>st</sup> Respondent on 28.12.2017 pursuant to a meeting of the planning committee held on 21.12.2017. Accordingly, the Petitioners argued that the issuance of the Development Permit (A3) is *ultra vires* as it was issued after the withdrawal of authority delegated to the 1<sup>st</sup> Respondent by the UDA.

However, the aforesaid withdrawal of the delegated authority by the UDA by its communication dated 23.01.2017(A10) applies with effect from 01.02.2017. As revealed by the Petitioner, the facts and matters relating to the instant application are almost identical to that of the facts involved in Court of Appeal Case No. CA (Writ) 194/2017. I had the benefit of delivering the judgement in the said matter as well. In determining the matters related to said Case No. CA (Writ) 194/2017, it was brought to my attention that the UDA had issued the further communication dated 22.02.2017 (marked as 3R2d by the Respondents in the above case) whereby UDA has authorised the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to process the applications that had been received by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent prior to 01.02.2017. I see no legal impediment to taking judicial notice of the said communication which forms part and parcel of case No. CA (Writ) 194/2017, in view of the facts and circumstances in relation to this matter are almost identical to that of case no. CA (Writ) 194/2017. In view of the said communication dated 22.02.2017 issued by UDA, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents were authorized to process the applications that had been received by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents prior to 01.02.2017. Accordingly, the stance taken up by the Petitioners that the building applications received prior to 01.02.2017 cannot be processed by the 1<sup>st</sup> Respondent cannot sustain.

A copy of the said building application marked **(A12)** has been submitted for the perusal of this Court. As per the day stamp of the Planning Division of the 1<sup>st</sup> Respondent on the said building application **(A12)**, it is observed that the said application had been submitted on 30.01.2017. Further, the endorsement dated 30.01.2017 made on the application **(A12)** concerning the calculation of the processing fee also supports the fact that the application was submitted on 30.01.2017. Accordingly, I am of the view that the application **(A12)** had been received by the 1<sup>st</sup> Respondent before 01.02.2017 and the Respondents were authorized to process such building application as per communication **A10**. Additionally, it appears that the contested Development Permit is not the only permit issued regarding a building application received by the 1<sup>st</sup> Respondent before 01.02.2017 but processed afterwards. In support of that the Respondents have submitted other building applications **(1R3,1R4)** which the 1<sup>st</sup> Respondent received prior to 01.02.2017 but processed after 01.02.2017.

### ***Discrepancies in the Development Permits***

The Petitioners have submitted Development Permits purported to be the same but have different serial numbers and dates on which the building application was submitted, indicating that the Respondents were fabricating and forging documentation. The Petitioners brought to the attention of this Court, that the Development Permit bearing serial no.16789 **(A3)** on which the building application was submitted, bears the date 01.02.2017 while the Permit bearing no.16791**(A13)** bears the date 30.01.2017. The Respondent clarified that the date 01.02.2017 which appears on the document **A3** is the date on which the building application was submitted and that due to a typographical error, which was later corrected, other copies of the same document (including **A3**) bear the date 30.01.2017. It is further submitted that the Development Permit was made available in four copies with distinct and consecutive numbers which were released to the Developer (3<sup>rd</sup> Respondent), UDA, Assessor Department of 1<sup>st</sup> Respondent and the City Planning Division of the 1<sup>st</sup> Respondent. It is observed that all such copies of the Development Permit bear the same reference number as ME/PB/J/BA/11/17.

It is observed that the position of the Petitioners that the Respondents have committed fraud in issuing the said Development Permit appears to be an assumption made by the Petitioners. It is also observed that the

Petitioners have failed to substantiate their said position. As such, under the above circumstances and with the materials made available, this Court is not in a position to accept the stance of the Petitioners, which appears to be a mere conjecture.

***Conclusion***

I am of the view that the Petitioners have failed to satisfy this Court of any illegality or irrationality or *ultra vires* action on the part of the Respondent which warrants this Court to quash the Development Permits marked A3 and A13. In view of the reasons given, I am not inclined to grant any of the reliefs prayed for in the prayer to the Petition. Accordingly, the application is dismissed. I order no cost.

***Application dismissed.***

**Judge of the Court of Appeal**