

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

In the matter of an application in the nature
of Mandamus in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

1. M. J. M. Ershad,
81 A 2/4 Kynsey Road,
Colombo 08.

PETITIONER

CA No. CA/Writ/0194/2020

v.

1. The Condominium Authority,
National Housing Department Building,
1st Floor,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 02.
2. Madhavi S. Pathirana Yapa,
General Manager,
National Housing Department Building,
1st Floor,
Sir Chiththampalam A. Gardiner Mawatha,
Colombo 02.
3. Cheryl Silva,
81 A, 3/1 and 3/2,
Kynsey Road,
Colombo 08.
4. Anne Amerasekara,
81 A 2/3,
Kynsey Road,

RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
M. Ahsan. R. Marikar J.

COUNSEL : H.G. Hussain with M. G. M. Shammass and
Nishaath S. Riza for the Petitioner.

Madushka Kannangara, SC for the 1st and
2nd Respondents.

Rienzie Arsecularatne, PC with
Chamindri Arsecularatne and Namal
Karunaratne for the 3rd and 4th
Respondents.

ARGUED ON : 21.11.2023

DECIDED ON : 15.12.2023

M. Sampath K. B. Wijeratne J.

Introduction

This is an application filed by the Petitioner seeking a writ of *mandamus* directing the 1st and 2nd Respondents to take action against the 3rd and 4th Respondents to have all obstructions created and caused by them removed and to take steps preventing them from obstructing in any manner the common areas in the condominium property.

The occupants of the respective units in a condominium property are governed by the Apartment Ownership Law No. 11 of 1973, as amended¹ (hereinafter referred to as the ‘Apartment Ownership Law’), Condominium Management Authority Law, as amended² (hereinafter referred to as the ‘Condominium Management Authority Law’) and the Regulations made thereunder. The Regulations made under Section 24 of the Condominium Management

¹ Amendment Act No. 45 of 1982, 4 of 1999, 27 of 2002 and 39 of 2003.

² Amendment Act No.46 of 1982 and 24 of 2003.

Authority Law are published in the (Extraordinary) Gazette notification No.2026/25 dated 5th July 2017 ('P 2').

Factual background

The Petitioner and the 3rd and 4th Respondents are residents of the condominium apartment complex named '*Kynsey Arcade*'. The Petitioner occupies condominium parcel No. 81A 2/4, and the 4th Respondent occupies No. 81A 2/3 on the same floor, the 2nd floor. The 3rd Respondent occupies condominium parcels No. 81A 3/1 and 81A 3/2 on the 3rd floor. The 1st Respondent is the Condominium Management Authority established by the Condominium Management Authority Law and the 2nd Respondent is the General Manager of the 1st Respondent Authority.

The Petitioner alleged that the 3rd and 4th Respondents violated the laws and Regulations applicable to the '*Kynsey Arcade*' condominium apartment complex by encroaching on the common areas by placing flower pots, chairs, ornament stands, and other movable items, preventing the Petitioner from using those, causing a hindrance. The Petitioner submitted photographs marked 'P 3', 'P 3(A)', 'P 4', 'P 4(A)' and 'P4 (B)' depicting the situation.

The Petitioner stated that the 3rd Respondent was directed by the 2nd Respondent, the General Manager of the Condominium Authority, by letter dated 11th March 2016 ('P 5'), and the 4th Respondent was directed by the Chairman of the 1st Respondent Condominium Authority by letter dated 25th March 2016 ('P 6') to have all obstructions placed in the common areas removed. The Petitioner states that the 3rd and 4th Respondents did not comply with the directions and the Petitioner was compelled to institute legal proceedings at the Magistrate's Court of Colombo. The Petitioner filled three private complaints against the 3rd and 4th Respondents and the 3rd Respondent's husband, Victor Silva. These private complaints were based on charges under Section 262 of the Penal Code, which pertains to unlawfully or negligently doing any act which is and which he has knowledge or has reason to believe to be likely to spread an infection or a disease dangerous to life, specifically dengue. The Petitioner stated that the cases were withdrawn after the 3rd and 4th Respondents undertook to remove the obstructions.

In response to the Petitioner's assertion of withdrawing the cases, the 3rd and 4th Respondents, stated in their objections filed as an affidavit, that the aforementioned statement is manifestly false. The 3rd and 4th Respondents supported their claim with copies of the orders submitted to Court marked as

‘3R3’/ ‘4R3’ (Case No. 82123/06/17), ‘3R3(a)’/ ‘4R3 (a)’ (Case No. 82121/06/17), ‘3R3(b)’/ ‘4R3 (b)’ (Case No. 82125/06/17). The Petitioner has not submitted a counter-affidavit denying that these are not the cases referred to in paragraph nine of his Petition.

The 3rd and 4th Respondents submitted that according to the copy of the order marked ‘3R3’/ ‘4R3’, a private plaint instituted by Petitioner, the 3rd Respondent who was the accused in the said case No. 82123/06/17 had been discharged by the learned Magistrate. According to the copy of the order marked ‘3R3(b)’/ ‘4R3 (b)’, another private plaint instituted by Petitioner, the 4th Respondent, the accused in the said case No. 82125/06/17 also had been discharged by the learned Magistrate. According to the 3rd and 4th Respondents, the Petitioner also filed case No. 82121/06/17 against the husband of the 3rd Respondent, Victor Silva, and the accused had been discharged by the learned Magistrate in that case as well (‘3R3(a)’/ ‘4R3 (a)’). At the argument, the learned President's Counsel for the 3rd and 4th Respondents contended that the aforementioned statement that the Petitioner withdrew the cases on an undertaking given by the 3rd and 4th Respondents was a manifest misrepresentation of facts by the Petitioner to the Court.

Based on the facts mentioned in the previous paragraphs, I concur that the Petitioner has misrepresented material facts to this Court.

In the case of *Collettes Ltd. v. Commissioner of Labour and others*³ Gunawardene, J. held that ‘*it is essential that, when a party invokes the Writ jurisdiction or applies for an Injunction to this Court, all facts must be clearly, fairly, and fully pleaded before the Court, so that Court would be made aware of all the relevant matters. It is necessary that this procedure must be followed by all litigants who come before this Court in order to ensure that justice and fair play would prevail.....*’

In *Alponso Appuhamy v Hettiarachchi*⁴ Pathirana, J. held that ‘*The necessity of full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the King v. The General Commissioner for the purpose of the Income Tax Acts for the District of*

³ CA. Application No. 77/88, at p. 17, decided on 16th May 1989.

⁴ 77 N.L.R. 131 at p. 135.

*Kensington-Ex-parte Princess Edmorbd de Poigns*⁵. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case, a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a **full and truthful** disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination'. (emphasis added)

In *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and others*⁶ it was observed that,

*'When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others, [1997] 1 Sri L.R. 360 the Court highlighted this contractual obligation which a party enters into with the Court, requiring the need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations*⁷. *Vide Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac Ex-Parte - (1917) 1 KB 486*⁸.

... In the result,[1] on both these aforesaid points, I hold that the petitioner has failed to make a full and frank disclosure of all material facts. Hence, by this conduct the petitioner had violated his contractual obligation to Court to

⁵ K vs The General Commissioner for the purpose of Income Tax Acts for the District of Kensington - Ex parte Princess Edmorbd de Poignal - (1917) KG Div. 486.

⁶ [2002] 1 Sri L. R. 277.

⁸ Ibid at p. 286.

disclose uberrima fides.... Accordingly, I proceed to dismiss and reject the [280] application...⁹

In *Dahanayake and others v. Sri Lanka Insurance Corporation Ltd. and others*¹⁰ it was observed that,

‘..... Our Courts have time and again emphasised the importance of full disclosure of all material facts at the time a Petitioner seeks to invoke the jurisdiction of this court, by way of writ of certiorari, mandamus or any of the other remedies referred to in Article 140 of the Constitution.’

In my view, the analysis of the settled legal status above alone justifies the dismissal of this application, without taking into account the merits. Nevertheless, I will evaluate the merits of this application to ensure a comprehensive analysis.

The Petitioner contends that despite legal proceedings, the 3rd and 4th Respondents persist in obstructing access to common areas. Subsequently, through his legal representatives, the Petitioner notified the 2nd Respondent of the violation of provisions of the Condominium Management Authority Law and its Regulations. The Petitioner urged the 2nd Respondent to take appropriate measures to remove the obstructions¹¹. Following this, the Petitioner initiated writ application No. CA/Writ/283/2019 in this Court, seeking a writ of *mandamus* to compel the 1st and 2nd Respondents to take action in removing the obstructions. Subsequently, the Petitioner withdrew the aforementioned writ application with the liberty to file a fresh one. The Petitioner states that despite efforts to amicably settle the matter, his attempts proved unsuccessful.

Once again, through legal representatives, the Petitioner communicated with the 2nd Respondent, urging them to take steps to eliminate the obstructions caused by the 3rd and 4th Respondents in the common areas¹².

The Petitioner asserts that the 1st and 2nd Respondents are statutorily bound to remove the obstruction created by the 3rd and 4th Respondents. However, the

⁹ Ibid at p. 287.

¹⁰ [2005] 1 Sri L.R. 67, at p. 77.

¹¹ Letter dated 7th February 2019 marked ‘P 7’.

¹² Letter dated 13th July 2020 marked ‘P 8’.

1st and 2nd Respondents have failed in their duty. Consequently, the Petitioner invoked the writ jurisdiction of this Court against the 1st and 2nd Respondents.

The 1st and 2nd Respondents, represented by the Attorney General's Department, initially filed a motion on the 10th of March 2021, asserting that the 3rd and 4th Respondents once again placed flower pots in the common areas, causing a nuisance to other residents and therefore, in light of the recurring nature of the issue, despite the 1st Respondent's intervention to remove the flower pots, they do not wish to contest this application. Furthermore, it was stated that the 1st and 2nd Respondents would abide by the decision of this Court. However, subsequently they changed their stance and filed a statement of objection on the 22nd of February 2022.

The 1st and 2nd Respondents denied any illegal, unlawful, unreasonable, irrational, malicious, or disproportionate actions. The 1st and 2nd Respondents stated that upon receipt of a complaint, the 1st Respondent conducted an inspection, revealing that several individuals including the Petitioner and the 3rd and 4th Respondents were obstructing the common areas by placing flower pots. The inspection report dated 4th March 2013 is marked as '1 R 1'.

Following this, the 3rd and 4th Respondents were issued with the letter '1R3/ 'X 2' on the 31st of July 2013 and ordering to remove flower pots placed in the common areas of the 2nd floor, specifically the entrance and emergency exit. Simultaneously, the Petitioner was also issued with the letter '1 R 2'/ 'X1' dated 31st July 2013 and ordered to remove an unauthorized structure. It is important to note that while the 1st Respondent instructed the 3rd Respondent to eliminate obstructions from the 2nd floor, the 3rd Respondent does not reside on the 2nd floor; instead, she is a resident on the 3rd floor. The 1st and 2nd Respondents assert that the 3rd and 4th Respondents neglected to remove the flower pots. As a result, officers from the 1st Respondent intervened and removed the flower pots on several occasions.

After this application was filed, the officers of the 1st Respondent conducted a fresh inspection on the 5th of February 2021. Report of the inspection is marked as '1 R 4' Although the officers observed that some flower pots are placed in front of the housing units of the 3rd and 4th Respondents, on the 3rd and 2nd floors, respectively, the officers have failed to conclusively state that those flower pots obstruct the common areas.

Another inspection was carried out on the 1st of October 2021. The inspection report dated 14th October 2021 is marked as '1 R 5'. The officers observed that there are flower pots placed on the 2nd and 3rd floors. However, upon

reviewing the Regulations of the Management Committee of 'Kynsey Arcade', they observed that there are no flower pots or other items that could cause obstructions to the stairways and emergency entrance.

The 3rd and 4th Respondents submitted that the Constitution of the Kynsey Arcade Apartment Complex Management Corporation was adopted on the 13th of October 2013 and on the 27th of October 2013 the General Rules were adopted. The 3rd and 4th Respondents contended that Rule VII of the general Rules encourages owners to keep the environment of the condominium pleasant by maintaining greenery and beautifying objects, including pots and plants, in all common areas leading to the apartments without obstructing entrances to the lifts, stair cases and emergency exits, and also without causing health hazards.

The 3rd and 4th Respondents in their affidavit filed in response to the Petition denied having encroached into or prevented the Petitioner from using common areas of the condominium apartment complex by placing flower pots, chairs, ornament stands or other movable items in violation of the Laws and Regulations. The 3rd and 4th Respondents stated that although the letter dated 11th March 2016 marked as 'P 5', sent by the General Manager of the Condominium Management Authority, directed the 3rd Respondent to remove the flower pots causing obstructions to the common amenities, the letter dated 21st March 2016, addressed to the 4th Respondent, allowed the flower pots to be kept in the areas that are enjoyed privately, without obstructing the entrance to lifts, stair cases and emergency exits, in terms of General Rule No. VII, adopted by the Management Corporation.

Analysis

As stated above, condominium properties are governed by the Apartment Ownership Law No. 11 of 1973, as amended¹³ and Condominium Management Authority Law No. 10 of 1973, as amended¹⁴. Both aforementioned statutes provide for making Regulations¹⁵. The Regulations made under Section 24 of the Apartment Ownership Law and Section 6(e) of the Condominium Management Authority Law are published in (Extraordinary) Gazette notification No. 2026/25 dated 5th July 2017. Regulation 11 (d) stipulates that *'no person shall use a Condominium Parcel*

¹³ *Supra* note 1.

¹⁴ *Supra* note 2.

¹⁵ Section 24 of the Apartment Ownership Law and Section 24 of the Condominium Management Authority Law.

*in such manner so as to obstruct the use of **common amenities** by other occupants of such condominium parcel or cause inconvenience to the other occupants thereof*. The term common amenities are interpreted in Section 27, the interpretation Section of the Condominium Management Authority Law. Accordingly, '**common amenities**' means water, sewerage, drainage, gas, electricity, garbage disposal, air conditioning, telephone and radio services and roads, accesses, lawns, gardens, parks, playgrounds and other open spaces.

*'Common elements' means 'so much of the property appurtenant to the relevant units as is not comprised in any unit and **includes** –*

- (1) The land on which the building comprising the units is located, including roads and accesses, drains and ditches lanes, gardens, parks, playgrounds and other open spaces;*
- (2) The foundations, columns, girders, beams, supports, main walls and roofs;*
- (3) The halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;*
- (4) The basements, yards, gardens, parking areas, and storage spaces;*
- (5) The premises for the lodging of persons in charge of the units including caretakers and watchers;*
- (6) Installations for central services such as electricity, telephone, radio, rediffusion, air conditioning, garbage disposal and incineration;*
- (7) The lifts, escalators, tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use;*
- (8) Such community and commercial amenities as may be provided; and*
- (9) All other parts and facilities of the units necessary or convenient to their existence, maintenance, and safety or normally in common use;*

The term ‘*common amenities*’ is not interpreted in the Apartment Ownership Law. However, the term ‘*common elements*’ is interpreted in Section 26, the interpretation Section of the Apartment Ownership Law in the following manner.

‘*common elements*’-

- (a) *In relation to any Condominium Property or Semi Condominium Property or Provincial Condominium Property which is comprised in any plan approved by the authority for the time being responsible for the approval of such plan, means so much of the land parcel for the time being not comprised in any Condominium Parcel shown in a Condominium Plan or Semi Condominium or Provisional Condominium Plan; and*
- (b) *Unless otherwise described specifically as comprised in any Condominium Parcel in a Condominium Plan or Semi Condominium or Provisional Condominium Plan and shown as capable of being comprised in such Condominium Parcel includes;*
 - (i) *Foundations, columns, gardens, and external beams, supports, main walls, roofs, walls, lobbies, corridors, stairs, stairways, fire escapes, entrances, exits of the building or buildings;*
 - (ii) *Car parks, recreational or community facilities, gardens, parking areas, roofs and storage spaces;*
 - (iii) *Central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, refrigeration and air-conditioning, telephone, radio, re-diffusion, garbage disposal and incinerators;*
 - (iv) *Escalators, lifts, tanks pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;*
 - (v) *Premises for use by security guards, caretakers and watchmen;*
 - (vi) *All facilities described as common elements in any plan for a condominium development approved by the authority for the*

time being responsible for such approval, and all facilities which may be shown in a legend of a Condominium Plan or Semi Condominium or Provisional Condominium Plan as common elements; and

- (vii) All other parts of the land parcel not comprised of any Condominium Parcel necessary or convenient to the existence and maintenance and for the reasonable common use and safety of the common elements including the roads and access drains and ditches, lanes, parks, playgrounds and other open spaces appurtenant to the Condominium Property or semi-Condominium Property or Provisional Condominium Property;*

After carefully considering the two interpretations provided in the Apartment Ownership Law and the Condominium Management Authority law it is clear that common amenities are different from common elements regarding the term ‘*common element*,’ I am of the view that both interpretations can exist simultaneously in a complementary manner.

In condominium properties the occupants of the units live close, using some of the facilities in common. Consequently, each unit owner could have to give up a certain degree of freedom of choice which they might otherwise enjoy in separate privately owned properties. Nevertheless, the health, happiness, and enjoyment of life of the unit owners must be a major concern. Therefore, the Condominium Association is at liberty to adopt Rules addressing those issues. I do not say that the Condominium association could adopt arbitrary or capricious Rule in this regard. Whatever, the Rules they adopt should conform with the statutory laws. No owner is assumed to be subject to arbitrary and capricious restrictions which achieve no positive benefits.

The Petitioner's learned Counsel argued that all spaces outside the main door of the condominium parcel should be considered common areas. However, I am disinclined to agree with this assertion. The definition and scope of common areas differ across various complexes. While a condominium parcel owner possesses absolute ownership of their purchased unit, they also share co-ownership of the common areas and amenities. Hence, each apartment owner has the entitlement to utilize these common areas and amenities as intended, without impeding or infringing upon the lawful rights of other co-owners.

Therefore, in determining whether to issue the writ of *mandamus* as prayed in paragraph (b) of the Petition against the 1st and 2nd Respondents, the Court must primarily ascertain whether the locations where the disputed flower pots are positioned qualify as common spaces.

The Petitioner has produced his title deed marked as 'P 1'. As per 'P1', the Petitioner is identified as the proprietor of condominium unit number 6, bearing assessment No. 81 A 2/4, located on the 2nd floor, as depicted in condominium plan No. 9797 dated 12th December 1995, prepared by M.C.L.C Perera, a Licensed Surveyor.

The 3rd Schedule to the deed defines and describe the statutory common elements and the other common elements delineated and described in the condominium plan. The statutory common elements encompass the land and building including the open spaces appurtenant to condominium property; foundation, columns, girders, beams, supports, main wall and roof of the building; installations for central services such as electricity, telephone, water pipes etc.

The other common elements are described as CE 1 to CE 17. It is clear that some of those common elements are limited to certain units whereas only few are common to all twelve units.

Upon consideration of those common elements outlined in the deed it is apparent that CE 1, CE 4 and CE 9 are common to all twelve units, while the rest are limited to certain units. As previously mentioned, the Petitioner's condominium parcel is designated as unit No. 6. Consequently, the Petitioner has entitlement to use common elements CE 1, CE 2, CE 3, CE 4, CE 6, CE9, and CE 11 only.

Among these common elements, CE 1 and CE 2 represent the land and ground floor of the building, CE 4 denotes the stairway and lift, and CE 9 signifies the stairway leading to the 4th floor. CE 6 and CE 11 encompass the corridor, passage, and common area access on the 2nd floor, utilized collectively by units 5, 6, 7, and 8 on that floor. Notably, CE 11 specifically designates the terrace exclusively used for the Petitioner's unit 6 on the 2nd floor.

However, according to the description of common elements in the deed ('P1'), the Petitioner does not hold the right to use any common elements on the 3rd floor. The common elements allocated to the 3rd floor are marked as CE 7, CE 12, CE 13, CE 14, and CE 15. As per the Petitioner's title deed ('P 1'), none of these common elements on the 3rd floor fall within the Petitioner's entitlement.

Consequently, it is apparent that the Petitioner lacks the legal standing (*locus standi*) to apply for a writ of mandamus directing the 1st and 2nd Respondents to take action against the 3rd Respondent for the removal of obstruction allegedly caused by her on the 3rd floor, as the Petitioner does not hold the rights to use any of the common elements on the 3rd floor according to their title deed ('P 1').

In relation to the question of alleged obstructions caused by the 4th Respondent on the 2nd floor within the common elements the Petitioner is entitled to use, the analysis above indicates that there is insufficient material presented to the Court to establish the claims. As previously stated, the Petitioner's entitlement extends to the use of common elements CE 6 shared with occupants of units 5, 7, and 8 and CE 11, exclusively.

According to the inspection report dated 4th March 2013 ('1 R 1'), the 4th Respondent placed flower pots in common areas, which led the 1st Respondent authority to order their removal by letter dated 31st July 2013 ('1 R 3'). The second inspection report on February 5, 2021 ('1 R 4') reveals that the 4th Respondent continued to place flower pots in common element CE 7. However, as previously mentioned, the Petitioner is not entitled to use CE 7 as per his own title deed ('P 1'). The report ('1 R 1') also reveals that between the first and second inspections, the *Kynsey Arcade* Management Corporation decided on 27th October 2013, that placing flower pots in common elements without causing any inconvenience to the residents is permissible. Article 20 of the constitution of the *Kynsey Arcade* Management Corporation, adopted on 13th October 2013 ('3 R 6'), empowers rule-making. Accordingly, the general Rules were adopted on 27th October 2013 ('4 R 1') and these were acknowledged by the 1st Respondent Condominium Management Authority in letters dated 21st March 2016 ('P 6') and 1st October 2021 ('1 R 5'). The report also states that the occupants of house No.81 A 3/2 on the 3rd floor have placed ten flower pots on the ground in common element CE 7 and fixed four flower pots on the wall. Also placed a rack in front of the house. The occupants of house No. 81 A 3/1 in the 3rd floor have placed six flower plots in the common element CE 7 and also placed a wooden lamp post. The 1st Respondent Authority conducted the 3rd inspection on 1st October 2021 ('1R5'). During the inspection, it was observed that the 4th Respondent had placed four flower plots in front of her house on the 2nd floor. However, the report does not indicate any obstruction caused by these flower plots in the common elements. The report further states that the 3rd Respondent has placed seventeen flower pots in common element CE 7 and hung three artificial

flower plots on the wall. Additionally, in front of house No. 81 A 3/1, there are two steel chairs, a steel table, and a cement ornament.

Similarly, in front of house No. 81 A 3/2, a steel seat and a rack have been placed. However, according to the observations of the officers of the 1st Respondent Authority, none of these items obstruct the stairway or emergency exits. It is noteworthy that this inspection took place while this application was pending before this Court. In a subsequent 4th inspection conducted on 27th August 2023 ('X'), the officers from the 1st Respondent Authority attempted to facilitate a compromise between the Petitioner and the 3rd and 4th Respondents. Unfortunately, the attempt proved unsuccessful as the Petitioner declined to reach a settlement.

In light of the above discussion, I am clearly of the view that the Petitioner has failed to establish substantial grounds that necessitates the intervention of this Court by through the invocation of writ jurisdiction.

Conclusion

The Petitioner sought to invoke the jurisdiction of this Court on the ground that the 1st and 2nd Respondents are statutorily bound to take steps against the 3rd and 4th Respondents to eliminate the purported obstructions.

Based on the analysis provided earlier, it is my considered view that the Petitioner's application lacks merit.

Consequently, I would hold that the application of the Petitioner must fail and accordingly, the application is dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL