

**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.*

Algewathhage Kasun Sanjaya,
No. 370/9A, Bonavista, Unawatuna.

CA (Writ) App. No. 746/2025

PETITIONER

Vs.

1. Director General,
Coast Conservation and Coastal
Resource Management Department,
4th Floor,
Ministry of Fisheries Building,
Maligawatta, Maradana,
Colombo 10.
2. Dr. T.L.C. Vinod,
Galle Regional Engineer and Deputy
Director,
Coast Conservation and Coastal
Resource Management Department,
Galle.

3. Secretary,
Ministry of Environment,
Sobadam Piyasa,
No. 416/C/1,
Robert Gunawardana Mawatha,
Battaramulla.
4. Mr. Thushara Chaminda Kariyawasam
Paranawithana,
Competent Authority,
Chief Engineer (Civil),
Sri Lanka Ports Authority,
No. 19, Chaithya Road,
Colombo 01.
5. Director General,
Department of Wildlife Conservation,
No. 811A, Jayanthipura,
Battaramulla.

RESPONDENTS

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

Counsel:

Saliya Pieris, P.C. with Thanuka Nandasiri and Himesh Tharuka for the Petitioner.

Medhka Fernando, S.C. for the Respondents.

Argued on: 03.03.2026

Delivered on: 29.04.2026

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

Judgement

Introduction

The counsel on all sides agreed that both the Writ Applications bearing Nos. 746/2025 and 747/2025 can be disposed of by one judgement; therefore, the judgement given in this Application applies to the connected Writ Application bearing No. 747/2025.

The Petitioner was served with a certain notice dated 27.06.2025; the same is marked as **P10** annexed to the Petition. The said **P10** has been issued in terms of Section 31(4) of the Coast Conservation Act No. 57 of 1981, informing the Petitioner to remove the unauthorised structures erected by him on the seashore which belongs to the public and comes within the purview of Coast Conservation and Coastal Resource Management Department, and the Petitioner is challenging the same by this Application.

The Petitioner's argument is that without giving him notice under Section 31(2) of the Coast Conservation Act, No. 57 of 1981 (as amended) (hereinafter referred to as "the Act"), the Respondents cannot take actions under Section 31(4); therefore, the said **P10** is invalid in law.

In addition to that, it is the position of the Petitioner, that **P10** has not been given by the competent authority; as such, since the power is not delegated to the person who has signed the said document **P10**, it is *ultra vires*.

After issuance of formal notice, the Respondents filed their Objections. The Respondents have taken up the position that the Petitioner had already been given notice under Section 31(2) by the competent authority, long before the issuance of **P10**; the said notices are marked and annexed to the Objections as **X12(a)** and **X12(b)**, dated 02.08.2024. Therefore, **P10**, which is marked as **X13** annexed to the Objections, is only issued pursuant to Section 31(4). As such, the said notice is given before the removal of the unauthorised structure for the Petitioner to remove, otherwise, expenses to remove will also be charged from the Petitioner. Thus, **P10** or **X13** is a document which is *intra vires* and had been sent to the Petitioner by the authorised officer who falls within Section 3 of the Act.

This was argued before me on 03.03.2026, and the following arguments were advanced by the counsel; hence, this judgement.

Arguments

The first contention of Mr. Pieris is that the **P10** is bad in law as it has been sent not by the Director General but by an engineer. Therefore, it appears to be with the delegated authority. However, in terms of Section 5 such delegation cannot be made unless such an officer is an officer contemplated by Section 5. In addition to that, Mr. Peiris contended that by the document marked as **X14**, the authority cannot be delegated. Therefore, both those documents are bad in law.

Further, he argued that in **X12(a)** and **X12(b)**, the Respondent has given notice one year before. However, without taking steps for about a year, the Respondents waited, and therefore suddenly they have given notice under **P10**. As such, the **P10** notice should be treated as a notice given in

terms of Sections 31(2) and not under Section 31(4). Further, he argued that **P10** is bad in law, as demolition should be carried out by the Director General, not by any other subordinate officers.

On the other hand, Mr. Medhaka Fernando argued that document **P10** itself refers to Section 31(2) of the Act. Accordingly, the notices have been given by **X12(a)** and **X12(b)** under Section 31(2). Though steps had not been taken to demolish after the period contemplated by **X12(a)** and **X12(b)**, by **P10**, before demolition, notice has been given in terms of Section 31(4) to avoid any situation of recovering expenses of the implementation of such a demolition order, as that has to be recovered from the unauthorized person.

He further argued that therefore, the person who has been assigned to remove the unauthorized structure directed the Petitioner by **P10**, giving notice for him to remove it without further incurring any expenses recoverable by the Respondents. Further, he argues that the **P10** is only a second chance to take action for the faulty party.

Further, he argued that Section 3 empowers the Director General to obtain the assistance of subordinate officers to carry out the order. Accordingly, **P10** is valid.

Factual matrix

On a perusal of the record, I found that it is asserted that the Petitioner is operating a hotel with the aim of serving foreign visitors, and he operates the same in an area close to the seashore. Initially, according to the Petition, the Petitioner had been issued with certain notices by the competent authority under the State Lands (Recovery of Possession) Act, which the Petitioner has marked as **X** and **Y**. However, pursuant to the said notices, the competent authority had instituted

action against the Petitioner in the Magistrate's Court of Galle. After securing an order of ejectment, the Petitioner has canvassed the same in a Revision Application before the High Court, which is also part of the said document marked as **X**. However, after the dismissal of the said revision application, the Petitioner has filed two appeals before this Court bearing Nos. CPA 47/2025 and CPA 48/2025; and the said matters are still pending before the Court of Appeal.

The Petitioner's complaint

In the meantime, the Department of Coastal Conversation and Coastal Resources Management has issued the document marked as **P10**, directing the Petitioner to remove the structures belonging to the Petitioner. The Petitioner had responded to the said document **P10**, by the document marked as **P11** through his lawyer and had appealed to the Secretary to the Ministry of Environmental Affairs by the document marked as **P12**. Since there was no response, the Petitioner has sought to invoke the jurisdiction of this Court.

Objections

After the issuance of formal notice, the Respondents have filed their Objections. According to the Respondents, the 1st Respondent is the Director General of the Coastal Conversation and Coastal Resources Management Department and is the competent authority, whose powers are properly published as enunciated in the Coast Conversation Act, No. 57 of 1981 (as amended), and relevant Gazettes marked as **X7** and **X8** annexed to the Objections.

The Respondents have further filed aerial photographs marked as **X9** and **X10**, to indicate the area that falls within the purview of the Respondents and the unauthorised construction effected by the

Petitioner, respectively. Further, the Respondents have referred to the two documents **X12(a)** and **X12(b)** sent under Section 31(2) of the Act, directing the Petitioner to remove the unauthorised structure within the time stipulated. Additionally, another letter marked as **X13**, which is a letter responding to the said letters, addressed to the Secretary of the Ministry of Environmental Affairs, and the letter authorising the engineer under the 1st Respondent, who had given **P10**, marked as **X14**, is also annexed to the Objections. Therefore, it is the position of the Respondents that the Petitioner does not have any right to maintain this Application, and the way that the Petitioner's Application is formulated, it should fail as the correct procedure has already been followed in terms of the Act by the relevant competent authorities.

According to the above-mentioned facts and arguments advanced by the parties, it is my view that the following questions arise for my consideration;

- (i) Whether the Petitioner has effected any unauthorised structure in the area proscribed by law
- (ii) Whether such construction can be removed by the 1st Respondent under the Act
- (iii) Whether the 1st Respondent has given due notice to the Petitioner
- (iv) Whether the 1st Respondent has duly authorised the engineer to carry out the orders to remove the said unauthorised structure
- (v) Whether the said engineer falls within Section 3 of the Act

As I have raised the above questions, it is my view that by answering these questions, the issues that have arisen in this Application will be resolved. Accordingly, as placed before me, now I will consider the relevant factual matters.

Unauthorised construction by the Petitioner

According to the Coast Conservation Act, regulations have been made and gazetted, and they are marked as **X1** annexed to the Objections. According to these regulations, rules have been made to identify the ‘setback area’. The setback area is determined according to the vegetation line (from the vegetation line, inwards). Sri Lanka being an island and surrounded by the Indian Ocean (sea), ninety-two setback areas have been identified under the said rules. Within such a setback area, there are two areas identified as ‘Restricted area’ and ‘Reservation area’.¹ The ‘Reservation area’, being closest to the shoreline, serves as a ‘No Build Zone’, where only absolute essential activities are permitted. Conversely, the ‘Restricted Area’ allows for certain low impact development activities, provided that a permit is obtained based on recommendations of the Advisory Council prescribed under the Act.²

The setback area relevant to the instant case has been identified as ‘Setback Area No. 20’, and the 1st Respondent being the competent authority under the Act, is of the opinion that the Petitioner has carried out certain development activities or constructions without obtaining permission under the Act and rules in the said restricted area; therefore, as mentioned above, **X12(a)** and **X12(b)** have been served on the Petitioner. Nevertheless, the Petitioner has not removed the said construction and development effected on the restricted area complying with the said notices.

¹ Paragraph 3(III) of the Statement of Objections; vide document marked as **X8** annexed to the Statement of Objections.

² Part III of the Coast Conservation Act, No. 57 of 1981 (as amended).

However, after a year from the issuance of the said notices given under Section 31(2) of the Act, the Petitioner has been further asked to remove the said constructions, by the impugned document marked as **P10**, on which the Petitioner is seeking a *Writ of Certiorari*. It is further stated that if the Petitioner does not comply with the said notices, the competent authority can authorise a person to carry out such removal; then the expenses incurred has to be borne by the Petitioner. To avoid this, the document marked as **P10** had been issued on the Petitioner, which the Petitioner challenges.

Accordingly, it is very clear that the Petitioner has effected unauthorised structure in the setback area as prescribed by law.

Authority of the 1st Respondent

The 1st Respondent is the competent authority equipped with the necessary powers to remove the unauthorised structure effected in the restricted area falls within the setback area. Further, the Petitioner has not placed any material before the Court to establish that he had already obtained permission from the relevant authority under the Act and Rules to effect such improvements and constructions.

Therefore, the 1st Respondent is empowered under the Act to remove such unauthorised constructions effected within the restricted area; Section 31(4) of the Coast Conservation Act, No. 57 of 1981 clearly spells out the same. In terms of Section 31(4) of the Act, where a person fails to comply with a notice issued under Section 31(2) requiring the removal of an unauthorised construction, the 1st Respondent is empowered to remove such unauthorised construction.

Accordingly, the 1st Respondent, exercising his powers conferred on him, has issued **X12(a)** and **X12(b)** on the Petitioner in terms of Section 31(2). Thereafter, as the 1st Respondent is empowered to delegate his powers to remove such unauthorised construction, has empowered the 2nd Respondent, an engineer, to remove the same. However, the 2nd Respondent, out of abundance of causes, had given further notice by **P10**; such authorisation can also be given in terms of Section 5 read with Section 3, which stipulates thus;

“3. For the purposes of this Act

(a) there shall be appointed a Director-General of Coast Conservation and Coastal Resource Management (hereinafter referred to as 'the Director-General');

(b) there may be appointed

(i) such number of Directors, Deputy Directors and Assistant Directors; and

(ii) such other officers

as may be necessary to assist the Director in the administration and implementation of the provisions of this Act.”

Section 5 of the Act reads thus;

“5. The Director-General may, delegate by an authorization in writing in that behalf to any Divisional Secretary of a Division within which any part of the coastal zone is situated or to any prescribed public officer, as the case may be, any power, duty and function conferred or imposed on, or assigned to, the Director-General, by this Act, other than any

power, duty or function falling within Part III of the Act. The Divisional Secretary or the prescribed public officer shall within such Divisional Secretary's Division or other area of authority exercise, perform and discharge the power, duty or function so delegated subject to the general direction and control of the Director-General.”

Accordingly, the 1st Respondent is empowered to remove any unauthorised constructions in terms of the Act and is also empowered to delegate its powers to the 2nd Respondent to remove such constructions since the 1st Respondent is physically and officially unable to carry it out personally.

Due notice to the Petitioner

The next question that arises for my consideration is whether the 1st Respondent has given due notice to the Petitioner.

As mentioned above, on a perusal of the notices marked as **X12(a)** and **X12(b)**, the 1st Respondent has given due notice in terms of Section 31(2), to the Petitioner. However, the Petitioner has not complied with the said notices.

Thereafter, once the power was delegated to remove to another officer who falls within Section 3, the 3rd Respondent, had given further notice to avoid any inconvenience or expenses recoverable as a duty cast upon the officers once such a removal incurs any expenses, to avoid further embarrassment or losses to the Petitioner.

Therefore, it is my view that both the 1st and 3rd Respondents have so far followed the rules and the Act.

Authority and legality of the Engineer

The next question that arises for my consideration is whether the 1st Respondent has duly authorised.

In terms of Section 5 of the Act, as reproduced above, the Director-General may delegate his powers, other than those falling within Part III of the Act. Part III relates to the issuance of notices. Therefore, the removal of unauthorised constructions does not fall within Part III, and such functions are capable of being delegated. Accordingly, the said powers have been delegated to the 2nd Respondent, who is the Engineer and has been duly empowered by the 1st Respondent through the document marked **X14**, to carry out the removal of unauthorised structures.

Therefore, it is my view that, as submitted by learned State Counsel, the 2nd Respondent is duly authorised to carry out the removal of unauthorised structures in terms of Section 31(4) of the Coast Conservation Act, No. 57 of 1981.

Alternative remedies not considered by the Petitioners

In addition to that, I must address the argument advanced by the learned Counsel for the Respondents, Mr. Fernando, that the Petitioners in both Applications have failed to resort to alternative remedies provided for in Section 31(3) of the Act, where they could have appealed to the Secretary to the line Ministry to obtain administrative relief, without coming before this Court first.

Thus, it is my view that there is no merit in this Application, and as such, this Application is liable to be dismissed.

Conclusion

For the reasons adumbrated above, I dismiss this Application.

However, for the purpose of record I will order nominal cost restricted at Rs. 5,250/- (Five Thousand Two Hundred and Fifty Rupees).

JUDGE OF THE COURT OF APPEAL