

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0060/2023

Chairman,

Wattala Pradeshiya Sabha,
Hendala Road,
Wattala

Petitioner

MC Welisara

Case No: 60157/21

B.R.D. Perera

No. 123/8,
Eksath Rd,
Elapitiwala,
Ragama

Respondent

And Now Between

B.R.D. Perera
No. 123/8,
Eksath Rd,
Elapitiwala,
Ragama

Respondent-Petitioner

Chairman,
Wattala Pradeshiya Sabha,
Hendala Road,
Wattala

Petitioner-Respondent

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Aravinda R.I. Athurupana
for the Petitioner-Respondent

Lakshan Dias with Sheba S. Soundararajah and
W.G. Dasuni Viyanjani
For the Respondent-Petitioner

Argued on :20-05-2025

Decided on:17-07-2025

JUDGMENT

R. Gurusinghe, J.

The Respondent-Petitioner (hereinafter referred to as the Petitioner) filed this *Restitutio-in-Integrum* application before this court on 20-12-2023, seeking the following reliefs.

- a) Issue notices on the respondent,
- b) Declare the order of the Learned Magistrate's court of Welisara, dated 22-06-2022 is *per incuriam*,
- c) Revise and set aside the order of the Learned Magistrate of Welisara, dated 22-06-2022,
- d) Issue an interim relief prohibiting the respondent from further removal of constructions belonging to the petitioner,
- e) For cost.

On 12-11-2021, the respondent-petitioner (hereinafter referred to as the respondent), instituted an action in the Magistrate's Court of Welisara, in terms of Section 28(A) (3) of the Urban Development Authority Law No. 41 of 1978 as amended (hereinafter referred to as the UDA Act), against the petitioner, seeking an order of demolition of unauthorized construction and some other reliefs. After hearing the parties, the learned Magistrate on 22-

06-2022, made a mandatory order authorising the demolition of the said unauthorised construction by the respondent and to recover the expenses for such demolition from the petitioner.

The petitioner filed this application before this court almost one and a half years after the demolition order was issued. Petitioner in paragraph 4 of the petition states, "The land on which this wall was built was purchased by the petitioner on/or around 05-03-1990, under the Deed of Transfer No. 3182 attested by Chulani Lanka Ambegoda of Colombo Notary Public." The petitioner further stated that he had constructed a house on the purchased land according to Plan No. 67/47, which was approved by the Secretary to the Welisara Pradeshiya Sabha. The petitioner later erected a protective wall around his residence with the approval of the same Pradeshiya Sabha.

The petitioner argued that the respondent initiated legal action approximately two decades later regarding the wall, which was constructed in accordance with the plan approved by the Wattala Pradeshiya Sabha.

The remedy of *Restitutio-in-Integrum* being an extraordinary remedy, it is not to be given for mere asking or where some other remedy is available. It is a remedy that is granted under exceptional circumstances, and the power of the court should be most cautiously and sparingly exercised. A party seeking *Restitution* must act with utmost promptitude. Parties invoking the extraordinary powers of the court must display honesty and frankness. (Vide Sri Lanka Insurance Corporation Vs Shanmugam and another [1995] 1 Sri LR 55.)

The petitioner filed this application before this court one and a half years after the impugned order. The petitioner's application should be dismissed for this very reason alone. The court will not relieve parties of the consequences of their own folly, negligence or laches (Vide Sri Lanka Insurance Corporation Vs Shanmugam and another [1995] 1 Sri LR 55.) Nor would *restitutio* be granted where there has been negligence or delay on the part of the petitioner (vide Perera v Don Simon [1958] 62 NLR 118). By the time he filed this application before this court, unauthorised construction had already been demolished. Furthermore, the petitioner's position is that the wall was built in accordance with the permit granted by the Pradeshiya Sabha. A copy of the permit is marked X4. X4 does not refer to any boundary wall. Therefore, no permission was granted to the petitioner to build a boundary wall by the document marked X4.

Furthermore, the petitioner's position is that he had built the boundary wall within his land. In the application before the Magistrate's Court, the

respondents have filed a survey plan marked A3 to show the unauthorised construction that the respondents sought to demolish. According to that survey plan, the petitioner's land is Lot No. 9 of Plan No. 249 dated 23-02-1987, made by Bopearachchi Licensed Surveyor. The unauthorised wall was built on Lot 14 of the said plan No. 249. The petitioner claims rights by Deed No. 3182, attested by C.L. Arambegoda NP. A copy of that deed is marked X3. Accordingly, the petitioner's land is Lot No. 9 of the said plan No. 249. The extent of the petitioner's land is 15.6 perches. He was given the right of way over Lots 13 and 14 of the said plan. As per A3, the petitioner has encroached on Lot 14 and erected an authorised parapet wall and a gate within Lot 14. The encroached portion was shown in A3 as Lot 14A, which contained 2.1 perches.

It is a basic principle of equity that when a person comes before court, he should come with clean hands (*vide Peoples' Bank v Hewawasam [2000] 2 SLR 29*). It was held in this case as follows;

In view of the admissions, the Plaintiff Respondent is stopped from denying the fact that the property described in Deed 10384 (Title Deed) was tendered as security. The Plaintiff Respondent has not come to court with clean hands.

In the case of Namunukula Plantations Limited v Minister of Lands and Others SC Appeal No. 46/2008 decided on 13.03.2012, Marsoof, J. held as follows;

*It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (*uberrima fides*) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. Learned Deputy Solicitor General has in this connection invited our attention to the decision of this Court in *W.S.Alphonso Appuhamy v L. Hettiarachchi (Special Commissioner, Chilaw)*, (1973) 77 NLR 131, in which it was found that an applicant for a mandate in the nature of a writ of mandamus had suppressed and misrepresented material facts. This Court decided the case on its merits, but observed that the case was one in which the principles set out in the celebrated English decision of *King v The General Commissioners for the Purpose of**

the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmond de Poignac (1917) 1 K.B. 486 would have applied, and the Court, in its discretion, could have dismissed the application in limine.

In the above circumstances, the petitioner has failed to disclose the facts truthfully. The unauthorised construction was not within his land. As per X4, the Pradeshiya Sabha has not granted approval for a boundary parapet wall, and therefore, the wall that was demolished by the order of the Learned Magistrate was an unauthorised construction.

For the aforementioned reasons, the petitioner's application is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra, J.

I agree.

Judge of the Court of Appeal.