

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 Writ of *Certiorari*, Prohibition and *Mandamus* under and in terms of Article 140 of the Constitution of the Republic.

Court of Appeal Case No:
CA/WRIT/93/2024

1. Rev. Panwila Sri Soratha Thero,
Adviser,
Surakimu Pelenwatta Organisation.
2. Rev. Pelanwatte Sobhitha Thero,
Chairman,
Surakimu Pelenwatta Organisation,
Both at 341/1, Sathbudu Maha
Viharaya, Welipatha, Palanwatta,
Pannipitiya
3. M. H. Upasena,
Chairman,
Village Development Committee of
Pelanwatta North,
325/12/78, Kurulu Uyana,
Pelanwatta,
Pannipitiya.
4. A. Jayantha Kumara,
Deputy Secretary,
Village Development Committee of
Pelanwatta North,
332/12, Sambodhipura, Pelanwatta,
Pannipitiya.

PETITIONERS

Vs.

1. Prasanna Ranathunga, MP
Hon. Minister of Urban
Development and Housing,
Ministry of Urban Development and
Housing
12th Floor, “Sethsiripaya”, Stage – 2,
Battaramulla.

1(a). Anura Kumarathilaka, MP
Hon. Minister of Urban
Development, Construction and
Housing,
Ministry of Urban Development,
Construction and Housing
12th Floor, “Sethsiripaya”, Stage – 2,
Battaramulla.

2. W. S. Sathyananda,
The Secretary,
Ministry of Urban Development and
Housing
12th Floor, “Sethsiripaya”, Stage – 2,
Battaramulla.

2(a). U. G. Ranjith Ariyaratne,
The Secretary,
Ministry of Urban Development,
Construction and Housing
12th Floor, “Sethsiripaya”, Stage – 2,
Battaramulla.

3. Urban Development Authority,
6th, 7th, and 9th Floors,
Sethsiripaya,
Battaramulla.

4. Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.

5. A. H. M. L. Aberatne,
The Commissioner General of
Agrarian Development,
42, Sir Marcus Fernando Mawatha,
P/O. Box 537, Colombo 07.
- 5(a). U.B. Rohana Rajapaksha,
The Commissioner General of
Agrarian Development,
42, Sir Marcus Fernando Mawatha,
P/O. Box 537, Colombo 07.
6. K. P. Premadasa,
Divisional Secretary,
Divisional Secretariat,
Kesbewa.
7. Harin Fernando,
Hon. Minister of Lands,
Mihikatha Medura,
Land Secretariat,
1200/6, Rajamalwatta Road,
Battaramulla.
- 7(a). K. D. Lalkantha, MP
Hon. Minister of Agriculture,
Livestock, Land and Irrigation,
Ministry of Agriculture, Livestock,
Land and Irrigation
80/5, “Govijana Mandiraya”,
Rajamalwatta Lane,
Battaramulla.
8. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Dushantha Kularathne instructed by Mahada Ferando for the
Petitioners.
Ishara Madarasinghe, S.C. for the Respondents.

Supported on: 28.04.2025

Decided on: 30.05.2025

Mayadunne Corea J

The Petitioners have sought *inter alia* the following reliefs in this Application.

“b) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the alleged decision to acquire Pelanwatta borne out by the document marked P8, P9 and P10;

(c) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision and the attempts of the 3rd Respondent to cut down the trees of Pelanwatta;

(d) Grant and issue a mandate the nature of Writ of Certiorari quashing the decision and attempts of the 3rd Respondent to construct a housing scheme in Pelanwatta.

(e) Grant and issue a mandate in the nature of a Writ of Prohibition preventing the 1st and/ or 2nd and/or 3rd Respondents from cutting down the trees in Pelanwatta;

(f) Grant and issue a mandate in the nature of Writ of Prohibition preventing the 1st and/or 2nd and/or 3rd Respondents from constructing a housing scheme and/or any development activity in Pelanwatta;

(g) Grant and issue a mandate in the nature of a writ of Mandamus directing the

1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 7th Respondents to take all the necessary actions to preserve and protect the fauna and flora in Pelanwatta;

(h) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st and/or 2nd and/or 3rd and/or 4th and/or 5th and/or 6th and/or 7th Respondents to form an independent Committee to investigate and identify the rare and/or valuable fauna and flora and species that are running the risk of extinction in Pelanwatta;

(i) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st and/or 3rd and/or 4th Respondents to send the recommendations of the said committee to the 7th Respondent forthwith;

(j) Grant and issue a mandate in the nature of Writ of Mandamus directing the 4th Respondent to make the necessary recommendations depending on the outcome of the said report to declare Palenwatta as a forest reserve or a botanical garden except the area which has already been cleared by UDA;

(k) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st and or any other Respondents to declare as a playground and/ or a common ground the area which is already cleared from Pelanwatta;”

The facts of the case briefly are as follows. The Petitioners are residing in the Palanwatte area and are members of two societies. They contend that they filed this Application as aggrieved citizens of the area. It is contended by the Petitioners that the area called Palanwatte is a highly residential area and the land in question is in the extent of approximately 8 Acres. The said land had been originally owned by one Rev. Chrisantha de Mel and subsequent to his demise, has been inherited by one Mrs. T.G. de Mel. The Petitioners claim that the said land is the only available free land in a highly residential area.

The Petitioners have invoked the Writ jurisdiction of this Court on the premise that the said Palanwatte contains valuable plants which are at the risk of extinction and also as it is home to rare fauna and flora. They contend that the 3rd Respondent was attempting to construct a housing project on the said land by claiming that the land had been acquired by the 3rd Respondent. It is their contention that in the process the 3rd Respondent is destroying the fauna and flora in the area. Thus, it is argued that they

have instituted this Writ Application in public interest to prevent the destruction of the environment.

Petitioners' case

Petitioners claim that the 3rd Respondent's action of cutting down the trees and clearing the land is:

- “(a) Contrary to the law;*
- (b) it offends the principles of natural justice;*
- (c) it violates the legitimate expectations of the Petitioners;*
- (d) it is against the principles of equality and equity;*
- (e) it is unreasonable;*
- (f) ultra vires the powers of the 3rd Respondent Authority;*
- (g) it is made for extraneous reasons and motivated in mala fide;”*

The Respondents objections

The Respondents objected to this Application on the following grounds:

- The Petitioners have misrepresented and suppressed facts
- The Petitioners have failed to come with clean hands
- Delay
- The Petitioners have no *locus standi*
- The owner of the land in any event is the 3rd Respondent

The Respondents accordingly argued that this Court should not issue notice and moved for the dismissal of this Application. This Court will now consider the Petitioners' submissions with the objections raised by the Respondents.

Misrepresentation and suppression of facts

It is pertinent to note that the Petitioners have invoked the Writ jurisdiction of this Court on the basis that the land in question is home to very rare fauna and flora that are at risk

of extinction. It was contended that this case was filed to protect and preserve the said area as it is the duty of the Petitioners as citizens to preserve and protect forest and land (paragraph 11 of the Petition). In paragraphs 29 and 30 of the Petition the Petitioners have described the rare animals that are in the land as “*large tiger cats, Indian Moose Deers, rabbits*” and the trees as “*obu, Ratnitul, Thippili, Ankenda, Kudumiris, Dan, Walpalu, Ketakela, Yakinaran*”. However, the Petitioners have failed to establish this claim with any independent evidence and further, upon inquiry by the Court pertaining to the existence of the animals described, the learned Counsel for the Petitioners conceded that he was unaware of the animals that are described in the said paragraph.

The Petitioners failed to establish their contention of the land being home to rare and valuable herbal trees with any independent evidence. In the absence of such material, this Court will venture to see the plan and the tenement list which was made for the purpose of the acquisition of the land (P2). The said plan and the tenement list gives a description of the land and a description of the available vegetation in the land. I have considered the tenement list attached to the Plan No. 7210 made by the Surveyor General dated September 1991. The said list does not depict a land with rare endangered plants nor does it describe the land as a forest. The said tenement list demonstrates that the land to be acquired as having trees that have been cultivated and that there are three buildings which is quite contrary to what the Petitioners’ Counsel submitted to this Court.

The learned State Counsel while denying the Petitioners contention that the said land was a forest, argued that the land was occupied and there were buildings and few trees planted there by the original owners. This submission is supported by the plants described in the tenement list as the plants that are described appears to be cultivated by people. It was her contention that when the owner the reverend monk died, his relative who inherited the land had requested the “State” to acquire the land which subsequently was acquired. This submission is established by the document P3, through which the inherited owner has requested the State to acquire the land as it was difficult to manage the property due to her failing health. Further, the plan and the tenement list marked as P2 also gives a description of the land and the trees on the said land which does not support the Petitioners’ proposition that the land is a forest which is home for rare animals. This tenement list demonstrate that the Petitioners have deliberately misrepresented facts. It is trite law that a Petitioner who seeks to invoke the Writ jurisdiction of this Court should come to Court with clean hands. A Petitioner who lacks *uberrima fides* disentitle himself from the reliefs he seeks.

Mohammed Laffar, J. in the case of ***Athukorala Kodithuwakkuge Chamal v. National Housing Development Authority and others*** CA/WRT/0321/2019 decided on

28.02.2023 observes that if a party lacks *uberrima fides*, discretionary remedies would not be awarded to such parties, and states as follows:

“It is trite law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana J in W. S. Alphonso Appuhamy v. Hettiarachchi

The necessity of a 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 Kensington-Ex-parte Princess Edmorbd de Poigns 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”.

The Petitioners also contended that there were several farmlands and paddy fields in the surrounding area that would be affected by the destruction of the forest. There was no material submitted to demonstrate this contention and it becomes untenable as P2 clearly establishes that there is no rainforest in the disputed land as submitted by the learned Counsel appearing for the Petitioners. It is also pertinent to note that, as per the document marked as ‘A’ which contains the photographs of part of the land, it clearly verifies that there are buildings in the said land and fails to establish the existence of a forest. The Petitioners failed to explain to this Court how old buildings happened to be in the alleged forest that contains rare fauna and flora.

The proposed construction does not have an Environmental Impact Assessment

The next contention of the Petitioners was that the proposed housing complex lacks the approvals needed. The main argument of the Counsel appearing for the Petitioners was that since there will be a destruction to the environment, the proposed construction should have the approval of the 4th Respondent. In response, the learned State Counsel submitted that there was no necessity for an Initial Environmental Examination or an Environmental Impact Assessment for the proposed project as the said development does not require such an Initial Environmental Examination or an Environmental Impact Assessment, and brought to our attention the letter dated 19.05.2022 by the Central Environmental Authority, the 4th Respondent, that establishes the State Counsel's contention. This once again establishes that the Petitioners have misrepresented facts to this Court.

Has the 3rd Respondent unlawfully entered the land?

It is the contention of the Petitioners' Counsel that the 3rd Respondent had unlawfully entered the land and was clearing the said land. However, the Petitioners' Counsel conceded that the said land had been acquired by the State as far back as 1991. Subsequently, by way of a motion, the 3rd Respondent had tendered to this Court the Vesting Certificate pursuant to section 44 of the Land Acquisition Act, No. 9 of 1950, where the land had been vested with the Urban Development Authority. Further, the Petitioners themselves have tendered to Court a document marked as P10 which is a grant given pursuant to section 6 of the State Land Ordinance, whereby, a grant has been executed in favor of the 3rd Respondent. Hence, it is established by the Respondents that the land is now vested with the 3rd Respondent. This negates the Petitioners' contention that the 3rd Respondent had unlawfully entered and was clearing the land.

Petitioners themselves have requested for a part of the alleged forest

It was the contention of the learned State Counsel that the Petitioners' motive for filing this Application was not in the spirit of public interest nor was it to preserve a forest, but because of the denial of Petitioners' request to obtain a part of the land in dispute. To substantiate this argument the Respondents' Counsel drew the attention of this Court to a letter dated 10 .01.2024. The said letter too had been filed with the motion dated 20.09.2024.

Now I will consider the said letter. The said letter is a reply sent to a letter by the Presidential Secretariat with a copy to the 1st Petitioner. As per the contents of the letter, it is clear that the 1st Petitioner has sought 2 Acres of the land in question for a playground and the 3rd Respondent had refused the said request on the basis, that the said land is being utilized for a housing project.

This Court observes that the documents annexed P4(1) to 4(X111) are correspondences between various parties, requesting for a 2 Acre plot of land from the forest land. The Petitioners in this Application argued that the said land is home to rare fauna and flora which are at the risk of extinction but failed to give an explanation as to how the fauna and flora would be protected if they obtained the 2 Acres of the forest land for a playground.

All these correspondences clearly establish that the Petitioners have been making various attempts to obtain a 2 Acre portion of the land in question for a playground. The learned State Counsel argued that the request in this correspondence was turned down by the 3rd Respondent and officially communicated by the letter dated 10.01.2014 which prompted the Petitioners to file this Application. To substantiate this position the learned State Counsel draws our attention to the date of the Petition that read as 01.02.2024 which is subsequent to the Petitioners' letter requesting the said the land to build a playground was rejected.

This Court observes that the Petitioners have invoked the Writ jurisdiction of this Court as a public interest litigation on the basis of protecting the environment and the forest that is alleged to be home to various endangered fauna and flora. As stated above, if that was the case the Petitioners themselves are seeking a 2 Acre part of the said land for a playground. This request itself is against their own arguments of protecting the environment.

Upon inquiry by Court, the Petitioners submitted that they had sought the said 2 Acres of land from the forest either for a playground or for a botanical garden. This response cannot be accepted as all the correspondence are only pertaining to a request for land for a playground and makes no reference to constructing a botanical garden. Further, the Petitioners failed to explain the contention of protecting the fauna and flora of the forest when they themselves seek to make a playground in the said land that the Petitioners themselves have pleaded as the home for the fauna and flora. The Petitioners have failed to give a satisfactory explanation to this question. This clearly establishes

the Respondents' contention that the Petitioners have not come to Court with clean hands.

Conclusion

Accordingly, after considering the submissions of both parties and the documents tendered, and for the above-stated reasons this Court is not inclined to issue formal notice on the Respondents. As this Court has now come to the conclusion that there is no merit to this Application, this Court will not consider the other objections raised by the Respondents and proceed to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal