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

In the matter of an application for the grant of writs of Certiorari and Prohibition, under terms of Article 140 of the Constitution.

CA/WRT/0786/2025

1. Dr. Radheeka Ranmali Abeyweera
   No. 9/1, Claessen Place, Colombo 05.

2. Mrs. Imesha A. Wijewickrama nee Wickramapala
   No. 3, Claessen Place, Colombo 05.

3. Mrs. Chithrangani Wickramapala
   No. 1, Claessen Place, Colombo 05.

4. Mrs. Dilhara S. Fernando
   No 6A, Claessen Place, Colombo 05

PETITIONERS

Vs.

1. Mr. E. M. S. B Ekanayake
   Director (Colombo Metro Region),
   Urban Development Authority,
   6th, 7th and 9th Floors,
   "Sethsiripaya",
   Battaramulla.

2. Archt. Plnr. Mr. Mahinda Withanaarachchi
   Director General, Urban Development Authority,
   6th, 7th and 9th Floors,
   "Sethsiripaya",
   Battaramulla.

3. Urban Development Authority
6th, 7th and 9th Floors,
"Sethsiripaya",
Battaramulla.

4. Mr. Anura Karunathilake
Hon. Minister of Urban Development,
Construction and Housing,
12th Floor,
"Sethsiripaya",
Stage II, Battaramulla.

5. Mr. Saman Hettiarachchi,
Chief Executive Officer,
Home Lands Construction Pvt Ltd,
No. 1087, Pannipitiya Road,
Battaramulla.

6. Home Lands Skyline Pvt Ltd
No. 1087,
Pannipitiya Road,
Battaramulla.

7. Home Lands Construction (Pvt) Ltd.
No. 1087,
Pannipitiya Road,
Battaramulla.

8. Home Lands Property Investments (Pvt) Ltd.
No. 1087,
Pannipitiya Road,
Battaramulla.

RESPONDENTS

In the matter of an application for the grant of writs of Certiorari and

Prohibition, under terms of Article 140 of the Constitution.

CA/WRT/0978/2025

1. Dr. Radheeka Ranmali Abeyweera
   No. 9/1, Claessen Place, Colombo 05.

2. Mrs. Imesha A. Wijewickrama nee Wickramapala
   No. 3, Claessen Place, Colombo 05.

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Battaramulla.

RESPONDENTS

Before: P. Kumararatnam, J.
Mahen Gopallawa, J.
Dr. D. F. H. Gunawardhana, J.

Counsel: Saliya Peiris, PC with Pulasthi Hewamanna, Sarinda Jayawardena and Ms. Fadhila Fairoze for the Petitioner.s

Ms. Chaya Sri Nammuni, Deputy Solicitor General with for the 1st to 4th Respondents.

Eraj De Silva, PC with Daminda Wijayaratne and Sanjana Mapatuna instructed by Sudath Perera Associates for the 5th and 7th Respondents.

Kushan D' Alwis, PC with Shanaka Cooray and Rajiv Wijesinghe instructed by Sudath Perera Associates for the 6th Respondent.

Ali Sabry, PC with Naamiq Nafatha, Akalanka Ukwatte and Shamith Fernando instructed by Sudath Perera Associates for the 8th Respondent.

Supported on: 08.06.2026, 10.06.2026, 11.06.2026, 16.06.2026 and 18.06.2026

Decided on: 24.07.2026

Mahen Gopallawa, J.

Introduction

The Petitioners identify themselves as residents of Claessen Place, Colombo 05 (Thimbirigasyaya). In the instant applications, they have sought to impugn the Preliminary Planning Clearance dated 26.02.2025 (P6(a)), the amended Preliminary Planning Clearance dated 09.07.2025 (P21(b)) and the Development Permit dated 21.08.2025 (P22) issued by the 3rd Respondent to the 6th and 8th Respondents in respect of the proposed development at premises Nos. 19, 19/1, and 19/2, Havelock Road and Nos. 11 and 11A, Claessen Place, Colombo 05. It is not in dispute that the proposed development is the construction of a high-rise residential apartment complex named "Pentara Residencies."

The Petitioners initially instituted writ application No. CA/WRT/0786/2025 on 25.07.2025 impugning the Preliminary Planning Clearance (P6(a)) and have thereafter instituted application No. CA/WRT/0978/2025 on 03.10.2025 impugning the aforementioned Preliminary Planning Clearance (P6(a)) as well as the amended Preliminary Planning Clearance (P21(b)) and the Development Permit (P22), which they state that they became aware of subsequent to the filing of the initial application.

As agreed by the parties, application No. CA/WRT/0978/2025 was taken up for support and submissions of all parties were heard. It was also agreed by all parties, that a single order would be made by this Court determining both applications. Therefore, it is clarified that references made to the pleadings and documents in this order would be to the pleadings and documents filed in application No. CA/WRT/0978/2025.

In the application No. CA/WRT/0978/2025, the Petitioners have sought the following substantive reliefs;

(e) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the purported amalgamation of No. 19, 19/1 & 19/2 Havelock Road and No. 11 & 11A Claessen Place as reflected in P6(f);

(f) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decisions reflected in Preliminary Planning Clearance marked P6(a);

(g) A mandate in the nature of a Writ of Certiorari quashing the decisions reflected in the amended Preliminary Planning Clearance [marked P21(b)];

(h) A mandate in the nature of a Writ of Certiorari quashing the decisions reflected in the Development Permit [marked P22];

(i) Grant and issue a mandate in the nature of a Writ of Certiorari quashing XX and XXI of 7.3 Planning, Development & Guidelines of the CCDP 2022-2031 [marked P15];

Or in the alternative to the above

Grant and issue a mandate in the nature of a Writ of Prohibition preventing the 1st to the 3rd Respondents and/or officers serving thereunder and/or any other Guidelines of the CCDP 2022-2031 [marked P15] to the entire bare land which is the subject of the instant application [identified originally as No. 19, 19/1 & 19/2 Havelock Road and No. 11 & 11A Claessen Place]

(j) Grant and issue a mandate in the nature of a Writ of Certiorari quashing Form G of Schedule V Permissible number of floors for Special Primary Residential Development Zone (P14) insofar as it applies to land with an extent greater than 2500 Sq.m;

Or in the alternative to the above

Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the application of Form G of Schedule V - Permissible number of floors for Special Primary Residential Development Zone P14 insofar as it applies to Claessen Place:

And
Grant and issue a mandate in the nature of a Writ of Prohibition, prohibiting 1st - 3rd Respondents and/or officers serving thereunder and/or any other Respondent from applying Form G of Schedule V - Permissible number of floors for Special Primary Residential Development Zone P14 to land on and/or adjoining/bordering and/or in close proximity to Claessen Place;

(k) Grant and issue a mandate in the nature of a Writ of Prohibition prohibiting the 1st - 3rd Respondents and/or officers serving thereunder, and/or any other Respondent from applying Form A 'Permissible Floor Area Ration' found in (Schedule I) of Chapter

8 of the CCDP 2022-2031 marked P14 to Special Primary Residential Development Zones:
Or in the alternative to the above

Grant and issue a mandate in the nature of a Writ of Prohibition, the prohibiting the 1st - 3rd Respondents and/or officers serving thereunder, and/or any other Respondent from applying Form A 'Permissible Floor Area Ration' found in Schedule I of Chapter 8 of the CCDP 2022-2031 marked P14 to land on and/or adjoining/bordering and/or in close proximity to Classen Place;

(l) Grant and issue a mandate in the nature of the Writ of Certiorari calling for and quashing the decision of the 1st – 3rd Respondents and/or officers serving thereunder, which considers the entire bare land which is the subject of the instant application [identified originally as No. 19, 19/1 & 19/2 Havelock Road and No. 11 & 11A Claessen Place] as a Medium Density Mixed Development Zone (Zone Factor 2.5) as reflected in P6(a);

(m) Grant and issue a mandate in the nature of a Writ of Prohibition prohibiting the 1st to 3rd Respondents and/or officers serving thereunder, from considering the entire bare land which is the subject of the instant application as Medium Density Mixed Development Zone (Zone Factor 2.5) as reflected in P6(a);

(n) Grant and issue a mandate in the nature of a Writ of Prohibition, prohibiting the 1st to 3rd Respondents and/or officers serving thereunder, permitting any construction to be carried out beyond FAR 5.0 as permitted in Form A - Permissible Floor Area Ratio found in Schedule I of Chapter 8 of the CCDP 2022-2031 marked P14 on the bare land which is the subject of the instant application [identified originally as No. 19, 19/1 & 19/2 Havelock Road and No. 11 & 11A Claessen Place;

OR in the alternative to the above
Grant and issue a mandate in the nature of a Writ of Prohibition, prohibiting the 6th to the 8th Respondents and/ or employee and/ or agents serving thereunder, from effecting/carrying out any construction beyond FAR 5.0 as permitted in Form A Permissible Floor Area Ratio found in Schedule I of Chapter 8 of the CCDP 2022-2031 marked P14 on the bare land which is the subject of the instant application identified originally as No. 19, 19/1 & 19/2 Havelock Road and No. 11 & 11A Claessen Place; 6th to 8th Respondents and/or employees and/or agents serving thereunder,

(o) Grant and issue a mandate in the nature of a Writ of Prohibition prohibiting the 1st - 3rd Respondents and/or officers serving thereunder, and/or any other Respondent from applying Section 50(1) found in New Planning & Development Regulations / Orders of Extraordinary Gazette 2235/54 dated 08-07-2021 marked P13(b) to land marked X in Survey Plan No. 3815 dated 31-03-2017 prepared by Mr. P. M. Sunil Registered Licensed Surveyor;

OR in the alternative to the above
Grant and issue a mandate in the nature of a Writ of Prohibition, the prohibiting the 1st - 3rd Respondent and/or officers serving thereunder, and/or any other Respondent from applying Section 50(1) found in New Planning & Development Regulations / Orders of Extraordinary Gazette 2235/54 dated 08-07-2021 marked P13(b) to land on and/or adjoining/bordering and/or in close proximity to Claessen Place;

The 1st to 3rd Respondents, and the 6th, 7th and 8th Respondents have filed limited statements of objections, objecting to the grant of the aforementioned reliefs sought by the Petitioners. The Respondents have also raised certain legal objections, which I intend to address in due course after a consideration of the merits of the application.

Factual Background

For ease of reference, the chronology of key events/actions material to these applications, as extracted from the pleadings and documents filed by the parties, may be tabulated as follows;

Date	Event/Action
22 August 2017	Amalgamation of the allotments of land bearing Assessment Nos. 11 and 11A, Claessen Place and Assessment Nos. 19, 19/1 and 19/2, Havelock Road depicted as Lot X in Survey Plan No. 3815 was prepared by PM Sunil Licensed Surveyor (P6(f)/1R1)
09 April 2018	Preliminary Planning Clearance (PPC) issued to the NEM Property Developers (Pvt) Ltd for 50 floors valid for a period of 01 year (7R18/8R8)
09 July 2021	Publication of the Urban Development Authority Planning & Development Regulations 2021 in the Extraordinary Gazette Notification No. 2235/54 (P13(b)6R7(b)/8R6(ii))
04 May 2022	Publication of the approval of the Development Plan for the Municipal Council Limit of Colombo (City of Colombo Development Plan 2022-2031 (CCDP 2022-2031) and notice of approval of same in the Extraordinary Gazette Notification No. 2278/10 (6R7(a)/8R6(i) and extracts thereof have been annexed to the petition marked P11 and P14.
06 February 2025	Application for Preliminary Planning Clearance submitted by 6th Respondent (8R9)

26 February 2025	Preliminary Planning Clearance (PPC) was granted to 6th Respondent for a period of 01 year (P6(a)/8R3(i)(b))
07 March 2025	A letter sent by the 6th Respondent to the UDA seeking amendment to PPC dated 26.02.2025 (8R10)
03 April 2025	Amended PPC was granted by the UDA to the 6th Respondent for construction of 02 towers (8R11)
10 April 2025	Building Application bearing Reference No. BA/11/CMCCE/2025/04/10/3937Y submitted by the 6th Respondent (The date of submission is reflected in the reference number)
23 April 2025	Request for information submitted by 1st Petitioner to UDA seeking information on owners of land and development plans or approvals (P2(a))
29 April 2025	Letters of objection submitted by the Petitioners against the construction of a high-rise development at 19 Havelock Road and 11 and 11A Claessen Place to the Minister of Urban Development, Construction and Housing, Director General, UDA, Chairman, Condominium Management Authority, Municipal Commissioner, Colombo Municipal Council, and His Excellency the President (P3(a)-(e) respectively) The said letters, which are similar in content, state that the said development violates zoning regulations, violates the constitutionally protected rights to live peacefully and securely under Articles 12 and 14 of the Constitution and will cause environmental degradation, and have requested for the immediate suspension of the project approval and withholding of further planning approval. Furthermore, a request for a meeting with affected residents has been sought.
23 May 2025	UDA response to RTI request (P2(b)) informing the 1st Petitioner that Preliminary Planning Clearance has been granted to the 6th Respondent for a proposed residential apartment complex project and that a building application had not been submitted to the said division of the UDA (P2(c))
26 May 2025	Request for information submitted by 1st Petitioner to UDA seeking a copy of the Preliminary Planning Clearance (P5(a))
30 May 2025	Response of the UDA in respect of the objections raised in their letters (P3(a)-(e)). The positions taken up by the UDA in the said letter will be

	examined in greater detail in relation to specific grounds of review urged by the Petitioners are considered (P6(b))
06 June 2025	UDA response to RTI request (P5(a)) informing the 1st Petitioner that Preliminary Planning Clearance has been and that the land is owned by NEM Construction (Pvt) Ltd and providing a copy of such PPC. The said letter also refers to payments to be made to obtain a certified copy of the PPC (P5(b))
30 May 2025	Permission sought by the 8th Respondent from the Petitioners to conduct pre-crack inspections of their properties (P16)
20 June 2025	Approval granted by the UDA for the Survey Plan No. 8546 dated 24.03.2025 (8R1(ii)(a)) depicting the amalgamated Lot X (8R3(ii))
26 June 2026	Deed of Transfer No. 6612 executed between N.E.M Property Developers (Pvt) Ltd and 8th Respondent in respect of the subject property which is identified as Lot X in Plan No. 8546 dated 24.03.2025 (8R1(i) and 8R1(ii)(a))
26 June 2025	A request was made by the 6th Respondent to the UDA to assign and change the name in the PPC to the 8th Respondent, which was a sister-company within the same Group. The fact that land had been purchased for the project in the name of the 8th Respondent has been cited as the reason to seek such assignment and change of name (8R12)
05 July 2025	Request by the 8th Respondent to amend condition (iii) of the PPC dated 03.04.2025 (8R11) and seeking the issuance of a new PPC in line with revised development plans and architectural drawings submitted for review. The said letter refers to the construction of 02 towers: Tower 01(A)-Ground + 32 Floors (without 13) and Tower 02 (B)-Ground + 41 Floors (without 13) P21(a)
08 July 2025	Amendments made to Building Application (P29)
09 July 2025	Amendments to PPC approved by the UDA and the amended PPP issued (P21(b)/8R3(i)(a)). The following conditions have been set out in the said amended PPC (i) Maximum Permissible F.A.R is 1:12.00 (ii) Maximum Permissible Plot Coverage at Podium level is 61.20% and Tower level is 45.45% (iii) Maximum number of Floors subject to above F.A.R and Plot Coverage are;

	• Podium level: Ground and 8 Upper Floors for parking • Tower A-Podium (G+8) + 20 Upper Floors for Apartments + 3 Floors with Common Facilities • Tower B-Podium (G+8) + 32 Upper Floors for Apartments The UDA had also approved the change of name of the PPC holder to "General Manager, Home Lands Property Investments (Pvt) Ltd" and had left all other conditions stipulated unchanged.
13 August 2025	Traffic Planning Clearance for the site was issued by the UDA for the project subject to the 26 conditions set out therein. One such condition is that *"any entry or exit gate should not be provided to the Claessen Place road in construction and operational periods"* (condition 8) (1R20)
18 August 2025	Pre-Crack Survey Report submitted by National Building Research Organization (NBRO) on buildings around the project site. The said Report*, inter alia,* reflects the fact that the Petitioners have not granted permission to inspect their premises.
21 August 2025	Development Permit granted by the UDA to the 8th Respondent valid for a period of 01 year. Approval of the said Development Permit has been granted subject to 31 conditions set out therein, including adherence to the conditions specified in the approvals and clearances set out in items (i) to (xv), condition 31 thereof. (P22/8R3)
29 August 2025	Correction made by the UDA to conditions 31 (xii) and (xiii) of the Development Permit (8R3(b))

The pleadings also reflect that the following approvals and/or clearances have been obtained by the 6th and 8th Respondents, as required by the PPC and the development permit;

Approval/Authorization and Issuing Authority	Date	Document Marking[1]
Drainage Clearance from Colombo Municipal Council (CMC)	11.07.2025 04.08.2025	1R12 1R12a
Street Line Certificate from CMC	07.08.2025	1R13
Solid Waste Management Clearance from CMC	17.06.2025	1R14
Environmental/Environmental Consultative Committee Clearance from the UDA/CEA	19.08.2025	1R15

[1] These documents have also been attached to the limited objections of the 8th Respondent marked 8R3(iii) to 8R3(xiv)

Electricity Supply Clearance from the Ceylon Electricity Board (CEB)	25.07.2025	1R16
Geotechnical Clearance by the NBRO	15.10.2025	1R17
Provisional Green Building Certificate issued by the UDA	20.08.2025	1R18
Preliminary Planning Clearance from the Condominium Management Authority (CMA)	21.08.2025	1R19
Traffic Planning Clearance for the site issued by the UDA	13.08.2025	P23(m)/1R20
Water Supply Clearance from the National Water Supply & Drainage Board (NWSDB)	23.07.2025	1R21
Fire Protection Requirements issued by the Fire Service Department of the CMC	15.07.2025	1R22
Height Clearance from the Civil Aviation Authority of Sri Lanka (CAASL)	14.05.2025	8R3(vii)

The events and actions referred to above will be elaborated as required when the grounds of review cited by the Petitioners are examined.

<u>Grounds of Review and Analysis</u>

In paragraph 39 of their petition, the Petitioners have articulated their entitlement to judicial review in the following terms;

> *39. The Petitioners state in the circumstances morefully enumerated above, the decision of the 1st & 3rd Respondents to grant the Preliminary Planning Clearance [marked **P6(a)**], to amend the Preliminary Planning Clearance [marked **P21(b)**], and issue the Development Permit [marked **P22**], for a high rise Residential Apartment Development under the conditions of the Medium Density Mixed Development Zone I, when the majority of the land is part of the Special Primary Residential Zone, to the 6th and/or 8th Respondent in contrary to law for the following reasons amongst others that may be articulated by way of Counsel at the appropriate stage,*
>
> *a) The issuance of **P6(a), P21(b),** and **P22** are inter alia, irrational, arbitrary, capricious, disproportionate, and/or unreasonable;*
>
> *b) The issuance of **P6(a), P21(b),** and **P22** are contrary to the Petitioners' Legitimate Expectations, especially vis-à-vis the residential nature of Classen Place;*
>
> *c) The issuance of **P6(a), P21(b),** and **P22** are without any public consultation, and hearing the Petitioners is contrary to the principles of Natural Justice;*

d) *The 1st and 3rd Respondents and/or officers serving thereunder, have failed to take into account relevant considerations as morefully enumerated above and/or have taking [sic] into account irrelevant considerations;*

e) *The issuance of **P6(a), P21(b),** and **P22** is an excessive use of power, and has the effect of penalizing innocent residents, and adversely impacting on their habitation, family life and well-being;*

f) *The improper licensing decisions reflected in the granting of the Preliminary Planning Clearance **P6(a), P21(b),** and **P22** do not fairly and reasonably relate to a building suitable for the residential neighbourhood, in which the Petitioners reside in, and/or such is for a building unsuitable to the neighbourhood;*

As reflected in the above factual narrative, the grounds upon which the Petitioners objected to the proposed development in their letters dated 29.04. 2025 to the Minister of Urban Development, Construction and Housing, Director General, UDA, Chairman, Condominium Management Authority, Municipal Commissioner, Colombo Municipal Council, and His Excellency the President (P3(a)-(e)) were that it violated zoning regulations, violated the constitutionally protected rights to live peacefully and securely under Articles 12 and 14 of the Constitution and will cause environmental degradation. It is observed that the aforementioned grounds of review cited in the petition are different and wider in scope than the grounds urged before the administrative authorities whose decisions they seek to impugn.

The learned President's Counsel representing the 5th to 8th Respondents also alleged that the grounds relied upon by the learned President's Counsel for the Petitioners when the instant applications were taken up for support differed in certain respects from the case presented in the petition.

I will proceed to consider the grounds of review presented by the learned President's Counsel for the Petitioners, along with the responses of the Respondents thereto, and provide my determinations thereon.

Regulatory Regime for Integrated Planning and Physical Development in Urban Development Areas

In order to place the arguments presented by the parties in their proper context, it would be helpful to set out the statutory regulatory regime set out in the Urban Development Authority Law No. 41 of 1978 (as amended) ("the UDA Law") to regulate integrated planning and physical development in urban development areas.

Section 3(1) of the UDA Law provides for the declaration of "urban development areas" and it is common ground that the Colombo Municipal Council area was declared as such an urban development area by the Minister in charge of Urban Development order published in the

Government Gazette No. 26/ 8 dated 07.03.1979. Section 3(3) of the Law provides that UDA "shall develop every development area for the better physical and economic utilization of such area."

In terms of section 8 of the Law, the UDA is empowered, *inter alia,* to carry out integrated planning and physical development within and among urban development areas[2] and to implement related programmes of development work, activities and services in such areas that are consistent with integrated planning in such areas, subject to directions that may be given by the Minister from time to time[3] and to implement development plans and capital investment plans approved by the Government.[4]

Section 8A of the UDA Law obliges and empowers the UDA to prepare development plans in respect of urban development areas "with a view to promoting and regulating the integrated planning and physical development of lands and buildings in a development area or part thereof," and the matters that may be provided for in such a development have been listed non-exhaustively in the Schedule to the Act. The matters set out in the Schedule include the following;

1. *The manner in which the land and buildings in the development area shall be used.*
2. *The allotment, reservation or zoning of land for different purposes.*
3. *The provision for regulating the uses of land and buildings in different zones such as residential, commercial, industrial and imposition of conditions and restrictions in regard to the floor area ratio, density, location, and height, number of storey and size of building structures, the size of plots, yards and open spaces, set backs from street, building lines and the use and maintenance of buildings, structures and appurtenant land.*

   …..

5. *The control of architectural features, elevation and frontage of buildings and regulations for attaining urban design objectives.*

The procedure to be followed in the preparation, approval and publication of development plans are set out in sections 8B to 8G of the Law and provision for amendment is made in section 8H of the UDA Law.

In so far as development plans in respect of the Colombo Municipal Council limits are concerned, the UDA, in its objections have, *inter alia,* clarified the following matters; that the City of Colombo Development Plans of 1999 and 2008 are no longer in effect; that the Colombo Commercial City Development Plan 2019-2030 was revoked by the Extraordinary Gazette Notification No. 2206/11 dated 15.12.2020 (1R5); and, that the City of Colombo Development Plan 2022-2031 (CCDP 2022-2031) (6R7(a)/8R6(i)), which was approved and

[2] Section 8(a)
[3] Section 8(b)
[4] Section 8(g)

published in the Extraordinary Gazette Notification No. 2278/10 dated 04.05.2022, has been in effect since such date. A perusal of the said CCDP 2022-2031 indicates that the procedure contemplated in sections 8B to 8G of the UDA Law have been adhered to in preparing, obtaining approval and publishing the said development plan.

Section 8J of the UDA Law sets out the legal requirements for a person to carry out or engage in a development activity within an urban development area, and, sub-sections (1), (3) and (4) thereof provide as follows;

> *8J. (1) Notwithstanding the provisions of any other law, no Government agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Authority.*
>
> *…….*
>
> *(3) A permit under subsection (1) shall be granted by the Authority under that subsection subject to such terms and conditions as the Authority may consider necessary, if the Authority is satisfied that*
>
>> *(a) in any case where the development plan has been submitted to the Minister for approval of the development plan has been approved by the Minister, the development activity proposed to be carried out or engaged in will not be inconsistent with or in contravention of any proposal of provision in such development plan; and ….*
>
> *…..*
>
> *(4) The Authority may take into account the recommendations of the Planning Committee, in granting or refusing to issue a permit under this section.*

Correspondingly, section 8K of the UDA Law provides that "no development activity shall be carried out or engaged in, in contravention of, or in variance with, the permit issued in that behalf."

Regulations have been enacted by the Minister from time to time in terms of section 21 of the UDA Law to give effect to the aforementioned statutory duties and functions, and, the Urban Development Authority Planning & Development Regulations, 2021 ("UDA Planning and Development Regulations, 2021"), which were published in the Extraordinary Gazette Notification No. 2235/54 dated 08.07.2021 (P13(b)/6R7(b)/8R6(ii)), are currently in force. Provisions relating to the issuance of a PPC are set out in Part I of such Regulations (Regulation 1-3), whilst those applicable to the issuance of a development permit are contained in Part III thereof (Regulations 28-44).

As observed by the learned President's Counsel for the 8th Respondent, the aforementioned statutory provisions have modified and restricted the application of the common law principle that *"cujus est solum ejus est usque ad coelum et ad inferos",* which is to the effect that "to whomsoever the soil belongs, he owns also to the sky and to the depths."[5] In support of the proposition that common law rights may be modified by statute in the interests of urban development, the learned President's Counsel also referred to the decision of the Supreme Court in ***Moosajee v. Carolis Silva,***[6] wherein a Bench of Five Judges of the Court opined as follows (per H.N.G. Fernando, CJ);

> *For these reasons, we hold that under the law of Ceylon mere long enjoyment of the access of light and air through a window does not entitle an owner of land to the servitude ne luminibus officiatur. We thus over-rule the previous decisions of this Court to the contrary. To do so is of great practical advantage in the public interest* ***. In our congested cities and towns, adequate work and living space has to be provided by the erection of tall modern buildings, which may be in quite close proximity to each other. It is unthinkable that such necessary development of available ground-space should be impeded by the mere fact of the existence on a neighbouring land of a building which has hitherto enjoyed the access of light and air in fact only, and not as of right. The civic authorities have by statute sufficient powers to control development in the interest of public health and on other similar grounds.*** (emphasis added).

In so far as the entitlement of the 5th to 8th Respondents to construct a building on the land owned by them and the right of a neighbour to object to same, the learned President's Counsel further referred to ***Telephix Technologies (Pvt) Ltd v. R.M. Jinasena,***[7] wherein the Supreme Court observed as follows (per Sisira De Abrew, J.);

> *Considering the above legal literature set out in W Perera Vs C Ranatunga (supra) and Musajee Vs Carolis Silva (supra)* ***I hold that when two persons become owners of adjoining premises one cannot acquire a right of servitude of light and air by prescription over the other's land by mere enjoyment of light and air for a long period and that mere fact that the neighbour has not constructed a building on his land for any length of time does not give a right to the owner of the other land to acquire a right of servitude of light and air. I further hold that the owner of the adjoining premises who has so far not constructed a building on his land has a right to construct a building approved by the Local Authority/Urban Development Authority on his land which may obstruct the light and air that the adjoining building has been receiving.*** (emphasis added)

The principle enunciated in the aforementioned decisions are relevant to the instant applications since these applications too relate to conflicting and competing rights and interests of neighbouring land owners.

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[5] For a discussion of the application of the principle in our Courts, see Nanda Senanayake, *Legal Maxims & Phrases* (2023) pp 691-693

[6] (1967) 70 NLR 217 at 226

[7] SC Appeal 239/2014, SC Minutes 31.03.2016, p 8

Amalgamation of Allotments of Land

One of the reliefs sought by the Petitioners (vide paragraph (e) of the prayer) is the quashing of the amalgamation reflected in the survey plan Survey Plan No. 3815 dated 22.08.2017 (P6(f)/1R1), whereby allotments of land bearing assessment Nos. 19, 19/1 and 19/2, Havelock Road and Nos. 11 and 11A Claessen Place were amalgamated into Lot X after such allotments were purchased by N.E.M. Property Developers (Pvt) Ltd. The ground relied upon by the Petitioners to seek the invalidation of such amalgamation at the stage of support of these applications was that, the documents denoting official approval of the amalgamation were not tendered to Court. In particular, the learned President's Counsel referred to the fact that the UDA had stated in their limited statement of objections that its approval for the amalgamation had been granted by a document marked "1R1" but that such document had not been tendered to Court. In such circumstances, he submitted that, no reliance could be placed on the Survey Plan (P6(f))/1R1) without such document denoting UDA approval. He further invited the Court to draw an adverse inference against the Respondents in view of their failure to produce the document (1R1A) in terms of section 114 illustration (f) of the Evidence Ordinance, No. 14 of 1895 (as amended).[8]

The learned Deputy Solicitor General for the 1st to 3rd Respondent, in response, submitted that the aforementioned amalgamation had been duly approved by the UDA and that the failure to tender the document "1R1" to Court, which had occurred by oversight, does not invalidate such amalgamation. She also pointed out that the position taken by the Petitioners at the stage of support had not been previously taken up before the UDA in their representations or in the petitions filed in these applications. The learned President's Counsel for the 5th to 8th Respondents too all concurred with such position taken up by the learned Deputy Solicitor General and also submitted that approval had been granted on 20.06.2025 by the UDA for the Survey Plan No. 8546 dated 24.03.2025 (8R1(ii)(a) and 8R3(ii)), wherein the amalgamated Lot X is depicted as a single parcel of land, submitted and relied upon by the said Respondents.

