

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

In the matter of an application for a mandate
in the nature of Writ of Mandamus I terms
of Article 145 P (6) of the Constitution.

CA (PHC) 100/2015

[CA (PHC) 111/2015, CA (PHC)
115/2015, CA (PHC) 122/2015
and CA (PHC) 137/2016]

HC WRT 05/2012

1. F.H. Hameed,
No. 480/38, Roxy Udyanaya, Wellawatta,
Colombo 06.
2. Chalina Hami,
No.480/54, Roxy Udyanaya, Wellawatta,
Colombo 06.
3. K.S. Perera,
No.480/10, Roxy Udyanaya, Wellawatta,
Colombo 06.
4. Iarin Perera,
No.480/47, Roxy Udyanaya, Wellawatta,
Colombo 06.
5. K. M. B. Rathnayake,
No.480/12, Roxy Udyanaya, Wellawatta,
Colombo 06.
6. B. A. Rita,
No.480/89, Roxy Udyanaya, Wellawatta,
Colombo 06.

Petitioners

Vs.

1. Colombo Municipal Council,
Colombo 07.
2. M. Musammil,
Mayor,
Colombo Municipal Council,
Colombo 07.
3. Badrani Jayawardhana,
Commissioner,

Colombo Municipal Council,
Colombo 07.

4. Chandrani Samarakoon,
Commissioner of Local Government,
Independence Square,
Colombo 07.
5. Jayanthi Wijethunga,
Chief Secretary,
Provincial Council of Western Province,
Sir Marcus Fernando Mawatha,
Colombo 07.

Respondents

And now between

1. F.H. Hameed,
No. 480/38, Roxy Udyanaya, Wellawatta,
Colombo 06.
2. Chalina Hami,
No.480/54, Roxy Udyanaya, Wellawatta,
Colombo 06.
3. K.S. Perera,
No.480/10, Roxy Udyanaya, Wellawatta,
Colombo 06.
4. Iarin Perera,
No.480/47, Roxy Udyanaya, Wellawatta,
Colombo 06.
5. K. M. B. Rathnayake,
No.480/12, Roxy Udyanaya, Wellawatta,
Colombo 06.
6. B. A. Rita,
No.480/89, Roxy Udyanaya, Wellawatta,
Colombo 06.

Petitioner- Appellants

Vs.

1. Colombo Municipal Council,
Colombo 07.
2. M. Musammil, Mayor,
Colombo Municipal Council,
Colombo 07.
- 2a. Vraie Cally Barlthazaar, Mayor,
Colombo Municipal Council,
Colombo 07.
3. Badrani Jayawardene,
Municipal Commissioner,
Colombo Municipal Council,
Colombo 07.
- 3a. Palitha Nanayakkaara,
Commissioner,
Colombo Municipal Council,
Colombo 07.
4. Chandrani Samarakoon,
Commissioner of Local Government,
Independence Square, Colombo 07.
- 4a. S.K. Jayasundara,
Commissioner of Local Government,
No. 204, Dencil Kobbakaduwa Mawatha,
Battaramulla.
5. Jayanthi Wijethunga,
Chief Secretary,
Provincial Council of Western Province,
Sir Marcus Fernando Mawatha,
Colombo 07.
- 5a. S. L. Dammika K. Wijesinghe,
Chief Secretary,
Provincial Council of Western Province,

No. 204, Dencil Kobbakaduwa Mawatha,
Battaramulla.

Respondent- Respondents

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Saranee Gunathilaka with Nithma Fernando for the Appellant.
Senany Dayaratne with Nishadi Wickramasinghe, Janani Abeywickrema, Maheshika Bandara for the 1st, 2a, 3a Respondent- Respondents.
Shani Perera, ASA for the 4th, 5th Respondents.

Argued: 27.04.2026

Written submissions tendered on: 29.07.2019 by 1st, 2nd & 3rd Respondent – Respondents.
07.01.2020 by 4th & 5th Respondent- Respondents.
13.07.2026 by 1st, 2a and 3a Respondent- Respondents.
24.07.2026 by Petitioner – Appellants.

Judgment Delivered: 18.09.2026

Thotawatte, J.

1. Introduction

The six Petitioner-Appellants (hereinafter referred to as the Appellants collectively and 1st to 6th Appellants individually) were the Petitioners before the High Court of the Western Province holden in Colombo in H.C. Writ Application No. 05/2012. The Colombo Municipal Council, its Mayor, its Municipal Commissioner, the Commissioner of Local Government and the Chief Secretary of the Western Province were cited as the Respondents before the

High Court and are the 1st to 5th Respondent-Respondents (hereinafter referred to as the Respondents collectively and 1st to 5th Respondents individually) in the present appeal.

During the pendency of the appeal, the relevant successors in office were substituted in place of the original 2nd and 3rd Respondents and were thereafter designated as the 2a and 3a Respondent-Respondents. The substitutions are in respect of the offices concerned and do not alter the substance of the proceedings.

The present appeal has been preferred under Article 154P (6) of the Constitution against the judgment dated 06.05.2015 delivered by the learned Judge of the High Court of the Western Province exercising writ jurisdiction under Article 154P(4)(b) of the Constitution.

The Appellants had filed writ applications numbers HCWA 05/2012, HCWA 14/2010, HCWA 19/2012, and HCWA 04/2011, HCWA 12/2011, in the High Court seeking, principally, a mandate in the nature of a Writ of Mandamus compelling the Respondents to vest in them the title to the respective houses occupied by them at the housing complex commonly referred to as “Roxy Gardens” or “Roxy Udyanaya” in Wellawatte. The claim was founded upon the Local Authorities Housing Statute No. 3 of 1991 of the Western Provincial Council and the doctrine of legitimate expectation.

The learned High Court Judge dismissed each of the above-mentioned applications upon holding, in substance, that the subject premises did not fall within the statutory scheme invoked by the Appellants, that the asserted legitimate expectation was not legally enforceable in the manner sought and that the application was also affected by delay. Being dissatisfied with the said orders of the learned High Court Judge the Appellants have filed appeals 100/15, 111/2015, 115/2015, 122/2015 and 137/2016 respectively against the orders of the High Court writ applications bearing No’s HCWA 05/2012, HCWA 14/2010, HCWA 19/2012, HCWA 04/2011, HCWA 12/2011 seeking to have those orders set aside and the substantive relief prayed for before the High Court granted.

As the grounds for the writ applications, the reasons for their dismissal and the grounds for the appeal is substantially similar, on 19.02.2021 (also on 27.04.2026) the counsel representing the parties in appeals CA (PHC) Nos. 100/15, 111/2015, 115/2015, 122/2015 and 137/2016 agreed to be bound by the judgement of the instant appeal CA (PHC)100/15. The matters were thereafter taken up together for argument on 27.04.2026.

2. Factual Background

The subject houses are situated within the housing complex known as “*Roxy Gardens*” in Wellawatte. It is common ground that the land and houses are owned by the 1st Respondent, the Colombo Municipal Council.

The Respondents state that the property was acquired or purchased for the Colombo Municipal Council during the 1920s and that houses were subsequently constructed thereon as residential quarters for employees of the Council. The houses were let to employees subject to payment of rent, subject to a prohibition against subletting and the understanding that occupation would cease upon retirement or termination of employment.

The 1st to 5th Appellants were not themselves employees of the Colombo Municipal Council but entered into or continued in occupation through family members who had been employed by the Council. The 6th Appellant entered into occupation in her capacity as a Council employee but was no longer in its service at the time material to these proceedings. Thus, none of the Appellants remains in occupation as a serving employee of the Council.

Appellants’ Position

The Appellants, however, contend that the character of their occupation cannot be determined merely by reference to the original allocation of the houses. They rely upon the prolonged acceptance of rent by the Council after the retirement or death of the original employee-occupants, the absence of action to recover possession, the expenditure incurred by the occupants in maintaining and improving the houses and, most significantly, a series of representations and administrative decisions made over several decades indicating that the houses would be transferred to the occupants.

The earliest material specifically relied upon includes Municipal Council circulars numbered 1975/34 and 1978/23, together with Gazette No. 167 dated 06.06.1975 [not attached to CA PHC 100/15 but annexed to the application in CA (PHC) 137/2016 marked P10, P11, and P15]. The Appellants contend that these instruments evidence an established administrative framework governing the transfer of low-cost housing to occupants.

A letter dated 29.10.1987, [not attached to CA PHC 100/15 but annexed to the application in CA (PHC) 122/2016 marked P21] issued by the Acting Municipal Commissioner, referred

to a decision of the mayor and directed that the services of a licensed surveyor be obtained and plans prepared for the transfer of the houses to the occupants.

The Appellants further rely upon letters dated 11.10.1988, [annexed to the writ application marked P1(e)(iv) and at page 162 of the brief] addressed to individual residents, in which it was stated that the Municipal Council had decided to vest the houses in the occupants without charge and that the legal documentation and conditions of transfer were to be arranged. These letters are said to have been issued by the Municipal Commissioner pursuant to the mayor's directions.

A communication dated 31.08.1992 [not attached to CA PHC 100/15 but annexed to the application in CA (PHC) 111/2015 marked P1(c)(ii)], issued in connection with the retirement of an original employee-occupant, was also relied upon as indicating that the house would ultimately be transferred and that possession was not required to be surrendered upon retirement.

The Appellants state that, notwithstanding these assurances, the transfer process was not completed. A letter dated 20.04.2005 [annexed to the writ application marked P2 and at page 179 of the brief] from the Commissioner of Local Government referred to discussions with representatives of the "*Roxy Gardens*" Residents' Welfare Society and to a ministerial direction that a suitable mechanism be identified for transferring the houses.

The Appellants submit that decision of the Colombo Municipal Council dated 20.06.2006 [annexed to the writ application marked P3(a) and at page 181 of the brief] indicate that the question was not whether the houses could be granted to the occupants, but with regards to the appropriate mechanism and the extent of the land to be included in such transfers.

The Appellants also rely upon the record of a discussion held on 15.12.2007, [at page 209 of the brief] with the Chief Minister of the Western Province and a letter dated 28.01.2008, [at page 210 of the brief] which refers to the possibility of transferring the properties to the occupants at a value of Rs.150,000 per perch. According to the Appellants, the available material indicates that certain occupants had resided in the premises since 1928, borne the expenses of their maintenance, and that, owing to the Council's lack of funds to maintain the houses, their transfer to the occupants was considered appropriate.

It is the Appellants' position that these repeated communications, decisions, meetings and assurances, extending over several decades, created a legitimate expectation that the

Council would complete the transfer of the houses to the occupants. They further contend that the Council's later refusal to accept rent and its failure to complete the transfer constituted an unlawful departure from that expectation.

3. Litigation History

(a) Proceedings Prior to the High Court

No prior judicial or quasi-judicial adjudication determining the Appellants' entitlement to title is disclosed in the material presently before this Court.

The dispute developed through a lengthy administrative process involving the Colombo Municipal Council, successive Mayors and Municipal Commissioners, the Commissioner of Local Government, provincial authorities and the Chief Minister of the Western Province.

The documentary material records several proposals and possible statutory mechanisms. It also discloses inconsistency within the administration as to whether the houses could be transferred under the Local Authorities Housing legislation, under the general powers of the Colombo Municipal Council or through some other mechanism.

The Appellants contend that certain houses within "*Roxy Gardens*" and other comparable houses had previously been transferred to occupants. The Respondents dispute the relevance and legal effect of the documents produced for that purpose and maintain that certain documents concern houses belonging to other authorities or premises falling under a different statutory regime.

(b) Proceedings Before the High Court

On 09.05.2012, the Appellants instituted H.C. Writ Application No. 05/2012 before the High Court of the Western Province holden in Colombo.

The principal relief sought was a Writ of Mandamus compelling the Respondents to vest outright title to the houses occupied by the Appellants. The application was founded upon:

1. an asserted statutory entitlement under the Local Authorities Housing Statute No. 3 of 1991; and
2. an alleged legitimate expectation arising from repeated representations and the conduct of the relevant public authorities.

The 1st to 3rd Respondents resisted the application on the grounds that:

- the property was purchased and owned by the Colombo Municipal Council and had not been vested in it by the State;
- the premises were official quarters originally let to Council employees;
- the Local Authorities Housing legislation did not apply;
- section 11A of the Local Authorities Housing Statute excluded official quarters from the statutory scheme;
- the Appellants possessed no legal right to title;
- the relevant powers were discretionary;
- disputed questions of fact could not properly be resolved in writ proceedings;
- the Appellants lacked locus standi; and
- the application was belated.

The 4th and 5th Respondents adopted substantially the same position. They maintained that the subject houses were official quarters, that the present occupants were not employees of the Council, that the Statute did not impose a legal duty to vest title and that legitimate expectation, without an antecedent legal right and corresponding public duty, could not sustain a Writ of Mandamus.

By judgment dated 06.05.2015, the learned High Court Judge dismissed the application, holding that the premises did not fall within the ambit of the Local Authorities Housing Act or the corresponding Provincial Statute, further stating that;

1. the alleged legitimate expectation was unfounded or legally insufficient to compel the transfer of title; and
2. the application was affected by laches.

It is against this order of the learned High Court Judge that the present appeal had been filed.

4. Grounds of Appeal Before the Court of Appeal

Although the Petition of Appeal and the written submissions formulate the complaints in different terms, the grounds may conveniently be consolidated under the following headings.

Applicability of the statutory housing scheme

The Appellants contend that the High Court erred in holding that the relevant housing legislation did not apply to the subject houses, relying on the governing statutes, circulars, Gazette No. 167 of 06.06.1975, and the historical practice of transferring low-cost houses to occupants.

Legitimate expectation

They further contend that repeated, clear and unqualified official representations created a legitimate expectation of transfer.

Mandamus

The Appellants maintain that the Respondents had statutory authority to transfer the properties and that their prolonged inaction was amenable to mandamus.

Delay and laches

Appellants contend that from 1970s assurances were repeatedly renewed by successive authorities and that the matter remained under official consideration until the invocation of writ jurisdiction in 2012.

5. Analysis

A. Statutory Framework as relied upon by the Appellants

The Appellants rely principally upon the Local Authorities Housing Act No. 14 of 1964, the Western Provincial Council Statute No. 3 of 1991, and section 40(f) of the Municipal Councils Ordinance No. 29 of 1947. They submit that sections 2 and 3 of the Local Authorities Housing Act No. 14 of 1964, as amended, contemplate the vesting of qualifying houses in a local authority and their letting upon terms enabling the occupants ultimately to acquire ownership. According to the Appellants, sections 2, 5 and 11A of the Provincial Statute substantially preserve that statutory scheme within the Western Province, while section 40(f) of the Municipal Councils Ordinance confers the necessary authority, subject to the prescribed approvals, to sell or lease municipal land and buildings.

On this basis, the Appellants contend that the Respondents possessed sufficient statutory power to transfer the subject houses to them. They maintain that the relevant provisions should be considered together with the Council resolutions, ministerial directions, administrative circulars and the established practice of transferring low-cost houses to long-standing occupants. They further rely upon the absence of proceedings under the Government Quarters (Recovery of Possession) Act No. 7 of 1969 following the retirement

or death of the original employee-occupants as conduct consistent with an intention to transfer, rather than recover, the premises. Accordingly, the Appellants contend that the subject houses fell within the statutory housing scheme and that the Respondents' prolonged failure to implement the representations and decisions concerning their transfer is amenable to mandamus.

The Respondents contend that the subject houses do not fall within the Local Authorities Housing Act No. 14 of 1964 or the Local Authorities Housing Statute No. 3 of 1991 of the Western Province. Under section 2(1) of the Provincial Statute, a local authority may let, on terms leading to ownership, a house which either vested in it under section 2 of the national Act or was constructed, or is to be constructed, by the local authority and vested in it by a ministerial vesting order for residential purposes. The mere fact that a property is owned, purchased or otherwise acquired by a local authority does not bring it within either category.

The material describes the Roxy Gardens property as having been purchased by, or acquired for and on behalf of, the Colombo Municipal Council, with compensation paid by the Council. Neither description establishes that the houses vested in the Council under section 2 of the national Act or under a ministerial vesting order contemplated by section 2(1)(b) of the Provincial Statute. Nor has it been established that the houses were constructed, or were intended to be constructed, by the Council within the meaning of that provision, particularly as the lands had been acquired long before the enactment of the national legislation.

The administrative correspondence relied upon by the Appellants does not remedy this deficiency. Although certain officials considered whether the statutory housing scheme might provide a mechanism for transferring the houses, their administrative understanding could not enlarge the scope of the legislation. Indeed, the correspondence discloses uncertainty as to the lawful mechanism by which a transfer might be effected rather than recognition of an existing statutory entitlement.

There is an additional difficulty. Section 11A of the Local Authorities Housing Statute No. 3 of 1991 of the Western Province excludes from its operation any house let by a local authority to an officer or a servant as official quarters. The material indicates that the houses were originally allotted to Council employees in that capacity. The present occupants, being relatives or successors of those original employee-allottees, derive their occupation through them and cannot acquire a greater right than that enjoyed by the

original allottees. Their continued occupation following the retirement or death of the respective employees does not, by itself, alter the original character of the premises as official quarters or bring them within the statutory housing scheme. In the absence of a subsequent lawful act reclassifying the houses or changing the basis upon which they were occupied, the exclusion in section 11A continues to apply.

In any event, section 2(1) of the Local Authorities Housing Statute No. 3 of 1991 of the Western Province employs the word “may” and thus confers a discretionary power upon the local authority; it does not create an automatic right in an occupant to demand the transfer of ownership. The Appellants have thus failed to establish either that the subject houses fall within the statutory scheme or that the legislation imposed a duty upon the Respondents to transfer ownership to them. Accordingly, the learned High Court Judge committed no error in rejecting this contention, and this ground of appeal fails.

B. Legitimate expectation

Legitimate expectation protects an expectation generated by a clear and unambiguous representation, undertaking or consistent conduct of a public authority. The expectation must be attributable to an authorized decision-maker, be legally capable of fulfilment, and remain subject to the governing statute. It cannot compel an authority to act *ultra vires* or confer a substantive right which the law itself does not recognize. These principles emerge from *M.R.C.C. Ariyaratne and Others v. Inspector General of Police and Others*¹, *M.U. Samarasinghe v. Hon. Janaka Bandara Tennekoon and Others*², *Ceylon Petroleum Corporation v. Kaluarachchi (Deceased) and Others*³, and *Micro Cars Limited v. Director General of Customs and Others*⁴.

The Respondents contend that the Appellants’ claim rests upon no more than a subjective hope founded on proposals which were never lawfully approved or implemented. The Appellants, however, rely upon repeated representations made by senior public officials, certain communications addressed individually to occupants indicating that the houses would be transferred, and the prolonged consideration by municipal and provincial

¹ (2019) 1 Sri LR 100

² CA/Writ/235/2013, decided on 09.08.2019

³ (2019) 1 Sri LR 406

⁴ CA/Writ/121/2015, decided on 19.02.2026

authorities of the surveys, documentation and legal mechanism necessary to implement such transfers.

Viewed cumulatively, this material was sufficient to generate a reasonable expectation that the question of transfer would be considered and determined lawfully, consistently and in accordance with the representations made. The Appellants' expectation was therefore more than a mere aspiration.

That conclusion does not, however, establish an enforceable right to the immediate conveyance of title. A legitimate expectation cannot require a public authority to contravene the governing legislation, dispense with mandatory approvals, or surrender a discretion entrusted to it by law. Nor can it, without compliance with the legal requirements governing alienation, create title to immovable property.

Any transfer remained subject to the identification of a lawful statutory mechanism, a valid decision by the competent municipal authority, compliance with the prescribed conditions governing alienation, the survey and identification of each property, the determination of the extent and consideration applicable to each transfer, and the receipt of any ministerial or Presidential approval required by law.

The documents relied upon by the Appellants themselves disclose continuing uncertainty concerning those matters. Certain proposals contemplated transfers without payment, while others referred to a consideration of Rs.150,000 per perch. Some referred only to the houses, whereas others raised questions concerning the extent of land to accompany each house. The material therefore does not disclose a clear, unconditional and final undertaking that title to a specified house and allotment would be conveyed to each Appellant.

Accordingly, although the official representations and conduct may have generated an expectation that a lawful transfer mechanism would be considered, they did not create an enforceable entitlement to the conveyance of ownership. The learned High Court Judge may have stated the matter too broadly if the judgment is understood as excluding any legitimate expectation whatsoever. Nevertheless, the conclusion that the expectation asserted could not sustain the specific mandamus sought was correct.

C. Whether mandamus could compel the transfer of title

Mandamus compels the performance of a public legal duty owed to an applicant possessing a corresponding legal right. It does not create a right where none exists, compel an act beyond the Respondents' lawful authority, or ordinarily dictate the manner in which a statutory discretion must be exercised. These principles are recognized in *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee and Jafferjee (Pvt) Ltd*⁵, *Ratnayake and Others v. C.D. Perera and Others*⁶, *Perera v. National Housing Development Authority*⁷, and *S.E. Fernando v. Rubber Controller*⁸.

The Respondents contend that the Appellants established neither a legal right to receive title nor a corresponding statutory duty requiring the Respondents to transfer the premises. They submit that the relevant statutory provisions confer, at most, a discretionary power to alienate municipal property subject to prescribed procedures and approvals.

The relief sought by the Appellants was not merely an order requiring the competent authorities to consider and determine their requests according to law. They sought mandamus compelling the Respondents to vest title to the respective premises in them. Such relief required proof of an existing legal right to the transfers and a corresponding public legal duty to effect them.

The Appellants have not established either requirement. Section 40(f) of the Municipal Councils Ordinance No. 29 of 1947 may authorize the sale or lease of municipal land or buildings, subject to the stipulated conditions and approvals. It does not impose a duty upon the Council to transfer a particular property to a particular occupant.

Similarly, even if the Local Authorities Housing Statute No. 3 of 1991 of the Western Province was applicable, section 2(1) provides that the local authority "may," by resolution or upon ministerial direction, let a qualifying house on terms leading to ownership. The provision thus contemplates the exercise of statutory discretion through the prescribed procedure; it does not confer upon every occupant an automatic right to demand ownership.

⁵ (2005) 1 Sri LR 89

⁶ (1982) 2 Sri LR 451

⁷ (2001) 3 Sri LR 50

⁸ (1924) 26 NLR 211

Mandamus may require a public authority to exercise a statutory power which it has unlawfully failed or refused to exercise, and to do so according to law. It cannot, however, replace the statutory decision-making process or predetermine its outcome. As recognized in *S.E. Fernando v. Rubber Controller*⁹, judicial intervention may be warranted where the authority has failed to exercise its discretion, proceeded upon a wrong principle of law, or relied upon extraneous considerations; it does not follow that the Court may itself dictate the substantive decision entrusted to that authority.

The material may disclose a substantial moral or administrative basis for the Appellants' claims to be finally and fairly considered. It does not, however, establish a presently enforceable public legal duty to convey title. Since mandamus cannot create the legal right upon which its issuance depends, the learned High Court Judge was correct in refusing the writ.

D. Disputed facts

The mere denial of a fact by a respondent does not, by itself, render an application unsuitable for determination in writ proceedings. The impediment arises where the facts in controversy are material to the existence of the right asserted or the public duty sought to be enforced, and the conflict cannot fairly be resolved upon the admitted documents and affidavit evidence. As recognized in *Ekanayake and Others v. People's Bank*¹⁰ and *Public Interest Law Foundation v. Central Environmental Authority and Another*¹¹, judicial review is not designed for the trial of disputed facts or for choosing between conflicting factual versions without oral evidence and cross-examination. In *Thajudeen v. Sri Lanka Tea Board and Another*¹², it was further held that where the major facts are disputed, their legal consequences are controversial, and the truth can be ascertained only by examining witnesses and evaluating oral and documentary evidence, the proper remedy is an ordinary action and not a writ. That principle was recently applied in *Ravinda De Silva Matarage and Others v. Divisional Secretary, Habaraduwa and Others*¹³. In the present case, the Appellants' alleged entitlement to a transfer depends upon disputed matters relating to the original acquisition and statutory character of the property, the terms upon which the houses were allocated, the authority and finality of the several administrative

⁹ Supra

¹⁰ (2005) 2 Sri LR 94

¹¹ (2001) 3 Sri LR 330

¹² (1981) 2 Sri LR 471

¹³ CA/WRT/0175/2020, Decided on 23.10.2024

communications and Council decisions, the legal effect of the continued acceptance of rent, the identity and comparability of the houses said to have been transferred to others, and the extent of land intended to accompany each house. These are not incidental disputes capable of being severed from the relief sought; they constitute the very factual foundation upon which the asserted right to obtain title and the corresponding duty of the Respondents are said to arise. Their determination would require the Court to investigate title, assess the authenticity and legal effect of competing documents, and decide between conflicting factual accounts, functions properly belonging to a court exercising ordinary civil jurisdiction. In the absence of an admitted or clearly established factual foundation demonstrating both an existing legal right in the Appellants and a corresponding imperative public duty in the Respondents, the controversy is not amenable to determination in writ proceedings, and mandamus cannot properly issue.

E. Delay and Laches

Mandamus is a discretionary remedy and must be sought with reasonable promptness. In *Madanayake v. Schrader*¹⁴ and *Abdul Rahuman v. Mayor of Colombo*¹⁵, the Court recognized that unreasonable and unexplained delay may disentitle an applicant to writ relief. The same principle was affirmed in *Biso Menike v. Cyril de Alwis and Others*¹⁶, *Issadeen v. Commissioner of National Housing and Others*¹⁷ and *Ceylon Petroleum Corporation v. Kaluarachchi and Others*¹⁸. The doctrine is not applied mechanically by counting the years that have elapsed. As explained in *Ramasamy v. Ceylon State Mortgage Bank*¹⁹, the Court must consider the length of the delay, the explanation offered, the conduct of the parties during the intervening period, any alteration of position or prejudice, and the balance of justice in granting or refusing relief.

The Respondents submit that the Appellants seek to enforce representations allegedly made in 1975, 1987 and 1988, but did not invoke the writ jurisdiction of the Court until 2012. The intervening correspondence and meetings in 1992, 2005, 2006, 2007 and 2008 cannot be disregarded. They indicate that the question of transferring the houses remained the subject of administrative consideration and that different mechanisms were

¹⁴ (1928) 29 NLR 389

¹⁵ (1965) 69 NLR 211

¹⁶ (1982) 1 Sri LR 368

¹⁷ (2003) 2 Sri LR 10

¹⁸ (2019) 1 Sri LR 406

¹⁹ (1977–78) 78 NLR 510

examined from time to time. To that extent, it would be artificial to calculate the entire period of delay solely from the earliest representation.

Nevertheless, continued correspondence or repeated requests for reconsideration do not, without more, indefinitely preserve a claim or create a fresh cause for mandamus. The Appellants must identify a sufficiently clear and final administrative act, refusal or omission from which the relevant delay may reasonably be calculated. More importantly, the subsequent communications do not disclose an unequivocal acknowledgment of an existing legal duty to convey the properties. Even if the last material administrative engagement in 2008 is taken as the point of reference, no satisfactory explanation has been furnished for waiting until 2012 to institute these proceedings.

The delay is also material because the relief sought is not merely declaratory but would compel the conveyance of immovable property upon the strength of representations and administrative dealings extending over several decades. During that period, office holders changed, the applicable statutory and administrative positions required reconsideration, and questions arose concerning the identity, extent, boundaries, present occupation and value of the properties. A writ of mandamus issued in such circumstances would require the present authorities to give effect to an alleged obligation formulated under materially different factual and administrative conditions.

Accordingly, the Appellants' delay constitutes a substantial discretionary consideration against the grant of relief. However, the more fundamental impediment is the failure to establish a presently enforceable legal right to the conveyances and a corresponding imperative public duty resting upon the Respondents. The delay and the changes occurring during the intervening period reinforce the conclusion that mandamus should not issue and provide an additional basis for affirming the judgment of the High Court.

6. Conclusion

For the foregoing reasons, I hold that the Appellants have failed to establish that the houses in question fall within the operative provisions of the Local Authorities Housing Act, No. 14 of 1964, or the Western Provincial Council Statute, No. 3 of 1991. The houses were originally allocated as official quarters, and the continued occupation thereof by the Appellants or their predecessors did not, in the absence of a lawful statutory decision, mature into a right of ownership. Although the representations and conduct of the public authorities may have given rise to a legitimate expectation that the possibility of

transferring the houses would be considered and pursued through a lawful mechanism, they did not create an unconditional or enforceable right to the immediate conveyance of title. Nor have the Appellants identified any provision of written law imposing upon the Respondents a corresponding mandatory public duty to convey the properties. The statutory powers of the Colombo Municipal Council to sell or lease municipal property remain subject to the prescribed procedures, approvals and the lawful exercise of administrative discretion, this Court cannot exercise those powers in place of the competent authority. Accordingly, the prerequisites for the issue of mandamus have not been satisfied and the learned High Court Judge was correct in dismissing the application. The appeal is therefore dismissed, and the judgment dated 06.06.2015 in H.C. Writ Application No. 05/2012 is affirmed.

As agreed, on 19.02.2021 by the counsel representing the parties in appeals (PHC) 111/2015, 115/2015, 122/2015 and 137/2016 to be bound by the judgement of the instant appeal CA (PHC)100/15. The said appeals also stand dismissed with the respective Judgements of the High Court being affirmed.

Considering the circumstances I make no order for costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal