**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.*

W.S.P. Wijewardena,
No 38, Rathnayake Mawatha,
Pelawatta, Battaramulla.

**CA (Writ) App. No. 474/2024**

**PETITIONER**

**Vs.**

1. Urban Development Authority
2. Chairman
3. Director General
4. Director (Western Province)
5. Deputy Director (Planning)

All at;
Urban Development Authority,
6th, 7th, and 9th Floors,
Sethsiripaya, Battaramulla.

**RESPONDENTS**

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

**Counsel:**

Senany Dayaratne with Nishadi Wikramasinghe, Janani Abeywikrema and Maheshika Bandara instructed by Bindiya Herath for the Petitioner.

Mihiri de Alwis, SCC for the Respondents.

**Argued on:** 27.03.2026

**Delivered on:** 21.05.2026

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

**Judgement**

**Introduction**

The Petitioner claims that he inherited the premises from his father. According to him, the house standing thereof has been built by his father in 1940s, and existing as a dwelling house, existing from 1940s, even prior to the promulgation of the Urban Development Authority Law, No. 41 of 1978 (as amended) (hereinafter referred to as "the Act"). However, in 2012, the Petitioner made an application to convert a part of the dwelling house into an office complex. For that purpose, the Petitioner submitted an application marked as **P12** annexed to the Petition.

After receiving **P12**, in the process of processing the same, the officers of the Urban Development Authority (hereinafter referred to as the "UDA") visited the said premises and found that not only a part, but the entire premises had been converted into an office complex. Accordingly, they decided to charge a certain fee, which is reflected in **P14**, which the Petitioner challenges in this Application.

In addition to that, the UDA, by the document marked **P16,** had informed the Petitioner that unless the Petitioner complied with the directions given in **P14** in order to use the premises as an office complex, the said premises would be treated as unauthorised under the UDA regulations. In those circumstances, the Petitioner seeks to challenge both **P14** and **P16** in this Application.

After formal notice was issued, the Respondents filed their respective Objections, annexing certain documents including **R3** and **R4**. It is their position that the Petitioner, after making the application for conversion, is required to pay a certain amount as charges as the law permits, which the Petitioner now challenges in this Application; therefore, the Petitioner is not entitled to the relief sought in this Application.

This was argued before me on 27.03.2026; hence this judgement. Following submissions were advanced by Counsel.

**Arguments**

Mr. Senani Dayarathne, the learned Counsel for the Petitioner, argued that **P14** and **P16** are two documents that the Petitioner challenges, as they are irrational and illegal; since after inspection, the Respondents, being the officers of the UDA, have decided that the Petitioner has converted the entirety of the premises into an office complex; therefore, it is against the evidence.

Mr. Senani Dayarathne further contended by way of written submissions that the decisions contained in **P16** and **P14** are irrational and improper, thus, the Petitioner challenges the two documents on that basis.

However, on the other hand, Mrs. Mihiri de Alwis argued that the Petitioner made an application to the UDA to convert his residential premises into an office complex, in terms of Rule 93 of the Extraordinary Gazette Notification No. 2235/54 and Sections 8(b)(1) and 8(e) of the Act. Accordingly, the officers of the UDA, having visited the Petitioner's premises, found that not only part of the premises, but the entire premises had been converted into an office complex.

Therefore, the Petitioner was required, by **P14**, to pay the relevant amount which had been decided in accordance with **R3** and **R4**, and which is justified. Accordingly, the Petitioner has not made out a sustainable case in this Application.

**The Petitioner's position**

According to the Petition, the Petitioner is the owner of the premises in suit, which is part of the larger land of 1 Acre and 31 Perches in the plan marked as **P4** annexed to the Petition. The

Petitioner claims that the Petitioner's ownership is well-established and confirmed by the certificates of title issued under the Title Registration Act, which are marked as **P3(a)**, **P3(b)**, and **P3(c)** annexed to the Petition.

Further, the Petitioner asserts that the premises in suit is also depicted in the cadastral plan of the Surveyor General in three parts marked as **P2(a), P2(b), and P2(c)** annexed to the Petition.

The building in dispute is situated in the premises marked as Lot C in the plan marked as **P4**; the Petitioner asserts that the house standing thereon had been built by his parents as way back as in 1948, at a time when no approval was necessary for a building plan to commence construction, and no certificate of conformity was required. The UDA Law was promulgated long thereafter. Therefore, notwithstanding the provisions of the UDA Law, the Petitioner asserts that the house had been constructed and used without any issue.

The Petitioner asserts that he applied to have his house designated as a dwelling house; however, the same was rejected by the document marked as **P5**, and the Petitioner was informed to submit a proper plan leaving the road reservation as indicated in the said document marked as **P5**.

However, the Petitioner asserts that part of the Petitioner's land was acquired in 1973, as reflected in the two Gazette Notifications marked as **P6(a)** and **P6(b)**. Thereafter, the Petitioner asserts that he appealed against the unreasonable conditions of demand made by the 1st Respondent in **P5**. Thereafter, the Petitioner asserts that he received the letter marked as **P7** from the 1st Respondent.

In the meantime, the Petitioner asserts that he entered into a lease agreement with a company called "Hayleys Agricultural Holdings Limited", (hereinafter referred to as "Hayleys") for them to carry on its business outlet in part of the said premises, while the balance was reserved for himself, his family members, and the guardian of the premises. Therefore, he asserts that

not the entirety of the building standing on the premises had been converted into business premises, but only a part thereof had been converted.

The Petitioner asserts, thereafter, when he submitted an application for the 1st Respondent for approval of the part of the premises as business premises, the said application is marked as **P12**; thereafter, certain officers of the 1st Respondent conducted a field visit, and consequently he received a letter asking him to pay a certain fee, which he complied with. Thereafter, the Petitioner asserts that he received the document marked as **P14** annexed to the Petition, directing him to pay a sum of Rs. 188,475.84/- (One Hundred and Eighty-Eight Thousand Four Hundred and Seventy-Five Rupees and Eighty-Four Cents) as service charges to process the application for the change of the premises from a dwelling house to business premises. The Petitioner further asserts that out of the Two Thousand Seven Hundred and Four square feet (2704 sq. ft.) of the building, only Two Thousand Four Hundred square feet (2400 sq. ft.) had been leased out to the said Hayleys company, while the balance was kept for himself for his personal use and for the use of his guardian.

However, in response thereto, the Petitioner sent an appeal to the Respondents. Thereafter, the Petitioner had received the document marked as **P16** rejecting his appeal, and stating that if he did not comply with the directions given in **P14,** the 1st Respondent would take action against the Petitioner on the basis that the house standing on the premises constituted as an unauthorized construction.

Thereafter, the Petitioner sought the intervention of this Court. Accordingly, the Petitioner seeks *inter alia* the following reliefs by this Application;

> *"(b) issue a mandate in the nature of a Writ of Certiorari quashing the findings and/or decisions of one or more Respondents and/or their servants or agents to compute and/or impose the purported government service charge and/or any other charges on the*

*premises relevant to this application, on the basis that the use of the said premises has been changed from the approved use, as reflected in P14 and P16;*

*(c) call for, and issue a mandate in the nature of a Writ of Certiorari quashing the findings and/or decisions of one or more Respondents and/or their successors in office, and/or servants or agents to treat the said premises as an unauthorized construction if the purported service charge is not paid, as reflected in P16;*

*(j) issue a mandate in the nature of a Writ of Mandamus compelling any one or more Respondents, and/or their successors and/or servants or agents, to withdraw the decision and/or determination reflected in P16 to treat the premises as an unauthorized construction;*

*(k) issue a mandate in the nature of a Writ of Mandamus compelling any one or more Respondents, and/or their successors and/or servants or agents, to withdraw the decision and/or determination reflected in P14 and P16, requiring the Petitioner to make payment of purported government service charge and/or any other charges on the purported change of use of the premises;"*

**The Respondents' Objections**

On the other hand, the Respondents, by way of their Statement of Objections, stated that the Petitioner had made an application to convert his dwelling house into business premises. After receiving the application together with the processing fee, certain officers of the 1st Respondent conducted a field visit, and upon such field visit it was found that the entire house had been converted into business premises from a dwelling house. Therefore, based on the findings, the 1st Respondent informed the Petitioner to pay the said fee of Rs. 188,475.84 as the fee for processing the application. The said fee had been charged according to the rules marked as **R3** annexed to the Objections, as well as **R4**, which is a circular issued in terms of the UDA Law.

Therefore, there is no irrationality or illegality in the Respondents' direction to charge the said fee.

In addition to that, it is the position of the Respondents that the entire premises had been converted into business premises. Therefore, it was the position of the Respondents that since there was no sufficient space for a car park and other amenities required for business premises, the Petitioner's premises had to be treated as unauthorised premises unless the directions were complied with. Therefore, the Respondents state that this Application is not justified and, as such, should be dismissed.

**Objective Test**

When I considered this Application made by the Petitioner, in essence, it is the Petitioner's position that he made an application to the UDA to change a description of the house situated in the premises in question from a 'dwelling house' to business premises. However, the Petitioner's position is that he never intended to have the entire premises described as a business premises; rather, he desired to have only part of the premises used for business purposes and the remaining part retained for residential purposes.

However, before I consider the application submitted to the 1st Respondent substantively, I wish to first deal with how this type of application is normally treated.

According to the regulations as reflected in the document marked as **R3**, even an existing house which had been built prior to the promulgation of the Urban Development Act as a residential premises may be converted to a business premises. For that purpose, an applicant must make an application in that behalf to the 1st Respondent Authority or any local authority to whom the relevant power or authority has been delegated.

For further clarity, I reproduce the relevant section found in the Extraordinary Gazette marked as **R3**;

*"PART VII: CHANGE OF USE*

*96. (1) No Building shall be occupied for any purpose except the purpose for which the CoC was issued.*

*(2) In case where it is deemed necessary the Authority shall: -*

*a. carry out a survey on the usage of the property where gazetted Development Plan is available;*

*b. notify the owner or occupier who has violated the conditions of the permit regarding the nature of the violation; and*

*c. inform the owner or occupier to apply for a change of use, if it is so desired.*

*(3)* ***Where a building or part thereof is intended to be used for a purpose other than any use specified in the CoC, the owner of the building shall notify the Authority the proposed use thereof and obtain the approval from the Authority.***

*(4)* ***Where any owner*** *or occupier intends to change the use of the building, an application may be made as per Form G as set out in Schedule 1 herein and shall be submitted along with copies of approved Survey Plan Building Plan, CoC and payment of assessment receipt to the Authority.* ***The fee shall be made as set out in the Schedule 2 herein.***

*(5) A change of use permit shall be valid for a period of one (1) year, provided the proposed use is in compliance with the zoning regulations of the gazetted Development*

*Plan, and compatible with the existing land use pattern and no adverse impacts may be caused to the existing environment and the parking, open space and other requirements within the site, width of the access roads and availability of infrastructure are satisfactory and the safety and security of the neighbours are ensured.*

*(6) The Authority may decide to renew the period of permit for change of use not exceeding one (1) year upon the request of the applicant if it is evident to the satisfaction of the Authority that the prerequisites for a change of use described in the foregoing provision has been successfully complied during the preceding year for which the permit was granted to effectuate the change of use.*

*(7) Where the Authority decides that the proposed change of use may adversely affect the conditions referred in Regulation 96 (5) herein, the Authority may revoke the permit without any payment.*

*(8) Tax numbers, trade permits or any other permit shall not be issued by the Local Authorities without the Change of Use Permit issued by the Authority for changing of use of a particular building or part thereof.*

*(9) Where a gazetted Development Plan is available and any party intends to change the existing use of a building or part thereof permanently, an approval shall be obtained from the Authority for the proposed use based on the Planning and Development Regulations of the gazetted Development Plan."* (Emphasis is mine)

However, even where such an application is made, the applicant is required to pay certain fees for processing such applications, as provided for in the rules promulgated under the Urban Development Act itself[1]. Therefore, the rules followed by the 1st Respondent in this instance

[1] As per Rule 93 of **R3**.

derive their authority from the Urban Development Act. In addition to that, for the purpose of ensuring the smooth functioning of such applications, circulars have been issued by the Urban Development Authority, one such circular also marked as **R4** annexed to the Petition.

Accordingly, when the Petitioner made the application to convert his dwelling house into business premises, for the purpose of processing and approval of the application, a certain amount of fees was required to be paid by the Petitioner in terms of the applicable rules. The said amount is charged for the services rendered by the officials of the 1st Respondent, based on the square foot area.

**Subjective test**

Accordingly, after the inspection was conducted by the officials of the 1st Respondent, they found that the Petitioner had converted the entire premises from a residential house into business premises. Although the Petitioner claimed that a certain area had been reserved for himself, his agents, and servants, nevertheless the officials found that no such space had in fact been reserved or used for residential purposes; rather, the entire premises had been converted into business premises. Consequently, the officials of the 1st Respondent directed the Petitioner to pay the amount provided for in the rules, depending on the square foot area of the premises in suit.

In addition to that, the Petitioner himself has asserted that the entire floor area is approximately 2704 square feet, out of which 2400 square feet had been leased to Hayleys Limited for business purposes. This in turn, indicates that only a small portion of the premises was not let out, whereas the main portion had been leased out to the lessee for business purposes.

However, in addition thereto, the Petitioner in this Application has failed to clearly distinguish whether the area that he claims to have reserved for himself and his agents was in fact intended

for residential purposes and used as such, particularly in circumstances where such area is comparatively small in relation to the larger area that had been leased out from the premises. Quite apart from that, the Petitioner has further failed to establish, by way of a plan, that there was any exclusive separation and that only a distinct portion had been given to Hayleys Limited Company on a lease.

Therefore, it is quite clear that the officials of the 1st Respondent found that the entire premises had been converted to a business premises, and consequently that the Petitioner had failed to reserve the necessary area for car parking and common activities. Therefore, unless and until the Petitioner makes provision for the same, the Respondents had indicated that they may not be in a position to regularise the conversion successfully and, as such, cannot grant the approval sought by the Petitioner, unless the payment of the relevant fee is paid. Therefore, it is my view that the Petitioner's Application made to this Court challenging the documents marked as **P14** and **P16** is a futile exercise**.** The Petitioner has been directed by the 1st Respondent to pay the fee according to the rules promulgated in **R3** and the circular marked **R4**, in addition to the powers derived from the Act itself.

Furthermore, if the conversion is successfully approved, the Petitioner is required to comply with the regulations stipulated under the Act. As such, if the Petitioner desired to challenge the same, the Petitioner ought to have challenged not only the rejection of the application or the directions given in the letters marked as **P14** and **P16**, but also the rules in effect, which the Petitioner in this case has failed to do; therefore, it is my view that the Petitioner's Application fails.

Accordingly, it is my view that the Petitioner's allegation that the 1st Respondent and its officials acted irrationally, *ultra vires*, and improperly in issuing the directions reflected in **P14** and **P16** is without merit.

Here, a question has arisen, as argued by the Petitioner, that he apparently appears to have been confused by the words "premises" and "building".

**The test devised by Court**

The Urban Development Authority Law, No. 41 of 1978 (as amended) does not state or define as to what a 'premises' is. However, certain similar enactments have defined what 'premises' is. According to the Rent Act, No. 7 of 1972, it is defined as any immovable property with a building thereon capable of being used either as a residential house or for business purposes. The premises is recognised and valued for annual rates depending on the facilities available and the purposes for which it is built and used. According to *Aloysius v. Pillaipody*[2], it was held that what is described in the Assessment Register for the purpose of rates by the relevant local authority or the UDA, such premises can be treated either as a residential premises or business premises; as such, a description appearing in the Assessment Register stands as *prima facie* evidence.

However, later according to *Percy Atapattu v. Wickremasinghe*[3], the Supreme Court devised another method to classify a premises as a business premises or residential premises by applying the 'user test'; accordingly, when applying the same principle in the present context, according to the officials who conducted the field visit, have found that the entire premises is mainly used for business purposes, though the Petitioner claims that part of it is used for himself, his family, and his servants, but he has not identified such area used exclusively and definitely by himself, as referred to in the case of *Britto v. Swamikannu*[4]. The same principle was also followed in *Ariff v. Ansary*[5] and *Bennet Soysa v. Ratnajothi*[6]. Therefore, it is my view that the

---

[2] [1982] 2 Sri L.R. 762.
[3] [1986] 1 Sri L.R. 16.
[4] 74 NLR 209.
[5] [1982] CA No. 64/77.
[6] [1982] CA (SC) No. 524/73 (F).

Petitioner has failed to establish that the premises in suit is used for residential purposes in addition to the business purpose.

**Conclusion**

For the reasons adumbrated above, it is my view that the Petitioner's Application is liable to be dismissed. However, I make no order as to costs, as the Petitioner appears to have already incurred sufficient costs.

**JUDGE OF THE COURT OF APPEAL**