

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

Petition of Appeal under section 755(3) and section 758 of the Civil Procedure Code against the Order of the Learned High Court Judge dated 20th February 2020 in 01/17/Writ in Provincial High Court of Western Province Holden in Gampaha.

**Court of Appeal Case No.
CA(PHC)/0030/2020**

Subramaniam Sathasiwam,
No. 258/151, Canal Road, Hendala, Wattala

Petitioner

Vs.

1. **Pradeshiya Sabha**
Wattala.
2. **Raj Fernando**
No. 258/42, Canal Road, Hendala,
Wattala.

Respondents

AND NOW BETWEEN

Raj Fernando
No. 258/42, Canal Road, Hendala, Wattala.

2nd Respondent-Appellant

Vs

Subramaniam Sathasiwam,
No. 258/151, Canal Road, Hendala, Wattala

Petitioner-Respondent

Pradeshiya Sabha
Wattala.

1st Respondent-Respondent

Before: **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel: Chandrika Wijesooriya instructed by Wathsala Dulanjani for the Appellant.

Aravinda Rohan Ivor Athurupane with Pubudu Piyasena Kalehewatta for the 1st Respondent-Respondent.

Ransith Funawardena instructed by Jayani Silva for the Petitioner-Respondent.

Argued on : 07.05.2025

Written Submissions
of the
2nd Respondent-Appellant
tendered on : 03.10.2024 and 24.07.2025

Written Submissions
of the
Petitioner-Respondent
tendered on : 05.02.2025

Written Submissions
of the
1st Respondent-Respondent
tendered on : 23.10.2024

Decided on : 29.08.2025

K. M. S. DISSANAYAKE, J.

The instant appeal arises from an order of the learned High Court Judge of the Provincial High Court of Western Province holden in Gampaha dated 20.02.2020 (hereinafter called and referred to as ‘the Order’) wherein, the learned High Court Judge of Gampaha had issued a mandate in the nature of a writ of *Mandamus* directing the 1st Respondent–Respondent-the Pradeshiya-Sabha Wattala (hereinafter called and referred to as the 1st Respondent) to demolish an unauthorized parapet wall constructed by the 2nd Respondent-Appellant (hereinafter called and referred to as 2nd Respondent) in between the land belonging to the Petitioner-Respondent (hereinafter called and referred to as Petitioner) as more fully described in the schedule to the petition of the Petitioner and shown and depicted as lot 12 in the plan produced to the High Court of Gampaha by the Petitioner along with his petition marked as ‘පෙ3’ and the road reservation shown and depicted as lot 13 in the said plan (පෙ3) as means of access to his land (lot 12 in the said plan marked as පෙ3). Being aggrieved by the order, the 2nd Respondent has now, preferred to this Court the instant appeal on the grounds of appeal as more fully set out in paragraph 14 of the petition of appeal among any other grounds of appeal that may be urged by Counsel at the hearing of this appeal which may be reproduced *verbatim* the same as follows;

“

- i. It is respectfully submitted that the said order is contrary to Law and against the weight of the material placed before the said court;
- ii. It is respectfully submitted that the Learned High Court Judge has failed to identify and apply the legal principles established by the judgments of Superior Courts pertaining to the granting of writs which are directly applicable to the matter at hand;
- iii. It is respectfully submitted that the Learned High Court Judge has failed to adjudicate on the objections raised and consider the

submissions made by and on behalf of the 2nd Respondent-Appellant;

- iv. It is respectfully submitted that the Learned High Court Judge has erred in law holding that Petitioner-Respondent is entitled to the reliefs prayed for by his petition;
- v. It is respectfully submitted that the Learned High Court Judge has erred in law holding that the Petitioner-Respondent has fulfilled the requirements to be entitled to the granting of the Writ prayed for;
- vi. It is respectfully submitted that the Learned High Court Judge has failed to recognize that the Petitioner-Respondent has failed to fulfill the mandatory prerequisites to file this application;
- vii. It is respectfully submitted that the Learned High Court Judge has erred in law holding that the 01st Respondent-Respondent had already concluded that the alleged boundary wall built by the 2nd Respondent-Appellant was illegal and unauthorized at the time of filing this application;
- viii. It is respectfully submitted that the Learned High Court Judge has erred in law granting the writ of Mandamus prayed for by the Petitioner-Respondent where the alleged duty denied by the Pradeshiya Sabha is a mere discretionary power of the same;
- ix. It is respectfully submitted that the Learned High Court Judge has failed to recognize that Unexplained delay is fatal to the maintainability of an action seeking writ;
- x. It is respectfully submitted that the Learned High Court Judge has failed to recognize the claim of prescriptive rights of the 2nd Respondent-Appellant over Lot D13;
- xi. It is respectfully submitted that the Learned High Court Judge has failed to recognize that the matter at hand is a dispute pertaining to a plot of land, which is privately owned thus not falling under

the definition and/or purview of “thoroughfare” as stated in Pradeshiya Sabha Act;

- xii. It is respectfully submitted that the Learned High Court Judge has failed to recognize that there are other alternate remedies available to the petitioner-Respondent;
- xiii. It is respectfully submitted that the Learned High Court Judge has failed to recognize that the matter at hand is a dispute which warrants the adjudication of a court with original civil jurisdiction;
- xiv. It is respectfully submitted that the Learned High Court Judge has failed to recognize the unexplained undue delay on the part of the Petitioner-Respondent to make this application;
- xv. It is respectfully submitted that the Learned High Court Judge has failed to recognize that the rights of both Petitioner-Respondent as well as 2nd Respondent-Appellant with regard to Lot D13 in Plan 3189 required to be adjudicated upon to resolve the dispute at hand;
- xvi. It is respectfully submitted that the Learned High Court Judge has failed to recognize that the matter at hand is pertaining to a right of way which cannot be resolved by the issuance of the writ pleaded by the Petitioner-Respondent.”

The facts material and relevant to the instant appeal as recited by the 2nd Respondent in his petition of appeal, may be briefly, set out as follows;

The Petitioner had by furnishing to Court a petition dated 20.02.2017, instituted action bearing No. 01/17/Writ in the Provincial High Court of Western Province holden in Gampaha praying for a mandate in the nature of a writ of *mandamus* directing the 1st Respondent-Pradeshiya Sabha-Wattala to demolish an unauthorized parapet wall allegedly, constructed by the 2nd Respondent in between the land belonging to the Petitioner as more fully described in the schedule to the petition of the Petitioner and shown and

depicted as lot 12 in the plan (පෙ3) and the road reservation shown and depicted as lot 13 in the said plan (පෙ3) as means of access to his land (lot 12 in පෙ3).

On the other hand, the 1st Respondent had *inter-alia*, urged that the application of the Petitioner be dismissed *in-limine* in view of the of the preliminary legal objections so raised in paragraph 2(අ), (ආ), (ඇ) and (ඈ) of its statement of objections, dated 23.08.2017 with regard to the maintainability of the application of the Petitioner. The preliminary legal objections so raised may be summarized in the following manner;

- a) the disputed roadway (lot 13 in the said plan පෙ3) upon which the unauthorized parapet wall was alleged to have been constructed by the 2nd Respondent, is a private roadway and therefore, not one managed and controlled by the 1st Respondent-Pradeshiya Sabha and as such, there is no legal duty cast upon it in relation to the matters averred in the petition of the Petitioners;
- b) there exists two access roadways to the land claimed by the Petitioner (lot 12 in the said plan පෙ3), and therefore, it would be unreasonable for the Petitioner to claim the roadway in dispute (lot 13 in the said plan පෙ3) as means of access thereto by making the 1st Respondent-Pradeshiya Sabha responsible therefor, in as much as the Petitioner can without any hindrance and/or obstruction, have access to his land through the roadway lying along the western boundary of his land, namely; Cardinal Cooray Mawatha which is managed by the 1st Respondent-Pradeshiya Sabha;
- c) However, in terms of the letter annexed to its statement of objections marked as 'X1', the power delegated by the Urban Development

Authority to the 1st Respondent-Pradeshiya Sabha for the demolition of an unauthorized construction have now, been taken back by it and therefore, re-vested on it and hence, the Urban Development Authority is a necessary party to the instant action and therefore, the relief sought in its petition by the Petitioner cannot be obtained from the High Court without making Urban Development Authority as a party to the instant action;

- d) at the time of the institution of the instant application before the High Court of Gampaha, the tenure of office of the 1st Respondent-Pradeshiya Sabha had become elapsed and in consequence, the powers and duties exercised by it had been vested with the Municipal Commissioner thereof, but, however, the Petitioner had not exercised due diligence to substitute him as a party to the instant action in the place of the 1st Respondent-Pradeshiya Sabha and therefore, the Petitioner cannot in law, obtain from Court the relief as prayed for in prayer to his petition without making the Municipal Commissioner a party to the instant action.

It is to be observed that, the 2nd Respondent too, had while raising in paragraph 2(i),(ii),(iii),(iv),(v),(vi),(vii) and (viii) of his statement of objections, dated 16.10.2017 a similar set of preliminary legal objections, as raised by the 1st Respondent with regard to the maintainability of the application of the Petitioner, urged that the application of the Petitioner be dismissed *in-limine* in view thereof.

However, the learned Provincial High Court Judge of Western Province sitting in Gamapha, had while overruling the preliminary legal objections so raised, by both the 1st as well as the 2nd Respondents as aforesaid, proceeded to issue a mandate in the nature of a writ of *Mandamus* directing the 1st Respondent Pradeshiya-Sabha to demolish an unauthorized parapet wall constructed by

the 2nd Respondent in between the land belonging to the Petitioner (lot 12 in the plan marked as 33) and the road reservation (lot 13 in the said plan 33) used as means of access to his land by holding that, it was undisputed nor was it denied by the 2nd Respondent that the parapet wall in question had been constructed by the 2nd Respondent himself on the very location stated in the petition of the Petitioner and that it was an unauthorized construction inasmuch the 2nd Respondent had failed to furnish any building plan approved by the 1st Respondent in respect thereof, or a certificate of conformity issued by the 1st Respondent, in respect thereof notwithstanding the request so made by the 1st Respondent-Pradeshiya Sabha from the 2nd Respondent to produce them if any, before it, and that however, the 1st Respondent-Pradeshiya Sabha who having so initiated legal action into it upon bringing it to the notice of it by the Petitioner, had afterwards, abandoned the legal action so initiated by it halfway through thereby, preventing itself from exercising the powers of demolition of the same so vested in it.

It is this order that the 2nd Respondent now, seeks to canvas before us on the grounds of appeal so enumerated in his petition of appeal.

However, it is significant to observe at this juncture that, neither appeal nor cross appeal had been preferred to this Court from the order of the High Court by the 1st Respondent-Pradeshiya Sabha. Hence the order made by the High Court against the 1st Respondent-Pradeshiya Sabha still, remain unchallenged and uncontroverted.

The principle relief sought in the application filed before the High Court by the Petitioner being a mandate in the nature of a writ of *Mandamus* directing the 1st Respondent Pradeshiya-Sabha to demolish an unauthorized parapet wall constructed by the 2nd Respondent in between the land belonging to the Petitioner as more fully described in the schedule to the petition of the Petitioner and shown and depicted as lot 12 in the plan (33) and the road

reservation shown and depicted as lot 13 in the said plan (පෙ3) used by him as means of access to his land (lot 12 in the said plan marked as පෙ3).

Upon a careful analysis of the documentary evidence adduced by the Petitioner before the High Court of Gampaha by way of deed of transfer bearing No.2917 by which the Petitioner claims title to the lot 12 along with the road reservation lot 13, the plans bearing Nos. 3189 and 8341, certified copies of which were annexed to his petition by the Petitioner respectively, marked as පෙ1, පෙ2 and පෙ3 and also by the 2nd Respondent by way of the deed of transfer bearing No.2917 by which the 2nd Respondent claims title to the lots 10 and 11 along with the road reservation lot 13, the plans bearing Nos. 3188 and 5159, certified copies of which were annexed to his statement of objections by 2nd Respondent respectively, marked as R1, R2 and R3, and also, upon a careful reading of the averments in paragraph 6 of the statement of objections of the 2nd Respondent, it becomes undoubtedly, and manifestly, clear that both the Petitioner as well as the 2nd Respondent are claiming title to the plots of land shown and depicted in the subdivision plan bearing No. 3189 and the disputed road reservation (the said lot 13) is situated in between the two lands belonging to the Petitioner as well as the 2nd Respondent.

The basis for the relief sought in the High Court by the Petitioner being that, the parapet wall had been constructed by the 2nd Respondent on the road reservation (lot 13 in the said plan- පෙ3); and that it was an unauthorized construction and therefore, the Petitioner has a legal right to have it demolished by the 1st Respondent –Pradeshiya Sabha for; it has a public duty to demolish it.

Upon a careful perusal of paragraph 6(i),(iii),(iv) and (vi) of the statement of objections of the 2nd Respondent and also the paragraphs 2.7, 2.8, 3.1.6, and 3.1.12 of the amended written submissions of the 2nd Respondent dated 18.10.2019 filed before the High Court, it undoubtedly shows, that 2nd

Respondent had unmistakably, and in no uncertain terms, admitted the truth of the allegation levelled against him by the Petitioner in his petition filed in the High Court praying for a mandate in the nature of a writ of *Mandamus* to demolish the said parapet wall in that the 2nd Respondent had admitted that; the parapet wall in dispute had been constructed by the 2nd Respondent on the road reservation (lot 13 in the said plan- ෧෩3); and that it was an unauthorized construction.

Besides, nowhere in his statement of objections or in his written submissions filed in the Court below, or else, in the submissions oral and written made by him before us in the course of the argument of this appeal, had he taken up a position that the so called construction of the parapet wall was done in terms of a building plan approved by the 1st Respondent-Pradeshiya Sabha and a Certificate of Conformity was granted to him by it certifying that, it had been built in compliance and conformity with the rules and/or regulations and/or conditions contained in a building plan approved by the 1st Respondent-Pradeshiya Sabha and/or any other laws and regulations applicable thereto and therefore, the construction of the said parapet wall was an authorized construction and therefore, not liable to be demolished by the 1st Respondent-Pradeshiya Sabha or Urban Development Authority and therefore, the Petitioner is not entitled to have it demolished by the 1st Respondent-Pradeshiya Sabha by way of a writ of *Mandamus* issued by this Court compelling it so to do.

Moreover, the 2nd Respondent had in his petition of appeal or in the course of the argument of this appeal, never sought to challenge and/or question the legal validity of the findings of the learned Provincial High Court Judge of the Western Province sitting in Gampaha that, in view of the failure on the part of the 2nd Respondent to produce before the 1st Respondent-Pradeshiya Sabha when so requested, a building plan if any, approved by the 1st Respondent-Pradeshiya Sabha in respect of the construction of the so called construction of

the parapet wall or a Certificate of Conformity issued by it certifying that the construction of the said parapet wall was done in compliance and conformity with the rules and/or regulations and/or conditions contained in a building plan approved by the 1st Respondent-Pradeshiya Sabha and/or any other laws and regulations applicable thereto, the construction of the said parapet wall was an unauthorized construction and therefore, the Petitioner is entitled to have it demolished by the 1st Respondent-Pradeshiya Sabha by way of a writ of *Mandamus* issued by this Court compelling it so to do.

Hence, those findings of the learned Provincial High Court Judge of the Western Province sitting in Gampaha remain uncontroverted, unchallenged and entirely, justified.

In the circumstances, the learned Provincial High Court Judge of the Western Province sitting in Gampaha was entirely, right and justified in issuing a mandate in the nature of a writ of *Mandamus* on the 1st Respondent compelling it to demolish the aforesaid unauthorized construction of the parapet wall admittedly, built by the 2nd Respondent without any lawful authority granted to him by the 1st Respondent or otherwise and therefore, in total contravention of the laws and regulations prevalent in this regard.

I would therefore, hold that the instant appeal is not entitled to succeed both in fact and law and therefore, it should be dismissed *in-limine*.

The wrong for the prevention or redress of which the instant action was brought by the Petitioner before the High Court praying for a writ of *Mandamus*, is not the obstruction of his right of way in and over lot 13 of the said plan (003) by the 2nd Respondent, but, the unauthorized construction of a parapet wall admittedly, by the 2nd Respondent thereon, without any lawful authority granted to him by the 1st Respondent or other competent authority and therefore, in total contravention of the laws and regulations prevalent in this regard.

In the circumstances, the pivotal question that arose before the High Court for its adjudication was as to whether or not a writ a *Mandamus* should be issued as prayed for by the Petitioner compelling the 1st respondent to demolish the parapet wall admittedly, constructed by the 2nd Respondent on the said right of way (lot 13 of the said plan-෧෩3) and not the question whether or not the 2nd Respondent had acquired prescriptive title to the said right of way (lot 13 of the said plan-෧෩3) for; it is a matter to be adjudicated upon by a Court of competent civil jurisdiction and not a matter to be adjudicated upon by a High Court in the matter of an application for a writ of *Mandamus*.

I would therefore, find myself unable to agree with the contention advanced by both the 1st Respondent as well as the 2nd Respondent in appeal that, it is a matter to be adjudicated upon by a Court of competent civil jurisdiction and not a matter to be adjudicated upon by a High Court in the matter of an application for a writ of *Mandamus* and therefore, the action of the Petitioner is misconceived in law and therefore, it should have been dismissed *in-limine* by the High Court. Hence, it should be rejected *in-limine* for; it cannot sustain both in fact and in law.

It was the uncontroverted and unchallenged findings the learned Provincial High Court Judge of the Western Province sitting in Gampaha that the said parapet wall was an unauthorized construction admittedly, built by the 2nd Respondent without any lawful authority granted to him by the 1st Respondent or otherwise and therefore, in total contravention of the laws and regulations prevalent in this regard.

Nature of an unauthorized construction is of its perpetuity until, it is demolished by a competent authority vested with the power of demolition of the same. Hence, an unauthorized construction has a state or quality of lasting forever until, it is demolished by a competent authority, and therefore, a cause

of action would accrue there from in every moment so long as an unauthorized construction is in continuous existence.

In the circumstances, I would find myself unable to agree with the next contention advanced by both the 1st Respondent as well as the 2nd Respondent in appeal that the Petitioner is guilty of laches and therefore, the High Court ought to have dismissed the instant application of the Petitioner *in-limine*.

Hence, I would proceed to reject it too, for; it too, cannot sustain in law.

In view of the documentary evidence adduced by the Petitioner along with his written submissions filed before this Court by way of a Circular-‘කා. සා. අ. චක්‍රලේඛ අංක. දෙසැ/1’, dated 20.03.1985, issued by the Director General of Urban Development Authority wherein the Urban Development Authority being the competent authority had by clause 6 thereof, *inter-alia*, delegated its powers to local authorities in relation to institution of actions for unauthorized constructions.

In view of the documentary evidence adduced by the 1st respondent along with his statement of objections filed before the High Court marked as ‘X1’, issued by the Chairman of the Urban Development Authority being the competent authority had on the other hand, by clause 5 thereof, *inter-alia*, taken back some of its powers so delegated to the local authorities by the said Circular-‘කා. සා. අ. චක්‍රලේඛ අංක. දෙසැ/1’, dated 20.03.1985, issued by the Director General of Urban Development Authority in relation to institution of actions for unauthorized constructions, namely, ‘..පොදු මහජනතාවගේ යහපතට අවහිර වන ආකාරයේ” වශයෙන් දක්වනු ලැබිය හැකි අනවසර ඉදිකිරීම් සඳහා නීතිමය කටයුතු කිරීම’.

Hence, what had been so taken back by the Urban Development Authority is only a kind of unauthorized constructions, namely; “Taking legal action against unauthorized constructions that may be deemed to be "obstructing the public interest”..” thus, leaving behind the local authorities the powers so delegated by the Urban Development Authority by the said Circular -‘කා. සා. අ. චක්‍රලේඛ

අංක. දෙස/1', dated 20.03.1985, issued by the Director General of Urban Development Authority, in relation to taking legal action against a kind of unauthorized constructions, namely; "Taking legal action against unauthorized constructions that may be deemed to be "obstructing the private individual's interest".."

Upon a careful reading of the Circular-‘කා. සා. අ. චක්‍රලේඛ අංක. දෙස/1', dated 20.03.1985, issued by the Director General of Urban Development Authority together with the letter dated 23.01.2017, marked as 'X1', also, issued by the Chairman of the Urban Development Authority, it becomes abundantly, clear, that, the public duty is cast upon the 1st Respondent being the Pradeshiya Sabha-Wattala to demolish an unauthorized construction erected within its purview that may be deemed to be obstructing the private individual's interest and therefore, the Petitioner has a legal right to have it demolished by 1st Respondent by way of a writ of *Mandamus*.

I would therefore, hold that the further contention so advanced by both the 1st Respondent as well as the 2nd Respondent in appeal before us that the powers so, delegated by the Urban Development Authority by the Circular-‘කා. සා. අ. චක්‍රලේඛ අංක. දෙස/1', dated 20.03.1985, issued by the Director General of Urban Development Authority to the 1st Respondent being the Pradeshiya Sabha-Wattala had been taken back by the Urban Development Authority by the letter dated 23.01.2017, marked as 'X1', issued by the Chairman of the Urban Development Authority and therefore, the 1st Respondent being the Pradeshiya Sabha-Wattala had no power to take legal action for the demolition of the unauthorized construction admittedly, constructed by the 2nd Respondent on the road reservation (lot 13 in the plan-෧෧3) and therefore, the learned High Court Judge ought to have dismissed the instant application *in-limine*, too, cannot sustain both in fact and law and as such it too, should be rejected.

In the light of the Circular-‘කා. සා. අ. චක්‍රලේඛ අංක. 043/1’, dated 20.03.1985, issued by the Director General of Urban Development Authority and the letter dated 23.01.2017, marked as ‘X1’, also, issued by the Chairman of the Urban Development Authority, it becomes abundantly, clear, that, the powers still, remain in the local authorities to take legal action against the unauthorized constructions erected within its purview that may, be deemed to be obstructing the private individual’s interest and therefore, public duty is cast upon the 1st Respondent being the Pradeshiya Sabha-Wattala to demolish an unauthorized construction erected within its purview that may be deemed to be obstructing the private individual’s interest and as such, the Petitioner has a legal right to have it demolished by 1st Respondent by way of a writ of *Mandamus* without making Urban Development Authority a party to the action for; the power so exercised by a local authority is not *sui generis* but one so, delegated to it by the Urban Development Authority and therefore, the exercise of power by a local authority in relation to the demolition of an unauthorized construction is in effect, the exercise of the power vested in the Urban Development Authority and the exercise of such power is thus, deemed to be an exercise of power not by the relevant local authority but by the Urban Development Authority through its agent under the authority of the delegated power by it to a local authority. Hence, institution of an action under the delegated power by a local authority in Court for a demolition order is deemed to be an action instituted by its Principle, namely; Urban Development Authority.

Hence, I would hold that, the further contention so advanced by both the 1st Respondent as well as the 2nd Respondent in appeal before us that, action of the Petitioner should fail for want of necessary parties, namely; Urban Development Authority and therefore, the learned High Court Judge ought to have dismissed the instant application *in-limine*, too, cannot sustain both in fact and law and as such it too, should be rejected.

It would be pertinent at this juncture to mention that, in my judgement, I have properly, directed my judicial mind to the legal authorities cited in their submissions oral and written, by Counsel in support of their respective positions so adverted to in appeal before us.

For the reasons enumerated above, I would hold that, the instant appeal is not entitled to succeed both in fact and law.

Hence, I would see no legal basis to interfere with the order of the learned Provincial High Court Judge of the Western Province sitting in Gampaha.

In the result, I would proceed to dismiss the instant appeal with costs payable to the Petitioner-Respondent by both the 1st Respondent-Respondent as well as the 2nd Respondent-Appellant.

Order is affirmed.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL