

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

*In the matter of an application
under and in terms of Article
140 of the Constitution of the
Democratic Socialist Republic of
Sri Lanka for mandates in the
nature of Writs of Mandamus.*

Case No. CA (WRIT) 131 / 2025

PET Containers (Pvt) Ltd.
No. 07, Old Airport Road,
Rathmalana.

PETITIONER

Vs.

1. The Municipal Council of
Dehiwala –
Mount Lavinia,
Dehiwala – Mount Lavinia.

2. M.M.C.K.K. Mannapperuma,
Commissioner, Municipal
Council,
Dehiwala – Mount Lavinia.

2A. A.A. Vidura Sampath,
Commissioner, Municipal
Council,
Dehiwala – Mount Lavinia.

3. Ranjika Himali Karunarathne,
Divisional Secretary, Divisional
Secretariat,
Rathmalana.

3A. M.M.K. Dilrukshi Walpola,
Divisional Secretary, Divisional
Secretariat, Rathmalana.

4. Hon. Hanif Yusoof,
Governor – Western Province,
Western Provincial Council
Office Complex,
No. 204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.

5. A. D. S. Sadeeka,
Secretary, Ministry of Provincial
Councils and Local Governments
and Sports,

As Now :

Ministry of Local Government,
Economic Promotion , Power and
Energy, Environmental Affairs,
Water Supply and Drainage and
Tourism – Western Province

No. 204, Western Provincial
Council Office Complex, 10th
Floor,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

6. K.D.P. Shantha,
The Mayor, Municipal Council,
Dehiwala – Mount Lavinia.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

AND NOW

In the matter of an Application
for Intervention

1. H.E. Sarathchandra,
President,
Rathmalana Dinapatha Pola
Ekamuthu Kada Himiyange
Sangamaya,
Old Airport Lane, Rathmalana
And
212/5, Delthara, Piliyandala.

2. Dola Mullage Pradeepa Lasanthi,
Secretary,
Rathmalana Dinapatha Pola
Ekamuthu Kada Himiyange
Sangamaya,
Old Airport Lane, Rathmalana

And
201/23, Chandragiri,
Sri Wijayarama Mawatha,
Walliwala, Weligama.

3. Hetti Arachchige Dona
Dhanawathi,
Treasurer,
Rathmalana Dinapatha Pola
Ekamuthu Kada Himiyange
Sangamaya,
Old Airport Lane, Rathmalana

And
97/F/1, Atigala Mawatha,
Kolamunna, Piliyandala

INTERVENIENT PETITIONERS

Vs.

PET Containers (Pvt) Ltd.

No. 07 , Old Airport Road,
Rathmalana.

PETITIONER – RESPONDENT

1. The Municipal Council of
Dehiwala –
Mount Lavinia,
Dehiwala – Mount Lavinia.

2. M.M.C.K.K. Mannapperuma,
Commissioner, Municipal
Council,
Dehiwala – Mount Lavinia.

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Council,
Dehiwala – Mount Lavinia.

3. Ranjika Himali Karunarathne,
Divisional Secretary, Divisional
Secretariat,
Rathmalana.

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Divisional Secretary, Divisional
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Governor – Western Province,
Western Provincial Council
Office Complex,
No. 204, Denzil Kobbekaduwa
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6. K.D.P. Shantha,
The Mayor, Municipal Council,
Dehiwala – Mount Lavinia.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT – RESPONDENTS

Before : Hon. Rohantha Abeysuriya PC, J.(P/CA)
: Hon. K. Priyantha Fernando, J.(CA)

Counsel : Theekshana Pathirana with Sanduni
Rathnayake instructed by Dilhara
Arachchige for the Petitioner.

Kisal Senanayake instructed by Niclo
Associates for the Intervenant-
Petitioners

Suranga Perera with Shiraz instructed
by Ovini Haththotuwa for the
Intervenant Petitioners.

Sulari Gamage instructed by J. P.
Hapuarachchi for the 1st and 2A
Respondents.

Written Submissions on : 17.07.2026 & 28.08.2026 for the Petitioner.
31.07.2026 for the Intervenant – Petitioners.

Decided on : 13.10.2026

K. Priyantha Fernando, J. (CA)

1. This writ application was instituted by the Petitioner namely, PET Containers (Pvt) Ltd. seeking a Writ of *Mandamus* directing the 1st Respondent, the Municipal Council of Dehiwala-Mount Lavinia, to exercise its statutory powers under Section 77(1) of the Municipal Councils Ordinance, No. 29 of 1947, by **removing alleged unauthorized structures erected in the form of shops on top of the public drainage and public passage alongside the Petitioner's front boundary wall.**
2. It ought to be noted that when the case was taken up for support on 18.02.2026, the Council undertook to remove the said unauthorized structures. The matter was then fixed to be called on 29.04.2026 to ascertain progress of the removal. Subsequently, the Council issued a notice on 31.03.2026 directing the removal of the structures, and the Intervenant Petitioners then filed an application for intervention on 24.04.2026.

POSITION OF THE PETITIONER:

3. The Petitioner stated that the disputed area had been designated and used as a public thoroughfare even prior to the year 1990, whereas the Interventions commenced textile related businesses alongside Old Airport Road around 1990 and continued to occupy the public passage.
4. it was contended that the Intervenant Petitioners failed to establish any lawful right, title, or legally recognizable entitlement to occupy the relevant passage or maintain the impugned structures. The Petitioner argued that neither long standing occupation and business activities nor the payment of municipal charges can create a legally enforceable right to

continue an unauthorized occupation across a public thoroughfare or prevent the Council from discharging its statutory duties under Section 77(1) of the Municipal Councils Ordinance.

5. The Petitioner relied on the authority of *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] AC 997 and argued that the notice dated 31.03.2026 constituted an independent administrative act consistent with legislative intent, and that judges cannot usurp legislative functions or rewrite laws to achieve a desired result.
6. Furthermore, it was stated that an alternative remedy of compensation under Section 77(4) is available for any party subsequently establishing ownership. The Petitioner stated that this supports the principle that the legislature intended for removal under Section 77(1) to proceed without being impeded by ownership disputes on a literal construction of the statutory provision; *Kodithuwakkulage Pradeep Samantha alias Fredie* (SC/Appeal No. 139/2014, decided on 21.11.2018).
7. The Petitioner contended that the payment of assessment rates, municipal taxes, duties, licence fees, or other charges constitutes merely a fiscal and administrative transaction for revenue collection purposes and does not confer title, create a legal right, or validate an unauthorized occupation. The Petitioner cited the cases of *Jayalath v. Karunatilaka* [2013] 1 Sri L.R. 337 and *Luwis Singho and Others v. Ponnamparuma* [1996] 2 Sri L.R. 320, and argued that rights relating to land flow from legally recognized title, permits, or entitlements rather than mere occupation, long user, or municipal payments, and that the acceptance of such charges by a local authority cannot amount to an acknowledgment of ownership or deprive the Council of its statutory powers under Section 77(1).

8. It was contended that the Intervenient Petitioners are guilty of *laches* due to the unreasonable delay in asserting their alleged rights before the Court. It was pointed out by the Petitioner that the Intervenient Petitioners, despite witnessing the earlier removal notices installed in 2023 (vide P15) only sought to intervene after the Council initiated fresh statutory action on 31.03.2026: *Biso Menika v. Cyril de Alwis and Others* [1982] 1 Sri L. R. 368.
9. Finally, the Petitioner argued that the Interveniencies have not approached the Court with clean hands, as they seek discretionary equitable relief while maintaining unauthorized structures. The Petitioner maintained that a party acting in violation of equitable norms cannot seek prerogative relief or invoke equity to preserve an unlawful state of affairs: *WTL Automobiles (Pvt) Ltd. v. Commissioner General of Inland Revenue* (CA/WRT/0014/2020 decided on 29.08.2022).

POSITION OF THE INTERVENIENT PETITIONERS:

10. The Intervenient Petitioners argued that it is essential to allow the intervention to these proceedings as they **could result in the removal of the Intervenient Petitioners' stalls, without affording them a hearing, those whose occupations, businesses, and livelihoods might be directly affected.**
11. They contended that the Petitioner cannot obtain coercive relief in the absence of parties directly affected. Furthermore, they contended that there was an immediate threat posed by the letter dated 31.03.2026 issued under Section 77 of the Municipal Councils Ordinance, as it

would irreversibly alter the subject matter and render the relief sought by the Intervenant Petitioners nugatory.

12. It was contended that there are several questions to be determined by Court and are inter alia as follows:

- whether the Intervenant is a necessary and directly affected party;
- whether the Petitioner has established a clear legal right and an enforceable public duty for the requirements of writ of *mandamus* to be satisfied;
- whether interim protection is necessary to preserve the status quo.

13. It has been revealed that they are traders without other means of support, relying solely on the modest shop income for food, medication, and daily expenses. The Petitioners stated that at least one stall began its operations in 1990 by traders on Old Airport Road who established a cooperative society. They stated that the stalls were permitted to be established along Old Airport Road **until thoroughfare development and allocation of a separate location (vide IP7 and IP13).**

14. It was the submission of the Intervenant Petitioners that the **Council had even assigned to the Traders, Assessment Numbers and had even collected taxes from them (vide IP9).**

15. They contended that they are persons vitally affected by writ proceedings and therefore are necessary parties who must be named and heard: Porakara Mudiyansele Aruna Samantha Kumara v. T.A.C.N. Thalagama CA/WRT/238/2020 decided on 21.05.2021, Raway a Publishers and Others v. Wijedasa Rajapakse [2001] 3 Sri L.R. 213, and Dominic v. Minister of Lands and Others [2010] 2 Sri L.R. 398.

16. In response to whether or not the Petitioners have satisfied the requisites for a writ of *mandamus*, contended that Section 77 of the Municipal Councils Ordinance confers a statutory power to address obstructions but does not create a private entitlement for the Petitioner to dictate conclusions or bypass the Council's obligation to conduct factual inquiries, survey verification, and fair consideration. Furthermore, they argued that the written assurances of relocation and collection of tax have **created a procedural legitimate expectation for the same.**

DISCUSSION OF FACTS AND ARGUMENTS:

17. The body of authorities relating to the intervention of parties are as follows:

- i) *The Government Dental Therapists Association, et al v George Fernando, Director of Health Services, et al.* CA Application No. 86/93 decided on 27.07.1994, Justice Ammer Ismail **adopted the liberal approach** to intervention. The Order reads as follows:

*"Each of the Intervenient Petitioners in the present case cannot be said to be a different "meddlesome busybody" or a "meddlesome interloper" who does not have a sufficient interest in the pending application. I would therefore adopt the liberalized rules in regard to the standing of a party entitled to seek a remedy to the case of an intervenient who **similarly has a sufficient interest in the subject matter of pending writ application and on that basis to permit the intervention.**" (the emphasis was added)*

ii) L. U. P. Jayawardena v. Ministry of Health and Others CA/WRT/978/2008, decided on 21.05.2009, in considering the matter of intervention held as follows:

*“What the court at this point of time needs to consider is **whether the intervenient party is a necessary party and having such party in the case would in all circumstances assist court in considering the merit and demerits of the application before court**”.*

iii) Indrani Dewalage Ranasinghe and Others vs. Commissioner General CA/WRT/127/2010 decided on 11.05.2011;

“There is a specific rule of law in the court of appeal rules in Sri Lanka which governs the issue of intervention applications by third parties in Writ applications. However, our courts have considered the issue of sufficient cause and interest of affected parties in exercising the inherent and discretionary power of the court to allow the intervention applications”.

iv) Porakara Mudiyansele Aruna Samatha Kumara v. T.A.C.N. Thalagama, Returning Officer, Gampola Urban Council CA/WRT/238/2020 decided on 21.05.2021, Justice Arjuna Obeysekera cited observations made by Justice Janak de Silva in the case of Hatton National Bank PLC v. Commissioner General of Labour and Others CA/WRT/457/2011, decided on 31.01.2020) wherein it was held as follows:

“The rule is that all those who would be affected by the outcome of an application should be made respondents to such applications”.

CONCLUSION:

18. Applying the decisions of the above decided case law to the instant application, it is seen that any order which will be made in this case would adversely affect the Intervenant Petitioners since they have occupied the same subject matter for a long period of time with the alleged approval of the Municipal Council.
19. Thus, I find that the Intervenant Petitioners are directly affected parties whose presence is necessary to decide the main application and thus, should be allowed to intervene.
20. For the aforesaid reasons, the intervention is allowed. The Petitioner is directed to amend the caption accordingly.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal.