

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

Prakash Anand Schafer
No. 15M, Ekanayake Avenue,
Nugegoda.

Petitioner

Vs.

CA (PHC) 0102 - 18

HC WA-07-2017

1. Secretary and enforcement Officer
Boralesgamuwa Urban Council
No. 01, Abeyrathna Mawatha,
Boralesgamuwa.
2. Public Health Inspector
Boralesgamuwa Urban Council
No. 01. Abeyrathna Mawatha,
Boralesgamuwa.
3. Boralesgamuwa Urban Council
No. 01, Abeyrathna Mawatha,
Boralesgamuwa.
4. D. R M. P. Thuwan
No. 166, Suriyamal Mawatha,
Divul Pitiya,
Boralsgamuwa.
5. A. C. Sirisena
No. 262/B, Suriyamal Mawatha,
Divul Pitiya,
Boralesgamuwa.

6. K. A. Anura
No. 262/A/1,
Suriyamal Mawatha,
Divul Pitiya,
Boralesgamuwa.
7. J. Firose
No. 168/B,
Suriyamal Mawatha,
Divul Pitiya,
Boralesgamuwa.
8. M. C. Perera
No. 162A, Suriyamal Mawatha,
Divulpitiya,
Boralesgamuwa.

Respondents

And Now

Prakash Anand Schafer
N. 15M, Ekanayake Avenue.
Nugegoda.

Petitioner – Petitioner

Vs.

1. Secretary and Enforcement Officer
Boralesgamuwa Urban Council
No. 01, Abeyrathna Mawatha,
Boralesgamuwa.
2. Public Health Inspector
Boralesgamuwa Urban Council
No. 01. Abeyrathne Mawatha,
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No. 162A, Suriyamal Mawatha,
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Boralesgamuwa.

Respondents - Respondents

Before : **Hon. M Sampath K. B Wijeratne,J.(CA)**
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : Heshan Mamuhewa for the Petitioner.
Tilak Wijesinghe with A. W. Gunasekara
instructed by Lakpriya appears for the
1st and 3rd Respondents.

Written Submissions filed by : 1st and 3rd Respondents – Respondents
on 15.06. 2022

Petitioner – Appellant on 24.07.2024

4th 8th Respondents - Respondents
on 28.08.2024

Argued on : 16.05.2024

Decided on : 25.10.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) This is an appeal against the Order made by the Provincial High Court of Colombo dismissing a Writ of Mandamus application.
- 2) The petition of appeal dated 25th May 2018 had sought the reliefs prayed for as follows;
 - a) Issue notice of this appeal to the 1st to 8th Respondents- Respondents
 - b) Make an Order calling for the full case proceedings of the High Court of Colombo Case No. HC/WA/07/2017 to Your Lordship's Court
 - c) Set aside the Order made by the Learned High Court Judge of Colombo in High Court of Colombo Case No. HC WA/07/2017 and dated 27th March 2018 marked "x"
 - d) Make an Order issuing notice on the 1st to 8th Respondents- Respondents on the basis of the matters Urged before Your Lordship's Court at the hearing of Appeal;
 - e) For costs, and

- f) For such other and further relief that Your Lordship's Court shall seem meet.

Facts of this case

- 3) The Petitioner-Petitioner [hereinafter referred to as the "Petitioner"] is the owner of the land situated at No. 28/11, Suriyamal Mawatha, Divulapitiya, Boralesgamuwa as described in the schedule to the petition.
- 4) The 4th to 8th Respondents are also the residents of Suriyamal Mawatha, Boralesgamuwa. The dispute had arisen between the Petitioner and the 4th to 8th Respondents regarding the discharge of wastewater into the culvert/drain which had been constructed to facilitate the flow of rain water through the Petitioner's property.
- 5) The 1st to 3rd Respondents are respectively the Secretary to the Urban Council Boralesgamuwa, Public Health Inspector and the Boralesgamuwa Urban Council who are responsible for Urban Governance.
- 6) The Petitioner contended that the discharge of wastewater is an illegal act by the 4th to 8th Respondents and it pollutes the environment, creates health hazards to the public and causes severe environmental damage.
- 7) The said matter was reported by the Petitioner to the 1st Respondent and informed the Chairman of the 3rd Respondent.
- 8) On that, a Technical Officer from the 3rd Respondent Council had inspected and warned the 4th to 8th Respondents not to discharge the wastewater into the said public drain.
- 9) Despite the said warnings the 4th to 8th Respondents had continued to discharge the wastewater into the drain which is constructed to discharge rain water.

- 10) The Petitioner had continued to complain to the 1st, 2nd and 3rd Respondents to prevent the illegal act of the 4th to 8th Respondents. However the public duty cast upon the 1st to 3rd Respondents had failed to prevent the ongoing discharge of wastewater.
- 11) On the aforesaid grounds, the Petitioner had filed a Writ application before the High Court of Colombo to prevent the ongoing discharge of wastewater citing the inability of the 1st, 2nd and 3rd Respondents as public officers, to take necessary action to stop the said illegal activity.
- 12) Nevertheless, the Honourable High Court Judge of Colombo had declined to issue notice to the Respondents and had dismissed the Writ of Mandamus application. Thus, aggrieved by the said Order the Petitioner has preferred this application.

Disputed facts

- 13) When this appeal was taken up for argument on 5th September 2024, all the parties agreed to conclude their arguments by filing written submissions.
- 14) Upon considering the written submissions, and relevant documents, to arrive at the conclusion, I have to evaluate the following disputes, to determine whether the Learned High Court Judge of Colombo had erred in dismissing the Petitioner's application for reliefs under Writ Jurisdiction.
 - i) What is the legal Principal of Writ of Mandamus?
 - ii) Can the Petitioner maintain a Writ of Mandamus application being a private party?
 - iii) If not, can the Order made by the High Court Judge be vacated?

I. What is the legal Principal of the Writ of Mandamus?

- 15) Mandamus is a discretionary remedy used to compel the Public Bodies to perform their duties when they fail to do so in an official capacity.
- 16) The literal interpretation discussed by H.W.R. Wade and C.F Forsyth in their book of **Administrative Law**¹ to Mandamus is as follows;

“The prerogative remedy of a Mandatory Order has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another.”

“Like quashing and prohibiting Orders, a Mandatory Order is a discretionary remedy”

- 17) Further, on perusal of the **Principles of Administrative Law in Sri Lanka**² by Dr. Sunil Cooray the Mandamus Writ Jurisdiction is specified as follows;

“Mandamus strongly retains its original character as a public law remedy, and it is a remedy in respect of a duty of a public nature only. It does not lie, for example, to enforce performance of an agreement for the supply of a telephone service

¹ Wade, H.W.R. and Forsyth, C.F. (2014) *Administrative Law*, 11th ed. Pg 520

² Coorey, S.F.A. (2020) *Principles of Administrative Law in Sri Lanka*, 4th ed., vol. 2. Pg 994

where the duty to supply the service is founded purely on contract”.

- 18) Based on the aforesaid literature, it is abundantly clear that the Mandamus lies to secure the performance of a public duty. In this context, the Applicant must demonstrate a legal interest that falls within the public domain, rather than one of a merely private character.

ii. Can the Petitioner maintain a Writ of Mandamus application being a private party?

- 19) When perusing the petition, written submissions and the Learned High Court Judge’s Order, the application put forward by the Petitioner seeking a Mandamus Writ against the 1st, 2nd and 3rd Respondents must be examined to determine whether there exists a public duty for the said Respondents to perform.
- 20) At the outset, I draw my attention to paragraph 1 and 2 of the Learned High Court Judge’s Order and as well as the petition of appeal dated 25th May 2018. The Learned High Court Judge had correctly identified that the issue between the Petitioner and the 4th to 8th Respondents is of a private nature, as the Petitioner’s grievance concerns the discharge of wastewater by the 4th to 8th Respondents into the drain constructed for rainwater runoff.
- 21) The Petitioner had written to the 3rd Respondent regarding this issue. At no point did the Petitioner assert that the drain falls under the purview of, or is maintained by the 3rd Respondent.
- 22) Thus, it is evident that, a drain belonging to private land cannot be maintained by the 3rd Respondent.

- 23) Further, the Petitioner had reiterated that the illegal discharge of wastewater pollutes the environment and creates health hazards to the public. However, there is no documentation/evidence to support the allegations made by the Petitioner.
- 24) In the said circumstances, it is abundantly clear that this is a private dispute between the Petitioner and the 4th to 8th Respondents. Therefore, the Petitioner has to seek remedies in a different forum.
- 25) It must be borne in mind that the 3rd Respondent is the local body while the 1st and 2nd Respondents are the government employees of the said local body.
- 26) As decided in ***Weligama Multi Purpose Co-operative Society Ltd. V. Chandradasa Daluwatta***³ ;

“Mandamus lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest. To be enforceable by mandamus the duty to be performed must be of a public nature and not of a merely private character”

- 27) The narrow interpretation of the aforesaid decision is that Mandamus lies solely to secure the performance of a public duty.
- 28) Further, the case of ***S.R.F Perera V Urban Council Wattala***⁴ also had explained the grounds on which a Writ of Mandamus can be obtained.
- 29) Therefore, as I have said before, it is manifest that to obtain a Writ of Mandamus, the enforceable duty must be of a public nature.

³ [1994] 1 SLR 195

⁴ [2005] 1 SLR 289

- 30) In the instant matter the Learned High Court Judge had correctly decided to refuse the Mandamus, as there is no duty cast upon the 1st to 3rd Respondents against the 4th to 8th Respondents.

iii. If not, can the Order made by the High Court Judge be vacated?

- 31) As I have explained in the preceding paragraphs, the Petitioner had failed to demonstrate that there is a public duty to be performed by the 1st, 2nd and 3rd Respondents. Further to that, the Petitioner does not disclose the statutory provision under which the 1st, 2nd and 3rd Respondents should be compelled to enforce their duties.
- 32) Failure of the Petitioner to refer to any statute itself is sufficient to reject his application of Writ of Mandamus as decided in the case of **Dr. AC. Visvalingam and another V. The Hon. Attorney General and Lalith Weeratunga** ⁵;

“Mandamus will lie to any person who is under a duty imposed by statute to do a particular act. It commands the person to whom the said writ is addressed to perform some legal duty which he has refused to perform.”

- 33) Even though the High Court had dismissed the Petitioner’s Writ of Mandamus application, the Petitioner had still pursued to set aside the High Court Judge’s Order without any merit knowing that the application does not fall within the scope of Writ of Mandamus.
- 34) I am of the view that the Learned High Court Judge had considered all the relevant facts and the documents in his Order dated 27th March 2018. Therefore, there is no necessity to interfere with the said Order made by the Learned High Court Judge of Colombo.

⁵ CA Application No. 668/2006

CONCLUSION

- 35) For the reasons set out above, I dismiss the petition of appeal dated 25th May 2018 subject to payment of Rs. 100 000/- cost to the 1st , 2nd and 3rd Respondents and Rs. 50 000/- each cost payable to the 4th to 8th Respondents.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal