

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

Court of Appeal Case No.

CA/WRT/0507/2023

1. **Galbokka Hewage Chamith Lasantha,**
No 363, Aluthgedarawattha,
Duwa Malalagama,
Habaraduwa.
2. **Galbokka Hewage Ranil Prasanna,**
Elthotawattha,
Duwa Malalagama,
Habaraduwa.

Petitioners

Vs

1. **Eng. R. A. S. Ranawaka,**
Director General,
Coast conservation and coastal
development Department,
4th Floor Ministry of Fisheries
building,
New Secretariat,
Maligawatta,
Maradana,
Colombo 10.

2. **Eng. L. D. Ruhunage,**
Additional Director General
Coast conservation and coastal
development Department,
4th Floor Ministry of Fisheries building,
New Secretariat,
Maligawatta,
Maradana,
Colombo 10.
3. **Eng. B. G. S. C. Nandasena,**
Area Engineer
Galle
District office of Coast
conservation and coastal development
Department,
No.274,
Peelagoda,
Unawatuna.
4. **W. K. G. Pushpakumara,**
Assistant Director.
Galle District office of Coast
conservation and coastal development
Department,
No. 274,
Peelagoda,
Unawatuna.
5. **W. S. Sathyananda,**
Secretary,
Ministry of Urban Development and
Housing.
17th Floor,
Suhurupaya
Sri Subhathipura Road.
Battaramulla.

6. **N. D. Namarathna,**
Additional Secretary
(Urban Development and
Environment Conservation),
Ministry of Urban Development and
Housing,
17th Floor,
Suhurupaya.
Sri Subhathipura Road,
Battaramulla.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
K. K. A. V. SWARNADHIPATHI, J.

Counsel: Upul Kumarapperuma, with Ms. Devini Godagama,
Ms. Tereesha Wedarachchi and Ms. Lashaini for the
Petitioners.

Ms. Madushka Kannangara, SC for the Respondents.

Supported on: 17.01.2024

Decided on: 07.03.2024

MOHAMMED LAFFAR, J.

We heard the learned Counsel for the Petitioner in support of this Application. We heard the learned State Counsel for the Respondents as well.

The subject matter in this Application is known as *Andana thotupola* which is presently known as *Marandawala Thotupola* of Koggala village in the Koggala Grama Niladari Division of Galle District wherein the predecessors of the Petitioners built a temporary structure, operating a Tea Café from 1960. The Petitioners state

that in 1991 their father had taken steps to register the said Café in the name of *Ranrasa Tea Pan Hala*. In terms of the Plan bearing No. 248/2013 dated 20-10-2013 made by A.J. Jayasekera, Licensed Surveyor marked as P11, the subject matter has been identified as Lots A and B together with the right of way by Lot C. Subsequently, by deed of gift-bearing No. 2379 dated 20-01-2023 attested by Jayanthi Nalani Silva, Notary Public marked as P12(a) and by the deed of gift-bearing No. 2377 dated 20-01-2023 attested by Jayanthi Nalani Silva, Notary Public marked as P13, the mother of the Petitioners gifted the Lots A and B to the Petitioners.

In terms of Section 31 (2) of the Coast Conservation and Coastal Resources Management Act No. 57 of 1981 (as amended) the 1st Respondent issued notices on the Petitioners directing them to remove the unauthorized structures (P17 and P18). Thereupon, the Petitioners on 26-06-2023 marked as P19, preferred an appeal to the 5th Respondent seeking to reconsider the said demolition orders. The 6th Respondent by letters dated 10-08-2023 marked as P22 and P23 informed the Petitioners that under Section 31 (3) of the said Act, the appeals are dismissed.

In those circumstances, the Petitioners state that since they have been in possession of the subject matter since 1960, the position taken up by the Respondents that the structures in dispute have been constructed after the appointed date, namely 01-10-1983 is erroneous, arbitrary and illegal. As the Petitioners obtained lawful title to the subject matter, the demolishing Orders marked as P17 and P18 issued by the 1st Respondent and the dismissal of the appeal marked as P22 and P23 are arbitrary and unreasonable. As such, the Petitioners are seeking Writs of Certiorari quashing the documents marked P17, P18, P22 and P23. A Writ of Mandamus compelling the 1st Respondent to issue a Permit under Section 14 of the said Act on the basis that the premises in suit have been constructed before the appointed date, 01-10-1983.

At first, I shall deal with the title of the Petitioners to the subject matter. The purported title deeds relied upon by the Petitioners are executed only before eight months of the institution of the instant Writ Application. Moreover, the manner in which the predecessor in title, vendor in P12(a) and P13, had obtained title to the subject matter was not described in those deeds. As such, it is abundantly clear that the Petitioners do not have good title to the corpus in suit.

Be that as it may, in terms of the provisions of the Coast Conservation and Coastal Resources Management Act No. 57 of 1981 (as amended), the Coast Conservation and Coastal Resources Management Department is empowered to manage the development activities within the Coastal Zone. Under Section 14 (1) of the said

Act, no person shall engage in any development activity within the Coastal Zone, except under the authority of a permit issued by the Director General, which reads thus;

“Notwithstanding the provisions of any other law, no person shall engage in any development activity other than a prescribed development activity within the Coastal Zone except under the authority of a permit issued in that behalf by the Director.”

The inspection reports marked as R3a and R3b substantiate the fact that the constructions in dispute are well within the setback area. Besides, the Petitioners failed to adduce evidence to buttress their contention that the constructions in dispute were built before the appointed date, namely 01-10-1983. The business known as the Beach Café was registered with the Habararuwa Pradeshiya Sabhawa in 2023 [P15 (h)]. The Report marked as R4 substantiates the fact that the disputed unauthorized constructions are obstructing the road access to the beach. It is well established that the said constructions were built without the permit issued by the Director in terms of Section 14 (1) of the said Act and therefore, the same is liable to be demolished as it is an unauthorized construction. It appears to this Court that the Respondents have taken steps against the Petitioners pertaining to the constructions in suit within the purview of the said Act. As such, the Petitioners are not entitled to invoke the writ jurisdiction of this Court seeking for discretionary remedies.

Thus, I hold that the Application is devoid of merits and therefore, the Notices are refused and the application is dismissed. No costs.

Notice refused and the Application dismissed.

JUDGE OF THE COURT OF APPEAL

K. K. A. V. SWARNADHIPATHI, J.

I agree

JUDGE OF THE COURT OF APPEAL