

**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. 687/2025

H.K. Prabhath Darshana,
No. 142/A, Weliwita,
Kaduwela.

PETITIONER

Vs.

1. B.A.D. Chinthaka,
Divisional Secretary,
Divisional Secretariat Homagama,
Homagama.
2. K.D. Lal Kantha,
Minister of Agriculture, Livestock,
Land and Irrigation,
Ministry of Agriculture, Livestock,
Land and Irrigation,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,
Battaramulla.
3. Secretary,
Ministry of Agriculture, Livestock,
Land and Irrigation,
“Mihikatha Medura”,
Land Secretariat,

No. 1200/6, Rajamalwatta Avenue,
Battaramulla.

4. Urban Development Authority,
7th Floor, “Sethsiripaya”,
Battaramulla.
5. L.B. Kumudumal,
Chairman,
Urban Development Authority,
7th Floor, “Sethsiripaya”,
Battaramulla.
6. Mahinda Withanaarachchi,
Director General,
Urban Development Authority,
7th Floor, “Sethsiripaya”,
Battaramulla.
7. Road Development Authority,
Maganeguma Mahamedura,
No.216,
Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.
8. Sarpa Wedage Indika,
No. 327/A, Dewala Road,
Katuwana, Homagama.
9. H.G.A.J.A. Dimaani Tharaka,
No. 47, Station Road, Homagama.
10. Kusumalatha Jayathunga,
No. 47, Station Road, Homagama.
11. Owitigala Hewage Dona Priyanthi,
No. 456/2 C, Neelammahara,
Godigamuwa, Maharagama.

RESPONDENTS

Before: M.C.B.S. Morais, J.

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

Counsel:

Shantha Jayawardena with Azra Basheer for the Petitioner.

A. Gajadeera, S.C. for the Respondents.

Dasun Nagashena with Shihara Ekanayaka instructed by Danuka Lakmal for the 8th
Respondent.

Argued on: 02.10.2026

Delivered on: 06.10.2026

Judgement

Introduction

The Petitioner seeks the intervention of this Court against the 1st to 7th Respondents, to compel them to complete the roadway concerned in this Application. The roadway concerned is built between Homagama - Pitipana area, which aims to cater to the Science and Technology City Development Project (commonly known as "Techno City"), and having constructed the entirety of the Road, the 1st to 7th Respondents have derelicted their duty to complete by connecting the balance of about One Hundred metres (100m) to be connected the main road.

The Petitioner alleges that the Respondents have derelicted their duty to complete the roadway, after the acquisition of certain land that lies East around the area connecting the Road built to the Main Road. Having acquired those lands, still the Respondents, particularly the 7th Respondent, have not taken steps to take possession thereof, despite the fact that they have taken possession of all other parcels of land, acquired for the acquisition in terms of Section 38A. The Petitioner alleges that the Respondents have not taken steps to take over the possession of four parcels of land, ejecting those who continue to be in unlawful possession thereof. Therefore, the Petitioner seeks a *Writ of Mandamus* by this Application.

The 1st Respondent is the Divisional Secretary of Homagama, and the 2nd Respondent is the Minister of Land, while the 3rd Respondent is its secretary. The 4th Respondent is the Urban Development Authority, while the 5th and 6th Respondents are its chairman and director general, respectively. The 7th Respondent is the Road Development Authority. The 8th to 11th Respondents are owners of the four parcels of land acquired by the Government for the construction of the said New Access Road.

The Petitioner's position

The Petitioner asserts that he was once a member of the Pradeshiya Sabha and was engaged in social service; in addition to that, he asserts that he contested at a general election representing a certain political party.

The Petitioner further asserts that the Government decided to implement the Western Regional Megalopolis Master Plan, a part of which was the Technology City Development Project. As a part of the said Megalopolis Project, the Government had decided to develop the infrastructure in the area, and the Homagama - Pitipana Road formed part of the said development project. For that purpose, lands had to be acquired, and accordingly, the Secretary to the Minister of Megalopolis and Western Development forwarded an application, dated 02.08.2018, to the Minister of Lands for the purpose of acquisition of the relevant lands; the said letter is marked as **P3** annexed to the Petition.

