# 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 and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Dr. Lindamulage Tiraj Niroshan Silva,
No. 3/5,
Melvil Lane, Samudra Mawatha,
Panadura.

**PETITIONER**

**C.A. Case No. WRT/0437/20**

**Vs.**

1. Municipal Council of Moratuwa,
   Galle Main Road,
   Moratuwa.

2. K.A. Thilakarathne,
   Municipal Commissioner,
   Municipal Council of Moratuwa,
   Galle Main Road,
   Moratuwa.

2(a).S.D. Thewarapperuma,
   Municipal Commissioner,
   Municipal Council of Moratuwa,
   Galle Main Road,
   Moratuwa.

3. A.L.C.S. Perera,
   Surveyor General,
   Surveyor General's Department,
   No. 150, Kirula Road, Colombo 05.

4. I.P. Anil Masakorale,
   OIC – Police Station,
   Egoda Uyana,
   Moratuwa.

5. C.D. Wickramaratne,
   Inspector General of Police (Acting),
   Police Head Quarters,
   Colombo 01.

6. P.C.D. Sigera (Mrs),
   Title Settlement Commissioner General,
   Department of Land Title Settlement,
   No. 1200/6, Mihikatha Medura,
   Rajamalwatta Road, Battaramulla.

**RESPONDENTS**

**BEFORE : K.M.G.H. KULATUNGA, J.**

**COUNSEL :** Chrishmal Warnasuriya with Ovini Abeyweera instructed by Mayomi Ranawaka for the Petitioner.
Prabashanee Jayasekara, SC for the 3rd to 6th Respondents.
Rasika Dissanayake with Shabbeer Huzair for the 1st Respondent.

**ARGUED ON :** 03.06.2025

**DECIDED ON:** 26.08.2025

**JUDGEMENT**

**K.M.G.H. KULATUNGA, J.**

1. The petitioner claims to be the owner of a land in extent of 50 perches situated at No. 148/6, New Galle Road, Egoda Uyana, Moratuwa, which is depicted and described in deeds, bearing No. 959 dated 27.11.2020, No. 799 dated 18.03.2018, and No. 801 dated 31.03.2018, all of which were executed by P. K. M. N. Kulasuriya, Notary Public. This land is also now depicted in Plan No. 1693 prepared by Licensed Surveyor, J. Wilfrey Rodrigo. The Municipal Council of Moratuwa, the 1st respondent, has embarked upon the laying of hume pipes, apparently to drain rain water. Work did commence somewhere in December 2020. This laying of pipes was proposed along the southern boundary of the land claimed by the petitioner. The petitioner was not in occupation of the said land and upon realising that work has commenced, the petitioner complained to the Police and also the 1st respondent, requesting that the said proposed project be stopped as it is on private land.

2. However, the position of the 1st respondent had been that, in accordance with the Surveyor General's cadastral plan bearing No. 520217, dated July 2010, there is an access road along the southern boundary of the petitioner and the pipes are laid along the same. The petitioner's position is that the said plan prepared by the Surveyor General in the course of the 'Bim Saviya' Project is erroneous and incorrect. Upon making complaints to the Municipal Council and the Egoda Uyana Police, the petitioner instituted this writ application against the Municipal Council of Moratuwa, the Municipal Commissioner, the Surveyor General, the OIC of the Egoda Uyana Police Station, the Acting IGP, and the Title Settlement Commissioner General, seeking several relief which *inter alia* included a writ against

the 3rd respondent Surveyor General to prepare a corrected cadastral drawing.

3. This application was filed in 2020, and during the pendency of the application in the past five years, the 3rd respondent Surveyor General has caused a re-survey and rectified and corrected the alleged erroneous depiction of the access roadway along the southern boundary of the petitioner's land. It is common ground and now admitted by all parties that the said cadastral map, upon the correction, bears No. 520217, prepared by the 3rd respondent Surveyor General, dated 22.11.2024. A copy of this is now made available along with the 3rd respondent's written submissions, marked X.' It is clear that the land of the petitioner, now depicted as Lot No. 1 in the said cadastral drawing, does not have any access road along its southern boundary as depicted in the original cadastral map. In view of the rectification and correction made by the 3rd respondent, the petitioner, when this was taken up for argument, informed Court that he will limit this application and pursue only with relief sought by prayer (b) and (c) (iii). By prayer (b), the petitioner is seeking a writ of prohibition restraining the 1st and 2nd respondents and others under them, from continuing any further digging, construction, or other activity on the petitioner's land except strictly in accordance with the law and with due notice to the petitioner and his entitlement to object and to be heard. Then, by prayer (c) (iii) the petitioner is seeking a writ of mandamus directing the 1st and/or the 2nd and/or the 3rd respondent/s to duly inquire into the damages caused to the petitioner's property and compensate the petitioner for all such damages. However, in the written submissions, the petitioner has specifically stated that this relief is now pursued only against the 1st and the 2nd respondents, and not against the 3rd respondent.

4. When this matter was taken up for argument, learned Counsel Mr. Chrishmal Warnasooriya submitted that the 3rd respondent has now rectified the original mistake of depicting a 10-foot access road along

the southern boundary. It was his position that the 1st respondent Municipal Council has been acting maliciously to assist a person named Neville Fernando, who happens to be a person with close political affiliations to the former Mayor of Moratuwa. It is alleged that he either influenced or was instrumental in having an access road demarcated and depicted in the original cadastral map. It is also alleged that the said Neville Fernando and several others who were politically motivated made several attempts to prevent the petitioner from developing and fencing his land, in or around April 2019. The petitioner has lodged complaints with the Police marked P-10 (a) and P-10 (b). The police are also alleged to not have properly investigated into this complaint but directed the petitioner to get the Mayor to sort it out. The petitioner having instituted this application, has obtained interim relief and has also instituted a civil action in the District Court of Moratuwa bearing No. 971/21 which appears to be an action for the declaration of title. It is the position of the petitioner that the 1st respondent is now attempting to pursue with the laying of the hume pipes on the guise of the project directed by the then President in 2019, titled "Sapiri Gamak" which is based on an election manifesto. It is the argument of Mr. Warnasooriya that a political manifesto does not authorize the 1st respondent Municipal Council to construct on private lands. The petitioner has not had due notice prior to the commencement of the said project, as required by Section 97 of the Municipal Councils Ordinance No. 29 of 1947 (hereinafter sometimes referred to as 'the Ordinance). The petitioner claims that they are entitled to relief on the bases of illegality, irrationality, procedural impropriety, as well as substantive legitimate expectation.

5. According to the objections filed by the respondents and submissions made during the argument, the position of the 1st respondent is that under S. 59 of the Ordinance, the respondent has the power to carry out such work and as this application entails several matters of fact that are in dispute, it is not amenable to the writ jurisdiction. It is also

argued that as a District Court matter is already pending, and the petitioner has an alternate remedy which also disentitles them to the remedy available by writ.

6. Then, it is also the petitioner's position that in view of the original cadastral map, as there was a 10-foot roadway along the southern boundary, this project was proposed to go over the said access road so depicted. The said cadastral map is marked and produced as P-6. It is also submitted that this project was effected under the programme called “Sapiri Gamak” of the Ministry of Finance, Economy and Policy Development (Circular No. 001 of 2019). A sum of Rs. 1 million has been set aside for this project. The respondents deny any influence or any other political object to this programme and reiterated their position that under Section 59 of the Ordinance, the 1st respondent is entitled to construct drains even over private land.

**Consideration of the Arguments**

7. The sum total of the respondents' position is that this was a project under the “Sapiri Gamak” development plan, and even if it is private land, the 1st respondent is entitled to lay pipes or make drains. S. 59 of the Municipal Councils Ordinance reads as follows:

> *“59. The proper officer of any Municipal Council shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses along any street within the Municipality, and also to make and lay such drains, watercourses, trunks, tunnels, plats, or bridges, as he may deem necessary for the protection, preservation, improvement, repair, or construction of any street or intended street, in and through any lands or grounds adjoining or lying near to such street or intended street.”*

On a plain reading of this provision, it appears that the Municipal Council has the power to lay pipes “in and through any lands or grounds adjoining or lying near to such street or intended street.”

8. In response to this, it is the position of the petitioner that the applicable provisions are Sections 97, 107, and 108 of the Municipal Councils Ordinance, which read as follows:

*"**97.** The Government or any Municipal Council may, from time to time, cause to be made, altered, or extended such public main or other drains, sewers and watercourses as may appear to be necessary for the effectual draining of the Municipality, and, if necessary, the Government or the Council may carry them through, across, or under any street or any place laid out as or intended for a street, or any cellar or vault which is under any of the streets, and (after reasonable notice in writing in that behalf) into, through, or under any enclosed or other lands whatsoever, doing as little damage as may be and making full compensation for any damage done."*

***107.***

*(1) Where any premises are within one hundred feet of any public drain or other fit place into which drains may lawfully be discharged, the Council may, by notice in writing, served on the owner of such premises, require such owner within such time as may be specified in the notice, to provide and execute to the satisfaction of the Council, in accordance with any by-laws for the time being in force, all or any of the following works that the Council may deem necessary for the effectual drainage of such premises, that is to say:—*

*(a) to provide and construct such channels, drains, gullies, manholes, and appliances as may be necessary for the removal and discharge into such drain or other fit place of sullage, foul liquids and rain water;*

*(b) where a sufficient water supply is available, to provide and construct sufficient and suitable water-closets or additional water-closets and drains and other appliances in connection therewith, and to convert any earth closet, privy, cesspit, closet, or other latrine into a water-closet, or abolish any such earth closet, privy, cesspit, closet or other latrine;*

*(c) to reconstruct, take up, and remove or fill up any existing drain or appliance (other than any drain or appliance that has been laid with the sanction of the Council for the drainage of such premises on the water carriage system) that may be, in the opinion of the Council, unnecessary or insanitary.*

*(2) Every owner who fails or neglects to comply with the requirements of any notice served on him under subsection (1) within the time specified*

*in the notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.*

***108.***
*(1) In the case of any premises which are more than one hundred feet, but less than two hundred feet, from any public drain or other fit place into which drains may lawfully be discharged, the Council may, by notice in writing served on the owner of such premises, require such owner within such time as may be specified in the notice, to provide and execute, in accordance with any by-laws for the time being in force, all or any of the works referred to in section 107.*

*(2) If in the opinion of the Council there is no suitable public drain or other fit place into which drains may lawfully be discharged within a reasonable distance of such premises, the Council may, by notice in writing served on the owner of such premises require the said owner, within such time as may be specified in the said notice, to provide and execute such other works and undertake such other measures as may in the opinion of the Council be best or necessary for the proper collection and disposal of the sullage and foul liquids, and the removal of faecal matter from such premises.*

*(3) Every owner who fails or neglects to comply with the requirements of any notice served on him under subsection (I) or subsection (2) within the time specified in the notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty rupees."*

9. Relying on the above provisions, it was submitted that if pipelines were required to be so laid over private land, it should be upon the complying of the pre-condition of giving reasonable notice and affording due notice to the landowner. It was argued that no such notice was afforded. On a perusal of the totality of the material, it is evident that the erroneous cadastral plan made in the year 2010, along the southern boundary of the land as an access road between the Galle Road and the railway line vide P-6. That being so, the decision and the commencement of a project to lay pipes along the said access road so depicted may not strictly require notice as contemplated by the said provisions. It is in 2024 that the cadastral plan was corrected and rectified. It is upon the said rectification that the access road ceased to exist on the cadastral plan.

To that extent, one cannot directly or positively attribute mala fides to the decision of laying a pipeline along such an access road. However, the implementation of the said project was stayed by this Court. In the interim, in 2024, the entire land was depicted as private land as Lot No. 01 in the said cadastral plan No. 520257 dated 22.11.2024.

10. If the 1st respondent still desires to proceed with the project, the 1st respondent is required to comply with the said statutory provisions. Notwithstanding the fact of the amended cadastral plan being brought to the notice of the respondents during the course of this proceeding, it appears that the 1st respondent still intends and desires to continue with the laying of pipelines as proposed. There is no intimation to the contrary made, even at the stage of argument. Therefore, for all intents and purposes, it appears that the 1st respondent may still proceed with the laying of the pipes as planned.

11. In these circumstances, as the proposed path of laying the said pipeline would be over private land, the 1st respondent would require to follow the procedure as specified by Sections 97, 107, and 108, as the case may be. This certainly requires giving reasonable notice to such landowner. In the said circumstances, relief sought by prayer (b) becomes relevant. Relief sought thereby is for a writ of prohibition preventing the 1st and 2nd respondents from continuing with the construction or activity of laying the pipeline as proposed without giving notice. As observed above, the 1st respondent has not made any intimation to discontinue the project as proposed.

12. The object and purpose of the writ of prohibition, as Lord Denning M.R. stated in ***R. vs. Greater London Council ex parte Blackburn [1976]*** 1 WLR 550 is "to prohibit administrative authorities from exceeding their powers, or misusing them." Wade & Forsyth on Administrative Law (11th Ed., at page 511) provides as follows:

> *"Although a prohibiting order was originally used to prevent tribunals from meddling with cases over which they had no jurisdiction, it was equally effective, and equally often used, to prohibit the execution of some decision already taken but ultra vires. So long as the tribunal or administrative authority still had some power to exercise as a consequence of the wrongful decision, the exercise of that power could be restrained by a prohibiting order."*

Dr. Sunil Cooray in "**Principles of Administrative Law in Sri Lanka**" describes the object of the writ of prohibition as follows:

> *"The Writ of Prohibition is available to prevent a proceeding in a given matter, to exercise a power which it does not have under the law, or act in violation of the rules of natural justice where the law requires such officer or authority to observe them. The Writ of Prohibition is not a remedy to restrain the doing of a purely physical act, to restrain which the proper remedy is an injunction. Further, where it is necessary to restrain an official from purporting to exercise power which he does not have, it is an order in the nature of a Writ of Prohibition to restrain him that must be sought, and not a mandamus to compel him not to act."*

Accordingly, I hold that the petitioner is entitled to the writ of prohibition as prayed for by prayer (b).

13. As for the issue of compensation, the petitioner is seeking that a writ of mandamus be issued against the 1st and 2nd respondents to inquire into and pay compensation for the damages caused. To this end the petitioner relies on Section 97 which provides for making full compensation for any damage caused as well as Section 302 of the Ordinance, which provides as follows:

> *"302. A Municipal Council may make compensation out of the Municipal Fund to all persons sustaining any damage by reason of the exercise of any of the powers vested in the Council, officers or servants by or under this Ordinance."*

When Section 97 is read with Section 302, a discretion is vested with the Municipal Council to make out the payment of compensation.

14. It is now settled law that a petitioner seeking a writ of mandamus should, in the first instance, demand that such duty be performed. It is only if such duty is not exercised upon such demand a person is entitled to invoke the writ jurisdiction seeking a mandamus. Wade & Forsyth on **Administrative Law** (11th Ed., at page 528, "Requirement of Demand and Refusal") states the follows:

> *"It has been said to be an 'imperative rule' that an applicant for mandatory order must have first made an express demand to the defaulting authority, calling upon it to perform its duty, and that the authority must have refused. But these formalities are application, and refusal to perform the duty is readily implied from conduct. The substantial requirement is that the public authority should have been clearly informed as to what the applicant expected it to do, so that it might decide at its own option whether to act or not." (emphasis added).*

J. A. N. De Silva, J., (as His Lordship then was) with Their Lordships S. N. Silva C.J., and Weerasuriya J., agreeing, in ***Credit Information Bureau of Sri Lanka v. Messrs Jafferjee and Jafferjee (Pvt.) Ltd.*** (2005) 1 SLR 89 clearly set out some basic requirements to be satisfied for a writ of mandamus to issue, where inter alia a demand that such duty be performed was highlighted:

> *"There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent the issue of Mandamus appear to be:*
>
> *(a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought (**R v Barnstaple Justices**). The foundation of Mandamus is the existence of a legal right (**Napier Ex Parte**)*
>
> *(b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.*
>
> *…*
>
> ***(e) The application must be preceded by a distinct demand for the performance of the duty***
>
> *….*

> *The above principles governing the issue of a writ of Mandamus were also discussed at length in P.K. Benarji v. H.J. Simonds. Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. The court will not grant a Mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put." (emphasis added).*

Therefore, it is clear that a petitioner seeking a writ of mandamus in the normal course of events is required to have requested/ demanded the performance of such duty from the relevant authority. In the present instance, there is no material placed before this Court to that effect.

15. I will not venture to consider if the petitioner has any legitimate right to obtain compensation. However, the absence of a demand to exercise such statutory power of computing and awarding compensation disentitles the petitioner to seek a writ of mandamus from this Court in the first instance. Accordingly, I hold that the petitioner is not entitled to the writ of mandamus as prayed for by prayer (c) (iii) of the petition.

16. Further, malice is no doubt alleged. However, considering the circumstances that existed at that point of time, did enable the 1st and 2nd respondents to lawfully act as they did. This is for the simple reason that the error in the cadastral map of depicting a 10-foot access road. I also observe that a reference is made to one Neville Fernando who appears to have been living in that vicinity. Though it is alleged that the said Neville Fernando was instrumental and has influenced the 1st and 2nd respondents to act as they did, there is no material to substantiate or confirm the said allegation.

17. For the reasons stated above, I see no basis to grant the relief as prayed for by prayer (c) (iii). However, I am of the view that the petitioner is entitled to relief as prayed for by prayer (b). Accordingly, writ of prohibition is granted, restraining the 1st and 2nd respondents, and

others under them, from continuing with any further digging, construction, or other activity on the petitioner's land, except strictly in accordance with the law and with due notice to the petitioner and his entitlement to object and to be heard.

18. Application is allowed to that extent. However, I make no order as to costs.

19. Application is partially allowed.

**JUDGE OF THE COURT OF APPEAL**