

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

In the matter of an Application in terms of  
Articles 17 and 126 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

1. Naotunna Badalge Sagarika Jayamali,  
No. 14/5, Temple Road, Galwadugoda,  
Galle.

**SC FR Application No: 02/2015**

**Petitioner**

**V.**

1. Divisional Secretary,  
Divisional Secretariat, Four Gravets,  
Galle.
2. Deepal Geeganage,  
Development Officer, Divisional  
Secretariat, Four Gravets,  
Galle.
3. Galle Municipal Council,  
Town Hall, Colombo Road, Kaluwella,  
Galle.
4. Municipal Commissioner,  
Galle Municipal Council, Town Hall,  
Colombo Road, Kaluwella,  
Galle.
5. Municipal Engineer,  
Galle Municipal Council, Town Hall,  
Colombo Road, Kaluwella,  
Galle.
6. Urban Development Authority,  
6<sup>th</sup> and 7<sup>th</sup> Floors, Sethsiripaya,  
Battaramulla.

7. Director General,  
National Building Research Organization,  
No. 99/1, Jawatta Road, Colombo 05.
8. Officer in Charge, Police Station, Galle.
9. K.S. Geethanjalee,  
No 49/1, First Lane, Kandewaththa,  
Galle.
10. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : **Mahinda Samayawardhena, J.**  
**K. Priyantha Fernando, J.**  
**Sampath B. Abayakoon, J.**

**Counsel** : Saliya Pieris, PC with Anjana Rathnasiri instructed  
by Manjula Balasooriya for the Petitioner.

Hasini Opatha, SSC instructed by Rizni Firdous,  
SSA for 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Respondents.

Asthika Devendra with Aruna Madushanka  
instructed by Niluka Dissanayake for 3<sup>rd</sup>, 4<sup>th</sup>, and  
5<sup>th</sup> Respondents.

Dr. Sunil F.A. Cooray with Nilangi Perera instructed  
by Kenneth E Perera for the 9<sup>th</sup> Respondent.

**Argued on** : 03.09.2025

**Decided on** : 02.10.2025

**K. PRIYANTHA FERNANDO, J**

1. The Petitioner is the owner of the property described in the schedule to the deed of transfer No. 5384 dated 21/01/2013 which was attested by Notary Public *D.W. Witharana*. This land is depicted as Lot 12 in the preliminary plan prepared by the Surveyor General on 04/08/1978 bearing No. 1384 (marked P - 8). Lot 09 of the said plan is owned by the 3<sup>rd</sup> Respondent and was reserved as a common well. Further, the land in the Eastern boundary of the Petitioner's land belongs to the 9<sup>th</sup> Respondent. The 3<sup>rd</sup> Respondent, following the allocation of the funds by the Ministry of Economic Development and consultations with relevant stakeholders has decided to construct a community hall in the aforementioned Lot 09 which was previously reserved for a well. It is her position that the fundamental rights guaranteed to her by Article 12 (1) of the Constitution are in violation owing to the construction of the aforementioned community hall by the 3<sup>rd</sup> Respondent in Lot 09 of preliminary plan bearing No. 1384. This Court granted leave to proceed under Article 12 (1) of the Constitution against the 1<sup>st</sup> -9<sup>th</sup> Respondents.

**Petitioner's Version**

2. The Petitioner's land depicted as Lot 12 in the preliminary plan prepared by the Surveyor General on 04/08/1978 bearing No. 1384, is situated within the Municipal Council limits of Galle and she states that as per S. 3(1) of the Urban Development Authority Law No. 41 of 1978, the Galle Municipal Council is a declared urban development area.
3. According to the Petitioner, a 4.0 perch land (Lot 9) in the aforementioned plan bearing No. 1384 – the northern boundary of the Petitioner's land is a reservation for a common well. However, with the lapse of time, the well

was abandoned and following a letter from the medical officer of the Municipal Council dated 12/01/1999, steps have been taken to fill the said well.

4. According to the Petitioner, the 9<sup>th</sup> Respondent has constructed a house at a higher elevation in the eastern boundary of the Petitioner's land allegedly with the approval of the municipal council.
5. As a result of this construction, water from the premises now flows down the vertical slope, leading to soil erosion, rocks being washed away, and large boulders becoming loose. This has caused the slope to become unstable and, according to the Petitioner, has created serious danger to the lives of her family members and to her property.
6. The Petitioner states that by letter dated 03/07/2009, her mother requested the 6<sup>th</sup> Respondent to look into the aforementioned issue. The 6<sup>th</sup> Respondent has then by letter dated 18/08/2009 informed the 4<sup>th</sup> Respondent the following:
  - That the rear of the Petitioner's house is a slope consisting of boulders
  - The boundary stones have been destroyed up to the fence and are a danger.
  - There is a threat of landslide owing to the flowing of the accumulated rain water from the 9<sup>th</sup> Respondent's premises.
7. According to the Petitioner, requests have been made to the 4<sup>th</sup>, 5<sup>th</sup>, and 7<sup>th</sup> Respondents to create a solid framework to solve the above issue owing to the danger caused to the Petitioner's family.
8. In February 2012, the 5<sup>th</sup> Respondent has informed the Petitioner that the planning committee had decided to summon the involved parties. Later that month, the committee's decisions were communicated to the Petitioner's mother and the 9<sup>th</sup> Respondent, along with a report from the

National Building Research Organization highlighting geological instability around the Petitioner's house. Based on this, the 9th Respondent was instructed to prevent rainwater from flowing down to the lower plateau and to obtain proper approval for construction, which had been carried out contrary to the approved plan. She states that this issue remains unsolved.

9. She further states that on 24/09/2014, she had noticed the commencement of some construction work in the plot of land (Lot. 09) that was previously reserved for a well. She states that upon inquiring from the 2<sup>nd</sup> Respondent she has learned that a two-story community hall is being constructed in Lot 9 by the 3<sup>rd</sup> Respondent. She states that she objected to this construction because the excavation in process was contrary to a report submitted by the National Building Research Organization. She states that she made a complaint to the Galle Police Station to inquire into this matter on 25/09/2014. She has further written letters dated 01/10/2014 to the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> Respondents and to the Mayor of the 3<sup>rd</sup> Respondent Municipal Council denoting the danger to her life associated with the above construction and to therefore investigate into the matter.
10. She states that amidst the complaints made to the various authorities, construction was continuing and that when her husband inquired into the same on 16/10/2014, the 1<sup>st</sup> Respondent has allegedly threatened her husband.
11. Afterwards, she states that in response to her letter dated 01/10/2014, via a letter dated 18/10/2014 the 6<sup>th</sup> Respondent has informed that the planning committee of the 3<sup>rd</sup> Respondent (the Municipal Council) has granted approval for the above mentioned construction and that the National Building Research Organization has made conditional recommendations in respect of the land and that plan has been approved subject to the same. The letter further stated that the aforesaid

construction work is carried out by the 3<sup>rd</sup> Respondent and that the building in question is a public building.

12. She submits that construction work continued on and that she and her husband made several complaints to the Galle Police Station against the above mentioned construction. Statements of the Petitioner and her husband have been recorded by the Police 17/11/2014.
13. The Petitioner further states that on 29/12/2014 the construction crew dug a latrine which is about 4 feet wide and 4- 5 feet deep. She states that this exacerbates the threat of landslide and thereby endangers her life and property.
14. Therefore, she states that the construction of the community hall is contrary to the recommendations of the National Building Research Organization (marked P-16) and that it is contrary to Regulation 17 of the Urban Development Authority Planning and Building Regulations, 1986 as amended from time to time. She alleges that there has been a failure to properly investigate into the complaints made by the Petitioner in this regard. Further, she states that the extent of land in Lot 9 is not sufficient to meet all the needs of a community hall and that there is no necessity for such a building. For these reasons, she alleges that the fundamental rights guaranteed to her under Article 12 (1) of the Constitution have been violated.

### **The Respondent's Version**

15. In response, the 1<sup>st</sup> Respondent in his affidavit states that all necessary approvals from the relevant authorities have been obtained for the construction of the community hall under the purview of the Divisional Secretariat, Four Gravets, Galle as the Planning Committee of the 3<sup>rd</sup> Respondent at a meeting held on 02.09.2014 approved the construction.

He further states that the decision to build a community hall was in response to the needs and well-being of the community.

16. He further states that the report by the National Building Research Organization dated 21.05.2015 numbered NBRO/LRRMD/CO/15/31/17482 does not indicate that the construction of the community hall has caused or increased the threat of a rockslide/ landslide or any environmental harm to the Petitioner's property.
17. The 4<sup>th</sup> and 5<sup>th</sup> Respondents in their affidavits take up a preliminary objection that the application is time barred. Further, they state that the vertical slope which the Petitioner claims to be a threat to her property is located in the eastern boundary of her land and that the community hall is located in the western boundary. They submit that the community hall and the Petitioner's house are in the same elevation.
18. They further submit that the Petitioner has hidden material facts from the Court as they state that she and her mother in 2008 blasted several rocks situated in the said slope without any prior approval. It is submitted that by letter dated 09.09.2014 the 5<sup>th</sup> Respondent directed the Petitioner to stop the unauthorized blasting owing to the environmental threat it posed.
19. In relation to the dispute between the Petitioner and the 9<sup>th</sup> Respondent who occupies the land in the eastern boundary, the 4<sup>th</sup> and 5<sup>th</sup> Respondents state that the 3<sup>rd</sup> Respondent summoned both parties before the planning committee and directed the 9<sup>th</sup> Respondent to comply with the directions stated in the report by the National Building Research Organization (marked P-15).
20. They further state that the recommendations made by the National Building Research Bureau (marked P-16) only relates to the eastern boundary of the Petitioner's land and therefore has no relevance to the

boundary between Petitioner's land and Lot 9 of the preliminary plan where the community hall is being constructed. In response to the contention vis-à-vis Regulation 17 of Urban Development Authority Planning and Building Regulations, 1986 (as amended), they submit that by way of Regulation 17 (3) the 6<sup>th</sup> Respondent and or the 3<sup>rd</sup> Respondent are empowered relax the requirements mandated by Regulation 17 provided all the other requirements are met.

21. They state that when the 1<sup>st</sup> Respondent sought for permission to construct a community hall, the 3<sup>rd</sup> Respondent sought recommendations from the National Building Research Organization where they recommended the aforesaid construction subject to certain conditions. They also submit that these conditions were duly communicated to the 1<sup>st</sup> Respondent in granting permission for the aforementioned construction. Therefore, they maintain that the construction of the community hall does not affect the Petitioner's property.

### **Alleged Violation of Fundamental Rights**

- **The Preliminary Objection**

22. I will first address the preliminary objection that was raised by the 4<sup>th</sup> and 5<sup>th</sup> Respondents that present application is out of time. In the circumstances of this matter, I am of the opinion that owing to the continuous nature of the constructions and the complaints made to the Human Rights Commission (marked P-35), the issue may be understood as an alleged continuing violation, whereby the application would not be deemed as filed out of time. I will therefore move on to address the merits of the matter.



- **Alleged Violation of Article 12 (1)**

23. Article 12(1) of the Constitution provides:

*“All persons are equal before the law and are entitled to the equal protection of the law.”*

24. Looking at the jurisprudential development vis-à-vis Article 12 (1) of the Constitution in ***Palihawadana v. Attorney General & Others (1978-79-80) 1 Sri LR 65 at page 68*** Shравananda J. comprehensively interprets Article 12 (1) as follows:

*“...Article 12 of the Constitution lays down the general rule of equality that all persons are equal before the law and are entitled to equal protection of the law and that no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any of such grounds.”*

25. In the case at hand, the Petitioner states that the construction of the aforementioned Community Hall is in conflict due to two reasons primarily. Firstly, that it is against Regulation 17 of the Urban Development Authority Planning and Building Regulations, 1986 as amended and secondly, that it is not in compliance with the recommendations of the National Building Research Organization.

26. With regards to the first position, Regulation 17 of the Urban Development Authority Planning and Building Regulations, 1986 (as amended) states the following:

*“(1) the minimum extent and the minimum width of lots for different classes buildings, not being high-rise buildings, should be in conformity with the specification set out in Form “C” of Schedule (III) unless the authority has stipulated a higher or lower minimum*

*extent and/or higher or lower width of lots in a development plan approved for the area or proposed for the area.”*

27. In this regard, the Petitioner states that the construction of the community hall is in contradiction of these requirements. However, the 4<sup>th</sup> and 5<sup>th</sup> Respondents in their affidavits submit that the 3<sup>rd</sup> and or 6<sup>th</sup> Respondents are empowered to relax the aforementioned requirements under Regulation 17 (3) of the Urban Development Authority Planning and Building Regulations, 1986 (as amended). It states the following:

*“(3) The authority may relax requirements of the specified site, extent and width in the case of an existing lot provided that a building stratifying the other regulations can built on the site.”*

28. The 4<sup>th</sup> and 5<sup>th</sup> Respondents further submit that in exercising the aforementioned discretion, the following were considered by the 3<sup>rd</sup> Respondent. Therefore, they submit that the date on which the lot was subdivided was considered by the 3<sup>rd</sup> Respondent as most of the regulations contained in the Urban Development Authority Planning and Building Regulations, 1986 (as amended) do not relate to lands subdivided prior to the implementation of it. In this regard, as the plan bearing No 1348 was prepared in 1977 and the aforementioned Regulations came into power in 1986, it is their position that Lot 9 of plan bearing No 1348 should be considered an existed land. For these reasons they claim a lenient interpretation of Regulation 17 of the Urban Development Authority Planning and Building Regulations, 1986 (as amended) should be given in implementing Regulation 17 in the case at hand.

29. Upon considering the submissions of all parties, I am of the opinion that the 3<sup>rd</sup> Respondent is entitled to exercise the discretion granted by way of Regulation 17 (3) of the Urban Development Authority Planning

and Building Regulations, 1986 (as amended) and therefore that the construction is not outlawed.

30. Regarding the second position furthered by the Petitioner, that it is not in compliance with the recommendations of the National Building Research Organization to build the community hall, the Petitioner forwards documents marked P – 11 and P – 16. The 4<sup>th</sup> and 5<sup>th</sup> Respondents state that these documents relate to the Eastern boundary and that they are therefore irrelevant to the construction of the community hall.
31. Upon perusal of the documents marked P – 11 and P -16, I am in agreement with the position taken by the 4<sup>th</sup> and 5<sup>th</sup> Respondents, the recommendations relate to the boundary between the Petitioner's property and that of the 9<sup>th</sup> Respondent.
32. I further observe that the 3<sup>rd</sup> Respondent has sought recommendations from the National Building Research Organization where they recommended the construction of the community hall subject to certain conditions. They also submit that these conditions were duly communicated to the 1<sup>st</sup> Respondent in granting permission for the aforementioned construction. The report provided by the National Building Research Organization marked "4-R-2" notes that there is no such danger as well. Whereby I am of the opinion that the second position furthered by the Petitioner too cannot be accepted.
33. For these reasons I am unable to find any material to establish that the Petitioner was subject to arbitrary, discriminatory or unequal treatment under the law as there is no material to conclude such treatment.

- **The dispute between the Petitioner and the 9<sup>th</sup> Respondent**

34. While the issue at hand is separate to the dispute between the Petitioner and the 9<sup>th</sup> Respondent, the Attorney-at-Law for the 9<sup>th</sup> Respondent, Dr. Sunil Cooray submitted that the 9<sup>th</sup> Respondent is willing to implement the recommendations (i), (ii), and (iii) mentioned in the report by the National Building Research Organization dated 21.05.2015 numbered NBRO/LRRMD/CO/15/31/ 17482.

35. In the above premise, I declare that the fundamental rights that have been guaranteed to the petitioner under Article 12 (1) of the Constitution has not been violated.

*Application is Dismissed.*

**JUDGE OF THE SUPREME COURT**

**JUSTICE MAHINDA SAMAYAWARDHENA**

**I AGREE**

**JUDGE OF THE SUPREME COURT**

**JUSTICE SAMPATH ABAYAKOON**

**I AGREE**

**JUDGE OF THE SUPREME COURT**