

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 of the Democratic Socialist Republic of Sri Lanka.*

**CA/WRIT/378/2021**

Kaluthanthri Arachchige Don Henry Shelton,  
No: 140/1, Maradana Road (Praja Mandala Road),  
Matagoda, Handala,  
Wattala.

**Petitioner**

V.

1. W.M Amarasena Wijethunga,  
No: 56/12, Puwakwaththa Patumaga,  
Thomas Garden, Handala, Wattala.
2. Mr. Thyagi de Alwis,  
Chairman,  
Pradeshiya Sabha,  
Kerawalapitiya,  
Handala,  
Wattala.
3. Mrs. Wasanthi Wickramarathne,  
Secratory,  
Pradeshiya Sabha, Kerawalapitiya, Handala,  
Wattala.
4. Wattala Pradeshiya Sabha,  
Kerawalapitiya,  
Handala, Wattala

**Respondents**

**Before:** Sobhitha Rajakaruna J.

Mahen Gopallawa J.

**Counsel:** Dr. Sunil Coorey for the Petitioner  
P.P Gunasena for the 1<sup>st</sup> Respondent.  
Aravinda Athurupana with Upendra Kalahewatta for the 2<sup>nd</sup> to 4<sup>th</sup> Respondents

**Argued on:** 27.09.2024

**Written Submissions:** 2<sup>nd</sup> to 4<sup>th</sup> Respondents on 16.10.2024

**Decided on:** 21.11.2024

**Mahen Gopallawa J.**

The Petitioner has invoked the jurisdiction of this Court in terms of Article 140 of the Constitution and sought a writ of Mandamus directing the 2<sup>nd</sup> Respondent to take necessary steps for the demolition of the wall standing on the western boundary of the Petitioner's land, which is described in the schedule to the petition and depicted in Plan No. 4203 dated 27.11.2004 made by H. R. Samarasinghe, Licensed Surveyor and annexed to the petition marked P2.

The 1<sup>st</sup> Respondent is the party who is alleged to have constructed wall in issue, the 4<sup>th</sup> Respondent is the Wattala Pradeshiya Sabha, within whose territorial limits the land is situate, and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are respectively the Chairman and Secretary of the said Pradeshiya Sabha. The said Respondents have filed objections objecting to the relief sought by the Petitioner.

The Petitioner states that the land described in the said schedule to the petition and depicted as Lot 4 of the aforementioned Plan No. 4203 marked P2 is owned by him by virtue of a Deed of Gift No. 2049 dated 31.03.2017 attested by Christopher Jehan Croospulle, Notary Public executed in his favour, which is annexed to the petition marked P1. In the Plan marked P2, the western boundary is indicated as "Road & Land of Amarasena Wijetunge," who has been cited as the 1<sup>st</sup> Respondent in this application. The Petitioner further states that he was personally aware that his predecessor in title, who was a daughter of his father's brother, had access from the said land to "Thomas Garden Road" alias "Puwakwatta Patumaga" alias "Thombaiya Road" on such western boundary before she had "constructed an unauthorized wall along the western boundary in order to keep away thieves attempting to steal her poultry" (vide paragraph 3 of the petition). It is the position of the Petitioner that such the aforementioned road, which will hitherto be referred to as "Thomas Garden Road" purposes of convenience, is a public road maintained by the 4<sup>th</sup> Respondent.

The Petitioner further states that the unauthorized masonry wall built by his predecessors-in-title contained two halls to ensure the flow of water from the Petitioner's land to Thomas Garden Road. He claims that the 1<sup>st</sup> Respondent had constructed another unauthorized wall about 4-5 inches west of the aforementioned wall preventing the flow of rainwater from his

land through the wall on to the road. The Petitioner has annexed to the petition, photographs of the unauthorized wall constructed by his predecessors-in-title and the unauthorized wall subsequently constructed by the 1<sup>st</sup> Respondent marked P4 and P5 respectively (vide paragraph 6 of the petition). The Petitioner also states that he had demolished the unauthorized wall constructed by his predecessors-in-title subsequently, and, that, the present dispute between the parties relates to the existence of the wall constructed by the 1<sup>st</sup> Respondent.

The Petitioner's legal entitlement to the aforementioned land and right of way over Thomas Garden Road is strenuously challenged by the 1<sup>st</sup> Respondent in his objections, to the extent of stating that the Deed of Gift marked P1 is illegal, bad in law and void (vide paragraphs 10-16 of the 1<sup>st</sup> Respondent's Statement of Objections dated 25.02.2022). The 1<sup>st</sup> Respondent further states that he derived his title to the land on the western boundary of the Petitioner's land (Lot 4) from a Deed of Transfer No. 2159 dated 01.06.1987 attested by N. L. V. Perera, Notary Public and the said land is depicted as Lot 10 in Plan No. 2685 dated 07.07.1986 made by S. Wickramasinghe, Licensed Surveyor. The aforementioned Deed of Transfer and Plan have been annexed to his Statement of Objections marked R1 and R2. The 1<sup>st</sup> Respondent also states that he had gifted his land to his children and is neither the owner or possessor of the land at present (vide paragraph 6 of the Statement of Objections).

At the hearing of this application, the learned Counsel for the Petitioner specifically submitted to Court that scope of the instant application is confined to the failure on the part of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents to take steps to demolish the unauthorized wall standing on the western boundary of his land and that he was not seeking a determination from this Court on his entitlement to the right of way over Thomas Garden Road or any proprietary rights. In such circumstances, it would not be necessary for this Court to consider the aforementioned submissions with regard to legal rights over the property. In any event, an application for judicial review would not be the proper remedy for parties to obtain adjudication upon such issues.

In order to consider the relief sought by the Petitioner in this application in its proper context, it would be necessary to examine the statutory framework regulating the construction of buildings and structures in the area in which the alleged unauthorized construction has taken place. It is evident from the order made under section 3 of the Urban Development Authority Law, No. 41 of 1978 (as amended) (hereinafter referred to as "the UDA Law") by the Hon. Minister of Megapolis and Western Development published in the Gazette Extraordinary No. 1983/30 dated 09.09.2016 that the territorial limits of the Wattala Pradeshiya Sabha have been declared as an "urban development area" for purposes of the UDA Law. The said Gazette Notification was filed by the 2<sup>nd</sup> - 4<sup>th</sup> Respondents in these proceedings marked XXI, as directed by the Court.

In areas declared as "urban development areas," engaging in development activities is regulated by section 8J(1) of the UDA Law as follows;

*8J(1) Notwithstanding the provisions of any other law, no Government agency or any other person shall carry out or engage in any development activity in any development*

*area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Authority.*

The expression “development activity” is defined in section 29 of the said Law as follows;

*"development activity" means the parcelling or sub-division of any land, the erection or re-erection of structures and the construction of works thereon, the carrying out of building, engineering and other operations on, over or under such land and any change in the use for which the land or any structure thereof is used, other than the use of any land for purposes of agriculture, horticulture and the use of any land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of a dwelling house, not involving any building operation that would require the submission of a new building plan;*

I am of the view that, considering the material available in the pleadings, that the construction of the wall by the 1<sup>st</sup> Respondent constitutes a “development activity” for purposes of the UDA Law, and, as such, a permit issued under section 8J(1) thereof would be required. In relation to the authority to issue such permits under section 8J, section 23(5) of the UDA Law has provided for the delegation of the powers vested in the Urban Development Authority to local authorities in the following manner;

*23(5) The Authority may delegate to any officer of a local authority, in consultation with that local authority, any of its powers, duties and functions relating to planning within any area declared to be a development area under section 3, and such officer shall exercise, perform or discharge any such power, duty or function so delegated, under the direction, supervision and control of the Authority.*

The scope of the powers that maybe delegated under section 23(5) has been discussed in our superior courts and the relevant case law indicates two lines of reasoning. In **Jayasinghe v. Seethawakapura Urban Council and others**<sup>1</sup>, it has been held by this Court that only powers, duties and functions relating to planning could be delegated and that matters relating to development activities were not capable of being delegated under the said section. However, in **E. R. M. Piyasena, Chairman Urban Council Bandarawela v. H. M. Wijesooriya**,<sup>2</sup> it has been held by this Court that the delegation of powers relating to planning referred to in section 23(5) of the UDA Law would include taking steps to enforce planning procedures, and, the said judgment has later been cited with approval in **S Sivapragasam and two others v. Robert Jayaseelan Perimpanayagam of Municipal Council Batticaloa and another**<sup>3</sup> wherein it was held that the Mayor of the Batticaloa Municipal Council had the authority to institute proceedings against the owner of an unauthorized construction to obtain an order for its demolition. The view expressed in **Jayasinghe's case** was followed by this Court in **Muniyandy Paneer Selvam v. Kuragamage Harishchandra Perera of the Municipal Engineers' Department (Planning) of Colombo Municipal Council and Hon. Attorney General**,<sup>4</sup> but on

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<sup>1</sup> [2003] 3 Sri LR 40

<sup>2</sup> CA Application No. 119/1990, decided on 04.11.1994

<sup>3</sup> CA (PHC) Appeal 02/1997, decided on 16.05.2002

<sup>4</sup> CA (PHC) APN 170/2007, decided on 29.05.2009

appeal,<sup>5</sup> such decision was reversed and the mandatory order of the Magistrate authorizing the Colombo Municipal Council to demolish the unauthorized construction was restored. In the said case, the Supreme Court, considered the interpretation of sections 23(5) and 28A(3) of the Urban Development Law, and held that “the provisions contained in section 28A(3) fall within the scope of the term ‘planning’ and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of a local authority” (per Sripavan J).

The aforementioned authorities have all been considered in detail by the Supreme Court in **S. A. Rajalingam v. Dissanayake Mudiyanse Udaya Ranjith, Municipal Engineers Department (Planning), Colombo Municipal Council**,<sup>6</sup> and the Court has clarified the status of the law on the issue as follows (per Surasena J);

*It is of some relevance to observe that while powers and functions of the UDA Law has been set out under Part II of the UDA law, a new Part (Part II A) was introduced to the Law by the UDA (Amendment) Act No. 04 of 1982. The said new Part II A has laid down a detailed ‘Planning Procedure.’*

*It is under the said ‘Planning Procedure’ that section 8 J states that no Government Agency or any other 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 UDA. It was in that backdrop that Act No. 04 of 1982 amended the UDA Law by inserting the definition of a new term ‘development activity’ to its interpretation section, which is section 29. Thus, the concept of ‘development activity’ for the purpose of the UDA Law is nothing but part of ‘Planning Procedure’ described in the Law.*

*Further, it must be borne in mind that section 28 A (3) is also a new section introduced by UDA (Amendment) Act No. 04 of 1982 to lay down the procedure to be followed in respect of certain development activities commenced and continued without a permit or contrary to any term and condition of a permit. Thus, it could be seen that section 28 A (3) has a direct bearing on sections 8 J and 8 K introduced by Act No. 04 of 1982. Therefore, the procedure set out in section 28 A (3) is also indeed a part and parcel of ‘Planning Procedure’. Indeed all the above new sections are found under Part II A - ‘Planning Procedure’ introduced by Act No. 04 of 1982.*

*Therefore, I have no hesitation to concur with the ratio decidendi of the judgment of the Supreme Court in Muniyandy paneer Selvam’s case that the provisions contained in section 28 A (3) fall within the scope of the term “planning” and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of a local authority.*

*For the above reasons, I am in full agreement with the interpretation given to section 23 (5) of the UDA Law by their Lordships in the cases cited above namely E R M Piyasena Vs H M Wijesooriya, S Sivapragasam and two others Vs Robert Jayaseelan*

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<sup>5</sup> **Palligoda Withanage Keerthi Wimal Withana, District Inspector, Colombo Municipal Council vs Muniyandy Paneer Selvam**, SC Appeal No. 123/2009, decided on 18.01.2012

<sup>6</sup> SC Appeal No. 60/2017, decided on 18.06.2020

Perimpanayaqam, Municipal Council Batticaloa and Saravanamuttu Navaneethan, Special Commissioner, Municipal Council Batticaloa and Palligoda Withanage Keerthi Wimal Withana (District Inspector Colombo Municipal Council) Vs Muniyandy paneer Selvam.

*Thus, I am of the view that the delegation of authority to the Respondent to institute the case bearing No. 9341/5 in the Magistrate's Court of Colombo has been correctly done in accordance with section 23 (5) of the Urban Development Authority Law No. 41 of 1978 as amended (at pp 12-13).*

On the direction of Court, the 2<sup>nd</sup> - 4<sup>th</sup> Respondents have filed in these proceedings, copies of a Letter dated 29.01.2018 issued by the Director General, UDA addressed to the Chairman, Wattala Pradeshiya Sabha and a Circular under reference no. ADG/EAM/Podu dated December 2020 issued by the Director General, UDA to all heads of local authorities and their commissioners/ secretaries marked XX2 and XX3 respectively, in proof of the due delegation of powers under section 23(5) of the UDA Law to the Wattala Pradeshiya Sabha.

In view of such delegation, it was essential for the 1<sup>st</sup> Respondent to obtain a development permit from the 4<sup>th</sup> Respondent Pradeshiya Sabha to construct the wall in question. I observe that the 2<sup>nd</sup> - 4<sup>th</sup> Respondents, being the issuing authority, and the 1<sup>st</sup> Respondent, being the recipient, would be in the best position to confirm the issuance of a development permit, if in fact such a permit was issued. However, the said 1<sup>st</sup> Respondent has failed to tender a copy of such development permit to the Court either with his Statement of Objections or even at the hearing, when a specific query was made by the Court. The 2<sup>nd</sup> - 4<sup>th</sup> Respondents too have failed tender a copy of the said development permit or confirm the issuance of such permit.

On the contrary, in the field inspection report dated 13.01.2020 issued by an officer of the 4<sup>th</sup> Respondent Pradeshiya Sabha marked P11, the construction has been described as an "unauthorized wall" (vide items 5 and 12) and notes that the said wall was still in place. Hence, the most reasonable conclusion that could be drawn by this Court is that that the wall in issue constitutes an "unauthorized construction."

The procedure to be followed in respect of development activities conducted without or contrary to a development permit in an urban development area is set out in section 28A of the UDA Law in the following terms;

*28A (1) Where in a development area, any development activity is commenced continued, resumed or completed without permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the Authority may, in addition to any other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, on or before such day as shall be specified in such notice, not being less than seven days from the date thereof-*

*(a) to cease such development activity forthwith; or  
(b) to restore the land on which such development activity is being executed or has been executed, to its original condition; or*

*(c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit,*

*and for the purposes of compliance with the requirements aforesaid-*

*(i) to discontinue the use of any or building; or*

*(ii) to demolish or alter any building or work.*

*(2) It shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any requirement specified in such notice within the time specified in such notice or within, such extended time as may be granted by the Authority on application made in that behalf.*

*(3) (a) Where any person has failed to comply with any requirement contained in any written notice issued under subsection (1) within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may, by way of petition and affidavit, apply to the Magistrate to make an Order authorizing the Authority to-*

*(a) to discontinue the use of any land or building;*

*(b) to demolish or alter any building or work;*

*(c) to do all such other acts as such person was required to do by such notice, as the case may be,*

*and the Magistrate shall after serving notice on the person who had failed to comply with the requirements of the Authority under subsection (1), if he is satisfied to the same effect, make order accordingly.*

*(b) If such person undertakes to discontinue the use of the land or building or to demolish or alter the building or work, or to do such other acts as are referred to in paragraph (a) of subsection 3 of section 28A, the Magistrate may, if he thinks fit, postpone the operation of the Order for such time not exceeding two months as he thinks sufficient for the purpose of giving such person an opportunity of complying with such requirement;*

*(4) Where a mandatory order has been made under subsection (3), it shall be the duty of the police authorities to render all necessary assistance to the Authority in carrying out the order.*

*(5) The Authority shall be entitled to recover any reasonable expenses incurred by the Authority in demolishing or altering any building or work in pursuance of an order made by the Magistrate under sub section (3).*

*(6) The preceding provisions of this section shall not affect any liability incurred by such person by reason of his failure to comply with such notice.*

In addition, reference has been made to the removal of obstructions or encroachments in section 59 of the Pradeshiya Sabhas Act, No. 15 of 1987 (as amended) and sub-section (1) thereof provides as follows;

*59 (1) It shall be lawful for any Pradeshiya Sabha, through any person authorized by the Council in that behalf, to give order verbally, or by notice in writing, to any person obstructing or encroaching upon any thoroughfare under the control of the Pradeshiya Sabha, forthwith to remove or abate the obstruction or encroachment; and if any person to whom such order is given refuses or neglects to comply therewith within a reasonable time, or, if there be any doubt as to who is the proper person to whom such order should be given, after such notice has been affixed for a reasonable time to such obstruction or encroachment, it shall be lawful for the Council to cause any such obstruction or encroachment to be forthwith removed or abated.*

I am of the view that the aforementioned provisions contained in the UDA Law and the Pradeshiya Sabhas Act cast a statutory duty upon the UDA and local authorities to whom such powers have been delegated to remove unauthorized constructions. To interpret such statutory provisions in any other manner would render the purpose and provisions of section 8J of the UDA Law nugatory and redundant.

At this point, it would be convenient to examine the positions taken up by the respective parties with regard to the issues in dispute. The Petitioner's contention is that the said wall was an unauthorized construction and that the 2<sup>nd</sup> - 4<sup>th</sup> Respondents have failed to discharge the public duty to demolish same. In support of such position, he has annexed to the petition, complaints made by him to the 2<sup>nd</sup> Respondent initially by letter dated 07.10.2019 and again by letter dated 14.10.2029 marked P6 and P9, complaints lodged at the Wattala Police Station on 10.10.2019 and 23.02.2020 marked P7 and P13, a complaint made to the 3<sup>rd</sup> Respondent dated 19.02.2020 marked P12, communications addressed to the State Minister of Community Development dated 28.02.2020 and 21.08.2020 marked P14 and P15. A subsequent reminder had also been sent by the Petitioner to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by letter dated 12.02.2021 marked P18 and a letter demand dated 25.02.2021 marked P19 had been sent on his behalf to the said Respondents in view of their continued failure to demolish the wall in question.

With regard to the 1<sup>st</sup> Respondent, it is pertinent to note that the construction of the wall has been admitted in his Statement of Objections (vide paragraph 21) and reference has also been made therein to a letter dated 29.10.2019 addressed by members of the "Suhada Ekmuthu Sangamaya" of No. 56/10, Puwakwatte Patumaga (Thomas Garden), including himself, to the 2<sup>nd</sup> Respondent to regularize the construction of the said wall (vide paragraph 9 and the document marked R5). The concerns of the 1<sup>st</sup> Respondent appear to be that the said wall had been constructed for the safety of the residents from trespassers and also that its demolition would permit the Petitioner to have access to Thomas Garden Road, over which he was not entitled to claim a right of way (paragraphs 9, 21 and 22 of the Statement of Objections).

The positions taken up by the 2<sup>nd</sup> - 4<sup>th</sup> Respondents in their Statement of Objections, and reiterated in their Written Submissions, can be summarized as follows; that the wall appears to have been constructed by a group of persons and not solely by the Petitioner; that the road (Thomas Garden Road) was not a public road over which the Petitioner had no right of way; and that there was no public duty owed to the Petitioner (in particular, vide paragraphs 13, 23, 24 and 25).



Since the writ of Mandamus has been sought against the 2<sup>nd</sup> Respondent, acting for and on behalf of the 4<sup>th</sup> Respondent Pradeshiya Sabha, I wish to examine the aforementioned positions and their legal implications in further detail. With regard to the degree of involvement of the 1<sup>st</sup> Respondent in the construction of the wall, the Statement of Objections of the 1<sup>st</sup> Respondent itself indicates that that he was responsible, at least in part, for the construction of the wall. In any event, I am of the view that the degree of culpability of the 1<sup>st</sup> Respondent in the construction of the wall would not have any bearing upon the statutory duty cast upon the 2<sup>nd</sup> - 4<sup>th</sup> Respondents to take action in respect of unauthorized constructions, particularly in view of the fact the wall in issue is described as an unauthorized construction in its own field inspection report marked P11.

The 2<sup>nd</sup> - 4<sup>th</sup> Respondents have also taken up the position that the “road” referred to in the petition is not a “public road” over which the Petitioner does not have any right of way. However, it is observed that the same Respondents, in relation to a specific query raised by the Petitioner as to whether or not Thomas Garden Road was a public road under the control of the 4<sup>th</sup> Respondent Pradeshiya Sabha by the letter dated 29.04.2021 marked P20, had replied by letter dated 08.07.2021 marked P21 stating that the said road was “a road developed by the 4<sup>th</sup> Respondent Pradeshiya Sabha out of public funds.” Such position is reflected in its field inspection report marked P11 as well. In such circumstances, I am of the view that the 2<sup>nd</sup> - 4<sup>th</sup> Respondents cannot resile from the position taken up by them in the documents marked P11 and P21 and that their argument that Thomas Garden Road was not a “public road” must fail.

For the sake of completeness, I also wish to address the argument presented by the 2<sup>nd</sup> - 4<sup>th</sup> Respondents in their Written Submissions that that the said road does not come within the definition of the term “road” in section 226 of the Pradeshiya Sabhas Act. Section 226 of the said Act provides that “‘river’, ‘road’, ‘thoroughfare’ and ‘canal’ shall have the same meaning respectively as in the Thoroughfares Ordinance (Chapter 193)”. Section 40 of the Thoroughfares Ordinance, No. 10 of 1861 (as amended) defines the term “road” as follows:

*"road" includes-*

- (a) all public carriageways, cartways, and pathways, as well as all bridges, drains, and embankments, causeways, and ditches belonging or appertaining to a road,*
- (b) all land adjoining any road, which has been reserved for its protection or benefit,*
- (c) all land which has been marked off and reserved for the construction of any road,*
- (d) all waste land which, not being private property, lies within a distance of thirty-three feet of the centre of public carriageways and cart ways and ten feet of the centre of public pathways, the burden of proving that such waste land is private property lying on the person asserting the same, and*
- (e) all public squares, greens, market places, and other public places other than public buildings;*

The Thoroughfares Ordinance was repealed by the National Thoroughfares Act, No 40 of 2008. However, it is observed that the inclusive and non-exhaustive nature of the definition and its essential elements have been retained in the definition of the term “road” in section 92 of the said National Thoroughfares Act as well. The said definition reads as follows;

*"road" includes-*

*(a) all public carriageways, fly overs, viaducts, interchanges, cart ways and pathways, as well as all bridges, drains, and embankments, causeways, and ditches belonging or appertaining to a road,*

*(b) all land adjoining any road, which has been reserved for its protection or benefit,*

*(c) all land which has been marked off and reserved for the construction of any road,*

*(d) all waste land which, not being private property, lies within a distance of ten metres of the centre of public carriageways and cart ways and three metres of the centre of public pathways. (The burden of proving that such waste land is private property lying on the person asserting the same;).*

In so far as Thomas Garden Road was concerned, the material placed before this Court by the Petitioner and the 1<sup>st</sup> Respondent indicates that it was being used by several parties as “public carriageway” to gain access to their lands, which is further supported by the position taken up by the 2<sup>nd</sup> - 4<sup>th</sup> Respondents in the documents marked P11 and P21.

The 2<sup>nd</sup> - 4<sup>th</sup> Respondents have also sought to argue that there was no “public duty” owed to the Petitioner, and, as such, also had no “*locus standi*” to institute the instant application. I am unable to agree with such argument for several reasons. In the first instance, as referred to above, the wall in issue was an unauthorized construction, which the 2<sup>nd</sup> - 4<sup>th</sup> Respondents were statutorily obliged to remove. Secondly, the repeated complaints made by the Petitioner to the 2<sup>nd</sup> - 4<sup>th</sup> Respondents, the Police and political authorities clearly indicate that the Petitioner was aggrieved and his interests were affected by the existence of such unauthorized construction, namely, the said wall prevented the flow of rainwater from his land on to the road as it used to happen prior to the construction of the said wall. Hence, I am of the view that the Petitioner had sufficient “*locus standi*” to invoke the jurisdiction of this Court. Furthermore, I hold that the continued failure on the part of the 2<sup>nd</sup> - 4<sup>th</sup> Respondents to remove the said unauthorized construction in terms of section 28A of the UDA Law constitute a refusal on their part of a demand to discharge a “public duty”, in so far as this application for a writ of Mandamus is concerned.

With regard to the submission made by the 2<sup>nd</sup> - 4<sup>th</sup> Respondents that procedural law must not be disregarded, drawing upon the decisions in Wijesekera v. Wijesekera<sup>7</sup> and Tissa Attanayake v. Commissioner General of Elections et al.<sup>8</sup> I am unable to find any breaches on the part of the Petitioner. In fact, the material before Court indicates that it is the 1<sup>st</sup> Respondent in constructing a wall without obtaining prior authorization and the 2<sup>nd</sup> - 4<sup>th</sup>

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<sup>7</sup> [2005] 1 Sri L R 58

<sup>8</sup> SC Spl LA 55/2011, decided on 21.07.2011

Respondents in not adhering to the statutory procedure to remove unauthorized constructions that have acted in breach of the law.

In view of the foregoing, I proceed to issue a writ of Mandamus directing the 2<sup>nd</sup> Respondent or the officer currently discharging the functions of the office of Chairman, Wattala Pradeshiya Sabha to take necessary steps in accordance with section 28A of the UDA Law in respect of the wall standing on the western boundary of the Petitioner's land, as described in the schedule to the petition, which is an unauthorized construction. I further direct the 2<sup>nd</sup> Respondent or the officer currently discharging the functions of the office of Chairman, Wattala Pradeshiya Sabha to conduct a site inspection, if there is any difficulty in identifying the location of the said unauthorized construction.

*Application is allowed.*

**Judge of the Court of Appeal**

**Sobhitha Rajakaruna J.**

I agree.

**Judge of the Court of Appeal**