

**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.*

1. M. D. Chandrakanthi,
2. H. A. H. M. Hettiarachchi,
3. H. A. A. S. Hettiarachchi,

All at:

No. K 3/6 Maligawatte Flats,
Maligawatte National Housing
Scheme, Colombo 10.

CA (Writ) App. No. 526/2025

PETITIONERS

Vs.

1. Condominium Management
Authority,
2. Bandula Karunaratne,
Chairman,
3. M. T. K. Priyantha,
General Manager,

All at:

Condominium Management
Authority,
1st Floor,
National Housing Department

Building,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

4. Anura Karunathilake,
Minister Urban Development,
Construction and Housing,

5. Ranjith Ariyaratne,
Secretary,

Both at:
Ministry of Urban Development,
Construction and Housing,
12th Floor,
"Sethsiripaya" Stage II,
Battaramulla.

6. Sugath Hemantha Hettiarachchi,
Chairman,

7. R. M. Madhusa Dilini,
Secretary,

8. S. H. S. M. Usham,
Treasurer,

All at:
Maligawatte Block G, H, J, K, M,
N,
Management Corporation,
J/7/3, Maligawatte Housing
Scheme,
Colombo 10.

9. National Housing,
Development Authority,
Sir Chittampalam A. Gardiner
Mawatha,
P.O. Box 1826, Colombo 02.

10. Mary Matilda Silva,

11. D. M. Sesuk,

Both at:
K 4/6, Maligawatte Flats,
Maligawatte National Housing
Scheme,
Colombo 10.

12. Colombo Municipal Council,

13. Municipal Commissioner,
Colombo Municipal Council.

Both at:
Town Hall, Colombo 7.

RESPONDENTS

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

Counsel:

Nishadi Wickramasinghe for the Petitioner.

Navinda Pathirage, S.C., for the 1st to 5th and 9th Respondents.

Sachintha Perera for the 10th and 11th Respondents.

G. Senanayake for the 12th and 13th Respondents.

Argued on: 26.05.2026

Delivered on: 28.07.2026

Judgement

Introduction

The three Petitioners are members of the same family, namely, the 1st Petitioner is the mother, while the 2nd and 3rd Petitioners are the two daughters of the family. They are occupying the premises more fully described in the schedule to the Petition, which is a parcel of condominium premises situated in the ‘K Block’ of the Maligawatha Housing Complex; their premises are situated on the 3rd floor, while the 10th and 11th Respondents’ parcel of condominium property is situated on the 4th floor, exactly above the Petitioners’ premises. Therefore, the Petitioners’ premises are separated from the 10th and 11th Respondents’ premises by the floor area of the premises of the 11th Respondent, which is used as the ceiling of the Petitioners’ premises.

The Petitioners’ complaint is that, due to the condition of the floor area of the premises of the 10th and 11th Respondents, there is seepage and leakage of water from the floor and under the walls into the Petitioners’ premises. Consequently, uninhabitable conditions have been created in the Petitioners’ premises; as such, the Petitioners first brought notice to the Commission of the National Housing Authority, where they referred it to the Condominium Corporation. The Petitioners later made complaints to the 1st Respondent, where the 2nd and 3rd Respondents are members. Nevertheless, the Petitioners’ complaint is that the 1st to 3rd Respondents also failed to take action.

As such, they were compelled to seek the orders in the nature of a *Writ of Mandamus* sought in the Petition. Accordingly, after the issuance of notice, only the 1st to 3rd, 10th, and 11th Respondents filed their Objections.

This matter was argued before me on 26.05.2026; hence, this judgement.

The following arguments were advanced by the Counsel at the hearing of this Application.

Arguments

The first contention of Mr. Wickramasinghe is that the Management Corporation has derelicted its duty. In addition to that, on the other hand, the 1st to 3rd Respondents, who are members of the Condominium Authority, have also derelicted their statutory duties.

The second contention advanced is that, although the 1st Respondent had filed a case against the 10th Respondent in terms of Section 25, it was later withdrawn based on an erroneous report filed by the technical officers of the 1st Respondent.

The third argument of Mr. Wickramasinghe is that the document **P24** stultifies the stand taken by the 1st Respondent, since the withdrawal of the said case filed against the 10th Respondent was based on a technical report. However, upon a subsequent complaint made by the Petitioners, the officers of the 1st Respondent further found in 2024 that seepage and leakage of water still continued, which is borne out by **P27, P29, P33, and P36**.

Further, it is argued on behalf of the Petitioners that, through **P27, P29, P33, and P36**, the 1st to 3rd Respondents have always attempted to play a ball game by attributing responsibilities to the Condominium Management Corporation. Further, Counsel argues that paragraph 5(gg) of the 1st Respondent's objections establishes the carelessness of the 1st to 3rd Respondents.

However, on the other hand, Ms. Navinda Pathirage, S.C., argued that the 1st to 3rd Respondents have only statutory powers of supervision and maintenance, whereas the actual maintenance is to be carried out by the 6th to 8th Respondents, who are members of the Management Corporation.

Further, she argued that the 10th Respondent had complied with the directions given by the 1st to 3rd Respondents and, thereafter, based on the report filed by the technical officer, the case against the 10th Respondent had been withdrawn. Further, the 1st to 3rd Respondents had called for a meeting of all stakeholders, including the Petitioners, and taken action to implement

remedial measures in respect of the Petitioners' premises, which is borne out by **P36**. Therefore, this action cannot be maintained against the 1st to 3rd Respondents.

However, Mr. Gamini Senanayake informed Court that the 12th and 13th Respondents do not have a statutory duty; therefore, they cannot be held responsible for any omission or commission committed by the other Respondents.

In addition, counsel for the 10th and 11th Respondents argued that the 10th Respondent had effected the necessary repairs and that, based on the technical report prepared by the technical officer of the 1st Respondent, the case filed against the 10th Respondent by the 1st Respondent was withdrawn by the Magistrate's Court.

In addition to that, he argued that further repairs had also been effected. Nevertheless, when I questioned whether there was any technical report to demonstrate that such repairs had been effectively carried out, he failed to provide a satisfactory answer.

On the other hand, Mr. Wickramasinghe argued in reply that the case against the 10th Respondent was withdrawn in 2022, but in 2024 seepage and leakage of water still continued to occur, as borne out by **P36**.

In addition to that, electronically generated evidence was produced by way of a video recording demonstrating the dilapidated condition of the floor of the 10th and 11th Respondents' premises, which serves as the ceiling of the Petitioners' premises. It further demonstrated the leakage and seepage and showed that it had caused enormous damage, which may one day result in the collapse of the floor of the 10th and 11th Respondents' premises upon the Petitioners' premises.

Complaints of the Petitioners

The 1st Petitioner asserts that she became the owner of the unit (premises in suit) by virtue of the deed marked as **P1** annexed to the Petition; the person who gifted the premises in suit to

the Petitioner by **P1** had got his title from the National Housing Development Authority (NHDA), and she further asserts that she is residing there with her two daughters, who are the 2nd and the 3rd Petitioners.

Further, it is asserted that the 10th and 11th Respondents are residing on the upper floor of the apartment unit, (hereinafter referred to as the 'premises' of the 10th and 11th Respondents), of the same apartment housing complex, and the floor of the 10th and 11th Respondents is the upper ceiling of the Petitioners' housing unit.

The Petitioners' complaint is that, from 2003, there had been a leakage from the ceiling (from the floor of the 10th and 11th Respondents). However, after making complaints to the NHDA, the 10th and 11th Respondents repaired it, and for some time there was no problem.

The Petitioners assert, however, in 2008, again there were leaks from the Petitioners' (ceiling) from the floor of the 10th and 11th Respondents, and therefore on a complaint made by the Petitioners to the NHDA, the NHDA referred the matter to the General Manager of the Apartment Housing Authority. Thereafter, the Apartment Housing Authority took over the matter and informed the 10th and 11th Respondents to come for an inquiry, and there had been several correspondences between the parties and complaints right up to 2019.

However, it is the position of the Petitioners that the Apartment Housing Authority had also informed the Management Corporation of the dispute between the parties, particular apartment housing complex to involve itself in the matter. Since the leakage still persisted despite the purported repairs effected by the 10th and 11th Respondents under the supervision of the Management Corporation, the Apartment Housing Authority instituted an action against the 10th and 11th Respondents in the Magistrate's Court of Colombo, bearing No. 19051/05/19, as reflected in the document marked as **P18**.

The Petitioners assert that subsequently, in 2020, the Apartment Management Authority withdrew the said action based on the report filed by the Management Corporation, which is marked as **P19** annexed to the Petition.

Thereafter, the Petitioners complained that the leakage still continued. Therefore, the Petitioners obtained certain reports regarding the condition of the water that was being leaked; the report is marked as **P21**, according to which the water leaked from the house of the Respondents contained waste and sewage, and also contained faecal coliform and bacteria known as '*Escherichia*'.

Thereafter, the Petitioners further obtained a technical report, and according to the said technical report, the Petitioners' roof and walls were damaged due to the penetration of the roots of Bo trees, which had caused damage to the floor and seepage and leakage from the upper floor to the Petitioners' house; the said report is marked as **P22**.

However, even thereafter, the Petitioners continued to make complaints to the Apartment Housing Authority as well as the Management Corporation. Nevertheless, since no action was taken against the 10th Respondent or to effect repairs preventing the leakage and seepage, the Petitioners, through their Attorney-at-Law, sent a letter to the Management Authority, which is marked as **P29**.

In addition to that, the Petitioners asserts that they obtained another report dated 04.11.2024, which is marked as **P36**, according to which there is a need for the Management Corporation to conduct the necessary maintenance and repairs to prevent the further leakage of water.

However, since no action was taken by the Apartment Housing Authority, and the Management Authority, the Petitioners sought the intervention of this Court by invoking the jurisdiction of this Court, basically seeking *inter alia* following reliefs as sought in prayers (c), (d) and (e).

For further clarity, I reproduce below the following reliefs as sought in the prayers;

c. issue a mandate in the nature of a Writ of Mandamus directing any one or more of the 15, and/or 2nd and 3rd Respondents, and/or their servants or agents, and/or their successors in office to take steps in terms of the law, to direct the 6th, 7th, 8th and/or 10th Respondents and/or their servants or agents, and/or their successors in office to conduct the necessary repairs and/or maintenance work required to prevent further water leakage into the house of the Petitioners bearing No. K 3/6, Maligawatte Flats, Maligawatte;

d. issue a mandate in the nature of a Writ of Mandamus directing any one or more of the 1st, and/or 2nd and 3rd Respondents, and/or their servants or agents, and/or their successors in office to conduct the necessary repairs and/or maintenance work required to prevent further water leakage into the house of the Petitioners bearing No. K 3/6, Maligawatte Flats, Maligawatte

e. issue a mandate in the nature of a Writ of Mandamus directing any one or more of the 6th, 7th and/or 8th and/or their servants or agents, and/or their successors in office to conduct the necessary repairs and/or maintenance work required to prevent further water leakage into the house of the Petitioners bearing No. K 3/6, Maligawatte Flats, Maligawatte;

Objections of several Respondents

After the issuance of notice, the 1st to 3rd Respondents filed statements of objections, and in addition to that, the 10th and 11th Respondents filed separate statements of objections. The 1st to 3rd Respondents, by way of their objections, took up the position that since the apartment complex identified as ‘K’ Apartment Housing Complex of the Maligawatte Apartment Housing Complex had been built long ago and, due to its old age, serious repairs had to be effected, it is natural that leakage and seepage of water from the upper floors could take place.

Accordingly, they denied any responsibility on their part and sought the dismissal of the Application.

The 10th and 11th Respondents, by their Objections, stated that they had taken all steps to effect repairs as directed by the Management Authority as well as the Management Corporation. Nevertheless, beyond that, there may have been problems caused to the Petitioners which were beyond their repairs, and therefore they are not responsible for such causes, as they had effected repairs to prevent leakage from their upper floor.

In addition to that, the 10th and 11th Respondents vehemently challenged the reports annexed to the petition by the Petitioners on the basis that they are *ex parte* reports obtained by the Petitioners. They further relied on the reports filed by the Management Authority and the Management Corporation to the effect that the necessary repairs had been effected by the 10th and 11th Respondents. Therefore, they sought the dismissal of the Application.

Further, the 12th and 13th Respondents, namely the Colombo Municipal Council, also filed objections and moved to be released from these proceedings on the basis that they are not responsible for the matters complained of.

Thereafter, the Petitioners filed their Counter Affidavits.

Issues for consideration

In view of the matters pleaded in the Petition, the objections filed by the respective Respondents, and the arguments advanced by way of oral and written submissions, it is my view that the following questions arise for the determination of this Court;

- I. Whether the leakage and seepage of water from the upper floor of the Petitioner's premises continue to occur;

II. If the answer to the above is in the affirmative, who is responsible for taking the necessary action;

III. Whether writ lies.

According to several complaints made by the Petitioner through various correspondence addressed to the authorities, namely the 1st Respondent, the Petitioner's complaint is that the leakage from the upper floor first started to occur in 2003. Thereafter, repairs were effected by the 10th and 11th Respondents. However, for a period of about five years, there was no recurrence.

However, in 2008, the same leakage recurred. Thereafter, several complaints were made by the Petitioner to the 1st to 3rd Respondents, who took several steps, after conducting several inquiries, to prosecute the 10th and 11th Respondents before the Magistrate's Court in case bearing No. 19051/05/19.

For that purpose, the Petitioner also involved the Management Corporation and its members, which is very clear from the correspondence reflected in documents marked **P16** and **P17**.

Thereafter, within two years, a report was filed by the Management Corporation, marked as **P19**. Consequently, the 1st to 3rd Respondents took steps to withdraw the said case pending before the Magistrate's Court on the basis that the necessary repairs had been effectively carried out.

However, thereafter, the leakage still continued. Consequently, the Petitioner obtained two reports; one relating to the contents of the water leaking from the upper floor, and the second being a technical report relating to the defects causing the leakage; these reports are marked as **P21** and **P22**.

According to **P21**, the water leaking from the upper floor contains waste, sewage, faecal coliform, and bacteria known as *Escherichia*. Therefore, it is very clear that the leakage takes

place from the lavatory area on the upper floor. Hence, due to the contamination of the water, since it leaks from the lavatory area and contains lavatory waste, it has created an uninhabitable atmosphere in the Petitioner's floor area.

Thereafter, the Petitioner obtained the technical report **P22** regarding the defects that have caused the leakage in the building. According to the report **P22**, the roots of a Bo tree, which had become implanted in the roof area as well as within the walls of the building, possibly due to the behaviour of animals and birds, have caused cracks in the structure; thus, it is through those cracks that the leakage continues.

Therefore, there is a serious matter that has to be looked into by the Management Corporation, under supervision of the Condominium Management Authority to effect the necessary repairs. In addition to that, the Management Authority and Management Corporation are required by law to make necessary repairs. Therefore, there is a dereliction of duty on the part of the Management Corporation as well as the Apartment Housing Authority according to law.

As such, it is my view that a writ lies in favour of the Petitioner to compel the Management Corporation and the Apartment Housing Authority to take the necessary steps. Otherwise, the entire building may collapse, thereby creating a danger not only to the Petitioner, but also to the lives of the other people residing in the building.

Conclusion

For the reasons adumbrated above, I grant reliefs as prayed for in prayers (c), (d), and (e) of the Petition, without costs.

JUDGE OF THE COURT OF APPEAL