

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
Certiorari and Mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C.A. (WRIT) App No 516/2023

Salha Mazeena Lukmanjee
No. 17, Abdul Caffoor Mawatha,
Colombo 3.

PETITIONER

-VS-

1. Colombo Municipal Council
Town Hall,
Colombo 07.
2. J.M. Badhranie Jayawardhana
Municipal Commissioner,
Colombo Municipal Council
Town Hall,
Colombo 07.
3. The Urban Development Authority
“Sethsiripaya” ,
Battaramulla.
4. Nimesh Herath
The Chairman,
Urban Development Authority,

6th , 7th and 9th Floors,
“Sethsiripaya” ,
Battaramulla.

5. N.P.K. Ranaweera
Director General,
Urban Development Authority,
6th , 7th and 9th Floors,
“Sethsiripaya” ,
Battaramulla.

6. National Housing Department
Authority
Sir Chattampalam A. Gardiner
Mawatha,
P.O. Box 1826,
Colombo 02.

7. Mohamed Faiz Mohamed Aslam
No. 58, Zavya Road, Henamulla,
Colombo 10.

And also of

No. 62, Sri Sangaraja Mawatha,
Colombo 10.

And also of

No. 60 B, Sri Sangaraja Mawatha,
Colombo 10.

RESPONDENTS

2A Palitha Nanayakara
Municipal Commissioner,
Colombo Municipal Council,
Town Hall, Colombo 07.

4A L.B. Kumudu Lal
The Chairman,
Urban Development Authority,
6th, 7th and 9th Floors, “Sethsiripaya”
Battaramulla.

5A Mahinda Withanaarachchi
Director General,
Urban Development Authority,
6th, 7th and 9th Floors, “Sethsiripaya”
Battaramulla.

ADDED RESPONDENTS

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

Counsel : Rajeev Amarasuriya with Yohani Yoharajah
instructed by Hashini Rathnayake for the
Petitioner.

Senany Dayaratne with Nishadi
Wickramasinghe and Janani
Abeywickrema for the 01st and 2nd
Respondents.

Zuhri Zain Fuard, D.S.G. for the 03rd to
06th Respondents.

M.U.M. Ali Sabry, P.C. with Ruwantha
Cooray and Naamiq Nafath instructed by
Ramzi Bacha Associates for the 07th
Respondent.

Written Submissions on : 17.11.2025 for the Petitioner
17.11.2025 for the 7th Respondent.

Supported on : 29.10.2025

Decided on : 08.12.2025

K. Priyantha Fernando, J.(CA)

THE FACTUAL MATRIX:

This case has been filed on 07.09.2023. Thereafter on 27.09.2023, this matter was supported and the Court being satisfied of existence of a *prima facie* case, issued formal notice on all the Respondents.

Following the notice returnable date on 02.11.2023, the Respondents have been granted 5 consecutive dates, specifically being 14.12.2023, 19.01.2024, 20.02.2024, 03.04.2024 and 03.05.2024 for objections.

The Statement of Objections of the 1st and 2nd respondents and the 7th Respondent has been filed on 19.02.2024.

After obtaining documents from several authorities, upon a request made under the Right to Information Act No. 12 of 2016, the Counter Affidavit of the Petitioner has been filed on 20.12.2024 and matter has been **fixed for Argument for the first time on 25.02.2025**.

On the said date, the matter has been re fixed for Argument on 18.06.2025 (the 2nd date for Argument) and again on 25.07.2025 (3rd date fixed for argument). However, all parties have been directed by the Court to file written submissions summing up the matter in issue before the next argument date being the 25.07.2025.

The Petitioner has filed written submissions on 18.07.2025. When this matter came up for Argument on 25.07.2025, the Respondents had yet to

file their written submissions and was once more re fixed for Argument on 29.10.2025.

It is important to note that after three dates which was fixed for argument, the 7th Respondent has remained silent in respect of any necessity to file objections in respect of the pleadings filed by the Petitioner on 20.12.2024.

It is only shortly before the Argument date, i.e. 29.10.2025, the 7th Respondent filed the motion dated 22.10.2025. After 4 dates of argument, the 7th Respondent has now sought to file objections in respect of alleged “fresh material” adduced in the counter-affidavit filed by the Petitioner.

After the argument was fixed for 29th October 2025, there had been a motion dated 22.10.2025 filed by the 7th Respondent seeking to file an affidavit in reply to the fresh material adduced by the Petitioner.

The Petitioner filed written submissions on 17.11.2025 opposing the motion by the 7th Respondent, **filed just one week before the fourth scheduled argument date, which requested permission to file further objections based on alleged "fresh material" adduced in the Petitioner's Counter-Affidavit.** The Petitioner argued that this request was a dilatory tactic and impermissible under the procedure.

Grounds for Objections.

1. Procedural Impropriety and Bad Precedent: Allowing further objections after the closing of pleadings, the filing of the Counter-Affidavit (December 20, 2024), the direction/filing of written submissions, and the lapse of four argument dates (over 10 months) would be procedural anomalous, set a dangerous precedent, and hinder the orderly administration of justice. The Court of Appeal (Appellate Procedure) Rules 1990 do not provide for the filing of

additional objections after the Petitioner files the counter-affidavit, which effectively closes the pleadings.

2. Inordinate and Inexcusable Delay: The 7th Respondent was well aware of the Counter-Affidavit filed on December 20, 2024, and the subsequent motions filed by the Petitioner seeking time to obtain RTI information, but remained silent for nearly 10 months. This delay, followed by a last-minute motion, was seen as tactical and a deliberate attempt to derail proceedings.
3. Nature of the Material: The Petitioner contended the material was not "fresh" but consisted of official information and documents issued by the Respondent public authorities themselves (including the 1st, 3rd, and 6th Respondents) under the Right to Information Act. This information could and should have been presented by the Respondents in their own Objections. The only non-official material (affidavits) was filed in response to affidavits annexed to the 7th Respondent's own objections and therefore could not be deemed "fresh".

The underlying matter remained that an unauthorized construction by the 7th Respondent was blocking the public pathway from 145 Garden to Sri Sangharaja Mawatha, compelling residents to use the Petitioner's private property. The Respondents had a clear statutory duty to remove this obstruction, and their inaction was illegal. The Petitioner requested the Court to dismiss the 7th Respondent's motion and fix the matter for argument.

THE POSITION OF THE 7th RESPONDENT:

The 7th Respondent filed a synopsis in support of their motion, relying on Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 to seek permission to file an affidavit in reply to the "fresh material" adduced by the Petitioner in the Counter-Affidavit dated December 19, 2024.

The 7th Respondent argued that the Petitioner's Counter-Affidavit went beyond merely responding to the Statement of Objections and introduced an enormous amount of fresh material (25 items marked as CA-1A to CA-11C) for the first time.

He contended that the rules of natural justice, specifically *audi alteram partem* (the right to be heard), warranted the grant of permission, as the Petitioner's timing of adducing 25 items of material 15 months after the Petition and 10 months after the 7th Respondent's objections was an "ambush" and a "hide and seek" form of litigation. To admit such material without granting the right to reply would be "repugnant to the most basic tenets of the principles of natural justice". Furthermore, the 7th Respondent asserted that if any order were made by the Court, it would be the 7th Respondent's construction that would be impugned and demolished on the basis of unchallenged fresh material, thus depriving them of the right to object.

The 7th Respondent relied on Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990, which permits a party to file additional pleadings or affidavits with the Court's prior permission, arguing that this Rule exists precisely to prevent the abuse of process seen in this case.

The 7th Respondent cited the rulings in *Dias v. Karawita* (1999 1 SLR 98) and *Kiriwanthe and Another v. Navaratne and Another* (1990) 2 Sri LR 393, which held that the Rules are "designed to facilitate justice and further its ends".

The dictum of Lord Hewart CJ in *R v. Sussex Justices, ex parte McCarthy* [1924] 1 KB 256 was noted: "Justice should not only be done, but should manifestly and undoubtedly be seen to be done".

Regarding the Petitioner's allegation of *laches*, the 7th Respondent argued that mere delay does not automatically amount to *laches*, and considering the circumstances, there was no undue delay.

The 7th Respondent cited *V. Ramasamy v. Ceylon Mortgage Bank* (78 NLR 510) and *Lulu Balakumar v. Balasingham Balakumar* (1997 BLR 22 and 23) to support the position that the principles of *laches* must be applied carefully and discriminately. The 7th Respondent prayed that the Court permit the filing of the affidavit in reply to the fresh material, asserting that refusal would reward the Petitioner's dilatory conduct and severely prejudice the 7th Respondent's property rights.

CONCLUSION:

Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 provides as follows: “*A party may, with the prior permission of the Court, amend his pleadings, or file additional pleadings, affidavits or other documents within two weeks of the grant of such permission, unless the Court otherwise directs. After notice has been issued, such permission shall not be granted ex parte.*”

It was the request of the 7th Respondent that he should be permitted to file an affidavit in reply to the fresh material adduced by the petitioner in the counter affidavit dated 19th December 2024.

It is seen that in the counter affidavit, the Petitioner has averred 48 paragraphs, whilst for the first time, bringing alleged fresh material, and taken up positions which were not taken up in the statement of objections of the Respondents. The documents marked as CA-1A to CA-11C (25 documents) are annexed to the counter affidavit dated 19.12.2024. The Petitioner has obtained such documents only after the institution of the case and even after the objections of the Respondents were filed. It is seen that the 7th Respondent is the party who will be affected by final order of

this Court, if it is given in favour of the Petitioner. Furthermore, rules of natural justice warrant that the 7th Respondent be permitted to file an affidavit in reply to the alleged fresh material adduced in the counter affidavit. Therefore, I am of the view that the application of the 7th Respondent should be allowed to file an affidavit in reply to the counter affidavit of the petitioner.

Regarding laches, it is seen that the 7th Respondent has waited for 10 months to make this application. However, the case has not been taken up for argument yet. Argument dates has been consecutively re-fixed not because of 7th Respondent's fault but for different reasons. Finally, on 29th October 2025, the 7th Respondent has supported this application for filing an affidavit before the argument begin. Considering the surrounding circumstances of this case, there is no *laches* on the part of the 7th Respondent.

I am fortified by following judgments when deciding on *laches*:

1. V. Ramasamy v. Ceylon Mortgage Bank-78 NLR 510 at 517, Wanasundera J.

*“it is my view that when we are dealing with a matter concerning the extent of the powers and jurisdiction, which is reposed in us, to be exercised for the public good, we should hesitate to fetter ourselves with arbitrary rules unless such a course of action is absolutely necessary. **The principle of laches must, in my view, be applied carefully and discriminately and not automatically and as a mere mechanical device. In any such event, the explanation of the delay should be considered sympathetically...**”*

2. Lulu Balakumar v. Balasingham Balakumar-1997 BLR 22:

*“mere delay does not automatically amount to laches and that **the circumstances of the particular case, the reason for the delay, and impact of the delay on the other party, must be taken into account**”.*

For all the above circumstances, I cannot see any prejudice caused to either party by permitting the 7th Respondent to file an affidavit in reply.

Accordingly, the 7th Respondent is granted permission only to file an affidavit in reply to the counter objections of the Petitioner within three (03) weeks from today. The Petitioner is allowed to reply the said Affidavit of the 7th Respondent within three weeks of filing of the same.

The costs of this inquiry should be borne out by the 7th Respondent.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal