

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

In the matter of an application for a Writ of Certiorari and a Writ of Prohibition in terms of Article 140 of the Constitution.

Anaikuttia Pillai Subramaniam  
No. 837, Aluthmawatha Road, Colombo 15.

**Petitioner**

**Case No: CA (Writ) 397/2013**

**Vs.**

1. Badrani Jayawardene  
Municipal Commissioner,  
Colombo Municipal Council, Town Hall,  
Colombo 07.
2. M. I. M. Salim  
Director Engineering,  
Water Supply and Drainage Division,  
Maligakande, Colombo 10.
3. P. D. Uduwala (Deceased)  
No. 10, Kotelawala Avenue, Colombo 04.
4. S. D. Subasinghe  
No. 12, Kotelawala Avenue, Colombo 04.

**Respondents**

Palitha Nanayakkara  
Municipal Commissioner,  
Colombo Municipal Council, Town Hall,  
Colombo 07.

**Substituted 1<sup>st</sup> Respondent**

S. N. Uduwala  
No. 10, Kotelawala Avenue, Colombo 04.

**Substituted 3<sup>rd</sup> Respondent**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

N. Jayanthan for the Petitioner

Ranil Samarasooriya with Shashiranga Sooriyapatabandi for the Substituted 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Uditha Egalahewa P.C. with Amaranath Fernando and N. K. Ashokharan for the Substituted 3<sup>rd</sup> and 4<sup>th</sup> Respondents

**Argued on:** 25.07.2019

**Written Submissions tendered on:**

Petitioner on 29.11.2018 and 23.09.2019

Substituted 1<sup>st</sup> and 2<sup>nd</sup> Respondents on 10.01.2019

Substituted 3<sup>rd</sup> and 4<sup>th</sup> Respondents on 11.01.2019

**Decided on:** 22.06.2020

**Janak De Silva, J.**

The Petitioner is the owner of land and premises bearing No. 9, Asoka Gardens, Bambalapitiya. At the time of the purchase of this land and premises by the Petitioner in 2006, there was a neglected building standing on the premises. The attempts by the Petitioner to repair and renovate it resulted in its collapse.

Therefore, the Petitioner sought to construct a new building and took steps to have the building plan approved by the Colombo Municipal Council (CMC).

Premises bearing Nos. 10 and 12 on Kotelawala Avenue are situated along the southern boundary of the Petitioner's land. The drainage lines of premises bearing Nos. 10 and 12, Kotelawala Avenue run under and through the land owned by the Petitioner and discharges into the public drainage line running below Asoka Gardens.

The Petitioner in this application seeks a writ of mandamus against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents directing them to exercise the statutory powers vested in the CMC and Respondents by section 110(6) and section 117 and other provisions contained in Part VI of the Municipal Councils Ordinance and to disconnect the premises Nos. 10 and 12, Kotelawala Avenue from the existing drainage line and to connect the said premises Nos. 10 and 12 directly to the public drainage line under the Kotelawala Avenue.

Parties have made extensive submission on the interpretation that should be adopted by this Court to sections 110(6), 117 and other provisions contained in Part VI of the Municipal Councils Ordinance.

However, such an exercise is not required to dispose of this matter as the prayer to the petition is very specific requiring the premises bearing Nos. 10 and 12, Kotelawala Avenue to be connected directly to the public drainage line under Kotalawala Avenue. Hence for a writ of mandamus to issue it must be established that there is a public drainage line under Kotalawala Avenue.

In order to establish this position, the Petitioner places much reliance on plan marked 'F2' showing that there is such a public drainage. It is certified by the 2<sup>nd</sup> Respondent who has however filed an affidavit dated 06<sup>th</sup> February 2014 wherein he states, at paragraph 13(1), that the plan marked 'F2' had been generated on inaccurate information that had been entered in to the system by the operator, which the CMC subsequently learnt and corrected. He goes on to state, at paragraphs 13(ii) and (iii), that therefore the plan marked 'F2' is a plan that contains inaccurate data and that the drainage line shown in the plan appended to the petition marked 'F2' and 'F3' does not physically exist under Kotelawala Avenue.

There is no reason to doubt the position taken by the 2<sup>nd</sup> Respondent or that he is biased. He in fact summoned the parties for a discussion after the Petitioner sought his assistance to separate the drainage lines (C and C1). The Petitioner does not make any allegation of bias or mala fides against the 2<sup>nd</sup> Respondent.

The CMC is entitled to correct factually inaccurate information given by it and act on the correct facts. In fact, the CMC was duty bound to reconsider the plan 'F2' once it became aware that it contained inaccurate facts and there cannot be any estoppel or legitimate expectation arising from a mistake of fact [*Rootkin v. Kent County Council* (1981) 1 W.L.R. 1186].

In the aforesaid circumstances, the evidence before this Court is that physically there is no drainage lines under Kotelawala Avenue. Hence, irrespective of the applicable provision, the relief claimed by the Petitioner cannot be granted.

For the foregoing reasons, this application is dismissed without costs.

Judge of the Court of Appeal

**N. Bandula Karunarathna J.**

I agree.

Judge of the Court of Appeal