

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

In the matter of an application for a Conditional  
Order in terms of Section 98(1) of the Code of  
Criminal Procedure Act No 15 of 1979.

1. **PRIYANTHI PERERA.**  
No. 530/11, Negombo Road,  
Wattala.
2. **USWATHTHA LIYANA RALALAGE  
LUCIEN GAMINI PERERA.**  
No. 7/B, Seewali Patumaga,  
Wattala.

**COMPLAINANT**

**Vs.**

**JANASHAKTHI PRIVATE LIMITED  
COMPANY**  
No.02, Deal Palace,  
Colombo 03.

**RESPONDANT**

**AND BETWEEN**

In the matter of a Revision Application under  
and in terms of Article 154(3)(B) of the  
Constitution read with Article 138 and Section 5  
of the Provincial High Court (Special Provisions)  
Act No. 19 of 1998 and Section 361 of the Code of  
Criminal Procedure Act No. 15 of 1979..

1. **PRIYANTHI PERERA.**  
No. 530/11, Negombo Road,  
Wattala.
2. **USWATHTHA LIYANA RALALAGE  
LUCIEN GAMINI PERERA.**  
No. 7/B, Seewali Patumaga,  
Wattala.

**COMPLAINANTS-PETITIONERS**

**Court of Appeal Case Number: CA/PHC/156/23**

**High Court Of Negombo**

**No: HC Ver. 23/2021**

**Magistrate Court Case**

**No. 58990/21**

**JANASHAKTHI PRIVATE LIMITED COMPANY**  
No.02, Deal Palace,  
Colombo 03.

**RESPONDENT-RESPONDENT**

**AND NOW BETWEEN**

In the matter of an Appeal from a Judgement of the Provincial High Court of Western Province Holden in Negombo pronounced by it, in exercising its Revisionary Jurisdiction.

**1. PRIYANTHI PERERA.**

No. 530/11, Negombo Road,  
Wattala.

**2. USWATHTHA LIYANA RALALAGE  
LUCIEN GAMINI PERERA.**

No. 7/B, Seewali Patumaga,  
Wattala.

**COMPLAINTS-PETITIONERS-PETITIONERS**

**Vs.**

**JANASHAKTHI PRIVATE LIMITED COMPANY**  
No.02, Deal Palace,  
Colombo 03.

**RESPONDENT-RESPONDENT**

Before : **Hon Justice B Sasi Mahendran**  
**Hon Justice Amal Ranaraja.**

Counsel : Dr Ravindranath Dabare, Savanthi Ponnampereuma, Britney Martil for the Complainant-  
Petitioner- Petitioners  
Thishya Weragoda with Pulasthi Rupasinghe and Bushan Illeperuma for the Respondent-  
Respondent-Respondent

**Written** 08.09.2025 (by the Complainants-Petitioners-Petitioners)

**Submissions:** 28.11.2025 (by the Respondent-Respondent-Respondent)

**On**

**Argued On :** 19.03.2026

**Judgment On:** 04.05.2026

### **ORDER**

**B. Sasi Mahendran, J.**

The Complainants-Petitioners-Petitioners (hereinafter referred to as the Petitioners) have filed this appeal seeking to set aside the order of the Provincial High Court of Western Province Holden in Negombo, dated 09.06.2023, in Case No. REV 23/2021, where the learned High Court Judge affirmed the order of the Learned Magistrate of Welisara on 03.11.2021 in Case No. 58990/21.

The Petitioners assert that the Respondent has unlawfully interfered with the natural condition of the wetland known as Kalu Ela. The Respondent's actions, according to the Petitioners, have caused significant disturbance and constitute a severe public nuisance affecting the surrounding residents. In response to this destruction, the Petitioners have sought a Conditional Order from the Magistrates' Court of Welisara under Section 98 (1) of the Code of Criminal Procedure Act. (herein after referred to as the "Act")

On 17 September 2021, the Learned Magistrate, having heard both parties, issued a Conditional Order under Section 98(1) of the said Act against the Respondent in line with the Petitioners' requests. It should be noted that when the matter was supported to make the conditional order by the learned Magistrate, the respondent was present with his counsel.

The Respondent's Counsel then objected to the Order and sought to file objections to the Information Report. On 22 September 2021, the Respondent submitted objections and requested that the inquiry be resolved through written submissions. It should be noted that the Petitioners agreed and also filed

the written submission. The Respondents tendered an affidavit along with their written submissions and informed the Court that the inquiry could be concluded on the basis of those documents.

On 03.11.2021, the Learned Magistrate dismissed the Conditional Order on the basis that the information provided by the Petitioners had failed to establish that the Respondent had committed a public nuisance under Section 98 of the Act. Furthermore, the Learned Magistrate observed that the Respondent had been granted permission by certain statutory bodies, and therefore, if the Respondent violates the conditions imposed by such bodies, it would be for those statutory authorities to take appropriate action.

Thereafter, against the said Order of the learned magistrate, the Petitioners filed a Revision Application before the High Court of Negombo. On 09.06.2025, the Learned High Court Judge directed both parties to tender written submissions and subsequently affirmed the Order of the Learned Magistrate. This Appeal is preferred against the said order of the Learned High Court Judge.

The main grievance of the Petitioners is that they had not consented to dispose of the inquiry by way of written submissions, and also, there was no evidence before the learned magistrate for his consideration to set aside the said conditional order. However, upon perusal of the proceedings and the Order made by the Learned Magistrate, it appears that the Petitioners had in fact agreed to conclude the inquiry through written submissions.

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කෙසේ වෙතත් මෙම නඩුව 2021.09.22 වන දින කැඳවූ අවස්ථාවේදී විරෝධතා ඉදිරිපත් කරමින් වගඋත්තරකරු වෙනුවෙන් දක්වා සිටින්නේ මෙම නඩුවේ මිලභ පියවර නඩුව විමසීමට නියම කිරීම බවත් ඒ අනුව ඔහුගේ විරෝධතා සමඟ දිවුරුම් ජරුකාශයක් ඉදිරිපත් කර තිබෙන බවත් ඒ අනුව එකී දිවුරුම් ජරසකාශය, සාක්ෂි ලෙස සලකා මෙම නඩුව ලිඛිත දේශණ මඟින් කලහැකි බවත් වාචික සාක්ෂි, සාක්ෂි වශයෙන් ලබාගැනීමේ අවශ්‍යතාවයක් ඒ අනුව නොමැති බවත්ය. ඒ අනුව මෙම නඩුවට අදාළ තොරතුරු සැපයුම්කාර පාර්ශවය මෙන්ම වගඋත්තරකාර පාර්ශවයේද ඉල්ලීම සටහන් කරගැනීමෙන් අනතුරුව ඔවුන් විසින් ස්වකීය සාක්ෂි දිවුරුම් ජරසකාශ මඟින් ඉදිරිපත් කර ඇති බවට සැඟීමට පත්වීමෙන් අනතුරුව ඒවා සාක්ෂි වශයෙන් තීරණය කර මෙම නඩුවේ ඉදිරි විමසීමේ කටයුතු ලිඛිත දේශන මඟින් සිදුකිරීමට දෙපාර්ශවයේම එකඟතාවය පරිදි අධිකරණය නියම කර ඇති අතර ඒ අනුව මෙකී දෙපාර්ශවයම ස්වකීය ලිඛිත දේශනයන්ද ඉදිරිපත් කිරීම සිදුකර ඇත.

I am of the view that the Learned Magistrate, having considered the written submissions filed by both parties, reached the conclusion that the Petitioners had failed to establish the existence of a nuisance. I am mindful that the Learned Magistrate has set aside the conditional order considering the affidavit

filed by the Respondent as evidence. Section 415 of the said Act authorized the learned Magistrate to have acted upon the said affidavit.

Section 415 reads as follows,

*415. An affidavit may be used in a criminal court if it is sworn or affirmed to-*

*(a) in Sri Lanka before any Justice of the peace or Judge,*

*(b) in any other place before a Judge or Magistrate, or Justice of the Peace or other person qualified or authorized to administer oaths in that place or in any other way deemed sufficient by the court; or*

*(c) before any person authorized by the Supreme Court to receive oaths out of Sri Lanka*

This proposition was considered in *Neil Fernando v. Ranjith Cooray and Others*, 1999 (1) SLR 281 at page 289, Gunasekara, J held that:

*“It was submitted that the learned High Court Judge erred in law when he set aside the Order of the learned Magistrate dated 18.5.95 on the basis that there was no evidence before the Magistrate for his consideration for him to have set aside the conditional Order. It is contended by learned counsel that the affidavit filed by the respondent-appellant along with his statement of objections P3 constituted evidence which had been acted upon by the learned Magistrate to have varied the conditional Order made in terms of section 98(1) and relied on the provisions of section 415 of the Code of Criminal Procedure Act which authorised the learned Magistrate to have acted upon the said affidavit.*

It should be noted that our courts are reluctant to invoke revisionary jurisdiction unless the Petitioners demonstrate exceptional circumstances or satisfy the court that the impugned order shocks its conscience.

In the case of *Bank of Ceylon Vs Kaleel and others* [2004] 1 SLR 284, Wimalachandra J held that,

*“In any event 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; the order complained of is of such a nature which would have shocked the conscience of court.”*

In *Wijesinghe V. Tharmaratnam* CA 120/80, Decided on 14th October 1986, page 47 at page 49 Srikantha's Law Reports, Volume (IV) Jameel J. held that,

*“Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the court.”*

In light of the judicial principles under consideration, my focus must be on whether the impugned order so offends the principles of justice and fairness that it shocks the conscience of this Court.

It should be noted that under Section 101(1) of the said Act, compel the Magistrate has to take evidence when he wants to set aside or modify a conditional order.

Section 101 (1) reads as follows,

*“101. (1) if such person appears and moves to have the order set aside or modified the magistrate shall take evidence in the matter.”*

In the instant case, both parties agreed to conclude the inquiry based on the documents they had filed, especially the affidavit which authorised the learned magistrate under Section 415 of the said Act to act upon the said affidavit. Accordingly, the Learned Magistrate, instead of calling oral evidence, has acted upon the affidavit filed by the Respondent and documents tendered by the Petitioners, and set aside the said order on the basis that the Petitioners have failed to establish the public nuisance. When I peruse the said order, it is evident that the Learned Magistrate had considered the evidence of the Respondent produced by way of supporting an affidavit to vary the conditional order. Therefore, I am of the view that the Learned Magistrate has complied with the provisions of Section 101 of the said Act.

Therefore, I find no irregularity in the impugned order of the Learned Magistrate. Upon perusal of the Order of the Learned High Court Judge, it is evident that he has held there was no necessity for the Magistrate to hear oral evidence, and that the conclusion reached through the affidavits was proper and in accordance with the law.

It is pertinent to refer to the impugned order of the Learned High Court Judge,

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ඒ අනුව වැලිසර උගත් මහේස්ත්‍රාත්තුමන් තම තීරණයට එළඹීමේ දී පෙත්සම්කරුවන් වෙතින් ඉදිරිපත්ව ඇති සාක්ෂිවල ප්‍රබලතාවය නොමැති වීම සම්බන්ධයෙන් මතයක පිහිටා ඇති බව පැහැදිලිය. ඒ අනුව නිකුත් කරන ලද කොන්දේසි සහිත ආඥාව නියත කිරීම සඳහා අධිකරණය හමුවේ ප්‍රමාණවත් සාක්ෂි නොමැති බවට වන පදනම මත එකී කොන්දේසි සහිත ආඥාව අවලංගු කර එය විසුරුවා හැර ඇති බව පැහැදිලිය.

ඒ අනුව මෙහිදී අධිකරණය විසින් සලකා බැලිය යුතු වන්නේ වැලිසර ගරු උගත් මහේස්ත්‍රාත්තුමන්ට පෙත්සම්කරුවන් වෙනුවෙන් සාක්ෂි කැඳවීමේ අවස්ථාව ලබාදිය යුතුව තිබුණේ ද යන්නයි.

අපරාධ නඩු විධාන සංග්‍රහයේ 101 වගන්තිය පරිදි කොන්දේසි සහිත අඥාවක් නිකුත් කරන ලද අවස්ථාවකදී එය නියත කිරීම හෝ විසුරුවා හැරීම සඳහා සාක්ෂි කැඳවීමක් අවශ්‍ය වේ. එකී සාක්ෂි කැඳවීම වාචික සාක්ෂි කැඳවීමක් වීම අනිවාර්ය නොවිය යුතු බවට නිල් ප්‍රනාන්දු නඩුවේදී ශ්‍රේෂ්ඨාධිකරණය විසින් තීරණය කර ඇත.

එකී නඩු තීන්දුව පදනම් කර ගෙන වැලිසර ගරු උගත් මහේස්ත්‍රාත්තුමන් විසින් විමසීම ලිඛිත දේශන මගින් පැවැත්වීමට තීරණය කර ඇත. එසේ මහේස්ත්‍රාත් අධිකරණය විසින් එම තීරණයට එළඹීමේ දී පළමුව වග උත්තරකරුවන් වෙතින් විමසීම ලිඛිත දේශන මගින් පැවැත්වීම සඳහා ඉල්ලීමක් ඉදිරිපත්ව තිබූ අතර, පෙත්සම්කරුවන් වෙනුවෙන් ඒ සඳහා එකඟත්වය පළ කර තිබිණි. ඒ සඳහා එකඟත්වය පළ නොකරන ලද බවට පෙත්සම්කරුවන් පෙන්වා දීමට උත්සාහ කරන ලද ද එය එසේ නොවන බවට මෙයට ඉහත දී තීරණය කරන ලදී.

ඒ අනුව පාර්ශවයන්ගේ එකඟත්වය ඇතිව සිදු වූ අධිකරණමය කටයුත්තක් සම්බන්ධයෙන් මෙම අධිකරණය සතු ප්‍රතිශෝධන බලය ක්‍රියාත්මක කිරීමට තරම් තත්ත්වයක් මෙහිදී උද්ගතව නැති බව තීරණය කරමි.

ඒ අනුව පෙත්සම්කරුවන් විසින් ඉදිරිපත් කරන ලද ප්‍රතිශෝධන ඉල්ලීම ප්‍රතික්ෂේප කරමි. ගාස්තු නියම නොකරමි.

The Petitioners had also failed to demonstrate any exceptional circumstances that would shock the conscience of that Court.

For the aforesaid reasons, I dismiss the Appeal. No order for cost.

Appeal dismissed

The Registrar is hereby instructed to transmit a copy of this Judgment to the Magistrate's Court of Welisara and the High Court of Negombo.

**JUDGE OF THE COURT OF APPEAL**

**Amal Ranaraja, J.**

**I AGREE.**

**JUDGE OF THE COURT OF APPEAL**