

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

In the matter of Application under and in terms of Article 140 of the Constitution for mandates in the nature of Writs of Certiorari, Prohibition, and Mandamus.

CA (Writ) Application No. 50/2016

1. W.H.M.P.K.B. Wijekoon,
President,
'Digana- Rajawella United Traders
Development Association'.
('Digana- Rajawella Eksath Welanda
Sanwardhana Sangamaya')
2. L. Sarath Chandra,
Secretary,
'Digana- Rajawella United Traders
Development Association'.
('Digana- Rajawella Eksath Welanda
Sanwardhana Sangamaya')

Both of No: 197/1, New Town, Digana,
Rajawella.

3. J.M.P.P.K Gunasekara,
395/2, New Town, Digana,
Rajawella
4. M.S.D. Priyadharshani,
Meegammana,
No. 532, Aluthwatta, Rajawella.

Petitioners

Vs.

1. Kudasale Pradeshiya Sabhawa,
Menikhinna.
2. E.W. Asela Ekanayake,
Chairman,
Kundasale Pradeshiya Sabhawa,
Menikhinna.
- 2A. T.H.S.Ranjana Akmeemana,
Chairman,

Kundasale Pradeshiya Sabhawa,
Menikhinna.

- 2B. W.M.I.W.M.P. Ihillagolla,
Chairman,
Kundasale Pradeshiya Sabhawa,
Menikhinna.
3. Samantha Rohana Athauda,
Secretary,
Kundasale Pradeshiya Sabhawa,
Menikhinna.
- 3A. V.H.G.N. Palitharathna,
Secretary,
Kundasale Pradeshiya Sabhawa,
Menikhinna.
4. Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
5. Anura Dissanayake,
Director-General,
Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
- 5A. H.M.J.K. Herath,
Director General,
Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jaya Mawatha,
Colombo 10.
6. I.M. Ubhaya Kalyana Kumara,
Resident Project Manager- Victoria
Project,
Mahaweli Authority of Sri Lanka,
Victoria Resident Project Manager's
Office, Nilagama, Rajawella.
- 6A. H.M.K.R. Herath,
Resident Project Manager- Victoria
Project,

Mahaweli Authority of Sri Lanka,
Victoria Resident Project Manager's
Office,
Nilagama, Rajawella.

7. Udaya R. Seneviratne,
Secretary,
Ministry of Mahaweli Development and
Environment,
No. 500, T.B. Jayah Mawatha,
Colombo 10.

7A. D.P. Wickramasinghe,
Secretary,
Ministry of Agriculture, Livestock,
Lands and Irrigation,
No. 500, T.B. Jaya Mawatha,
Colombo 10.

Respondents

Before: Dhammika Ganepola, J.

Damith Thotawatte, J.

Counsels: Nishantha Sirimanne with Nelundi Herath for the Petitioners.
Sandun Senadhipathi with Nuwan Godage for the 1st, 2nd and
3rd Respondents instructed by Mary Dickman.
Zuhir Zain, DSG with Dr. Peshan Gunaratne, SC for the 4th to
7th Respondents.

Argued: 04.03.2025 and 30.09.2025

Written submissions
tendered on: 19.11.2019 and 13.11.2025 by 4th – 7th Respondents
26.11.2019 and 27.10.2025 by Petitioners
24.11.2025 by 1st – 3rd Respondents.

Judgement:
Delivered: 20.01.2026

Thotawatte, J.

This application has been instituted by the Petitioners seeking relief in the nature of Certiorari, Prohibition and Mandamus, arising from the decisions and conduct of the 1st to 3rd Respondents, namely the relevant Pradeshiya Sabha and its Chairman and Secretary, acting as the local authority and its chief executive and administrative officers, in relation to land vested in the 1st Respondent by the Mahaweli Authority of Sri Lanka for a defined and restricted public purpose, namely, the maintenance of a children's park for the Digana–Rajawella community.

The 4th Respondent is the Mahaweli Authority, a statutory body charged with the administration and conservation of Mahaweli Special Areas. The 5th and 6th Respondents are senior officers of the said Authority, while the 7th Respondent (at present 7A) is the Secretary to the relevant line Ministry.

The Petitioners to this action, being residents of the Digana–Rajawella area, include the 1st and 2nd Petitioners, who are respectively the President and Secretary of the Digana–Rajawella United Traders Development Association, an unincorporated association representing the collective interests of the local community, and who act in a representative capacity on behalf of the Association and the public, and the 3rd and 4th Petitioners, who are residents and parents of minor children who had continuously used and benefited from the children's park forming the subject matter of this application.

Background

By a written vesting order dated 24 April 2002, (copy annexed to the petition as P-4) the Mahaweli Authority of Sri Lanka had handed over and vested in the 1st Respondent an extent of land measuring 0.2856 hectares (approximately 112.9 perches) situated at Rajawella New Town. The Schedule to the said vesting instrument expressly describes the subject land as a "*Children's Park – Rajawella*." The vesting was effected subject to several express conditions, including that the land be utilised solely for the official and public purpose for which it was vested, that it not be transferred or alienated to any other authority or person, and that, upon any breach of the stipulated conditions, the land would re-vest in the Mahaweli Authority, with power to recover possession.

From the date of vesting in 2002 until approximately 2012, the land was maintained and utilised exclusively as a children's park for the benefit of the Digana–Rajawella community. It is the position of the Petitioners that there is no other dedicated public children's park within the Digana–Rajawella area, the nearest such facility being located several kilometres away.

From about 2012 onwards, the Petitioners observed a progressive neglect of the children's park, including the deterioration of playground equipment and the failure of the 1st Respondent to take effective steps to prevent encroachment upon the land. In the course of time, and in the backdrop of such neglect, the Petitioners became aware that the 1st Respondent had initiated proposals to utilise the very same land for the construction of a multi-storey commercial building complex. This awareness arose through formal and overt acts of the 1st to 3rd Respondents, including the publication of public tender notices, the issuance of written instructions and clarifications to prospective bidders, and the circulation of project descriptions and cost estimates, all of which contemplated a multi-storey commercial structure on the site of the children's park. (It is not in dispute that tenders had been called and plans prepared in relation to the proposed project).

Further, preparatory physical acts had also been carried out on the land itself. Against this factual backdrop, which demonstrated a definite and imminent departure from the purpose for which the land had been vested, the Petitioners had accordingly invoked the writ jurisdiction of this Court.

The Petitioner has filed this present application seeking, *inter alia*, the following reliefs:

1. A mandate in the nature of a Writ of **Certiorari** quashing the decisions of the 1st to 3rd Respondents to construct a commercial/multi-purpose building on the children's park land;
2. A mandate in the nature of a Writ of **Prohibition** restraining further construction or utilization of the land for any purpose other than a children's park;
3. A mandate in the nature of a Writ of **Mandamus** directing the Respondents to maintain and preserve the land strictly in accordance with the original vesting purpose.

Objections of the 1st, 2nd and 3rd Respondents

The principal objections advanced are:

- that the vesting instrument constitutes a **purely contractual arrangement**, not amenable to writ jurisdiction;
- that the Petitioners lack **locus standi**, being traders allegedly motivated by personal or commercial interests;
- that an **alternative remedy** exists, namely re-vesting of the land by the Mahaweli Authority;

- that no legal duty is owed to the Petitioners capable of enforcement by Mandamus.

On the merits, the 1st to 3rd Respondents contend that the proposed development does not defeat the purpose of the children's park, asserting that the project envisages a "modernized" facility incorporating play areas within a commercial complex.

Position of the 4th to 7th Respondents

The 4th to 7th Respondents, deny any illegality on their part and maintain that no final or unconditional approval has been granted for the construction of a commercial building on the subject land. At the same time, they expressly admit that the land was vested in the 1st Respondent solely for the purpose of maintaining a children's park, subject to specific conditions.

The 4th, 5th and 7th Respondents admit that the children's park is situated within an area prescribed for the Mahaweli Authority of Sri Lanka. While the pleadings do not employ the statutory expression "Mahaweli Special Area", the Act recognises no other territorial category by which land may fall within the Authority's jurisdiction, and such admission therefore attracts the statutory regime applicable to a Special Area under section 3 of the Mahaweli Authority of Sri Lanka Act No. 23 of 1979.

The consistent position of the 4th, 5th, 6th and 7th Respondents is that the original purpose of the vesting continues to subsist, that any development of the land must strictly conform to that purpose, and that all actions taken in relation to the land are required to be in accordance with the governing statutory framework.

Locus Standi of the Petitioners – Effect of Personal or Commercial Interest

It was held in *Wanasinghe and others v. University of Colombo and others*¹;

"In India anyone could seek judicial review on illegal governmental and administrative action. No link with the dispute or grievance need to be established. So long as the applicant comes before Court in good faith, standing will be allowed. The focus being the issue or injustice canvassed and not on the interest of the applicant."

In Sri Lanka, the locus standi requirement is based on "sufficient interest" in the matter in dispute.

¹ (2006) 3 Sri LR 322

In “Wanasinghe and others”², His Lordship Justice Sriskandarajah explains that, although Sri Lankan Courts have not relaxed the standing as in India, the requirement of a nexus between the petitioner and the subject matter has been liberally interpreted in appropriate cases, especially where significant public rights are at stake. Further, the fact that a petitioner has a personal or commercial interest in the outcome does not automatically disqualify him and a direct interest may strengthen his standing, since he is genuinely aggrieved.

In the instant case, the Respondents’ objection is premised on the assertion that the Petitioners’ interest is personal or commercial in nature. However, writ jurisdiction does not require the absence of self-interest. What is required is the existence of a **sufficient and direct interest** in the impugned decision.

Even in the absence of a strict legal right, a person with a sufficient and bona fide interest may invoke judicial review³. The only qualification is that the application must be brought in good faith and not by a mere busybody. In the present case, there is no indication of bad faith, and the Petitioners’ interest, whether as members of the local community or as persons affected by the change of use of public land, coincides with a legitimate public interest in ensuring lawful administration of public assets. This Court is therefore of the view that the Petitioners have the requisite standing to maintain this application.

Nature of the Vesting Instrument – Contractual or Statutory

(a) Mode and Legal Character of Vesting

It is clear from the material placed before the Court that the subject land was vested in, and physical possession thereof handed over to the 1st Respondent Pradeshiya Sabha by the Mahaweli Authority of Sri Lanka by a written vesting order dated 24 April 2002 (P-4), and not by way of any private or consensual contractual arrangement. The vesting was expressly conditional, the Schedule thereto identifying the land as a “children’s park”, and the 1st Respondent was required to utilise and maintain the land solely for that public purpose, subject to re-vesting and recovery of possession by the Mahaweli Authority in the event of breach. In the circumstances, the vesting bears the character of a statutory disposition of state lands attended by public-law obligations, and is therefore amenable to the supervisory jurisdiction of this Court.

² *supra*

³ *Ariyaratne and Others v. Inspector General of Police* (2019) 1 SLR 100

(b) Whether the Impugned Decisions are Ultra Vires

The central issue in this instant matter is whether the 1st to 3rd Respondents acted ultra vires in approving the construction of a commercial building on land vested exclusively for use as a children's park. A public authority may act only within the powers conferred by statute and in conformity with the conditions attached to any grant or vesting.

The authority of the 1st Respondent in respect of the subject land is circumscribed both by the conditions of the vesting order (P-4) which expressly restricts the use of the land to a children's park, and by the provisions of section 18(a) of the Pradeshiya Sabhas Act No. 15 of 1987, which require the preservation of such land for public and recreational purposes.

The conditions contained in P-4

1. මහවැලි අධිකාරිය යටතේ ඉටු කරනු ලද්දා වූ/අපේක්ෂිත වූ නිල කාර්යය වෙනුවෙන් එම වත්කම පැවරුම්ලාභී ආයතනය විසින් භාරගෙන පවත්වාගෙන යා යුතුවේ. අදාළ නිල කාර්යය සඳහා මිස වෙන කටයුත්තක් සඳහා එම ඉදිකිරීම භා ඉඩම් පැවරුම්ලාභී ආයතනය විසින් නොයෙද්විය යුතුය.
2. යටෝක්ත ඉඩම් කැබලි හෝ ඉන් කොටසක් හෝ වෙනත් රාජ්‍ය හෝ පළාත් පාලන ආයතනයකට සංවිධානයකට හෝ පුද්ගලයකුට හෝ ස්ථිරව හෝ තාවකාලිකව හෝ මොනයම් පදනමක් මත පැවරීමක් හෝ භාරදීමක් නොකළ යුතුය.
3. අදාළ නේවාසික ව්‍යාපාර කළමණාකරුගේ ලිඛිත අනුමැතියක් නොමැතිව ඉඩම්වල තිබෙන යම් වට්නාකමක් ඇති කිසිම ගසක් කපා හැරීම හෝ ඉඩමෙන් බැහැර කිරීම නොකළ යුතුය.
4. භාරගනු ලබන පොදු (නිල) කාර්යය සඳහා අදාළ ඉඩම් කොටස (මිල) ප්‍රාදේශීය සභාවට දෙපාර්තමේන්තුවට ප්‍රයෝගනයක් නොමැති විටදී නේවාසික ව්‍යාපාර කළමණාකරුට හෝ ඔහුගේ බලයලත් නියෝජිතයකුට ආපසු භාරදීය යුතුවේ.
5. ඉහත සඳහන් කොන්දේසි කිසිවක් පැවරුම්ලාභී ආයතනය උල්ලාසනය කළහොත් ඉඩම් කොටස් භා වත්කම අනිවාර්යෙන් ශ්‍රී ලංකා මහවැලි අධිකාරිය වෙත ආපසු පැවරේ. එවැනි අවස්ථාවක නොවා. කළමණාකරු හෝ ඔහුගේ නියෝජිතයකු විසින් එම වත්කමවල භා ඉඩම්වල නිරවුල් තුක්තිය ශ්‍රී ලංකා මහවැලි අධිකාරිය වෙනුවෙන් භාර ගැනීමට ක්‍රියා කරනු ඇත.

Section 18(a) of Pradeshiya Sabhas Act No. 15 of 1987 provides as follows;

18. Other property vested in Pradeshiya Sabhas.

There shall be further vested in each Pradeshiya Sabha for the purposes of this Act, the following classes of property-

- (a) all public parks, gardens and open spaces acquires by or otherwise transferred to the Pradeshiya Sabha, and all erections and other structures therein and the equipment thereof, subject always to the terms of any trust or the conditions in any instruments by which any such property may have been transferred to the Pradeshiya Sabhas;

This provision obligates a Pradeshiya Sabha to protect and maintain public parks and open spaces, always subject to the conditions of the instrument by which such property has been transferred. It is clear that the impugned decisions to construct a multi-storey commercial building on the subject land were taken without any amendment, variation, or lawful relaxation of the vesting conditions, and in the absence of final approval from the Mahaweli Authority.

In these circumstances, the decisions and actions of the 1st to 3rd Respondents constitute a use of power for a purpose not authorised by law and are, therefore, ultra vires, unlawful, and void, irrespective of the asserted justification that a children's facility would be incorporated within a predominantly commercial structure. The absence of the requisite prior approval from the Mahaweli Authority for a change of use further supports the conclusion that the impugned conduct was ultra vires.

Having regard to the statutory framework and the express conditions governing the vesting of the land, this Court can reach no conclusion other than that the decision of the 1st to 3rd Respondents was ultra vires and is unsustainable in law.

(c) Public Trust Doctrine

Lands vested in the Mahaweli Authority, particularly within designated Special Areas, are held in trust for the benefit of the public, having been acquired or reserved for defined public purposes. When such land is vested in another public authority subject to conditions, that authority assumes the position of a trustee of a public trust, bound to administer the land strictly in accordance with the purpose for which it was vested.

In *Piyarathna and Another vs. Minister of Lands and Others*⁴ his Lordship Justice Mahinda Samayawardhena stated;

"The public trust doctrine is based on the concept that the powers held by the organs of government are powers that originate with the people and are

⁴ (2020) 02 SLR 354

entrusted to the legislature, the executive and the judiciary only as a means of exercising governance and with the sole objective that such powers will be exercised in good faith for the benefit of the people. The exercise of power contrary to the public trust doctrine would be an abuse of power and a contravention of the rule of law.”

The conversion of land expressly vested and maintained as a children’s park into a predominantly commercial development amounts to the diversion of public property from a public purpose to a private or revenue-oriented use, and thereby constituting a breach of the public trust doctrine recognised in the jurisprudence of our apex courts. Public purpose, in this context, connotes public utility and the benefit of the community as a whole, and cannot be diluted by characterising a commercial complex as a means of indirectly funding public amenities.

The diversion of land vested for a defined public purpose within a Mahaweli Special Area to a predominantly commercial use constitutes a breach of the public trust doctrine and an abuse of statutory power, and being a public law wrong affecting public property, is therefore amenable to correction by writ under Article 140 of the Constitution.

The alleged availability of an alternative remedy

As per the Vesting Instrument, it would appear that it is incumbent upon the Mahaweli Authority to take the necessary action in the event of any violation by the beneficiary of the conditions stipulated in the Vesting Instrument. With reference to paragraphs 07 and 08 of the limited statement of objections of 1st to 3rd Respondents and the letter annexed as X-4, it would appear that the Mahaweli Authority should at least have been aware of the impugned project since 2015. Although no specific approval has been granted, neither has the Mahaweli Authority taken any meaningful steps to prevent this project.

Even in post argument written submissions tendered to court on 13th November 2025, the 4th to 7th Respondents have sought to prevent the Petitioners from being granted their relief, rather than taking any measures to prevent the 1st to 3rd Respondents from constructing the building complex or taking steps with regard to the re-vesting of land.

Availability of Certiorari and Mandamus

The 1st Respondent Pradeshiya Sabha is under a clear statutory and public duty to utilise and maintain the subject land exclusively as a children’s park, in strict conformity with

the vesting order and the governing statutory framework. That duty is mandatory, non-discretionary in nature, owed to the public at large, including the Petitioners.

In circumstances where the Respondents have demonstrated an unlawful administrative determination to utilise the land for a commercial purpose, a writ of certiorari lies to quash such a decision, whether express or implicit in conduct.

Where a public authority acts, or threatens to act, in disregard of such duty, a writ of mandamus lies to compel compliance. In the present case, the continued assertion of authority by the Respondents to proceed with the impugned construction, notwithstanding the subsistence of the vesting conditions and the absence of lawful approval, constitutes a continuing failure to perform a public duty, thereby warranting the intervention of this court by way of mandamus.

Conclusion

For the foregoing reasons, this Court holds that the impugned decision manifested by the conduct of the 1st to 3rd Respondents is ultra vires, unlawful, and in breach of the conditions governing the vesting of the subject land. Accordingly, this Court grants and issues a writ of certiorari quashing the decision, whether express or implicit in conduct, to utilise the subject land for the construction of a commercial or multi-storey building complex and a writ of mandamus directing the 1st Respondent to utilise, maintain, and preserve the land strictly in accordance with the vesting order and the governing statutory framework.

The application is accordingly allowed; I make no order as to costs.

Judge of the Court of Appeal

Dhammadika Ganepola, J.

I agree

Judge of the Court of Appeal