

**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
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

N.F. Sabrina,
No. 184, Main Street,
Addalachenai.

PETITIONER

CA (Writ) App. No. 377/2022

Vs.

1. Addalachenai Pradeshiya Sabha,
Alankulam Road,
Addalachenai.
2. A.L. Amanulla,
Chairman,
Addalachenai Pradeshiya Sabha,
Alankulam Road,
Addalachenai.
- 2A. Chairman,
Addalachenai Pradeshiya Sabha,
Alankulam Road,
Addalachenai.
3. M.I. Mohamed Fayis,
Secretary,

Addalachenai Pradeshiya Sabha,
Alankulam Road,
Addalachchenai.

- 3A. Secretary,
Addalachenai Pradeshiya Sabha,
Alankulam Road,
Addalachchenai.
4. Urban Development Authority,
6th, 7th, 9th Floors, “Sethsiripaya”,
Battaramulla.
5. Nimesha Herath,
Chairman,
Urban Development Authority,
6th, 7th, 9th Floors, “Sethsiripaya”,
Battaramulla.
- 5A. Urban Development Authority,
6th, 7th, 9th Floors, “Sethsiripaya”,
Battaramulla.
6. N.P.K. Ranaweera,
Director-General,
Urban Development Authority,
6th, 7th, 9th Floors, “Sethsiripaya”,
Battaramulla.
7. S.P.S. Jayatissa,
Deputy Director
Urban Development Authority,
6th, 7th, 9th Floors, “Sethsiripaya”,
Battaramulla.
8. N. Manivannan,
Local Government Commissioner,
Department of Local Government,
Eastern Provincial Council,

Kanniya Road, Varathoyanagar,
Trincomalee.

9. Noorul Haq Fasly,
“Haq Traders”
Main street, Addalachenai 02.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Nilshantha Sirimanne with Deshara Goonetilleke for the Petitioner.

Rushdhie Habeeb with A. Misar instructed by Samadhi Lokuwaduge for the 1st, 2A and
3A Respondents.

Amsara Gajadeera, S.C. for the 4th – 8th Respondents.

Azad Mustaffa for the 9th Respondent.

Argued on: 10.11.2025

Delivered on: 09.12.2025

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

Judgement

Introduction

The Petitioner is a citizen living with her mother and daughter at premises bearing No. 184, Main Street, Addalachchenai-02, which she owns. The 1st Respondent is the Local Authority (Pradeshiya

Sabha) of the area, the 2nd Respondent is its Chairman, and the 3rd Respondent is the Secretary thereof. The 4th Respondent is the Urban Development Authority (hereinafter referred to as the “UDA”), whose powers are delegated to the 1st Respondent; the 5th to 7th Respondents are its Chairman, Director General, and Deputy Director General of Planning respectively, the 8th Respondent is the Local Government Commissioner, while the 9th Respondent is the person against whom formal complaint is made by the Petitioner in this Application.

The Petitioner’s complaint is that the 9th Respondent, having purchased the adjacent land of the Petitioner’s premises, commenced construction thereon, which initially appeared to be a single-storey building. Gradually, the 9th Respondent had added three more floors excluding the ground floor to the said building, and now he is carrying out a business under the name style “Haq Traders”. Thus, the Petitioner complains that the 9th Respondent has not obtained any valid development permit from the 1st Respondent who has been delegated the powers of the 4th Respondent to issue such permits.

In those circumstances, the Petitioner has first requested the 4th Respondent to take necessary actions to remove the said unauthorised construction; however, neither the 1st Respondent nor the 4th Respondent has taken any actions to remove the same. Accordingly, the Petitioner seeks, *inter alia* the following relief from this Court;

“d) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1st to 7th Respondents and/or any one or more of them and their respective servants or agents, from granting/issuing any planning and building approvals/permits to the 9th Respondent and/or pertaining to any constructions effected in respect of the 9th Respondent's said building located on Main Street, Addalaichenai -02, except in strict accordance with the applicable laws and regulations framed thereunder;

g) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st and/or 4th Respondents and/or any one or more of them and their respective servants and agents to forthwith take action in strict accordance with law, including all necessary legal action under the UDA Law (as amended), to have all of the said illegal/unauthorised structures and/or portions of the 9th Respondent's said Haq Traders building situated on Main Street, Addalaichenai-02, demolished/removed and/or the entirety of the 9th Respondent's said building demolished/removed and/or to forthwith take necessary action under and in terms of sections 28 and/or 28(A) of the UDA Law (as amended) against the 9th Respondent and/or any person(s) holding under him;

h) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 7th Respondents and/or any one or more of them and their respective servants and agents to forthwith take action in strict accordance with the law, including necessary legal action under the UDA Law (as amended), to have all of the said illegal/unauthorised structures and/or balconies constructed on the rear of the 9th Respondent's said building and facing the (western) building wall of the Petitioner's premises [as depicted in the said Survey Plan bearing No. T/1604A and produced marked P-3(a) herein], demolished/removed and/or to take necessary legal action under and in terms of sections 28 and/or 28(A) of the UDA Law (as amended) against the 9th Respondent;

j) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 7th Respondents and/or any one or more of them and their respective servants and agents to forthwith take action in strict accordance with law, including necessary legal action under the UDA Law (as amended), to demolish and remove all of the said balconies, reinforcements, roofing sheets and claddings of the building, and any other features of the

9th Respondent's said building, which have been constructed/erected in violation/contravention of the UDA's said Planning & Building Regulations (marked as P-12 herein) and/or any duly approved Building Plan(s) and/or any other applicable law(s), and/or to take necessary action under and in terms of sections 28 and/or 28(A) of the UDA Law (as amended) against the 9th Respondent;”

Accordingly, the Respondents have filed their respective Objections, and thereafter, this was argued before me on 10.11.2025. Hence, this judgement.

Objections of the Respondents

The 4th to 8th Respondents have not filed any Objections, and they have informed that they will abide by any order of the Court since the 4th Respondent has already delegated its powers to the 1st Respondent.

On the other hand, the 1st to 3rd Respondents have filed their respective Objections; in their Objections, they have specially mentioned that the 9th Respondent has constructed the said building without obtaining any approval or building permit. It also further confirms that this same fact was confirmed by the 1st Respondent by the information given when an application was made in that behalf under the Right to Information Act, No. 12 of 2016.

It is also their position that, though the UDA has delegated its powers, particularly with regard to planning and approval of such plans, so far, there is an ambiguity in the manner in which it is observed as there is no proper methodology adopted by the 1st Respondent.

However, the 9th Respondent objects, stating that he is the owner of the premises where he is carrying on a business under the name and style of “Haq Traders”, and had started construction of

the said building in 2005. After the ground floor was constructed in 2010, he occupied the same. The construction of the remaining upper floors had commenced afterwards; however, until 2020, no objection had been raised by the Petitioner against such construction for more than 20 years. Therefore, there is a delay, laches and acquiescence on the part of the Petitioner. As such, this Application should be dismissed *in limine*.

The second objection that the 9th Respondent has raised is that this is a private dispute, and therefore, no writ lies.

Thirdly, the 9th Respondent has taken up the position that there is an ambiguity in the UDA Regulations, and no permission has been obtained by him so far.

Arguments

The first contention advanced by Mr. Sirimanne is that in view of the document marked as **P12**, the authority of UDA has been given to the 1st Respondent.

The second argument advanced is that paragraph 20 in the Objections of the 1st to 3rd Respondents confirms the Petitioner's stand. Therefore, the writs that the Petitioner has sought should be granted in his favour.

However, Counsel for and on behalf of the 9th Respondent, Mr. Mustaffa, contests that the Petitioner is guilty of laches.

On the question of laches, he further argued that on the Petitioner's own showing, the 9th Respondent had commenced the 1st to 3rd floors in 2010, and this Application is made only in 2020; therefore, laches are made.

His second contention is that no writ lies in a case where agitation is made based on personal animosity between the parties, as reflected in paragraph 50 of the Petition. Accordingly, no writ lies in terms of relief prayed for in (b), (c), and (d) of the Petition as they are *mala fide*.

Mr. Habeeb, for and on behalf of the 1st to 3rd Respondents, also argued that there are laches on the part of the Petitioner in prosecuting this Application, and **P12** does not fall within the writ jurisdiction of this Court. Therefore, the Petitioner cannot obtain any writ by this Application.

The third argument is that this is a matter for the District Court.

Ms. Gajadeera, for and on behalf of the 4th to 8th Respondents, associated with the same arguments advanced for and on behalf of the other above-mentioned Respondents.

Factual matrix

The Petitioner is a lecturer in the Faculty of Architecture of the University of Moratuwa, as evidenced by the document marked as **P5** annexed to the Petition. She is a resident of the address given in the Petition, which is in the Eastern Province, Addalachchenai-02; she is married, has two children, and is residing with her family at the said address given in the caption. The said premises also belongs to her by virtue of the deed marked as **P3** annexed to the Petition, and the land and premises more fully described in the said deed is also depicted in the Plan marked as **P3(a)**. In addition to that, there are several other plans where the larger land originally belonging to her grandfather is depicted, which was later subdivided by her aunt, who became the owner of the entirety thereof by virtue of the Deed of Gift marked as **P2(a)** annexed to the Petition; several of the plans depicting the subdivisions are marked as **P2(b)** and **P2(c)**.

The Petitioner's ownership of her parcel of land has been confirmed by the Pradeshiya Sabha, which is the 1st Respondent to this Application, by its letter dated 11.12.2012 and marked as **P3(b)**

annexed to the Petition. To further confirm her ownership and connection to the said premises in suit, the Petitioner has marked electricity bills and telephone bills annexed to the Petition as **P3(c)** to **P3(h)**. In addition to that, she pleads that she has mortgaged the property to raise a loan, which is borne out by the documents marked as **P4(a)** and **P4(b)**.

It is her position that her grandfather had constructed the ancestral house in the 1960s, in which she now resides. Since there was no Urban Development Authority Act or related law in existence during that time, there was no need to register or obtain approval from the Urban Development Authority (UDA) to construct the house. That position has never been controverted by the Respondents.

It is an undisputed fact that the 9th Respondent, who is the owner of the premises which lies to the East of the Petitioner's premises, initially having erected the ground-floor of the building standing on his premises, had started occupying the same and carrying on a business bearing the name "Haq Traders". Later, he further developed the same building by constructing three more floors over and above the ground floor, which is clearly depicted in the photographs marked as **P6(a)** to **P6(e)**, and **P7(a)** to **P7(g)**; in addition to that, the process of construction is also visible in the said photographs.

It is the Petitioner's complaint to this Court that the said four-storey building, where the 9th Respondent is occupying and also carrying on a business under the name and style of "Haq Traders", is an unauthorised and illegal construction as he has not obtained any development permit to construct or erect any building in the premises of which he is the owner, and no Certificate of Conformity (COC) has been issued to him so far.

The Petitioner asserts that she came to be aware of such facts after obtaining information from the 1st Respondent by **P21**, after making an application in that behalf under the Right to Information Act, No. 12 of 2016; the 1st Respondent has clearly confirmed that the premises where the 9th Respondent is carrying on his said business is an unauthorised construction in violation of UDA Regulations annexed to the Petition as **P12**.

The Petitioner has however, made representation to the 1st Respondent to take action against the said unauthorised construction, to remove the same since it is violative of the UDA Regulations and the law. In addition to that, the Petitioner has written to the Chairman and the Directors of the UDA, who are the 5th to 7th Respondents in the instant Application. In response to such a letter, the 4th Respondent has written to the 1st Respondent to take action. Since up to the time that this Application was instituted, no such action had been taken against the 9th Respondent by any of the other Respondents, the Petitioner has sought the relief previously mentioned in the introductory part of this judgement.

Violation of rules admitted

In this case, it is very clear that the 9th Respondent has not obtained proper authorisation to construct the said four-storey building in the premises belonging to him, by submitting a relevant plan as per Clauses 3 and 7 of the Regulation marked as **P12**. The Petitioner's complaint is based on that. In addition to that, the 1st to 3rd Respondents have clearly admitted in paragraph 20 of their Objections that such construction effected without any development permit or approval, is violative of the UDA Regulations and laws, as delegated by the 4th Respondent, the UDA. However, it is their position that there is an ambiguity on the observance of the said regulations.

To cap all that, the 9th Respondent has admitted in his Objections that he had not submitted any plan nor obtained any development permit from the 1st Respondent. In view of those admissions, it is my view that the 9th Respondent has violated the Regulations contained in **P12**, which has been made and published under the UDA Act of 1978 (as amended). Thus, it is my view that the premises on which the 9th Respondent has constructed a four-storey building where he is carrying on the business under the name and style “Haq Traders” is unauthorised.

Liability of unauthorized construction

Now I will consider whether there is a liability on the part of the Respondents to remove the unauthorized construction.

As per Regulation No. 7 in **P12**, if a building has been constructed without prior approval or if no Certificate of Conformity (COC) has been issued under the UDA Regulations as indicated in **P12**, the 1st Respondent, acting on the delegated powers of the 4th Respondent, is liable to remove such unauthorized construction as it violates the said regulations.

The 9th Respondent has not challenged the said regulations, nor the position taken by the 1st to 3rd Respondent in its Objections; therefore, it is my view that such unauthorised construction is liable to be removed.

The Petitioner, as mentioned above, has made several complaints to the 1st Respondent as well as other relevant Respondents, to take action to remove the unauthorised construction which the 9th Respondent has effected. However, no such action has been taken; therefore, now I will see whether they are under a statutory duty to take such actions.

The 4th Respondent has been established by an Act of Parliament for the purpose of regulating the urban and local government areas, and for that purpose, it is empowered to make regulations which are also treated as by-laws. Accordingly, the 4th Respondent has made the regulations marked as **P12**. It is further provided by the Section 13(4) of the UDA Act of 1978 that the powers vested in the 4th Respondent can be delegated to different Local Government Authorities for the purpose of exercising its powers, since it is expedient for the 4th Respondent to effectively and efficiently exercise its vested powers by the said Act. It is also common ground and an undisputed fact, as admitted by the 1st to 3rd Respondents, that the 4th Respondent's powers have been delegated to the 1st Respondent to authorise or grant building permits or development permits to the people within the jurisdiction of the 1st Respondent.

However, in the instant case, neither has the 9th Respondent obtained such approval or permit from the 1st Respondent, nor has the 1st Respondent issued such approval or permit to the 9th Respondent to construct the impugned building erected on the premises of the 9th Respondent. As such, it is my view that the 1st to 3rd Respondents are responsible for taking actions against the 9th Respondent for and on behalf of the 4th Respondent and other Respondents as it is a vicarious duty and responsibility as provided for by the law. Therefore, it is my view that the Respondents have derelicted their statutory duties in taking legal actions against the 9th Respondent, on the complaint made by the Petitioner, who is directly affected by the said unauthorised construction.

In fact, permits are issued in respect of construction, particularly in areas where local government bodies are set up under the law, for the purpose of regulating the smooth living conditions in such areas. In modern welfare states, to ameliorate the living conditions of citizenry, regulations are made by the relevant authorities to maintain not only the living standards, but also when such

regulations, particularly relating to development activities, are in place, it is expedient for them to provide common amenities for the citizenry of the area.

This concept of the modern welfare state came into existence particularly just before the First World War and with the advent of Industrial Revolution in the mid-Victorian era as described in the textbook of “Administrative Law”, by H. W. R. Wade and C.F. Forsyth (12th Edition) in the following terms;

“Until August 1914, it has been said, 'a sensible law-abiding Englishman could pass through life and hardly notice the existence of the state, beyond the post office and the policeman.' This worthy person could not, however, claim to be a very observant citizen. For by 1914 there were already abundant signs of the profound change in the conception of government which was to mark the twentieth century and continue into the twenty-first. The state schoolteacher, the national insurance officer, the job centre, the sanitary and factory inspectors and, as the twentieth century progressed, the executive agency and the official regulator, with their necessary companion the tax collector, were among the outward and visible signs of this change. The modern administrative state was taking shape, reflecting the feeling that it was the duty of government to provide remedies for social and economic evils of many kinds. This feeling was the natural consequence of the great constitutional reforms of the nineteenth century. The enfranchised population could now make its wants known, and through the ballot box it had acquired the power to make the political system respond.¹”

¹ Chapter 1 “Introduction”, Page 3.

In the present case, the Petitioner complains that her rights are affected by the illegal construction; therefore, the 1st to 8th Respondents are under a statutory duty to take actions against the 9th Respondent, and dereliction of such duty is amenable to writ. Thus, this Court can issue a *Writ of Mandamus*, compelling them to take necessary actions against the 9th Respondent.

The local authorities are expected to regulate proposed building plans for several reasons. One such reason is regarding natural resources; all individuals residing within the jurisdiction of such local authority should be equally entitled to have access to the available natural resources such as water, sunlight, and unpolluted air (ventilation), as it is a part to their right to life.

The second matter that should be considered by the local authorities is the amount of inhabitants who will occupy or use the area proposed to be constructed; if the number of inhabitants exceeds the expected amount, then it has to be regulated for the simple reason that an enormous number of inhabitants occupying or residing within a small area might affect the rights of other people, when it comes to common amenities such as water supply, drainage, ventilation, sunlight, and electricity supply.

Furthermore, the following passage illustrates H.W.R. Wade and C.F. Forsyth's explanation on the historical development of the activities of local government authorities as a regulatory body;

“Reform started to take place in the eighteenth century with the formation of statutory authorities such as the Poor Law Commissioners (1834), highway boards, boards of health, burial boards and so forth, which created a dense governmental jungle. Another marked change that took place during that period was the formation of boroughs. Boroughs were corporations created by royal charter obtained (and commonly purchased) from the Crown. For a sufficient sum, they could obtain grants of commercial and jurisdictional

privileges and get representation in Parliament. Having corporate personality, boroughs could accumulate and administer their own property. A privilege which they often obtained was the power to elect their own magistrates, escaping thus from the rule of the county justices."²

Relief

Even in this Application, the Petitioner has sought certain *Writ of Prohibition*, preventing the Respondents from issuing the Development Certificate or Certificate of Conformity (COC) to the 9th Respondent. This matter is pertinent, as at this stage, such an unauthorized structure cannot be regularized or authorized by the issuance of Development Certificate or Certificate of Conformity once the complaint has been made to this Court. Therefore, in my view, most of the relief sought by the Petitioner should be granted.

I wish to further rely on the following passage found in the authoritative textbook, "Administrative Law", by H. W. R. Wade and C.F. Forsyth (12th Edition);

"I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction.

Primarily, the prohibiting order is used to prohibit an inferior tribunal from doing something in excess of its jurisdiction. In what might be called the 'jurisdictional warfare

² H. W. R. Wade and C.F. Forsyth, *Administrative Law* (12th Edition, Oxford University Press 2023), Chapter 4 "Local and Devolved Government", Page 60.

of the seventeenth century, it was an important weapon of the King's Bench when that court struck down the pretensions of competing jurisdictions such as those of the Court of Admiralty and the ecclesiastical courts. Like the quashing order, it later developed into part of the regular mechanism of judicial control both of inferior tribunals and of administrative authorities.³

Question of delay

The next question that needs to be decided is whether delay on the part of the Petitioner defeats the issuance of any writ in favour of the Petitioner.

As particularly the Counsel for and on behalf of the 9th Respondent argued, even if there appears to be delay in invoking the jurisdiction of this Court, such gap of time cannot be considered as a delay for the following reasons.

Firstly, unless and until the Petitioner wrote to the 1st Respondent by **P20** and the 1st Respondent's response to the same in **P21**, the Petitioner was not aware that the 9th Respondent had not been issued with a valid development permit or approved building plan issued by the 1st Respondent or any other authority. The questions contained in **P20** have been answered by **P21**; the document marked **P21** has been issued on 2022.01.03, a month after **P20**. Therefore, it is my view that there is no delay in prosecuting this application as it had been filed on 2022.10.14.

The second matter is that the 9th Respondent had initially constructed only the ground floor; slowly he has added other floors; therefore, his secret in intentions in adding other floors should not defeat the Petitioner's right to invoke the jurisdiction of this Court, because the completion of the building

³ Chapter 16 "Prerogative Remedies", Page 483.

has taken place just before the document marked as **P20** was sent to the relevant authority, after the completion of the building, as the Petitioner asserts, and particularly the 9th Respondent has admitted so.

Conclusion

For the reasons adumbrated by me above, I grant the following relief as prayed for in the Petition: *(d), (e), (f), (g), (h), (j), and (k)*. In addition to that, I wish to award a cost of Rs. 105,000/- (One Hundred and Five Thousand Rupees) to the Petitioner, payable by the 1st and 9th Respondent jointly and severally, since the 9th Respondent has constructed without any authorisation, and once it was brought to the attention of the 1st Respondent, he should have taken steps to remove it before the invocation of the jurisdiction of this Court.

JUDGE OF THE COURT OF APPEAL