

**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.*

Mohamed Zarook Mohamed
Basith,
No. 24/2B, Hill Street, Dehiwela.

CA (Writ) App. No. 86/2021

PETITIONER

Vs.

1. Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
2. Harshan De Silva
Chairman,
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
- 2A. Nimesh Herath
Chairman,
Urban Development Authority,
9th Floor, Sethsiripaya,
Battaramulla.
- 2B. Eng. L.B. Kumudu Lal
Chairman,
Urban Development Authority,

9th Floor, Sethsiripaya, Stage I,
Battaramulla.

3. N.P.K Ranaweera,
Director General,
Urban Development Authority,
6th and 7th Floors,
Sethsiripaya, Battaramulla

3A. Mahinda Withanaarachchi
Director General,
Urban Development Authority,
7th Floor, Sethsiripaya, Stage I,
Battaramulla.

4. Dehiwela Mount Lavinia
Municipal Council, Galle Road,
Dehiwela.

5. Mahinda Rajapaksha,
Hon. Minister of Urban
Development and Housing
Facilities,
The Ministry of Urban
Development and Housing
Facilities,
17th and 18th Floors,
Sethsiripaya, Battaramulla.

5A. Prasanna Ranatunga,
Hon. Minister of Urban
Development and Housing,
Ministry of Urban Development
and Housing,
2nd Floor, "Sethsiripaya"
Battaramulla.

5B. Anura Karunathilaka
Hon. Minister of Urban
Development and Housing,
Ministry of Urban Development,
Constructions and Housing,
12th Floor, "Sethsiripaya", Stage- II
Battaramulla.

6. Sirinimal Perera, Secretary,
Ministry of Urban Development
and Housing Facilities
17th and 18th Floors,
Sethsiripaya, Battaramulla

6A W.S. Sathyananda,
Secretary,
Ministry of Urban Development
and Housing,
17th Floor "Suhurupaya",
Battaramulla.

6B. Ranjith Ariyaratne,
Secretary,
Ministry of Urban Development,
Constructions and Housing,
12th Floor, "Sethsiripaya", Stage- II
Battaramulla.

7. MJ & ML Engineering
Construction (Pvt) Ltd,
No. 245/12, 3/2,
Hill House Gardens, Dehiwela.

RESPONDENTS

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

Counsel:

Ruwantha Cooray with Naamiq Nafath instructed by Ramzi Bacha Associates for the Petitioner.

Rajika Aluwihare, S.C. for the 1st to 3rd and 5th and 6th Respondents.

W. Dayartne, P.C. with Ranjika Jayawardene for the 4th Respondent.

Sanjaya Rajaratnam, P.C with Jude Dinesh for the 7th Respondent.

Argument on: 06.02.2026

Delivered on: 03.08.2026

Judgement

Introduction

The Petitioner is a resident residing at No. 24/2B, Hill Street, Dehiwala, and the 7th Respondent, who is the owner of the premises bearing No. 24/2, Hill Street, Dehiwala, has obtained a Development Certificate, which is marked and annexed to the Petition as **X6**. The **X6** has been issued by the 1st Respondent, the Urban Development Authority (hereinafter referred to as the "UDA"), to erect a building consisting of six floors and three parking floors, comprising 24 apartment housing units. The land on which the proposed building is to be constructed is in extent of 22.72 Perches (574.65 square metres). According to the Development Permit, the floor area of the building is 2927.82 square metres. The Petitioner challenges the said proposed Development Certificate marked as **X6** and the approved Building Plan marked as **X7** on several grounds.

One ground is that the said **X6** has been issued in violation of the regulations marked as **X9(c)**, being the regulations under which the UDA has issued the certificate.

The next ground on which the Petitioner challenges **X6** is that **X6** and **X7**, which is the Building Plan, are also violative of Regulation 96.

In addition to that, the Building and Street Line Certificate issued by the 4th Respondent, the Municipal Council of Mount Lavinia, is contrary to the regulations applicable to the 4th Respondent, which are marked as **X12**. Further, the Building Line applicable to that area is violative of the regulations marked as **X9(c)**.

Therefore, the Petitioner has sought *inter alia* the following relief;

" B. Make order in terms of Article 140 of the Constitution, and call for and examine the entire record maintained by the 1st Respondent and the 4th Respondent, pertaining to premises bearing Assessment No. 24/2, Hill Street, Dehiwala;

*C. Grant and issue mandates in the nature of **Writ of Certiorari**, quashing the **purported Development Permit marked 'X6'** and/or any renewal of the said Development Permit issued in the name of the 7th Respondent and/or any other Development Permit issued in the name of the 7th Respondent contained therein in respect of premises bearing Assessment No. 24/2, Hill Street, Dehiwala;*

*D. Grant and issue mandates in the nature of **Writ of Certiorari**, quashing the **underlying decision** contained in the **purported Development Permit marked 'X6'** and/or any renewal of the said Development Permit and/or any other Development Permit issued in the name of the 7th Respondent in respect of premises bearing Assessment No. 24/2, Hill Street, Dehiwala.*

*E. Grant and issue mandates in the nature of **Writ of Certiorari**, quashing the **approval of the 1st Respondent Authority** and/or the underlying decision of the 1st Respondent Authority in approving the **purported Building Plan marked 'X7'** and/or any amended Building Plan and/or any other Building Plan in respect of premises bearing Assessment No. 24/2, Hill Street, Dehiwala.*

*F. Grant and issue mandates in the nature of **Writ of Certiorari**, quashing the **approval of the 4th Respondent Municipal Council** and/or the underlying decision of the 4th Respondent Municipal Council in **approving the Survey Plan bearing No. 2448 aforesaid marked 'X11(d)'** in respect of premises bearing Assessment No. 24/2, Hill Street, Dehiwala.*

*G. Grant and issue mandates in the nature of **Writ of Certiorari**, quashing the **Street Line/Building Line Certificate** marked as 'X12' issued by the 4th Respondent Municipal Council and/or the underlying decision of the 4th Respondent Municipal Council to issue the Street Line/Building Line Certificate marked as in respect of premises bearing Assessment No. 24/2, Hill Street, Dehiwala.*

*H. Grant and issue mandates in the nature of **Writ of Prohibition** prohibiting any one or more of the 1st to 4th Respondents and their employees, servants or anyone acting under them from issuing a **Certificate of Conformity** and/or any other approval to any building that is being constructed at premises bearing Assessment No. 24/2, Hill Street, Dehiwala, save and except as provided for by the law;*

I. Grant and issue mandates in the nature of Writ of Mandamus compelling the 1st to 2nd to demolish the illegally and unlawfully constructed building that is being constructed at premises bearing Assessment No. 24/2, Hill Street, Dehiwala, in terms of the Urban Development Act (as amended);” [Emphasis is mine]

On a perusal of the record, I found that the 1st, 2nd, 3rd, 5th, 6th, and 8th Respondents have filed their separate Objections and, by their Objections, they have sought the dismissal of the Application. However, according to the said Objections of the said Respondents, the Development Plan and the Development Certificate had been approved, since there was compliance with all the requirements according to the regulations. Therefore, they deny the allegations directed against them by the Petitioner. The 7th Respondent has filed the Statement of Objections, denying the allegations levelled against him, and has further sought a dismissal of this Application.

Thereafter, responding to the Objections filed by the Respondents, Counter Affidavits were filed by the Petitioner.

However, when this matter came up for argument before me on 06.02.2026, the learned Counsel for all the Respondents, including Mr. Aluwihare, who appeared for the 1st to 3rd and 6th Respondents; Mr. W. Dayaratne, President's Counsel, who appeared for the 4th Respondent; and Mr. Sanjaya Rajaratnam, President's Counsel, who appeared for the 7th Respondent developer, raised preliminary objections with regard to the maintainability of this Application on the basis that the main relief sought by the Petitioner is principally against the 7th Respondent, namely, to quash the approval of the Development Certificate and approved Building Plan issued by the UDA, marked as **X6** and **X7** respectively.

Therefore, by now, the one-year period has lapsed, and those certificates have also lapsed, particularly **X6** and **X7**.

Accordingly, the relief sought to quash those certificates has also been rendered academic. Since the matter has become an academic exercise, it was contended that these proceedings need not proceed any further.

In addition to that, all the other certificates issued by the relevant agencies, including the Electricity Board and the Fire Brigade, are also valid only for one year.

In addition to that, it was further admitted by all learned Counsel that, before the stay order in this case was issued, construction had already commenced under the original Development Certificate. Thereafter, from time to time, the stay order was extended, and the construction has now come to a halt. It was further submitted that, even if the 7th Respondent wishes to proceed with the construction, he would have to renew his application and obtain fresh approvals, as the previous approvals cannot now be relied upon. Therefore, it was contended that this application cannot be maintained against the Respondents. On that basis, all parties tendered their respective submissions.

It is argued on behalf of the 7th Respondent, basically, that whatever relief is sought against the 7th Respondent is to stop the building by quashing **P6**, the Development Certificate, and **P7**, the approved Building Plan. Therefore, after the stay order, although the building had already commenced prior to the issuance of the stay order, the construction no longer continued thereafter by the developer. Further, the 7th Respondent never sought the renewal of those certificates and, in addition to that, has never made an application to renew them after the lapse of those certificates. Therefore, it has now rendered it nugatory for the Petitioner to maintain this application, since he has sought to quash the two certificates, **P6** and **P7**, which have already lapsed.

Therefore, if this Court proceeds with the main arguments on the merits, or directs the parties to advance their main arguments and thereafter decides the matter on the merits, that would merely be an academic exercise.

The other learned Counsel, Mr. Aluwihare, having associated himself with the same argument, further argued that the Petitioner has not come before Court with clean hands. In addition to what was submitted by Mr. Rajaratnam, learned Counsel appearing for the 1st to 3rd, 5th, and 6th Respondents submitted that the Petitioner has not come with clean hands because he has suppressed the fact that construction had already commenced after the issuance of the Development Certificate and the approved Building Plan.

In addition to that, certain other preliminary objections were also raised by Mr. Aluwihare by way of his written Statement of Objections. Nevertheless, it is also his application that this Application be dismissed since there is no purpose in the Petitioner obtaining the writs sought, as the matter has now become merely academic.

I have considered the facts pleaded in the Petition by the Petitioner. Accordingly, the Petitioner basically challenges the Development Certificate, **X6** issued on the basis that it is violative of

the regulations issued by the 1st Respondent. The land is situated within a high-density commercial area coming under the Dehiwala–Mount Lavinia Municipal Council. The regulations applicable to such buildings are marked as **X9(c)**. The Petitioner challenges the proposed high-rise building of nine floors on the basis that the said Building Plan could not have been approved due to *inter alia* following reasons.

According to the extent of the land, such a high-rise building comprising three parking floors and six residential floors cannot be erected due to the length and width of the land, which is violative of the applicable regulations.

In addition to that, it is the Petitioner's contention that the roadway leading to the proposed building site is less than nine metres in width and also ends in a dead end. Therefore, since the roadway leading to the proposed building exceeds 30 metres in length, there should be a turning circle of the required diameter, which the 7th Respondent has not provided.

Therefore, it is contended that the Building Plan approved, together with the Street Line Certificate approved by the Municipal Council, is also violative of the applicable regulations. As such, the Development Permit, **X6** and the Building Plan marked as **X7** are violative of the regulations issued by the 1st Respondent under the UDA Law, as well as the regulations of the Municipal Council.

Therefore, initially, the Petitioner obtained a stay order. Although construction had commenced prior to the issuance of the stay order, it is common ground that, after the stay order was issued, there was no further progress in the construction.

In addition to that, the Development Permit, **X6** and the approved Building Plan, **X7**, were issued only for a duration of one year, and within that one-year period the 7th Respondent did not complete the building.

Therefore, those approvals have already lapsed. As such, each and every one of the main reliefs prayed for, from prayers (C) to (I), has been rendered nugatory because there is no useful purpose in granting them. It is, as the learned Counsel argued, akin to ‘flogging a dead horse’. Therefore, as correctly argued by learned Counsel, it is my view that this application should be dismissed.

However, an argument was advanced by the Petitioner in answer to the same preliminary objections, as reflected in the written submissions, that the Petitioner has also sought a *Writ of Prohibition* as prayed for in prayer (H), whereby the Petitioner seeks to prevent the 1st to 6th Respondents from issuing a ‘Certificate of Conformity’ in respect of the building for operational and occupation purposes.

However, the issuance of a Certificate of Conformity would not arise unless the building is completed. The construction of the building has already been stayed after the issuance of the stay order in this case. Accordingly, it is my view that there is no purpose in proceeding with this application, and, as such, this application is dismissed without costs.

To buttress my view above, I rely on the observations of Justice Surasena *Ajith Hiran Samarasundera and Others v. Dehiwala-Mount Lavinia Municipal Council and Others*¹;

This court also observes that the main prayer of the petitioner is to obtain a writ of certiorari to quash development permits produced marked P9(a) and P9(b). It is a fact that the validity period in both the said permits have now lapsed. Therefore, this Court is of the view that quashing the said two permits would anyway be futile. In these circumstances this court decides not to entertain this application. Therefore, this court

¹ CA/WRT/0396/2017 (CA Minutes 10.07.2018).

decides to refuse to issue notices on the respondents and proceed to dismiss this application without Cost (at page 05).

However, in the future, I will keep this matter open in the event the 7th Respondent seeks permission from the relevant Respondents to obtain a fresh Development Certificate and an approved Building Plan based on the same plan. In such circumstances, if the Petitioner has a cause of action based on the same facts, it will be open to him to assert his rights by way of a separate application.

Conclusion

Accordingly, for the reasons adumbrated above, I am compelled to dismiss this Application, without costs.

JUDGE OF THE COURT OF APPEAL