

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

*In the matter of an application under
Article 140 of the Constitution for a
Mandate in the nature of a Writ of
Mandamus.*

1. Shanthany Sirisena,
No. 21A - 1/1 Amarasekara Mawatha,
Colombo 05.
2. Manju Vasvani
No. 21A - 3/1 Amarasekara Mawatha,
Colombo 05.

PETITIONERS

CA (Writ) Application No. 126/2024

Vs.

1. Condominium Management Authority,
1st Floor, National Housing Department
Building,
Sir Chittapalam A. Gardiner Mawatha,
Colombo 02.
2. General Manager,
Condominium Management Authority,
1st Floor, National Housing Department
Building,
Sir Chittapalam A. Gardiner Mawatha,
Colombo 02.
3. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Ms. Ajithaa Edirimanne with Ms. Diana Weerasinghe for the Petitioner.
Ms. Indumini Randeny, State Counsel for the Respondents.

Argued on: 15.05.2025 and 17.07.2025

Written Submissions: Petitioner on 01.09.2025
Respondents on 08.09.2025

Decided on: 08.12.2025

Mahen Gopallawa, J.

Introduction

The Petitioners are purchasers of two condominium units of the condominium property called "Dawson Court" situated at Nos. 21A and 21B, Amarasekera Mawatha, Colombo 5 developed by Manisha Homes (Private) Limited. They have filed the instant application impugning the failure on the part of the 1st Respondent Condominium Management Authority (CMA) take over and register itself as the owner of the aforementioned condominium property and the failure to execute deeds of transfer in favour of the Petitioners and other purchasers of condominium units therein.

The reliefs prayed for in the petition are as follows;

(a) Notice on the Respondents.

*(b) A mandate in the nature of a **Writ of Mandamus:***

ordering the Respondents to take over the State vested "Dawson Court" condominium property situated on the premises morefully described in the 1st Schedule hereto under powers vested in the Condominium Management Authority in terms of section 6(a) and section 10(a) of the Common Amenities Board (Amendment) Act No. 24 of 2003 read together with section 6 of the Crown Lands Ordinance by attending to all matters that are required to be done in terms of the said statutory provisions and by registering the Condominium Management Authority as the owner of the said condominium property under an amended Deed of Declaration and in all other connected documents;
And

In terms of the powers vested in section 10(c) of the Common Amenities Board (Amendment) Act No. 24 of 2003 to dispose all such fully paid condominium units (parcels) to the 1st and 2nd Petitioners and to all other purchasers of condominium units depicted in the Condominium Plan No. 3170 dated 18.01.2013 made by S. Krishnapillai Licensed Surveyor, as identified in their respective Sales Agreements/Deeds of Assignment, for such transaction costs as determined by the said Authority.

(c) An order for costs; and

(d) An order for such further and other reliefs that Your Lordships Court shall seem meet.

The Respondents have objected to the grant of the reliefs sought by the Petitioners and moved for a dismissal of the application. In addition, they have also raised the following legal objections;

- (a) The Petitioners have not established their *locus standi*;
- (b) The Petitioners' remedy lies in contract and not in writ;
- (c) The Petitioners' have failed to cite necessary parties to this application despite such parties being patently clear at the very outset of the institution of the application; and
- (d) The relief prayed for is futile because factually Dawson Court or the land is not owned by the CMA, and that in any event, CMA does not have the power to alienate its property without the concurrence of the Minister.

Since the said legal objections are closely intertwined with the factual background, I propose to consider them after examining the merits of the case presented by the Petitioners.

Factual Background

According to the petition, the Petitioners had purchased and fully paid for their condominium units.¹ The construction of the condominium building had been completed by the Developer, Manisha Homes (Private) Limited (Manisha Homes) in or around 2000/2001 but had failed to execute deeds of transfer in favour of the purchasers who had paid for and were in possession of condominium units therein.

Pursuant to a complaint received, the CMA had conducted an inquiry and it had been revealed that the aforementioned Developer had failed to register the condominium plan in accordance with section 3 of the Apartment Ownership Law, No. 11 of 1973 (as amended).² The 2nd Petitioner

¹ As evidenced by the Sale Agreements P3(a) and P3(b), the 2nd Petitioner has purchased her condominium unit on 03.05.1999 from the Developer Manisha Homes Private Limited directly whilst the 1st Petitioner appears to have purchased her condominium unit on 16.05.2017 from another party who had entered into a Sale Agreement with the said Developer.

² The Inquiry Report has been annexed to the Objections of the Respondents marked R5.

had attended such inquiry. The CMA had directed the Developer by letter dated 09.04.2007³ to take steps to register the condominium plan within 3 months thereof, and, in view of its failure to comply with such direction, had proceeded to institute Case No. 22836/05/2008 against the Developer and its directors in the Magistrate's Court of Colombo.⁴

The objections, *inter alia*, disclose that, Manisha Homes (Private) Limited had been re-registered on 10.02.2014 (R1) and that a Certificate for Common Amenities and Common Elements had been issued on 21.05.2013 (R1). Approval had also been granted for the Condominium Plan (P1).

The pleadings also disclose the institution of several civil actions in respect of this matter. Two purchasers of condominium units⁵ had instituted Case No. CO/14/2014 against the Developer, 3 directors, the Registrar of Companies, and the Attorney General in the Commercial High Court of Colombo but had withdrawn the said action on 26.01.2016.⁶ Thereafter, 6 purchasers, including the petitioners in the aforementioned case, had instituted Case No. DTR/06/17 in the District Court of Colombo against the directors of the Developer and the parties had arrived at a settlement and recorded same on 28.01.2019.⁷

It appears that a Deed of Declaration under section 5(i) and (ii) of the Apartment Ownership Law bearing No. 2993 dated 29.03.2019 (P10) had been executed and the Condominium Plan (P1) registered in the Land Registry of Colombo, in accordance with such terms of settlement. Although the Petitioners have challenged the validity of the said Deed of Declaration, the Respondents have taken up the position that the company had been re-registered on 10.02.2014 and was a duly registered company as at the date of execution of the said Deed.⁸

After the aforementioned Deed of Declaration was executed, 4 purchasers, including the Petitioners had instituted action in the District Court of Colombo bearing No. DSP 310/2019 against the parties in Case No. DTR/06/17, the Registrar of Companies, the CMA and the Hon. Attorney General (R9). In the said action, the plaintiffs had sought, *inter alia*, injunctive relief against the execution and registration of deeds by the directors of the Developer in terms of the settlement in Case No. DTR/06/17, order directing the CMA to acquire the condominium property and an order to amend the Deed of Declaration. A copy of the plaint in the said action has been tendered to this Court by the Respondents with their objections (R9). The Registrar of Companies, the CMA and the Hon. Attorney General had moved Court to discharge them from the said action, and accordingly they had been discharged from the said action by order dated 09.05.2022 (P12/R10). Although the plaintiffs had objected to the discharge of the CMA, the learned District Judge had observed that since the CMA exercised statutorily conferred quasi-judicial powers and

³ This letter has been annexed to the Petition marked P4 and to the Objections of the Respondents marked R6.

⁴ The Amended Plaint and Charge Sheet are annexed to the Objections of the Respondents marked R7 and R8.

⁵ Their names are disclosed as Mahmud Mohomad Thaslim and Amarasinghe Widana Pathirana Dilum Niroshana Amarasinghe in the Objections of the Respondents.

⁶ The order of the Commercial High Court has been annexed to the Petition marked P8.

⁷ The proceedings and order Court and the signed Terms of Settlement dated 28.01.2019 are annexed to the Petition marked P9.

⁸ vide paragraph 18(iv) of the Objections of the Respondents.

the District Court was not empowered to issue the directions sought by the plaintiff against it. The Petitioners do not appear to have canvassed the said order in appeal and neither have they indicated the current status of such case.

Thereafter, the Petitioners had requested the CMA to take over the condominium property on the basis that it is vested in the State and to execute Deeds of Transfer to their condominium units by letter dated 19.06.2023 (P13), and, in the absence of a response to a subsequent letter demand dated 23.12.2023 (P15(a)), proceeded to file the instant application. In their petition, the Petitioners have also disclosed that, although there is no legally valid registration of the condominium property, the CMA has been levying an annual fee from the group of purchasers of Dawson Court referring to them as a “Committee.”⁹

Grounds of Review and Analysis

As per the pleadings filed and submissions made by learned Counsel on their behalf, the positions taken up by the Petitioners can be summarized as follows;¹⁰

- (a) Due to its failure to re-register when the Companies Act, No. 7 of 2007 was enacted, Manisha Homes (Registration No. PVS 22599) has been struck off as a limited liability company by the Registrar of Companies on 01.03.2010 under section 487(3) of the said Act on 01.03.2010. Hence, the Developer of the condominium property is no longer in existence and its property has vested in the State in terms of section 487(5) of the Act;
- (b) The Deed of Declaration (P10) is invalid since it has been ex-Directors of Manisha (Private) Limited (Manisha), which is a different company (Registration No. PV 13196), and as the condominium property has vested in the State;
- (c) Even though the construction of Dawson Court has been completed, it is yet to become a “validly registered condominium property, which is an essential requirement for the valid sub-division of the building into condominium units;
- (d) The CMA has necessary powers to take over property vested in the State and issue Title Deeds to the Petitioners in terms of section 5(m) (*to complete any incomplete condominium building*), section 10(a) (*to take over State vested property*) (to be read with section 6(1) of the Crown Lands Ordinance) and section 10(c) (*to dispose property so acquired*) of the Condominium Management Authority Law No. 10 of 1973 (as amended); and
- (e) Despite being fully aware of the plight of purchasers of condominium units of Dawson Court, the CMA has failed, to date, to exercise the powers vested in it to take over the property

⁹ vide paragraph 24 of the Petition.

¹⁰ vide paragraph 2 of the Written Submissions of the Petitioners.

vested in the State and granting relief to such purchasers. In this regard, the continuation of Colombo Magistrates' Court Case No. 22836/05/2008 against the non-existent Manisha Homes is futile.

In their written submissions, the Petitioners have also stated that they have invoked the jurisdiction of this Court properly and in good faith under the law as it stood.¹¹ They have further submitted that any delay in determining the matter is not attributable to the Petitioners but has occurred due to the conduct of the CMA and that they will be unfairly penalized if relief is denied to them.¹²

The Petitioners have also founded a claim of legitimate expectation based on the past conduct of the CMA under the Apartment Ownership (Special Provisions) Act, No. 23 of 2018.¹³

I now propose to examine the aforementioned positions taken up by the Petitioners in detail, with recourse to the submissions of the respective parties thereon and applicable statutory provisions and judicial authorities.

(a) Legal Status of the Developer of the Condominium Property

According to the Petitioners, the legal effect of the failure to register during the prescribed period after the enactment of the Companies Act No. 7 of 2007 is that the Developer, Manisha Homes (Private) Limited, has been struck off the register of companies and has ceased to exist as a limited liability company. Such argument is posited on section 487(3) of the Companies Act, which provides as follows;

487 (3) Where an existing company fails to comply with the requirements imposed under subsection (2) of this section within the time specified therein, the Registrar shall cause to be published the name of such company in a daily newspaper in the Sinhala, Tamil and English Language, and where such company continues to fail to comply with those requirements thereafter, the Registrar shall, within six months of the publication of its name in the newspapers, strike off the name of such company from the register maintained by him under the provisions of section 473.

In interpreting the aforesaid section 487(3), the learned Counsel for the Petitioners contended that striking off the name of a company from the companies register thereunder by the Registrar of Companies had the effect of dissolving it and bringing its existence to an end. The fact that Manisha Homes (Private) Limited has been struck off is not in dispute since the Registrar of

¹¹ Vide paragraph 5.1 of the Written Submissions of the Petitioners.

¹² Vide paragraphs 5.2 and 5.3 of the Written Submissions of the Petitioners.

¹³ Vide paragraph 5.4 of the Written Submissions of the Petitioners.

Companies had confirmed that the said company had been struck off from the register under section 487(3) on 01.03.2010, by letter dated 06.05.2019 (P6).

However, the aforementioned position taken up by the Petitioners regarding legal effect of striking-off a company under section 487(3) has been put in issue by the Respondents. The argument advanced by the learned State Counsel for the Respondents was that the procedure set out in section 487 does not lead to the dissolution of a company. She premised such argument on the fact that section 485 of the Companies Act specifically recognized the continuing existence of 'existing' companies and that a company can only cease to exist under the Companies Act when it is wound up and dissolved.¹⁴ She also drew a comparison between the text of section 487(3) and section 394(6), which provides for the striking off of defunct companies and observed that, whilst section 394(6) contained the words "shall be struck off the register and be dissolved" no reference has been made to "dissolution" in section 487(3). Hence, the learned State Counsel submitted that it was entirely possible that the name of a company being struck off the register *per se* did not have the effect of dissolving it and it was a curable defect.

The learned State Counsel further submitted that Manisha Homes (Private) Limited had been struck off the register well-past the statutory deadline on 01.03.2010, and, that the company was subsequently re-registered under the same name on 05.02.2014, as reflected in the documents R2 and R3.¹⁵ Hence, she submitted that there has been and *is* a private limited liability company by the name of Manisha Homes (Private) Ltd since such date of re-registration.

The Petitioners have submitted that, since there is no provision in the Companies Act to re-register a company which had been struck off after the period specified in section 487(4) had lapsed, the "Manisha Homes (Private) Limited" that was registered on 05.02.2014 under the registration no. PV 96956 is a new company and not the owner of the land and property upon which Dawson Court has been constructed.

This position too has been contested by the Respondents. Learned State Counsel for the Respondent submitted that whether the re-re-registration was valid or not and whether it had effect of reversing the vesting of any property, are matters that have to be clarified either by the Registrar General of Companies or by the directors of Manisha Homes (Private) Ltd, both whom the Petitioners had failed to cite as parties in the instant application. Furthermore, it was submitted that the material submitted to Court by the Petitioners themselves indicated that the directors of Manisha Homes (Pvt) Ltd. had agreed in District Court Case No. DR/06/2017 (P9) to treat Dawson Court as a property that was held on trust for purchasers, and had entered into a settlement to issue Deeds of Transfers to the plaintiffs in that case (P9). The learned State Counsel further submitted that, in any event, such issue involved an inquiry into disputed facts, which this

¹⁴ Vide paragraphs 26 and 27 of the Written Submissions of the Respondents.

¹⁵ It is observed that the two persons listed as directors of the re-registered company in R2, namely Ponnampemurage John Aloysius Fernando and Thangaraja Sivakumar, had served as directors of the company earlier prior to it being struck off.

Court is not equipped to undertake in the exercise of its writ jurisdiction. I am inclined to agree with such position taken up by the learned State Counsel.

On the effect of striking off in the context of defunct companies under the UK Companies Act, 2006, the celebrated text *Charlesworth's Company Law*¹⁶ has commented as follows;

Striking the company's name off the register does not affect the liability of any director or member of the company, and the company may still be wound up by the court. If the company is to be wound up, it should first be restored to the register under s. 1024 or s. 1029 of the Companies Act.

On the effect of restoration of a company, *Charlesworth's Company Law* has explained the position under English law as follows;

If the Registrar decides to restore the company to the register, restoration takes effect for the date that he sends notice of his decision to the applicant (s. 1027(1), (2)) and the Registrar must publish a notice in the Gazette regarding the restoration (s. 1027(3)). The effect of restoration is that the company is deemed to have continued in existence as if it had not been dissolved or struck off the register: s. 1028.¹⁷

Upon consideration of the material before this Court, I am unable to definitively conclude that the Developer of the condominium property, Manisha Homes (Private) Limited, has ceased to exist, as contended by the Petitioners. Such failure to arrive at a definitive finding on this issue is principally due to the failure on the part of the Petitioners to join the parties who would be in the best position to clarify such matter, namely, the Registrar General of Companies and Manisha Homes (Private) Limited and its directors, as parties in the instant application. The Petitioners would have to bear the consequences of their action.

(b) Legal Status of the Assets of the Developer

The Petitioners contend that, by virtue of the Developer being struck off the company register under section 487(3) of the Companies Act, its property, including Dawson Court, vested in the State under section 487(5) of the said Act. Section 487(5) of the Companies Act provides as follows;

487 (5). Where a company's name is struck off from the register under subsection (3), all property and rights whatsoever vested in or held on trust for the company immediately before

¹⁶ Stephen Girvin, Sandra Frisby and Alastair Hudson (eds) *Charlesworth's Company Law* (18th ed, Sweet & Maxwell, 2010) at p 757.

¹⁷ *Ibid*, at p 756.

the date on which the name is struck off, (including leasehold property but not including property held by the company on trust for any other person), shall vest in and be at the disposal of the State.

In this context, I wish to re-iterate findings on the legal status of the Developer above and to focus on the applicability of section 487(5) to the facts and circumstances of the instant case. In the first instance, it is observed that the neither the said section nor any other section in the Companies Act set out a procedure to as to how the vesting of property of companies that are struck off should take place. In fact, there is no material placed before this Court by either party acknowledging that the relevant condominium property has vested in the State or that any agency of the State has assumed ownership or responsibility such property on behalf of the State. The Court is further handicapped by the fact that the Registrar General of Companies, who is vested with the authority to strike off companies under section 487(3), has not been joined in the instant application. Neither have Manisha Homes (Private) Limited nor its directors, who could reasonably be expected to offer an explanation on this issue, cited as parties.

In such circumstances, I am compelled to conclude that there is no definitive evidence before Court that Dawson Court has vested in the State. I am further not inclined to assume that such property has vested in the State in view of the specific position taken up by the Respondents that Manisha Homes (Private) Limited has been validly re-registered with effect from 10.02.2014. The legal effect of such re-registration is that the ownership of the company to the property concerned would be restored.

(c) The Mandate of the Condominium Management Authority and the Capacity to Grant Relief to the Petitioners

It is the position of the Petitioners that the CMA has necessary powers to take over property vested in the State and issue Title Deeds to the Petitioners in terms of section 5(m) *(to complete any incomplete condominium building)*, section 10(a) *(to take over State vested property)* (to be read with section 6(1) of the Crown Lands Ordinance) and section 10(c) *(to dispose property so acquired)* of the Condominium Management Authority Law No. 10 of 1973 (as amended).

In response, the Respondents argue that, even if the property in issue vested in the State in terms of section 487(5) of the Companies Act, the Petitioners cannot maintain this application against the Respondents since the CMA does not “own” Dawson Court and does not have the power to alienate property at its sole discretion.¹⁸

I wish to commence by examining the legal capacity of the CMA to grant the reliefs sought by the Petitioners in terms of the aforementioned statutory provisions relied upon by them.

¹⁸ vide paragraphs 40 and 50 of the Written Submissions of the Respondents.

Section 5(m) of the Condominium Management Authority Law reads as follows;

The objects of the Authority shall be to –

.....

(m) undertake the completion of any condominium building shown in the Semi Condominium Plan or Provisional Condominium Plan, in the event of any owner failing to complete such project; ...

The Petitioners sought to rely on the aforementioned section 5(m) on the basis that, although the construction of the building had been physically completed, it had yet not become a validly registered condominium property. However, the definitions of the terms “Semi-Condominium Plan” and “Provisional Condominium Plan,” which are contained in the Apartment Ownership Law, make it abundantly clear that section 5(m) relates to the completion of partially constructed buildings or buildings proposed to be constructed and does not contemplate a situation described by the Petitioners.

The Petitioners also contended that section 10A(1) of the Condominium Management Authority Law, read with section 6 of the Crown Lands Ordinance (State Lands Ordinance) empowered the CMA to execute title deeds in respect of the condominium units to the Petitioners and other purchasers.

Section 10A of the Condominium Management Authority Law is provides as follows:

10A (1) Where any immovable property of the State is required for any purpose of the Authority, such purpose shall be deemed to be a purpose for which a special grant or lease of such property may be made under section 6 the Crown Lands Ordinance, and accordingly the provisions of that Ordinance shall apply to a special grant or lease of such property of the Authority...

The aforementioned section 6 of the State Lands Ordinance No. 8 of 1947 (as amended) provides for special grants and leases in the following manner;

6 (1) A special grant or lease of State land may be made at a nominal price or rent or gratuitously for any charitable, educational, philanthropic, religious or scientific purpose, or for any other purpose which the President may approve.

(2) Every special grant or lease shall be substantially in the prescribed form and shall state that the title to the land conveyed thereby shall revert to the State if the land is not used for the purpose for which it was granted or leased or if it is applied to any other purpose....

Contesting the interpretation sought to be given by the Petitioners, learned State Counsel for the Respondents submitted that the purpose of section 10 A was not to empower the CMA to lay claim to any state property but had a very limited scope of enlarging the purposes for which a

special grant or a lease can be made under section 6 of the State Lands Ordinance.¹⁹ In fact, section 10A empowered the President to take cognizance of CMA's purposes as a purpose within the meaning of section 6 of the said Ordinance but did not confer any entitlement or right on the part of the CMA to take over State property.

The learned State Counsel submitted that the consequence of non-registration was that the property of the struck-off company became vested in the State in terms of section 487(5) of the Companies Act. It was her submission that the reference to the "State" in the said section was a reference to the "dominium" of the Government and did not include a statutory body such as the CMA, which is a distinct and separate legal entity. The learned State Counsel further submitted that land or other property belonging to the State must, in turn, be vested in the CMA for it to exercise any control over such property and, until such time as the State vests Dawson Court and the land in the CMA under section 6 of the State Lands Ordinance, obtaining a mandamus against the CMA would be futile.

She also drew the attention of Court to the fact that the discretion to grant a special grant lies at all times with His Excellency the President under section 2 of the State Lands Ordinance, and as such, if a writ of Mandamus were to be issued as prayed for by the Petitioners, it would be both factually and legally impossible for the CMA to act comply with same when it neither had title to the property nor the legal power to issue deeds to third parties.

Section 10C of the Condominium Management Authority Act, which relates to the right of the alienation of immovable property, was sought to be relied upon by the Petitioners in support of their position that the CMA does have the legal authority to execute title deeds to them. The said section is reproduced below;

10C (1) The Authority may, with the approval of the Minister, dispose by way of sale, lease, land, flat, rent or rent purchase any land flat house or other living accommodation held by the Authority, subject to such terms and conditions as may be determined by the Minister and specified in the instrument of disposition, and in particular, but without prejudice to the generality of the foregoing provisions of this section, a condition to the effect that the disposition effected by such instrument may be cancelled or determined in the event of a failure to comply with any other condition specified in such instrument or in the event of any money due to the Authority under such instrument remaining unpaid for any such period as may be specified therein.

(2) Nothing in the Crown Lands Ordinance shall affect or be deemed or construed to affect the disposition of any State land held by the 'Authority for any of the purposes of the Authority.

¹⁹ The position of the Respondents on this issue is set out in paragraphs 40-46 of their Written Submissions.

The Respondents disputed the aforementioned position taken up by the Petitioners on three grounds; firstly, it was submitted that the factual situation of the property being 'held by the Authority' was not established; and secondly, section 10C appeared to be in conflict with the role of the CMA as a regulator.²⁰ In relation to the second ground, the learned State Counsel submitted that the objects of the CMA under section 5 of the CMA Act and its powers under section 6 of the Act did not contemplate CMA acting as anything more than a statutory regulator of condominium parcels and common amenities. Hence, the CMA as the regulator could not both regulate and be the owner of a building which it is supposed to regulate, since it would be contrary to the notion of arm's-length oversight of regulated parties and would frustrate the statutory design, unless decisions that concern its properties are taken by a separate, independent decision-maker. Drawing upon several English authorities, the Respondents submit that, when a public authority with regulatory functions also acts as landowner/operator or market participant in the same field, the law requires structural separation or independent oversight, and, where such separation is missing, decisions may be quashed for being *ultra vires* or vitiated by institutional self-interest and must be re-taken by an independent decision maker.²¹ The third ground raised in opposition to the Petitioners' position is that, even if the property is owned by the CMA, it would still not have the power to alienate such property without the concurrence of the Minister in terms of section 10C. The Hon. Minister referred to in section 10C above has not been made a party in these proceedings. Hence, they argue that the relief prayed for against the Respondents is futile.²²

Upon consideration of the aforementioned positions of the respective parties, I am inclined to the view that the Petitioners have failed to establish both factually and legally that they are entitled to the relief prayed for in the petition.

(d) Legitimate Expectation based on the Conduct of the CMA under the Apartment Ownership (Special Provisions) Act No. 23 of 2018

The Petitioners have referred to the fact that the CMA had previously taken steps to register all unregistered condominium properties on State land owned by state authorities which were constructed prior to 31.12.2009 and the possession of which had been handed over to persons by sale, lease, rent or rent purchase notwithstanding various lapses and deficiencies in terms of the Apartment Ownership (Special Provisions) Act No. 23 of 2018.²³ Therefore, the Petitioners claim that they had a legitimate expectation that the CMA to act in a similar manner in respect of "State-vested" Dawson Court as well. Such position was specifically denied by the learned State Counsel for the Respondents.

²⁰ The position of the Respondents on this issue is detailed in paragraphs 50- 58 of their Written Submissions.

²¹ The English authorities cited by the Respondents are *Enterprise Hangars Ltd v Fareham BC* [2023] EWHC 2060 (Admin) and *R v Secretary of State, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304.

²²

²³ Vide paragraph 5.4 of the Written Submissions of the Petitioners.

I too am unable to expect the position that the Petitioners could have formed a legitimate expectation under the aforementioned circumstances. In the first instance, the Petitioners have failed to establish that Dawson Court vested in the State and that it could be disposed by the CMA, as sought by them. Secondly, as pointed out by the Petitioners themselves, the Apartment Ownership (Special Provisions) Act No. 23 of 2018 was enacted for a specific purpose and specific period and the mandate of the CMA was statutory circumscribed therein address such purpose. Thirdly, it is evident that legal status and circumstances relating to Dawson Court do not fall within the ambit of section 3 of the Act. Fourthly, it is observed that the five-year duration of the said Act had expired on 15.08.2023, which is even prior to the Petitioners invoking the jurisdiction of this Court. In such circumstances, I am of the view that the Petitioners' claim relating to legitimate expectation is misconceived and untenable.

(e) The Registration Process and the Conduct of the CMA in relation to Dawson Court Condominium Property

It is also necessary to examine the conduct of the CMA in relation to the registration of the condominium property, particularly in the light of certain allegations made by the Petitioners.

One such allegation is that the CMA has engaged in a futile exercise in continuing the proceedings instituted in Colombo Magistrates' Court Case No. 22836/05/2008 against the non-existent Manisha Homes (Private) Limited. Whilst the status of the said company has been examined and findings made elsewhere in this judgment, it is observed that such proceedings have been instituted in terms of section 3(4) of the Apartment Ownership Law in respect of a violation of section 3(2) thereof (R7 and R8). In my view, action taken by a regulatory authority in the discharge of its statutory duties, as the CMA has sought to do in the instant case, cannot be considered as an exercise in futility. However, I am in full agreement with the Petitioners in that there has been inordinate delay in the conduct of the of the inquiry and prosecution by the CMA.

The Petitioners have also been critical of the action taken by the CMA in approving the condominium plan P1. The Respondents have explained their conduct in their objections. The said objections disclose, *inter alia*, that the CMA had issued the Certificate for Common Elements and Common Amenities (R1) to Manisha Homes (Private) Limited after the Certificate of Conformity had been issued by the Colombo Municipal Council (R1) and had approved the condominium plan (P1).²⁴ They have also stated that, since the aforementioned Developer was a duly incorporated company and in operation at the time the Deed of Declaration (P10) was executed, the said Deed is a legally valid instrument.²⁵

To my mind the principal issue to be considered in this regard is whether the CMA could have acted in disregard of the re-registration of the Developer, Manisha Homes (Private) Limited.

²⁴ vide paragraph 10 of the Objections of the Respondents.

²⁵ vide paragraph 12(v) and (vi) of the Objections of the Respondents.

Despite certain purported irregularities that the use of the company registration pointed out by the Petitioners, the Registrar of Companies had deemed it fit to re-register the said company. Considering the effect of striking off and the re-registration of a company, as discussed elsewhere in this judgment, I am of the view that the CMA was obliged to take cognizance of the re-registration of the Developer, and, as such its approval of the condominium plan and recognition of the Deed of Declaration (P1)) as a valid legal instrument cannot be considered as being unlawful. Hence, I cannot agree with the position taken up by the Petitioners that, even though the construction of Dawson Court has been completed, it is yet to become a “validly registered condominium property, which is an essential requirement for the valid sub-division of the building into condominium units.

The Petitioners have impugned the legality of the Deed of Declaration (P10), and, as reflected in the factual narrative, 4 purchasers, including the Petitioners had instituted action in the District Court of Colombo bearing No. DSP 310/2019 challenging the validity and implementation of the said Deed. They are well entitled to do. However, considering the fact that such Deed of Declaration has not been executed by the CMA, and the aforementioned obligation to take cognizance of the re-registration of the Developer, I am of the view that it would not be rational or reasonable to take account of issues concerning the legality of such Deed in determining the Petitioners’ entitlement to the relief prayed for against the CMA in the instant application. It is further observed that the CMA is not empowered to set aside or disregard a duly executed Deed that has also been registered in the Land Registry.

Legal Objections raised by the Respondents

Apart from objections to the merits of the Petitioners’ case, the Respondents have also raised several legal objections regarding the maintainability of the instant application.

(a) Locus Standi

The Respondents have sought to argue that the Petitioners have not established their *locus standi* on the footing that they were not original owners and have not adduced evidence that the payment obligations under the Sales Agreement on which they claim rights to the condominium units.²⁶ However, it is observed that the evidence before this Court on the conduct of the parties clearly indicate that the CMA has acted upon the basis that the Petitioners had legitimate rights and interests in respect of the condominium property in issue. In fact, the 2nd Petitioner had participated at the inquiry conducted by the CMA (R5). Hence, I hold that the Petitioners have sufficient interest and standing to have and maintain this application and reject the objection raised by the Respondents.

²⁶ Vide paragraphs 6-14 of the Written Submissions of the Respondents.

(b) Contractual Dispute

The Respondents have raised another legal objection that the Petitioners' remedy lies in contract and not in writ.²⁷ Such objection is raised on the premise that the Petitioners derive their entitlements to the condominium units from the Sales Agreements with the Developer (P3(a) and P3(b)) and that the remedy available to the Petitioners for not receiving Deeds of Transfers are specifically set out in the said Agreements. The Respondents have drawn the attention of Court to clause 22 of the Sale Agreement No. 536 dated 24.11.1999, which provides as follows;

*"If the Purchaser shall have duly observed and performed the terms and conditions set forth in this Agreement and on the part of the Purchaser to be observed and performed by **the Vendor shall fail to execute the conveyance by way of a Deed of Transfer in favor of the Purchaser** and her aforewritten in accordance with the provisions of the Agreement **for any reason whatsoever the Vendor shall repay to the Purchaser all sums of money deposited in terms of this Agreement without interest thereon and the Purchaser shall therefore be entitled to a like sum as/and by way of liquidated damages** and not as a penalty or to enforce specific performance of this Agreement and to claim all damages suffered by the Purchaser by reason of the failure of the said Vendor as aforesaid.*

They have stated that a similar provision is found in Clause 6 of the Sale Agreement P3(b) and argue that the Petitioners ought to have sued the vendor under these respective agreements and recovered the amounts they had paid. It was further pointed out that none of the Respondents were parties to the aforesaid Sale Agreements, which was a purely commercial transaction between two private parties, and, that the obligations arising out of such contract could not be enforced against the CMA or other Respondents at all, let alone by way of mandamus.

In support of the proposition that contractual rights cannot be enforced by writ, reference has been made by the Respondents to ***Jayaweera v. Wijeratne***,²⁸ wherein it was observed as follows (per G.P.S. de Silva J (as he then was));

It is of the utmost significance that the decision sought to be quashed by certiorari is a decision founded purely on contract. The act or decision complained of arose from an alleged breach of contract. The fact that one of the parties to the contract is the "Competent Authority" appointed by statute cannot alter the intrinsic character of the decision sought to be quashed by certiorari. The decision is one taken wholly within the context of the contractual relationship and not in the exercise of the powers of a public authority as such. It invoked no administrative powers or authority. It is a decision made in the exercise of a power which springs from contract. In my view, it is a decision clearly

²⁷ Vide paragraphs 15-22 of the Written Submissions of the Respondents.

²⁸ [1985] 2 Sri L.R. 413. The other decision cited by the Respondents in their Written Submissions, ***Samaraweera v. Minister of Public Administration*** [2003] 3 Sri L.R. 64 does not relate the issue of commercial disputes in writ applications.

within the area of private law and the remedies available are the private law remedies such as damages, declaration, or injunctive relief. On the other hand, Administrative Law is primarily, if not entirely, concerned with the exercise of powers and duties of governmental, statutory and public authorities. Contractual rights, devoid of a statutory flavour, are manifestly beyond the scope of certiorari.

Although learned State Counsel raised such objection at the hearing of the application, it has not been responded to by the Petitioners.

Whilst I acknowledge Petitioners may have remedy in contract under the Sales Agreement to secure the transfer of their condominium units, as contended by the Respondents, I also observe that the writ of Mandamus has been sought by the Petitioners in the instant application on a slightly different footing from the aforementioned decision cited by the Respondents. In the instant case, the Petitioners have invoked the jurisdiction of this Court to compel the transfer of the condominium units to them on the premise that the condominium property has vested in the State and not the basis of a contractual relationship between them and the CMA. Hence, I am not inclined to uphold to this objection raised by the Respondents.

(c) Necessary Parties

The Respondents also contend that the Petitioners' have failed to cite necessary parties to this application despite such parties being patently clear at the very outset of the institution of the application.

In identifying as to who is a necessary party in writ applications, the Respondents have relied upon the decision of this Court in **Rawaya Publishers v. Wijedasa Rajapaksha**²⁹(per J.A.N. de Silva, J. P/CA (as he then was);

In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings.

In the instant case, the Respondents have identified the Registrar General of Companies, Manisha Homes (Private) Limited and directors of the said Manisha Homes (Private) Limited as such necessary parties whose presence was necessary to clarify issues relating to the striking off and re-registration of the aforementioned company and vesting of its property in the State. The Respondents have further submitted that their presence was entirely foreseeable even at the time of filing of this application.

²⁹ [2001] 3 Sri L.R. 213

The response of the learned Counsel for the Petitioners to such objection was to point out the positions taken up by the Registrar General of Companies and the directors of Manisha Homes (Private) Limited in other civil actions related to the issue. In particular, learned Counsel submitted that since the Registrar General of Companies had informed that Manisha Homes (Private) Limited had been struck off the register by letter dated 06.05.2019 (P6), it was not necessary to join such party in the instant application. I do not agree with such position taken up by the Petitioners, and, in my analysis of the grounds of review, I have enumerated in detail the instances where the presence of the Registrar General of Companies and Manisha Homes (Private) Limited and its directors were required and necessary.

After the hearing was concluded and dates fixed for post-hearing written submissions, the Petitioners sought to amend the caption and add the Registrar General of Companies as a Respondent by a motion dated 11.08.2025. The Respondents objected to the said application citing the extremely belated stage at which it was made and as it would fundamentally alter the scope of the case and the complexion of the Petitioners' case. In the motion, the Petitioners sought to justify their request on the basis of amendments introduced by the Companies (Amendment) Act No. 12 of 2025³⁰ to section 487(5) of the Act.³¹ The Amending Act provided as follows (section 17);

Section 487 of the principal enactment is hereby amended in subsection (5) thereof, by the substitution for the words "shall vest in and be at the disposal of the State.", of the following: -

"shall vest in and be at the disposal of the State:

Provided that any company of which, the name has been struck off under subsection (3) may before the expiry of a period of ten years from the date of operation of the Companies (Amendment) Act, No. 12 of 2025, apply to court making the Attorney-General a party to such application and show cause to the satisfaction of the court stating reasons why such company was unable to comply with the provisions of subsection (1). After such inquiry as the court may deem necessary, the court may permit the re-registration of the company and upon such registration, make an order for the return to the company of all property previously vested in the State under this subsection:

Provided further that where property vested in the State under the provisions of this subsection has been dealt with or disposed of, by the State, the rights of third parties who have acquired such rights from the State in good faith shall not be affected in any manner:

³⁰ The said Act was certified on 04.08.2025.

³¹ Vide paragraphs 3.1-3.5 of the Written Submissions of the Petitioners.

Provided however, where the property has been destroyed or damaged or, physical possession of the property has not been taken by the State, the State shall not be liable to any party in any manner.”

The effect of the amendment appears to be to provide a further period of ten years for companies that have been struck off to obtain re-registration by applying to court and obtaining an order as specified therein. In my view, such amendment does not provide a role for the Registrar General of Companies “to enable the valid re-registration of Manisha Homes (Pvt) Ltd, so that “Dawson Court” now vested in the State can be returned to the said company,” as alleged by the Petitioners.³² The onus of applying for re-registration is upon the company itself and the Registrar General of Companies cannot compel any company to do so. Thus, quite apart from its extreme belatedness and material prejudice caused to the Respondents, I am of the view that that Petitioners’ application dated 11.08.2025 to add the Registrar General of Companies is also misconceived in law. I wish to clarify that the aforementioned observations have been made purely for the purpose of explaining the legal effect of the amendment to section 487(5) introduced by the Companies (Amendment) Act No. 12 of 2025 and does not in any manner affect or vary the findings already made by me herein based on the merits of this application on whether vesting has taken place, and, if so, the consequences thereof.

In view of the foregoing, I am inclined to uphold the objection raised by the Respondents that the Petitioners have failed to cite necessary and material parties in the instant application.

(d) Futility

The Respondents have taken up the position that the relief prayed for is futile because factually Dawson Court or the land is not owned by the CMA, and that in any event, CMA does not have the power to alienate its property without the concurrence of the Minister. I have discussed respective positions of the parties on these issues in detail in my analysis of the grounds of review and based on the findings made thereon, I am inclined to uphold the objection raised by the Respondents.

As the Respondents have alluded to in their written submissions, a writ of Mandamus will only be issued when there is a valid legal duty in operation. Such circumstances have been articulated by this Court in **Kumarasinghe v. Dayananda Dissanayake**³³ in the following terms (per J.A.N. de Silva, J. (as he then was);

³² vide paragraph 3.4 of the Written Submissions of the Petitioners.

³³ [2001] 2 Sri L.R. 252 at 256.

The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kind (vide Harding Public Duties and Public Law Chapt. 3). "Mandamus" literally means "we command." It differs from writ of prohibition or certiorari inasmuch as (if granted) it will require some positive act on the part of the body or person to whom it is addressed rather than prohibiting some step (Stephen's Commentaries 20th Edition Vol. 1 Page 59)." Mandamus commands the person to whom it is addressed to perform public or quasi public legal duty which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy..... where any tribunal, inferior Court or body of persons charged with the performance of a public duty do not discharge the duty, mandamus lies to compel him to do it." (Short and Mellor, Brown Practice 2nd Edition Page 197).

It is also a well established principle that a Court would refuse to grant a writ of mandamus when it is futile or when it is practically impossible to perform. As cited by the Respondents, in **Mohamed Sahibu and Others v. Ariyaratne and Others**,³⁴ observed that "where there is no practical possibility of enforcing obedience to an order to perform a duty a Writ of Mandamus will generally be refused" (per Seneviratne, J, P/CA). In similar vein, the Supreme Court in **Wannigama v. Incorporated Council For Legal Education**,³⁵ citing with approval the observation of Justice Soertsz in Mahanayake Thero Malwatta Vihare v Registrar General and others,³⁶ has observed as follows (per Dr. Shirani Bandaranayake, J (as she then was);

In Maha Nayake Thera, Malwatte Vihare (supra), Soertsz, J. had stated that, "... the writ may be refused not only upon the merits, but also by reason of the special circumstances of the case. The court will take a liberal view in determining whether or not the writ will issue."

*This position has been considered by many other authorities. For instance, in Halsbury's Laws of England (4th Edition, Vol.I, page 125, page 134), it is clearly stated that the writ of mandamus will not be issued when it appears that it is impossible of performance, by reason of the circumstances and the writ will normally be refused' **if the party against whom it is prayed does not, for some other reason, possess the power to obey**'.*

I am of the view that the Respondents have successfully made out a case within the aforementioned parameters to establish that the grant of a writ of Mandamus would be futile in the instant application.

³⁴ [1985] 1 Sri L.R. 146 at 151.

³⁵ [2007] 2 Sri L.R. 281.

³⁶ 39 NLR 186LR 186 at 191.

Additional Reliefs sought by the Petitioners in their Written Submissions

At the commencement of this judgment, I have cited the reliefs prayed for by the Petitioners in the instant application and the hearing was conducted and submissions made by Counsel too on such basis. However, in their written submissions, the Petitioners have sought additional reliefs, namely, a declaration that the Petitioners are entitled to “alternate relief so that title Deeds can be executed for the Petitioners (and other purchasers in possession of their respective condominium units for the past 25 years)” and damages/compensation from the CMA.³⁷

In the first instance, I wish to observe that parties are not entitled to expand the scope of the reliefs sought in their written submissions. Thus, the procedure adopted by the Petitioners is irregular. If the Petitioners wished to obtain such reliefs, they should have moved for an amendment of the petition and incorporate same into the pleadings. They have failed to do so. As the Petitioners themselves have identified such reliefs as “alternative reliefs” and considering their expansive scope, I am also of the view that they cannot be legitimately considered under paragraph (d) of the prayer to the petition (“an order for such further and other reliefs that Your Lordships Court shall seem meet”).

It is trite law that the reliefs sought to be clear and specific when the writ jurisdiction is invoked, particularly when a writ of *Mandamus* is sought; vide **Wanninayaka Mudiyanseelage Dhanapala v. Mr. Nimal Kotawalagedara Commissioner of Buddhist Affairs**,³⁸ **H. K. D. Amarasinghe and others vs. Central Environmental Authority and others**³⁹ and **Annalingam Annarasa and others v. S. J. Kahawatta, Director General, Department of Fisheries and Aquatic Resources and others**.⁴⁰

The principle is also well established that amendment of pleadings will not be permitted where substantial prejudice will be caused to the opposing party; vide **Road Development Authority v. Hon. Manusha Nanayakkara and Others**,⁴¹ and **W. M. P. V. K. Wijenayake and Others v. Sri Lanka Institute of Architects (SLIA) and Others**.⁴² If the additional reliefs referred to in the Petitioners’ written submissions are considered, I am of the view that substantial prejudice will be caused to the Respondents in that they will be faced with different reliefs than those sought in the original petition without even being afforded an opportunity to respond to same.

In view of the foregoing, I am not inclined to consider the additional reliefs referred to in the Petitioners’ written submissions.

³⁷ Vide paragraphs 6.1-6.3 of the Written Submissions of the Petitioners.

³⁸ CA (Writ) Application No. 243/2017, decided on 07.11.2017.

³⁹ CA (Writ) Application No. 132/2018, decided on 03.06.2021.

⁴⁰ CA (Writ) Application No. 21/2022, decided on 13.02.2023.

⁴¹ C.A. Writ Application No. 831/2023, decided on 27.11.2024

⁴² CA Writ Application No. 649/2024, decided on 29.08.2025. Cited in the Petitioner’s Written Submissions.

Conclusion and Orders of Court

Considering the grounds of review presented by the Petitioners and the material available and submissions made to Court by the respective parties, I am of the view that the Petitioners have failed to establish their entitlement to the reliefs prayed for in the petition. The failure to cite necessary parties and the futility of the grant of reliefs sought, as determined by me, too, militate against the grant of prerogative relief to the Petitioners. Therefore, I proceed to dismiss the application. No costs.

However, I state that this judgment should not be considered as a bar for the Petitioners to seek relief in any other forum or for the Respondents perform their statutory functions in respect of the relevant condominium property.

Before I part with this judgment, I wish to highlight that regulatory authorities, such as the Condominium Management Authority in the instant case, play a critical role in the community. They are they expected to maintain the highest professional standards in the regulation and management of their respective sectors, to hold the scales even in the resolution of disputes and, perhaps most importantly, to safeguard the rights and interests of the vulnerable segments within their purview. As custodians of powers vested for the public benefit, such authorities may be reasonably expected to act with the highest degree of responsiveness, diligence, efficiency, transparency and accountability in the discharge of their mandate. I hope the Condominium Management Authority will take heed of such matters in their future conduct.

Application is dismissed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal