IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writs of *Certiorari* and *Mandamus*.

Court of Appeal Case No:
CA/WRIT/246/2021

Koralage Dona Rasika Priyadarshanie,
"Indunila",
Mampe,
Piliyandala.

PETITIONER

Vs.

1. Urban Development Authority,
   6th, 7th and 9th Floors,
   "Sethsiripaya", Battaramulla.

2. Chairman,
   Urban Development Authority,
   6th, 7th and 9th Floors,
   "Sethsiripaya", Battaramulla.

3. Director General,
   Urban Development Authority,
   6th, 7th and 9th Floors,
   "Sethsiripaya", Battaramulla.

4. Deputy Director General (Planning),
   Urban Development Authority,
   6th, 7th and 9th Floors,
   "Sethsiripaya", Battaramulla.

5. Ceylon Petroleum Corporation,
   609, Dr, Danister De Silva Mawatha,
   Colombo 09.

6. Harshan De Silva,

7. N.P.K. Ranaweera,

8. H.A. Dayananda,

9. M.P. Ranathunga,

10. Mahinda Withanaarachchi,

11. Thushani De Alwis,

12. Lalith Wijayarathne,

13. N.A.S.N. Nissanka,

14. Dayani Frances,

15. V.A.G.K. Gunathilake,

16. I.P.S. Somasekara,

17. E.A.C. Priyashantha,

18. Priyani Nawarathne,

19. M.H.V.R. Kumar,

20. Veranjan Kurukulasuria,

21. H.M.R.B. Herath,

22. S. Opanayake,

23. I.S. Weerasoori,

24. Kishan Sugathapala,

25. Shereen Amendra,

26. Hester Basnayake,

27. A.M.C.W. Bandaranayake,

28. Sujani P. Pilapitiya,

29. K.G.S. Jayawardana,

30. P.M.P. Wijeratne,

31. K.P.I.U. Dharmapala,

32. W.M.U.P. Kumara,

33. A. Dissanayake,

34. D.P.D.M.H. Dissanayake,

35. H.E.I. Karunarathe,

6th to 35th Respondents are members of the Main Planning Committee,
Urban Development Authority,
6th, 7th and 9th Floors,
"Sethsiripaya", Battaramulla.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Kapila Liyanagamage for the Petitioner. Rifana Mukthar, S.C. for the 1st to 5th Respondents.
Argued on:	26.01.2026, 24.02.2026 and 19.03.2026.
Written Submissions:	For the Petitioner on 19.03.2026. For the 1st to 4th Respondents on 24.03.2026.
Decided on:	27.05.2026.

Mayadunne Corea J

The Petitioner in this application sought, inter alia, the following reliefs:

> "*b) Issue a mandate in the nature of Writ of Certiorari quashing the decision of the 1st Respondent and/or the Main Planning Committee of the 1st Respondent consisting of the 2nd to 4th and 6th to 35th Respondents contained in the letter marked P16 to reject the building application submitted by the Petitioner bearing no. BA/11KSBUC/2018/04/06/2848F and dated 6th April 2018*
>
> *c) Issue a mandate in the nature of Writ of Mandamus directing the 1st Respondent and/or the Main Planning Committee of the 1st Respondent consists of the 2nd to 4th Respondents and the 6th to 36th Respondents to grant the Petitioner a building permit in respect of the building application submitted by the Petitioner bearing no. BA/11KSBUC/2018/04/06/2848F and dated 6th April 2018 to construct a filling station on the allotment of land depicted as lot 1 in the plan marked P2 as per the approval granted by the 5th Respondent by letter marked P10*"

The facts of this case, in brief, are as follows. The Petitioner became the owner of a land called "Maha Kumbura" by virtue of a deed of gift no. 5007 dated 09.04.2014. The Petitioner states that the area in which the said allotment of land is situated was declared as an urban development area under section 3 of the Urban Development Authority Law, No. 41 of 1978, and accordingly, that the power to grant permits in respect of development activities within the said area is vested with the 1st Respondent, the Urban Development Authority (herein sometimes referred to as 'UDA').

The Petitioner wished to construct a filling station on the said land, and thereby submitted a building application to the 1st Respondent. By letter dated 14.05.2018, the 1st Respondent informed the Petitioner that the building application had been submitted to the meeting of the district planning committee of the 1st Respondent, where it was decided that the application would be referred to a sub-planning committee of the 1st Respondent since the land had access to the Kesbewa by-pass road. Subsequently, by letter dated 11.05.2021 (P16), the Petitioner was informed that the building application was rejected by the main planning committee of the 1st Respondent on the basis that access to non-residential use is restricted by Gazette no. 188/48 dated 14.11.2014 and that a filling station is not an approved use within the paddy zone according to the zonal plan prepared by the 1st Respondent. Hence, this Writ application.

The Petitioner's contention

The Petitioner challenged the acts of the Respondents on the following grounds:

- The Road Development Authority has no objection to the construction of the filling station on a land with access to the Kesbewa by-pass road.
- The 1st Respondent had previously granted approval for the Petitioner to operate an organic agri-food shop on the same land having access to the Kesbewa by-pass road.
- The 1st Respondent has permitted the operation of several other business on premises with access to the Kesbewa by-pass road, including a cement warehousing complex, building material yard, a medical centre and a guest house.
- The 1st Respondent had acted in violation of the legitimate expectations of the Petitioner.
- The acts of the Respondents are unreasonable, arbitrary, *ultra vires*, illegal, unlawful and tainted with malice.

At the hearing the Counsel for the Petitioner confined the grounds for the Writ to the following:

> "*The grounds given in rejecting the building application in P16 is erroneous and hence, the rejection is ultra vires*".

The Respondents' contention

The 1st to 4th Respondents raised the following objections:

- The Petitioner has no *locus standi*.
- The Petitioner has failed to name necessary parties.
- The Petitioner has failed to disclose all material facts and is guilty of suppressing and misrepresenting material facts.
- The Petitioner is guilty of laches.
- The Petitioner's application is futile.

Analysis

I will now examine the Petitioner's contention with the Respondents objections. At the commencement of the arguments, the Petitioner informed Court that, subsequent to the filing of the original petition, an amended petition dated 10.11.2021 had been filed, and that the arguments were based on the said amended petition. The learned State Counsel also confirmed this position and stated that objections had been filed in response to the amended petition.

The Petitioner also submitted that some of the Respondents named have ceased to hold office but the Petitioner is not seeking to amend the caption of the petition.

It is common ground that the corpus relating to the proposed construction is within an area designated as a special development area by the UDA by virtue of a Gazette published under section 3 of the Act. It is also not in dispute that the corpus is bordering the new Kesbewa by-pass road and has sought access through the Kesbewa by-pass road which is

published in the Gazette Notification no. 1888/48 dated 14.11.2014 (1R3). It is also common ground that by virtue of the Urban Development Authority Law, No. 41 of 1978 as amended, the power to grant permits to carry out development activities within the said area is vested with the 1st Respondent.

The Petitioner owns the corpus

The Petitioner contends that he is the owner of the corpus by virtue of deed no. 5007 dated 09.04.2014, pertaining to an extent of 1 rood and 9 perches, which is more fully depicted in plan no. 4307 dated 12.03.2014. The said deed and plan have been marked respectively as P1 and P2. It is contended that the Petitioner has obtained the non-vesting certificate and the street line certificate in the year 2017, which are marked and tendered as P3 and P4 respectively.

The Petitioner's application to construct a filling station

The Petitioner contends that, as she intended to construct a filling station on her land, she made an application for that purpose. Prior to making the said application, the Petitioner had obtained approvals/recommendations from the following State institutions:

- Department of Agrarian Development (P5)
- Sri Lanka Land Reclamation and Development Corporation (P6)
- Divisional Secretary (P8)
- Central Environmental Authority (P9)
- Ceylon Petroleum Corporation granting approval to establish a dealer owned category of the Lanka filling station on corpus (P10)

It is alleged that the Petitioner thereafter, had tendered a building application with the building approval plan to the 1st Respondent, a copy of which has not been tendered to this Court by the Petitioner. However, the Respondents have tendered a copy of the said building application marked as 1R1.

It is observed by this Court that the document marked P5, dated 02.06.2014, had been issued subject to several conditions, granting approval to the Petitioner to utilize the land

for a business purpose. The said conditional permission specifically states it was issued for a period of one year. Paragraph 3(අ)(IV) reads as follows:

> "*ඉහත සඳහන් කාර්-යය/ගොඩකිරීම සඳහන් දින සිට වසරක් (අවු 01) ඇතුළත අවසන් කළ යුතුය.*"

By document P6, the Sri Lanka Land Reclamation and Development Corporation had also granted conditional approval, subject to the conditions stipulated therein, the conditions imposed in P5 being complied with, and further subject to approval being obtained from the 1st Respondent, namely the UDA, and other relevant State institutions. The Petitioner, on 17.09.2015, had obtained a separate number for the corpus from the Gramasevaka of the area (P7).

By the document marked as P8 dated 17.05.2016, the Divisional Secretary had recommended the establishment of the filling station on the basis of a Grama Niladhari report stating that there was no public protest in relation thereto.

The Central Environmental Authority, by its letter dated 21.02.2017 (P9), had issued a conditional no-objection letter to have a filing station. The said letter has a validity period of one year and was further subject to obtaining approvals from the 1st Respondent and the other State institutions referred to therein.

The 5th Respondent too had granted authority to set up a filling station subject to several conditions, including the condition to obtain the relevant approvals from the State authorities mentioned thereon. It is also stated that the proposed plan for the filling station should be approved by the 5th Respondent before the commencement of the construction. Whether the said plan was given to the 5th Respondent and whether the the requisite approval had been obtained, has not been disclosed to this Court. This Court further observes that, by letter dated 15.02.2021, the 5th Respondent had granted a further extension of time for a period of three months from 15.05.2021. The said approval was made subject to the Petitioner establishing title to the land by furnishing a non-vesting certificate and a street line certificate obtained afresh. Whether these conditions had been complied with was not disclosed to the Court by the Petitioner.

The Petitioner also tendered to this Court a letter issued by the Road Development Authority, whereby, in response to the Petitioner's request for access to the by-pass road, the Road Development Authority had informed the Petitioner that the said road had been declared a limited-access road by the Gazette marked as 1R3. The Road Development Authority had further stated that, subject to obtaining approval from the UDA for the same, it had no objection thereto.

The Petitioner argues that, subsequent to the above building application being made to the 1st Respondent, the said Respondent had failed to send a reply, which prompted the Petitioner to write a letter through her Attorney-at-Law to the 1st Respondent. It is alleged that this resulted in the Petitioner receiving the impugned document P16 dated 11.05.2021, whereby her building application had been rejected by the 1st Respondent. It is contended that as per the said letter, the building plan submitted to the main planning committee had been rejected on 27.11.2020 on two grounds. The grounds enumerated in the said letter reads as follows:

> "*1. Access to non-residential use through the Kasbwa Bypass road is restricted as per Gazette Notification No. 1888/48, dated 14th November 2014, published by the Road Development Authority.*
>
> *2. According to the zoning plan prepared by the Urban Development Authority, the filling station is not an approved use within the paddy zone*."

The Petitioner contends that both grounds are based on erroneous facts and incorrect legal positions, and thereby contends that the rejection founded on the said grounds is bad in law.

Let me now consider the said grounds upon which the application has been rejected.

Is access to non-residential use through the Kesbewa/Piliyandala by-pass road restricted as per Gazette Notification no. 1888/48?

The Gazette Notification no. 1888/48 dated 14.11.2014, marked and tendered by the Respondents as 1R3, reads as follows:

THE NATIONAL THOROUGHFARES ACT, No. 40 of 2008

Order under Section 8

BY virtue of the powers vested in me by Section 8(1) of the National Thoroughfares Act, No. 40 of 2008 read with Article 44(2) of the Constitution, I, Mahinda Rajapaksa, President, do by this Order declare the road specified in the Schedule to this Order, to be a National Highway.

04th November, 2014

SCHEDULE

Name of the Road	Section (km)	
	From	To
Western Province:		
1. Piliyandala Bypass	*0.000*	*2.865*
Requirement under Section 10 (Annex 1)		

As per this Gazette, it appears that what has been published is the declaration of the Kesbewa/Piliyandala by-pass road as a national highway pursuant to section 8(1) of the National Thoroughfares Act, No. 40 of 2008. The said section reads as follows:

> "*8. Declaration of National Highways*
>
> *(1) The Minister may by Order published in the Gazette declare any road or public road or classes of roads or public roads to be a national highway or national highways, as the case may be*"

It is the contention of the Petitioner that the main ground to refuse her building application is that she cannot have access through the by-pass road as access to the said road is restricted. A plain reading of P16 clearly establishes this. However, does section 8(1) restrict access? The plain reading of the section does not place a restriction. It has only named the said by-pass road as a national highway. Further, as submitted by the learned Counsel for the Petitioner, I find that a restriction can be imposed under the National Thoroughfares Act, but that is not pursuant to section 8(1) but pursuant to section 9 of the said Act. The Respondents have failed to tender any Gazette whereby the said stretch of road had been declared under section 9 of the Act. Hence, what is before Court is a Gazette that has declared the by-pass road as a national highway under section 8(1) of the Act and is not a declaration pursuant to section 9 of the Act. Section 8(1) does not impose a restricted access. Even though the learned State Counsel contended that the access to the by-pass road is restricted she was not in a position to demonstrate to Court any other Gazette that has declared the by-pass road to have restricted access under section 9. In the absence of such material, the Court has to rely on the material available and considering the material tendered to this Court, the only conclusion that this Court can arrive at is that what has been published in the Gazette is merely the naming of the by-pass road as a national highway. Upon inquiry, the learned Counsel for the Respondents conceded that the said section does not impose any restriction to access.

As per the submissions, the Court observes that the Petitioner's building application has been rejected on the basis that there is restricted access to the by-pass road. The impugned document P16 specifically mentions the Gazette that restricts road access. As observed above, if a road is to have a restricted access, the said part of the road should be declared by a Gazette published under section 9 of the Thoroughfares Act and not under section 8(1) as in the case before us.

This would be an opportune time to consider section 9 of the Thoroughfares Act, which reads as follows:

> "*9. Declaration of Expressways &c,.*
>
> *(1) The Minister may by Order published in the Gazette designate a national highway declared in terms of section 8, to be-*
>
> *(a) an expressway; or*
>
> *(b)* ***a restricted access highway****.*

(2) For a national highway to be designated as an expressway or as a restricted access highway, as the case may be, under subsection (1)-

(a) the national highway should be designated specially for high speed movement of vehicular traffic with minimum interference to such high speed traffic movements;

(b) the national highway should not serve the properties bordering it.

(3) The Minister may designate a national highway to be an expressway under subsection (1), if he is satisfied that the number of interchanges that affects high speed movement of vehicular traffic along that national highway is minimal.

(4) ***The Minister may designate a national highway to be a restricted access highway under subsection (1), if he is satisfied that the number of interchanges affecting high speed movement of vehicular traffic along that national highway is relatively more in number***." (emphasis added)

Upon a plain reading of the section, it is clear that the restriction to access can only be done pursuant section 9 of the Act. Considering section 8 of the Act as opposed to section 9, I am inclined to agree with the submissions of the learned Counsel for the Petitioner. In the absence of any material to establish that the Minister had designated the road as a restricted access highway, in my view, the first ground to reject the building application marked as P16 cannot be sustained.

This takes me to the next ground on which the Petitioner is impugning the refusal marked as P16.

Can the application be refused according to the zoning plan?

The learned State Counsel submitted that even if the first ground fails, still the Petitioner cannot succeed as there is a zoning plan prepared for the Kesbewa development project and as per the said plan, the corpus to be developed falls within a paddy zone and not within the business zone. To substantiate her argument, she relied on the document marked and tendered as 1R4. It appears the said zoning plan is made for the period from 2022 to 2032 and is title "**proposed** building plan**".** Hence, it does not appear to have been published by way of a Gazette. It was the contention of the learned State Counsel that as per the plan

marked 1R3, the proposed corpus falls within the paddy zone. In response, the Counsel for the Petitioner contended that her application had been tendered for approval in 2018, while the Gazette the Respondents are relying on to reject his application on the basis of the corpus falling within a paddy zone is for the period commencing from 2022 to 2032. Further, the rejection by P16 had been informed in May 2021, which once again is a date prior to the zoning plan tendered by the Respondents coming in to affect. The Petitioner's application was marked and tendered to Court by the Respondents as 1R1 and establishes the Petitioner's contention that the building application was tendered in the year 2018. In the given circumstances, it appears the second ground the Respondents relied on to reject the building application was based on a zoning plan that had not been published by way of a Gazette or the relevant the period where the building application was tendered.

This Court specifically asked the learned State Counsel whether there was a zoning plan in existence prior to the zoning plan marked as 1R4 (a copy of the same had been marked and tendered as X2 by way of a motion dated 10.05.2023). The reply was in the negative. Hence, it appears the second ground relied upon by the Respondents based on the zoning plan cannot be sustained as the considered zoning plan is not for the particular time period the building application was made.

Let me now consider the objections raised by the Respondents.

Addressing the objections of the Respondents

The learned State Counsel has failed to substantiate any of the grounds that were raised in objection to the application, namely, in view of the Petitioner establishing the title to the corpus and submitting the building application, the objection based on *locus standi* fails.

Although an allegation was made on suppression of material facts, laches and futility, none of these grounds were established by the Respondents.

Prayers of the Petitioner

In my view, as per the reasoning above, the Petitioner has established that the decision contained in P16 is bad in law. Hence, prayer (b) of the Petition has to succeed.

By prayer (c), the Petitioner is seeking a Writ of Mandamus against the 1st to 4th and 6th to 36th Respondents to grant the building permit. However, for this application the Petitioner is relying on the approvals she has received from the State institutions marked as P3 to P14. On a careful consideration of the said documents, it appears that all these approvals are given with a time limit and the said time limit has passed. The Petitioner has failed to tender any material to state that the said approvals have been extended. It appears that some of the approvals, including the approval marked P5, had expired prior to the Petitioner handing her building application.

Hence, in my view, the Petitioner has to obtain fresh approvals before she tenders the building application. Further, the Writ of Mandamus is prayed against the 1st to 4th and 6th to 36th Respondents. However, the Petitioner's Counsel concedes that the 6th to 36th Respondents have ceased to exist. However, no steps were taken to amend the caption. Hence, this Court cannot issue a Writ of Mandamus against parties who are not before Court and who have since ceased to hold the office. Such an order from this Court be futile as the said Respondents are personally named.

In the case of ***Dinga Thanthirige Jayalath Perere v. Vice Admiral, Commander of Sri Lanka Navy and 7 others*** **SC Appeal 11/2017, SC Minutes 11.01.2023**, the Supreme Court held as follows:

> "*The common law recognizes multiple grounds on which the refusal to issue the writ would be justified under certain circumstances. Futility in issuing the writ is one such ground. Court will not issue the writ in favour of a petitioner, if it is evident that the issuance of the writ would be futile, as the writ issued by Court would remain only as an order of Court, and would not yield any relief to the party who sought the writ. Dr. Sunil Coorey in Principles of Administrative Law in Sri Lanka (4th Edition, Volume 2, page 1172) has lucidly captured this principle in the following manner:*
>
> > *'Certiorari will not be issued to quash a particular exercise of power if it be futile to do so because it is no more operational or it has had its effect.*

However, if there be any practical benefit (in the form of a clarification of the legal position) for the future, either to the Petitioner or to the public at large, by quashing an exercise of power which is no more operational or has had its effect, certiorari will nevertheless issue to quash such exercise of power.'

As pointed out by learned Senior State Counsel for the Respondents, in ***Siddeek v. Jacolyn Seneviratne and three others****, [(1984) 1 Sri L.R. 83], it has been held that Court will not issue a writ of certiorari where the end result will be futility, frustration, injustice and illegality*."

Hence, issuing a Writ of Mandamus against the 6th to 36th Respondents who have ceased to hold office, in any case, becomes futile. Accordingly, for reasons stated above, prayer (c) has to fail.

Conclusion

I have considered the submissions made and the documents tendered. For the reasons stated above, in my view, the Petitioner is successful in obtaining the relief prayed under prayer (b). Hence, this Court proceeds to issue a Writ of Certiorari to quash the decision contained in P16. However, I am not inclined to grant the reliefs prayed by prayer (c). Hence, this Court refuses to issue a Writ of Mandamus as prayed for in prayer (c).

The Petitioner has been partially successful in this application. Hence, the parties are to bear their own costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal