

**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, Prohibition and Mandamus  
under Article 140 of the Constitution of  
the Democratic Socialist Republic of  
Sri Lanka.*

Rupasena Koswatta,  
No. 64/6A, Matipe, 1<sup>st</sup> Lane,  
Karapitiya.

**CA (Writ) App. No. 722/2025**

**PETITIONER**

**Vs.**

1. Prof. P.B. Terney Pradeep Kumara,  
Director General,  
Coastal Conservation and Coastal  
Resource Management,  
4<sup>th</sup> Floor,  
Ministry of Fisheries Building,  
New Secretariat, Maligawatta,  
Maradana, Colombo 10.
2. Urban Development Authority,  
6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Floors,  
“Sethsiripaya”,  
Battaramulla.
3. Secretary,  
Ministry of Environment,  
Sobadam Piyasa, No. 416/C/1,

Robert Gunawardana Mawatha,  
Battaramulla.

4. Chairman,  
Habaraduwa Pradeshiya Sabha,  
Habaraduwa.
5. Divisional Secretary,  
Divisional Secretariat,  
Habaraduwa.
6. Surveyor General,  
Survey General Department of Sri  
Lanka,  
No. 150, Bernard Soysa Mawatha,  
Colombo 05.
7. Araliya Golden Beach Resort (Pvt)  
Ltd.,  
No. 368, Matara Road, Ganahena,  
Unawatuna.
8. Hon. Attorney General,  
Attorney General's Department,  
No. 159, Hulfsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Dr. Ravindranath Dabare with S.D. Ponnampereuma instructed by K.N.Kodithuwakku for the Petitioner.

S.Dharmawardene, P.C., S.A.S.G. with Medhaka Fernando, S.C. for the 1<sup>st</sup> to 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Respondents.

Chandana Wijesooriya with Ms. Wathsala Dulanjani for the 4<sup>th</sup> Respondent.

Susantha Balapatabendi, PC with Suren Gnanaraj, Savini Iddamalgoda, Rihini Jayasuriya, and H. Marasinghe instructed by Atapattu Rajapaksa Associates for the 7<sup>th</sup> Respondent.

**Supported and Decided on:** 12.03.2026

**Dr. D. F. H. Gunawardhana, J.,**

Sri Lanka is a popular destination for tourists. It can not only boast about its ancient ruins in Anuradhapura and Polonnaruwa which are considered as famous tourist attractions, it can also boast about the salubrious climes of Nuwara Eliya and the Upcountry, and sunny beaches right around the country as good tourist attractions. During the two seasons, tourists from temperate countries visit Sri Lanka's sunny beaches and enjoy the hospitality offered by the star-level hotels. This Application also relates to a proposed hotel project designed to be established in the southern coast of Unawatuna, abutting another sunny beach.

The said plot of land is depicted in the document marked and annexed to the Petition as **P3**, a Survey Plan. At one point in time, a gentleman named Milton Galappathy, having purchased the land depicted in **P3** in extent of 82.69 Perches, had initially put up a hotel called "Milton's Paradise," as depicted in **P7**.

However, later it was revealed that the said Milton Galappathy had expanded the hotel building; part of the said hotel had been built on a restricted area which comes within the purview of the Coast Conservation and Coastal Resource Management Act, No. 57 of 1981. Since part of the hotel had been put up on the restricted area, it had been removed by the Director General of Coast Conservation, as borne out by several documents marked as **P8**, **P8(a)**, **P9**, and several other marked and unmarked documents annexed to the Petition in terms of the said Act No. 57 of 1981.

Subsequently, the said Milton Galappathy, having decided to sell the property in suit, sold the same to Araliya Beach Hotel (Private) Limited, a body corporate incorporated under the Companies Act, No.7 of 2007, by the document marked as **P11(a)**, and the same is depicted in

**P11(b)**. Thereafter, the purchaser under **P11(a)** leased it out to another body corporate, namely the 7<sup>th</sup> Respondent, who is said to be a part of the conglomerate of Araliya Beach Hotel, by the document marked **P12(b)**. The 7<sup>th</sup> Respondent, having taken a decision, proposed to establish a (6-storied) 5-star tourist hotel, on the land so taken on lease by **P12(b)**; consequently a development plan was submitted to the Pradeshiya Sabha, the same was extensively considered as reflected in **P13**.

Further, the plot of land initially purchased by Araliya Beach Hotel (Private) Limited is depicted in the plan annexed to the Petition at page 194, which is also identified in the plan marked as **P3**. The balance portion of the said land was in the possession of the owner at the time the said plan was prepared. The area was pointed out by the then owner, Mr. Milton Galappathy, as at 30.08.1919.

Thereafter, when the 7<sup>th</sup> Respondent proposed to establish a 5-star tourist hotel, the relevant architectural plans were submitted and are marked as **P14(c)** to **P14(k)**. The said documents also include the geo-technical investigation report marked as **P15**.

Thereafter, a complaint had been made to the Ombudsman against the 7<sup>th</sup> Respondent and consequently, the Ombudsman has held an inquiry. For that inquiry, the relevant government agencies who are required to grant the necessary clearance certificates to the 7<sup>th</sup> Respondent to construct the said hotel were called. Pursuant thereto, the Ombudsman called for a technical report, which is borne out by the document marked and annexed to the Petition as **P21**.

According to **P21**, representatives of several government agencies had participated in the inquiry held before the Ombudsman, and the names of the officers who participated in the said inquiry are set out in the report at page 307.

Finally, the said proposed hotel had been approved subject to certain conditions. In view of the same, it was identified that the buildable freehold area consists of 40 Perches as Lot No. 2 in Plan No. 6076. The owner of the land was required to give up or reserve 40 Perches from the road side for the purpose of road reservation. Further, from the land possessed and transferred to Araliya Beach Hotel (Private) Limited, a certain extent of land was required to be given up or renounced in favour of the Government on the beach side as well.

Accordingly, for the purpose of developing the hotel, the area to be given up or renounced in favour of the Government was to be made available to the 7<sup>th</sup> Respondent, having regard to the proposed area to be utilized for the hotel. For that purpose, the Commissioner of Lands of the National Government called for a report from the Commissioner of Lands of the Southern Province. The said letter is marked as **P25(b)** and is annexed to the Petition. Subsequently, subject to the said conditions, approval was granted to the 7<sup>th</sup> Respondent. In the present application, the Petitioner seeks to quash several decisions taken by various government agencies in relation to the approval of the hotel project proposed to be established by the 7<sup>th</sup> Respondent on the land. In addition, the Petitioner also challenges the recommendations contained in the technical report which is in the document marked **P21**, called for by the Ombudsman.

However, on a perusal of the Petition, particularly the prayers set out therein, I am unable to comprehend how the prayers are formulated to challenge the various decisions taken by the government agencies in approving the project of the 7<sup>th</sup> Respondent. It is further noted that it took more than two hours to identify the allegations relating to the reliefs sought in the Petition, yet the manner in which it has been drafted and formulated remains unclear. Accordingly, my first observation is that, with regard to the averments in the Petition, the prayers are prolix,

vague, and cannot be granted. In the first instance, I am therefore constrained to hold that the reliefs sought in the Petition cannot be granted<sup>1</sup>.

Having said that, I hold that the objections raised by Mr. Dharmawardhena relating to the prolixity of the Petition holds water. He has relied upon several judgments, and the judgment of Justice Arjuna Obesekara<sup>2</sup>.

To buttress my view, I wish to rely on the following dicta of Justice Obesekara in the said judgement of *H.K.D. Amarasinghe and Others v. Central Environmental Authority* [2021];

*“Before I consider the position of the Respondents, I must address two issues that have been raised by the learned Senior State Counsel. I have re-produced in its entirety the Writs of Certiorari and Writs of Mandamus prayed for by the Petitioners in view of the first submission of the learned Senior State Counsel that the relief prayed for by the Petitioners is too wide and too vague. A petitioner invoking the jurisdiction of this Court must seek relief that would address their grievance and must not refer to each and every section in an Act hoping and praying that his case would come under at least one of the said sections. In other words, the relief that is sought must be specific and should address the concerns of the petitioner. This would then enable the respondents to respond to the averments of fact and law raised by the petitioner. The fact that the relief is vague is an indication that the petitioner is unsure of the allegations that he/she is making against the respondents and makes the task of Court to mete out justice that much harder.”*

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<sup>1</sup> *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others* [2004] 1 Sri L.R. 230.

<sup>2</sup> CA (Writ) Application 132/2018 (CA Minutes 03.06.2021); *G.P.D. Weerasooriya v. The Chairman of the National Housing Development Authority* CA (Writ) Application 866/98 (CA Minutes 08.03.2004).

Mr. Dharmawardhena further contended that although the Coast Conservation Department, having considered the application, had taken a decision particularly relying on the Technical Evaluation Committee report marked and annexed to the Petition as **P21(a)** (However, the Petition erroneously refers to this document as **P20**; no such document exists in the record with the relevant marking). However, be that as it may, I shall, for present purposes, assume that it exists.

The technical evaluation report has been marked as two documents, **1R1A** and **1R1C**. According to **1R1A**, it is a Gazette notification issued under the Coast Conservation and Coastal Resource Management Act, No. 57 of 1981. Further, annexed thereto is another document, **1R1B**, wherein the 7<sup>th</sup> Respondent's hotel has been approved, subject to certain conditions, which are set out therein.

One of the principal conditions mentioned is that the land now proposed to be leased to the 7<sup>th</sup> Respondent, although situated within the setback area, constitutes a newly accreted land. In this context, Accretion, refers to land accumulated by affluence over time due to various natural causes, including the gradual deposition of soil and sand along the seashore<sup>3</sup>.

Further, according to Mr. Dharmawardhena, the said setback area is not fixed and keeps changing over time due to environmental factors, as well as the high and low tide seasons. This is further evidenced by document **1R1(b)**, particularly **1R1(a)**, which is set out in Section 6.4.7 at page 107A of the Gazette.

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<sup>3</sup> S. Van Leeuwen, (A. Strahan 1820) *Commentaries on the Roman-Dutch Law*, Book II, Chapter V, 118.

Accordingly, depending on the variations in the setback area from time to time, the relevant authorities are empowered to grant such clearance to developers; without such discretion, development in these areas would not be possible.

One of the arguments, based on the allegations set out in the Petition and advanced by Dr. Dabare, is that when Milton Galappathi possessed and operated the hotel at one point in time, he was subjected to significant hardships because a portion of his hotel was removed by the authorities under the powers conferred by the Coast Conservation and Coastal Resource Management Act, No. 57 of 1981. However, in the case of the 7<sup>th</sup> Respondent, he has now been permitted to establish a hotel, and it is argued that there has therefore been no equal treatment.

However, as clearly mentioned by Mr. Dharmawardhena, although vaguely argued in his submissions with reference to documents and other authorities, it is my view, as pointed out by him, that it is an accepted principle that the seashore is a natural area where land may accumulate over time. Such accumulation, identified as accretion, occurs due to natural processes. Therefore, the grant of permission based on the technical report annexed to the Petition, marked as **P21(a)**, is justifiable, as the responsible administrative officers are empowered to consider and grant such permission.<sup>4</sup>

Therefore, it is my view, as argued by the learned President's Counsel, Mr. Balapatabedi, who appeared for the 7<sup>th</sup> Respondent, that the 7<sup>th</sup> Respondent, as the developer and the lessee, is confined to 40 perches for the purposes of carrying out this development permanently. The balance of the land, although originally taken from the owner, Araliya Beach Hotel (Private) Limited, as evidenced by the lease marked **P12**, shall be taken from the Government on an

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<sup>4</sup> *Placid Insurance Brokers (Pvt) Ltd and Others v. Insurance Regulatory Commission of Sri Lanka* [2025] CA (Writ) App. No. 683/2025 (CA Minutes 27.08.2025).

annual lease. The 7<sup>th</sup> Respondent may carry out development on the 40 perches for the purpose of catering to the tourist industry, which now forms part of the nation's development and economic program.

In addition, Mr. Balapatabendi has raised two further points, which I shall also address. First, the Petitioner has not divulged the capacity under which he has approached this Court, whether as a public interest litigant or as a party with a personal interest in the matter. This alone constitutes a separate ground for dismissing the application, and the defect is patent on the face of the Petition; therefore it is fatal.

Secondly, the necessary parties are not before this Court. The decisions of the Provincial Land Commissioner and the Land Commissioner are challenged under prayers *(j)* and *(k)*; however, the said parties have not been made respondents in this application. This, too, is a patent defect committed by the Petitioner; therefore is fatal.

In those circumstances, it is my view that the Petitioner's application cannot be entertained. I am not inclined to issue notice in view of the matters already mentioned in my order. Firstly, no case has been made out in relation to the allegations. Secondly, the Petition does not seek any specific relief and a lot of vagueness and ambiguity in relation to the allegations made therein. Thirdly, the 7<sup>th</sup> Respondent has taken all necessary steps to obtain the required clearances from the relevant government departments and agencies, in accordance with the law and the legal framework provided by the authorities, as evidenced by the documents placed before me.

Accordingly, it is my view that even notice cannot be issued; therefore I am compelled to refuse to issue formal notice and dismiss this Application *in limine*, without costs.

**JUDGE OF THE COURT OF APPEAL**