

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* 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/0245/2021

1. **Center for Environmental Justice,
(Guarantee Limited)**
No, 20/A, Kuruppu Road, Colombo 08.

2. **Withanage Don Hemantha Ranjith Sisira Kumara,**
Executive Director,
Center for Environmental Justice,
20 A, Kuruppu Road, Colombo 08.

Petitioners

Vs.

1. **K.M.A. Bandara,**
Conservator General of Forests,
Forest Department,
Sampath Paya, 82 Rajamalwate Rd
Sri Jayawardenepura Kotte.

 2. **Central Environmental Authority,**
No.104, Denzil Kobbekaduwa Mawatha
Battaramulla.
- 2A. **Hemantha Jayasingha,**
Director General.
Central Environmental Authority
No.104, Denzil Kobbekaduwa Mawatha
Battaramulla.

3. **Hon. C.B. Rathnayake,**
Minister of Wildlife and Forest Conservation,
Ministry of Wildlife and Forest Conservation,
No . 1090, Sri Jayawardenapura
Mawatha,
Rajagiriya.
4. **Hon. Mahindra Amaraweera,**
Minister of Environment,
Ministry of Environment, "Sobadam Piyasa", 416/C/1, Robert Gunawardana
Mawatha,
Battaramulla.
5. **Hon. Wimalaweera Dissanayake**
State Minister of Wildlife Protection,
Adoption on Measures including the Construction of Electric and Trenches and Re-foreststation and Forest Resource Development,
Ministry of Wildlife Protection, Adoption on Measures including the Construction of Electric and Trenches and Re-foreststation and Forest Resource Development,
"Sobadam Piyasa".
5th Floor, Denzil Kobbekaduwa Mawatha,
Battaramulla.
6. **Hon. Chamal Rajapakshe,**
Minister of Irrigation,
T.B.Jaya Mawatha,
Colombo 10.
7. **Hon. Attorney General,**
Attorney General's Department,
Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
W. A. KALUARACHCHI, J.

Counsel: R. Dabare with S. Ponnampereuma for the Petitioners.
Ms. Navodi De Zoysa, SC for the Respondents.

Supported on: 26.10.2023

Written Submissions
tendered on: 08.12.2023 by the Petitioner
11.12.2023 by the Respondent

Decided on: 12.02.2024

MOHAMMED LAFFAR, J.

When this matter was taken up for support on 26-10-2023 for formal notices to the Respondent, the learned State Counsel appearing for the Respondents raised preliminary legal objections as to the maintainability of this Application, which reads thus;

“As several reliefs sought for by the Petitioners are either already granted and/or public duty does not arise in order to issue a mandate in the nature of a Writ of Mandamus against the Respondents, this matter has now become futile.”

In a nutshell, the Petitioners allege that certain parties have commenced construction and expansion of an eighteen-kilometer gravel road from Neluwa to Deniyaya running through the Sinharaja Forest Reserve and such construction is in violation of several statutory provisions. The Sinharaja Forest is a forest reserve that has been declared as a National Heritage Wilderness Area. The construction of reservoirs at Madugate and Katapola and the construction of the aforesaid roadway will negatively affect the biodiversity of the ecosystem of the Sinharaja Forest Reserve. In those circumstances, the Petitioners are seeking, *inter alia*, Writs of Mandamus compelling the Respondents to take legal actions against the perpetrators in terms of the provisions of the National Heritage and Wilderness Area Act

No. 03 of 1988 and the provisions of the Forest Conservation Act, directing the 1st Respondent to protect the Sinharaja forest, directing the Respondents to prepare an updated management plan for Sinharaja National Heritage and Wilderness area and for Sinharaja Forest Reserve in consultation with pertinent stakeholders and implementation of a plan of action to address threats and fill management gaps in conservation and protection of Sinharaja. Seeking an Order in the nature of a Writ of Mandamus compelling the Respondents to demarcate the boundaries of the Sinharaja National Heritage and Wilderness area and the Sinharaja Forest Reserve.

The contention of the Respondents was that there had been a roadway that was in existence for several decades used by the people to travel from Neluwa to Deniyaya. The portion of the said roadway which is from Lankagama to Deniyaya is outside the Sinharaja World Heritage Site and such portion has been widened and renovated. A certain portion of the said roadway which traverses through the Sinharaja Heritage Site has been reconstructed without widening up the existing roadway which will not cause any damage to the forest. There was never a new construction of a roadway through the Sinharaja World Heritage. In these circumstances, the learned State Counsel has taken up the position that several reliefs sought by the Petitioners are either granted or public duty does not arise to issue Writs of Mandamus against the Respondents and therefore, the matter has now become futile.

This is a public interest litigation. The contention of the learned State Counsel was that the Respondents had renovated the right of way in dispute which traversed through the Sinharaja Forest without causing any damage to the forest. These facts are to be substantiated with cogent and adequate documentary evidence. It appears to this Court that before supporting the main matter, tendering a comprehensive objection by the Respondents, and hearing both parties in this regard, this Court is not in a position to come to a conclusion that the matter is futile. The learned State Counsel has not addressed the prayer (g) seeking a Writ of Mandamus directing the Respondents to demarcate the boundaries of the said forest. In those

circumstances, it is the view of this Court that the foregoing preliminary objection raised by the learned State Counsel is premature.

For the foregoing reasons, this Court does not proceed to answer the preliminary legal objection raised by the learned State Counsel for the Respondents at this juncture.

The matter is fixed for support for formal notices.

JUDGE OF THE COURT OF APPEAL

W. A. KALUARACHCHI, J.

I agree

JUDGE OF THE COURT OF APPEAL