Since the proposed road lies over paddy lands, clearance was required from the Commissioner General of Agrarian Development. For that purpose, applications were made and the necessary approvals were granted, as reflected in the documents marked as **P4** and **P5** annexed to the Petition.

After the acquisition process commenced, the initial Section 2 Notice was issued, which is reflected in **P6** annexed to the Petition. The Petitioner further asserts that survey plans were prepared, and the Advance Tracing bearing No. CO/HMG/2018/716, prepared by the Surveyor General, is annexed to the Petition and marked as **P7**.

Thereafter, before the entire process of acquisition under the Land Acquisition Act took place, the Secretary to the Minister of Lands issued a Section 38A Notice, and published the same, for the immediate taking of possession of the proposed lands; this is reflected in the documents marked as **P8** and **P9** annexed to the Petition.

In addition, after identifying the lands, claims from the owners were called for by way of two Gazette Notifications marked as **P10** and **P11** annexed to the Petition. Thereafter, the claimants were paid compensation for the acquisitions.

Following the acquisition, and after substantial public funds had been spent, the said New Access Road was constructed up to a certain point. However, a part of the project was subsequently abandoned, as the final few metres of the road were not completed due to the non-availability of the parcels of land occupied by the 8th to 11th Respondents. The said Respondents have, to date, failed to hand over the parcels of land, which they continue to possess. Consequently, the Acquisition Officer has failed to acquire the remaining 66-foot-wide section required for the completion of the Homagama - Pitipana Road Project.

This has caused considerable inconvenience to the public, who have been deprived of the use of the said road, in addition to the substantial expenditure incurred by the same public authorities in connection with the acquisition, including the payment of compensation and the construction of the road up to the point at which the authorities abandoned its completion. To further establish the factual position on the ground, the Petitioner has annexed photographs marked as **P15(a)** to **P15(h)** annexed to the Petition.

In addition, the Petitioner alleges that several requests were made to the 1st to 7th Respondents, including by way of letters marked as **P16** to **P20**. Nevertheless, the 1st to 7th Respondents have, to date, failed to complete the said road.

Thus, the Petitioner contends that the 1st to 7th Respondents appear to have derelicted their duties, and accordingly, seeks relief from this Court to compel the said Respondents to complete the road, after ejecting the 8th to 11th Respondents from the said four parcels of land concerned, which have already been acquired and in respect of which, notices have been published for taking immediate possession in terms of Section 38A.

The Respondents' Objections

Two sets of Respondents have filed their respective Objections. The first set consists of the Government officers, whilst the 8th Respondent, who continues to occupy or possess the said parcels of land, has filed a separate set of objections.

According to the Statement of Objections of the 1st to 7th Respondents, they have admitted most of the facts relating to the development project asserted in the Petition, except for the allegations levelled against the Respondents, on the dereliction of their duties.

However, it is their position that certain Respondents have still failed to handover their respective parcels of land, because they have not yet been allocated alternative accommodation to enable them to relocate and carry on their businesses; they continue to occupy the said premises and conduct their businesses therefrom. In addition, the requests made to the Pradeshiya Sabha, seeking alternative accommodation have been marked and annexed to the Statement of Objections.

The documents marked **R1** to **R11** have been annexed to their Statement of Objections, and on this basis, the 1st to 7th Respondents seek the dismissal of this Application.

Associating with the position of dismissing this Application, the 8th Respondent, having annexed documents marked as **R8(1)** to **R8(4)** to the Statement of Objections, argues that the relevant amount of compensation has not yet been paid by the Government, as the parcel of land owned by the 8th Respondent allegedly no longer falls under the category of paddy land, and instead, has been developed to be a highland.

In addition to that, the Respondents raised a preliminary objection on the *locus standi* of the Petitioner to maintain this Application.

After filing Counter Affidavits, this was fixed for argument, and this was argued before my brother, Justice Morias, and me on 02.10.2026; hence this judgement.

Arguments

The thrust of the main argument advanced by Mr. Jayawardena is that the Petitioner has sought a *Writ of Mandamus*, compelling the 1st to 7th Respondents to perform their duty cast upon them by the Statutes; therefore, the Petitioner is entitled to obtain the relief sought by the Petition.

On the other hand, it is the position of the learned State Counsel, Mr. Gajadeera, that since some of the Respondents (the 8th to 11th Respondents) were not given alternative accommodations so far, the Acquisition Officer has failed by not taking steps to eject them; in addition to that, since the entire project is almost completed, there is no dereliction of duty on the part of the 1st to 7th Respondents.

However, the learned Counsel on behalf of the 8th Respondent, Ms. Shihara Ekanayaka, contends that, unless and until they are paid compensation, they are entitled to stay in the property.

Issues to be considered

In view of the averments contained in the Petition, Statements of Objections, the Counter Affidavits, and the arguments advanced before us, the following questions arise for our consideration;

- (i) Whether the Homagama - Pitipana Road was built as part of the Colombo Western Megapolis Project;
- (ii) Whether there was an acquisition of lands, spending public money for that purpose;

- (iii) In the course of acquisition, whether possession was taken under Section 38A of the Land Acquisition Act of all parcels of the land relevant to said project, in respect of which the proposed acquisition was underway;
- (iv) Whether there are still any lands that the Respondents have failed to take possession of under Section 38A of the Act;
- (v) Whether there is any duty cast upon the 1st to 7th Respondents, as they perform a public duty to complete the project after taking possession of the land, of which they have so far failed to take possession of;
- (vi) Whether there is any duty cast upon the 1st to 7th Respondents to complete the project;

Acquisition of lands

The first matter to be considered is whether there was an acquisition of lands for the purpose of building a road between Homagama and Pitipana, as part of the Western Province Megapolis Development Project, since the new road caters the new Techno City proposed to be set out in the that area.

On a perusal of the documents marked as **P3** to **P5**, one could understand that the Secretary to the Ministry of Western Province Development had submitted a Memorandum to the Secretary of the Ministry of Parliamentary Reforms, by which he has proposed to build this road with the estimated costs of Rs. 200,000,000/- (Two Hundred Million Rupees), which would be expended by the UDA. Since the proposed road lies over paddy lands, clearance had to be obtained from the Director of Agrarian Services, and accordingly, clearance has been obtained, which is reflected in **P4** and **P5**.

Thereafter, a Section 2 notice had been issued in respect of several parcels of land proposed to be acquired by **P6**; the Advance Tracing of the proposed road is depicted in **P7**, which is the plan of the Surveyor General.

Thereafter, the Western Province Development Minister has requested the Minister of Land to make arrangements to obtain immediate possession of the lands identified and proposed to be acquired for the said Project by **P6** (the Section 2 notice); the said request has been made by **P8**. Accordingly, by **P9**, the Secretary to the Land Ministry has published a notice in terms of Section 38A proviso and taken immediate possession of the parcels of land proposed to be acquired by **P10**.

Then, the Petitioner has sought information from the Information Officer of the Homagama Divisional Secretariat by **P12** and **P13**, and thereafter, in response to the said request, by **P14**, the same had been given as to the status of the construction of the road as at that time.

Immediate possession in terms of Section 38A

It is clear that after proposals and Section 2 notice published by **P6**, there had been immediate possession taken by several Gazette Notifications marked as **P10**, and the claims have been called for after the Section 7 notice was published, by **P11**, for those having any interest in the said acquired lands and whose possession had been taken by the Government by **P10**. Therefore, it is very clear that the acquisition has taken place, and that there was a process initiated by the Government to pay compensation since there was a call for the claims of compensation.

Failure to take possession of certain parcels of land

Since there was a delay in the completion of the said road, the Petitioner had sought information under the Right to Information Act, as reflected in **P12** and **P13**. The relevant Information Officer had responded to the said application by **P14**, and accordingly, the Petitioner had received the said information by **P14**; thus, the Petitioner has come to be aware that the stretch of the last few metres of the said road has not been completed due to the failure on the part of the Acquiring Officer to take possession of certain lands as depicted in **P15(a)** to **P15(h)**, and therefore, the incomplete part of the road is also visible.

Therefore, even after the immediate possession taken pursuant to the Section 38A publication by the Land Ministry, such possession had not yet been taken of only three or four parcels of land, where the 8th to 11th Respondents continue to occupy and possess. Thus, there is a clear failure on the part of the Respondents, particularly the Acquiring Officer, of their duty to possess the said remaining parcels of land and complete the proposed road, amounting to a dereliction of duty.

Dereliction of duty of the 1st to 7th Respondents

On a perusal of the record, it is very clear that several parcels of land had been acquired for the definite public purpose of constructing a road as a part of the Western Province Megapolis Development Project, and the said road is so built to cater to the Techno City that is proposed to be set up in the Homagama – Pitipana area. As such, the New Access Road is part of the infrastructure of the proposed Megapolis Development Project, which in the future, the Government of the country aims to achieve.

The Petitioner, being a taxpayer and whose money is part of the public money that the Government has spent to prepare the project report, acquire the relevant parcels of land, and build the road up until its completion. However, the construction of the road has come to a standstill, without completing the last few metres, due to the failure of the Respondents, particularly the Acquiring Officer, who is empowered under the Land Acquisition Act to acquire the lands for any public purpose; the said Acquiring Officer is the Divisional Secretary of the area (the 1st Respondent), who is so empowered to take any decision on behalf of the Government in the name of the general public, spending public money, and employed to do his job. If he is unable to perform his job, then, there is a clear case of dereliction of his duty, for which he has to be answerable to the relevant ministries.

The relevant Minister in turn, being a part of the Executive is answerable to the People.

Therefore, it is my view that in terms of the Social Contract Theory, governments are instituted among men, deriving the powers of the People, for the purpose of implementing the necessary executive actions. Constitutional provisions and relevant legal provisions exist, empowering them to take the necessary actions in carrying out their public duty.

In this case, the 1st to 7th Respondents have derelicted their duties; thus, the failure on their part is a serious matter that has to be taken cognisance. Thus, it is my view that a *Writ of Mandamus* lies to compel the 1st to 7th Respondents to first, take possession of the relevant parcels of land of the 8th to 11th Respondents after taking the necessary steps, and secondly, to complete the road as expected according to law.

In fact, it must be noted that in terms of Section 38A proviso, the immediate possession of the lands concerned have been taken. Therefore, there is no impediment for the 1st Respondent to take actions to possess the said lands and allow for the completion of the remaining few metres of the road.

To further buttress my view, I rely on the following passages from the authoritative textbook, "Administrative Law" by Wade and Forsyth,¹ which reads thus;

D. Modern Statutory Duties

In modern times, a mandatory order is frequently used to enforce statutory duties of public authorities such as the duty to make a rate, to refer a complaint to a statutory committee, to decide a dispute between education authorities on proper grounds, to determine an application for a licence, to reconsider an application for a licence on proper grounds, to appoint an inspector of a company, to decide a dispute between education authorities on proper grounds, to adjudicate between land lord and tenant,

¹ Wade, W., & Forsyth, C. (12th Edition, Oxford University Press 2023). *Administrative Law*, Part VII Chapter 16, p. 496.

to approve building plans, to pay college lecturers, to pay a police the pension, to improve conditions of imprisonment, and to implement an employment scheme. Where the duty is to reach a decision, the order will usually be to 'hear and determine according to law', the law being indicated by the court. In other cases, the order will be to act according to law, with or without further details and instructions which the court may add. Occasionally, a mandatory order may be sought to enforce a non-statutory duty, such as the duty of the police to prosecute law offenders or the duty of a local authority to produce documents which a councillor reasonably needs for the proper performance of their duties.

A statutory duty must be performed without unreasonable delay, and this may be enforced by a mandatory order. For instance, a mandatory order was granted on this ground against the Home Secretary when the Home Office insisted that a would-be immigrant who was legally entitled to enter the country 'without let or hindrance' should wait for over a year in the queue of applicants for entry certificates.

Obligatory duties must be distinguished from discretionary powers. A mandatory order has nothing to do with discretionary powers. It will not issue, for example, to compel a minister to promote legislation. Statutory duties are, by no means, always imposed by mandatory language with words such as 'shall' or 'must'. Sometimes, they will be the implied counterparts of rights as in the instances where a person 'may appeal' to a tribunal and the tribunal has a correlative duty to hear and determine the appeal. Furthermore, sometimes language which is apparently merely permissive is construed as imposing a duty. For example, in certain instances 'may' may be interpreted to mean 'shall'. In these instances, even though no compulsory words are used, the scheme of the Act may imply a duty (at page 496).

As such, the 1st to 7th Respondents, who are responsible for the dereliction of their duties, must pay the costs to the Petitioner, who, being a law-abiding citizen, has come before this Court and sought to obtain relief for and on his behalf as well as for the benefit of the public.

Locus standi of the Petitioner

The Respondents had raised a preliminary objection on the *locus standi* of the Petitioner to maintain this Application.

It is my view that the Petitioner himself has asserted in the Petition that he is personally using the said road; therefore, he is affected. In addition to that, the Petitioner is a member of the general public. As the Government has spent the money collected from the taxpayers, by way of direct or indirect tax, and not out of a minister's pockets or the Respondents' pockets, every taxpayer who contributes to the collection of Government revenue has a duty by himself and by the society, to question the relevant government authorities who have derelicted their statutory or public duty; this also includes instances where a government authority might have trampled upon their rights, which would allow any member of the public to complain.

In support of my view, I further rely on the judgement of His Lordship Justice Saleem Marsoof (as he then was) in the case of *A. R. Perera and Others v. Central Freight Bureau of Sri Lanka and Another*,² where His Lordship overruled a similar objection and held as follows;

As Lord Denning noted in R v Inland Revenue Commissioners ex p. National Federation of Self Employed and Small Business Ltd., English Courts have orchestrated the generous view that “if there is good ground for supposing that a government department or public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of her Majesty’s subjects,

² [2006] 1 Sri L.R. 84.

then any one of those offended or injured can draw it to the attention of the court of law and seek to have the law enforced". In the course of his judgment in the same case, Lord Diplock observed as follows -

*In Sri Lanka there has been considerable progress in the public interest litigation arena, and the courts have liberalized rules relating to standing or locus standi, and permitted not only persons aggrieved but also others to challenge violations of fundamental rights. Cases such as *Mediwake and Others v Dayananda Dissanayake, Commissioner of Elections and Others*, *Sunila Abeysekara v Ariya Rubasinghe*, *Leader Publications v Ariya Rubasinghe*, *Lilanthi De Silva v Attorney General* are landmark decisions of our Supreme Court which reflect this liberal approach*

*Similarly, when one looks across the Palk Straits, one cannot help but notice the landmark decision of the Indian Supreme Court in *S. P. Gupta v. Union of India*, holding that lawyers have a vital interest in the independence of the judiciary, and therefore have standing to agitate before courts important issues affecting the judiciary, This decision has since been followed in several other cases involving consumer concerns, such as *Akhila Bharatiya Grahak Punchayat v A.P.S.E. Board* in which a Consumer Council was held to have locus standi to challenge the action of an electricity board for increasing the rates of electricity, and *P. Nella Thampy Thera v Union of India*, in which the Supreme Court of India entertained a petition at the behest of a railway commuter against the Indian Railways for improving the railway services*

I do not see any merit in the preliminary objection raised on behalf of the 1st Respondent and have no alternative but to overrule the same (at pages 89 – 93).

Conclusion

For the reasons adumbrated above, I issue *Writ of Mandamus* to compel the Respondents to take the necessary steps to complete the construction of the said New Access Road; accordingly, I grant relief as prayed for in prayers (c), (d), and (e) of the Petition.

Furthermore, I order costs in a sum of Rs. 31,500/- (Thirty-One Thousand Five Hundred Rupees) as cost of litigation awarded to the Petitioner, payable by the 1st to 7th Respondents.

JUDGE OF THE COURT OF APPEAL

M.C.B.S. Morais, J.

I agree.

JUDGE OF THE COURT OF APPEAL