

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

In the matter of an application for Orders in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Amber Adventures (Private) Limited,
No. 360, Nawala Road,
Rajagiriya.

PETITIONER

C.A. Case No. WRT/0656/24

Vs.

1. Athma Dilukshi Jayaratne,
Divisional Secretary,
Divisional Secretariat, Udapalatha,
Gampola.
2. The Sri Lanka Tourism Development Authority,
No. 80, Galle Road, Colombo 03.
3. B.H.R. Sariffo Deen,
Director General,
Sri Lanka Tourism Development Authority,
No. 80, Galle Road, Colombo 03.
4. Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”, Battaramulla.

5. Mahinda Withanaarachchi,
Director General,
Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”, Battaramulla.
6. Board of Investment of Sri Lanka,
Level 24, West Tower, World Trade Centre,
Colombo 01.
7. Ambuluwawa Dissanayake Mudiyanselage
Jayaratne Religious Centre,
Ambuluwawa Bio-diversity Complex Trust
Office,
Ambuluwawa ICC Road, Ambuluwawa,
Gampola.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Ali Sabry, P.C., for the Petitioner.

Sanjeewa Jayawardena, P.C., for the 7th Respondent.

Panchali Witharana, S.C., for the 1st – 6th Respondents.

ARGUED ON : 17.10.2025

WRITTEN SUBMISSIONS ON : 31.10.2025

DECIDED ON : 07.11.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioner, Amber Adventures (Pvt) Ltd, by this application, is seeking, *inter alia*, the issuance of a writ of prohibition to prevent the 1st respondent from unduly interfering with or obstructing the cable car

project carried out by the petitioner. The relief is so prayed for by prayer (c).

2. The petitioner is a BOI-registered company and has been selected and employed by the 7th respondent to construct and operate a cable car project on a BOT basis. It is said to be an investment of almost US\$ 6 million. The petitioner has entered into lease agreements to give effect to this project. This project was to be carried out and implemented in Ambuluwawa, situated in the Central Province. The 7th respondent is a trust fund, namely the Ambuluwawa Dissanayake Mudiyanselage Jayaratne Religious Centre and Bio-diversity Complex Trust Fund, which is established and incorporated by Act No. 44 of 2009. The said Trust Fund was the recipient of an extent of land by a Presidential Grant in the Gampola area. It is on this land that the cable car project is being constructed. Prior to commencement of this project, the petitioner obtained the following approvals and clearances from the relevant authorities:
 - i. Ministry of Defence;
 - ii. Central Environment Authority;
 - iii. Urban Development Authority;
 - iv. Board of Investment of Sri Lanka;
 - v. Road Development Authority;
 - vi. National Water Supply and Drainage Board;
 - vii. Divisional Secretariat – Udapalatha;
 - viii. Urban Council – Gampola;
 - ix. Pradeshiya Sabha – Udapalatha;
 - x. Ceylon Electricity Board;
 - xi. Civil Aviation Authority;
 - xii. National Building Research Organization;
 - xiii. Irrigation Department; and
 - xiv. National Resources Management Centre
(Department of Agriculture)

3. This, *inter alia*, also included a letter from the Divisional Secretariat of Udapalatha, X-8(vi), signed by the 1st respondent Divisional Secretary herself. Upon the said approvals, the petitioner has also obtained the approval from the Sri Lanka Tourism Development Authority, the 2nd respondent (X-10). Then, the approval of the building plan by the UDA, the 4th respondent, was also granted, and the development permit was issued to the petitioner. Having so obtained all the necessary approvals, concurrences and licenses, the petitioner has commenced construction.
4. As the construction was in progress on 06.10.2024, the 1st respondent along with officers of the Special Tasks Force (STF), entered the construction site and took the backhoe/excavator and the equipment, along with three employees, into custody and has handed them over to the Gampola Police. It is the apparent complaint and allegation made by the 1st respondent that the petitioner was engaged in unauthorised excavations without necessary approval under the Mines and Minerals Act. Acting on this complaint, the said three employees and the backhoe were produced before the Gampola Magistrate under the Case No. B1103/2024 for an offence under the Mines and Minerals Act. At this point of time, as the petitioner has apprehended and anticipated the 1st respondent would act unlawfully and unduly interfere and obstruct or suspend the cable car project, this application was instituted. The petitioner initially obtained interim relief preventing the 1st respondent from interfering with, obstructing, or suspending the petitioner's project.
5. Initially, the 1st respondent tendered limited objections dated 29.11.2024, which, upon granting of notices and interim relief, were considered and adopted as the substantive objections as requested by the respondents. This statement of objection is supported by an affidavit of the 1st respondent Divisional Secretary. According to the objection, it is claimed that the 1st respondent received information from the Grama Niladhari of Singhepitiya - North of an unlawful

excavation and disposal of earth taking place in Ambuluwawa Watta, a copy of which is produced as R-1. The 1st respondent claims to have made a field visit on 06.10.2024 and observed excavation taking place without safety procedures. The 1st respondent admits to obtaining the assistance and being accompanied by STF Officers and arresting three individuals and producing them before the Magistrate. The 1st respondent has then caused the letters to be sent to 17 state agencies, including those which granted licenses, permits, and approvals.

6. The said letter sent to the Public Trustee is marked P-5, according to which the 1st respondent makes a complaint and attempts to induce the Public Trustee to look into the legality of the grants or alienation of the land in question originally given to the 7th respondent, Ambuluwawa Dissanayake Mudiyanselage Jayaratne Religious Centre. The 1st respondent makes a complaint that there is an unauthorised construction on the said land and an excavation of earth. The 1st respondent is also complaining of a serious environmental harm being caused. It is also stated therein that the 1st respondent was aware that 19 agencies, including the Public Trustee, had issued letters granting consent and permission, informing that there is no reason to object to the said project. The 1st respondent also makes numerous other complaints and allegations of a varying nature. She also clearly admits that the said project has been approved and permission has been granted by the UDA. According to the objections, the primary concerns of the 1st respondent is that the grant of the said land was irregular, the conducting of a survey, and prevention of environmental, ecological, and cultural damage and the impact on the ecosystem. However, I observe no primary reference to an offence under the Mines and Minerals Act in the 1st respondent's substantive objection, despite this being the basis of the initial complaint made to the Magistrate.
7. The petitioner has placed before this Court material that establishes a long-standing dispute between the 1st respondent and the 7th

respondent or its trustees. The complaint and the apprehension of the petitioner is that the 1st respondent is unlawfully attempting to somehow disrupt and prevent the cable car project from proceeding. In their written submission, the petitioner draws the attention of this Court to the following, which demonstrates malice, ulterior purpose, and *mala fides* of the 1st respondent:

- a. that the 1st respondent has provided incorrect or false information to the officers of the Special Task Force as appearing in the information book extracts of the Gampola Police, that:

“විශේෂ කාර්ය බලකාය ගම්පොල කදුවුරේ කදුවුර අණදෙන නිලධාරී ප්‍රධාන පොලිස් පරික්ෂක P. M. නලින්ද වන මා අද දින මාගේ අංක 0718592387 දුරකථනයට ප්‍රාදේශීය ලේකම් උඩපලාත ආත්මා දිල්රැක්ෂි ජයරත්න මහත්මිය එතුමියගේ ජ්‍යෙගම දුරකථන අංක 0718211870 දරණ දුරකථනයෙන් අමතා අම්බුලවාව කන්ද රජයේ ඉඩමේ කිසිදු බලපත්‍රයක් නොමැතිව ඉදිකිරීමක් යැයි පවසා පස් කැණීම කොට එම පස් අම්බුලවාව කන්දෙන් හෙමිමාතගම මාරුගය දෙසට ඇති වත්තේ කැඩී ප්‍රදේශයට බැහැර කර ඇති බවත්, එය පරික්ෂා කිරීම සඳහා පිටව යාමට කියා සිටියා.” (*vide R-4*).

- b. The purported initial allegation against the petitioner on 06th October 2024 was that the petitioner is engaging in mining without a valid licence in terms of the Mines and Minerals Act No. 33 of 1992. However, the Geological Survey & Mines Bureau (GSMB), by letter tendered to the Magistrate's Court of Gampola in case bearing No. B1103/2024, has confirmed that the petitioner is not required to obtain any approval of licence under the Mines and Minerals Act for the activities carried out (*vide X-22*).
- c. The basis of the raid was offences under the Mines and Minerals Act; however, the allegations raised by the 1st respondent in the letter sent to the Public Trustee and copied to others is on the legality of the alienation of the land, leases and possible levying of charges and appropriating a part of the earnings by leasing etc. (*vide R-5*).

- d. The 1st respondent has gone to the extent of writing to the Commissioner General of Lands seeking to cancel the Presidential Grant issued to the 7th respondent Trust (*vide* 'X-2').
 - e. That the 1st respondent as the Divisional Secretary has written to several state agencies making incorrect allegations about the progress and conduct of the construction of the petitioner's project. However, the 1st respondent deliberately failed to produce the responses, which shows the compliance of the petitioner with the terms and conditions (*vide* 'X-21', 'X-22', 'X-23', and 'X-24').
8. The long history of enmity and litigation between the 1st respondent and the 7th respondent or its trustees amply explains to a great degree the conduct of the 1st respondent on this occasion. The fact that, the cable car project is proceeding with all the necessary approvals and licences, especially from that of the UDA, Environmental Authority, NBRO and other relevant agencies, was certainly known to the 1st respondent. This is confirmed by the fact that the 1st respondent had copied the letter R-5 to 19 agencies and authorities, which include the various agencies that have granted permission and necessary licences required for this project. In this backdrop, even if there was some complaint as claimed by the 1st respondent, she could not reasonably have formed the view or opinion that the said excavation is unauthorised and is an unlawful activity without any permit. There is no rationale or basis for the 1st respondent to form the opinion that an offence was committed under the Mines and Minerals Act and to make a complaint accordingly. As I see, the ostensible and apparent reason is that all other agencies have granted the necessary approval and permission. The approval of the Mines and Minerals Bureau was not *per se* required for this project. It was necessary if there be a transportation of soil so excavated. This is so provided by condition No. 06 of the building permit issued by the UDA. That was not required at

this juncture. At the time of the inspection there had been no report of any transportation of soil. That being so, as all approvals and licences were obtained, the only possible allegation the 1st respondent could have thought of and made was under the Mines and Minerals Act. The 1st respondent being the Divisional Secretary, who also appears to be an Attorney-at-Law, seems to have ingeniously crafted the complaint in this form to make out an offence under the Mines and Minerals Act.

9. It is extremely disturbing to observe that the 1st respondent has obtained the assistance of the STF. As it is commonly known, it is the paramilitary outfit of the Sri Lanka Police Force. Admittedly, the 1st respondent has obtained the assistance of the STF as opposed to obtaining the services of the regular Police. The area of inspection does not appear to be alien or unknown terrain or territory to the 1st respondent. The 1st respondent clearly was aware and knew there was an ongoing project with the necessary approvals had and obtained. There had simply been a backhoe and a few employees. In these circumstances I see no reason to take a paramilitary outfit to conduct an inspection, so to say. It strongly savours of a pre-planned and malicious exercise with an ulterior motive on the part of the 1st respondent.
10. As observed hereinabove, the 1st respondent by way of objections, has failed to substantiate or state any rationale or, for that matter, a plausible reason for making a complaint under the Mines and Minerals Act and alleging that this is an unlawful activity on state land without any authority. Instead of so placing material to justify the initial conduct, which is the subject matter of this application, the 1st respondent embarks upon maliciously attempting to impeach the process and procedure pertaining to the grant of the land and the release of the land to the 7th respondent and attempts to make out some case of violations of the conditions of the building permit granted by the UDA. Making an allegation under the Mines and Minerals Act, in this context,

is clearly malicious and is nothing but an exhibition of extreme malice for an ulterior purpose.

11. The conduct of the raid in the guise of an inspection by the 1st respondent is *ultra vires*, unlawful and illegal, in the least. There is a clear-cut effort by the 1st respondent to interfere and jeopardise unlawfully the cable car project, which is proceeding upon the receiving and obtaining of all licences and approvals. It is quite evident that the 1st respondent has carried out the ‘inspection’ and complained to the Police with collateral purpose. The conduct is clearly irrational.
12. The petitioner is seeking a writ of prohibition against the 1st, 4th and 5th respondents. The learned State Counsel cites the following quote from ‘Principles of Administrative Law of Sri Lanka’ by Dr. Sunil Cooray:

“The Writ of Prohibition is available to prevent a proceeding in a given matter, to exercise a power which it does not have under the law, or act in violation of the rules of natural justice where the law requires such officer or authority to observe them. The Writ of Prohibition is not a remedy to restrain the doing of a purely physical act, to restrain which the proper remedy is an injunction.”

Citing this dictum, the learned State Counsel submits and attempts to impress that there is only a physical act and no exercise of power to attract a writ of prohibition. It is argued that there is no evidence of the 1st respondent acting *ultra vires* and of any conduct or arbitrary act in the future to prohibit. It is ironic and incongruous that the learned State Counsel has overlooked the immediate continuation of the above quote of Dr. Sunil Cooray that,

“Further, where it is necessary to restrain an official from purporting to exercise power which he does not have, it is an order in the nature of a Writ of Prohibition to restrain him that must be sought, and not a mandamus to compel him not to act” [emphasis added].

The 1st respondent has in the least purported to exercise power which she does not have. The remedy available to the petitioner is thus a writ in the nature of prohibition.

13. The object and purpose of the writ of prohibition, as Lord Denning M.R. stated in ***R. vs. Greater London Council ex p Blackburn [1976]*** 1 WLR 550, is “*to prohibit administrative authorities from exceeding their powers, or misusing them.*” Wade & Forsyth on Administrative Law (11th Ed.) provides as follows:

*“The prohibiting order developed alongside the quashing order as part of the system of control imposed by the Court of King’s Bench. It was a similar remedy, but was **prospective rather than retrospective**. Primarily it lay to prohibit an inferior tribunal from doing something in excess of its jurisdiction.”* (at page 509) (emphasis added).

“Although a prohibiting order was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective, and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had some power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by a prohibiting order.” (at page 511)

In the landmark case of ***R vs. Electricity Commissioners ex p London Electricity Joint Committee Co.*** [1924] 1 KB 171, Lord Atkin, distinguishing between the writs of certiorari and prohibition, observed as follows:

“I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction.”

M. P. Jain and S. N. Jain, in ‘Principles of Administrative Law’ (7th Ed., Volume II, at page 2388), state the following:

“On the other hand, the object of prohibition is prevention rather than cure. Prohibition is issued when the proceedings before the concerned body are still pending and the matter has not been disposed of but is still being considered by the concerned decision-

making body. The function of prohibition is to prohibit the body concerned from proceeding with the matter further. If proceedings before the concerned body have come to an end then only certiorari can be issued as there remains nothing to prohibit.”

14. The 1st respondent has purported to act in the exercise of powers vested in respect of state lands and also her apparent powers under the Mines and Minerals Act as intimated by condition 6 of the permit. Her conduct clearly establishes that she, in the exercise of powers as the Divisional Secretary, has embarked upon abusing and misusing her powers and acting maliciously to prevent the progress of this approved lawful project. A writ of prohibition is to prevent such officers from so acting and conducting themselves to the detriment and prejudice of such persons.

This would constitute *mala fide* in law, as well as *mala fides* in fact. In support of this proposition, “Principles of Administrative Law” by Jain and Jain (8th Ed., at page 594) reads as follows,

“Mala fide exercise of power does not necessarily imply any moral turpitude as a matter of law. It only means that the statutory power is exercised for purposes foreign to those for which the law intended.”

Then also, Wade & Forsyth in ‘Administrative Law’ (11th Ed., at page 354) where the author states as follows,

It is extremely rare for public authorities to be found guilty of intentional dishonesty: normally they are found to have erred, if at all, by ignorance or misunderstanding. Yet the courts constantly accuse them of bad faith merely because they have acted unreasonably or on improper grounds. Again and again it is laid down that powers must be exercised reasonably and in good faith. But in this context ‘in good faith’ means merely ‘for legitimate reasons’. Contrary to the natural sense of the words, they impute no moral obliquity.”

Then at page 355,

“And Lord Greene MR...treated bad faith as interchangeable with unreasonableness and extraneous considerations. Bad

faith therefore scarcely has an independent existence as a distinct ground of invalidity.”

15. When this judgement was reserved and pending, the 1st respondent Divisional Secretary personally tendered a large number of documents, along with a letter dated 03.11.2025, signed by her, directly to the Registry, with reference to this case number, addressed to the President and other Judges of the Court of Appeal. The 1st respondent was represented by the State Counsel, and it is apparent that the State Attorney was holding her proxy. That being so, the 1st respondent is not entitled in law to file papers or material directly in the form as she has done. I also observe that the 1st respondent is an Attorney-at-Law, as stated therein. Yet for all, there is no basis in law to accept or consider the said letter or documentation so tendered.
16. In the above circumstances, the petitioner has well and truly established that the 1st respondent is hell-bent on disrupting the cable car project of the petitioner. There is no other possible inference that may reasonably be drawn from the averred circumstances. As I see, the timely intervention by this Court in issuing the interim relief did save the project, so to say. It is clear and apparent there was no basis in law to make an allegation under the Mines and Minerals Act. The conduct, as evident by the documentation and pleadings, certainly leads to a very strong inference that the 1st respondent, in the guise of exercising her power *qua* Divisional Secretary has embarked upon a malicious course of conduct to disrupt and obstruct this project, and even now, is attempting to raise certain matters pertaining to the original grant of the land, which took place several decades ago.
17. The only lawful and effective remedy available to the petitioner is to obtain a writ of prohibition as prayed for by prayer (c), which I hold that the petitioner is entitled to. Thus, the petitioner is entitled to a mandate in the nature of a writ of prohibition, restraining the 1st respondent from

unduly interfering and obstructing or taking any action to suspend the cable car project carried out by the petitioner.

18. Accordingly, the writ of prohibition as prayed for by prayer (c) is hereby granted.

19. I have found and concluded that the 1st respondent's conduct is *mala fide*, demonstrating that she acted maliciously and abused her office and authority for a collateral purpose. Thus, this Court is of the view that the circumstances warrant and demand that the 1st respondent be directed to pay costs personally to the petitioner in a sum of Rs.100,000.00. The petitioner is not entitled to the other relief prayed for.

20. Accordingly, the application is partially allowed, subject to costs.

Application partially allowed.

JUDGE OF THE COURT OF APPEAL