

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

1. Mohamed Imtiyas Mohamed Nazvi

No.62/8,
Kolonnawa Road,
Kolonnawa.

2. Fathima Shameera Shiham

No.62/8,
Kolonnawa Road,
Kolonnawa.

CA/ Writ Application No:

CA/WRT/336/2024

PETITIONERS

Vs.

1. Kolonnawa Urban Council

Kolonnawa,
Wellampitiya.

2. Chairman

Kolonnawa Urban Council,
Wellampitiya.

3. H. M. Nelum Kumari

Secretary

Kolonnawa Urban Council,
Wellampitiya.

4. U. U. Premadasa

No. 62/011/1 Kolonnawa Road
Kolonnawa.

5. Hon. Attorney General

Attorney General's Department,
Hulftsdrop,
Colombo 12.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J (President C/A)- Acting.**
K. P. FERNANDO, J.

Counsel: M. D. N. Dilham for the Petitioners.
Respondents are absent and unrepresented.

Supported on: 27. 03. 2025

Decided on: 19. 05. 2025

MOHAMMED LAFFAR, J. (President of The Court of Appeal- Acting)

The Petitioners having filed the amended Petition dated 02.09.2024 seeking, *inter alia*, a mandate in the nature of a writ of Mandamus directing the 1st, 2nd 3rd and 4th Respondents not to park the vehicles of the 4th Respondent obstructing the common right of way depicted as lot 2 in plan marked P2 of the Petition, and an interim order preventing the 4th Respondent from parking her vehicle obstructing the common right of way.

On 03.06.2024 an interim order was issued as prayed for in the prayers to the petition. On 27.03.2025 when the matter was taken up for argument the Respondents were absent and unrepresented. Thus, the learned Counsel for the Petitioner consented to dispose the argument by way of written submissions.

By virtue of the Deed bearing No. 15576 dated 19.08.2016 attested by M. I. M. Mubarak Notary Public the Petitioners became the owner of the premises bearing assessment no. 62/08, Kollonnawa road, Kollonnawa (P1). The said premises owned by the Petitioners are more fully described as lot 03 in the final partition plan bearing No.696 dated 02.01.2004 prepared by Devasurendra, Licensed Surveyor marked as P2. In the said title plan, admittedly the aforesaid lot No. 2 is the common right of way to the said premises owned by the Petitioners. As the premises are situated within

close proximity of the Kollonnawa oil refinery, the Petitioners have obtained written permission, marked as P3, from the Ministry of Defence. According to the approved plan marked as P4 and P5 the Petitioners have constructed a single story building in the said premises. The Petitioners have obtained a building construction report issued by the Petroleum Storage Terminal as well (P6). The Petitioners state that they conduct tuition classes in the said premises to the students of the area under the name and style of 'Syntax' which is registered (P7).

On 16.02.2024 the Petitioners received a letter from the 1st Respondent requesting the Petitioners to relocate the tuition classes, cut down the mango tree and remove the illegal constructions (P8). In terms of the documents tendered, it is established that the constructions of the Petitioners are lawful and in terms of the approved plan issued by the relevant authorities. The mango tree does not cause any disturbance to the common right of way or to the parties, and there is no noise pollution or traffic congestion caused by the conduct of tuition classes. Thereafter, the 1st, 2nd and 3rd Respondents have withdrawn the said letter marked P8. It is stated that the 4th Respondent being a Legal Officer of the 1st Respondent, on the instructions of the 1st, 2nd and 3rd Respondents parks her car and has given permission to her clients, who come to consult her, to park their vehicles obstructing the said common right of way, which is marked as lot 2 in plan marked as P2. The Petitioners further state that the permission given by the 1st, 2nd and 3rd Respondents to their Legal Officer, the 4th Respondent, to park her vehicle in the common right of way is unreasonable, illegal and *mala fide*.

Having scrutinised the petition, affidavit, objections, documents and submissions it is abundantly clear that the 1st, 2nd and 3rd Respondents have no right to allow the 4th Respondent to park her vehicle in the common right of way. Admittedly, the 4th Respondent being a Chief Legal Officer of the 1st Respondent has no legal right to park her vehicle in the common right of way obstructing the said common piece of land.

It is manifestly clear that the decision of the 1st, 2nd and 3rd Respondents and the aforesaid conduct of the 4th Respondent are unlawful, illegal, arbitrary, and violating the lawful right of the Petitioners. In the event of failure on the part of this court exercising its revisionary jurisdiction, indeed material prejudice will be caused to the Petitioners due to the illegal conduct of the public institution and public officers, namely the 1st, 2nd, 3rd and 4th Respondents.

For the foregoing reasons I hold that the Petitioners are entitled to the reliefs as prayed for in the amended Petition dated 02.09.2024. Accordingly, a Writ of Mandamus directing the Respondents not to park the vehicles of the 4th Respondents and her clients obstructing the common right of way depicted as lot 2 in plan marked P2, is issued.

Application allowed, no cost.

President of the Court of Appeal (Actg)

K. P. Fernando, J.

I agree.

Judge of the Court of Appeal