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.

L.P.S.A.K. Jayasinghe,
No. 47/1, Marapola,
Weyangoda.

CA (Writ) App. No. 140/2023

PETITIONER

Vs.

1. Senior Deputy Inspector of Police,
   Western Province,
   Sri Lanka Police Headquarters,
   Colombo 01.

2. Superintendent of Police,
   Gampaha Division,
   Police Station,
   Gampaha.

3. Assistant Superintendent of Police,
   Attanagalla.

4. Officer-in-Charge,
   Police Station,
   Weyangoda.

RESPONDENTS

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

Counsel:

Jagath Abeynayake with Mahesh Dissanayake for the Petitioner.

Medhaka Fernando, S.C. for the Respondents.

Argued on: 27.10.2025

Delivered on: 05.12.2025

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

Judgement

Introduction

The Petitioner is an entrepreneur who has invested in Four Hundred Million Rupees in a condominium property complex which is named as "Sanasa Purahala", located in Naiwala, Weyangoda. He asserts that his is carrying out the business under the name and style of "Jayasinghe City Centre" in the same said premises along with his son, as reflected in **P1**.

The said condominium property includes common amenities and common utilities; in addition to that, it consists of boutiques, two auditoriums, a reception hall, a restaurant, two kitchens, access area and parking space, as set out in the description of the premises and depicted in the Plan marked as **P12**.

The Petitioner further asserts that after he had invested in the said business, he also caused and made available a three-phase electricity connection, by having fixed a transformer exclusively to the property. He has also completed the plumbing and drainage system of the premises, employed security personnel and sanitary workers, and improved the parking facilities in the premises in suit.

He further states and particularly asserts that in the area depicted as 'C1' in the plan marked as **P12**, certain members of a volunteer organisation called "Sri Bodhiraja Three-wheeler Association", is utilising the premises to park their three-wheelers, causing disturbance, nuisance, and hindrance to the Petitioner. Therefore, the Petitioner has made several complaints to the Police Station.

Though the Weyangoda Police has instituted action in the Magistrate's Court of Attanagalla in case bearing number B/2406/22, charging nineteen suspects with trespass, the Petitioner asserts that they have not been adequately charged under the relevant laws including the public nuisance. In those circumstances, the Petitioner is seeking to obtain a *Writ of Mandamus* to compel the 1st to 4th Respondents to take action in removing the unauthorised parking of three-wheelers within the premises belonging to the Petitioner, which is identified as 'C1' in **P12**.

However, the Respondents have filed their respective Objections; according to their Objections, they have taken up that they have already filed action against the alleged trespassers in the Magistrate's Court, and the said case is still pending. Therefore, the Petitioner cannot maintain this action against the Respondents. As such, this Application should be dismissed.

This was argued before this Court on 27.10.2025, and the following arguments were advanced by the counsel of all parties.

Arguments

The first contention advanced by Mr. Abeynayake is that in terms of Section 73 of the Police Ordinance, the Respondent or his subordinate officers are under a duty to institute proceedings against the three-wheel drivers who cause hindrance at the entrance of the Petitioner's entryway. Therefore, the Petitioner is entitled to obtain a *Writ of Mandamus* against the Respondent. However, on a question posed by the Court, Mr. Abeynayake argued that though the police had instituted proceedings in the Magistrate's Court against nineteen three-wheel drivers who continue to park their three-wheelers in front of the Petitioner's premises, causing hindrance and nuisance, the police has failed to file actions on the basis of public nuisance.

The next contention advanced by Mr. Abeynayake is that in terms of Section 170 of the Municipal Councils Ordinance, No. 29 of 1947 (hereinafter referred to as the "Municipal Councils Ordinance"), the Municipal Council is responsible for maintaining the due order of the fare. Although the complaint is made to the Municipal Council by the Petitioner, the Municipal Council has to take steps to bring the perpetrators before the law only through the Respondent. Therefore, the Respondent has to take the initiative to institute the proceedings against the perpetrators. Thus, in those circumstances, the Petitioner has sought a Writ of Mandamus against the Respondent from this Court. He heavily relies upon the cases of *Saram v. Seneviratna* [1918][1] and *Nair v. Costa* [1927][2].

However, on the other hand, Mr. Fernando argued that as correctly questioned by the Court, if at all to go against the perpetrators in terms of Section 73 of the Police Ordinance, they are not made parties to this application. Therefore, without hearing them, no writ can be obtained compelling the Respondent to prosecute against the perpetrators.

The second contention advanced by Mr. Fernando is that the Petitioner has failed to establish a public element to constitute an offence in terms of Section 73 of the Police Ordinance and Section 170 of the Municipal Councils Ordinance. Additionally, he argued that the Petitioner without making the Municipal Council a party cannot obtain a writ against the Respondent in terms of Section 170 of the Municipal Councils Ordinance.

[1] *Saram v. Seneviratna* [1918] 21 NLR 190
[2] *Nair v. Costa* [1927] 28 NLR 385

Factual matrix

On a perusal of the record, I found that the Petitioner has made a complaint to the police against the three-wheel drivers who use the area marked as 'C1' in plan **P12** as a three-wheel parking space regularly. On that complaint, the police have inquired into the matter, and several three-wheel drivers have made their statements, which is also part of the record attached to **P1**. It was further revealed that the Petitioner has purchased his shares in the condominium property by several deeds which are marked as **P2** to **P9**. **P10** to **P12** are the survey plans where the situation of the condominium property and also the area reserved for a parking space marked as 'C1', which is now used by the said three-wheel drivers according to the Petitioner, is depicted.

There are several correspondences between the Petitioner and the local government authorities, including the condominium authority, that the Petitioner has annexed to the Petition marked as **P14** to **P17** and **P19,** to establish that the space used for three-wheel parking is not authorised by the Local Government Authority. **P16** consists of two photographs which indicate how the hindrance is caused at the entrance. In addition to that, the Petitioner has also annexed the letters issued by the condominium authority stating that the condominium complex of which the Petitioner is also a shareholder, is properly regularised and a registered one, and hindrance caused to the Petitioner. Therefore, it is very clear that the Petitioner has every legal right to the condominium property and to remain in possession of the same, undisturbed and uninterrupted by anybody.

Petitioner has lodged a police complaint

The Petitioner has lodged a police complaint, marked as **P1**, with the Weyangoda Police Station, and the police has recorded several statements from the identified perpetrators.

Thereafter, based on the said complaint, the police have instituted proceedings against nineteen relevant perpetrators on the basis of criminal trespass and unlawful restraint, which are punishable under Sections 433 and 332 of the Penal Code; and still the case is pending in courts. On a perusal of the record, I found that it also transpired that representation had been made before the Magistrate's Court. At the B Report stage before the plaint was filed, an application was made on behalf of the Petitioner to institute charges against the accused on the basis of public nuisance as well. However, the learned Magistrate has refused that application after considering the following matters;

i. There are occupants of the very same condominium complex, as shoppers, who had given letters and affidavits claiming that the said three-wheel parking is not a nuisance to them.

ii. On the police investigations, it has not been disclosed whether there is an exact demarcation between the three-wheel park and the area claimed by the Petitioner for his parking space.

Therefore, a charge based on public nuisance cannot be maintained.

Instant Application

The present Application fails due to three reasons which I enumerate below in detail.

In this Application, the Petitioner alleges that three Respondents who are the police officers, have failed to investigate properly in order to prosecute the accused trespassers on the basis of trespass and public nuisance as well.

The learned Magistrate having gone into the matter at the initial stage, has discharged the accused from the charges of public nuisance since there was no prima facie case. Therefore, it is not conceivable that such a charge of public nuisance can be maintained by the police. In those

circumstances, if the Petitioner is of the view that there is a nuisance as far as he or his business is concerned, then he must institute an action in the District Court on the basis of private nuisance or public nuisance to those who come to the shopping complex[3]. Therefore, the Petitioner's Application against the Respondents cannot be maintained.

The second matter is that the Petitioner has made allegations against the Local Government Authority, who should take actions against the perpetrators to prosecute for using a space of the road for three-wheel parking. However, during submissions, when this Court questioned the learned Counsel, it was his submission that even for the Local Government Authority to take action, they need to initiate it through the police; therefore, the police were only made Respondents. In that sense, without the Local Government Authority as a Respondent, no order can be made in that respect, even against the Respondents who are cited in this Application.

Thirdly, none of the so-called perpetrators have been made parties to this Application. Therefore, without hearing them, no writ can be issued against anybody, including the Respondents, as their rights will be affected.

As such, it is my view that no writ lies in this case. However, if the Petitioner so desires to make an application, he is entitled to do so by making an application to the District Court to obtain his civil rights as an owner to the property in suit[4].

[3] R.G. McKerron, *The Law of Delict* (7th Edn., Juta & Co. Ltd., 1971), Chapter XII "Wrongs against Property".

[4] *Thajudeen v. Sri Lanka Tea Board and Another* [1981] 2 Sri LR 471.

Conclusion

Accordingly, for the reasons adumbrated above, this Application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL