

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

In the matter of an application for Mandates in the nature of *Writs of Prohibition*, and *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0042/2025

1. Colombo Municipal Council,
Town Hall,
Colombo 07

2. Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 07.

3. Chief Legal Officer,
Colombo Municipal Council,
Town Hall,
Colombo 07.

4. Director Engineering (Land Management and
Environmental Development),
Colombo Municipal Council,
Town Hall,
Colombo 07.

PETITIONERS

Vs.

1. Honourable Additional Magistrate of Colombo,
Magistrate's Court No. 06,
Hulftsdorp,
Colombo 12.
2. Registrar,
Magistrate's Court No. 06,
Hulftsdorp,
Colombo 12.
3. Officer-in-Charge,
Police Station,
Modera.
4. Fathima Farhana Uvais,
No. 844/5, Aluth Mawatha,
Modera,
Colombo 15.
5. Mohomed Ali Mohomed Farshan,
No. 844/11, Aluth Mawatha,
Modera,
Colombo 15.
6. Ponniah Pathmaraj,
No. 844/10/A, Aluth Mawatha,
Modera,
Colombo 15.

7. Baskarana Lechchuman,
No. 844/9, Aluth Mawatha,
Modera,
Colombo 15.
8. Prema Selvakumar,
No. 844/10, Aluth Mawatha,
Modera,
Colombo 15.
9. Sylvia Rupa Fernando,
No. 844, Aluth Mawatha,
Modera,
Colombo 15.
10. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Senany Dayaratne with Nishadi Wickremasinghe, Janani Abeywickrema
and Maheshika Bandara for the Petitioners.
Maheshika Silva D.S.G. with Prabhashinee Jayasekara S.C for the
3rd and 10th Respondents.
Keerthi Thilakaretne for the 9th Respondent.

Argued on : 13.02.2026

Written Submission

Tendered on : 13.03.2026 by the Petitioner.

Decided on : 02.04.2026

Adithya Patabendige, J.

The Petitioners invoke the writ jurisdiction of this Court seeking, *inter alia*, a mandate in the nature of a *writ of certiorari* to quash the part of the order of the Learned Primary Court Judge of Colombo dated 15th January 2025 marked **P22**, made in proceedings bearing No. 61353/06/21 in Primary Court of Colombo, purportedly in terms of Part VII of the Primary Courts' Procedure Act, No. 44 of 1979. The Petitioners further seek a mandate in the nature of a *writ of prohibition* preventing the Respondents from taking steps to give effect to the said order marked **P22**, insofar as it affects the Petitioners.

The gravamen of the Petitioners' application is that the said order has been made without jurisdiction, in that it imposes obligations on persons who were not parties to the proceedings and further contains directions which fall outside the limited scope of the jurisdiction conferred under Part VII of the said Act.

It is observed that when this case was taken up for arguments on 13th February 2026, none of the Respondents filed their respective Statements of Objections. Although all the parties were dispatched notices, the 5th, 6th, 7th, and 8th Respondents were absent and unrepresented.

Factual Background

Proceedings in case No. 61353/06/21 were initiated before the learned Judge of the Primary Court of Colombo upon facts reported by the Officer-in-Charge of the Modera Police Station concerning a dispute between the 4th to 8th Respondents and the 9th Respondent relating to the use of a roadway (vide. **P1**).

By order dated 02nd May 2023, marked **P3**, the learned Judge of the Primary Court made an order recognising the right of the 4th to 8th Respondents to use the disputed road.

Subsequently, the 9th Respondent made an application before the Primary Court upon additional complaints relating to drainage connections and related matters (vide **P4(a)**, **P4(b)** and **P5**).

It is significant that at no stage of the proceedings were the Petitioners made parties to the said case, as evident from the journal entries, proceedings, and related documents.

Notwithstanding the absence of the Petitioners as parties, certain notices were issued to officers of the 1st Petitioner, including the Chief Legal Officer and the Director of Engineering, following a site inspection carried out by the learned Judge of the Primary Court (vide **P9(a)** and **P9(b)**).

The Petitioners state that such notices were received belatedly and that they thereafter made representations to the Court through a legal officer, primarily to assist the Court by furnishing information pertaining to the subject matter. (vide **P12**).

Reports were subsequently submitted by the relevant officers of the 1st Petitioner regarding the drainage system and the nature of the roadway, confirming, *inter alia*, that the road in dispute was a private road and that the sewer lines in question were not connected to the main sewer system maintained by the 1st Petitioner (vide **P17(a)**, **P17(b)**, **P17(c)** and **P18**).

Following these proceedings, the learned Judge of the Primary Court, by order dated 15th January 2025, marked **P22**, made several directions, including:

- directing the Chief Legal Officer of the 1st Petitioner to take steps to connect the sewage lines of the 9th Respondent to the main sewer line maintained by the 1st Petitioner;
- directing steps to be taken in respect of adjoining properties; and
- directing the felling of certain trees within a specified period.

The said order further indicated that action could be taken in terms of Section 73 of the Act against persons acting in breach thereof.

Aggrieved by the said order, which was addressed to and imposed obligations upon the Petitioners who were not parties to the proceedings, the Petitioners have invoked the writ jurisdiction of this Court.

Issues for Determination

In the above circumstances, the principal issues that arise for determination are:

- Whether the learned Judge of the Primary Court, exercising jurisdiction under Part VII of the Primary Courts' Procedure Act, has the power to make orders binding on persons who were not parties to the proceedings.
- Whether the impugned order dated 15th January 2025 (P22) falls within the scope of the jurisdiction conferred under Part VII of the Primary Courts' Procedure Act, or whether it is *ultra vires*.

Analysis

At the outset, it is to be observed that the proceedings in question were conducted under Part VII of the Primary Courts' Procedure Act, which confers a special and limited preventive jurisdiction to the Judge of the Primary Court to intervene in disputes relating to land where a breach of the peace is threatened.

The purpose of such jurisdiction is preventive, aiming to preserve peace between disputing parties until a Court of competent jurisdiction decides their substantive rights. The orders made under this Part are therefore temporary and between the parties, not meant to definitively settle rights or impose obligations beyond those involved in the dispute.

It is not in dispute that the Petitioners were not parties to the proceedings in case No. 61353/06/21. The material placed before the Court, including the journal entries and related documents, clearly establishes that the proceedings were between the 4th to 9th Respondents.

The involvement of the Petitioners arose only at a later stage, when certain officers were called upon to assist the Court by providing information. Such participation, in view of this Court, cannot be equated to being made parties to the proceedings.

In that context, the question arises whether the learned Judge of the Primary Court was empowered to issue directions imposing obligations on the Petitioners.

The scheme of Part VII does not contemplate the imposition of binding directions upon persons who are strangers to the proceedings. The jurisdiction is inherently confined to regulating the conduct of the disputing parties so as to prevent a breach of the peace.

To extend such orders to non-parties would not only be inconsistent with the statutory framework but would also offend the basic principles of natural justice, inasmuch as

obligations would thereby be imposed on persons without affording them a sufficient opportunity of being heard.

Accordingly, this Court is of the view that the learned Judge of the Primary Court lacked jurisdiction to make orders binding on the Petitioners.

Even assuming that the Petitioners were properly before the Court, it is necessary to examine whether the nature of the directions contained in **P22** falls within the scope of the jurisdiction conferred by Part VII.

A perusal of the impugned order reveals that the learned Judge of the Primary Court has directed:

- the connection of sewage lines to the main sewer system,
- the undertaking of certain works in relation to adjoining lands; and
- the felling of trees within a specified period.

Such directions, in substance, amount to positive and enforceable obligations that require the execution of works and the exercise of administrative or proprietary functions.

I am of the view that such directions go beyond the limited mandate of the Primary Court under Part VII, which is confined to making temporary and preventive orders to maintain the *status quo* and prevent disturbances.

The jurisdiction under Sections 66–69 does not extend to:

- enforcing infrastructural or administrative measures;
- directing public authorities to undertake specific works; or
- granting reliefs of a substantive or executory nature.

Such matters properly fall within the domain of a Civil Court or other competent authority, where the rights and obligations of parties may be fully adjudicated.

Therefore, the impugned order is also *ultra vires*, in that it travels beyond the jurisdiction conferred by the Primary Courts' Procedure Act.

For the reasons set out above, this Court holds that the impugned order dated 15th January 2025 marked **P22** is vitiated on two independent grounds.

- 1) It is made against persons who were not parties to the proceedings, and
- 2) it contains directions which fall outside the scope of the jurisdiction conferred under Part VII of the Primary Courts' Procedure Act.

Accordingly, the said order cannot be sustained in law.

Conclusion and Order

For the reasons set out above, this Court is satisfied that the impugned order dated 15th January 2025 marked **P22**, made by the learned Judge of the Primary Court in case No. 61353/06/21, has been made without jurisdiction and is therefore liable to be quashed.

Accordingly,

- (a) a mandate in the nature of a *Writ of Certiorari* is hereby issued quashing the part of the order dated 15th January 2025 marked **P22** made in case No. 61353/06/21 of the Primary Court of Colombo, **insofar as it affects the Petitioners;**
- (b) a mandate in the nature of a *Writ of Prohibition* is hereby issued restraining the learned Judge of the Primary Court and/or any other authority from taking steps to enforce or give effect to the said order dated 15th January 2025 marked **P22**, **insofar as it affects the Petitioners;**
- (c) the Registrar of this Court is directed to communicate **this Order** to the Primary Court of Colombo forthwith.

In all the circumstances of this case, this Court makes no Order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL