

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, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Application No.
CA/WRT/0551/21

1. Munasinghe Arachchilage
Nansihami
No. 65, Sri Nissankamallapura
Polonnaruwa.
2. Pastor Hasitha Nuwan Kumara
No. 79/1/B,
Sri Nissankamallapura
Polonnaruwa.

PETITIONERS

Vs.

1. Pradeshiya Sabha
Polonnaruwa.
 2. Premasiri
Chairman,
Pradeshiya Sabha, Polonnaruwa.
- 2A. Y.P. Himali Jayashanthi,
(Acting Chairman),
Pradeshiya Sabha,
Polonnaruwa.

3. R.M. Hemakanthi

Secretary,
Pradeshiya Sabha,
Polonnaruwa.

3A. Mrs. Chandrani Rajaguru

Secretary,
Pradeshiya Sabha,
Polonnaruwa.

3B. Mrs. Y.P. Himali

Jayashanthi
Secretary,
Pradeshiya Sabha,
Polonnaruwa.

4. Divisional Secretariat

Thamankaduwa.

5. H.S.K.G. Bandara

Divisional Secretary,
Divisional Secretariat,
Thamankaduwa.

6. Urban Development Authority

Polonnaruwa.

7. M.P.Mayurawansa

Director,
Urban Development Authority
Polonnaruwa.

8. B.M.D.P.Banneheka

Deputy Director (Legal Affairs),
Urban Development Authority
Polonnaruwa.

9. The Officer -in-Charge
Police Station,
Polonnaruwa.

10. Hon. Attorney General
Attorney General's Department
Colombo-12

RESPONDENTS

BEFORE : **Mohammed Laffar, J.**
P. Kumararatnam, J.

COUNSEL : **Lakshan Dias with Sheba Soundararajah**
for the Petitioners.
Migara Kodithuwakku for the 1st and 3rd
Respondents.
Sehan Soyza, S.S.C, for the 4th to 8th
Respondents.

DECIDED ON : **20/01/2025.**

JUDGMENT

P. Kumararatnam, J.

The Counsels appearing for the Petitioners and the Respondents consented to dispose this matter by way of Written Submissions.

The Petitioners instituted this Writ Application praying for the following relief in the Petition dated 08.11.2021.

- a) Issue notices on the Respondents;
- b) Grant/Issue an order in the nature of a Writ of Certiorari quashing the order of 1st to 3rd Respondents marked as “P-20(1)”, “P-20(2)” and “P-20(3)”.
- c) Grant/Issue an interim relief in the nature of Writ of Prohibition to the 1st and 10th Respondents to stop any steps taken to demolish the construction on the Petitioners premises.
- d) Grant costs.

This matter was supported on 15.11.2022 and based on the pleadings and the circumstances of this case, this Court was inclined to issue notice on the Respondents.

The learned Counsel for the 1st and 2nd Respondents gave an undertaking that the subject building would not be demolished until the conclusion of this application provided that the Petitioners would not engage in any constructions at the subject premises. Further, the Petitioners had agreed to discharge the 10th Respondent from these proceedings. Accordingly, the 10th Respondent was released from these proceedings.

The background of the case *albeit* as follows;

The 1st Petitioner became the owner of the land in which she is living by Deed of Grant issued under Section 19(4) of the Land Development Ordinance on 30.12.1996. The 2nd Petitioner was named as the Successor of the land in issue by the 1st Petitioner with the approval of the Registrar of Land, Polonnaruwa on 11.09.2020.

On 16.02.2020 the 2nd Petitioner lodged a complaint at the Polonnaruwa Police Station followed by the incident of interruption of the private prayer held at the Petitioners premises. There is an ongoing case filed against the 2nd Petitioner in the Magistrate Court of Polonnaruwa accusing that the 2nd Petitioner is conducting prohibited religious activities.

On 10.02.2020 the 2nd Petitioner was summoned to the Divisional Secretariat, Thamankaduwa to discuss about the religious activities conducted at the Petitioners premises. Followed by the meeting above, the Petitioner had received a letter dated 13.02.2020 from the Pradeshiya Sabha, Polonnaruwa stating to stop further constructions on the Petitioners premises and to obtain proper permission within 14 days for such construction. A similar letter dated 14.02.2020 was also sent by the Divisional Secretary of Thamankaduwa imposing similar restrictions as by the Polonnaruwa Pradeshiya Sabha.

In addition to the letters mentioned above, the Petitioners had received three more letters insisting that the Petitioners should obtain permission for the ongoing contractions, permission to construct wall around the Petitioners' premises and to fulfill all necessary requirements sought by the authorities.

As required by the authorities, the 2nd Petitioner had provided all necessary documents and drawn a survey plan with the permission of the Divisional Secretariat, Thamankaduwa to obtain the required permits.

After the submission of all necessary documents 2nd Petitioner received three letters from Polonnaruwa Pradeshiya Sabha declining the request for appropriate permission for constructions on the Petitioners premises on the ground that the Petitioners have not fulfilled the requirement mentioned in the letters dated 01.12.2020 which were sent by the Polonnaruwa Pradeshiya Sabha. In the meantime, the Petitioners were notified through a private lawyer on behalf of the Polonnaruwa Pradeshiya Sabha to stop ongoing constructions at the Petitioners premises.

Now the Petitioners complain to this Court that the Respondents have neglected their duties by not accepting the duly completed documents submitted by the Petitioners and thereby abused their power by denying the grant of rightful permit to continue constructions on Petitioners' premises.

The Respondents in their objections takes up the position that the Nishshankamallapura Grama Niladri Division falls within the Urban Development Area described under the order dated 30.07.2018 (Published in the Extraordinary Gazette Number 2084/4 dated 14.08.2018) of the Minister of Megapolis and Western Development. When considering the 2nd Petitioner's application 6R3 and the Building Plan 2020/BA/79-I, the representatives of the 6th Respondent *inter alia* noted that there were number of shortcomings in the Building Plan submitted by the 2nd Petitioner and recommended to rectify such shortcoming and re-submit the same. This was intimated to the 2nd Petitioner by letter marked as P16(a), P16(b) and P16(c) by the 6th Respondent. As the 2nd Petitioner failed to rectify the shortcomings mentioned in the letters P16(a), P16(b) and P16(c), the Polonnaruwa Pradeshiya Sabha has sent P20(a) to P20(c) dated 25.02.2021 to the 2nd Petitioner informing him to rectify the shortcomings in his documentation.

In response to P20(a) to P20(c) the Polonnaruwa Pradeshiya Sabha received the 'Building Plan' marked P18(c) from the 2nd Petitioner. As the 2nd Petitioner not fulfilled the shortcoming highlighted by 1st Respondent, the Planning Committee of the 1st Respondent did not approve P18(c) and this was communicated to the 2nd Petitioner by letter marked as 6R8.

Although on 26.04.2022 the Planning Committee of the Polonnaruwa Pradeshiya Sabha approved the Subdivision submitted by the 2nd Respondent, but it did not approve the boundary wall application

submitted by the 2nd Petitioner since the 2nd Petitioner had failed to rectify the shortcomings indicated in the letter marked as P16(c).

Although several dates were moved explore for a settlement in this case, on 26.08.2024 the parties informed Court that there is no settlement reached by the parties.

The Planning Committee of the 1st Respondent had approved the subdivision application on 26.04.2022 as the 2nd Petitioner had rectified the shortcomings highlighted by the 1st Respondent. But the boundary wall application was not approved by the Planning Committee of the 1st Respondent as the 2nd Petitioner had failed to rectify the shortcomings highlighted in the boundary wall application. Even though it was communicated to the 2nd Petitioner by letter 6R12 dated 24.05.2022 the Petitioners had not taken any meaningful action to submit the same after rectifying the shortcoming highlighted.

The Petitioners in their written submission stated that they had fulfilled all the requirements requested by the Respondent authority and yet the Respondent authority has refused to grant the building plan permit to the Petitioners stating irrational reasons. But the Petitioners had not mentioned what was the action they had taken to remedy the shortcoming highlighted in the boundary wall application. This clearly shows that the Petitioners have not exhausted all the remedy available to them.

In **Ishak v Laxman Perera, Director General of Customs** 2003 (3) SLR-page18 held that;

"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review".

In this case, the Planning Committee did not approve the boundary wall application submitted by the 2nd Petitioner as the 2nd Petitioner had failed to rectify the shortcomings indicated in the letter marked as P16 (c). This was not rectified by the 2nd Petitioner up to now.

As the application of the Petitioners is devoid of merit, this Court decided to dismiss this application. No cost ordered.

JUDGE OF COURT OF APPEAL

M.T. Mohammed Laffar, J.

I Agree

JUDGE OF COURT OF APPEAL