

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

In the matter of an application made in revision under the provisions of Section 753 of the Civil Procedure Code read with Article 138 of the constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CPA/17/2025

High Court of Tangalle
Case No:
SP/HC/TAN/WA/4/2022

Tangalle Property (Pvt.) Ltd,

Bodhi Mawatha,
Walla Wathura,
Godallawela,
Tangalle.

PETITIONER

Vs.

1. **Tangalle Pradeshiya Sabha,**

Tissa Road,
Netolpitiya,
Tangalle.

2. **Laalitha R. Wanigasekarea,**

Chairman,
Tangalle Pradeshiya Sabha,
Netolpitiya.

3. **R. K. Andiyagala,**

Secretary,
Tangalle Pradeshiya Sabha,
Netolpitiya.

3A. **Pathiranage Rohini Jayalath,**

Secretary,
Tangalle Pradeshiya Sabha,
Netolpitiya.

4. **Iesha Liyanagama,**

Divisional Secretary,
Divisional Secretariat,
Tangalle,

5. **Attorney General,**

Attorney General's Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

1. **Tangalle Pradeshiya Sabha,**

Tissa Road,
Netolpitiya,
Tangalle.

3B. **Champa Shyamalie Wijesekara**

Abeygunawardena,
Secretary,

Tangalle Pradeshiya Sabha,
Netolpitiya.

RESPONDENTS-PETITIONERS

Vs.

Tangalle Property (Pvt.) Ltd.

Bodhi Mawatha,
Walla Wathura,
Godallawela,
Tangalle.

PETITIONER-RESPONDENT

Iesha Liyanagama,

Divisional Secretary,
Divisional Secretariat,
Tangalle.

**4th RESPONDENT-
RESPONDENT(DISCHARGED)**

Attorney General,

Attorney General's Department,
Colombo 12.

**5th RESPONDENT-
RESPONDENT(DISCHARGE)**

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Kuvera de Zoysa, PC with Sajana de Zoysa
instructed by M. J. S. Fonseka for the
Respondents-Petitioners.

Kushan de Alwis, PC with Prasanna de
Silva, D. Abeysekara and L. Munasinghe
instructed by Simon & Associates for the
Petitioner-Respondent.

Written Submissions
of the Respondents-Petitioners
tendered on : 23.11.2026

Written Submissions
of the Petitioner-Respondent
tendered on : 22.07.2026

Decided on : 16.10.2026

K. M. S. DISSANAYAKE, J.

Instant application in revision arises from a judgement dated 10.01.2025, made by the learned High Court Judge of the Southern Province holden at Tangalle (hereinafter called and referred to as “the HC Judgement”) in an application for a mandate in the nature of a writ of *certiorari* bearing No. SP/HC/TAN/WA/4/2022, preferred to it by the Petitioner-Respondent (hereinafter called and referred to as “the Respondent”) seeking to quash the

decision of the 1st Respondent-Petitioner contained in the document annexed to the amended petition dated 06.10.2022 filed by the Respondent in the High Court of the Southern Province holden at Tangalle (hereinafter called and referred to as “the High Court”) marked thereto, as **X28** and a notice annexed thereto, marked as **X32(a)**; and also a mandate in the nature of a writ of *prohibition* prohibiting the Respondents named in the amended petition from implementing the decision of the 1st Respondent contained in **X28**.

When this matter came on before us for support of the application for notice, the Respondent who appeared in Court in pursuant to the direct notices issued to him by the 1st and 2nd Respondents-Petitioners (hereinafter called and referred to as “the 1st and 2nd Petitioners”) raised a number of preliminary legal objections as to the maintainability of the instant application in revision and Counsel desired this Court to pronounce the order thereon, on the strength of the written submissions, and the written submissions were thus, filed by the respective parties and hence, the order thereon, on the strength of the written submissions as urged and agreed.

The preliminary legal objections so raised by the Respondent is four-fold, namely;

- a) The Respondents-Petitioners have failed to pursue the alternative remedies available to them prior to invoking the extraordinary revisionary jurisdiction of Your Lordships' Court;
- b) The Respondents-Petitioners have failed to establish the existence of exceptional circumstances warranting the exercise of the extraordinary revisionary jurisdiction of Your Lordships' Court;
- c) The Respondents-Petitioners have failed to bring before Your Lordships' Court the necessary parties for the adjudication of the application and the grant of the substantive reliefs prayed for therein;
- d) Notwithstanding the above, the Respondents-Petitioners are not entitled in law to invoke the revisionary jurisdiction of Your Lordships' Court

against the Judgment of their Lordships in the Provincial High Court of the Southern Province holden in Tangalle.

Since the preliminary objections a) and b) as enumerated above, appear to me to be interwoven, I would think it expedient and convenient to deal with both of them together.

a) The Respondents-Petitioners have failed to pursue the alternative remedies available to them prior to invoking the extraordinary revisionary jurisdiction of Your Lordships' Court;

b) The Respondents-Petitioners have failed to establish the existence of exceptional circumstances warranting the exercise of the extraordinary revisionary jurisdiction of Your Lordships' Court;

It is in this context, I would think it apposite to briefly, deal with the facts and circumstances leading to the institution of the instant application in revision before this Court as can be deducible from a careful perusal of the averments contained in the petition filed before this Court by the 1st and 2nd Petitioners along with the instant application in revision.

Presenting to Court the petition dated 06.04.2022, as subsequently, amended by the amended petition dated 07.10.2022, the above styled action had been instituted in the High Court by the Respondent against the 1st and 2nd Petitioners and four others seeking *inter-alia*, a mandate in the nature of a writ of *certiorari* to quash the decision of the 1st Petitioner contained in the document annexed to the amended petition dated 06.10.2022 filed by the Respondent in the High Court of the Southern Province holden at Tangalle (hereinafter called and referred to as “the High Court”) marked thereto, as **X28** and a notice annexed thereto, marked as **X32(a)**; and also a mandate in the nature of a writ of *prohibition* prohibiting the Respondents named in the amended petition from implementing the decision of the 1st Respondent contained in **X28**; and that the 4th and 5th Respondents named in the amended petition filed in the High Court

had subsequently, been discharged by the Court; and that the Petitioners had in their objections, sought a dismissal of the application for a mandate in nature of a writ of *certiorari* and *prohibition*; and that, the learned High Court Judge of the Southern Province holden at Tangalle (hereinafter called and referred to as “the learned High Court Judge”), had having heard submissions oral and written made by the parties, delivered the HC Judgement granting the mandates in the nature of a writ of *certiorari* and *prohibition* against the Petitioners as prayed for in prayer to the amended petition. It is this judgement that the Petitioners now, seek to revise and set aside in the instant application in revision.

It is not in dispute that, the HC Judgement now, sought to be revised and set aside in the instant application in revision is one made by the learned High Court Judge in the exercise of the writ jurisdiction vested in him by Article 154P(4)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as “the Constitution”).

It is in this context, it would I think, be pertinent to examine Article 154P(6) of the Constitution which reads thus;

“(6) subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from to the Court of Appeal in accordance with Article 138.”

It would also, be pertinent to examine section 9(b) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended (hereinafter called and referred to as “the Act”) which reads thus;

“(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.”

It is also not in dispute that, the HC Judgement sought to be revised and set-aside in the instant application in revision, is a judgement within the meaning of Article 154P(6) of the Constitution as well as section 9(b) of the Act.

A careful reading of Article 154P(6) of the Constitution and section 9(b) of the Act makes it abundantly, clear that, both of those provisions expressly, provide for a statutory right of appeal to this Court from the HC Judgement sought to be revised and set-aside in the instant application in revision.

However, it is significant to observe that, the Petitioners had not availed themselves of the statutory right of appeal from the HC judgement to this Court as provided for by Article 154P(6) of the Constitution and section 9(b) of the Act nor have they given in their petition filed before this Court any reason whatsoever, as to why they did not avail themselves of the statutory right of appeal so granted to them by both the Article 154P(6) of the Constitution and section 9(b) of the Act from the HC Judgement now, sought to be revised and set-aside in the instant application in revision.

In view of the preliminary legal objections a) and b) enumerated above, the pertinent question that would then, arise for our consideration and determination would be whether this extra-ordinary method of rectification would be available in case where a statutory right of appeal is available from a judgement sought to be revised and set aside; and if so, under what circumstances;

It may now, be examined.

The extra-ordinary revisionary jurisdiction had been exclusively, vested with the Court of Appeal before the enactment of the 13th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka. However, after the enactment of the 13th Amendment to the Constitution, the revisionary jurisdiction is now,

vested with the High Court of the Province concurrently, with the Court of Appeal.

After an exhaustive analysis of all the authorities on the question of availability of this extra-ordinary method of rectification in case where statutory right of appeal would lay, it was held in **Rustom vs. Hapangama & Company (1978-79) 2 SLR 225**, that “the powers by way of revision conferred on the Appellate Court are wide and can be exercised whether an appeal has been taken against an order of the original Court or not. **However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are dependent on the facts of each case**”.
[emphasis is mine]

Court in **Rustom vs. Hapangama & Co (Supra)** further observed in the following manner; “The trend of authority clearly, indicates that where the revisionary powers of the Court of Appeal are invoked, the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision.”

It was further observed by Court in the decision in **Rustom Vs. Hapangama & Company(Supra)** that, “This Court has the power to act in revision even though the appeal is available, in appropriate cases. The question which has now to be decided is whether the instant case is an appropriate case in which we should exercise our discretionary powers of revision. In his petition and affidavit the petitioner has not set out the reasons for his seeking this method of rectification of the order rather than the ordinary method of appeal. Nor has he set out any exceptional circumstances as to why we should grant him the indulgence of exercising our revisionary powers when he could have appealed against the order with leave”.

It was held by Court in **Dharmaratne and Another Vs. Palm Paradise Cabanas Ltd and Others 2003 (3) SLR 24** at page 30 that “Thus, the existence of

exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given right of appeal. The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this ‘rule of practice’.”

It was held in **Urban Development Authority vs. Ceylon Entertainments Ltd. and another reported in 2002 [B.L.R]** at page 66 that “the petitioner who invokes the revisionary jurisdiction of this Court should expressly set out the exceptional circumstances and an express pleading to that effect is a *sine quo non*, for this Court to consider the relief claimed by the petitioner. In the absence of an express plea, this Court would be precluded from considering the relief claimed in the application”.

In **Perera v. Muthalib 45 NLR 412** it was held that, “I would invite attention to the observations made by Wood-Renton J. in the King v. Nordeen. He said; I do not think that that power (i.e. , revisionary power) is at all limited to those cases in which either no appeal lies or for some reason or other an appeal has not been taken”, but he went on to add that this power would be exercised only when a strong case is made out “amounting to a positive miscarriage of justice in regard to either the law, or the judge’s appreciation of the facts. In the case I am dealing with I should have felt compelled to give relief solely on the ground that what may well be said to be a failure of justice has been brought to the notice of this Court, and technical rules must make way for the granting of redress in such a case. There has been a violation of the fundamental rule of judicial procedure that a person sought to be affected by an order shall first be heard. But, in this

instance there is yet another ground upon which this application for revision ought to be exercised and that is that the petitioner had no knowledge of the order made against him till the time for preferring an appeal had elapsed.”

In the case in **Attorney-General v. Podi Singho 51 NLR 385** it was held that, “even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as (a) miscarriage of justice (b) where a strong case for interference by the Supreme Court is made out or (c) where the applicant was unaware of the order.” Court also observes that “the Supreme Court in exercising its powers of revision is not hampered by technical rules of pleading and procedure.”

In **Bank of Ceylon vs Kaleel and others 2004 [1] SLR 284**, at page 287 it was stated that, “In the circumstances this Court will not interfere by way of revision when the law has given the plaintiff an alternate remedy and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction. In any event, for this Court to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words the order complained of is of such a nature which would have shocked the conscience of Court.”

In **Thilagaratnam Vs. E.A.P. Edirisingha 1982 [1] SLR, P56**, it was observed that “though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify the exercise of the Court's powers of revision.”

In **Caderamanpulle Vs. Ceylon Paper Sacks Ltd 2001 [3] SLR, P112**, it was held that “no exceptional circumstances are disclosed why his application for

revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision.”

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali 1981 [1] SLR, P262**, held that, “the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision.”

The Supreme Court in **AG. Vs. Najimudeen-SC Appeal No. 62/2016-SC Minute of 13-03-2020** observed that, “the Defendant has had an alternative remedy available. In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The Defendant has not been successful in convincing Court that the grounds he had urged have any exceptional character which is sufficient to move Court to exercise its discretionary revisionary power. Thus, this Court has no reason to disagree with the conclusion of the Provincial High Court that there are no exceptional circumstances to invoke the revisionary jurisdiction of the Court. In these circumstances and for the foregoing reasons, the appeal is dismissed without costs.”

In **Geethani Nilushika Vs. Waruni Harshika-SC Appeal No. 93/2017-SC Minute of 18.06.2021** Court observed that; “**Revision is a discretionary remedy. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right. When a right of appeal is available against a**

Judgment or an Order, a party seeking to come before Court by way of revision shall explain in the petition why he did not exercise his right of appeal. In the revision application filed before the High Court there was no such explanation at all.”

In the case of **Seylan bank Vs. Thangaveil 2004 [2] SLR, 101** wherein Court held that, “no revision lies. The petitioner has not resorted to his statutory right of appeal with leave of court. He has not set out in his petition for revision any exceptional circumstances.”

See also; **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels Management Ltd. 1978 (1) SLR 05, Janita Vs. Abeysekara (Sri skantha Law Report Vol iv Page 22)**, and **Thilagaratnam Vs. Edirisinghe 1982 (1) SLR 56.**

In the light of the principle laid down by Court in the aforesaid decisions, an Appellate Court can exercise its revisionary jurisdiction conferred on the Appellate Court **only and only, in exceptional circumstances, where an alternative remedy lay.** [emphasis is mine]

In view of the fact that, a statutory right of appeal would lie from the High Court Judgement sought to be revised and set aside in the instant application in revision as provided for by Article 154P(6) of the Constitution and section 9(a) of the Act, the pivotal question that would next, arise for our consideration and determination is whether the petition of the Petitioners filed before this Court along with the instant application in revision, has disclosed exceptional circumstances, showing as to why this Court should exercise this extra-ordinary method of rectification to revise and set aside the High Court Judgement for; in such instance, this Court can exercise its extra-ordinary revisionary jurisdiction conferred on it **only and only, in exceptional circumstances?** [emphasis is mine]

It may now, be examined.

The Petitioners in paragraph 12 of the petition plead that, the grounds and/or circumstances, set out in paragraph 12(a) to (n) thereof, would constitute exceptional circumstances warranting the exercise of its extra ordinary revisionary jurisdiction of this Court vested in it by Article 138 of the Constitution in revision of the HC Judgement and they may be re-produced as follows;

“

- a. The judgement dated 10.01.2025 marked as "X1" is patently in error, is contrary to law, is ex facie wrong, is manifestly unjust, causes serious prejudice to the Petitioners and the residents of Tangalle and is a serious miscarriage of justice;
- b. The Judgement of the Provincial High Court of the Southern Province holden in Tangalle palpably wrong and contrary to law;
- c. Hon. High Court Judge erred in Law and/or misdirected himself in applying law relating to disputed facts in a Writ applications;
- d. Hon. High Court Judge erred in Law and/or misdirected himself in applying the law relating to the correct remedy in order to resolve a matter arising out a S.66 of the Primary Courts Ordinance (as amended);
- e. Hon. High Court Judge erred in Law and/or misdirected himself in applying S.24(1) of the Pradeshiya Sabhas Act(as amended);
- f. Hon. High Court Judge erred in Law and/or misdirected himself in applying S.24(2) of the Pradeshiya Sabhas Act(as amended);
- g. Hon. High Court Judge erred in Law and/or misdirected himself in failling to appreciate that the appropriate court as mentioned in S.24(2) of the Pradeshiya Sabhas Act(as amended) is not the Provincial High Court of the Southern Province holden in Tangalle;

- h. Hon. High Court Judge erred in Law and/or misdirected himself in applying S.26 of the Pradeshiya Sabhas Act(as amended);
- i. Hon. High Court Judge erred in Law and/or misdirected himself in deciding private property rights by way of a writ application;
- j. Hon. High Court Judge erred in Law and/or misdirected himself in not applying the law relating to Servitudal right by long user;
- k. Hon. High Court Judge erred in law by failing to appreciate that when major facts are in dispute, the issuance of a writ solely based on documents, is contrary to law;
- l. Hon. High Court Judge erred in Law and/or misdirected himself in applying the law relating to laches.
- m. Hon. High Court Judge failed to correctly evaluate the submissions made and documents tendered on behalf of the Petitioners.
- n. Hon. High Court Judge failed to correctly evaluate the injustice and the grave prejudice that will be caused to the Residents of Tangalle if the only public road/footpath to the Wallawathura Upasaka Beach is made a private road way.”

As is manifest from the matters averred in paragraphs 10 and 11 of the petition of the Petitioners, the purported exceptional circumstances are based on the premise that, the learned High Court Judge had erroneously, misdirected himself, in deciding a dispute over a servitudal right by way of a writ application solely based on documents; and that on the face of the HC judgement, there were disputed facts and documents which cannot be adjudicated in a writ application.

The pertinent question that would then, arise before us for our consideration and determination is what would constitute exceptional circumstances.

It is to be borne in mind that, a hard and fast rule cannot be laid down in determining as to what constitutes exceptional circumstances for; **such**

exceptional circumstances are dependent on the facts and circumstances of each case. [emphasis is mine]

What then, are exceptional circumstances? Does it mean a mere error or mistake? It is not, but that it must be something substantial that, the rights of the complaining party are at stake and/or his substantive rights have been denied and/or the order challenged must have occasioned a failure of justice and manifestly, erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly, react to it and/or the order complained of is of such a nature which would have shocked the conscience of Court.

As is manifest from the matters averred in the petition of the Petitioners filed before this Court, particularly, in paragraphs 10 and 11 thereof, the principal ground of attack to the HC Judgement, appear to be that, the learned High Court Judge had erroneously, misdirected himself, in deciding a dispute over a servitudal right by way of a writ application solely based on documents; and that on the face of the HC judgement, there were disputed facts and documents which cannot be adjudicated in a writ application. The purported exceptional circumstances set out in paragraph 12(a) to (n) of the petition of the Petitioners are centred on those two grounds set out in paragraphs 10 and 11 of the petition of the Petitioners. Based on the said premise, it was contended by the learned President's Counsel for the Petitioners that, HC Judgement is patently, erroneous; is contrary to law; is *ex facie* wrong; is manifestly, unjust; causes serious prejudice to the Petitioners and the residents of Tangalle; causes a serious miscarriage of justice which Petitioners verily believe that, shock the conscience of this Court.

It is in this light, I would think it expedient at the juncture to carefully, examine the pivotal basis of the application presented by the Respondent being the Petitioner thereto, to the High Court and the relief sought therein, against the Petitioners who being the Respondents thereto, and the HC judgement and the pivotal basis therefor.

The said application had been preferred to the High Court by the Respondent being the Petitioner thereto, against the Petitioners who being the Respondents thereto, seeking *inter-alia*, to quash the decision of the 1st Petitioner who being the 1st Respondent thereto contained in the document (**X28**) and a notice annexed thereto, marked as **X32(a)**; and also a mandate in the nature of a writ of *prohibition* prohibiting the Petitioners who being the Respondents named in the amended petition filed in the High Court from implementing the decision of the 1st Respondent contained in **X28**.

As disclosed in paragraph 50(a), (b) and (c) of the amended petition filed by the Respondent being the Petitioner thereto, in the High Court, the pivotal basis therefor being that,

- a) එකී ප්‍රාදේශීය සභා පනතේ 24 වැනි වගන්තිය ප්‍රකාරව පෙත්සම්කරුගේ දේපළෙහි ඉහත කී අඩි පාර පොදු ප්‍රවේශ පාරක් ලෙස ප්‍රකාශ කිරීමට 1 වන වගඋත්තරකරුට අයිතියක් නොමැති බවත්;
- b) 1 වන වග උත්තරකරුට එකී ප්‍රාදේශීය සභා පනතේ 24 වැනි වගන්තියේ විධිවිධාන යටතේ ක්‍රියා කිරීමට බැලූ බැල්මට නෛතික පදනමක් හෝ අයිතියක් නොමැති අතර එම ප්‍රාදේශීය සභා පනතේ 24 (2) වගන්තිය යටතේ උද්දේශිතව ප්‍රකාශයට පත් කරන නොතිසිය නීති විරෝධී සහ බල රහිත ලද්දකි.
- c) ඉහත කී කරුණු වලට අගතියකින් තොරව කෙසේ වෙතත් එම ප්‍රාදේශීය සභා පනතේ 26 වැනි වගන්තිය ප්‍රකාරව අවශ්‍ය පරිදි එකී අඩි පාර 1 වැනි වග උත්තරකරුට පැවරීමේ අභිප්‍රාය පිළිබඳව පෙත්සම්කරුට නිසි දැනුම්දීමක් කිරීමට 1 වැනි වග උත්තරකරු අපොහොසත් වී ඇත.

When translated to English, it reads thus;

- (a) that, the 1st respondent has no right to declare the said footpath on the petitioner's property as a public access road in terms of Section 24 of the said Pradeshiya Sabha Act;
- (b) the 1st respondent has no *prima facie* legal basis or right to act under the provisions of Section 24 of the said Pradeshiya Sabha Act and the

notice purportedly published under Section 24(2) of the said Pradeshiya Sabha Act is illegal and void;

- (c) without prejudice to the above, however, the 1st Respondent has failed to give due notice to the petitioner of the intention to transfer the said footpath the 1st Respondent as required under Section 26 of the said Pradeshiya Sabha Act.

The pivotal basis for the position so adverted to by the Petitioner thereto, who being the Respondent hereto, being that, for the 1st Respondent thereto-the Pradeshiya Sabha of Tangalle-who being the 1st Petitioner hereto, to act under section 24(1)(a) and (b) of the Pradeshiya Sabhas Act No. 15 of 1987 as amended (hereinafter called and referred to as “the Pradeshiya Sabhas Act”), as a condition precedent, he ought to have acted under section 24(1) of the Pradeshiya Sabhas Act in the first place; but, however, there had been nothing on record to show that the Minister in charge of the subject of the Pradeshiya Sabhas had acting under the powers vested in him by section 24(1) of the Pradeshiya Sabhas Act in the special circumstances, allowed further time to the 1st Petitioner hereto, who being the 1st Respondent thereto, to act under section 24(1) of the Act and therefore, the Pradeshiya Sabha of Tangalle had no power and/or authority and/or jurisdiction to publish the notice (**X32(a)**) published in the Government Gazette (**X32**) as done by it and as such the publication of the notice under section 24(1) of the Pradeshiya Sabhas Act (**X32(a)**) in the Government Gazette (**X32**) was *ultra vires* of the powers and/or authority, vested in it and therefore, it ought to be quashed by way of a mandate in the nature of a writ of *certiorari*.

Hence, the pivotal issue that arose for consideration and determination by the learned High Court Judge was whether, at the time, it had proceeded to publish the notice in question (**X32(a)**) in the Government Gazette (**X32**), the Pradeshiya Sabha of Tangalle had power and/or authority and/or jurisdiction vested in it by section 24(1) of the Pradeshiya Sabhas Act so to do.

The learned High Court Judge having carefully, examined the petition, statement of objections of the Respondents, and material adduced before him by way of documentary evidence and the submissions, oral and written made by the respective Counsel, clearly, and unequivocally, had been inclined to the position so adverted the Petitioner thereto.

Hence, it becomes manifest, upon that a close and careful scrutiny of the HC judgement that, the learned High Court Judge had not proceeded to deal with and decide on the question of servitudal rights of the parties to the action in respect of the way of access in question, nor, had he proceeded to examine the disputed facts pertaining to the application before him which cannot certainly, be adjudicated in a writ application as a rule, but that, he had rightly, proceeded to direct his judicial mind on the legality and/or rationality and/or procedural impropriety of the publication by the 1st Respondent, of the notice (**X32(a)**) in the Government Gazette (**X32**) as contended by the Petitioner thereto, who being the Respondent hereto.

Hence, I would find myself unable to see any of the grounds urged in paragraphs 12 (a) to (n) of the petition of the Petitioners based on 10 and 11 thereof, as constituting exceptional circumstances warranting this Court to exercise extraordinary revisionary jurisdiction vested in this Court in revision of the HC Judgement as rightly, contended by the learned President's Counsel for the Respondent.

It is now, well settled law, that, where the revisionary powers of the Court of Appeal are invoked, the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision. However, as observed by me elsewhere in this order, the petition of the Petitioner, does not in any manner, disclose any exceptional

circumstances warranting this Court to exercise extra-ordinary revisionary jurisdiction vested in this Court in revision of the HC Judgement particularly, in view of the availability of a statutory right of appeal from the HC Judgement sought to be revised and set aside in the instant application in revision as enumerated above and as rightly, contended by the learned President's Counsel for the Respondent.

I would therefore, hold that, the preliminary legal objections a) and b) enumerated above, are entitled to succeed both in fact and law.

I would thus, uphold both of them.

In the result, I would hold that, the instant application in revision is not entitled to succeed, and as such, it ought to be dismissed *in-limine* as rightly, contended by the learned President's Counsel for the Respondent.

Let me next, examine the preliminary legal objection c) above.

c) The Respondents-Petitioners have failed to bring before Your Lordships' Court the necessary parties for the adjudication of the application and the grant of the substantive reliefs prayed for therein;

This is based on the premise that, the Petitioners had failed to bring the Chairman, Tangalle Pradeshiya Sabha as a party to the instant application in revision for; he is a necessary party thereto and failure so to do is fatal to the maintainability of the instant application in revision and therefore, it ought to be dismissed *in-limine* for want of necessary parties.

It may now, be examined.

In view of the preliminary legal objection so raised, it would I think, be prudent and expedient to examine section 2(2) of the Pradeshiya Sabha Act which reads thus;

“Every Pradeshiya Sabha constituted by an Order under subsection (1) **shall be a body corporate with perpetual succession** and a common seal and shall have power, subject to the provisions of this Act, to acquire, hold and sell property **and may sue and be sued in such name.**” [Emphasis is mine]

It is manifest from a careful reading of the caption of the petition filed along with the instant application in revision that, “the Pradeshiya Sabha-Tangalle” has been named as the 1st Respondent-Petitioner which can sue and be sued in its own name as required by section 2(2) of the Pradeshiya Sabha Act.

I would thus, hold that, it is not necessary to name the Chairman-Tangalle Pradeshiya Sabha as a party to the instant application in revision for; it is not a necessary party nor a proper party in view of section 2(2) of the Pradeshiya Sabha Act as discussed above.

I would therefore, hold that the further preliminary legal objection c) as enumerated above, is not entitled to succeed in law and as such, it ought to be overruled.

Let me then, examine the remaining preliminary legal objection d) as enumerated above.

d) Notwithstanding the above, the Respondents-Petitioners are not entitled in law to invoke the revisionary jurisdiction of Your Lordships' Court against the Judgment of their Lordships in the Provincial High Court of the Southern Province holden in Tangalle.

The basis therefor being that, this Court would exercise concurrent original writ jurisdiction with the High Court established under Article 154P(1) of the Constitution after the enactment of the 13th Amendment to the Constitution and therefore, this Court has no jurisdiction to hear and determine an application in

revision emanating from a decision made by a High Court Judge of the Province in the exercise of the original writ jurisdiction.

A preliminary legal objection of a similar nature had arisen before this Court for its consideration and determination in the decision in **CA/CPA/0023/23-CA Minutes 19.06.2026** wherein, this Court had after having carefully, examined the provisions contained in the Constitution as well as in the Act *inter-alia*, held at pages 15 and 16 as follows;

“In view of the above, it clearly, appears that it is only, the concurrent original writ jurisdiction with the Court of Appeal that has been conferred upon such High Court established by Article 154P(1) of the Constitution and not the concurrent appellate jurisdiction which has now, been exclusively, vested with the Court of Appeal by Article 154P(6) of the Constitution to be read with sections 9(b), 11 and 12(d) of the Act and the resultant position is that the appellate jurisdiction has not been so conferred upon such High Court established by Article 154P(1) of the Constitution with the Court of Appeal and hence, appellate jurisdiction has been so vested exclusively, on the Court of Appeal.

In the result, it is my considered view that the Court of Appeal has been vested with the revisionary jurisdiction too, conferred upon it by Article 138 of the Constitution from the orders made by such provincial High Court in the exercise of its concurrent original jurisdiction vested in it by Article 154P(4)(b) of the Constitution as a necessary, corollary to the exercise of the appellate jurisdiction so vested in it, subject however to the accomplishment of pre-requisites necessary to invoke the extra-ordinary revisionary jurisdiction vested in it by Article 138 of the Constitution.

Hence, I would hold that the preliminary objection on jurisdiction has been raised by the Respondent on a total misconception and/or misapprehension that appellate and/or revisionary jurisdiction so exclusively, vested in Court of Appeal under Article 138 of the Constitution

to be read with Article 154P(6) thereof, and sections 9(b), 11 and 12(d) of the Act too, has been concurrently, vested with the High Court established by Article 154P(1) of the Constitution in the same manner as the original writ jurisdiction vested in it with the Court of Appeal as enumerated above.

In view of the foregoing, I would hold that the preliminary objection on jurisdiction so raised by the Respondent cannot in any manner, sustain in law and as such it should be rejected in-limine.

In consequence, I would hold that neither the judicial reasoning in the decision in SC/APPEAL/65/2025(Supra) nor the authorities cited in the written submissions by the Respondents are, if I may say so with all due respect, of any assistance for the resolution of the preliminary objection on jurisdiction so raised by the Respondent.

Hence, I would proceed to overrule the preliminary objection on jurisdiction raised by the Respondent with costs.”

I would thus, hold that, the line of reasoning and the decision pronounced by this Court in the case in **CA/CPA/0023/23(Supra)** is applicable with equal force and gravity in respect of the preliminary legal objection d) enumerated above, too.

In the result, I would proceed to overrule the remaining preliminary legal objection in view of the line of reasoning and the ultimate decision pronounced by this Court in the case in **CA/CPA/0023/23(Supra)**.

However, in view of the findings reached by this Court in relation to the preliminary legal objections a) and b) as enumerated above, I would hold that, the instant application in revision is not entitled to succeed both in fact and law.

I would therefore, refuse to act in revision of the HC Judgement.

In the result, I would dismiss the instant application in revision however, subject to the above.

In view of all the above circumstances, I would make no order for costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL