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

In the matter of an application for the grant of mandates in the nature of writs of mandamus, certiorari and prohibition under and in terms of the Constitution of the Democratic Socialist Republic of Sri Lanka and especially Article 140 thereof.

CA WRIT Application No.388/2022

1. Gilkrisht Leisure (Pvt) Ltd.,
   No.9, Havelock Place,
   Colombo 5.

2. Thusitha Paranagama,
   No. 9, Havelock Place,
   Colombo 5.

PETITIONERS

Vs.

1. Urban Development Authority,
   6th and 7th Floors,
   Sethsiripaya",
   Battaramulla.

2. Mr. Nimesh Herath,
   Chairman,
   Urban Development Authority,
   6th and 7th Floors,
   Sethsiripaya",

Battaramulla.

2A. Eng. L. B. Kumudu Lal,
Chairman,
Urban Development Authority,
6th and 7th Floor,
"Sethsiripaya".
Battaramulla.

3. Mr. N.P.K. Ranaweera,
Director General,
Urban Development Authority,
6th and 7th Floors,
Sethsiripaya",
Battaramulla.

3A. Mr. Mahinda Withanaarachchi,
Director General,
Urban Development Authority,
6th and 7th Floors,
Sethsiripaya",
Battaramulla

4. Hon. Prasanna Ranathunga,
Minster of Urban Development and Housing,
8th, 17th and 18th Floors,
"Suhurupaya",
Subhuthipura Road,
Battaramulla.

4A. Hon. Anura Karunathilaka,
Minister of Urban Development Construction and Housing,
12th Floor,

Sethsiripaya,
Stage – II
Battaramulla.

5. Mr. Pradeep Rathnayake,
Secretary,
Ministry of Urban Development and Housing,
8th, 17th and 18th Floors,
"Suhurupaya",
Subhuthipura Road,
Battaramulla.

5A. Mr. Ranjith Ariyaratne,
Secretary,
Ministry of Urban Development Construction and Housing,
12th Floor,
Sethsiripaya,
Stage – II,
Battaramulla.

6. Hotel Grand Serendib (Pvt) Ltd.,
No. 12, Mahamaya Mawatha,
Kandy.

7. Mr. Herath Jayasinghe Mudiyanselage Dilip Kumar,
Australian Business Education Centre (Pvt) Ltd.,
No. 12, Mahamaya Mawatha,
Kandy.

8. His Worship Kesara Senanayake,

Mayor of Kandy,
Kandy Municipal Council,
Kandy.

9. Kandy Municipal Council,
Kandy.

10. Hon. Lalith U. Gamage,
Governor Central Province,
Palace Square,
Kandy.

10A. Hon. Prof. S.B.S. Abayakoon,
Governor,
Central Province,
Palace Square,
Kandy.

11. Director Central Province,
Urban Development Authority,
Kandy.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Suren Fernando with Khyali Wickramanayake for the Petitioners.
Ronal Perera, P.C. with Naamiq Nafath and Akash Rafeek instructed by Sanath Wijewardane for the 6th and 7th Respondents.

Sulakshi Batuwila instructed by Niluka Dissanayake for the 8th and 9th Respondents.
Nayomi Kahawita, S.S.C. for the State (1st to 5th and 11th Respondents).

Written Submissions: On behalf of the Petitioners filed on 02/12/2025.

On behalf of the 6th and 7th Respondents filed on 21/11/2025.

On Behalf of the 1st 2nd 3rd 4th 5th and 11th Respondents filed on 16/12/2025.

Argued on : 01/10/2025, 08/10/2025 and 28/10/2025.

Judgment on : 18/12/2025

Dr. Sumudu Premachandra J.

1] The 1st Petitioner, a company operating "The Coffee Bungalow Kandy" on Rajapihilla Mawatha, and the 2nd Petitioner, the owner of that property and a director of the 1st Petitioner, challenge what they describe as an unlawful and hazardous construction at No. 12, Mahamaya Mawatha, named as Grand Serendib Hotel, within the Kandy World Heritage City. Their renovated bungalow, dating to the 1860s, depends significantly on its historic setting and "picturesque view," which they assert is now imperilled by the erection of a six-floor structure with a high roof reaching approximately 22 metres in height.

2] It is seen by pleadings, beginning in April 2019, the Petitioners engaged in extensive correspondence with several state authorities—including the Urban Development Authority (UDA)—after obtaining information on the applicable

planning and building regulations (P6(a), P6(b), P8–P25). Their concerns intensified following the Buwelikada building collapse in September 2020, which they believed raised analogous risks in respect of the Mahamaya Mawatha construction; a related news article was annexed as P31, P30(a), P30(b), P30(c).

3] The Petitioners' persistent efforts precipitated the appointment of a seven-member investigation committee by the State Ministry of Urban Development. In response to a Right to Information request submitted by the 2nd Petitioner (P32), the 1st Respondent disclosed the committee's report on 30/05/2022 (P34). The committee unanimously confirmed several serious violations of the applicable UDA regulations, including: the construction of 24,097 sq. ft. where only 3,491 sq. ft. was permitted (Regulation 13(c)); a land area of merely 25.65 perches where 40 perches were required for a development on that gradient (Regulation 15(3)); and a site coverage exceeding 65% where the permissible limit was 40% (Regulation 24). The committee also determined that the purported three "basements" were, in fact, ground or lower-ground floors, resulting in an unlawful increase in the number of floors.

4] The Said Committee recommended disciplinary action against officers involved in approving the plans contrary to the regulations. Despite follow-up letters from the 2nd Petitioner dated 06/06/2022 (P35) and 01/07/2022 (P36), the UDA failed to take any steps to ensure compliance. Meanwhile, the Central Environmental Authority had commenced separate environmental-violation proceedings (Case No. 32102/21; P37), and a further report obtained around January/February 2022 revealed irregularities in issuing permits, recommending disciplinary measures and possible proceedings under the Bribery and Corruption Act. The construction also contravened recommendations by the State Engineering Corporation concerning structural safety, particularly in relation to the so-called basements.

5] In these circumstances, the Petitioners seek urgent interim and final relief to prevent what they characterise as continuing unlawful construction posing a grave threat to public safety and the integrity of their adjacent heritage property. They assert that the failure of the 1st to 3rd Respondents to exercise their statutory powers—particularly under Section 28A of the Urban Development Authority Law—to demolish the offending structure or compel conformity results in an ongoing violation of their rights and a significant public health hazard. Despite repeated written appeals, including letters dated 29/08/2022, 08/09/2022, and 19/10/2022 to the 10th Respondent and the Chairman of the UDA, the Petitioners fear that the authorities are instead attempting to grant illegal approvals or certificates of conformity, which would render any eventual judicial relief nugatory. Accordingly, they request orders directing the 1st Respondent to demolish the unlawful construction or bring it into regulatory conformity, restraining the issuance of further approvals, and compelling the production of all relevant correspondence and documents from the Respondents to ensure a just and lawful outcome. Above was the case of the Petitioner.

6] The Petitioners pray for the following reliefs;

a. Issuing Notice on the Respondents

b. Calling for the record pertaining to this matter, including all correspondence, reports, approvals, certificates, permits, correspondence and other documents in the possession of the relevant respondents (including all reports made with regard to the construction at No. 12, Mahamaya Mawatha, Kandy, including the report made in or around January or February 2022 at the request of the Urban Development Authority, and all reports/ recommendations made by the State Engineering Corporation with regard to the said construction or such other appropriate order

c. Issuing an interim order, restraining and/or prohibiting the relevant respondents or their representatives, agents, assigns or anyone acting

under their authority from taking any steps towards granting a certificate of conformity to the building being constructed on No.12, Mahamaya Mawatha, Kandy, or such other appropriate order, until the final hearing and determination of this application

d. Issuing a Writ of Prohibition, restraining and/or prohibiting the relevant respondents and/ or their representatives, agents, assigns or anyone acting under their authority from taking any steps towards granting a certificate of conformity to the building being constructed on No.12, Mahamaya Mawatha, Kandy, or such other appropriate order

e. Issuing a Writ of Certiorari quashing any purported permits and/or approvals (including quashing the purported Development Permit P45) and/or the decision to grant approval (as may be disclosed by the documents obtained by calling for the record) granted for the construction on premises No.12, Mahamaya Mawatha, Kandy and/or quashing any purported approvals/ the decision to grant approvals for the construction on premises No.12, Mahamaya Mawatha, Kandy to the extent of inconsistency with the applicable building regulations P6 (A), or such other appropriate order

f. Issuing a Writ of Certiorari quashing any Certificate of Conformity (as may be disclosed by the documents obtained by calling for the record) granted for the construction on premises No.12, Mahamaya Mawatha, Kandy, or such other appropriate order

g. Issuing a Writ of Mandamus, directing the relevant respondents, including especially the 1st – 3rd respondents, to give effect to the recommendations contained in the investigation report marked P34, with regard to the building/ construction on No.12, Mahamaya Mawatha, Kandy, or such other appropriate order

h. Issuing a Writ of Mandamus, directing the relevant respondents, including especially the 1st -3rd respondent, to exercise their powers under section

28A (1) (C) of the Urban Development Authority Law by acting to demolish the construction on premises No.12, Mahamaya Mawatha, Kandy and/or at minimum the illegal and/or unlawful portions of the building at No.12, Mahamaya Mawatha, Kandy, so as to bring it in conformity with the applicable regulations, or such other appropriate order

i. For costs including punitive and/or exemplary costs; and

j. For such further and other reliefs as to Your Lordships' Court shall seem meet.

7] The 1st, 2nd, 3rd, and 11th Respondents concede certain background facts, notably, that a Special Committee was appointed by the Governor following the Buwelikada building collapse to investigate comparable structural risks. They say, however, that the construction of this application was not among the twenty collapsible buildings identified by that Committee.

8] In refuting allegations made by the Petitioners, the said Respondents maintain that all requisite procedures were duly followed, affirming that approval for a seven-floor structure was granted on 19/09/2019, followed by the issuance of a Development Permit under the Urban Development Authority Act. They further contend that the subsequent Certificate of Conformity (COC) was lawfully issued after a site inspection, which, in their assessment, showed no significant incline and confirmed that the building footprint covered only 80% of the land in compliance with the relevant regulations. The Respondents also note that the earlier report marked P34 was later reviewed and determined to have been prepared on "incorrect premises" and in an "erroneous manner," resulting in the exoneration of the officers whose conduct had been questioned.

9] Beyond these limited admissions, the Respondents categorically deny all other allegations. They raise several preliminary objections, asserting that the Petitioners have failed to present material facts, have willfully suppressed or misrepresented information, and have therefore not approached the Court with

the requisite “clean hands,” amounting to a breach of uberrima fides. They also contend that the application is misconceived and futile.

10] Further, the Respondents argue that “The Coffee Bungalow” is situated at a significantly higher elevation than the 6th and 7th Respondents’ construction, with an approximate 200-foot separation, and thus any structural instability of the “Grand Serendib Hotel” would not affect the Petitioners’ premises. Asserting that their actions were lawful and properly executed, they submit that the Petitioners have failed to demonstrate any illegality or impropriety and request that the Court dismiss the application and award costs.

11]The 6th and 7th Respondents—Hotel Grand Serendib and its director—vigorously oppose the Petition, contending that it should be dismissed *in limine* on the grounds that it is misconceived, frivolous, and vexatious. They argue that document P34, the report of the purported seven-member committee, is not properly before the Court and was prepared in violation of natural justice, asserting that it cannot be relied upon. That was the case for the State.

12]They further submit that the Petitioners have suppressed and misrepresented material facts in order to mislead the Court. Describing the development of Hotel Grand Serendib at No. 12, Mahamaya Mawatha, they state that they invested over USD 4 million and complied fully with all requisite approvals from the Urban Development Authority (UDA), the Central Environmental Authority (CEA), and other regulatory bodies. They say that they have already obtained a Certificate of Conformity (COC) and all necessary operational licences, including a liquor licence. Emphasizing the structural soundness of the building.

13] They assert that the Hotel was designed by qualified experts and constructed on flat land, directly contradicting the Petitioners' allegations of hazardous construction on a steep incline.

14] They claim to have had no prior knowledge of the seven-member committee's report and maintain that the committee neither visited the site nor afforded them a fair hearing. They confirm that the building was originally approved for a height of approximately 22 metres and was subsequently constructed with seven floors (B1 + B2 + G + G1 + 3), pursuant to an amended plan duly approved by the UDA (6R28). They categorically deny any suppression of documents and assert that the hotel poses no risk of collapse, relying on documents 6R37, 6R38, and 6R39, which they say affirm its structural integrity. Their request is that the Petition be dismissed with costs.

15] The 8th Respondent, Mayor of the Municipal Council, Kandy, generally denies or expresses unawareness of the averments made by the Petitioners across paragraphs 1 to 33 and 35 to 36 of the petition. Specifically, they admit that the building in question is located within the Kandy Municipal Council limits, is approved by the Urban Development Authority (UDA), and has received a Certificate of Conformity from the UDA.

16] The 8th Respondent says that 9th Respondent has fulfilled all requirements for their building plan approval and that the impugned related processes are outside the administrative scope of the 9th Respondent. The 8th Respondent formally prays that the Court dismiss the Petition.

17] The 9th Respondent, The Kandy Municipal Council, admits to certain facts, such as the existence of a property called "The Coffee Bungalow Kandy" and the admission that the building is approved by the Urban Development Authority (UDA) and is located within the Kandy Municipal Council (KMC) limits.

18] However, they state that they are unaware of facts and documents referenced in the petition, including the letter marked P10 received by the 8th Respondent, the news articles P30(a)-P30(c) concerning the building collapse in Buwelikada, the news article P31, the documents P32-P34, the investigation report, the letter P35, the document P36, the document P38, and the communications marked P40 to P45. Crucially, the 9th Respondent denies involvement in the building's construction or the inspection mentioned in paragraph 21, states they are not members of the Investigation Committee, and asserts they were not a party to the Magistrate's Court case No. 32102/21.

19] At this moment, firstly, the Court considers the objection to X1 to be considered. It should be considered based on the merits of the application, before the Learned Counsel for the Petitioner objected that the NBRO Report marked as X1, which was prepared on 13/10/2025 by the Chief Geologist of NBRO-Kandy. The record shows that this was tendered by motion of the 6th Respondent's Registered Attorney, Mr. Sanath Wijewardene, dated 23/10/2025. I noted that oral submissions of the Petitioners have been concluded on 01/10/2025 and the adjudication must be considered situation of at the date of filing the application. This report has been prepared well after the institution of this application, therefore court refuses to consider materials in X1.

20] The Petitioners contend that their application for a Writ of Certiorari ought to be adjudicated on its merits and not dismissed on the ground of laches, particularly because the impugned approvals and the Certificate of Conformity (COC) are alleged to be nullities issued without jurisdiction. They argue that while the Court possesses discretion in granting prerogative writs, such discretion must be exercised in accordance with ordinary principles of administrative law, and that delay is immaterial where the challenged act is void ab initio.

21] They rely on ***Ashokan v Commissioner of National Housing*** and ***Biso Menika v Cyril de Alwis***, which emphatically state that laches cannot defeat a challenge to a jurisdictionally defective decision. The Petitioners therefore submit that even if some delay is established, the Court is nevertheless bound to scrutinize the legality of the impugned acts, as nullities are incapable of being validated by the mere passage of time.

22] In Ashokan v Commissioner of National Housing [2003] 3 SLR 179, Sripavan, J., held the question of delay as;

> *"Question of delay does not apply where the proceedings are a nullity"*

23] In ***Biso Menika Vs. Cyril de Alwis*** [1982] 1 SLR 368, 379, SHARVANANDA, J., (As he then was**)** held that,

> *"An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by the Law.*
>
> *When the Court has examined the record and is satisfied the Order complained of is manifestly erroneous or without jurisdiction, the Court would be loath to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the authority*

concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In Any such event, the explanation of the delay should be considered sympathetically.

"Recent practice clearly indicates that where the proceedings were a nullity an award of Certiorari will not readily be denied" - de Smith - Judicial Review - 4th Ed. page 426.

In this connection, Professor Wade in his "Administrative Law" 4th Ed. at page 561 states

"the discretion to withhold remedy against unlawful action may make inroads upon the rule of Law and must therefore be exercised with the greatest care. In any normal case the remedy accompanies the right, but the fact that a person aggrieved is entitled to Certiorari ex debito justitiae does not alter the fact that a Court has power to exercise the discretion against him, as it may in the case of any discretionary remedy."

24] In this application, the Petitioners allege that the construction at No. 12, Mahamaya Mawatha, Kandy, was undertaken in clear violation of the Urban Development Authority Law and its subsidiary regulations. They assert that a series of approvals—ranging from the Preliminary Planning Clearance to the Planning Approval and subsequent amendments—were granted in blatant disregard of mandatory regulatory requirements governing floor area ratio (FAR), plot coverage, building height, and the treatment of basements.

25] The Petitioners rely extensively on material obtained through a Right to Information application, particularly the seven-member investigation committee report (P34), which documents numerous breaches, recommends disciplinary action, and calls for suspension of the COC. Despite these findings, the Respondents allegedly issued the COC in undue haste in an attempt to frustrate the Petitioners' legal challenge. The Central Environmental Authority has also initiated proceedings for environmental violations, further reinforcing the unlawfulness of the project.

26] Specially, the Petitioners' argument concerns the actual slope of the land and the resulting FAR restrictions under the applicable Planning and Building Regulations. They contend, based on reports from the National Building Research Organization [NBRO] and material from the UDA's own records, that the land has a slope between 30°–40°, thereby limiting the permissible FAR to 1:0.5. Nevertheless, the Respondents granted FAR values ranging from 1:2.5 to 1:3.3, which the Petitioners submit constitutes a gross and jurisdictionally fatal excess of statutory authority. Additional violations are cited in respect of rear open space, natural light and ventilation requirements, plot coverage, and maximum permissible height. The Petitioners argue that the Respondents' attempt to disregard or retroactively invalidate Report P34 is an abuse of process, as the report was produced by a committee appointed by a higher authority and remains corroborated by independent evidence. Thus, the record demonstrates indisputable violations rendering the entire approval process ultra vires.

27] The Petitioners highlight that an invalid administrative action is "unusually destitute of legal effect" and may be collaterally challenged or ignored with impunity. The Petitioners emphasize that the timeline of approvals reflects arbitrary and unreasonable conduct by the Respondents, including the granting of approvals for expanded construction despite known hazards and objections, and despite evidence—such as landslide zonation maps—establishing significant public safety risks. The issuance of the COC after the application is

filed is characterised as an attempt to confer retrospective legitimacy on an unlawful structure.

28] Thus, the Petitioners argue that any act not performed within statutory authority is null and void, and all purported permits granted in this matter must therefore be quashed.

29] Moreover, the Petitioners submit that once the permits and approvals are found to be invalid, the logical and mandatory consequence under Section 28A of the UDA Act is demolition of the unlawful construction.

30] The Petitioners rely on the decision of ***KORALAGAMAGE v COMMANDER OF THE ARMY***, [2003] 3 SLR 169. In that, SRIPAVAN, J., held;

> *"If the impugned acts are not done in the genuine exercise of the regulations, then they are not done in the 'Exercise of a power conferred by law and are a nullity."*

31] Further, Petitioners mentioned the decision of ***S A J T Chandralatha vs Homagama Pradeshiya Sabha,*** C A (Writ) Application No. 466 / 2008, Decided on: 2017 - 06 – 29, where His Lordship P. Padman Surasena J (As His Lordship then was) held statutory duty in unauthorised construction and ordered demolition. His Lordship noted;

> *"It was shown to the satisfaction of this Court that the 5th Respondent had constructed a building along the boundary of the Petitioner's land violating clause 51(1) of the Building and Planning Regulation produced marked P 2 which requires such construction to be away from the boundaries of the adjoining lands.*

The petitioner has shown to the satisfaction of this Court that she has a legal right of demanding that an action according to law be taken to redress the violations of her rights of enjoyment of her property. The Respondents (except the 5th Respondent) are the statutory authorities charged with the sole power to take necessary action according to law, to protect the rights of the Petitioner which has been adversely affected by the unlawful constructions done by the 5th Respondent."

32] Similarly, in the case of ***Daya Chandrasiri Jayanetti et al. v. Urban Development Authority et al.*** (SC FR/621/2010), Decided on: 3.4.2019, Sisira J de Abrew J. has considered unauthorized structure in a fundamental rights case. His Lordship noted;

"Thus the applicable regulations are the regulations found at document marked P4. The width of the Chapal Lane is SC /FR/621/2010 15 only 6 meters. Thus, according to Section 27(2) of the said regulations which I have referred to earlier, this building cannot be permitted to be built and if the said building has already been constructed it has to be demolished. When I consider the aforementioned matters, I hold that the development permit issued to construct the above-mentioned building marked 9R22 extended by 9R24 has violated the above regulations and that therefore it becomes an illegal document. However, learned President's Counsel (PC) appearing for the 9th and the 10th Respondents admitted at the hearing before us that there is no any building at No.12, Chapal Lane Nugegoda and that the development permit issued to construct the above-mentioned building marked 9R22 extended by 9R24 has now lapsed. However, if the building shown in 9R23 has been constructed or part of the said building has been constructed at No.12, Chapal Lane Nugegoda, the 1st and the 2nd Respondents should take all steps to demolish the said building."

33] In line with the above case laws, the Petitioners contended that the 1st Respondent has not performed the statutory duty within the framework, all the approvals become nullity, and nullity defeats the laches.

34] In ***Chief Adjudication Officer v Foster*** [1993] AC 239, the court considered the concept of **void** versus **voidable** administrative actions and the timing of judicial review. The principle established (or reaffirmed) is that not all actions taken by administrative bodies have the same immediate and binding legal consequences. Where a comprehensive internal review and appeal system exists, an initial decision may be seen as lacking final legal effect until that process is exhausted or the review period has passed.

35] In the above case, Lord Goff used the phrase "unusually destitute of legal effect" to characterise the initial decision in that specific statutory context. He reasoned that the decision was subject to a seamless and complete administrative review process, under which the reviewing officer could substitute their own decision with retrospective effect. This meant the initial decision did not have the finality or independent legal standing typically associated with administrative actions subject to judicial review.

36] The impugned construction was not an overnight construction and it went certain stages spanning nearly a decade. The Petitioners have objected to the 1st Respondent for unlawful constructions but no steps were taken. The Petitioners mainly rely on P34. This P34 was made by the constant complaints made by the 2nd Petitioner. It shows;

> **"2.** කමිටුවේ අවධානයට ලක් කළ ඇති ගැටළු.
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> මෙම ඉඩමට යාබදව ඉහළින් කොපි ෂොප් ව්‍යාපාරයක් පවත්වාගෙන යන මහමායා මාවතේ හි තුසිත පරණගම මහතා විසින් ඔහුගේ ඉඩමේ සිට බලන විට දර් ශන පථය අවහිර කරමින් අංක **12,** මහමායා මාවතේ ඉදිකිරීම් සම්බන්ධව දිගින් දිගටම කරන ලද පැමිණිලි"

37] It is clear that the report was made by the 2nd Petitioner and the duty of the committee was;

> **"3. කමිටුවේ කාර් යය භාරය**
>
> **මහනුවර මහමායා මාවත, අංක 12 දරණ ස්ථානයේ ඉදිකරනලද ගොඩනැගිල්ල සඳහා අනුමැතිය ලබා දීමේදී නීත්‍යානුකූලව අනුමැතිය ලබා තිබේද යන්න පරීක්ෂා කිරීම."**

38] On careful perusal, P34 does not show the methodology adopted to arrive at such conclusions. It does not show that the committee visited the impugned vicinity and a physical inspection had been done before the arrival of the conclusion. Moreover, it is not mentioned that owners of the alleged illegal construction were given a chance to explain their version, and the said purported report was made ex parte, breaching the rules of natural justice.

39] It is seen by 6R40, the Petitioners' premises are not in close proximity to the said and it was 200 feet apart by three roads, namely Mahamaya Mawatha, Rajapihilla Mawatha and a private road to the Petitioners' Coffee Bungalow, Kandy,and Liselma Residence. (details taken from Google Maps). Thus, Petitioners' premises are nowhere near the impugned Grand Serendib Hotel.

40] I now consider whether Petitioners' rights have been affected. The purpose of the said P34 inquiry was whether the scenic view of Dalada Maligawa was disturbed by the impugned Grand Serendib Hotel. (**ඉඩමේ සිට බලන විට දර් ශන පථය අවහිර කරමින්**). Now, the question arises whether the Petitioners have a right to an undisturbed view, as of right.

41] The Petitioners have viewed Shri Dalada Maligawa for over 100 years and have long possession created a servitude? In ***Perera v. Ranatunge,*** 66NLR 337, His Lordship BASNAYAKE, C. J, held that a **negative servitude for a view or light cannot be acquired by mere long enjoyment or prescription**. A landowner is generally presumed to be a building on their land for their own convenience and profit and cannot be prevented from building higher by an adjacent landowner unless a formal legal agreement exists. [Emphasis is added]

42] In ***D. H. MOOSAJEE, vs Y. CAROLIS SILVA***, 70 NLR 217, His Lordship H. N. G. FERNANDO, C.J. held that servitude of light and air, window light, a Negative servitude that bare enjoyment cannot create a prescriptive title under section 3 of the *Prescription Ordinance (Cap.* 68).

43] Thus, it is crystal clear that the Petitioners have no standing on an infringement of private right, nor do they have any legal standing that they do not put forward this as public interest litigation. If this allowed a person in Kandy to point out a premise in Colombo that had been built in violation of the regulations and to seek a writ for demolition. If so, it would lead to uncertainty and would open floodgates.

44] In the case of ***Vasana Vs. Incorporated Council of Legal Education and others*** [2004] 1 SLR 163 Gamini Amaratunga J stated in this regard as follows: *" ... A writ of mandamus is available against a public or a statutory body performing statutory duties of a public character. In order to succeed in an application for a writ of mandamus the petitioner has to show that he or she has legal right and the respondent corporate, statutory or public body has a legal duty to recognize and give effect to the petitioner's legal right... "*

45] The Petitioners prayed for the approval of the public authority (UDA) to be declared null and void, and on that premise, a demolition order be granted, and Mandamus be issued. In ***GEEGANAGE v. DIRECTOR GENERAL OF CUSTOMS***, [2001] 3 Sri L.R. 179, U. DE Z. GUNAWARDANA, J. held;

> *"If a certain decision is left unchallenged, it will be accepted and enforced as if it were valid. Only a decision of a Court can establish its nullity. One ignores the void decision at one's peril and with ouster and time - limit clauses coming into vogue, effluxion of time can prevent a challenge to a nullity being ever mounted after the stipulated period.*

46] In ***Weligamawa Multi-Purpose Cooperative Society Ltd. vs. Chandradasa Daluwatta*** [1984] 1 S.L.R. 195 stressed that a writ of mandamus should be issued to secure the performance of a public duty, in the performance of which the applicant has sufficient legal interest. The public duty sought to be enforced must be of a public nature stemming from a statute, charter, the common law or custom, and cannot be of a merely private character.

47] Sansoni J. observed in Samaraweera vs. Balasuriya 58 NLR 118 (at p.120)

> *"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."*

48] It should be stressed that Mandamus will not be available where there has been a valid exercise of power, merely because the Petitioner believes that the discretion has been exercised erroneously by the Respondents. Till P34, there was no evidence. However, as I observed, P34 was done in breach of the rules of natural justice and vehemently disputed by the 1st Respondent parties.

49] The P34 report itself shows that the first building plan was approved on 19/11/2015 and the second building plan was approved on 16/12/2016. The Respondents have spent millions of monies, Google says that the impugned premises is a 5 Star Hotel. [1]. The Petitioners' Hotel is a 4 Star Hotel. [2]I do not see why the Petitioners have waited till 2022 to bring this application. The application was filed on 21/10/2022; construction of the building began in 2015; and P34 was issued on 22/10/2021, exactly 1 year after P34.

50] The Respondents say that the Petitioners are guilty of laches; thus, the application should be dismissed. In ***Arachchige Dona Christene Shani De Silva et al. v. Urban Development Authority et al,*** CA WRIT/278/18, CA Minute 26-10 2021, the Court of Appeal held that the principle of laches prevents a party from claiming judicial review if they have unreasonably delayed in asserting their rights. However, it has also been held that if the delay is adequately explained by the applicant, the objection regarding laches can be disregarded. The Petitioners explanation was that they complained to the authorities and waited for a reasonable outcome. In the above case His Lordship MOHAMMED LAFFAR, J. held;

[1] Vide https://www.google.com/maps/place/Grand+Serendib+Hotel/@7.2854217,80.6445306,3a,75y,90t/data=!3m8!1e2!3m6!1sAF1QipMIZYmN3XIHHuomACS0efh8iFLYNzhuus3K0fK5!2e10!3e12!6shttps:%2F%2Flh3.googleusercontent.com%2Fp%2FAF1QipMIZYmN3XIHHuomACS0efh8iFLYNzhuus3K0fK5%3Dw128-h86-k-no!7i5170!8i3449!4m21!1m10!3m9!1s0x3ae367776a0f9bdb:0x17705a91676bf680!2sLiselma+Residence!5m2!4m1!1i2!8m2!3d7.2854586!4d80.6457222!16s%2Fg%2F11y7532gk7!3m9!1s0x3ae367ddbb19e145:0x7709710fcb36a3f1!5m2!4m1!1i2!8m2!3d7.2854197!4d80.6444884!10e5!16s%2Fg%2F11j4fj892v?entry=ttu&g_ep=EgoyMDI1MTIwOS4wIKXMDSoASAFQAw%3D%3D (Accessed on 16/12/2025)

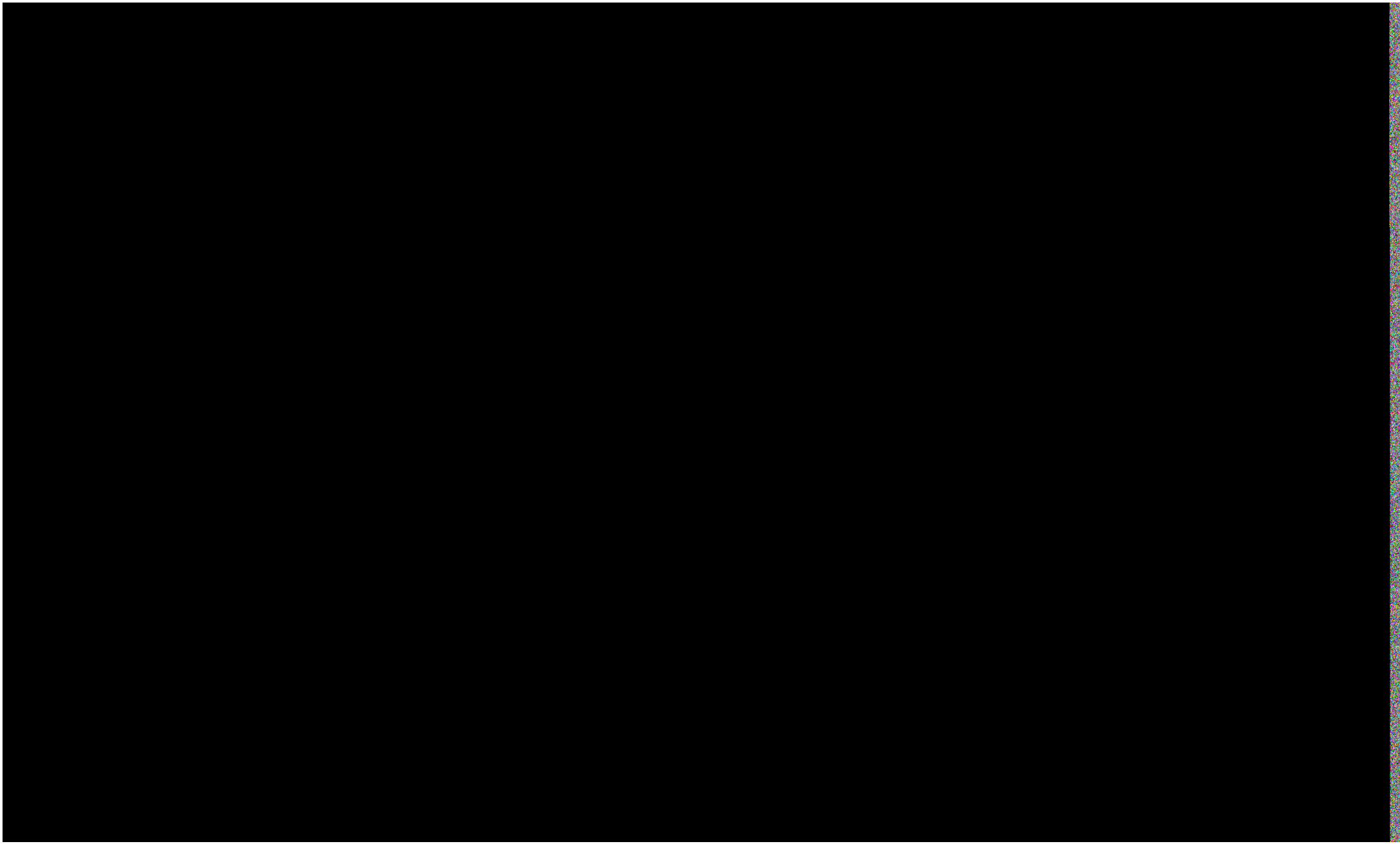
[2] https://www.google.com/maps/place/Coffee+Bungalow+Kandy/@7.2851972,80.6449321,17z/data=!3m1!4b1!4m9!3m8!1s0x3ae366296a6b0435:0x9fabc054859b0c!5m2!4m1!1i2!8m2!3d7.2851972!4d80.6449321!16s%2Fg%2F11f662_vn0?entry=ttu&g_ep=EgoyMDI1MTIwOS4wIKXMDSoASAFQAw%3D%3D (accessed on 16/12/2025)

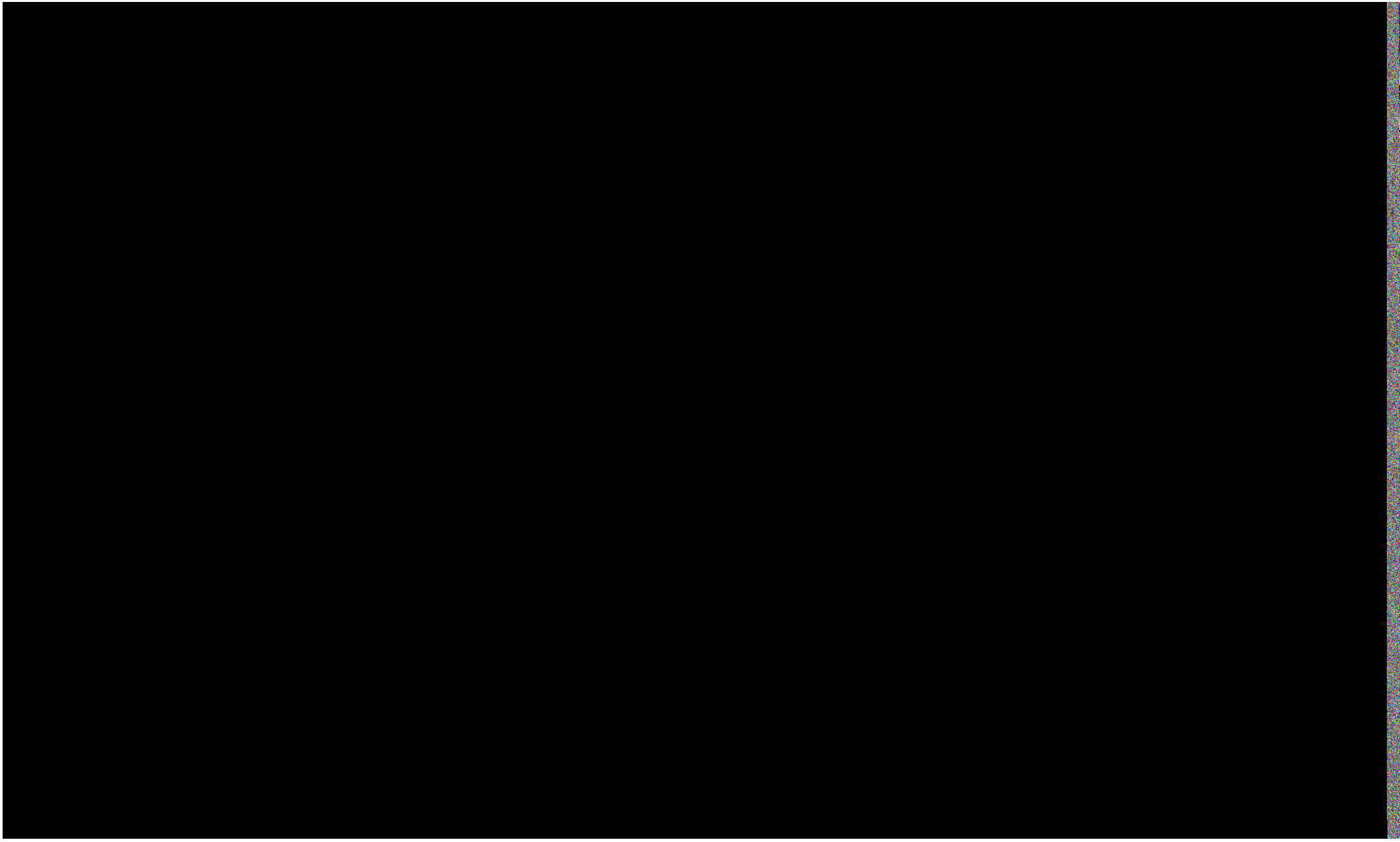
"If the writ jurisdiction of this Court is invoked after an inordinate delay, the Petitioner shall explain the delay in his petition. That is a threshold requirement. Vide Lindsey Petroleum Com. v. Hurd [1873-74] LR 5 PC 221; Fisher v. Brooker [2009] UKHL 41; Biso Menika v. Cyril de Alwis and Others [1982] 1 Sri LR 368 and Bogawanthalawa Plantation Ltd. v. Minister of Public Administration, Home Affairs and Plantation Industries [2004] 2 Sri LR 329"

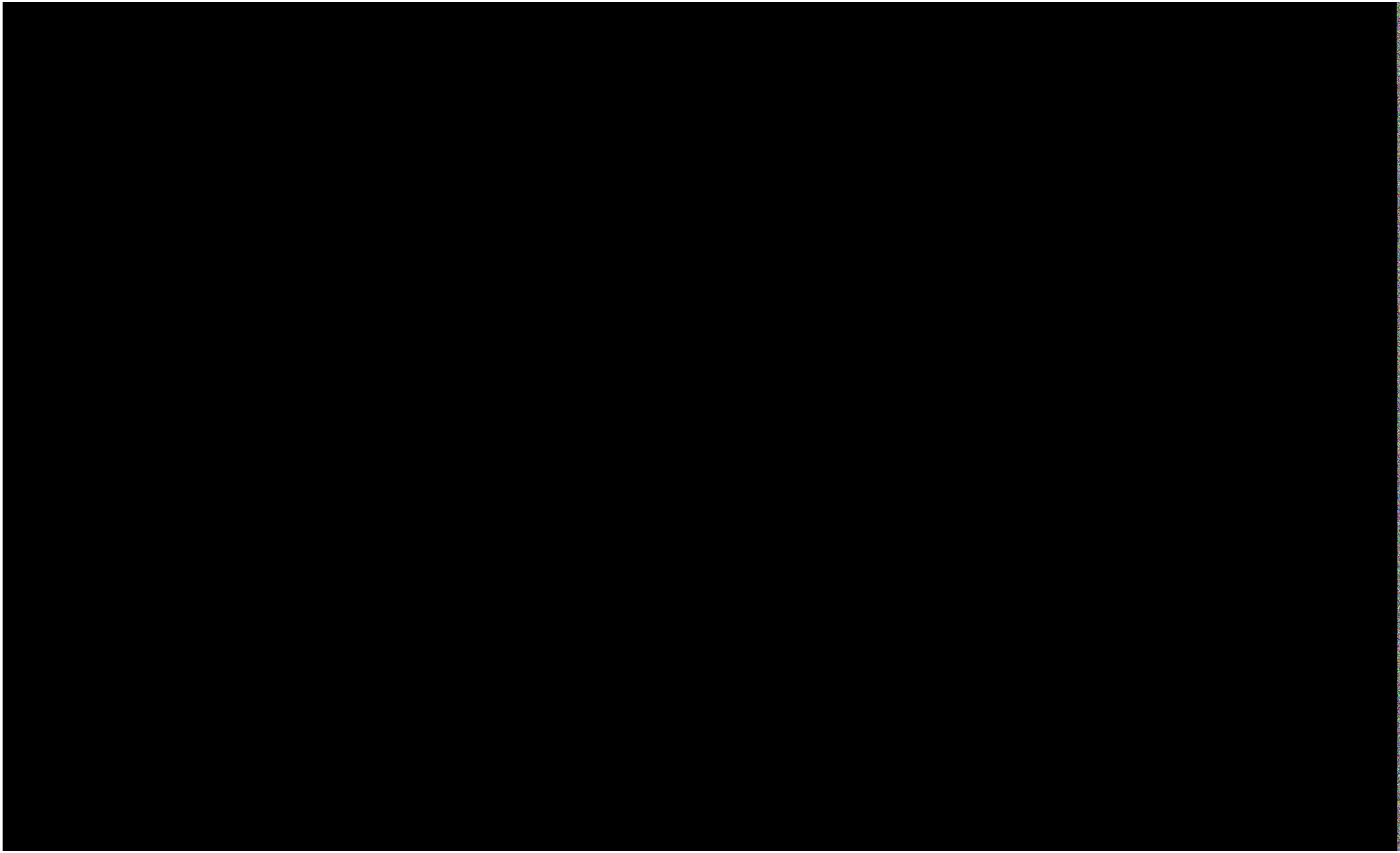
51] But what we do not see is that once the complaint was made, if the public authority does not act promptly, waiting for such a long time cannot be excused. The principle is that the law assists the vigilant, not the sleepy (***Vigilantibus Non Dormientibus Jura Subveniunt***). Thus, the explanation cannot be accepted.

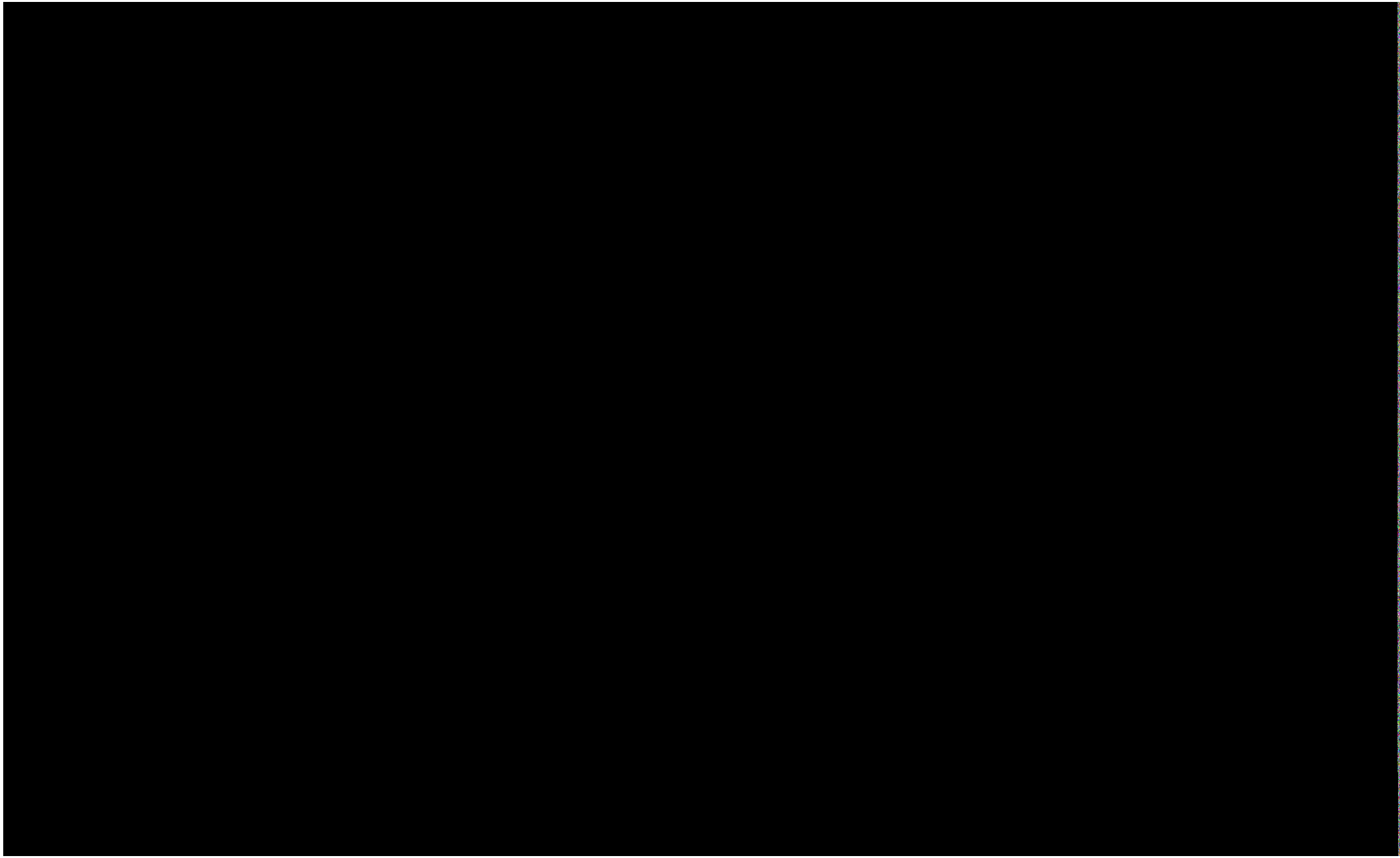
52} The Learned Senior State Counsel in her written submission has drawn a comprehensive comparison (table) with regard to P34 and position according to the UDA. This clearly shows that facts are disputed by the parties.

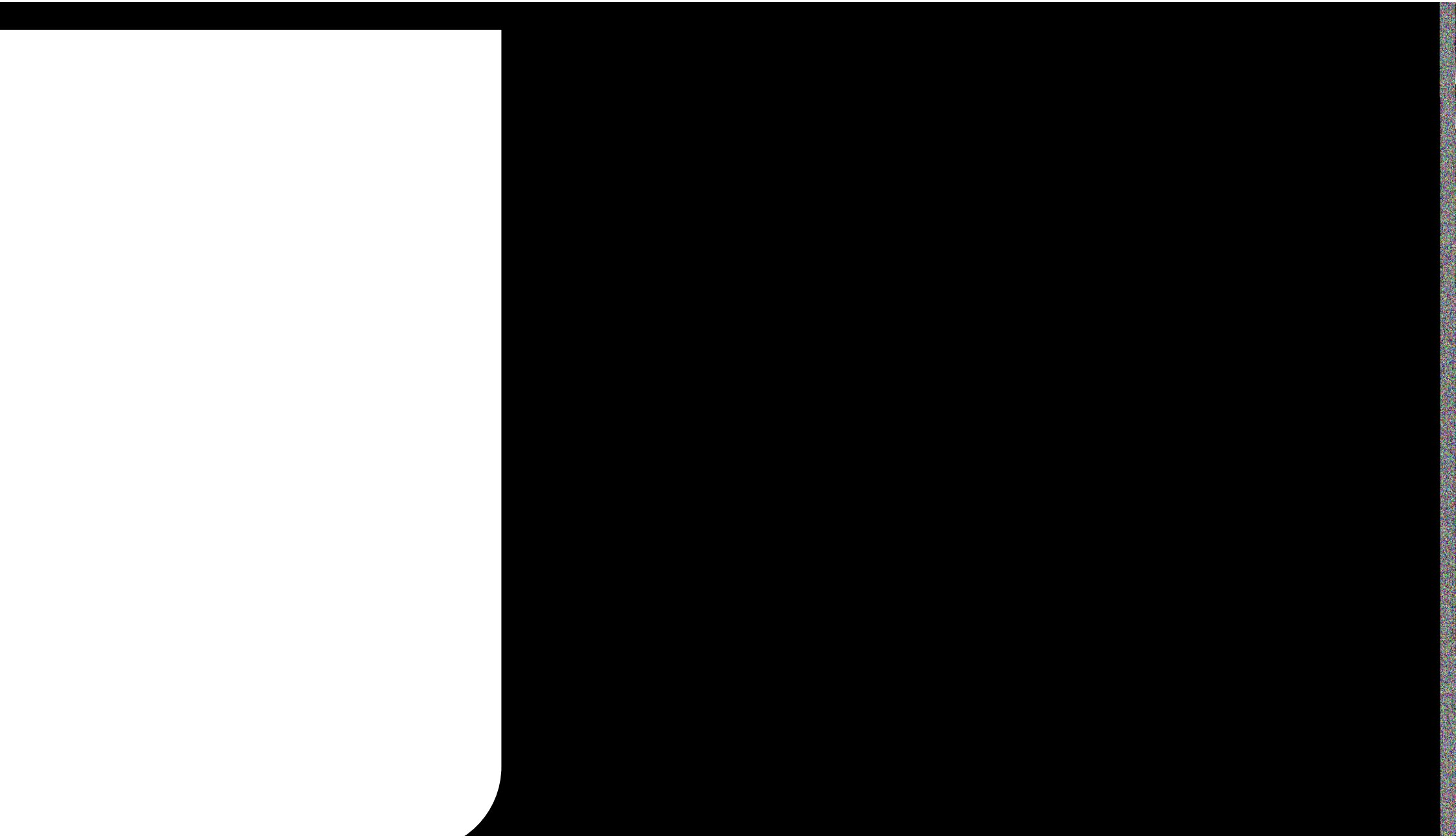
53] This table was drawn below for clarity and it clearly shows that facts are disputed by the parties.











54] It is seen that the substantive relief sought by the Petitioners, is specifically quashing the Development Permit (P45) and the Certificate of Conformity (COC). The 1st to 5th Respondents say that these documents, P45 and COC, are lawful, and the relief of a Writ of Mandamus directing the demolition of the building should be denied on the grounds of futility and lack of public duty. They say they do not owe a public duty towards the Petitioners. As I noted above, the Petitioners do not have a legal right to have a pristine view of Dalada Maligawa by prescription.

55] The Respondents contend that the Petitioners had the opportunity to challenge the Development Permit before the COC was issued, making the current petition belated and untenable.

56] A key legal principle cited against the Petitioner's ability to challenge the documents is the Mac Foy Principle, derived from the case of ***Mac Foy v United Africa Company*** [1961] 3 W.L.R 1405 at Page 1410. (1961) 3AER 1169), in that, the House of Lords held;

> *"No court has ever attempted to lay down a decisive test for distinguishing between the two: but one test which is often useful is to suppose that the other side waived the flaw in the proceedings or took some fresh step after knowledge of it. Could he afterwards, in justice, complain of the flaw? Suppose, for instance, in this case that the defendant, well knowing that the statement of claim had been delivered in the long vacation, had delivered a defence to it? Could he afterwards have applied to dismiss the action for want of prosecution, asserting that no statement of claim had been delivered? Clearly not. That shows that the delivery of a statement of claim in long vacation is only voidable. It is not void. It is only an irregularity and not a nullity. It is good until avoided. In this case, the statement of claim not being avoided, it took effect at the end of the long vacation and the time for defence then began to run. Likewise when the plaintiffs signed judgment in default of defence, that too was voidable but not void. It was not a nullity.*

It was therefore a matter for the discretion of the court whether it should be set aside or not…

Once this stage is reached, it becomes plain that there is no ground for interfering with the decision of the West African Court of Appeal. As they pointed out: " The defendant knew when the statement of claim was delivered to him, and he knew it was then vacation. He made no application in the court below to set aside the statement of claim as having been delivered irregularly; he did not raise the point in any way until he appeared in this court to argue the appeal, over eight months after the statement of claim had been delivered. Instead of applying to have the statement of claim set aside, he allowed judgment to go against him by default and then moved to have the judgment set aside. In that application, he proceeded on the basis that the judgment was a regular and subsisting one. In support of the application, he made an affidavit with the object of showing that he had a defence on the merits, and set out certain averments intended to establish a basis of fact for that contention. At the hearing of the application he appeared by counsel, and the application was argued on the merits of the defence." In the light of the history, it is well within the discretion of the Court of Appeal to refuse to set aside the judgment."

57] The Petitioners knew that there was an unauthorised construction, yet they waited till the edge of issuing the COC. Thus, the stage has passed to get the declaration of nullity, and the court is vested with the discretion to exercise. We hold that the Petitioners now cannot apply to invalidate the Development Permit (P45) or the COC, and the 1st Respondent asserted that the Urban Development Authority (UDA) followed due process in issuing them.

58] Thus, the issuing prerogative writ can be refused if its purpose is to serve no practical end or if it would cause mischief to the lawful action. In ***Samastha Lanka Nidahas Grama Niladhari Sangamaya and Others Vs. D. Dissanayake Secretary, Public Administration and Ministry of Home***

Affairs and Another SC. Appeal No. 158 of 2010, decided on 14.06.2013, Saleem Marsoof J.

> *"It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile. See, P.S. Bus Company Ltd., v Members and Secretary of Ceylon Transport Board 61 NLR 491, Credit Information Bureau of Sri Lanka v. Messrs Jafferjee and Jafferjee (Pvt) Ltd., 2005 (1) Sri LR 89. The writ of mandamus*

59] The Respondents challenge the validity of the "purported Report marked as P34," which the Petitioner relies upon for the Writ of Mandamus. The Respondents assert that this report, which contains findings and recommendations for demolition, is "unlawful and arbitrary" and "ab initio an invalid report." They say that the committee was not appointed by the Board of Management of the UDA as required by Section 5(1) of the UDA Law, but instead by the Secretary of the line Ministry without proper authority.

60] The said section 5 is produced for clarity; it says;

> *"5 (1) The Board may establish committees consisting of such number of persons for the proper exercise, discharge and performance of its powers, functions and duties*
>
> *(2) The Board may delegate to such committees such of its powers, functions and duties as may be determined by the Board.*
>
> *(3) Every committee established under subsection (1) shall determine the quorum for and the procedure to be followed at the meetings of such committee."*

61] It is plain to see that the said committee was appointed by the secretary to the line Ministry, and P34 has no force in law. Thus, this court cannot act on P34 findings, and the Petitioners should fail at this juncture.

62] As contrasted above by the table, the technical findings of P34, such as the building's floor area ratio (FAR), total height (under 15 meters, thus not a 'high rise' building per Regulation P6(a)), and number of floors, are in compliance with the Development Permit (P45) and UDA regulations. Specifically, they point to an alleged error in P34 regarding the building site's slope, contrasting it with a 2016 NBRO Report, which they state was misinterpreted. These facts are, thus, disputed.

63] A.S. CHOUDRI in his book on the Law of Writs and Fundamental Rights (2nd Ed.), Vol. 2,(at page 449) states thus:

> *"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."*

64] In the case of ***Thajudeen Vs. Sri Lanka Tea Board and Another*** [1981] 2 SLR 471 Ranasinghe J held:

> *" That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation Porraju v. General Manager B. N. Rly" (at page 474)."*

65] Thus, even if P34 is to be considered lawful, yet facts are disputed, and this court cannot call records and hold an inquiry superficially to find the truth. Thus, the application should be dismissed.

66] The Supreme Court in ***Ratnayake and Others vs C.D. Perera and others*** [1982] 2 Sri LR 451 held that:

> *"The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties."*

67] This position was reiterated in ***Jayawardena vs. People's Bank*** [2002] 3 Sri LR 17, and the Court held that:

> *"Courts will always be ready and willing to apply the constitutional remedy of mandamus in the appropriate case. The appropriate case must necessarily be a situation where there is a public duty. In the absence of a public duty, an intrusion by this Court by way of mandamus into an area where remedial measures are available in private law would be to redefine the availability of a prerogative writ."*

68] In ***Rajeswari Nadaraja v. M. Najeeb Abdul Majeed, Minister of Industries and Commerce and Others*** SC Appeal No. 177/15; SC Minutes of 31st August 2018. , Aluwihare, J held that,

> *"In an application for a writ of mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists."*

69] In ***Credit Information Bureau of Sri Lanka vs M/s Jafferjee and Jafferjee (Pvt) Limited,*** [2005] 1 Sri LR 89**.** The court held that *"the foundation of mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce a right which is not legal and not based upon a public duty."* Thus, it is seen that the 1st to 5th Respondents do not owe a public duty towards the Petitioners, thus, the application on the above premises should be dismissed.

70] The learned Senior State Counsel submitted a comprehensive table (as shown above) and countered P34. As I noted, this committee, the P34, was not constituted by the proper authority and has no legal validity.

71] Under Section 28A(1)(c) of the UDA Act, demolition should be done only if the construction was made without a Development Permit or contrary to the permit. In this case, when the COC is issued, the construction is deemed to be completed according to the conditions of the permit. This P34 has become an invalid piece of paper; there cannot be a factual matrix to prove that it was a construction, not according to the development of the permit.

72] Atkin, J in the case of ***Rex v. Electricity Commissioners ex parte London Electricity Joint Committee Co*** [1924] 1 KB 171, held that the controls of judicial review may be used *"wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority*." In here, we cannot see any excess of using legal authority.

73] In ***Stassen Exports (Pvt) Ltd Vs. The Commissioner General of Inland Revenue & Others*** CA (Writ) Application No: 71/2019, the Court held that; *"The above-mentioned matters are serious matters which are connected to the reliefs sought in this Application. Since those matters are involved with the facts, the*

Court cannot decide on those facts on affidavit evidence. It is trite law that when the material facts are in dispute the Courts does not exercise its Writ jurisdiction".

74] Vjith K. Malalgoda, PC J. in ***Francis Kulasooriya Vs. OIC-Police Station-Kirindiwela*** SC Appeal No. 52/2021 held that; *"Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute."* In this case, the facts are heavily disputed and cannot be decided merely on untested affidavits and documents.

75] In ***Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and Another***, [1996] 2 SLR 70 at page 73, Jayasuriya, J held that;

> *"I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine.* ***Even if he is entitled to relief, still the court has a discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction*** *are all valid impediments which stand against the grant of relief."* [Emphasis is added]

76] Further, in ***The Board of Trustees of the Tamil University Movement vs. F.N. de Silva*** **[1981] 1 SLR 350**) and in exercising the writ jurisdiction, the court said that *"this Court will not consider whether the decision is right or wrong in the context of the greater benefit of the society or otherwise, but whether the decision is lawful or unlawful in the eyes of the law. (Vide* ***Public Interest Law Foundation vs. Central Environment Authority [2001] 3 SLR 330*** *&* ***CA/WRIT/173/2015, C.A. Minutes dated 03.07.2018****)."*

77] In ***Urban Development Authority v. Minister of Lands and 5 others*** (2009 B.L.R.) at p 252, the Supreme Court had observed by reference to "Administrative Law (Ninth Edition) by Wade and Forsyth as follows:

> *"…. the issue is a Writ of mandamus issue is not that of an abuse of discretion, but whether the public authority failed to discharge a duty owed to the applicant." The position is emphasized in a subsequent section at*

page 620 which reads as follows: "Obligator duties must be distinguished from discretionary powers. With the latter Mandamus has nothing to do…."

78] Further, it was held in ***S.I. Syndicate v. Union of India*** AIR 1975 SC 460;

"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct ***demand*** *of that which the party seeking the mandamus desires to enforce and that that demand was* ***met by a refusal****."*

79] As noted above, in ***Ratnayake and Others vs C.D.Perera and others*** [1982] 2 Sri LR 451- "*to succeed with the prayer for the Writ of Mandamus, the claimant must establish that they have a legal right to the performance of a public duty by the Respondents."*

80] It is necessary at this stage to bear in mind that certiorari is a discretionary remedy, -see Wade, "Administrative Law" 5th Ed. (1982) pp. 546, 591. Further, as de Smith says in his work "Judicial Review of Administrative Action", 4th Ed. (1980) p. 404:

"Thus, certiorari is a discretionary remedy and may be withheld if the conduct if the applicant, or, it would seem, the nature of the error does not justify judicial intervention".

81] In ***P. S. BUS CO., LTD., Vs. MEMBERS AND SECRETARY OF CEYLON TRANSPORT BOARD***. 61 NLR 491. **SINNETAMBY. J.,** held that;

"A prerogative writ is not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal. A writ, for instance, will not issue where it would be vexatious or futile…

…The Court will also consider the probable consequences of granting the writ-vide 9 Halsbury P 81 (Hailsham ed.) and the cases referred to there-

in. In the present case the consequences of granting the writ can only be described as disastrous."

82] In the case of ***Siddeeque Vs. Jacolyn Seniviratne*** [1984] 1 SLR-p83. the Supreme Court observed that;

"Certiorari being a discretionary remedy will be withheld if the nature of the error does not justify judicial intervention. Certiorari will not issue where the end result will be futility, frustration, injustice and illegality."

83] In ***Annalingam Annarasa and others vs Pathimarasa Leeliyankurus and others,*** CA/WRIT/21/2022, Decided on: 13.02.2023, Sobhitha Rajakaruna J.,

"Similarly, I am attracted by the following passage as well, where it is laid down under the sub topic of 'Relief refused in discretion' in the above 'Administrative Law' by H. W. R. Wade and C. F. Forsyth (p. 426); "Closely akin to the subject of the foregoing paragraphs and overlapping it in some cases, is the question of the court's discretion. The remedies most used in natural justice cases -the quashing order, the prohibiting order, the mandatory order, the injunction and the declaration-are discretionary, so that the court has power to withhold them if it thinks fit; and from time to time the court will do so for some special reason, even though there has been a clear violation of natural justice"

84] In ***Mendis v. Jayaratne, Minister of Agriculture, Lands and Forestry***, [1997] 2 SLR 215, DR. RANARAJA, J., held;

"It is only if the Minister has failed to reasonably exercise his discretion that relief could be granted. The petitioner has failed to satisfy court on this aspect."

85] Lastly, the Respondents raised objection that some prayers prayed for are vague and therefore, no writ lies. Prayer "f" shows to quash "any Certificate of Conformity". It is to be noted that Certificate of Conformity was issued later and

the Petitioners neglects to amend the Petition as law provides. Without proper prayer no relief can be granted. The Court cannot act on assumptions. Prayers must be specific and the Petitioners out to have made it clear by way of amendment. In ***H. K. D. Amarasinghe and others vs. Central Environmental Authority and others,*** CA/Writ/132/2018 decided on 03.06.2021, His Lordship Justice Arjuna Obeysekere J., P/CA held in this regard;

> *"…the relief that is sought must be specific and should address the concerns of the petitioner. This would then enable the respondents to respond to the averments of fact and law raised by the petitioner. The fact that the relief is vague is an indication that the petitioner is unsure of the allegations that he/she is making against the respondents and makes the task of Court to mete out justice that much harder".*

86] I am guided by the above authorities, and I feel the Petitioners have failed to establish that they have a right to bring this action, that they are not guilty of laches, and facts are disputed, and some documents are contrary to each other, rendering the refusal of this application.

87] For the aforesaid reasons, we dismissed the application with costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL