

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 Prohibition under and in
terms of Article 140 of the Constitution
of the Republic.

Court of Appeal (Writ)
Application No.
CA/WRT/878/2025

MC Case No.
MC/50421/2025

1. Balasuriyage Susila Perera,
No. 08/01, Sri Siddhartha Road,
Kirulapana,
Colombo 05.
2. Balasuriyage Sunanda Perera,
No. 08/01, Sri Siddhartha Road,
Kirulapone,
Colombo 05.
3. Balasuriyage Douglas Perera,
No. 16, Robert Gunawardena
Mawatha,
Kirulapone.
4. Mohamed Hameed Mohamed Niyaz,
No. 68/26, Sri Siddhartha Road,
Kirulapone.

Petitioners

Vs

1. The Magistrate,
Magistrate's Court No. 03,
Hulftdorph Street,
Colombo 12.
2. Maestro Minds (Pvt) LTD,
No. 16, 42nd Lane,
Colombo 06.
3. S. Piribaharan,
No. 42, Ridgeway Place,
Colombo 04.
4. Hon. Attorney General,
Attorney – General's Department,
Hulftsdorp Street,
Colombo 12.

Respondents

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

Counsel : Mahanama de Silva with Udani Ekanayake
instructed by Nadeeka Senanayake for the
Petitioners.

Panchali Witharana, S.C. for the 01st and 04th
Respondents.

S. Thanikumar, S.C. for the 02nd and 03rd
Respondents.

Written Submissions on : 10.11.2025 for the Petitioners.
10.12.2025 for the 2nd and 3rd Respondents.

Supported on : 31.10.2025

Decided on : 15.12.2025

K. Priyantha Fernando, J.(CA)

The four Petitioners filed their Petition dated 02.09.2025 seeking a Writ of Certiorari quashing the order dated 19th August 2025 made by the 1st Respondent Magistrate of the Magistrate Court No. 03 of Colombo. Having heard the submissions made by both parties, this Court has issued formal notice on 31st October 2025. With regard to the granting of interim relief viz. staying further proceedings in the case No. MC/50421/2025, all parties were directed to file written submissions.

THE POSITION OF THE PETITIONERS:

The 1st Petitioner, owner of a 16-perch land in Kirulapone (Assessment No: 01, High Level Road), had instituted District Court action DLM 61/25 **on May 5, 2025**, against the 3rd Respondent and others, seeking declarations that several deeds and a power of attorney were forged documents. In the same District Court

case, the 1st Petitioner had also sought an interim injunction to prevent the Defendants from disturbing her possession and construction activities on the land. When the enjoining order was refused, the Petitioner filed application WP/HCCA/Col/72/2025 in the Civil Appellate High Court seeking leave to appeal, which was pending.

While the inquiry into the interim injunction in the District Court was pending, the 2nd and 3rd Respondents filed an information on July 1, 2025, in the Magistrate's Court, case MC/50421/2025, under Section 66(1)(b) of the Primary Courts' Procedure Act No: 44 of 1979, praying for the grant of possession of the same land. The Petitioner raised a preliminary objection in the Magistrate's Court on August 19, 2025, arguing that the Magistrate Court lacked jurisdiction as the issue of possession was already pending in the higher courts. On that date, the Magistrate's Court ordered the filing of affidavits but failed to rule on the preliminary objection. The Petitioner contended that the Respondents were abusing the process of law and was seeking Writs of Certiorari to quash the order and Prohibition to prevent the Magistrate's Court from proceeding with case MC/50421/2025.

The 1st Petitioner was the owner of a 16-perch land in Kirulapone, valued at approximately 200 million rupees, where she had obtained approval to construct a four-storied apartment complex. She instituted District Court action DLM 61/25 on May 5, 2025, against the 3rd Respondent and others, including Chanaka D. Illaperuma, Jeewa Illaperum, S. Piribaharan (the 2nd Petitioner in the Magistrate's Court case), Techorin Solutions (Pvt) Limited, Raatnam Raguraajah (Notary Public), and Savithri J. Amadoru (Notary Public), after contractors and others allegedly executed forged documents. In the District Court case, the Petitioner sought declarations that several Deeds and a Special Power of Attorney were forged documents. It was noted that the parties who

initiated the Magistrate's Court case, MC/50421/25, were also relying on these same documents whose validity was challenged in the District Court.

In DLM 61/25, the 1st Petitioner prayed for an interim injunction and an enjoining order to prevent the 1st, 2nd, 3rd, and 4th Defendants from disturbing her possession, specifically:

“මෙම නඩුව අසා නිම වන තුරු, මෙහි පහත උපලේඛණයේ සඳහන් ඉඩමට ඇතුළු වීමෙන් හා/හෝ මෙහි පහත උපලේඛණයේ සඳහන් ඉඩමේ පැමිණිලිකාරියගේ සත්තකයට මොනායම් අන්දමකින් හෝ බාධා කිරීමෙන් හෝ එම ඉඩමේ පැමිණිලිකාරිය විසින් කරන ඉදිකිරීම්වලට මොනායම් අයුරකින් බාධා පැමිණවීමෙන් හෝ 01, 02, 03 වන සහ 04 වන විත්තිකරුවන් ඔවුන්ගේ සේවකයින් හා නියෝජිතයින් වළක්වාලන අතුරු ඉන්ජිනේරු තහනමක් නිකුත් කරන ලෙසත්.”

Following the refusal of the enjoining order, the 1st Petitioner filed application WP/HCCA/COL/72/2025/LA in the Civil Appellate High Court on May 26, 2025, seeking leave to appeal against the refusal.

The inquiry into the interim injunction in DLM 61/25 was pending. While the District Court case (instituted on May 6, 2025) and the Civil Appellate High Court Application (instituted on May 26, 2025) were pending, the 3rd Respondent (who was the 2nd Petitioner in the Magistrate's Court case) and one of his companies instituted proceedings in the Magistrate's Court of Colombo on July 1, 2025, in case No: MC/50421/25, under Section 66(1)(b) of the Primary Courts Procedure Act No: 44 of 1979.

It was Petitioners' contention that the dispute as to the possession of the land was seized and possessed by both the District Court and the Civil Appellate High

Court. Therefore, the central legal issue was whether the Magistrate's Court, could simultaneously decide the same matter when it was already seized by two Superior Courts.

The Petitioners further argued that the 03rd Respondent could not hamper the District Court and Civil Appellate High Court proceedings by using the Primary Courts Procedure Act, particularly since an order under Section 68 of that Act was only temporary until the order or decree of a competent court, which in this instance was the District Court. The Petitioner therefore prayed that the interim order be issued.

Petitioners have submitted a second Petition dated 18.11.2025 seeking interim relief in terms of paragraph (c) of the main petition dated September 1, 2025. The Petitioners stated that proceedings in the Magistrate's Court of Colombo, case MC/50421/2025, were continuing, with the next date set for November 27, 2025, despite a screenshot of the Court's proceedings dated October 31, 2025, having been submitted to the Magistrate's Court. A certified copy of the Magistrate's Court proceedings from November 6, 2025, was annexed. The Petitioners noted that the Court of Appeal order regarding the application for interim relief was due to be delivered on December 15, 2025. The Petitioners expressed apprehension that since the Learned Magistrate had not taken the Court's proceedings into consideration, the final order in case No: MC/50421/2025 might be delivered before December 15, 2025, unless this Court stayed further proceedings in the Magistrate's Court. Therefore, the Petitioners prayed for an interim order staying further proceedings in case No: MC/50421/2025 until the final determination of this application, or at least until December 16, 2025.

THE POSITION OF THE 2ND AND 3RD RESPONDENTS:

These Respondents have submitted that, if the petitioners are disagree with the order of the Learned Magistrate, the Petitioners have the **alternative remedy of filing a revision application in the relevant High Court.**

Regarding the merits of the case, the 1st Petitioner namely Balasuriyage Susila Perera owned the property (vide Deed No. 2786 dated 28.07.2015 marked as **A3**). Thereafter she has transferred her rights to the Techorin Solutions (Private) Limited (vide Deed No. 11673 dated 17.12.2021 marked as **A5**) and the said company has transferred the title to the 2nd Respondent (by the deed No. 11704 dated 01.01.2022 marked **A6**) and the possession is given to the 2nd Respondent as it appears in the document **A7**. Then the 2nd Respondent Company and the 1st Petitioner have agreed to accept 1650 square feet in the 4th floor, and accordingly the agreement to sell (vide Deed No. 11705 dated 01.01.2022 marked **A8**) was executed.

Thereafter following documents has been obtained by the 2nd Respondent including letter which confirms the title of the 2nd Respondent (A10), Extracts (A11), Special Power of attorney (A12), Mutual Agreement (A13), Non vesting order (A14), Approved Plan (A15), UDA Preliminary Planning Clearance (A16), Excavation Permit (A17), Payment for the excavation (A18), letter from the Senior DIG (A19), water bills (A20) and Payments to the security service (A21).

Based on the aforesaid evidence, the 2nd and 3rd Respondents were in possession till they were evicted by the Petitioners. When they held possession, the security guard named Gnaprakasam Mariyadasan was the watchman of the premises.

On 14th May 2025, the Petitioners have entered in to the premises and obtained the keys from the security guard. By using the said keys, the gate was opened

and the watchman called 119. Thereafter, watchman Mariyadasan has been threatened by the petitioners informing not to come the premises again and accordingly the said act was informed to the superiors. (vide A23 and A24). Then, new padlocks installed by the Petitioners. The incident was inquired by the Kirulapona Police handed over the phone of the watchman back to him agreeing to handover vacant possession back to the 2nd and 3rd respondents. However, the watchman was again evicted on **21st May 2025** and thus, the petitioners have been charged for criminal trespassing (MC case No. B 46430/03/25). However, no action has been taken by the police for breach of peace or ejectment of the 2nd and 3rd respondents. Thus, 2nd and 3rd respondents filed private plaint before the Learned Magistrate and upon hearing, the Notices were issued on the Petitioners by order dated 19th August 2025 which is sought to be quashed by a Writ of Certiorari.

CONCLUSION:

The facts are clearly in dispute in this matter. Writs are not granted when major facts are in dispute. The main facts relating to who was in possession immediately two months prior to the information report filed before the Magistrate is a matter which should be inquired into by the Learned Magistrate.

The Petitioners' main grievance before this court is that they raised a preliminary objection by way of an affidavit (Z1) that the said court had no jurisdiction to hear and determine the said information in as much as the District Court and the Civil Appellate High Court are seized and possessed of the issue as to the possession of the subject land. On 19th August 2025, the Learned Magistrate made an order to file affidavits. (Z2) The Petitioners state that the Learned Magistrate by failing to make an order relating to the preliminary objection is an order made without jurisdiction.

As per the submissions made on behalf of the 1st Petitioner before the Learned District Judge on **8th May 2025** (A27), the 1st Petitioner has started erecting a building and 3rd respondent namely S. Piribaharan also attempting to enter into the land while erecting a building. The learned District Judge has categorically stated that although it is stated in paragraph 39 of the plaint that she has started building on the premises, there is no particular date or occasion mentioned. The learned Judge has only granted notice of injunction.

According to the B report filed on **22nd May 2025** (vide A25), under Sections 343 and 433 of the Penal Code, all four Petitioners are made suspects of entering the subject land using criminal force on 21st May 2025. When perused the whole B report, it clearly reveals that the Petitioners has had no possession of the land but attempted to gain possession using criminal force and threatening the watchman namely Mariyadasan employed by S. Piribaharan (3rd Respondent). The initial attempt of the 1st Petitioner to enter into possession has happened on **14th May 2025** as evident from the B report dated 22.05.2025 and affidavits marked as A24 (by Mariyadasan) and A23 (by the Manager of the Security Firm).

In the District Court case, the 1st Petitioner has attempted to prove that she had the possession but the 2nd and 3rd respondents are trying to disturb such possession. However, the facts revealed in this Court show that the Petitioners has had no possession immediately prior to the Section 66 application filed by the 2nd and 3rd respondents before the Magistrate Court. Neither the District Court nor the Civil Appellate High Court is in a position to decide on breach of peace and who was in the possession immediately two months prior to the facts reported to the Magistrate Court. This question of fact should solely to be decided by the Learned Magistrate. Even this Court is not clothed with jurisdiction to decide who is in possession since facts are in dispute as to the said issue and the Court of Appeal is devoid of jurisdiction in such situations.

Moreover, there is no step is given by the legislature to file preliminary objections to any application filed under either Section 66(1)(a) or 66(1)(b) of Primary Court Procedure Code. This position was affirmed by Justice Samayawardhena in **Jayawardena vs. Gamini** - CA (PHC) 7/2014 decided on 03.05.2019 as follows:

“There is no place for technical objections in section 66 applications. All such objections shall be viewed keeping in mind the main objective, which is, nothing but to prevent the breach of the peace. In that process, the Magistrate shall act within the frame of the law but without clinging on high-flown technical objections.”

On these circumstances, I am of the view that the Learned Magistrate should be allowed to proceed with the matter and no interim relief should be granted. Accordingly, interim relief is refused.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal