

**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.*

**CA (Writ) App. No. 323/2024**

1. Premakumara Rajapakse,  
No. 247/1, Dabahena Road,  
Maharagama.
2. S.A Prageeth Lakmal,  
No. 245, Dabahena Road,  
Maharagama.
3. P.V.K Apsara Lakshmi,  
No. 129/3, Dabahena Road,  
Maharagama.
4. D.L. Chandika,  
No. 189/11, Dabahena Road,  
Maharagama.
5. R.A.S.P. Kumara,  
No. 63/65, Dabahena Road,  
Maharagama.
6. Nilantha Ruwan Satharasinghe,  
No. 129/4, Dabahena Road,  
Maharagama.

**PETITIONERS**

**Vs.**

1. Maharagama Urban Council,  
Maharagama.
2. N.T Aruna Dias,  
Secretary,  
Maharagama Urban Council,  
Maharagama.
- 2A. Thilini Kalhari Nandasena,  
Secretary,  
Maharagama Urban Council,  
Maharagama.
3. Nilmini Rawanaella,  
Administrative Officer,  
Maharagama Urban Council,  
Maharagama.
4. Urban Development Authority,  
6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Floors,  
Sethsiripaya,  
Battaramulla.
5. M.G Gamini Pinto,  
Acting Assistant Commissioner of  
Local Government,  
Department of Local Government  
(Western Province),  
No. 204,  
Denzil Kobbekaduwa Mawatha,  
Battaramulla.
- 5A. Mrs. Rangika Lakmali Perera,  
Acting Assistant Commissioner  
of Local Government,  
Department of Local Government  
(Western Province),  
No. 204,

Denzil Kobbekaduwa Mawatha,  
Battaramulla.

6. S.K Jayasundere,  
Commissioner of Local Government,  
Department of Local Government  
(Western Province),  
No. 204,  
Denzil Kobbekaduwa Mawatha,  
Battaramulla.
7. Pradeep Yasaratne,  
Secretary,  
Ministry of Provincial Councils and  
Local Government,  
No. 330,  
Dr. Colvin R. de Silva Mawatha  
(Union Place),  
Colombo 02.
- 7A. S. Alokha Bandara,  
Secretary,  
Ministry of Provincial Councils and  
Local Government,  
No. 330,  
Dr. Colvin R. de Silva Mawatha (Union  
Place),  
Colombo 02.
8. Sudheera Jayaweera,  
No. 129/19D, 2<sup>nd</sup> Lane,  
Dabahena Road, Maharagama.

**RESPONDENTS**

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

**Counsel:**

Sanjeewa Jayawardena, P.C. for the Petitioner.

R.A.P. Ranawaka with Panchali Ekanayake instructed by Madhaci Kiriella for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Dr. Peshan Gunaratne, S.C. for the 7<sup>th</sup> Respondent.

Shiral Lakthilaka with Sanjeewani Nawarathne instructed by N.J.P. Silva for the 8<sup>th</sup> Respondent.

**Argued on:** 03.02.2026

**Delivered on:** 20.03.2026

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

## **Judgement**

### **Introduction**

The 1<sup>st</sup> to 6<sup>th</sup> Petitioners are residents of Dabahena Road, Maharagama. The 1<sup>st</sup> Petitioner is residing at premises No. 2471 of Dabahena Road, and the other Petitioners are also residing on the same road. The 1<sup>st</sup> Respondent is the Urban Council of Maharagama, while the 2<sup>nd</sup> Respondent is the Secretary thereto. The 3<sup>rd</sup> Respondent is the Administrative Officer, and the 4<sup>th</sup> Respondent is the Urban Development Authority, whose powers are now delegated to the 1<sup>st</sup> Respondent. The 5<sup>th</sup> and 6<sup>th</sup> Respondents are the Commissioners of the Local Government, the 7<sup>th</sup> Respondent is the Secretary of the Provincial Council, and the 8<sup>th</sup> Respondent is a resident of the same road which leads from the Dabahena Road to the houses of the Petitioners.

The 8<sup>th</sup> Respondent, having recently purchased a plot of land depicted as Assessment No. 129/19D of the Plan marked as **P2(a)** annexed to the Petition, constructed three gates opening to the said road, which the Petitioners complain affects their rights and is also an unauthorised construction.

As such, the Petitioners have complained to the 1<sup>st</sup> Respondent, and thereupon, the 1<sup>st</sup> Respondent, having caused an inspection, directed the 8<sup>th</sup> Respondent to remove the same, which the 8<sup>th</sup> Respondent has failed to comply with. Thereafter, the Petitioners have complained to several other Respondents; nevertheless, none of the Respondents have taken steps to remove the alleged unauthorised construction.

Thus, the Petitioners seeking to invoke the jurisdiction of this Court to obtain *inter alia* the following relief;

*“(b) Grant and issue a Mandate in the nature of a Writ of Mandamus, directing the 1<sup>st</sup> to the 4<sup>th</sup> Respondents and/or any one or more of them and/or their successors in office and/or their servants and/or agents, to forthwith to act in terms of section 28A(3) of the Urban Development Authority Law No. 41 of 1978, as amended, and/or to institute action in the Magistrate Court, having competent jurisdiction, against the 8<sup>th</sup> Respondent, to demolish the two illegal entrances and/or gates and/or openings, at the Southern boundary of the premises bearing assessment No. 129/19D, Dambahena road, Maharagama, in view of the patent continuing failure of the 8<sup>th</sup> Respondent, to remove the said two entrances and/or gates and/or openings;*

*(c) Grant and issue a Mandate in the nature of a Writ of Mandamus, directing the 2<sup>nd</sup> Respondent and/or his successors in office and/or his servants and/or agents, to forthwith comply with the directive given by the 5<sup>th</sup> Respondent in the letter dated 22/02/2024, produced marked as P-12, against the 8<sup>th</sup> Respondent,*

*Or*

*(d) Grant and issue a Mandate in the nature of a Writ of Mandamus, directing the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents and/or anyone or more of them and/or his successors in office and/or his servants and/or agents, to forthwith comply with the several directives issued by him to the 8<sup>th</sup> Respondent produced marked as P-4 and/or P-5 and/or P-6 and/or P-7, wherein it is inter alia stipulated that action will be instituted against the 8<sup>th</sup> Respondent, to close and/or remove the 2 illegal entrances and/or gates and/or openings in the Southern boundary of the premises bearing assessment No. 129/19D, Dambahena road, Maharagama;”*

After issuing notice, only the 8<sup>th</sup> Respondent has filed Objections while all other Respondents have indicated through their counsel that they are not filing any Objections. Accordingly, this was fixed for Arguments by this Court, and it came up before me on 03.02.2026, and argued by the counsel; however, the 8<sup>th</sup> Respondent's Counsel had taken two dates on personal grounds, including today (03.02.2026). However, Junior Counsel for the 8<sup>th</sup> Respondent informed that written submissions would be filed; accordingly, written submissions were filed. The following arguments were advanced by Counsel in their respective submissions.

### **Arguments**

It is the argument of Mr. Jayawardena, learned President's Counsel for the Petitioner that the Petitioners are entitled to obtain *Writ of Mandamus*, directing the Respondents to take action against the 8<sup>th</sup> Respondent either to remove the illegal construction effected by him, or prosecute an action in the Magistrate's Court to prevent the 8<sup>th</sup> Respondent to continue violating the rights of the Petitioners.

The Counsel, Mr. Shiral Lakthilaka for and on behalf of the 8<sup>th</sup> Respondent advanced two main points in the course of his arguments. The first point is that the Petitioners have not made out a case against the 8<sup>th</sup> Respondent to obtain a *Writ of Mandamus* because if the Petitioners have any grievance based on any private dispute between the Petitioners and the 8<sup>th</sup> Respondent, they should go before a relevant forum to assert their rights; they cannot make use of public law avenue to obtain a *Writ of Mandamus* against the Respondents, particularly against the 8<sup>th</sup> Respondent, over a private matter.

The second point of argument advanced on behalf of the 8<sup>th</sup> Respondent is that since the 8<sup>th</sup> Respondent has already obtained a valid development permit from the 1<sup>st</sup> Respondent, the

Municipal Council, and constructed his house, he is entitled to possess the same, and as the outright owner thereof, the 8<sup>th</sup> Respondent is entitled to enjoy the rights attributable to ownership; namely, *utendy, abutundy, and fruendi*.

### **Petitioners Position**

The 1<sup>st</sup> Petitioner has annexed and produced his title deed, which was executed in 1985, marked as **P1**. It is the position of the Petitioners' that the 8<sup>th</sup> Respondent has also purchased his property identified as Lot No. B1 as depicted in the plan marked as **P2(a)** annexed to the Petition, by the Deed marked as **P2**, executed in 2016. Thereafter, it is the Petitioners' position that the 8<sup>th</sup> Respondent, having put up a house in the premises belonging to him, has also kept three openings in the parapet wall to be used as entrances, against which the Petitioners assert, causes hindrances to their right of way over the said by-road which leads to the Dabahena Road and also causes nuisance to the Petitioners.

### **Complaint**

Accordingly, the 1<sup>st</sup> Petitioner has made a complaint to the 2<sup>nd</sup> Respondent, who is the secretary of the 1<sup>st</sup> Respondent. Thereafter, as evident by the document marked and annexed to the Petition as **P4**, the 1<sup>st</sup> Respondent had sent its technical officer for a site inspection, where it was revealed that there are three openings used by the 8<sup>th</sup> Respondent as gates to have access or entrance to his property in suit. Accordingly, the 8<sup>th</sup> Respondent was asked to close two openings and retain only one opening as his gate.

Further, on complaints made by the other Petitioners, the 2<sup>nd</sup> Respondent, who has repeatedly sent several letters to the 8<sup>th</sup> Respondent, directing him to close the said two opening, which is evidenced by the documents marked as **P5**, **P6**, and **P7** annexed to the Petition. Further, since there

was no action taken by the 1<sup>st</sup> Respondent or its officers, the 1<sup>st</sup> Petitioner has written to the 2<sup>nd</sup> Respondent again, by the letters marked as **P8**, **P8(a)**, **P9**, and **P10** annexed to the Petition. In fact, the farmers of the area also have written by the document marked as **P11**, stating that the said gates of the 8<sup>th</sup> Respondent were a hindrance and nuisance to them since the 8<sup>th</sup> Respondent is using three gates to use the said roadway.

Thereafter, on the said complaints, the Department of Local Government (Western Province) has written to the Secretary of the Maharagama Urban Council (the 2<sup>nd</sup> Respondent), to take legal actions against the 8<sup>th</sup> Respondent. The said gates are depicted in the photographs marked and annexed to the Petition as **P13**, and several further requests have been made by the 1<sup>st</sup> Respondent by the documents marked as **P14** and **P15**; thereafter, the 1<sup>st</sup> Respondent has also further written to the 1<sup>st</sup> Petitioner to establish his rights.

### **Objections**

On the other hand, the 1<sup>st</sup> to 7<sup>th</sup> (7A) Respondents have not filed their respective Objections or any documents; however, the 8<sup>th</sup> Respondent has filed his Objections along with several annexed documents marked as **8V1** to **8V6**. The document marked as **8V1** is the same as the document marked as **P2** annexed to the Petition; **8V2** is the same as the plan marked and annexed to the Petition as **P2(a)**; there is no document marked as **8V3**, however, the document marked as **8V4** is the development permit apparently obtained from the Maharagama Municipal Council. The document marked as **8V5** is the partition plan depicting the larger land of which a portion of land the 8<sup>th</sup> Respondent has purchased, which is evidenced by the document marked **P2(8V1)**. The document marked as **8V6** is the final decree of the said partition by which the said partition plan **8V5** is affirmed.

However, it is his position that his development permit has been approved; therefore, he is entitled to use the three gates.

Now I will consider the arguments advanced by the counsel on both sides in relation to the facts mentioned above.

Apparently, the Petitioners are owners of certain premises situated where a by-road that leads to the Dabahena Road is used as their way of access to the main road to and from their residences; the 8<sup>th</sup> Respondent has not disputed that fact.

The 8<sup>th</sup> Respondent has purchased a land in the said area in 2016, that he occupies presently, as evidenced by the Deed marked as **P2(a)** annexed to the Petition or **8V1** annexed to the Objections; and the said land is depicted in the plan marked as **P3** or **8V2**. The said parcel of land of the 8<sup>th</sup> Respondent is a portion of a larger land for which there had been a partition case; the final plan of the said partition is annexed as **8V5**, with the same having been confirmed by the final decree of the partition case marked as **8V6**. Therefore, it is very clear that the 8<sup>th</sup> Respondent possesses a land which he owns based on good title derived from a partition action.

Now the question arises as to whether the 8<sup>th</sup> Respondent is entitled to enjoy all the attributes that he relies on as the owner of the said land depicted in the plan marked as **P2(a)** or **8V3** annexed to the Petition and Objections of the 8<sup>th</sup> Respondent respectively.

It appears that the 8<sup>th</sup> Respondent has obtained a development plan to build his house, which is marked as **8V4**. On a perusal of **8V4**, I found that except for the main house there is no permission given to construct a parapet wall which separates the 8<sup>th</sup> Respondent's land and the said road. Therefore, it appears, as the Petitioners complain and as evidenced by **P4**, that there are three openings used as entrances by the 8<sup>th</sup> Respondent. As such, the said entrances kept and maintained

by the 8<sup>th</sup> Respondent cause hindrances and nuisance to the people of the area; thus, the Petitioners have complained to the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> Respondent, as an officer of the 1<sup>st</sup> Respondent, and other relevant authorities against the 8<sup>th</sup> Respondent's conduct. Based on those complaints, the 1<sup>st</sup> Respondent had sent a technical officer and obtained a report, according to which, there is unauthorised construction by the 8<sup>th</sup> Respondent.

Therefore, by **P4** and several other letters, the authorities (the 1<sup>st</sup> to 4<sup>th</sup> Respondents) have informed and directed the 8<sup>th</sup> Respondent to close two of the said openings and use only one as the sole entrance to his property, which the 8<sup>th</sup> Respondent has not complied with.

Therefore, it is my view that the 8<sup>th</sup> Respondent has put up some unauthorised construction for his benefit and to the hindrance and annoyance of the Petitioners and other residents of the area, including the farmers of the area as evidenced by **P11**. As such, it is my view that the Petitioners have made out a case against the 1<sup>st</sup> to 4<sup>th</sup> Respondents to obtain a *Writ of Mandamus* directing them to take legal actions against the 8<sup>th</sup> Respondent for his unauthorised construction.

The next question that arises is whether the Petitioners are entitled to such a *Writ of Mandamus*, as argued by the 8<sup>th</sup> Respondent.

The UDA Act has been promulgated covering the entire Island, for the purpose of enhancing the life of the citizenry depending on the area that such citizenry resides or live in; it is thus, also required and expected by the UDA to create such conducive environment for the citizenry to live a peaceful life. For that purpose, they can adopt and promulgate by-laws, or their powers can be delegated to local authorities since the UDA cannot solely carry the responsibility of creating such conducive environment for the citizenry. Once such a power is delegated to a local authority, the local authority is responsible for regulating the environment as far as possible to create healthy

environments for the citizenry to live within their locality. Therefore, Section 28 empowers such delegated local authority to act accordingly.

As such, it is my view that the 1<sup>st</sup> Respondent is under a statutory duty to create such environment by regulating the actions and inactions of the citizenry who live within its local limits. If the 1<sup>st</sup> Respondent and its officers, whose powers are derived from the UDA by the Act No. 47 of 1978, fail to carry out its duties in that respect, then, any citizen affected by such action or inaction of the local authority can compel them to carry out such duty. Accordingly, it is my view that a *Writ of Mandamus* lies in this Application.

I rely upon Wade and Forsyth in the authoritative textbook “Administrative Law” to further buttress my view;

*“Originally the writ of mandamus was merely an administrative order from the sovereign to his or her subordinates. However, the central government had little administrative machinery of its own, which led to the mandamus quickly becoming generally available through the Court of King's Bench. The writ would issue to enforce the terms of royal charters and, by the seventeenth century, it was commonly used to compel the admission or restoration of freemen or burgesses to their offices or rights in borough corporations*

*Another early use of the mandamus was to enforce the rights of members of universities. The mandamus was used, for instance, in the time of Edward III to command the University of Oxford to restore a member who had been banished. Lord Holt and Lord Mansfield favoured the free use of the writ for the enforcement of public duties of all kinds. Mandatory orders were thus issued against inferior tribunals which refused to exercise their jurisdiction and against municipal corporations which did not duly hold*

*elections, meetings, courts and so forth. As Lord Mansfield said in sweeping terms, the mandamus:*

*'was introduced, to prevent disorder from a failure of justice, and defect of police  
Therefore, it ought to be used upon all occasions where the law has established no  
specific remedy, and where in justice and good government there ought to be  
one....The value of the matter, or the degree of its importance to the public police,  
is not scrupulously weighed. If there be a right, and no other specific remedy, this  
should not be denied. Writs of mandamus have been granted, to admit lecturers,  
clerks, sextons, and scavengers,... to restore an alderman to precedency, an  
attorney to practice in an inferior court..*

*This statement was made in a case where a writ of mandamus was issued for the admission  
of a Presbyterian preacher whose only title was under a trust deed. It was clarified that  
duty enforced did not need to be statutory or under royal charter. **Furthermore, in that  
case, the duty was public only in the sense that it was a duty to execute a charitable trust.  
This was a departure from previous practice where mandamus used to be employed for  
enforcing the admission of copyholders in manors only in cases where it was a matter of  
private duty.**'<sup>1</sup> [Emphasis is mine]*

## **Conclusion**

In the above circumstances, it is my view that a *Writ of Mandamus* would certainly lie in favour of the Petitioners, to compel at least the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to carry out their official duties,

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<sup>1</sup>Wade, W., & Forsyth, C. (12<sup>th</sup> Edition, Oxford University Press 2023). Administrative Law, Part 7 Chapter 16, pp. 493-494.

either by removing an unauthorized construction or by prosecuting the 8<sup>th</sup> Respondent before the relevant forum. Further, order Rs. 31,500/- (Thirty-One Thousand Five Hundred Rupees) as cost of litigation payable by the 8<sup>th</sup> Respondent to the 1<sup>st</sup> Petitioner.

**JUDGE OF THE COURT OF APPEAL**