

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

In the matter of an application in terms of  
article 140 of the Constitution of the Republic  
of Sri Lanka for Writ of Mandamus to be  
issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup>  
Respondents.

**CA-WRIT No: WRT 151/23**

1. Koralalage Dhanesha Samanthi Kumari  
No. 60 1A,  
Muruthawela, pasyala
2. Seragingha Jayakodi Arachchi;age  
Layanal Pemasiri  
No 60 1A,  
Muruthawela, Pasyala

**Petitioners**

**v.**

1. Attanagalla Pradeshiya Sabha  
Aththanagalla
2. The Chairman  
Attanagalla Pradeshiya Sabha  
Attanagalla
3. Urban Development Authority  
6<sup>th</sup> and 7<sup>th</sup> Floor, “Sethsiripaya”  
Battaramulla.

4. Officer in Charge  
Urban Development Authority  
Gampaha District Office,  
6A Queen Mary MW  
Gampaha
5. The Secretary  
Attanagalla Pradeshiyuva Sabhawa  
Attanagalla.

**Respondents**

**Before :** N. Bandula Karunarathna P/CA, J.  
B. Sasi Mahendran, J.

**Counsel:** Dr. Sunil Cooray with Gayashani Perera for the Petitioner  
R. Wimalarathna for the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents  
Mihiri De Alwis, SSC for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents

**Argued on:** 20.03.2024

**Written** 24.06.2024 (by the Petitioners)

**Submissions** 27.05.2024 (by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents)

**On:**

**Decided On:** 28.06.2024

**B. Sasi Mahendran, J.**

The Petitioners instituted this action praying for the following reliefs as prayed in the Petition dated 12<sup>th</sup> March 2023.

- a) Issue notice of this application on all the Respondents;
- b) For an order in the nature of writ of Mandamus directing 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents to entertain and process the application of the 1<sup>st</sup> Petitioner for approval of Plan No. 3287 made by A.M Jayapala Licensed Surveyor on 29/02/2020.
- c) For an order in the nature of writ of Mandamus directing the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents to accept from the 1<sup>st</sup> Petitioner the rates in respect of the premises referred to in the documents marked “P-9 (a)” and “P-10” and to issue a receipt therefore to the Petitioner.
- d) Order for costs;
- e) Order such other and further reliefs that Your Lordships Court shall seem meet.

The facts of this matter briefly are as follows,

According to the Petition, the 2<sup>nd</sup> Petitioner was occupying the land depicted in the said Plan No 3287 from year 2006. Furthermore, the 2<sup>nd</sup> Petitioner had developed, cultivated and possessed this said land for a period of 14 years without any disturbance or interruption from any person. Therefore, the 2<sup>nd</sup> Petitioner had executed a Deed of Declaration bearing No. 231 dated 14/03/2020.

Thereafter, the 2<sup>nd</sup> Petitioner had gifted the said land to the 1<sup>st</sup> Petitioner by virtue of a Deed of Gift bearing No 292 dated 23/04/2021 and now the 1<sup>st</sup> Petitioner is the legal owner of the said land.

The 1<sup>st</sup> petitioner made an application to the AttanagallaPradeshiyaSabha seeking approval for the said Plan No. 3287 on 29/09/2022. The Petitioners state that as per the instructions of the AttanagallaPradeshiyaSabha the 2<sup>nd</sup> Petitioner had paid Rs 1000/- on behalf of the 1<sup>st</sup> Petitioner on 22/09/2022 to the AttanagallaPradeshiyaSabha in respect of two applications, namely; Surveyor Plan approval application and Building Plan approval application. According to the petitioner, the 2<sup>nd</sup> Respondent have informed the Petitioner to bring extracts with respect to the Lot 39A depicted in Plan No 3287 from the Land Registry of Attanagalla. According to the document marked P7 they have handed over the said extracts, somewhere in November 2022. According to the Petitioner,

Divisional Secretary of Attanagalla has informed the Land Registrar that the Land which is subjected to the Deed of Declaration bearing No 231 depicted in the said surveyor plan No. 3287 is not a State Land, but it is a private land.

The main argument put forward by the Petitioners are that the Respondents have the statutory duty to approve the plan which was submitted by the Petitioner and accept the rates in respect of the premises referred in the said plan.

We are mindful that the Petitioners are claiming the premises on the basis that they have derived the title on the basis of prescription.

When we perused both the Deeds. Deed bearing No 231 was executed on 14.03.2020, other deed where the 1<sup>st</sup> Petitioner title bearing No 292 was executed on 23.04.2021. Both the Deeds were recently executed. For that purpose, the 1<sup>st</sup> Respondent had asked from the Petitioners to submit the relevant documents that pertaining to the said Deeds from the Land Registry to approve the said plan. We are mindful that the particular plan which was marked as “P1” doesn’t indicate the name of the owner of the Land and there is no Assessment Number given to the land.

One of the objection taken by the Respondent is that, since the 2<sup>nd</sup> Petitioner claimed his title over the said land on prescription which was recently executed by deed, they are not certain whether any other person will claim the ownership of the said land. To avoid the future dispute over the said land the Respondents needed more time to ascertain and confirm the ownership of the said land, which is depicted in the said plan. Further they stated that the particular plan does not have any reference whatsoever regarding the owner of the said land.

According to the Respondents, Urban Development Authority Law has power to approve the sub division of the land which is coming under a development activity. That means, whenever any person submit the plan for building, the survey plan submitted by them should be approved in accordance with the rules therefore they need more time to confirm it.

Furthermore, they have indicated that for the assessment, to give a new assessment for the said they need to get a report from the chief valuer. According to section 140 (1) of the PradeshiyaSabhas Act No. 15 of 1987,

140. (1) For the preparation of a new assessment, the annual value of each house, building land and tenement within the limits of any PradeshiyaSabha shall be assessed by the Chief Valuer or any person or persons appointed by the PradeshiyaSabha with the approval of the Assistant Commissioner

According to the above section, the particular land has to be assessed by the Chief valuer with the approval of the Assistant Commissioner. Therefore it takes some time to conclude the inquiry.

Therefore, they alleged that, within months without waiting to the approval, the Petitioners have invoked this Court's Jurisdiction to obtain a Writ of Mandamus to approve the plan.

Concept of Mandamus was discussed by Professor Wade & C F Forsyth in their Book on Administrative Law, 11<sup>th</sup> edition, at page 520.

Nature of this Remedy

"The prerogative remedy of a mandatory order has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another. The commonest employment of a mandatory order is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him. The quashing order and a prohibiting order deal with wrongful action, a mandatory order deals with wrongful inaction. The prerogative remedies thus together cover the field of governmental powers and duties."

One of the prerequisites to the mandamus is that the Petitioner has to show that the respondent refused to exercise his duties. In the instant case, the Petitioner s

have failed to establish that the Respondents havenot taken any steps to perform their duties. On the other hand, the Petitioner's own documents shows that the Respondents have requested the Petitioners to submit relevant documents for them to consider the approving of the plan.

We are mindful of the words stated by Sharvananda J (as he was then) in Ratnayaka and Others v. C.D. Perera and Others, 1982 (2) SLR 451 at page 456.

“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”. (Emphasis added).

For the above said reasons we hold that this is a premature application as still the Respondents are considering to approve the said plan. For the above said reasons we dismiss the application with costs.

We direct the Respondents to conclude the said inquiry with regarding to the approving of the plan and if the Petitioners are not satisfied, they have the liberty to agitate this matter in this Court.

**JUDGE OF THE COURT OF APPEAL**

**N. Bandula Karunarathna,J (P/CA)**

**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**