

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

In the matter of an Application for a mandate in
the nature of a Writ of *Mandamus* under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0513/2019

Vinodini Arumugam,
No.462/ 1, Raja Uyana,
Welipara, Thalawatugoda.

Petitioner

Vs.

1. Urban Development Authority,
6th and 7th Floors,
Sethsiripaya,
Battaramulla.

2. Jagath Munasinghe,
The Chairman,
Urban Development Authority
6th and 7th Floors,
Sethsiripaya,
Battaramulla.

(ceased to hold office)

2A. Harshan De Silva,
The Chairman,
Urban Development Authority,
6th and 7th Floors,
Sethsiripaya,
Battaramulla.

(Ceased to hold office)

2B. **Nimesh Herath,**
The Chairman,
Urban Development Authority
6th and 7th Floors,
Sethsiripaya,
Battaramulla.

3. **S. S. P. Rathnayake,**
The Director General,
Urban Development Authority
6th and 7th Floors,
Sethsiripaya,
Battaramulla.

(Ceased to hold office)

3A. **Prasad Ranaweera,**
The Director General
Urban Development Authority,
6th and 7th Floors,
Sethsiripaya,
Battaramulla.

4. **Maharagama Urban Council,**
Maharagama.

5. **Tiraj Lakruwan Priyaratne,**
Mayor,
Maharagama Urban Council,
Maharagama.

(Ceased to hold office)

5A. **Commissioner,**
Maharagama Urban Council,
Maharagama.

6. **Palitha Nanayakkara**,
Commissioner of Local Government,
No. 904,
Denzil Kobbekaduwa Mawatha
Battaramulla.
8. **Sewwandi Hettiarachchi**,
Office of the Assistant Commissioner of Local
Government,
Plaza Building,
High Level Road,
No. 99, Delkanda,
Nugegoda.
9. **Suren Weerasuriya**
No.462/ 2,
Raja Uyana Welipara,
Talawatugoda.
10. **Honorable Attorney General**,
Attorney General's Department,
Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Vijith Singh for the Petitioner.

A. Weerakoon, SC. for the 1st, 2nd, 3rd, 4th, 7th, 8th and 10th
Respondents.

Pulasthi Hewamanne with Ms. Harini Jayawardena and F. Faisze,
instructed by Ms. Lilanthi De Silva for the 9th Respondent

Argued on: 01.07.2024

Written Submissions on: 06.08.2024 by the Petitioner
09.08.2024 by the 1st to 3rd Respondents
05.08.2024 by the 9th Respondents.

Decided on: 13.11.2024

MOHAMMED LAFFAR, J.

Admittedly, the Petitioner is the owner of lot 1 in Plan bearing No. 1606 dated 02-12-1993 made by Hettige, Licensed Surveyor marked as **P1C**, and the 9th Respondent is the owner of lot 2 of the same. The lot No. 14 is the common right of way to the aforesaid lots. The Petitioner has constructed a house in her said premises and subsequently, the 9th Respondent constructed a three-storied house adjoining the house of the Petitioner. The Petitioner states that the rainwater flowing from the right side blind wall of the 9th Respondent's house seeps through a very narrow space of the left side blind wall of the Petitioner's house, dampening and causing patches on the Petitioner's wall. The Petitioner made several complaints to the Urban Council, Maharagama and the Ministry of Local Government and Land of the Western Province with regard to this matter (**P13, P14A**). The Petitioner further states that the 9th Respondent has encroached the right of way and the turning circle (lots 13 and 14 in plan **P1C**) by building his house. In these circumstances, the Petitioner took up the position that;

1. Construction of the blind wall by the 9th Respondent adjoining immediately to the Petitioner's blind wall is illegal.
2. The 1st and 4th Respondents have approved the 9th Respondent's said construction without considering its nature and its effect on the adjoining occupiers.
3. The 9th Respondent has encroached the right of way and the turning circle.
4. The 1st and 4th Respondents were obliged to take necessary steps against the illegal construction and obstruction made by the 9th Respondent.

In this scenario, the Petitioner is seeking, *inter-alia*, a Writ of Mandamus directing the 1st to 6th Respondents to institute legal action against the 9th Respondent pertaining to the said illegal construction and/or to take necessary steps to remove the said purported illegal construction.

A writ of mandamus is a judicial remedy in the English and American common law system consisting of a court order that commands a government official or entity to perform an act it is legally required to perform as part of its official duties or to refrain from performing an act the law forbids it from doing.

The Supreme Court in **Weligama Multi Cooperative Society Vs. Daluwatta**¹ observed that;

“Mandamus lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest To be enforceable by Mandamus the duty to be performed must be of a public nature and not of a merely private character. A public duty may be imposed by statute, charter or the common law or custom.”

In **Ratnayake Vs. C.D. Pwrera**² the Supreme Court held that;

“The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties”

In the case at hand, at first, it is to be ascertained whether the construction of the 9th Respondent is illegal. It is substantiated by the documents marked as **9R3, 9R4, 9R4a** and **P4** that the 9th Respondent had constructed his house in accordance with the approved plan and thereafter, he had obtained the Certificate of Conformity as well. There is no iota of evidence before Court to

¹ 1984-1SLR-195.

² 1982-2SLR-451.

establish the fact that the 9th Respondent had constructed an unauthorized building. In this scenario, it is apparent that there is no statutory duty cast upon the Respondents to institute action against the 9th Respondent to demolish his construction. Accordingly, there is no legal basis to issue a Writ of Mandamus against the Respondents as prayed for in the prayers to the Petition.

Be that as it may, it is to be noted that the major facts in this application are in dispute. The contention of the Petitioner that the 9th Respondent had encroached on the said right of way and the turning circle has to be established with oral and documentary evidence before a trial Court. Similarly, the allegation that the rainwater flowing from the right side blind wall of the 9th Respondent's house seeps through a very narrow space of the left side blind wall of the Petitioner's house, dampening and causing patches on the Petitioner's wall is also a major fact that has to be proved with cogent evidence before a trial Court. It is settled law that when the major facts are in dispute this Court will not exercise its Writ jurisdiction as those facts are to be well established with adequate evidence before a trial Court.

A.S. CHOUDRI in his book on the law of Writs and Fundamental Rights (2nd Edition) Vol-2. At page 449) states that

"where facts are in dispute and in order to get at the truth, it is necessary that the question should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a Writ will not issue."

The Supreme Court in **Francis Kulasooriya Vs. OIC- Police Station-Kirindiwela**³ observed that

"Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute."

In **Dr. Puvanendran Vs. Premasiri**⁴ the Supreme Court held that;

"The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy

³ SC Appeal No. 52/2021. SC Minute of 14-7-2023.

⁴ 2009- 2SLR-p107

requires multiple conditions that must be met prior to the issuance of a writ by Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”

For the foregoing reasons, it is the considered view of this Court that the application filed by the Petitioner is devoid of merits and accordingly, it is liable to be dismissed with costs fixed at Rs. 15,000/-.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL