

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

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

Environmental Foundation (Guarantee)  
Limited.

**CA (Writ) application No: 738/2023**

No. 4/3 1/1 Welikadawatta, Nawala Road,  
Rajagiriya.

**PETITIONER**

**-Vs-**

1. Mr. Chandana Sooriyabandara,  
Director General,  
Department of Wildlife Conservation,  
811A, Jayanthipura, Battaramulla.

1(b) Mr. Ranjan Marasinghe,  
Director General (Acting),  
Department of Wildlife Conservation,  
811A, Jayanthipura, Battaramulla.

2. Mr. S. Sivanantharajah,  
Surveyor General,  
Sri Lanka Survey Department,  
150, Bernad Soysa Road, Narahenpita,  
Colombo 05.

2 (a) Mr. Sudath Perera,  
Surveyor General,  
Sri Lanka Survey Department,  
150, Bernad Soysa Road, Narahenpita,  
Colombo 05.

2(b) Y. G. Gnanathilaka,  
Surveyor General,  
Sri Lanka Survey Department,  
150, Bernad Soysa Road, Narahenpita,  
Colombo 05.

3. Hon. (Mrs.) Pavithra Wanniarachchi,  
Minister of Wildlife & Forest Resources  
Conservation,  
1090, Sri Jayawardenapura Mawatha,  
Rajagiriya.

3(a) Hon. Vijitha Herath,  
Hon. Minister of Environment, Wildlife,  
Forest Resources, Water Supply, Plantation  
and Community Infrastructure,  
Ministry of Wildlife & Forest Resources  
Conservation,  
No. 07, Hector Kobbekaduwa Mawatha,  
Colombo 07.

3(b) Hon. Dhammika Patabendi,  
Minister of Environment,  
Ministry of Environment,  
Sobadam Piyasa,  
No.416/C/1, Robert Gunawardana Mawatha,  
Battaramulla.

**RESPONDENTS**

**Before: S. U. B. Karalliyadde, J.**

**Dr. D. F. H. Gunawardhana, J.**

**Counsel:** Lakshman Jeyakumar with Nimashi Hirimbura and Madhusa Kavindhi for  
the Petitioner.

Nayomi Kahawita, SC for the Respondents.

**Written submissions tendered on:**

28.08.2025 by the Petitioner

**Argued on:** 25.07.2025

**Decided on:** 30.09.2025

**S. U. B. Karalliyadde, J.**

The Petitioner is a Company limited by guarantee and duly registered under the Companies Act, No. 07 of 2007. The Petitioner is a non-profit organisation engaged in activities in the field of, *inter alia*, environmental protection and promotion of sustainable development in the interest of the public. This Application revolves around the illegal constructions that have been carried out within the boundaries of the Wilpattu National Park. The boundaries of Block V of the Wilpattu National Park had been declared by the Gazette Extraordinary No. 89 dated 07.12.1973, marked as P2. Block V consists of all areas of land situated in the Grama Niladhari divisions of Pukkulam and Pomparippu in the District of Puttalam, excluding the Pallugaturi, Pukkulam and Vellamudal villages. The contention of the Petitioner is that there is an illegal human settlement within the boundaries of the Block V of the Wilpattu National Park in contravention of the provisions of the Fauna and Flora Protection Ordinance, No. 02 of 1937 (as amended) (the FFPO) and therefore, the Director General of Department of Wildlife, the 1<sup>st</sup> Respondent has failed to carry out his statutory duty to take action

against the encroachers to protect the boundaries of the Wilpattu National Park and to protect and conserve the wildlife within the boundaries of Wilpattu National Park.

Being aggrieved by the inaction of the 1<sup>st</sup> Respondent, the Petitioner has invoked the Writ jurisdiction of this Court seeking the following substantive reliefs, *inter alia*,

- d. A mandate in the nature of a Writ of Mandamus compelling the 1<sup>st</sup> Respondent, and/or all those holding under him, from permitting any development activity inside the Wilpattu NP violating the provisions of the FFPO;
- e. A mandate in the nature of a Writ of Certiorari quashing any authorisation/permission granted by the 1<sup>st</sup> Respondent and/or all those holding under him permitting any development activity inside the Wilpattu NP in contravention of the FFPO;
- f. A mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> Respondent to evict and prosecute the encroachers inside the Wilpattu NP at the GPS location of 8°33'37.87"N 79°55'18.90"E;
- g. A mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> Respondent to remove the illegal constructions at the GPS location of 8°33'37.87"N 79°55'18.90"E within the Wilpattu NP and to restore the affected area;
- h. A mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> Respondent to strictly enforce FFPO to prevent further illegal encroachments to the Wilpattu NP;

- i. A mandate in the nature of a Writ of Mandamus directing the 2<sup>nd</sup> Respondent to conduct a survey, identify and demarcate boundaries of Wilpattu NP-Block V as per the Gazette Extraordinary No. 89 of 07.12.1973 and institute permanent boundary markers;

The Petitioner argues that, in terms of Section 5 of the FFPO, no person can enter into a National Park without obtaining a permit from the ‘prescribed officer’ under the 1<sup>st</sup> Respondent, except for the purpose of studying or observing the fauna and flora in a National Park. The Petitioner further argues that in terms of Section 6(1) of the FFPO, no person can erect a building or occupy any erected building within a National Reserve unless a permit is obtained from the ‘prescribed officer’. The ‘prescribed officer’ is any ‘wildlife officer’ under Section 72 of the FFPO. The Petitioner, through the Right to Information Act, has requested information from the Department of Wildlife regarding whether the Department of Wildlife is aware of the buildings erected within the GPS location (8°33'37.87"N 79°55'18.90"E) within the Wilpattu National Park near the Pukulam village (P7(a)). In response, by the letter marked as P7(c), on behalf of the 1<sup>st</sup> Respondent, Mr. Manjula Amararatne, who is the Director (Prescribed Area Management) in the Wildlife Conservation Department, has accepted that it is aware that the erections questioned by the Petitioner in P7(a) are situated inside the Wilpattu National Park near the Pukkulam Village. The Petitioner has further requested information regarding whether those erections have been put up with the approval of the Department of Wildlife, Mr Amararatne has replied that the Department of Wildlife

has not granted approval. Therefore, the Petitioner argues that the illegal encroachers carrying out constructions on the GPS location near the Pukkulam village within the Wilpattu National Park is a violation of Section 6(1) of the FFPO.

The Petitioner alleges that, in terms of the Auditor General's report on 'International Ramsar Wetlands' (P4),<sup>1</sup> the illegal encroachers are hunting wild animals, which is an act prohibited under the FFPO. The contention of the Petitioner is that the failure to take legal action against the illegal encroachers within the Wilpattu National Park pose an adverse impact on the wildlife and the eco system within the National Park and failure to take legal actions against the illegal encroachers now, would lead to a threat of spreading the illegal encroachments in the future, thereby posing a grave threat to the wildlife and their natural habitats therein. The Petitioner has further obtained information through the Right to Information Act, which reveals that the 1<sup>st</sup> Respondent has failed to initiate any legal action against the illegal encroachers (P9(a) and (P9(c))). Therefore, the Petitioner argues that the 1<sup>st</sup> Respondent has failed to carry out the statutory duty cast upon him by failing to take action to maintain and protect the boundaries of the Wilpattu National Park.

First and foremost, this Court must determine whether the encroachments alleged by the Petitioner are in fact located within the boundaries of the Wilpattu National Park. The Petitioner asserts that the illegal settlement is located at the GPS coordinates of 8°33'37.87"N 79°55'18.90"E within Block V of the Wilpattu National Park (P3(a)). The

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<sup>1</sup> at page 179.

Respondents, in their statement of objection, have admitted that the GPS coordinates alleged by the Petitioner correspond to the location of Block V of the Wilpattu National Park, and that the alleged illegal constructions are identified as houses erected under a resettlement programme within the boundaries of the Wilpattu National Park. As evident from the letters marked as P7(a) and P7(c), the Department of Wildlife has admitted that the constructions located at the GPS coordinates have been erected within the boundaries of the Wilpattu National Park. Furthermore, at the argument, no objection was raised by the learned State Counsel appearing for the Respondents regarding the location of the alleged illegal settlement. According to the letter dated 10.06.2019 marked as R9, the Wildlife Ranger of Mollikullam Division who was present when the boundaries of the Pukkulam fishing village were demarcating has informed the 1<sup>st</sup> Respondent that the correct boundaries of the Pukkulam fishing village had been duly identified by the Surveyors of the Survey Department with the help of the Gazette and the survey plans possess by the Survey Department and that 11 houses, a Community Centre and a mosque had been unlawfully constructed within the boundaries of the Wilpattu National Park. The Wildlife Ranger of Mollikullam Division by R9 had requested the 1<sup>st</sup> Respondent to take appropriate measures against the illegal occupants. Referring to R9, the 1<sup>st</sup> Respondent, by letter dated 07.11.2019 marked as R10, had instructed the Assistant Director Wildlife of Anuradhapura to initiate necessary legal action against the said illegal encroachers within the Wilpattu National Park. The letters marked R9 and R10 thus clearly establish the fact that illegal

constructions have been carried out within the boundaries of the Wilpattu National Park. Therefore, this Court is of the view that the encroachments alleged by the Petitioner fall within the boundaries of Block V of the Wilpattu National Park stipulated in P2.

Now the question before this Court is whether the 1<sup>st</sup> Respondent has failed to discharge the statutory duty imposed upon him under the FFPO. The contention of the Petitioner is that the illegal encroachers had violated the provisions mentioned in Sections 5 and 6(1) of the FFPO. Unless a permit issued by the 'prescribed officer' is obtained, entry to a National Park is prohibited in terms of Section 5(1) of the FFPO. Under Section 5(2) of the Ordinance, a permit issued under Section 5(1) can only be obtained for the purpose of studying or observing the fauna and flora in a National Park. In terms of Section 5(4) of the FFPO, a person who enters and remains within a National Park without obtaining a permit is guilty of an offence under the FFPO. Therefore, it is clear that, other than for the purpose of studying or observing the environment, no person can enter or remain within the National Park.

Section 6 of the FFPO lays down the acts that are prohibited in Strict Natural Reserves, National Parks, Nature Reserves and Jungle Corridors. In terms of Section 6(1)(i) of the FFPO, except under the authority of a permit issued by the 'prescribed officer', no person can erect any building, whether permanent or temporary, or occupy any building so erected. As per Section 72 of the FFPO, the 'prescribed officer' is interpreted to mean any wildlife officer unless otherwise defined under the FFPO. In terms of Section



72, a 'wildlife officer' is the Director-General of the Department of Wildlife Conservation or any Director, Deputy Director, Assistant Director, Wildlife Ranger, Range Assistant or Wildlife Guard in the Department of Wildlife Conservation. The position of the Petitioner is that the constructions within the Wilpattu National Park have been carried out without the approval of the 1<sup>st</sup> Respondent in violation of Section 6(1) of the FFPO. The Petitioner, by the letter marked as P7(a), has requested information from the information officer of the Department of Wildlife Conservation on the question of whether they are aware of the illegal constructions in the above-mentioned GPS location and whether such construction has been carried out with the approval of the Department of Wildlife Conservation. By the letter marked as P7(b), the Department of Wildlife Conservation has informed the Petitioner that they are aware of such constructions, and it has not been carried out with their approval. The learned State Counsel appearing for the Respondents has admitted the fact that the constructions have been carried out without obtaining the prior approval of the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent, in his affidavit, concede that the predecessors of the 1<sup>st</sup> Respondent had made certain administrative errors when resettling the Pukkulam fishing village.

The Petitioner further argue that hunting of wild animals within a National Park is prohibited under Section 6(1)(a) of the FFPO. However, as evident from the Auditor General's report on 'International Ramsar Wetlands' marked P4, the villagers of the Pukkulam fishing village are engaged in such illegal acts by hunting wild animals.

Therefore, the failure of the 1<sup>st</sup> Respondent to carry out his statutory duty to prevent such illegal activities has posed a serious threat to the conservation of wildlife within the Wilpattu National Park. The learned State Counsel has also admitted this allegation of the Petitioner.

In terms of the preamble, the purpose of the FFPO is to protect and conserve the fauna and flora of Sri Lanka and their habitats. In terms of Section 66A(b) of the FFPO, if an officer appointed under the FFPO “*who willfully neglects or fails to perform any duty under this Ordinance or neglects or fails to report any offence under the Ordinance*” shall be guilty of an offence under the FFPO. This alone establishes the fact that the 1<sup>st</sup> Respondent owe a statutory duty to ensure that provisions of this FFPO have been complied with. In the case of *Environmental Foundation Ltd. v. Central Environmental Authority and Others*,<sup>2</sup> Sripavan, J. observed that, “*where a statute requires the power to be exercised in a certain form, the neglect of that form renders the exercise of the power ultra vires.*” Furthermore, in *Bandara and Another v. Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development and Others*,<sup>3</sup> it was held that,

*“The State must, in the public interest, expect high standards of efficiency, service and fairness from public officers in their dealings with the administration and the public. In the exercise of constitutional and statutory*

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<sup>2</sup> (2006) 3 Sri L R. 57

<sup>3</sup> [1994] 1 Sri LR 301

*powers and jurisdictions, the Judiciary must endeavour to ensure that this expectation is realised.”*

In the case of *Samaraweera v. Balasuriya*,<sup>4</sup> it was held that, *“It is trite law that Mandamus is only available to compel the doing of a duty not done, and not on the ground that the duty had been done erroneously.”* Furthermore, in the case of *Centre for Environmental Justice (Guarantee) Ltd. v. Anura Satharasinghe*<sup>5</sup> this Court, citing the case of *Heather Therese Mundy v. Central Environmental Authority and Others*,<sup>6</sup> held that,

*“Further, this Court itself has long recognized and applied the “public trust” doctrine: that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred, and that their exercise is subject to judicial review by reference to those purposes”*

Considering the fact that the constructions have been carried out within the GPS coordinates 8°33'37.87"N 79°55'18.90"E, within Block V of the Wilpattu National Park, this Court is of the view that the 1<sup>st</sup> Respondent has failed to carry out the statutory duty cast upon him under the FFPO. Therefore, this Court grant the Writ of Mandamus prayed for in prayers (d) and (h) of the Petition.

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<sup>4</sup> 58 NLR 118

<sup>5</sup> Case No. C.A. (Writ) 291/2015, CA Minutes of 16.11.2020

<sup>6</sup> SC Appeal 58/2003, SC Minutes of 20.01.2004

Now this Court will look into the remaining reliefs prayed by the Petitioner separately.

In prayer (e), the Petitioner is seeking a Writ of Certiorari to quash any authorisation/permission granted by the 1<sup>st</sup> Respondent permitting any development activity inside the Wilpattu National Park in contravention of the FFPO. No such document reflecting the approval of the 1<sup>st</sup> Respondent permitting such construction has been produced before this Court. Furthermore, as stated above, the 1<sup>st</sup> Respondent has not granted his approval to carry out the constructions within the Wilpattu National Park. For that reason, the relief prayed for in prayer (e) has to fail.

In prayer (f), the Petitioner is seeking a Writ of Mandamus directing the 1<sup>st</sup> Respondent to prosecute and evict the encroachers inside the Wilpattu National Park situated at the GPS location of 8°33'37.87"N 79°55'18.90"E within Block V of the Wilpattu National Park. In terms of Section 67C of the FFPO, the Director and every prescribed officer are considered as a peace officer within the meaning of the Code of Criminal Procedure Act for exercising any power conferred on peace officers by the Code of Criminal Procedure Act for the purposes of the FFPO. As stated above, the 1<sup>st</sup> Respondent is a prescribed officer in terms of Section 72 of the FFPO. Furthermore, in terms of Section 67F(1) of the FFPO, any person who is in unlawful and unauthorised possession of any State land under the FFPO shall be liable to an ejectment under the provisions of the State Lands (Recovery of Possession) Act, No. 7 of 1979. From the above-stated facts, it is clear that the 1<sup>st</sup> Respondent has the power to prosecute and take action to evict the encroachers inside the Wilpattu National Park. Therefore, this Court grants the relief

prayed in the prayer (f) to the Petition. As relief (g), the Petitioner seeks a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> Respondent to remove the illegal constructions at the GPS location of 8°33'37.87"N 79°55'18.90"E within the Wilpattu National Park and to restore the affected area. Under the above-stated circumstances, this Court also grant the relief prayed in prayer (g).

Furthermore, it was brought to the attention of this Court that the illegal occupiers within the Wilpattu National Park are the people who were displaced due to the civil war in Sri Lanka. This Court is of the view that though it is important to have them settled, the way in which they are settled should be in accordance to the law. Therefore, this Court grants the reliefs prayed for in prayers (f) and (g) for the reason that the occupation of the people is against the provisions of the FFPO. This matter was also considered in the case of *Centre for Environmental Justice (Guarantee) Ltd. v. Anura Satharasinghe*, where Janak De Silva, J., emphasised that,

*“I reiterate that without any doubt there is a need to settle down all IDPs who were displaced due to the war in Sri Lanka as far as possible in the areas where they were residing. However, this is subject to other overriding concerns and above all the respect for the rule of law which is the foundation of our Constitution. The conclusions I have made and the relief granted is based on the finding that the re-settlement of the IDPs in this case has been made contrary to law.”*

The Petitioner in prayer (i) of the Petition seeks a Writ of Mandamus directing the Survey General, 2<sup>nd</sup> Respondent, to survey to identify and demarcate boundaries of the

Wilpattu National Park Block V as per P2 and institute permanent boundary markers.

Considering all the above-stated facts, this Court see no reason as to why this Court should not grant the relief prayed in prayer (i). Therefore, this Court grants the relief prayed in prayer (i) at the expense of the 1<sup>st</sup> Respondent.

When this matter was taken up for argument, the learned State Counsel appearing for the Respondents argued that the Petitioner had failed to add the Divisional Secretary of Wanathawilluwa as a necessary party to this Application. The reason for the argument of the learned State Counsel is that the settlements within the Wilpattu National Park have been initiated by the Divisional Secretary. In the case of *Rawaya Publishers and others v Wijedasa Rajapaksha, Chairman Sri Lanka Press Council and Others*,<sup>7</sup> it was held that,

*“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.”*

The Petitioner in this Application does not seek any relief against the Divisional Secretary of Wanathawilluwa. The reliefs prayed by the Petitioner revolve around the failure of the 1<sup>st</sup> Respondent in fulfilling his statutory duties under the FFPO. It is the view of this Court that the reliefs prayed by the Petitioner can be effectively granted

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<sup>7</sup> [2001] 3 Sri LR 213

without making the Divisional Secretary of Wanathawilluwa a party to this Application. Therefore, this Court cannot agree with the argument of the learned State Counsel appearing for the Respondents that the Divisional Secretary is a necessary party to this Application.

Considering all the above-stated facts and circumstances, this Court is not inclined to grant relief prayed for in prayer (e). However, this Court grant the Writ of Mandamus as prayed for in prayers (d), (f), (g), (h) and (i) of the Petition. Accordingly, this Writ Application is partly allowed. No costs ordered.

*Application partially allowed.*

## **JUDGE OF THE COURT OF APPEAL**

**Dr. D. F. H. Gunawardhana, J.**

I agree with the conclusion of my brother; however, I wish to set out my own reasons to establish as to why I reached the same conclusion.

### **Background facts**

The Petitioner is a body incorporated under the laws of Sri Lanka and registered under the Companies Act No. 07 of 2007 (as amended) and limited by guarantee. Therefore, it is capable of suing and being sued in its corporate name. All its directors are Sri

Lankan citizens, while its registered office is situated at the address given in the caption: it is interested in preserving and protecting the environment. Therefore, it is committed to the cause of protecting the environment; in pursuit of this, when the need arises, it engages in litigation as well.

The 1<sup>st</sup> Respondent is the Director General of the Department of Wildlife Conservation. The 2<sup>nd</sup> Respondent is the Surveyor General under the Sri Lanka Survey Department, and the 3<sup>rd</sup> Respondent is the Minister of Wildlife and Forest Resources Conservation.

In this application, the Petitioner is seeking to invoke the jurisdiction of this Court to obtain a *Writ of Mandamus* against the 1<sup>st</sup> Respondent, compelling him to take actions against certain squatters who have encroached upon the area declared as the Wilpattu National Park, and also unauthorised settlement by them. Therefore, being the statutory authority, who has been empowered by the relevant statutes to take action against the unpermitted settlers within the boundaries of the Wilpattu National Park, the Petitioner has taken steps to obtain a *Writ of Mandamus* against the 1<sup>st</sup> Respondent to carry out those statutory duties as the statute requires the 1<sup>st</sup> Respondent to carry out.

The Petitioner, being a recognised and registered non-governmental organisation particularly interested in wildlife and committed to the protection of it, made attempts to instigate relevant Government officials to take action against the illegal encroachment, colonisation, and unlawful settlement within the boundaries of Wilpattu National Park, the relevant authorities have not paid any heed or attention to it.



Consequently, the Petitioner seeks to invoke the administrative jurisdiction of this Court by an application seeking a writ in the nature of *Mandamus*, compelling the relevant authorities to take action against the unlawful encroachment, unlawful settlement, and all other unlawful activities connected therewith and incidental thereto.

The 1<sup>st</sup> Respondent has filed his objections and taken up the position that without making the Divisional Secretary of the area concerned of the relevant District, a party to the application, the Petitioner cannot maintain this application. In addition to that, it is the position of the Respondent that it has taken all necessary steps on its part; therefore, no writ can be issued. This was raised during arguments on 25.07.2025 and the following arguments were advanced by the counsel.

### **Arguments**

Mr. Jayakumar contented that the Wilpattu Forest Reserve is a reserve which falls under the ambit of Section 5 of the Fauna and Flora Protection Ordinance (hereinafter sometimes referred to as “the Ordinance”); therefore, in terms of the provisions of the said section, if a person is not given the permission to enter, stay, or remain within the boundaries of the said reserve, it is the duty of the 1<sup>st</sup> Respondent to eject such person or to take legal action against such person. Since the 1<sup>st</sup> Respondent has failed to do that, the Petitioner, being an entity interested and committed to the preservation of the environment, has sought a *Writ of Certiorari* and *Mandamus* compelling the 1<sup>st</sup> Respondent to take legal action to eject or remove the unauthorised persons remaining

within the boundaries. For that purpose, he is further compelled to seek assistance of the 2<sup>nd</sup> Respondent.

Without prejudice, Mr. Jayakumar reserved his right to raise a preliminary objection, if necessary, on the basis that the affidavit filed by the 1<sup>st</sup> Respondent is defective. Since the person who administered the oath is also an employee under the 1<sup>st</sup> Respondent, the said affidavit is not valid in Court.

On the other hand, the learned State Counsel, Ms. Kahawita, contended that occupiers have been settled by the Divisional Secretary under the Land Development Ordinance; therefore, the Divisional Secretary is a necessary party to this application. Since the Petitioner has failed to cite him as a party, this application is defective and should be dismissed.

However, without prejudice to that, she further argued that the 1<sup>st</sup> Respondent has taken all the steps, as correspondence (as established) between the Divisional Secretary, 1<sup>st</sup> Respondent, and other governmental officers; therefore, there is no lapse on the part of the 1<sup>st</sup> Respondent.

### **Wilpattu National Park**

Sri Lanka is a tropical country which lies Southeast to the Indian subcontinent within the Indian Ocean, between the latitude 7.8731° N and longitude 80.7718° E, and its total land area is in extent 64,630 km<sup>2</sup> (24,950 sq. mi). Being an island, there are sunny beaches all-round the country, surrounded by its territorial waters. She boasts enormous

wildlife within its territory; this includes the wildlife in its territorial waters as well. It also can boast 16% endemic fauna species and 23% endemic floral plants. To preserve and protect her wildlife, from time to time, the Government to date has declared several National Parks, totalling 26 (as per **P2**). Wilpattu is the largest out of the said 26 National Parks covering a total area of 5,734 km<sup>2</sup> (2,214 sq. mi). According to the Flora and Fauna Ordinance, Sri Lanka's natural parks have been identified and classified into seven categories.

*“(a) a Strict Natural Reserve; or*

*(b) a National Park; or*

*(c) a Nature Reserve; or*

*(d) a Jungle Corridor; or*

*(e) a Refuge; or*

*(f) a Marine Reserve; or*

*(g) a Buffer Zone.<sup>8</sup>”*

The Wilpattu Forest Reserve is bounded on the north by the villages situated in the District of Mannar, on the south by the District of Puttalam, and on the east by the villages of Anuradhapura, approximately. However, during the civil war, which continued for almost 30 years, the militants used the jungle and its buffer zones as part of their training camps and hideouts. Therefore, human habitation located in the

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<sup>8</sup> Section 2(1) of the Fauna and Flora Protection Ordinance (No. 2) of 1937

bordering villages of the said districts were also destroyed during the hostilities, although wildlife, though disturbed, was not eradicated.

After the hostilities ceased, at one point in time, normalcy came to exist in the day-to-day life of human activity. With that, it was found that human activities started; this includes encroachment, colonisation, and unlawful settlement within the boundaries and territories of the Wilpattu National Park. Thus, adversely affecting the biodiversity of the Wilpattu Park and its buffer zones.

The complaint of the Petitioner to this Court is that the Respondents, particularly the 1<sup>st</sup> Respondent, has failed and neglected to take actions against the squatters who have now settled within the boundaries of the Wilpattu National Park after the cessation of hostilities between the belligerent parties in 2009. Hence, the Respondents have derelicted their statutory duties cast upon them. In those circumstances, the Petitioner seeks to obtain a *Writ of Mandamus* against the Respondents, particularly the 1<sup>st</sup> Respondent, compelling them to perform their statutory duties.

The question that arises is whether the Petitioner is entitled to obtain a writ in the nature of *Mandamus*, compelling the Respondents to take certain measures or to perform statutory duties imposed upon them by the relevant statutes. For that purpose, I will first consider what legal right the Petitioner possesses to sue the Respondents in order to compel them to perform certain acts that are statutorily cast upon them. As the Petitioner asserts, it is a non-governmental organisation registered as a limited liability

company, committed to the preservation and protection of the environment. This includes the protection of fauna and flora within the four corners of the law, statutory or otherwise. According to the Petitioner, it has filed the above style application as a public interest litigation. Its objective is to preserve the fauna and flora, particularly in this case, the area that falls within the Wilpattu National Park, for the benefit of present and future generations, due to its significant biodiversity.

***Locus standi***

Upon a perusal of the Petition and the accompanying documents, I found that the Petitioner is a limited liability company limited by guarantee, and its objectives are clearly stated. Since it is not a natural person, its object is to preserve environment as part of nature for and on behalf of natural or living beings, particularly for the benefit of the present and the future. Therefore, it is evident that, even though the environment may not have a direct impact on the Petitioner, it maintains some interest in protecting the environment for future generations. Accordingly, the Petitioner asserts that its committed interests are to protect the environment and promote sustainable development. It also seeks to engage in conflict resolution between stakeholders in terms of environmental conservation and sustainable development (as per paragraph 2 of the Petition).

Public interest litigation has developed across different jurisdictions<sup>9</sup>. Particularly in relation to environmental matters, public interest litigation significantly evolved during the late 1980s and 1990s within Indian jurisprudence<sup>10</sup>. In Sri Lanka, this concept has also been well recognized<sup>11</sup>. Even a person who does not have any direct interest or *locus standi* in the matter may invoke the jurisdiction of this Court in the interest of the public, by way of public interest litigation. Therefore, it is my view that the Petitioner has the right to invoke the jurisdiction of this Court in seeking a *Writ of Mandamus*.

### ***Writ of Mandamus lies***

The second question that arises is whether a *Writ of Mandamus* can be obtained against the Respondents. Mandamus is writ issued by a competent Court compelling a statutory authority or an official to perform certain duty cast upon such statutory authority or official.

To buttress my view above, I rely on the following passage in the authoritative textbook, “Administrative Law”, by H. W. R. Wade and C.F. Forsyth (8<sup>th</sup> Edition);

#### *“Nature of this remedy*

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<sup>9</sup> One of the first case heard in this regard is the British House of Lords case *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses Ltd* [1982] A.C. 617

<sup>10</sup> *M.C. Mehta v. Kamal Nath* (1977) 1 S.C.C. 388

<sup>11</sup> *Bulankulama and Others v Secretary, Ministry of Industrial Development and Others* (Eppawela case) [2000] S SLR 244; *Sugathapala Mendis and Another v Chandrika Kumaratunga and Other* (Waters Edge case) [2008] 2 SLR 339

*The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another. The commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him. Certiorari and prohibition deal with wrongful action, mandamus deals with wrongful inaction. The prerogative remedies thus together cover the field of governmental powers and duties.*

*Mandamus reached the zenith of its utility in the eighteenth century, when as well as protecting the citizen, it played a conspicuous part in the machinery of the era between the abolition of the Star Chamber in 1640 and the creation of the modern system of local government in the nineteenth century. During that inter-regnum the business of administration was mainly in the hands of local magistrates and other authorities who enjoyed an extraordinary measure of independence. A mandamus from the King's Bench was virtually the only effective means of forcing some such body to carry out its duties under common law or Acts of Parliament. We have already seen an example of its use in that heyday of the rule of law.*

*The essence of mandamus is that it is a royal command, issued in the name of the Crown from the Court of King's Bench (now the Queen's Bench Division of the High Court), ordering the performance of a public legal duty. It is a discretionary remedy, and the Court has full discretion to withhold it in unsuitable cases. It has never lost the wide scope which the courts gave it in the eighteenth and early nineteenth centuries, when it was so vital a part of the mechanism of the state. But in the highly organised administrative system of the modern state, it has no longer this prominent role to play. Governmental bodies*

*today respond more naturally to the political stimulus, and the ultimate legal sanction has to be invoked only in a handful of stubborn cases.*

*Disobedience to a mandamus is a contempt of court, punishable by fine or imprisonment. A mandamus is therefore very likely a mandatory injunction: both are commands from the court that some legal duty be performed. But the two remedies have different spheres. The injunction is an equitable remedy, and it is rare to find mandatory injunctions outside private law. Mandamus is a common law remedy, based on royal authority, which is used only in public law.”<sup>12</sup>*

Sri Lankan courts have consistently held that when a statutory duty is imposed on a statutory body or authority created by a statute to carry out statutory functions, that authority cannot neglect its statutory duties. If they fail in such a duty, a *Writ of Mandamus* will always lie<sup>13</sup>.

### **Duty cast on the 1<sup>st</sup> Respondent**

Now I will consider what type of duties are cast upon the Respondents in their official capacity to carry out various responsibilities.

The 1<sup>st</sup> Respondent is clearly a creation of a statute, namely the Fauna and Flora Protection Ordinance No. 02 of 1937, initially appointed as ‘the Conservator of Wildlife’ but later redesignated as the Director for the protection of fauna and flora. His

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<sup>12</sup> Page 604 - 605

<sup>13</sup> *Sripavan J., Kahandawela v. National Housing Development Authority* (2004) 2 SLR 176, 179-180; *M. D. H. Fernando J., Perera v Prof. Daya Edirisinghe* (1995) 1 SLR 148, 156



duties are also enumerated in the very ordinance in black and white, and one such duty is stated in Section 2A of the Ordinance, as read below.

*“2A. The Director shall administer, control and manage the facilities or services which are to be provided within any National Reserve.”*

As such, he is under a duty to protect the environment, including the Wilpattu National Park, which falls within his scope of responsibilities.

The said duties of the Director elucidated in Section 2A of the Ordinance will commence once the area is identified and declared as a national park, in terms of Section 2(4)(a) of the Ordinance. Then, Sections 3 and 5 of the Ordinance come into operation.

The Section 5(1) of the Ordinance clearly stipulates that no person shall enter or remain within a national park except under proper authority. Section 5(2) further states that a valid permit must be issued for the purpose of studying or observing flora or fauna within a national park. If any person enters the National Park without such a permit, remains within its boundaries, or engages in any activity therein, that person is guilty of an offence under the Ordinance.

*“5. (1) No person shall enter or remain within any National Park except under the authority and in accordance with the conditions of a permit issued by the prescribed officer on payment of the prescribed fee.*

*(2) A permit under subsection (1) shall be issued only for the purpose of enabling the permit-holder to study or observe the fauna and flora in a National Park.”*

*“5A. (1) No person shall enter or remain within any Nature Reserve except under the authority and in accordance with the condition of a permit issued by the prescribed officer on payment of the prescribed fee.*

*(2) If no fee is prescribed for the issue of a permit under subsection (1), such permit shall be issued free of charge.”*

Therefore, it is clear that even the mere act of entering and remaining within the boundaries of the Wilpattu National Park without permission attracts strict liability. This includes individuals who not only enter and remain, but also, engage in activities or permanently settle by erecting habitable structures are liable to a punishment even without any *mens rea*<sup>14</sup>.

The Respondents, in their objections, also admitted that there is human settlement within the boundaries of Wilpattu National Park, particularly in the document marked as **R3**. In addition, the Petitioner has clearly established by **P9(a)** to **(c)** that the information sought from the Wildlife Conservation Department has been answered, admitting that the 1<sup>st</sup> Respondent has not taken actions to institute legal proceedings against the unlawful settlers or squatters found within the boundaries of Wilpattu National Park.

Bringing such persons before the law is a statutory duty of the 1<sup>st</sup> Respondent, who is created, appointed, and entrusted with this responsibility. He cannot delegate this duty

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<sup>14</sup> Peiris G.L., 'General Principles of Criminal Liability in Sri Lanka' (Reprinted 1999) Chapter 10, pg. 354; Jewel Arts Limited v. Assistant Commissioner of Labour and the Attorney General 211/ 2018 [CA Minute 31<sup>st</sup> July 2025]

to any other person (other than his subordinate as authorized by law), particularly not to the Assistant Government Agent or the Divisional Secretary of the area. In this instance, the Divisional Secretary has granted permission to some squatters to settle within the boundaries of the Wilpattu National Park.

Preservation of the boundaries of the National Park is a duty imposed on the 1<sup>st</sup> Respondent as the Director General of Wildlife. If at any time the boundaries are unascertainable, under any doubt or suspicion as to its existence, or have been obliterated by a person, it is the duty of the 1<sup>st</sup> Respondent to seek the assistance of the 2<sup>nd</sup> Respondent to protect, erect, and maintain such boundaries. This ensures that any individual who enters or remains within the park without authorisation, or engages in activities therein, can be properly brought before the law.

However, it appears from the pleadings that the 1<sup>st</sup> Respondent has not only neglected his statutory obligations but also has derelict them. Furthermore, he appears to be attempting to delegate his duty to the Divisional Secretary, which he is not permitted to do under the Ordinance. While the Divisional Secretary may be acting under a different statute, such as the Land Development Ordinance, it remains the statutory responsibility of the 1<sup>st</sup> Respondent to protect the area within the Wilpattu National Park.

Given that such a duty is cast upon the 1<sup>st</sup> Respondent, he can be compelled to perform his statutory functions, which he is expected to carry out as long as he holds public office and is paid from public funds.

Therefore, it is my view that the Petitioner is entitled to obtain a *Writ of Mandamus* compelling the 1<sup>st</sup> Respondent to perform the official duties cast upon him under the Ordinance. Accordingly, the Petitioner is entitled to the Writs sought from this Court.

### **Delegation of duties of the 1<sup>st</sup> Respondent**

In this case, one additional point to be mentioned is that it was argued for and on behalf of the Respondents, particularly the 1<sup>st</sup> Respondent, that without the assistance or the participation the Divisional Secretary of the area, the 1<sup>st</sup> Respondent cannot take a decision. No statutory provision was brought before us to establish that the Divisional Secretary is in charge of the Wilpattu National Park, or that the 1<sup>st</sup> Respondent can delegate his powers to the Divisional Secretary to exercise any power under him or under the Fauna and Flora Ordinance to take action against people or actions in favour of the squatters who have already settled within the boundaries of Wilpattu National Park. Therefore, the contention advanced on behalf of the Respondents is not acceptable for two reasons. One is that there is no statutory provision or any law to establish that the Divisional Secretary is empowered to settle squatters within the boundaries of the Wilpattu National Park. The second matter is that the powers entrusted to the 1<sup>st</sup> Respondent cannot be delegated to the Divisional Secretary either to settle squatters or to eject or bring them before the law under the Ordinance. Therefore, a *Writ of Mandamus* has to be issued against the 1<sup>st</sup> Respondent to compel him to take necessary actions. An argument based on bringing or citing the Divisional Secretary of the area as a necessary party only amounts to introducing a red herring.

**Conclusion**

Accordingly, for the reasons outlined by me, I am of the opinion that relief should be granted in terms of the relief sought in prayers (d), (f), (g), (h), and (i) of the Petition, but without costs.

**JUDGE OF THE COURT OF APPEAL**