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

In the matter of an application for orders in the nature of Writs of *Certiorari* and *Prohibition* in terms of Article 140 of the Constitution.

Case No. CA/Writ/690/2023

R T I Homes (Private) Limited
No. 25, N J V Cooray Mawatha
Welikada
Rajagiriya

PETITIONER

VS.

1. **Reliance Residencies Management Corporation**
   No. 51/1A, Heenatikumbura Road
   Thalangama North
   Koswatta

2. **Condominium Management Authority**

3. Mr. Sarana Karunarathna
   Chairman
   Condominium Management Authority

3A Eng. Bandula Karunaratna
   Chairman
   Condominium Management Authority

4. Mr. Rasika Silva
   General Manager (Acting)
   Condominium Management Authority

5. Mr. Nisasiri Dayananda
   Inquiry Officer
   (Inquiry No. CMA / Le / IQ / 439 / 2023)
   Condominium Management Authority

   2nd to 5th Respondents at:
   1st Floor,
   National Housing Department Building,
   Chittampalam A. Gardiner Mawatha,
   Colombo 02.

RESPONDENTS

Before	**:**	**Hon. Rohantha Abeysuriya PC, J.(P/CA)**
	:	**Hon. K. Priyantha Fernando, J.(CA)**
Counsel	:	Faiszer Musthapha, PC with Amila Perera instructed by Sanjeewa Kaluarachchi for the Petitioner.
		Mihiri De Alwis SSC for the 2nd – 4th Respondents.
Written Submissions on	:	21.11.2025 for the Petitioner. 19.12.2025 for the 2nd – 4th Respondents.
Argument on	:	28.10.2025

Decided on : 26.02.2026

K. Priyantha Fernando, J.(CA)

1. The Petitioner, a company engaged in the development of Condominium Properties, by the Petition dated 06.11.2023 invoked the writ jurisdiction of the Court against the impugned decision of the Respondents.

2. The main Reliefs prayed for are as follows:

   I. Writ of Certiorari quashing the illegal order of the 5th Respondent dated 05.10.2023-P12 - Prayer (c)
   II. Writ of Certiorari quashing the decision of 2nd to 5th respondents to proceed with the inquiry No. CMA/Le/IQ/439/2023.- Prayer (d)
   III. Writ of Certiorari quashing the decision of the 5th Respondent to accept or not reject the purported affidavit P8(b) - (Prayer e)
   IV. Writ of Certiorari quashing the proceedings of the inquiry. - Prayer (f)
   V. Writ of Prohibition prohibiting the 2nd to 5th Respondents from conducting or taking further steps in the inquiry. - Prayer (g)

FACTUAL MATRIX:

3. The 1st Respondent, being the Management Corporation of Reliance Residencies Condominium Complex, had preferred a complaint against the Petitioner with the 2nd Respondent-the Condominium Management Authority, which subsequently initiated an inquiry under section 9 of the Condominium Management Authority Law. The Petitioner filed a Statement of Objections raising a preliminary objection that the complaint and the application were in the English language, which was contended to be contrary to Article 24 of the Constitution regarding the language of the courts. During the proceedings, the 1st Respondent tendered an affidavit in reply; however, the Petitioner objected to the acceptance of the said affidavit on the premise that the motion

filing it was dated 28th July 2023 while the affidavit itself was post-dated to 29th July 2023, which the Petitioner argued was impossibility and ex facie fraudulent.

4. The 5th Respondent, the Inquiring Officer, delivered an order dated 05th October 2023 rejecting both objections raised by the Petitioner. In the said order, the Inquiring Officer held that the Constitution recognized the English language and that refusing the complaint would be discriminatory under Article 12(2) of the Constitution. Furthermore, the Inquiring Officer ruled that the discrepancy regarding the date of the affidavit was a typographical error and that it was improper to reject the affidavit on a technical ground. Consequently, the Petitioner sought writs of Certiorari to quash the said order and Prohibition to prevent the Respondents from proceeding with the inquiry.

THE POSITION OF THE 2ND TO 5TH RESPONDENTS:

5. The 2nd to 5th Respondents filed their Statement of Objections on 11.09.2024 denying the substantive averments contained in the Petition, except for certain formal admissions regarding the parties and the procedural history. The Respondents specifically asserted that the inquiry in question was properly initiated in terms of Sections 6(m) and 16(1) of the Condominium Management Authority Law, rather than solely under the section alleged by the Petitioner. They maintained that the 2nd Respondent Authority is vested with the power to investigate complaints lodged by a Management Corporation against a developer regarding defects in condominium property and to make orders after considering the positions of both parties.

6. The Respondents contended that they had at all times complied with the provisions of the Condominium Management Authority Act No. 10 of 1973 and had afforded a fair hearing to both parties involved. With regard to the specific allegations concerning the affidavit submitted by the 1st Respondent, the Respondents stated they were unaware of the specific details regarding the discrepancy in dates but affirmed that the reply affidavit formed part and parcel of the inquiry record. They further argued that the Petitioner's application was baseless, defective, and failed to disclose legal grounds for relief, alleging that the Petitioner had misrepresented or suppressed material facts and lacked the *uberrima fides* required for writ jurisdiction. Consequently, the Respondents prayed for the dismissal of the Petitioner's application with costs.

7. Filing written submissions on 21.11.2025 the Petitioner has submitted that the inquiry conducted by the 2nd Respondent was *ultra vires* and devoid of jurisdiction as it was initiated against a developer under Section 9 of the Condominium Management Authority Law.

8. It was contended that Section 9 expressly limits the scope of inquiry to the activities and financial stability of a "management corporation" and does not extend to developers. The Petitioner highlighted that the 2nd Respondent formally notified the commencement of the inquiry citing Section 9, stating: '2003 අංක 24 දරණ සහාධිපත්‍ය කළමණාකරණ අධිකාරී පනතේ 9 වන වගන්තියේ විධිවිධාන අනුව මේ සම්බන්ධයෙන් සහාධිපත්‍ය කළමණාකරණ අධිකාරියේ නීති අංශය විසින් අංකCMA/Le/IQ/439/2023 යටතේ නීති පරීක්ෂණයක් ආරම්භ කර ඇති බව මෙයින් කාරුණිකව දන්වා සිටිමි.". Although the Respondents subsequently sought to rely on Sections 6(m) and 16(1) of the Law, the Petitioner argued that these sections also list specific categories of persons such as owners, occupiers, and purchasers which notably exclude developers.

9. Relying on the maxim *expressio unius est exclusio alterius* as discussed in *University of Peradeniya v. Justice D. G. Jayalath, Chairman University Services Appeals Board and Others* (2005) 3 Sri LR 337, the Petitioner maintained that the omission of developers was intentional and that jurisdiction could not be implied.

10. Furthermore, it was asserted that contractual disputes regarding construction defects fall within the exclusive original civil jurisdiction of the District Court under Section 19 of the Judicature Act, and the Authority could not usurp such judicial power. The Petitioner relied on *Sirisena and Others v. Kobbekaduwa, Minister of Agriculture and Lands* 80 NLR 56 to support the position that a statutory tribunal cannot infer powers not expressly granted.

11. Regarding the validity of the complaint, the Petitioner submitted that lodging the complaint in the English language was contrary to Article 24 of the Constitution. It was argued that the Condominium Management Authority constitutes a "Court" within the

meaning of Article 24(5), a fact admitted by the Authority itself in its order: "මෙම කළමණා කරණ අධිකාරිය මගින් පවත්වනු ලබන මෙවැනි පරීක්ෂණයන් අර්ධ අධිකරණමය එසේත් නොමැති නම් ආරවුල් සමථයකට පත් කොට නිරවුල් කිරීම සඳහා වන ආයතනයක් ගණයට අයත් වන බැවින් ආඥාක්‍රම ව්‍යවස්ථාවේ 24 වන වගන්තියේ සඳහන් පරිදි "අධිකරණ" කටයුතු යන අර්ථකතනයට ඇතුළත් වේ.".

12. The Petitioner relied on *Xavier Cross v. M. Sivalingam* CALA 435/2003 (reported in (2008) HLJ Vol. 1, Part 1&2 pp. 228-230) to contend that initiating proceedings with pleadings in English, where not permitted, rendered the proceedings bad in law. Finally, the Petitioner challenged the admissibility of the 1st Respondent's affidavit, noting that it was filed by a motion dated 28th July 2023 but the affidavit itself was dated 29th July 2023. Citing *Inaya v. Lanka Orix Leasing Company Ltd.* (1999) 3 Sri LR 197, the Petitioner submitted that while technicalities should not bar justice, basic legal requirements must still be fulfilled, and a false date rendered the affidavit ex facie defective.

WHETHER THE PETITIONER IS THE OWNER CUM DEVELOPER?

13. It was Petitioner's contention that the Petitioner Company is a separate and distinct from the owner and developer of the subject property. Whereas it was contended by the 2nd to 6th Respondents that in terms of Section 27 of the Condominium Authority Act No. 10 of 1973, the term 'owner' includes both the owner of the land parcel immediately before its subdivision and the registered owner of a condominium parcel for the time being. Accordingly, the definition of "owner" under the Act is broad and inclusive, encompassing both the original land owner and the developer who undertook the construction and sale of the condominium units. They contended that for the purpose of the quasi-judicial proceedings before the Condominium Management Authority, both the developer and the parcel owner fall within the definition of "owner" as contemplated by law. It was Respondents position that the Petitioner, being the developer and the original owner of the land prior to subdivision cannot evade liability.

Section 27 gives the following definition for the term "owner":

"owner" means the owner of" the land parcel immediately before the subdivision thereof:'

"owner of the condominium parcel "means the-registered owner for; the time being of a condominium parcel having a freehold estate in the condominium parcel or where a leasehold estate in the condominium parcel has been created a leasehold estate in the condominium parcel having an unexpired term of not less than twenty years computed as from the date of registration of such creation of leasehold estate ;

14. It was also contended that in terms of Sections 6(m) and 6(l) of the Condominium Authority Act No. 10 of 1973, the Management Corporation, being the 1st Respondent, is vested with the right to lodge a complaint before the Condominium Management Authority (the 2nd Respondent) regarding any defects in the condominium building attributable to the Developer or Owner.

WHETHER THE CONDOMINIUM AUTHORITY HAS POWER TO INQUIRE INTO THE ACTS OR OMISSIONS OF THE DEVELOPER?

15. The letter P3 confirms that the 2nd Respondent has invoked Section 9 as the basis for conducting the inquiry.

Section 9 of the Condominium Management Authority Law reads as follows:

"9. (1) The Authority, may on its own motion, or on the application of a majority of the members of the ***management corporation*** *or corporation or of not less than one-third of the owners of the Condominium Parcels of the Condominium Property or Semi Condominium Property, hold an inquiry, or direct a person authorized in writing in that behalf, by the Authority by order to hold an inquiry into the activities and financial stability of the management corporation.*

(2) For the purposes of an inquiry under subsection (1) the Authority or any person authorized by to hold an inquiry, shall have the power -

(a) to ***summon any member of the management corporation, or owner or owners of the condominium parcels ;***

(b) to require the production of any book or document relating to the affairs of the management corporation or any cash or security ;

(c) to summon a special general meeting of the owners of the condominium parcels ;

(d) to take into his custody, books of accounts or documents in the possession of the management corporation.

(3) Where an inquiry is lie Id under subsection (1) the Authority or the person authorized by the authority to hold the inquiry shall alter due inquiry make order as regards the management corporation and shall communicate the order of the inquiry to ail the owners of the condominium Parcels of the Condominium property or Semi Condominium Property.

(4) It shall be the duty of the management corporation to abide by any order made under subsection (3).

19. It is seen that the statutory power in terms of Section 9 of the Condominium Management Authority Law does not confer any power to conduct an inquiry against a developer. The statutory power is expressly limited to inquiries into the activities and financial stability of the management corporation. The side note to Section 9 - *"Inquiry into the activities of the management corporation*" reflects the legislative intent and statutory scope. Even if the marginal note is considered to be inserted by the legal draftsman, the body of the section itself clearly limits the inquiry to: management corporation; its activities; its financial stability; its records and documents and obligations imposed on the management corporation.

20. **It is pertinent to note that section 9 has no reference whatsoever to the powers concerning developers**.

Section 9 enumerates the persons and entities who may be summoned but a developer is not included. It expressly limits the persons who can be summoned to: members of the management corporation and owners of condominium parcels. A developer does not fall into either category. If the legislature intended the Authority to summon or investigate developers, it would have expressly provided for it.

21. It is trite law that an administrative body cannot exercise powers over a person or entity unless such powers are expressly granted by statute. An excerpt from the judgment of the case of *University of Peradeniya v. Justice D. G. Jayalath, Chairman University Services Appeals Board and Others* (2005) 3 Sri LR 337 which discussed the latin maxim of *expressio unius est exclusio alterius* reads as follows:

> *"It is also important to note that the term teacher' is defined in Sections 79 and 89 of the Universities Act of 1978 "to include Librarian, Deputy Librarian and Assistant Librarian", but there is no mention of Medical Officer, Senior Medical Officer of Chief Medical Officer in this definition. I think this is eminently a situation wherein the maxim expressio unius est exclusio alterius should apply. This means that expression or mention of one thing means the exclusion of the other or others not mentioned. The fact that in the definition of 'teacher' Librarian, Deputy Librarian and Assistant Librarian are expressly mentioned but Medical Officer, Senior Medical Officer and Chief Medical Officer are nor mentioned would militate in favour of the argument that a Medical Officer is not a teacher. In any event, on a functional basis it is not possible to regard a Medical Officer, Senior Medical Officer or Chief Medical Officers as a 'teacher' since such an officer is attached, as the4th respondent was, to a Health Centre or similar unit of a Higher Educational Institution which plays no part in the process of teaching. I have therefore no doubt in my mind that the 4th Respondent was clearly not a teacher and not entitled to be considered a teacher within the meaning of the Universities Act of 1978. It will follow that the en block extensions purported to be granted by the 6th Respondent Commission to the 4th Respondent by P4 and P5 are clearly ultra vires the provisions of the Universities Act of 1978, and the decision of the University Services Appeals Board marked P9 is not correct."*

22. Furthermore, the decision in *Sirisena & Others v. Kobbekaduwa, Minister of Agriculture & Lands* 80 NLR 56, established that an authority created by statute cannot infer powers.

> At page 61: "*As long ago as 1910 Farwell L.J. 52 declared 'Subjection in this respect to the High Court is a necessary and inseparable incident to all tribunals of limited jurisdictions; for the existence of the limit necessitates an authority to determine and enforce it; it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure - such tribunal would be autocratic not limited…*"
>
> At page 63: "*The well-known rule that a statute should not be construed as taking away the jurisdiction of the Court in the absence of clear and unambiguous language to that effect now rests on a reluctance to disturb the established state of the law or to deny to the subject access to the seat of justice. 'It is' he (Viscount Simonds) said in another case 'a principle not by any means to be whittled down that the subject's recourse to her majesty's Courts for the determination of his rights is not to be excluded except by clear words. That is….a fundamental rule from which I would not for my part sanction any departure*"
>
> *"As far back as 1895 it was held in the case of Mahamadu v. Ibrahim2' — that this Court had no inherent power to issue injunctions and its jurisdiction is restricted to cases referred to in section 20 of the Courts Ordinance.*
>
> *When the jurisdiction of Courts in regard to its powers on any matter is referable to a statute, there is no inherent jurisdiction in the Courts to exercise its powers in regard to those same matters.*
>
> *I therefore, reject this argument and hold that section 24(1) cannot be construed as excluding the inherent powers of the Court to grant injunctions when such powers do not exist."*

WHETHER THE INQUIRY IS ILLEGAL?

23. The Petitioner argued that the statutory scheme being the Condominium Authority Management Law makes clear that the scope of the inquiry applies only to the actions of management corporations and not developers. Furthermore, Section 9(2) of the Act only provides for the summoning of ***"any member of the management corporation, or owner or owners of the condominium parcels ;…".*** As such the Petitioner contended that there is a lack of jurisdiction and an *ultra vires* on the part of the 2nd Respondent as powers have not been expressly granted to them by statute to do so.

24. Furthermore, the Petitioner in addressing section 6(m) and 16(1) point out that the statute listed the specific categories of parties between whom disputes may arise, and which the Act has jurisdiction over.

Section 16 of the Act reads as follows:

(1) Where any dispute arises between an ***owner and occupier*** *or* ***owner and owner*** *or the* ***management corporation and owner*** *or the* ***management corporation and owner*** *or* ***owners or mortgagee and owner, or mortgagee and mortgagee or owner and purchaser, or owner and prospective purchaser or mortgagee and" prospective purchaser****, of any such condominium parcel in respect of the use or occupation of any such condominium parcel or the enjoyment of the common amenities or common elements appurtenant thereto, such dispute shall be referred by such person or the management corporation to the Authority, and the Authority as the case may be shall, after due inquiry, make such order in respect of that dispute as may appear to the Authority to be just and equitable.*

(2) It shall be the duty of every party to a dispute referred to the Authority under subsection (1) to abide by any order made by the Authority under that subsection.

It is clear that section 16(1) only identifies the following persons, - owners, occupiers, purchasers, prospective purchasers, mortgagees and the management corporation **and there is no mention of developers**.

25. Furthermore, the Petitioner finally contended that the 2nd Respondent cannot invoke a provision which usurps the powers of the District Court. The Condominium Management Authority is only able to act within the four corners of the Act. This would mean that jurisdiction on matters of contractual disputes cannot be adjudicated upon merely because the issue relates to a condominium.

26. I find it prudent to refer to the judgement delivered in the case of ***Auriya Vinothini Yogaraja nee Poopalarathnam v Riyal Mohomed Riswan*** - SC/APPEAL/33/2020 decided on 02.12.2024 by His Lordship Justice Mahinda Samayawardhena. The judgment underscores the precise role of a judge in interpreting statutory provisions, refraining from introducing new words or ignoring the ones expressly written by the legislation. The relevant portion of the judgment reads as follows:

> *"When the wording of a statute is clear, there is no need for interpretation;* ***the words speak for themselves. The Judge cannot introduce new words or disregard existing words to give a different interpretation in a manner the Judge thinks serve the ends of justice.*** *The words, phrases, and sentences must be construed according to their ordinary, natural, and grammatical meanings. This principle, known as the primary or literal rule, constitutes the foundational tenet of statutory interpretation. (Maxwell on The Interpretation of Statues, 12th Edition (1969), pages 28 32; N.S. Bindra Interpretation of Statutes, 13th edition (2023), pages 328 336) In general terms, the Judge may resort to other canons of interpretation, such as the golden rule, the mischief rule, and harmonious construction, if he is fully convinced that the literal meaning is inconsistent with the clear intention of the legislature or leads to absurdity or repugnancy.*
>
> *In* ***Miller v. Salomons*** *(1853) 7 Ex. 475, Pollock C.B. stated at 560: If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it—to administer it as we find it, and I think, to take a*

different course is to abandon the office of Judge, and to assume the province of legislation."

27. It appears that Sections 6(m), 9 and 16 of the Condominium Management Authority Law, whether read individually or collectively, do not confer jurisdiction to the 2nd Respondent over such matters.

28. Furthermore, if a dispute concerns enforcement of contractual obligations, breach of contract, defects liability, or any other rights arising from agreements, the proper and exclusive forum for adjudication under Sri Lankan law is the District Court (unless a statute expressly grants such power to any other court or tribunal or institute) which exercises unlimited civil jurisdiction. Contractual liability, whether arising from a sale of units, construction agreement, or development obligation is a matter governed by general civil law and is outside the purview of the Condominium Management Authority.

    In this regard, section 19 of the Judicature Act reads as follows:

> "*Every District Court shall be a court of record and shall within its district have unlimited original jurisdiction in all civil, revenue, trust, insolvency and testamentary matters, save and except such of the aforesaid matters as are by or under Chapter VA of this Act or by virtue of the provisions of any other enactment exclusively assigned by way of original jurisdiction to any other court or vested in any other authority and in the exercise of such jurisdiction to impose fines, penalties and forfeiture and shall, in like manner also have jurisdiction over the persons and estates of persons of unsound mind and wards, over the estates of cestuis que trust and over guardians and trustees and in any other matter in which jurisdiction is given to District Court by law*"

29. It is my considered view that the Condominium Management Authority cannot usurp the power of the District Court by assuming a jurisdiction not provided for it under any law. It has no inherent jurisdiction and may act only within the four corners of the Condominium Management Authority Law. It cannot adjudicate contractual disputes, determine liability arising from agreements, award remedies analogous to damages or

specific performance or inquire into 'defects' arising from contractual undertakings of a developer.

30. Wade described the nature of *ultra vires* acts in the context of those being outside jurisdiction. On page 28 of the Eleventh edition of 'Administrative Law' by H. W. R. Wade and C. F. Forsyth, it was observed as follows:

> "*An act which is for any reason in excess of power (ultra vires) is often described as being 'outside jurisdiction'. 'Jurisdiction', in this context means simply 'power', though sometimes it bears the slightly narrower sense of 'power to decide', e.g. as applied to statutory tribunals. It is a word to which the courts have given different meanings in different contexts, and with which they have created a certain amount of confusion. But this cannot be explained intelligibly except in the particular contexts where difficulties have been made. Nor should the difficulties be exaggerated. For general purposes 'jurisdiction' may be translated as 'power' with no risk of inaccuracy.*"

31. As such I am of the view that a matter such as this does not fall under the purview of or the jurisdiction granted to the 2nd Respondent Authority by the Condominium Management Authority Law. The statutory power is clear in its limitation of the matters which can be inquired into. The term 'developer' has been omitted and thus the Petitioner cannot in his capacity as a developer be inquired against under the authority of the 2nd Respondent. Such an act would be considered 'outside the jurisdiction' of the 2nd Respondent Authority and hence *ultra vires.*

<u>WHETHER ENGLISH LANGUAGE IS RECOGNIZED UNDER THE CONSTITUTION?</u>

32. Article 18 of the Constitution reads as follows:

> (1) The official language of Sri Lanka shall be Sinhala
> (2) Tamil shall also be an official language.
> (3) English shall be the link language.

Accordingly, Article 18(3) of the Constitution declares English as the link language of Sri Lanka. The English language is used for the official as well as legal purposes. It is also pertinent to refer to Article 24 of the Constitution:

> "*24(1) Sinhala and Tamil shall be the languages of the Courts throughout Sri Lanka and Sinhala shall be used as the language of the courts situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the Court. In the event of an appeal from any court records shall also be prepared in the language of the court hearing the appeal, if he language of such court is other than the language used by the court from which the appeal is preferred:*
>
> *Provided that the Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers direct that the record of any court shall also be maintained and the proceedings conducted in a language other than the language of the court.*
>
> (2) *Any party or applicant or any person legally entitled to represent such party or applicant may initiate proceedings and submit to court pleadings and other documents and participate in the proceedings in courts, in either Sinhala or Tamil.*
>
> (3) *Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the language used in a court, shall be entitled to interpretation and to translation into [Sinhala or Tamil] provided by the State, to enable him to understand and participate in the proceedings before such court and shall also be entitled to obtain in such language any such part of the record or translation thereof, as the case may be, as he may be entitled to obtain according to law.*
>
> (4) *The Minister in charge of the subject of Justice may, with the concurrence with the Cabinet of Ministers, issue, directions permitting the use of English in or in relation to the records and proceedings in any court for all purposes or for such purposes as may be specified therein. Every judge shall be bound to implement such directions*"

The 24(1) provides for the recording and conduct of proceedings in the language of court hearing the appeal.

33. It was contended by the Respondents that there is no written rule setting out the procedure for such inquiries and as such the Petitioner cannot object to the decision taken by the 2nd Respondent to accept a complaint made in English. It was also contended that same is constitutionally permissible and does not contravene Article 24.

34. In the impugned proceedings, it is important to note that the parties have filed written submissions in Sinhala and certain decisions pertaining to the matter had also been made by the 5th Respondent in Sinhala. In *Madan Mohan v. Carson Cumberbatch & Co. Ltd*. SC (1998 2 SLR 75) it was held that, "By virtue of the Affidavits Act No. 23 of 1953, and affidavit can be filed in the English Language and it does not violate the Constitution. The affidavit filed by the 2nd, 3rd, and 7th respondents under section 213(3) of the Companies Act is a valid affidavit which could be tendered to Court" The Supreme Court had recognized the English language in formal legal proceedings.

IS THE AFFIDAVIT INADMISSIBLE?

35. With regard to this issue, I am inclined to rely on the ratio in following decisions; *Inaya v. Lanka Orix Leasing Company Ltd.* (1999) 3 Sri LR 197 which reads as follows:

> *"I am firmly of the view that technicalities should not be allowed to stand in the way of justice. But, however, the basic requirements of the law must be fulfilled. In the written submissions filed by the petitioners in the District Court the defendants have taken up the position that the affidavit tendered to Court becomes insignificant and no reliance should be placed thereon since the petitioner is required to satisfy Court that he has reasonable grounds for such default. The content of the submission of the petitioner is that the validity or otherwise of the affidavit is not material or relevant as the petitioner has in any event to satisfy Court that he has reasonable grounds for such default.* ***What the petitioner failed to realise is that the application to have an ex parte judgment and decree set aside can be disposed of even without any oral***

testimony. To this extent an affidavit sworn or affirmed according to law is necessary*. If I understood the petitioner's written submissions correctly, then an affidavit drawn up according to law is unnecessary. I am unable to subscribe to this submission."*

36. I further refer to the judgment delivered in *Madan Mohan v. Carson Cumberbatch & Co. Ltd. (SC 1998 SLR 75)* wherein the question of "*Is the affidavit filed by the 2nd, 3rd and 7th respondents in accordance with the provisions of S. 213 (31 of the Companies Act of 1982), an affidavit that can be produced before a Court in accordance with Article 24(1.) of the Constitution?,"* was answered in the manner below:

"Accordingly, our determination is that the affidavit filed by the 2nd, 3rd and 7th respondents under s. 213(3) of the Companies Act is a valid affidavit which could be tendered to Court, and does not contravene the provisions of Article 24(1) of the Constitution. Our answer to the 2nd question posed to this Court is therefore in the affirmative. The Record is returned to the District Court. We make no order for costs."

37. This Court is of the view that as was held in the case of *Inaya v. Lanka Orix Leasing Company Ltd.* (1999) 3 Sri LR 197, while technicalities should not bar justice, basic legal requirements must still be fulfilled. As such, this Court is not able to hold in line with the argument of the Respondent pertaining to this issue.

CONCLUSION:

38. It is apparent that Section 9 does not confer any power to conduct an inquiry against a developer. The statutory power is expressly and exclusively limited to inquiries into the activities and financial stability of the management corporation. Although the Petitioner has been the owner of the land, prior to transfer, the subject complaint concerns only the Petitioner's acts and omissions qua developer in relation to construction. There is no dispute regarding ownership, use, or occupation of the land.

39. As such, I am of the considered view that the wording of the statute is clear in the fact that it has chosen to omit from its phrasing the term ‘developer’ and thus the Petitioner who is the developer/owner cannot be considered a party whose dispute comes under the purview of the Condominium Management Authority Law.

40. For the foregoing reasons, the Petitioner is granted the reliefs (c), (d), (f) and (g) prayed for in the Petition dated 06.11.2023.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal