

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

In the matter of an Application for Writs in the nature of *Certiorari* and *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Kalanasuriya Arachchige Indrani Perera,
No. 661, Ethul Kotte,
Kotte.
2. D.P. Wickramaratne,
No. 659/16, Ethul Kotte,
Kotte.

PETITIONERS

Court of Appeal Case No:
CA/WRIT/6/2022

Vs.

1. Sri Jayawardenapura Kotte Municipal Council,
No. 6, Nawala Road,
Rajagiriya.
 2. I.V. Premalal,
Mayor of Sri Jayawardenapura Kotte Municipal Council,
No. 6, Nawala Road,
Rajagiriya.
- 2(A) Arosha Attapattu,
Mayor of Sri Jayawardenapura Kotte Municipal Council,
No. 6 Nawala Road,
Rajagiriya.

3. R.A. Shalika Ranaweera,
Municipal Commissioner,
Sri Jayawardenapura Kotte
Municipal Council,
No. 6, Nawala Road,
Rajagiriya.
4. J. Thiwarhar,
Municipal Engineer,
Sri Jayawardenapura Kotte
Municipal Council,
No. 6, Nawala Road,
Rajagiriya.
- 4(A) W.A.S. Damayanthi,
Municipal Engineer,
Sri Jayawardenapura Kotte
Municipal Council,
No. 6, Nawala Road,
Rajagiriya.
5. Urban Development Authority,
6th, 7th and 9th Floors,
“Sethsiripaya”,
Battaramulla.
6. Harshan De Silva,
Chairman,
Urban Development Authority,
6th, 7th and 9th Floors,
“Sethsiripaya”,
Battaramulla.
- 6(A) L.B. Kumudu Lal,
Chairman,
Urban Development Authority,
6th, 7th and 9th Floors,
“Sethsiripaya”,
Battaramulla.

7. N.P.K. Ranaweera,
Director General,
Urban Development Authority,
6th, 7th and 9th Floors,
“Sethsiripaya”,
Battaramulla.

7(A) W.T.H. Ruchira Withana,
Director General,
Urban Development Authority,
6th, 7th and 9th Floors,
“Sethsiripaya”,
Battaramulla.

8. Christobel Silva nee Wijemanne,
No. 659/8, Ethul Kotte,
Kotte.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Chinthaka Mendis with Panchali Illankoon for the Petitioner.
Gamini Perera with Manoja De Silva and Aruni Gunaratne for the 1st to
4th Respondents.
Asoka Serasinghe and Nimesha Karawilakandage instructed by
Akalanka Tharinda Serasinghe for the 8th Respondent.
Panchali Witharana, S.C. for the 5th to 7th Respondents.

Argued on: 16.09.2025

Written Submissions: For the Petitioner on 30.09.2025
For the 1st to 4th Respondent on 03.10.2025

Decided on: 20.11.20205

Mayadunne Corea J

The Petitioner in this Application sought, inter alia, the following reliefs:

- “b) Issue an order in the nature of a Writ of Certiorari against the 1st Respondent, the 2nd Respondent, the 3rd Respondent and the 4th Respondent quashing the purported decision of the 1st Respondent Municipal Council and/or the 2nd Respondent and/or the 3rd Respondent and/or the 4th Respondent dated 1st November 2021, as set out in the letter dated 8th November 2021 marked ‘M’ that the unauthorized construction that is obstructing the turning circle depicted as Lot 5 on Plan No. 1080 dated 23rd May 1997 of D.D.C. Heendeniya Licensed Surveyor marked ‘C’ should be resolved through the institution of a civil action;*
- c) Issue an order in the nature of a Writ of Mandamus against the 1st Respondent, the 2nd Respondent, the 3rd Respondent, the 4th Respondent, 5th Respondent, the 6th Respondent and the 7th Respondent mandating the said Respondents to take steps under the law to issue notice on the 8th Respondent to demolish the unauthorized construction that is obstructing the turning circle depicted as Lot 5 on the Plan No. 1080 dated 23rd May 1997 of D.D.C. Heendeniya Licensed Surveyor marked ‘C’ in terms of the provisions of the Urban Development Authority Law No. 41 of 1978 as amended and the Municipal Councils Ordinance as amended;*
- d) Issue an order in the nature of a Writ of Mandamus against the 1st Respondent, the 2nd Respondent, the 3rd Respondent, the 4th Respondent, the 5th Respondent, the 6th Respondent and the 7th Respondent mandating the said Respondents to take all measures permitted in law to demolish the unauthorized construction that is obstructing the turning circle depicted as Lot 5 on the Plan No. 1080 dated 23rd May 1997 of D.D.C. Heendeniya Licensed Surveyor marked ‘C’ in the event the 8th Respondent fails to comply with a notice issued in terms of prayer (b) above in terms of the provisions of the Urban Development Authority Law No. 41 of 1978 as amended and the Municipal Ordinance as amended”*

The facts of the case briefly are as follows. The 1st Petitioner acquired title to the land through a Partition Decree, following which the 1st Petitioner and other co-owners, including the 8th Respondent, executed a Deed of Partition. The 1st Petitioner demarcated and set apart a portion of her own land as an access road and a turning circle for the benefit of all co-owners. The 2nd Petitioner had purchased a portion of land from the 1st Petitioner.

The Petitioners state that the 8th Respondent constructed a permanent structure on the turning circle without obtaining the necessary approvals from the 1st and/or 5th Respondents, thereby obstructing the use of the turning circle. Therefore, the 1st Petitioner had made a complaint to the 5th Respondent regarding the illegal and unauthorized construction of the 8th Respondent. The 4th Respondent directed the Petitioners and 8th Respondent to attend a meeting with the Deputy Mayor of the 1st Respondent, where, according to the Petitioners, the 8th Respondent admitted to the unauthorized construction. Thereafter, the 4th Respondent instructed the 8th Respondent to remove the unauthorized construction on several occasions. Nevertheless, the 8th Respondent had not taken any steps to this effect. Subsequently, by letter dated 08.11.2021, the 4th Respondent notified the 1st Petitioner and the 8th Respondent that the planning committee of the 1st Respondent had decided that the issue pertaining to the unauthorized construction should be resolved through the institution of a civil action. Hence, this Writ Application.

The Petitioners' contention

The Petitioners challenge the acts of the Respondents on the following grounds:

- The Respondents have acted contrary to the Urban Development Authority Law, No. 41 of 1978 (as amended).
- The Respondents have acted contrary to the Municipal Councils Ordinance, No. 29 of 1947 (as amended).
- The 8th Respondent admitted to erecting an illegal and unauthorised structure

The Respondents' contention

The 1st – 4th Respondents raised *inter alia* the following objections:

- The Petitioners are guilty of laches.
- The Application is frivolous, vexatious and futile.
- The access road is a private road. Hence, the dispute must be resolved by way of civil action in a District Court.
- The 8th Respondent raised an objection pertaining to the non-applicability of the Urban Development Authority Law to the premises and also submitted that the delegation of powers pursuant to section 28A to the 1st -4th Respondents is bad in law.

Analysis

This Court will now consider the Petitioners' submissions along with the objections of the Respondents.

If I am to summarize the Petitioners' contentions, the main relief the Petitioners sought is based on four main grounds. Which are firstly, the 8th Respondent has constructed a permanent structure in the turning circle without the permission of the 1st Respondent (Paragraph 17(a) of the Amended Petition). Secondly, it is argued that though the Municipal Council is charged with the general protection of the people, despite several complaints, the Municipal Council has failed to discharge its statutory duty (paragraph 18(a) of the Amended Petition). Thirdly, Urban Development Authority Law (herein referred to as "UDA Law") provides for a mechanism to enforce the law, especially pertaining to unauthorized structures, which the 1st Respondent has failed to implement. Fourthly, the Sri Jayawardenepura Kotte Municipal Council's inaction or inability to take remedial action pursuant to the provisions of the law.

Keeping the said grounds as it may, in the instant Application before me, the parties have conceded to the existence of the roadway depicted in Plan No. 1080 marked "C" and also of the existence of Lot 5, the turning circle. This plan has been submitted to the 1st Respondent and there is an endorsement to state that, subject to a specific development project being approved by the 1st Respondent, the Lots depicted in the said plan are permitted to be developed. The Petitioners contend that, as per this plan, Lot 5, which contains 9.05 Perches, is the turning circle for the 10ft wide roadway. The 8th Respondent, who occupies Lot 3, is alleged to have constructed an unauthorized structure (roller gate), thereby caused an obstruction and reduced the extent of the turning circle, which has rendered the entire turning circle useless and purposeless. The Petitioners' grievance is that, though complaints were made to the 1st Respondent, inquiries were held by both the 1st and 5th Respondents and decisions were made, none of the decisions have been implemented.

I have carefully considered the objections filed by the 8th Respondent.

In the said objections, I find that the 8th Respondent does not deny the construction within Lot 5. However, in paragraph 9 of the objections, the 8th Respondent had conceded that she had constructed the houses with the consent of the Petitioners.

Applicability of UDA Laws.

The 8th Respondent argues that 1st -7th Respondents have no power to act under the UDA Law. Especially in view of sections 23(5) and 28A, it appears that her main contention is that the land which the dispute arose is not within an Urban Development Area (herein referred to as "development area") as contemplated under section 23 of the UDA Law. Section 23 of the UDA Law enables the Minister to declare development areas by an order published in the Gazette and it further empowers that any development plan and development project which is in conflict with the UDA law shall cease to operate in that area. Subsection 5 of section 23 allows the UDA to delegate any of its powers and duties

related to planning within any area which is declared to be a development area under section 3.

Section 23 reads as follows.

(1) *“Where any area has been declared to be a development area the Minister may, by Order published in the Gazette, declare that any planning scheme or project in a development area under the provisions of the Town and Country Planning Ordinance or under any other enactment which is in conflict with any development plan or development project under the provisions of this Law shall cease to operate in that area.*

....

(5) *The Authority may delegate to any officer of a local authority, in consultation with that local authority, any of its powers, duties and functions relating to planning within any area declared to be a development area under section 3, and such officer shall exercise, perform or discharge any such power, duty or function so delegated, under the direction, supervision and control of the Authority”*

It was contended by the 8th Respondent that the powers under section 23(5) of the UDA Law do not empower a local authority to exercise any of its powers and duties and functions pertaining to development activities. It is the Respondents’ contention that what is delegated is only “planning activities” and the planning procedure. Hence, the argument that the 1st Respondent has no power to give notice under section 28A (1) under the UDA Law. Further, it was her contention that the person who received the notice therefore, is not bound to act pursuant to section 28A (3). This, argument cannot be maintained as under section 23 (5), the delegation of powers pertaining to planning includes the development activities. This is now settled law and in coming to this conclusion I am guided by the case of **Rajalingam v. Colombo Municipal Council** 2020 1 SLR 179, where the Supreme Court **considered** the varying case law and provided clarification on whether the UDA can delegate its powers under section 23(5) of the Law. The Court observed that,

“

Thus, the concept of 'development activity' for the purpose of the UDA Law is nothing but part of ' Planning Procedure 'described in the Law.

Further, it must be borne in mind that section 28A(3) is also a new section introduced by UDA (Amendment) Act, No. 04 of 1982 to lay down the procedure to be followed in respect of certain development activities commenced and continued without a permit or contrary to any term and condition of a permit. Thus, it could be seen that section 28A(3) has a direct bearing on sections 8J and 8K introduced by Act No. 04 of 1982. Therefore, the procedure set out in

section 28A(3) is also indeed a part and parcel of 'Planning Procedure'. Indeed all the above new sections are found under Part II A-'Planning Procedure' introduced by Act No. 04 of 1982.

*Therefore, I have no hesitation to concur with the ratio decidendi of the judgment of the Supreme Court in **Muniyandy Paneer Selvam's** case that the provisions contained in section 28A(3) fall within the scope of the term "planning" and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of a local authority.*

*For the above reasons, I am in full agreement with the interpretation given to section 23(5) of the UDA Law by their Lordships in the cases cited above namely **E. R. M. Piyasena v. H. M. Wijesooriya; S. Sivapragasam and two others v. Robert Jayaseelan Perimpanayagam, Municipal Council Batticaloa and Saravanamuttu Navaneethan, Special Commissioner, Municipal Council Batticaloa and Palligoda Withanage Keerthi Wimal Withana (District Inspector Colombo Municipal Council) v. Muniyandy Paneer Selvam.***

Thus, I am of the view that the delegation of authority to the Respondent to institute the case bearing No. 9341/5 in the Magistrate's Court of Colombo has been correctly done in accordance with section 23(5) of the Urban Development Authority Law, No. 41 of 1978, as amended."

In view of the above judgement, the 8th Respondent's objection based on the argument that the 1st Respondent has no power to act under the UDA law has to fail.

Is the purported unauthorized construction within a development area?

The 1st – 7th Respondents as well as the Petitioners, conceded that the land where the turning circle is situated is within a development area.

The Petitioners, in the 1st paragraph of their Amended Petition, have especially pleaded this. Further, the learned State Counsel for the 5th Respondent tendered the Gazette No.4/1 dated 30.09.1978, the order under section 3 of the UDA Law declaring the said area as a development area. The learned State Counsel has also tendered a board paper whereby it is stated that Sri Jayewardenepura Kotte has been declared a development area under section 3 of the UDA Law. The background information in the board papers states as follows.

"Sri Jayawardanapura Kotte Urban Council Area has been declared as an Urban Development Area under Section 03 of the UDA Law No. 41 of 1978 by the Government Gazette No. 4/1 dated 30th September 1978, and there administrative setup was changed in 1996 and Urban Council was upgraded to

the status of a Municipal Council by a Gazette No. 941/9 dated 17th September 1996.”

The Petitioners in their counter objections have annexed a Gazette Extraordinary No. 1546/3 dated 21.04.2008 marked as “N” and have pleaded that by the said Gazette, the area in which the *corpus* lies namely, the Sri Jayawardenepura Kotte Municipal Council area is declared as an urban development area.

Hence, this Court comes to the conclusion that the disputed land area is situated in a development area within the meaning of sections 3 and 8F of the Law as amended.

The parties were not at variance that, as per the UDA Regulations, any development project within a development area should be done with the approval of the UDA. Let me now consider whether there had been a construction in the disputed turning circle.

The purported construction

The Petitioners’ main contention is that the 8th Respondent had constructed an unauthorized structure, thereby obstructing the turning circle depicted as Lot 5 in the document marked and produced as “C”. The said plan is approved by the 1st Respondent. It is further contended that the purpose of having this turning circle was due to the gradient of the narrow roadway, whereby when a vehicle that enters the roadway cannot turn and has to reverse onto the main Kotte Road down a steep incline, which the Petitioners state is one of the busiest main roads. The Petitioners submit that when they discovered that the 8th Respondent was constructing a permanent structure within the turning circle, they lodged a complaint to the UDA and to Sri Jayawardenepura Kotte Municipal Council, who are the 5th and the 1st Respondents in this Application, respectively. By the letter dated 24.06.2020, the 1st Respondent, upon receiving the complaint by the Petitioners, has called for a meeting with all parties. The said letter is marked as “F”. The said discussion was to be chaired by the Deputy Mayor of the 1st Respondent. The 5th Respondent also had replied to the complaint made by the Petitioner by letter dated 22.07.2020 marked as “E”, which states that the authority pertaining to dealing with the said complaint has been vested with the local authority.

Subsequent to the letter sent by the 1st Respondent, there had been a meeting in the presence of the Petitioners and the 8th Respondent, and as per the minutes of the said meeting, which has been marked and tendered to this Court as “G”, the Petitioners and the 8th Respondent, among others, have participated and signed the minutes. In the said minutes, the 8th Respondent had accepted that she had constructed an unauthorized structure. The said minute reads as follows.

“පිළුරු පත් 1080 හි කෙලවර මායිම් වන හැරවුම් ලක්ෂ්‍ය ලෙස සඳහන් ලොට් අංක 05 පවර්ස් 9.89 ප්‍රමාණය ලොට් අංක 03 හි පදිංචි ක්‍රිස්ටි බල් සිල්වා යන අය විසින් අනවසර ඉදිකිරීමක් සිදු කර ඇති බවත් එම හැරවුම් ලක්ෂ්‍යයේ ගස් වවා අවහිර කර ඇති බවත්

කේ.අයි. පෙරේරා යන අය පැමිණිලි කරන ලදී. සාකච්ඡාවේදී ක්‍රිස්ටි බල් සිල්වා යන අය එසේ අනවසර ඉදි කිරීමක් කර ඇති බවට පිළිගන්නා ලදී.”

It was also contended by the Petitioners, the 1st Respondent and the 8th Respondent that the parties had agreed to abide by a decision from a Court. However, contrary to this minute, the 8th Respondent had filed a motion dated 20.02.2025 with a plan and submitted that she had obtained approval from the 1st Respondent for the construction. The said plan, which is purported to be approved by the 1st Respondent, is a plan for the construction of a house. This Court will advert to the said plan elsewhere in this judgment. However, it is pertinent to note, the contention of the Petitioners is that the 8th Respondent had constructed a structure within the turning circle for her roller gate and the said structure was constructed without the permission of the 1st Respondent.

Action by the 1st Respondent

Subsequent to the said meeting, it appears that the 1st Respondent independently had sent a technical officer to ascertain whether an unauthorized structure had been constructed by the 8th Respondent and it appears that the technical officer tendered his report confirming the unauthorized construction. Upon the receipt of the said technical officer's report, the 1st Respondent, in a letter marked as “I” has informed the 8th Respondent to remove the said unauthorized construction within 14 days of the said letter. The said letter reads as follows.

“අප ආයතනයේ තාක්ෂණ නිලධාරී වරයෙකු ස්ථානීය පරීක්ෂනයක් සිදු කර වාර්තා කර ඇත්තේ ඔබ විසින් හැරවුම් වෘත්තය මත අනවසර ඉදිකිරීමක් සිදු කර ඇති බවයි.

ඒ අනුව මෙම ලිපියේ සඳහන් දින සිට දින 14 ක් ඇතුළත උක්ත අනවසර ඉදිකිරීම කඩා ඉවත්කර මෙම ආයතනය වෙත ඉදිරිපත් කරන මෙන් කාරුණිකව දන්වා සිටිමි.”

It appears that after the 14 day period had lapsed, the 8th Respondent had failed to comply with the notice of removal, which prompted the 1st Respondent to dispatch another letter dated 16.12.2020 whereby the 8th Respondent was given 7 days to remove the unauthorized construction and had been warned that the failure to comply with the order will compel the Respondents to take legal action. The said letter reads as follows.

“මෙම අනවසර ඉදිකිරීම ඉවත්කොට මෙම ලිපියේ සඳහන් දින සිට දින 7ක් ඇතුළත මෙම ආයතනය වෙත දන්වන මෙන් කාරුණිකව දන්වා සිටින අතර එසේ කිරීමට නොහැකි වුවහොත් නීතිමය පියවර ගැනීමට සිදුවන බව වැඩි දුරටත් දන්වා සිටිමි.”

As the said issue had not been settled and the unauthorized structure had not been removed, it appears that the 1st Respondent had thereafter informed the Petitioners as well as the 8th Respondent by a letter dated 31.09 2021(marked as “K”) to obtain the services of a surveyor to identify the unauthorized structures within the relevant premises and the road. Strangely, this letter has been issued despite the 1st Respondent being possession of the site inspection report from technical officers which confirms

the existence of an unauthorized structure. It was argued that as the Petitioners did not receive any further response from the 1st and 5th Respondents, the Petitioners had lodged a complaint with the police pertaining to the obstruction of the roadway and the disturbances caused by the said unauthorized construction marked as “L”.

Thereafter, the Petitioners submit that the 1st Respondent, for reasons unknown to them, had been reluctant to act according to the UDA Law but had issued a letter marked as “M” bearing the date 08.11.2025. The impugned letter whereby the 1st Respondent had informed the Petitioners as well as the 8th Respondent to resolve the issue pertaining to the unauthorized structure through civil litigation between the parties. The Petitioners vehemently contend that by this letter, the 1st Respondent had failed to act according to the powers vested with the 1st Respondent Council and also by asking the parties to resolve the issue through civil litigation has derelict and abdicated its powers.

The learned State Counsel appearing for the 5th Respondent, in her submissions, submitted a complaint received by the 5th Respondent from the 1st Petitioner, whereby she has complained of the unauthorized structure. The letter bearing the date 01.07.2020 is marked as 5R1. The 5th Respondent, objecting to Writ Application on the grounds of delay further submitted that the 1st Petitioner had complained about the unauthorized construction only by the said letter. This Court is not inclined to accept the said submission in view of the letter marked as “F” by the Petitioners, which is issued by the 1st Respondent. The 1st Respondent had called a meeting to resolve the dispute between the parties on 30.06.2020. The letter inviting the parties to the meeting is dated 24.06.2020. The said letter predates the letter 5R1 and it is observed that for the 1st Respondent to send the letter on 24.06.2020, the Petitioners’ complaint should have reached the 1st Respondent prior to June 2020.

Further, I observe that even in the letter marked as 5R1, the Petitioners have mentioned about the inquiry that the Deputy Mayor of the 1st Respondent had conducted in June 2020. However, the 1st Respondent in its objections conceded that the 1st Respondent has undertaken two site inspections and observed that there is an unauthorized structure that obstructs the turning circle. Further, in view of the Development Circular No. 27 dated 04.12.2017 issued by the UDA the 1st Respondent admitted that the Authority is with the power to deal with unauthorized constructions. The 5th Respondent also tendered to this Court the field reports by their technical officers marked as 5R3 and 5R4.

Let me now consider whether the 1st Respondent’s act of dispatching the letter marked “M” is bad in law and whether the 1st Respondent had failed to act according to the powers vested with it.

Further action of the 1st Respondent.

As discussed earlier in this judgment, the premises which the structure that is in dispute is situated within the UDA declared area under section 3 of the UDA Law. Thereby, it is mandatory that any development within the said development area requires the approval of the UDA. As observed earlier the UDA has delegated its power to the 1st Respondent. The 1st Respondent after two inspections had come to the conclusion that the 8th Respondent had constructed a structure that is unauthorized. At an inquiry, the 8th Respondent herself had admitted that she had constructed an unauthorized structure. Hence, in my view there is sufficient material for the 1st Respondent to act under the UDA Law pertaining to unauthorized constructions.

Further, the 1st Respondent has exercised the delegated power by issuing the letters marked as “I” and “J”, ordering the unauthorized structure to be removed within 14 and 7 days. However, the learned State Counsel for the 5th Respondent states that though the letters were sent in 2020, no legal action has been instituted. Let me now consider whether the 1st Respondent has the power for the removal of unauthorized structures.

In terms of section 8J (1) of the UDA Law, it is stated that,

“Notwithstanding the provisions of any other law, no Government agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Authority.”

Hence, it is clear for a construction within a development area can be carried out only with the permissions of the UDA. Let me also consider whether the development activity, namely, the construction of the structure containing a roller gate falls within the meaning of a development activity.

Development activity is defined in the UDA Law under section 29 as,

*“development activity means the parcelling or sub-division of any land, **the erection or re-erection of structures and the construction of works** thereon, the carrying out of building, engineering and other operations on, over or under such land and any change in the use for which the land or any structure thereof is used, other than the use of any land for purposes of agriculture, horticulture and the use of any land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of a dwelling house, not involving any building operation that would require the submission of a new building plan.”* (Emphasis added).

In light of the above, it is apparent that the roller gate constructed by the 8th Respondent constitutes a development activity within the meaning of section 29 of the Law. Therefore, the construction of a roller gate could be carried out only with an approval namely, a construction permit issued by the 1st Respondent. If a permit has not been

obtained by the 8th Respondent, the construction of the roller gate becomes an unauthorized structure. In the instant case before this Court, the 8th Respondent failed to produce any construction permit to erect a structure for the roller gate. Thus, making the said structure an unauthorized structure. The legislature in its wisdom has provided to curtail unauthorized structures and the mechanism to remove the same, can be found in the UDA Law. Let me now consider the law governing the removal of unauthorized structures.

The procedure the UDA must follow in terms of unauthorized construction is set out in section 28A of the UDA Law which states as follows.

“(1) Where in a development area, any development activity is commenced continued, resumed or completed without permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the Authority may, in addition to any other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, on or before such day as shall be specified in such notice, not being less than seven days from the date thereof

(a) to cease such development activity forthwith; or

(b) to restore the land on which such development activity is being executed or has been executed, to its original condition; or

(c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit, and for the purposes of compliance with the requirements aforesaid:

(i) to discontinue the use of any or building; or

(ii) to demolish or alter any building or work.

(2) It shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any requirement specified in such notice within the time specified in such notice or within, such extended time as may be granted by the Authority on application made in that behalf.

(3)

(a) Where any person has failed to comply with any requirement contained in any written notice issued under subsection (1) within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may, by way of petition and affidavit, apply to the Magistrate to make an Order authorizing the Authority to-

(a) to discontinue the use of any land or building;

(b) to demolish or alter any building or work;
(c) to do all such other acts as such person was required to do by such notice,
as the case may be,
and the Magistrate shall after serving notice on the person who had failed to comply
with the requirements of the Authority under subsection (1), if he is satisfied to the
same effect, make order accordingly.”

In view of the above provisions contained in the UDA Law it is the duty of the 1st Respondent to implement the said provisions of the law which it has attempted to do by the letters marked as “I” and “J”. However, the 1st Respondent has not taken any further action for reasons best known to them and not disclosed to this Court. In view of the provisions of the above Law, if 8th Respondent had erected an unauthorized structure, the UDA has the power to institute action in the Magistrates Court requesting for an order authorizing the UDA to abolish the structure. It is not disputed and as I have stated above, the UDA has delegated its power to the 1st Respondent. Hence, by issuing the letter marked “M”, the 1st Respondent had abdicated its powers and had attempted to allow the parties to litigate on their own. It is the duty of the 1st respondent to exercise the said powers in compliance with the law and not to delegate the said powers to 3rd parties. This, in my view, is a clear dereliction of the powers vested with the 1st Respondent.

Accordingly, I am of the view, that the letter marked as “M” is bad in law for the reasons stated above.

Has the 8th Respondent obtained approval for the construction?

It is pertinent to observe that the learned Counsel appearing for the 8th Respondent submits that all the construction has the relevant approval. The 8th Respondent tendered the alleged development approval by way of a motion dated 20.02.2025. This Court observes that the said motion tendered by the 8th Respondent contained a plan for a proposed house within the 8th Respondent’s premises. It does not disclose any construction within the turning circle. Nor does it depict the disputed roller gate. Hence, the said plan does not shed any light to substantiate the 8th Respondent’s argument that she has obtained prior approval for the construction of the disputed construction. It is also pertinent to note that the learned Counsel for the 1st Respondent at the hearing as well as in the written submissions has stated that the plan that has been tendered to this Court by way of a motion is different from the plan tendered for approval of the 1st Respondent.

As per its records, the 1st Respondent contended that even the building permit granted for the construction of the 8th Respondent’s house which is depicted in the plan has lapsed and that there is no material in the file maintained to reflect an extension has been sought or granted. Further, it was argued that certain changes and endorsements

that are found in the plan tendered to this Court by the 8th Respondent are not available in the plan which is in the custody of the 1st Respondent. In this context, the learned Counsel for the 1st Respondent very boldly stated that the plan submitted is not genuine and amounts to forgery. To exuberate the gravity of this, the 1st Respondent had attached a letter issued by the Chief Municipal Engineer of the 1st Respondent dated 06.05.2024 which clearly states that the alleged changes and amendments made to the plan are not reflected in the office copy of the plan which is in the custody of the 1st Respondent. Further, it is alleged that the signature of the Mayor placed in the purported plan of the 8th Respondent too, is not reflected in the office copy. As per this submission, it is a serious matter that warrants an investigation by the 1st Respondent.

This Court observes that the 8th Respondent has failed to establish that she had submitted a plan to obtain approval for the construction of the roller gate nor any approval granted by the 1st Respondent for the construction of the same.

Aggravating the situation further, through a motion dated 02.06.2025, the 1st Respondent has filed a document dated 07.04.2025, stating that even the purported construction of the house which is depicted in the disputed plan tendered by the 8th Respondent has not been issued with the Certificate of Conformity. Thereby, making the entire construction of the house an unauthorized structure. Before concluding, I will now consider the objections raised by the 1st – 4th Respondents.

Objections to the Application

The 1st Respondent firstly objects, to this Application on the basis of delay and laches on the part of the Petitioners and contends that the Court should dismiss the Application. It was learned Counsel's contention that the grievance had arose in 2020. It was argued that the Petitioners had only invoked the jurisdiction of this Court in 2022. Thus, it is argued that there is a delay of 2 years.

In considering these objections I have perused the documents tendered to this Court. I have observed that the Petitioner had commenced her long list of complaints to the 1st Respondent in the year 2020. Subsequently there had been various correspondence between the parties and there had been various meetings throughout the year 2020 and thereafter the 1st Respondent had issued 2 notices for demolition in December 2020 giving time for the 8th Respondent to remove the unauthorized structure. As the unauthorized structures had not been removed, the 1st Respondent had dispatched a letter to the Petitioners and the 8th Respondent dated 08.11.2021, whereby the 1st Respondent had informed the parties to resolve the dispute through civil litigation. This letter is dated 08.11.2021. This letter is the letter impugned by the Petitioners. The Petitioners thereafter in January 2022 has filed the Petition which is only about 2 months from the date the impugned letter had been issued by the 1st Respondent. In my view, I cannot consider the period of two months as a delay. Especially in the light of the factual

circumstances describe above. Further, it is also pertinent to observe that the 1st Respondent who had received the complaint in 2020 had failed to take any meaningful action as prescribe by law until the year 2022. Hence in my view this objection is not tenable.

The 1st Respondent also objected to this Writ Application and contended that the Petitioners have not exhausted the alternative remedies available to them. Namely, it is contended that the Petitioners should have recourse to civil litigation. In my view, this objection is not tenable as the Petitioners' grievance is pertaining to an unauthorized construction. Removing unauthorized construction within an urban development area, especially within an area which falls within section 3 is clearly with the 1st Respondent. The 1st Respondent has been given statutory power for this purpose. Hence, this objection has to fail. I have considered the judgments of *M.A.D.A.K. Mallikarachchi v. Dr.P.V.N.P. Amarasinghe Director, Medical Research Institute and others* CA Writ 474/2021 decided on 14.11.2023 and *Ceylon Petroleum Storage Terminals Limited Vs Mr. B.K. Prabath Chandrakeerthi and Others* CA Writ 243/2021 decided on 10.02.2022 and I find that the facts and circumstances of the said case is not relevant to the case before me.

The 1st Respondent in its written submissions has attempted to address the issue before us as an issue of encroachment. However, it is pertinent to observe that the complaint was based on a complaint of unauthorized construction. The 1st Respondent's subsequent conduct of sending the technical officers and the inquiry held with the participation of all parties, too seems to be on an issue of unauthorized construction. As I have stated it is the 1st Respondent who is entrusted under the UDA Law to authorize constructions and to take steps pertaining to unauthorized constructions. In this context, I do not agree with the 1st Respondent's submission that they have at all times enforced the Municipal Council Regulations and taken action against the violations established.

The objections taken by the 8th Respondent was on the basis that the construction does not fall within the UDA area. Hence, it was argued that the 1st Respondent has no legal authority to act under the UDA Law. In my judgement I have already discussed the applicability of the UDA Law pertaining to the *corpus* where the disputed construction is. Hence, the objections raised by the 8th Respondent has to fail.

Conclusion

Accordingly, as per the reasons stated above, when the UDA Law vests the power with the 1st Respondent to remove the unauthorized structure, issuing the impugned letter marked as "M" directing the parties to resolve their dispute pertaining to an unauthorized construction by resorting to civil action is bad in law. Hence, I proceed to issue a Writ of *Certiorari* to quash the decision contained in document marked as "M".

In view of the overwhelming evidence pertaining to the construction of an unauthorized structure, to which the 8th Respondent too, has conceded at the inquiry before the 1st Respondent, this Court proceeds to issue a Writ of *Mandamus* against the 1st- 4th Respondents to act according to the UDA Law and the Municipal Council Ordinance pertaining to unauthorized constructions.

The Petitioners' prayer (d) is based on a future eventuality on the assumed non-compliance of the 8th Respondent. In any event as I have issued a writ of *Mandamus* under prayer (c), in my view, prayer (d) will not arise.

Since I have partly allowed the Writ Application of the Petitioners and since the Petitioners have invoked the Writ Jurisdiction of this Court due to an unauthorized construction by the 8th Respondent, and the failure of the 1st Respondent to act pursuant to the law, I award a cost of Rs. 50,000 each to the 1st and 2nd Petitioners to be paid by the 1st and 8th Respondents equally.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal