

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 Mandamus in terms of
Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA/WRIT-505-23

1. Mallika Wanigasekera,

No. 15/3, Chakindarama Road,

Ratmalana.
2. Hemawathi Kannangara,

No. 15/2, Chakindarama Road,

Ratmalana.
3. L. Lalitha Ranjani Fernando,

No. 15/5A, Chakindarama Road,

Ratmalana.

Petitioners

Vs.

1. Municipal Council of Dehiwala- Mount
Lavinia,
AnagarikaDharmapala Road,
Dehiwala.

2. Municipal Commissioner, Municipal Council of Dehiwala- Mount Lavinia, Anagarika Dharmapala Road, Dehiwala.

3. W.Ashoka Janet Silva, No. 15/7, Chakindarama Road, Ratmalana.

Respondents

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

Counsel: Viran Fernando with Sahiru Jayasinghe for the Petitioners
W. Dayaratne, PC with Harsha de Silva for the 1st and 2nd Respondents.
Shantha Jayawardena with Sajana de Zoysa for the 3rd Respondent

Written 04.11.2024 (by the Petitioner)

Submissions: 04.10.2024 (by the 3rd Respondent)

On

Order On: 22.11.2024

B. Sasi Mahendran, J.

The Petitioner has filed this application seeking writs of Mandamus against the 1st and 2nd Respondents namely the Municipal Council of Dehiwala-Mount Lavinia and the Municipal Commissioner of the said Municipal Council for their failure to execute the demolition order issued by the Magistrate Court of Mount Lavinia dated 09.05.2008 in the case bearing No. 3257/S/07.

This application was filed on 01.09.2023 by the Petitioners. According to the Petitioners, they have made the 3rd Respondent a party to this application as the subject matter of this application and the order given by the Learned Magistrate relating to the demolition involves the property of the 3rd Respondent. The purpose of the demolition order according to the petition is that, the 3rd Respondent has encroached upon the private road to the residences of the Petitioners which was supposed to be a 10 feet-wide road and was narrowed down to a 7 feet road.

Although a Notice under Section 28A of the Urban Development Authority Act (as amended) was issued by the 1st Respondent, the 3rd Respondent failed to comply with such notice. Thereafter, the 1st Respondent instituted an action in the Magistrates' Court of Mount Lavinia. At the inquiry, it was revealed that the 3rd Respondent has not obtained a development permit for the said construction, therefore the construction was unlawful. The Learned Magistrate thereafter issued an order in terms of Section 28A (3) of the Urban Development Authority Act authorizing the 1st Respondent to demolish the unauthorized construction of the 3rd Respondent. The Petitioners further state that, the 3rd Respondent filed an application bearing No. CA/WRIT/451/2018 in this Court to quash the said order made by the Learned Magistrate of Mount Lavinia which was dismissed by the Court by the judgment dated 02.04.2013. The Petitioners state that, although the 1st Respondent had the opportunity to execute the said demolishing order made on 09.05.2008, they refrained from enforcing such Order. Therefore, the Petitioners filed an application by an Affidavit dated 27.03.2022 to the Magistrate Court where the Learned Magistrate had advised the Petitioners to take appropriate administrative remedies.

In this context, the Petitioners have invoked the jurisdiction of this Court seeking writs of Certiorari quashing the decision taken by the 1st and/or 2nd Respondents to abstain from enforcing the Order of the Magistrate Court of Mount Lavinia and writ of Mandamus directing the 1st and 2nd Respondents to execute the said Order.

Accordingly, when the matter was supported on 04.10.2023, the Court issued formal notices and dates were given for filing of Objections. Thereafter, on 20.11. 2023, the 3rd Respondent filed his Objections in the Open Court and a date was given for Counter Objections. On 10.01.2024, the matter was fixed for argument on 22.03.2024. On that day, both parties

agreed to refile the case for argument on 23.05.2024 and again on such date, the case was refiled for 25.07.2024.

In the meantime, the 3rd Respondent by a Motion dated 11.07.2024 filed an amended Statement of Objections and moved to support this matter on 25.07.2024. When the matter came up on such date, Counsel for the Petitioner objected to the said amended objection.

This order pertains to whether to allow the said amended Statement of Objections.

It should be noted that both parties agreed that, the matter could be concluded by way of written submissions.

When we peruse the written submission of the 3rd Respondent, he has indicated that this amendment can be allowed under Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 (as amended). Further, he has stated that the Petitioner has suppressed certain material facts in his petition.

According to the said written submission, the purpose of amending the objections was that, the Petitioners have willfully suppressed the cases between the Petitioners and the 3rd Respondent namely DC/Mount Lavinia/2808/13/L and DC/Mount Lavinia/2249/06/L which amounts to willful suppression.

According to the Statement of Objections of the 3rd Respondent dated 20.11.2023, the 3rd Respondent has mainly objected the application on the basis that, the Petitioners' rights were not affected by these constructions. But the 3rd Respondent has mentioned in paragraph 2 of the said Objections that the Petitioners have instituted this action in view of the decision given by the District Court of Mount Lavinia.

It is clear that, the 3rd Respondent had an opportunity to indicate both the cases to this Court which were already been concluded as indicated in the particular Objection.

We note that Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 stipulates:

*“A party may, with the prior permission of the court, amend their pleadings, or file additional pleadings, affidavits, or other documents, within two weeks of the granting of such permission, unless the Court directs otherwise. **After notice has been issued, such permission shall not be granted ex-parte.**” (emphasis added)*

In the present case, the amended objections were filed by the 3rd Respondent on 11.07.2024 by way of a Motion without obtaining the Court's prior authorization. Thereafter, the 3rd Respondent sought permission to support this matter before this Court.

We are mindful that, the Learned Magistrate has made an order to demolish in 2008. Up to now, the said order has not been carried out by the 1st Respondent. For the last 16 years, these constructions have been a nuisance to the Petitioners. The 3rd Respondent is taking advantage from abusing the procedure by filing this amendment.

In any way, the failure to indicate the cases could be taken up at the argument stage. Further, the Court was aware that there were cases instituted in the District Court of Mount Lavinia regarding the subject matter.

For the above-said reasons, we disallow the application to amend the objections.

This case is refixed for arguments.

JUDGE OF THE COURT OF APPEAL

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

I AGREE

PRESIDENT OF THE COURT OF APPEAL