In the first instance, I wish to observe that amalgamation of allotments of land is permitted in terms of Part II (Land Subdivision, Amalgamation and Development) containing Regulations 4 -27 of the UDA Planning & Development Regulations, subject to the approval of the UDA. Secondly, it is observed that the seal affixed on the bottom left corner of the Survey Plan (P6(f)/1R1), though copies tendered to Court are not the clearest, support the position taken up by the UDA that the amalgamation of the land had been approved by the UDA. Thirdly, it is extremely unlikely that the Survey Plan No. 8546 dated 24.03.2025(8R1(ii)(a) and 8R3(ii)), wherein the amalgamated Lot X is depicted as a single parcel of land, would have been approved by the UDA if the amalgamation effected in 2017 was defective or invalid in any manner. Finally, it is also observed that, as contended by the Respondents, the Petitioners themselves had sought the invalidation of the amalgamation upon the premise that there was

[8] Section 114 illustration (f) of the Evidence Ordinance provides as follows; *The Court may presume…(f) that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it;*

a valid amalgamation. Thus, based on the material available to this Court, I am satisfied that the amalgamation of the subject land has been validly effected in 2017.

It is further observed that the Petitioners have stated that the subject land had been cleared of buildings and existed as a bare land since on or around 2016.[9] The Report (7R20) tracing the land composition and structural changes to the subject land since 2015, which has been submitted with the limited objections of the 7th Respondent, too confirm such position. However, whilst the existence of a single bare block of land over a considerable period of time could reasonably be considered as strongly indicative of amalgamation, the Petitioners do not appear to have objected to or challenged the amalgamation of the land at any time prior to these proceedings.

Change in Zonal Boundaries due to Amalgamation of the Land

A common feature in development plans formulated by the UDA in respect of the urban development areas is the establishment of distinct zones with their distinct zoning regulations. Such feature has been present in all development plans formulated in respect of the city of Colombo, as reflected in the petition itself. In the currently applicable CCDP 2022-2031, the Colombo Municipal Council (CMC) area has been divided into 10 zones for the purpose of implementing the with distinct zoning regulations.

It is common ground that Claessen Place is located within the Special Primary Residential Development Zone (SPRDZ), whilst Havelock Road is located within the Mixed Development Zone 1 in the Medium Density sub-zone (MDMDZ-I). It is also not in dispute that, prior to its amalgamation, the several allotments constituting the subject land (Lot X) straddled the said two zones with the allotments bearing assessment Nos. 11 and 11A, Claessen Place being located within the SPRZ and allotments of land bearing assessment Nos. 19, 19/1 and 19/2 being located in the MDMDZ-1. After amalgamation and by virtue of Guidelines XX and XXI of contained in Section 7.3 (Planning, Development Regulations & Guidelines) of the CCDP 2022-2031, the entirety of Lot X is located within the MDMDZ-1.

For purposes of clarity, the zoning plan for the entire CMC area extracted from the CCDP 2022-2031 is depicted at Figure 1.

[9] vide paragraph 6

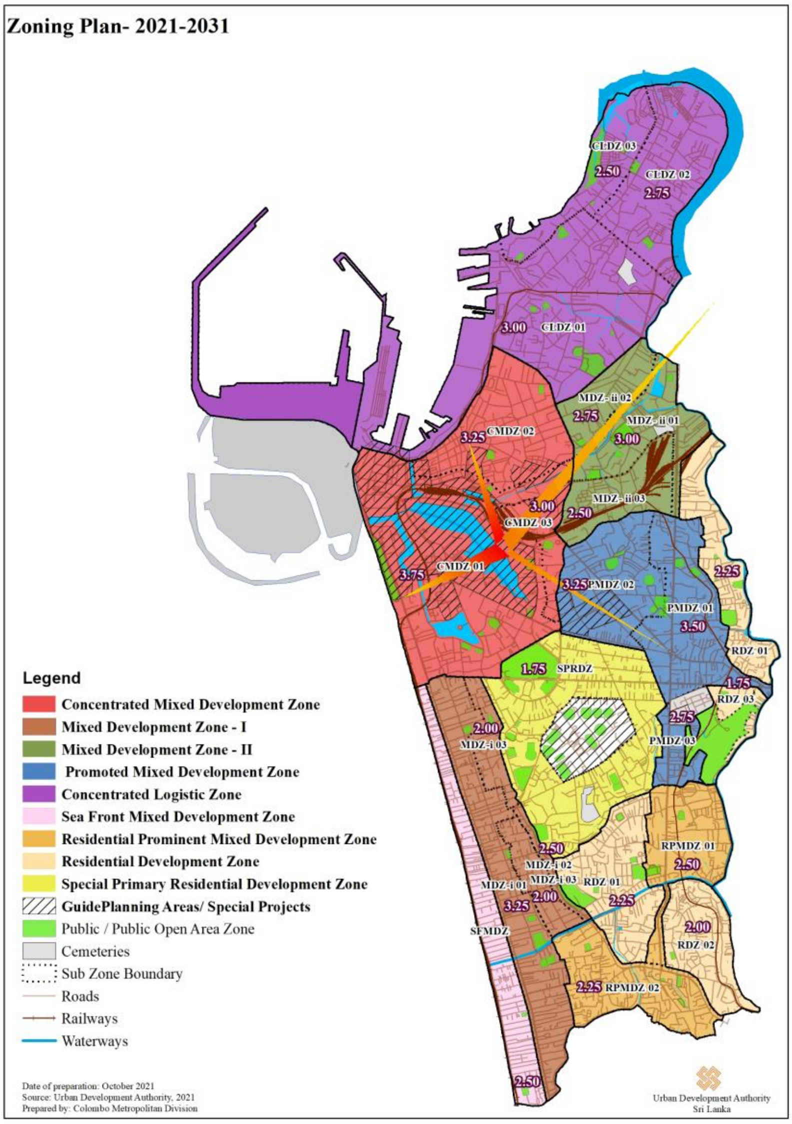

Figure 1: Zoning Plan for Colombo City Development Plan 2022-2031 (p 289)

In respect of lands located in two or more zones, Guidelines XX and XXI contained in Section 7.3 (Planning, Development Regulations & Guidelines) of the CCDP 2022-2031 provide as follows;

XX. In cases where any land belongs to two or more zones, the zone of the land shall determine by the zone that belongs to the main access road of the land. If both roads are in same width, the zone which the access road with greater frontage shall be applied.

XXI. When a zone is demarcated as the first block facing an access road as the zone boundary, the entire plot shall include in that zone. When the plots in the back is *somehow merged with the first plot and approved as a single plot of land, the last boundary of that total land shall be considered as the zonal boundary.*[10]

The Petitioners contend that the application of the aforementioned guidelines across all zones without any regard to the special characteristics of each zone is unreasonable and has the effect, in the instant case, of converting areas of the SPRDZ, which has more stringent restrictions as to development, into areas of the MDMDZ-I.[11] Thus, they contend that it is unreasonable to apply the said regulations to the subject amalgamated land (Lot X). They also sought to contend that such Regulations only apply to lands already situated across two zones at the time zoning boundaries are defined and does not permit later amalgamations, since zoning boundary change occasioned by the amalgamation of the subject land is depicted in any of the zoning maps in the CCDP 2022-2031. The Petitioners have sought reliefs in respect of Guidelines XX and XXI on an alternate basis; either to issue a writ of *Certiorari* quashing such Guidelines or to issue a writ of *Prohibition* preventing the application of same to the subject land.

The merits of such argument of the Petitioners as well as the maintainability of the reliefs sought were contested by the Respondents. The learned Deputy Solicitor General for the 1st to 3rd Respondents submitted that, since amalgamation was permitted in terms of the UDA Planning & Development Regulations and since it was foreseeable that lands sought to be amalgamated may lie in different development zones, it was an essential requirement to make provision in its development plans to facilitate the orderly development of such amalgamated lands. She also submitted that it would be contrary to the provisions and the entire purpose of such Regulations to freeze amalgamations at the point of demarcating development zones in development plans, as contended by the Petitioners. The learned Deputy Solicitor General also took the position that the mechanism set out in Guideline XX to determine the applicable zone and zoning regulations based on the main access road of the land, was fair and reasonable, and, the inclusion of the amalgamated land in one development zone in terms of Guideline XXI provides for an integrated, co-ordinated and orderly development of the amalgamated land. I am inclined to agree with such position taken up by the learned Deputy Solicitor General and I am of the view that Guidelines XX and XXI serve a useful purpose within the CCDP 2022-2031 in ensuring the integrated, co-ordinated and orderly development of amalgamated lands.

The Respondents also contested the Petitioners' contention Guideline XXI had the effect of unreasonably shifting previously demarcated zonal boundaries and pointed out that shifting a zonal boundary to correspond with the boundary of an amalgamated land was a logical and necessary requirement in order to accommodate such land within a single zone. They also adverted to the order of this Court in ***Mahesh Lalchand Hirdaramani and others v. The Urban Development Authority and others,***[12] wherein the Court considered a provision under a

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[10] CCDP 2022-2031, p 294

[11] vide paragraph 22 of the petition

[12] CA (Writ) Application No. 25/2017, decided on 28.06.2017

previous development plan for the city of Colombo[13] having similar effect. Whilst refusing notice, the Court observed as follows (per Surasena, J. as he then was);

> *It is to be observed that clause 5 of the said Development Plan has references to 3 areas namely*
> *1. the Western side of the Galle Road - mixed Development Zone,*
> *II. the Southern side of the Ward Place - Commercial Zone and*
> *III. both sides of Havelock Road - Special Mixed Residential Zone.*
>
> *It is apparent that the wording 'extend up to the end of the front lots having a frontage from each of those roads' in the said clause 5 is a phrase common to all 3 areas referred therein and hence is applicable to the lands situated in the Southern side of the Ward Place. Therefore, those lands could be permitted to be developed as being part of Commercial Zone referred therein. It is the view of this Court that it is not open to interpret the reference in the said Clause ' ..... extend up to the end of the front lots having a frontage from each of those roads ... ' as having meant only the front portions of those lands facing the Southern side of the Ward Place.*
>
> *Further such interpretation is not possible as there is no yardstick to ascertain as to how one could demarcate such front portion from the whole block as the land in question is just one block of land. Petitioners have failed to offer any explanation in this regard.*

I am of the view that such findings can be applied to the instant case as well and I intend to be guided by the same in interpreting Guideline XXI.

Since the application of zonal regulations depend on the main access road to the land, which would vary from land to land, I am of the view that the Petitioners' contention that Guidelines XX and XXI are inherently biased against or discriminate against zones having stricter development guidelines too is untenable.

In so far as the reliefs sought by the Petitioners were concerned, the learned President's Counsel for the 5th to 8th Respondents all submitted that both alternative formulations presented by the Petitioners were misconceived. They submitted that the prayer for a writ of *Prohibition* to prevent the application of the impugned Guidelines to the subject land constituted an acknowledgement on the part of the Petitioners that the Guidelines *per se* were not illegal or unreasonable. They further strenuously contended that the exclusion of the subject land from the application of such Guidelines would be violative of Article 12(1) of the Constitution and would also subject the said 5th to 8th Respondents to unequal and discriminatory treatment. Whilst this Court is not competent to adjudicate upon the violation of fundamental rights, it is nevertheless evident that it would be irrational and unreasonable to deviate from the regulatory regime set out in the CCDP 2022-2031 and adopt a different

[13] City of Colombo Development Plan 1999 as amended by the City of Colombo Development Plan 2008

regulatory regime only in respect of the subject land for the convenience of the Petitioners. As determined above, I am also of the view that the Petitioners have failed to establish a *prima facie* case upon which the issuance of a writ of *Certiorari* to quash such Guidelines may be considered.

Access and Road Frontage

In their petition, the Petitioners have taken up the position that, although Regulation 50(1) of the UDA Planning & Development Regulations permit the road frontage of both access roads (i.e. Havelock Road and Claessen Place) to be taken into account, the application of such Regulation to the instant allotment of land is arbitrary and unreasonable since Claessen Place is a dead end with a width of approximately 9m and low carrying capacity.[14] However, the position advanced by the learned President's Counsel when supporting these application was that, since the traffic planning clearance for the site issued by the UDA (P23(m)/1R20) expressly prohibited entry or exit from Claessen Place and that the 5th to 8th Respondents' building application only identified road frontage from Havelock Road, only such road frontage from Havelock Road should be taken into account determining height calculations and that reliance on the road frontage of Claessen Place constitutes an arbitrary and unlawful *ex post facto* justification for the increasing building height.

In the first instance, it would be useful to examine the text of the aforementioned Regulation 50 of the UDA Planning & Development Regulations, which is as follows;

> *50. Where the land is facing more than one road from which such land has right of way, road frontage can be considered as applicable to the situation in the following manner for computation of the Permissible Floor Area:*
>
> *(1)* ***The land is facing two or more independent roads having minimum width of 6 m or more, the road frontage shall be considered as the sum of the road frontage facing the main access road and the portion(s) of road frontage of the other road(s) computed proportionate to the ratio between the width of the main access road to the width of the respective other road(s).***
>
> *(2) Where the land is facing two or more independent roads each having width less than 6 m, the road frontage shall be computed as the sum of the road frontage facing the main access road and the width(s) of the other road(s).*
>
> *(3) Where, the land is facing one or more by-roads of the main access road although not connected to two roads, the road frontage shall be considered as the sum of the road frontage facing the main access road and the width (s) of such by-road(s).* (emphasis added)

[14] paragraph 30 of the petition

Furthermore, the term "Access Road" is defined in Part IX of the said Regulations as follows;

> *In these Regulations, unless the context otherwise requires;*
>
> *"Access Road" means any street used as a means of access to a building or a plot of land whether the public have a right of way thereover or not.*

It is not in dispute that both Havelock Road and Claessen Place have a minimum width of more than 6m. The learned President's Counsel for the 6th Respondent submitted that, as reflected in the Title Deed (8R1(i)) and Survey Plan (8R1(ii)(a)), since the subject land abutted two public roads, the 5th to 8th Respondents had right of access from the said roads as of right.

The learned Deputy Solicitor General as well as the learned President's Counsel for the 5th to 8th Respondents submitted that the text of the aforementioned Regulation 50(1) clearly permit the aggregation of the road frontages facing the main access road as well as the other road(s) in the manner set out therein for the purpose of computing the road frontage of the subject land. They further submitted that, since the 5th to 8th Respondents had legal rights of access from both Havelock Road and Claessen Place, they were entitled to aggregate road frontages from both roads in calculating road frontage of the subject land, irrespective of their choice to exercise access only from Havelock Road. Upon a careful perusal of the text of the aforementioned Regulation 50(1) and the definition of the term "access road," I am inclined to accept such interpretation of Regulation 50(1) advanced by the Respondents. I also observe that a similar conclusion has been reached by the Petitioners in their petition as well.

Based on the aforementioned Regulation 50(1) and the documents filed by the parties, the learned President's Counsel for the 8th Respondent provided the following calculation of the road frontage of the subject land;

- Site frontage from Havelock Road: 28 m (main access road)
- Site frontage from Claessen Place: 39 m
- Road width of Havelock Road: 18 m
- Road width of Claessen Place: 09 m
- Ratio between the width of the main access road to the width of the other road: 9/18 = 0.5
- Road frontage from Claessen Place to be taken into account in calculating the total road frontage: 39 m X 0.5 = 19.5 m
- Total road frontage of the subject land in terms of Regulation 50(1): 28 m + 19.5 = 47.5 m

Since the measurements used in the above calculation were not contested by the Petitioners, I intend to be guided by same in determining the road frontage of the subject land.

I will proceed at this stage to consider the objections raised by the Petitioners to the application of Regulation 50(1) to the subject land. It is observed that the width of Claessen

Place is above the threshold limit of 6 m set out in Regulation 50(1). It is further observed that neither the carrying capacity of a road nor the fact that the road is a dead end nor the traffic planning clearance have not been identified as relevant criteria in determining the road frontage of a land in Regulation 50 nor has any provision been made in the said Regulations to deviate from Regulation 50 on such grounds. Hence, in my view the above objections raised by the Petitioners are devoid of merit.

In such circumstances, I am of the view that the road frontage of subject land has been calculated in accordance with the UDA Planning & Development Regulations and I am not inclined to either to quash Regulations XX and XXI or to prevent its application to the subject land, as sought by the Petitioners. I further re-iterate that, as contended by the Respondents, any exclusion of the subject land from the application of such Regulations would raise issues relating to the violation of Article 12(1) of the Constitution and would adversely impact the efficacy of the CCDP 2022-2031 and the said Regulations.

Building Height

The Petitioners also contend that the subject land does not have the minimum road frontage set out in Form E (Setbacks & Open Spaces) of Schedule III of Chapter 8 of the CCDP 2022-2031 to construct a building with a height above 75 m. The said Form E is reproduced below;

Schedule III – Open spaces published in the gazette notification No. 54/2235 dated 08.07.2021by the Urban Development Authority

Form E - Setbacks & Open Spaces

Building Height (m)	Minimum Site Frontage (m)	Plot Coverage *		Rear Space (m)		Side Space (m)		Light Well for NLV	
		Non Residential	Residential	When no NLV is taking this end	When NLV is taking this end	When no NLV is taking this end	When NLV is taking this end	Minimum width	Minimum Area
less than 7	6	80%**	65%	2.3m	2.3m	-	2.3m	2.3m	5Sq.m
7 less than 15	6	65%	65%	3.0m	3.0m	-	3.0m	3.0m	9 Sq.m
15 less than 30	12	65%	65%	4.0m	4.0m	1.0m and 3.0m	4.0m	4.0m	16 Sq.m
30 less than 50	20	65%	65%	4.0m	5.0m	3.0m both side	5.0m	5.0m	25 Sq.m
50 less than 75	30	50%***	50%***	5.0m	6.0m	4.0m both side	6.0m	6.0m	36 Sq.m
75 and above	Above 40	50%***	50%***	5.0m	6.0m	5.0m both side	6.0m	6.0m	****

NLV - Natural Light & Ventilation
Building Height - Height between access road level to roof top or roof level (Including parking floors)
*Where no Plot Coverage specified under the zoning regulations
**The entire development is for non-residential activities
***65% plot coverage can be allowed only for the podium level not exceeding 20% of the tower height or 12 floors whichever is less
****Minimum area shall be increased by 1Sq.m for every additional 3m height

As per the amended PPC (P21(b)/8R3(i)(a)) and the Building Permit (P22/8R3), it is not in issue that the height of the proposed development of the 5th to 8th Respondent is over 75 m. In fact, the learned President's Counsel for the 8th Respondent submitted that the height of the proposed building was 128 m. I have already determined that road frontage has been correctly calculated to be 47.5 m. However, I intend to examine whether there has been due compliance with the aforementioned Form E. It is observed that the site frontage of the subject land is 47.5 m, and, as such, is above the threshold minimum site frontage of 40 m required to construct a building with a height in excess of 75 m. Hence, the Petitioner's argument regarding building height is clearly untenable and cannot be maintained.

Regarding plot coverage,[15] the learned Deputy Solicitor General for the 1st to 3rd Respondents clarified that the maximum permissible plot coverage of 61.20% at podium level and 45.45% at tower level was within the parameters set out in Form E. In respect of residential buildings with a height above 75 m, plot coverage is specified as 50% with provision being made to allow plot coverage up to 65% at podium level not exceeding 20% of the tower height or 12 floors whichever is less.

Preliminary Planning Clearance and Development Permit issued to the 8th Respondent

Both learned Deputy Solicitor General for the 1st to 3rd Respondents as well as the learned President's Counsel for the 8th Respondents made detailed submissions to the effect that the parameters set out in the PPC issued to the 6th and 8th Respondents (both original and amended) were within the parameters set out in the Zoning Regulations in respect of the Medium Density Mixed Development Zone (MDMDZ-I) contained in the CCDP 2022-2031.

In order to consider the merit or otherwise of this contention, I intend to make a comparison between the parameters permitted in the CCDP in respect of the MDMDZ-I, as set out in section 8.1.2 of the CCDP 2022-2031 and the parameters specified in the PPC (as amended) issued to the 6th and 8th Respondents on key criteria/indicators in the following manner;

Criteria/Indictor	CCDP -Permitted Parameters	PPC-26.02.2025, as amended on 03.04.2025 and 09.07.2025
Permissible Uses	Residential, Health, Office & Institution, Commercial, Education (Form H-Schedule VI)	Residential Apartments (Form H-Item 2)
Zone Factor	2.5	2.5
Floor Area Ratio	1:12.00 (land extent 3500-4000m and minimum road width above 15m) (Form A-Schedule 1)	1:12:00 Land Extent: 3758.18 m Floor Area: 67,145 m^2

[15] In the UDA Planning & Development Regulations (8R6(ii)), the term *"Plot Coverage"* has been defined to mean "the percentage of total plinth area of a building in relation to the total land area in the plot where building is situated. In the case of buildings or part thereof which include roof projection or balcony exceeding 1.2 m in width, such additional areas shall also be added for the purpose of calculating the plot coverage. (page 43 A)

Number of Floors		02 Towers Podium level: Ground+ 8 Upper Floors for parking Tower A: Podium (G+8) + 20 Upper Floors for Apartments + 3 Floors with Common Facilities Tower B: Podium (G+8) + 32 Upper Floors for Apartments
Plot Coverage	Form E-Schedule III. 50% (subject to maximum of 65%)	61.20% at Podium level and 45.45% at Tower level
Setbacks and Maximum Height	Form E- Schedule III	Form E- Schedule III Building Height: 128 m

It is evident from the above comparative study that the key parameters specified in the PPC issued to the 6th and 8th Respondents within the parameters permitted under the CCDP 2022-2031. It is pertinent to note that, apart from the specific matters referred to in the preceding sections hereof, the Petitioners have not contested such parameters set out in the PPC.

In this context, the learned Deputy Solicitor General also submitted that the role of the UDA was to ascertain whether the application for the PPC submitted by a developer conformed to the UDA Planning and Development Regulations and the planning and developments guidelines specified in the applicable development plan, and, if the requisite requirements were met, to issue a PPC setting out parameters for the proposed development in line with parameters permitted under the said development plan and other terms and conditions to be fulfilled by the developer. Thereafter, if the terms and conditions specified in the PPC were fulfilled and if the building plan conformed to specified parameters in the PPC, upon an application being made, the UDA was obliged to issue a building permit to the developer. The learned Deputy Solicitor General as well as the learned President's Counsel for the 8th Respondent sought to impress upon the Court that, the developer had the discretion to develop an architectural design of his/her choice within such permitted parameters and to submit a building plan. Considering the regulatory regime established under the UDA Law, I am inclined to concur with such submissions made by the learned Deputy Solicitor General and the learned President's Counsel for the 8th Respondent with regard to the status of the law.

I further wish to observe that the UDA Law, along with the UDA Planning and Development Regulations and territorial development plans published and revised from time to time have cumulatively established a comprehensive regulatory regime for integrated planning and physical development in urban development areas, in keeping with the objects of the UDA Law. The CCDP 2022-2031 is the development plan in effect within the Colombo Municipal Council area. In the CCDP 2022-2031, a development plan has been defined as "the preparation of an integrated plan to promote and regulate the economic, physical, social and environmental aspects of the areas that are declared as urban development areas."[16]

In the context of the CCDP 2022-2031, the learned Deputy Solicitor General submitted that such development plan has been prepared in consultation and with the participation of the Colombo Municipal Council and all other active stakeholders and following a fair and transparent ten-stage process, including obtaining views of stakeholders.[17] She further submitted that the CCDP 2022-2031 reflected development policy and objectives envisioned for the city of Colombo for the decade from 2022-2031 and contained detailed provisions of a technical and operational nature to give effect to same. Thus, observing the policy element and the highly technical nature of the contents of the CCDP, I am in agreement with the submission made by the learned President's Counsel for the 6th Respondent that the Court will exercise caution in interfering with the decisions to issue the PPC and the Development Permit which have been made by officers of the UDA having technical expertise and experience in such matters.

In view of the foregoing, I am satisfied that the PPC and the development permit has been issued by the UDA in accordance with the law.

Clearances and Hurried Approvals

The learned President's Counsel for the Petitioners also alleged that project approvals and clearances had been granted hurriedly by the UDA and other public authorities thereby favouring the 5th to 8th Respondents. He cited the examples of the amended PPC (P21(b)/8R3(i)(a)) being issued on 09.07.2025 within 04 days of the request for the same being made on 05.07.2025 (P21(a)) and the development permit (P22/8R3) being issued within period of just over 01 month after the amended PPC was issued. He further submitted that other approvals and authorizations required under the PPC too had been hurriedly issued by relevant public authorities.[18]

Such allegations were rejected by the learned Deputy Solicitor General and the learned President's Counsel for the 5th to 8th Respondents. They pointed out that the application for the PPC was lodged online,[19] as required by the UDA, on 06.02.2025 (8R9) and had been updated from time to time and the PPC issued and amended accordingly. Similarly, the building application too had been lodged on 10.04.2025, after the initial PPC had been issued, and the development permit had been eventually issued on 21.08.2025, after requisite requirements had been fulfilled. Thus, they contended that the PPC and the development permit had been issued after following the due procedure and without any undue haste.

[16] CCDP 2022-2031, p 2
[17] Ibid, pp 8-9
[18] vide paragraph 34(d) of the petition.
[19] vide Regulation 1(5) of the UDA Planning and Development Regulations 2021

Considering the documentary proof in support of such position, I am inclined to accept such position taken up by the Respondents.

The learned Counsel also submitted that all approvals and authorizations required in terms of the PPC and/or development permit had been issued independently by the relevant public authorities in accordance with applicable procedures. They further pointed out that the Petitioners have failed to cite any irregularities in such approvals and authorizations or in the manner in which they had been granted in their petition, and, had even failed to the public authorities which issued such approvals and authorizations as parties in the instant applications. However, in his submissions, the learned President's Counsel referred to the fact that the clearance of the Condominium Management Authority (CMA) had been obtained after the Development Permit had been issued. In this context, I find that the preliminary planning clearance had been issued by the CMA on 21.08.2025, and, that a period of 03 months had been granted in terms of condition 31(xv) of the development permit to submit CMA clearance. Similarly, the reference to the issuance of a second geotechnical clearance by the NBRO dated 15.10.2025 (8R3) too does not vitiate the PPC or the Building Permit. Upon consideration of the material before this Court, I am unable to find any irregularities in the approvals and authorizations granted by public authorities, as required by the PPC and/or the development permit or in the manner in which they have been issued.

In fact, the learned Deputy Solicitor General lamented that, at a time when public authorities are constantly censured for delay, expeditious action too should not be a reason for censure but rather should be appreciated. In the light of the facts and circumstances of the instant case, I am inclined to agree with the learned Deputy Solicitor General.

Lack of Procedural Fairness

The learned President's Counsel for the Petitioners submitted that, as residents of the area in which the proposed development was taking place, the Petitioners had a legitimate expectation of being consulted in decisions affecting their habitation, family life and well-being. However, he contended that, in the instant case, the PPC and the development permit had been issued by the UDA to the 5th to 8th Respondents without any public consultation and disregarding their objections and requests for meetings, notwithstanding the fact that the proposed development had the effect of altering and adversely impacting the residential nature of Claessen Place.

The learned Counsel for the Respondents rejected such allegations. The learned Deputy Solicitor General for the 1st to 3rd Respondents submitted that, although neither the UDA Law nor the UDA Planning and Development Regulations 2021 contemplate calling for and inquiring into objections in respect of applications for PPCs and/or building permits, the UDA had nevertheless given a detailed response by its letter dated 30.05.2025 (P6(b)) to the objections raised by the Petitioners in their letters dated 29.04.2025 (P3(a)-(e)). In their letters of objection, the Petitioners had taken up the position that the proposed development violates zoning regulations, violates the constitutionally protected rights to live peacefully and securely under Articles 12 and 14 of the Constitution and will cause environmental degradation, and had requested for the immediate suspension of the project approval and withholding of further planning approval to conduct a meeting with affected residents. The learned President's Counsel for the Petitioner responded to such position by stating that the mere response to their letters of objection was inadequate and do not meet the requirements of a fair hearing and that an in-person hearing with the full participation of the Petitioners and other affected residents was required.

In ascertaining the requirements of a fair hearing, all Counsel sought to rely on the recent decision of the Supreme Court in ***Western Provincial Revenue Service Union and others v. K.C. Logeswaran, Governor, Western Provincial Council and others***[20], albeit for different reasons. The petitioners in the said application were a Trade Union and officers of the Provincial Revenue Service of the Western Province. They had filed the said application when the National Salaries and Cadres Commission had refused to place the Petitioners on par with the officers of the Inland Revenue Service serving at the Department of Inland Revenue and grant the Petitioners the same designations, promotional pathways, service conditions, salary structures and allied privileges that officers of the Department of Inland Revenue are entitled to in accordance with the Service Minute of the Inland Revenue Service that was introduced in 2013.

The learned President's Counsel for the Petitioners referred to the fact that the Court had determined that the National Salaries and Cadres Commission had violated the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution, by its failure to act with procedural fairness in arriving at its decision and grant the Petitioners a fair hearing, as was required by the circumstances of said matters, and had granted relief to the Petitioners. On the other hand, the learned Deputy Solicitor General and the President's Counsel for the Respondents referred to the fact that the said judgment clearly acknowledges the very contextual nature of procedural fairness and the right to a fair hearing.

The views of the Court on the issue of procedural fairness are encapsulated in the following paragraphs of the judgment (per Obeyesekere. J.);

89. *Although many of the cases where our Courts have held that a person must be afforded a right to respond prior to a decision affecting the rights of such person are taken dealt with inquiries involving two parties, the principle laid down is equally applicable to a case such as this application.*

90. *Some laws contain provisions that specifically require a hearing to be given while some laws may go a step further and specify the procedure that should be followed in affording a hearing and the nature of such hearing. There are many laws that are completely silent with regard to the requirement for a hearing. The right of a party to*

[20] SC(FR) Applications Nos. 296/2017, 9/2019 and 42/2019, SC Minutes 05.05.2026

*be heard prior to a decision affecting his/her rights being taken even where the Statute is silent on such a requirement was considered over 150 years ago in the case of **Cooper v Wandsworth Board of Works** [(1863) 14 CB Reports (NS) 180] where Byles, J. stated that, ". . . a long course of decisions, beginning with Dr. Bentley's case, and ending with some very recent cases, establish that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."*

91. *In **Ranjith Flavian Wijeratne v Asoka Sarath Amarasinghe** [SC (Appeal) No. 40/2013; SC Minutes 12th November 2015] Priyantha Jayawardena, PC, J held that, "The question whether the requirements of natural justice have been met by the procedure adopted in any given case depends to a greater extent on the facts and circumstances of the case in point…. Tucker L.J. held in the case of Russell v. Duke of Norfolk and Others (1949) 1 All E.R. 109 'There are no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.'"*

92. *It was held in **Harin Fernando v Samagi Jana Balawegaya and others** [supra] as follows:*

*"That procedural fairness is not frozen at any moment of time and is a 'constantly evolving concept' [per Lord Bingham in Regina v H and Others [(2004) 2 AC 134] has been emphasised in **De Smith's Judicial Review** [supra; page 407] where the authors have stated as follows:*

> *"The content of procedural fairness is infinitely flexible. It is not possible to lay down rigid rules and everything depends on the subject matter. The requirement necessary to achieve fairness range from mere consultation at the lower end, upwards through an entitlement to make written representations, to make oral representations, to a fully-fledged hearing with most of the characteristics of a judicial trial at the other extreme. What is required in a particular case is incapable of definition in abstract terms. As Lord Bridge has put it [vide Lloyd v McMohan [(1987) A. C. 625 at 702]]: "the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of **individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates**." [emphasis added]*

93. *If I may reiterate, the National Salaries and Cadres Commission was required to take a decision affecting the rights of Officers of the Revenue Service of all nine Provinces.*

*Their designations and their remuneration meant the whole world to the Petitioners and it was important that their dignity of service was maintained. Although the two services were different and I am satisfied with the reasonableness of the decision of the National Salaries and Cadres Commission, as **De Smith** puts it, "The Wednesbury reserve has no place in relation to procedural propriety" [supra; page 387]. I am therefore of the view that the Petitioners ought to have been given a hearing in order to better appreciate their side of the story and thereafter to have sought a policy directive from the Cabinet of Ministers, instead of closing the issue with P28.*

Similar reasoning had been adopted by the Privy Council in ***Durayappah v. Fernando***[21] (per Lord Upjohn);

Outside the well-known classes of cases, no general rule can be laid down as to the application of the general principle[22] in addition to the language of the provision. In their Lordships' opinion there are three matters which must always be borne in mind when considering whether the principle should be applied or not. These three matters are : First what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly when a right to intervene is proved what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined.

I too intend to be guided by the principles enunciated in the aforementioned decisions that, whilst procedural fairness is an indispensable requirement in any decision-making process, the specific requirements of fairness in a particular instance would depend on the character of the decision-making body, the nature of the decision and the applicable statutory or other framework. Thus, it would be necessary to examine the aforementioned criteria in relation to the facts and circumstances of the instant case. In so far as the character of the decision-making body is concerned, it is not in doubt that it is the UDA is administrative authority that is statutorily empowered to regulate the proposed development, including the power to grant and cancel PPCs and development permits.

In so far as the applicable statutory framework is concerned, it is re-iterated that the such framework is contained in the UDA Law, the UDA Planning and Development Regulations 2021 and the CCDP 2022-2031. The salient features of the regulatory framework have already been discussed in considerable detail herein. It is recalled that, whilst section 8J of the UDA Law requires a person to obtain a development permit from the UDA to person to carry out or engage in a development activity within an urban development area, the procedure for

[21] (1967) 69 NLR 265 at p 270

[22] The principle referred to is "*audi alteram partem.*"

obtaining same is set out in the UDA Planning and Development Regulations 2021. Accordingly, Part I of such Regulations (Regulation 1-3) provides for the issuance of a PPC, which is the first stage in the process, and Part III thereof (Regulations 28-44) provides for the issuance of a development permit thereafter. The procedure for obtaining both a PPC and a development permit contemplate an application being made by the Developer, who is defined in the said Regulations as "the owner of the land or person who has been authorized to carry out the Development Activity in such land,"[23] to the UDA and fulfilling the requirements set out in the Regulations, and the UDA issuing the PPC and development permit upon such requirements being fulfilled. Such procedures do not contemplate any requirement on the part of the UDA to call for and inquire into objections from residents in the neighbourhood or any other third party in respect of applications for PPCs and/or development permits. Hence, it is evident that the statutory framework for the issuance of PPCs and development permits do not require the consideration of objections of residents in the neighbourhood or any other third parties. Thus, whilst the 5th to 8th Respondents possess statutorily recognized and secured rights, as reflected in the analysis of the statutory regulatory regime above, the Petitioners do not possess any legally conferred or recognized right or expectation to participate in such decision-making process under the statutory framework or the common law.

I will now proceed to consider nature of the decision involved in the instant case and its implications on the parties. The decision in focus relates to the issuance of a PPC and development permit to the 6th and 8th Respondents and the entitlement of the Petitioners to participate in such decision-making process. As referred to above, the Petitioners claim a legitimate expectation in having the residential character of Claessen Place being preserved and being consulted in decisions affecting their habitation, family life and well-being. The response of the 5th to 8th Respondents was that, having fulfilled all requirements, they too had a legitimate expectation in respect of the issuance of a PPC and development permit in their favour. They contend that, the reliefs sought by the Petitioners from the UDA to suspend the authorizations granted and to withhold further approvals, and the reliefs sought in the instant applications to quash the PPC and the development permit granted has the effect of depriving them of such lawfully acquired rights and entitlements. Thus, it is evident that the Petitioners and the 5th to 8th Respondents have conflicting and competing interests, and, that the reliefs sought by the Petitioners, if granted, would have the effect of negating or reversing the legally acquired rights and entitlements of the 5th to 8th Respondents.

In my view that aforementioned facts and circumstances do not indicate, let alone establish, that the Petitioners possess any legal right or legitimate expectation to demand the conduct of a hearing, in the manner articulated by the learned President's Counsel for the Petitioners. In my view, to recognize such a requirement would be to vary the statutory procedure set out in the UDA Planning and Development Regulations, which would be beyond the remit of this Court sitting in judicial review.

[23] Part X (Definitions)

Without prejudice to the above, I observe that, as submitted by the learned Deputy Solicitor General, the UDA had addressed the objections raised by the Petitioners in their letters (P3(a)-(e)) and provided a detailed response to same by its letter (P6(b)). The Petitioners do not appear to have further contested such response with the UDA. Thus, I am of the view that the concerns of the Petitioners regarding the proposed development have been adequately addressed by the UDA by the aforementioned correspondence. It is further observed that the issues not placed before the UDA in such correspondence but raised in these proceedings too have been responded to by the UDA in the pleadings filed and submissions made on its behalf. In such circumstances, I am unable to agree with the Petitioners that there has been a lack of procedural fairness.

Legal Objections

The learned President's Counsel for the 5th to 8th Respondents also raised several legal objections relating to the maintainability of the instant applications. Although I am of the view that it would not be necessary to consider such legal objections in view of my aforementioned findings on the merits, I propose to consider them briefly for the sake of completeness, in the following manner.

a. Lack of Uberrima Fides

The learned President's Counsel for the 5th and 7th Respondents submitted that the Petitioners have been selective in the presentation of their case, the disclosure of material facts and the justice that they have sought in the instant applications, thereby demonstrating a lack of *uberrima fides.*

The learned President's Counsel submitted that the Petitioners have been selective in the presentation of their case as the case presented by the learned President's Counsel at the stage of support different in certain important issues from the case pleaded in the petition. In this regard, he referred to the contradictory positions taken up with regard to access and road frontage and the interpretation of Guidelines XX and XXI of the CCDP 2022-2031.

On the issue of selective disclosure, the learned President's Counsel submitted that the Petitioners had failed to disclose the fact that the amalgamation of the land had been done in 2017 and a PPC had been issued to NEM Property Developers (Pvt) Ltd for an apartment complex consisting of 61 floors on the subject land on 09.04.2018 (8R8) and presented the Report (7R20) tracing the land composition and structural changes to the subject land since 2015 to substantiate the position that the Petitioners were aware or could reasonably be expected to have been aware of such developments. He also alleged that the Petitioners had misrepresented facts that the UDA had issued incomplete information and withheld documents,[24] when, in fact, the UDA had furnished the information and documents sought by the Petitioners and had requested them to make the requisite payment to obtain certified copies in the letter P7(b). He also alleged that the Petitioners had failed to mention the significant investment made by the 5th to 8th Respondents in the petition.

The learned President's Counsel further submitted that the justice sought by the Petitioners too was selective in that they sought to obtain preferential treatment in the application of the CCDP and the UDA Planning and Development Regulations to the detriment of the rights and interests of the 5th to 8th Respondents to develop their land.

Accordingly, the learned President's Counsel argued that the Petitioners lacked *uberrima fides* required to obtain prerogative relief. he adverted to the decision of the Supreme Court in ***Alphonso Appuhamy v. Hettiarachchi,***[25] wherein the Court articulated the duty to make a full and fair disclosure of all material facts in the following terms (per Pathirana, J.);

> *The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioners -for the Purpose of the Income Tax Acts for the District of Kensington-Exparte Princess Edmond de Poignac - (1917)1 Kings Bench Division 486. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case.* ***In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination.*** (emphasis added)

The broad response of the Petitioners to such objection was that they had no reason to apprehend that their rights and interests would be affected as no construction had commenced by NEM and that it was only after the 5th to 8th Respondents had commenced construction activities in mid-April 2025 that they had become aware of the high-rise apartment project on the subject land. The learned President's Counsel for the Petitioners further submitted that at all material facts required to determine the matters impugned have been pleaded. However, upon a perusal of the pleadings filed by the parties and the documents tendered therewith, I am not satisfied that the Petitioners have made a full and fair disclosure of all material facts, particularly with regard to the transformations and activities taking place in the subject land since 2016 and the action taken by them in respect

[24] paragraph 7(j) of the petition
[25] (1973) 77 NLR 131 at pp 135-136

thereof. Thus, I am inclined to uphold the objection raised that there is a lack of *uberrima fides* on the part of the Petitioners.

b. Abuse of Process of Court

The learned President's Counsel for the 6th Respondent contended that the instant applications should be dismissed on account of abuse of process of Court, as detailed in the limited objections filed by the said 6th Respondent.[26] He submitted that the Petitioners were engaged in filing litigation in multiple *fora* including the Supreme Court, District Court and this Court seeking substantially similar reliefs in respect of the same proposed development.

In particular, the learned President's Counsel made a comparison of the reliefs sought in these two writ applications and SC(FR) Application No. 219/2025 (6R1) and pointed out that they were virtually identical. He further submitted that, though filed on 22.09.2025, the said fundamental rights application is yet to be supported by the petitioners. The learned President's Counsel also referred to the fact that 12 actions had been filed in the District Court of Colombo seeking injunctive relief, the details of which transpire in the 6th Respondent's limited objections.

Rejecting such allegation, the learned President's Counsel for the Petitioners submitted that the Petitioners have instituted litigation in various *fora* in the due exercise of their legal rights. He further submitted that such litigation had not been instituted by the same parties, pointing out that the Petitioners in the instant applications were not parties in the fundamental rights application, and, that there were differences in the causes of action and reliefs sought as well. I am inclined to accept the submissions made by the learned President's Counsel for the Petitioners, and, as such, I hold that a case of abuse of process of Court has not been made out in the instant case.

<u>Conclusion and Orders of Court</u>

At this stage of support, I have endeavoured to examine issues in some detail with the intention of doing justice to the extensive submissions made by learned Counsel for all parties.

As set out above, I am of the view that the Preliminary Planning Clearance (as amended) (P6(a))/ 8R11 and P21(b)) and the Development Permit (P22) have been issued in accordance with the law. Furthermore, I see no legal basis to consider the prohibition of the application of any provisions in the UDA Planning and Development Regulations 2021 or the City of Colombo Development Plan 2022-2031 (CCDP 2022-2031) to Claessen Place, as sought by the Petitioners.

[26] vide paragraph 4 of the limited statement of objections of the 6th Respondent

I acknowledge that the proposed development undertaken by the 5th to 8th Respondents may cause a degree of inconvenience or discomfort to the Petitioners. However, as submitted by the learned Counsel for the Respondents, such inconvenience or discomfort *per se* do not entitle the Petitioners to the reliefs sought in the instant application, in the absence an infringement of their legal rights or legitimate expectations. In fact, I observe that the terms and conditions set out PPCs and development permits issued under the UDA Law along with clearances and authorizations from other public authorities thereunder address not only structural, safety, sanitation and comfort requirements of the building to be constructed but also encompass wider social, community and environmental interests and needs.

In such circumstances, I hold that the Petitioners have failed to establish a *prima facie* case warranting the issuance of notice. The objection raised by the 5th to 8th Respondents relating to lack of *uberrima fides* too militate against the grant of prerogative relief. Accordingly, I decline to issue formal notice and proceed to dismiss both the applications. The parties shall bear their own costs.

Application dismissed. No costs.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal

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

I had the opportunity of reading the order in draft prepared by my brother Justices Kumararatnam and Gopallawa. However, I must confess that I am unable to agree with the reasoning given and the final conclusion arrived at in their order. Therefore, I wish to give my own order and the reasons therefor in this separate Order, which I have already shared with them.

Introduction

This Application concerns a proposed apartment housing complex to be erected on an amalgamated land abutting two roads; namely, Havelock Road and Claessen Place.

Before amalgamation, the larger part of the property was situated facing the Havelock Road, which is the main road of entrance, and about one-third of the amalgamated property was situated facing the Claessen Place. However, after amalgamation, now the property is facing both roads.

The Petitioners to this Application are residents of Claessen Place which falls into the zone of 'Special Primary Residential Zone', as described and depicted in the development plans and regulations promulgated under the Colombo City Plan, whilst the Havelock Road, which is the main road abutting the property, falls within the zone called 'Mixed Development Zone', which is a relatively high density populated zone in comparison to the 'Special Primary Residential Zone' which is of lower population density. These zones are depicted and described in the document known as the Colombo City Development Plan.

The Petitioners' grievance is that if and when the apartment housing complex is erected, it will change the nature of the Claessen Place, and thereby the zone identified and depicted as a 'Special Primary Residential Zone' will be squeezed and reduced. Thus, the common amenities provided to the said road will be affected by reason of the apartment housing complex which affects their general life, as well as change the living environment within which they all live in peacefully.

The 1st Respondent to this Application is the Director of the Urban Development Authority (UDA), the 2nd Respondent is the Director General therein, while the 3rd Respondent is UDA, and the 4th Respondent is the Minister of Urban Development. The 5th Respondent is the Chief Executive Officer of Home Lands Construction (Private) Limited, while the 6th Respondent is Home Lands Skyline (Private) Limited, the 7th Respondent is Home Lands Construction (Private) Limited, and the 8th Respondent is Home Lands Property Investment (Private) Limited.

When this was first taken up before me as a single judge, since an important issue of national interest is involved which is germane to the regulations promulgated under the Urban Development Authority Act, I suggested to the counsel on all sides to present this case before two judges; they indicated that they all trusted my single view on the matter. However, with my insistence, they agreed to refer the matter to His Lordship the President of the Court of Appeal to nominate another judge.

After initial submissions at the support stage, there were vehement objections from the Respondents for even notice being issued. However, after the conclusion of arguments, the other judge and I deferred our final opinion as to the issuance of notice. On that, the matter was again referred to His Lordship the President, and thereupon His Lordship referred this matter to the present three-judge bench, where I am also a member.

This was supported by counsel and opposed by different President's Counsel, and the following arguments were advanced at the support.

Now I will mention the said arguments in brief for the purpose of clarity.

The Petitioners attack the Preliminary Planning Clearance marked as **P6(a)**, the amended Preliminary Planning Clearance marked as **P21(b)**, and the Development Permit marked as **P22**, granted to the developer, on the following grounds.

The first ground is that the said development permit has been obtained by the 5th to 8th Respondents, and the same has been issued on the basis of an amalgamation resulting in the expansion of the Mixed Development Zone with the reduction of the Special Primary Residential Zone.

Therefore, the new zoning affects the rights of the Petitioners, as they reside within the Special Primary Residential Zone, where the height of building is restricted and the Floor Area Ratio (FAR) is also restricted. Since it is identified as a low-density area; it is quite different from the area where Havelock Road is situated, which is identified as a mid-density Mixed Development Zone and where the density is much higher in comparison to the Special Primary Residential Zone.

The second ground on which the said development permit is attacked is that the development permit is based on the amalgamation of two lands, which basically fell into two zones, and by reason of the amalgamation the amenities of peaceful life and the low-density environment enjoyed by the residents therein are somewhat different from the common amenities enjoyed by the residents and occupants of the Mixed Development Zone.

The third ground on which **P22** is attacked relates to the process of issuing the development permit and approving the plan.

The fourth ground is that the decisions taken by the UDA was arbitrary in nature, without consultation and without affording a hearing to the affected parties.

I will now consider the above grounds one by one in view of the arguments advanced in that behalf by the Counsel appearing for the different parties.

Arguments

The first argument advanced by Mr. Pieris is that when the amalgamation took place without notifying the Petitioners who are residents in the vicinity, and after amalgamation, by giving an approval to construct an apartment housing complex on the basis that the land is now situated within the Mixed Development Zone affects the rights of the Petitioners since the zone within which they reside in will be further squeezed or will be affected. Thus, the amalgamation and approval for amalgamation, and thereafter, approving an apartment housing complex which is not consistent with the Floor Area Ratio (FAR) or height of the building that is permitted within the zone of the residence of the Petitioners are against the law. As such, Mr. Pieris's argument is that without consulting or giving them a hearing, the decision taken by the UDA and the approval given by the UDA and other agencies are taken is *ultra vires*, violating the law, and therefore, it is irrational, and violating the rules of natural justice.

Further Mr. Pieris argues that the height of the building is decided according to the width of the road that is used as the road of access. In this case, though the main road of access as used by the 6th, 8th, and 9th Respondents is the Havelock Road and Claessen Place, but to decide upon the height of the building, the Respondents, particularly the UDA, has also made use of the Claessen Place since the amalgamated land abuts the Havelock Road as well. Based on the width of the said two roads, in terms of Rule 50 of the **P13(b)** is erroneously counted and thus, clearly affects the rights of the Petitioners, and thereby, squeezing the zone within which the Petitioners reside.

The first argument advanced by Ms. Nammuni, D.S.G., who appears for and on behalf of the UDA and its chairman, is that the Respondents have acted within the law since the amalgamated land depicted in **1R1** has been approved as way back as in 2017, without any objection, and based on the width of the two roads abutting the said amalgamated land, though it falls within the two zones, the UDA (the 1st Respondent) has given its approval when the approval was sought by NEM Property Developers (Private) Limited in 2017 for the building of fifty floors which is permitted within the rules of the FAR depending on the extent of the land and the width of the two abutting roads. As such, the UDA and the other Respondents have acted within the relevant regulations.

In addition to that, she further relies upon the Regulations 7.3 (xx) and 7.3 (xxi) of **P39** since it is permissible and within the permitted parameters of the regulations. Further she argued that though the approval was given based in relation to the Claessen Place, the architectural plans and the approval of the same was given with the condition that once the apartment complex is in full operation, the Claessen Place will not be made use of to have access to the main road for the owners of the apartment housing complex. As such, they are acting within the law.

She further argued that within Regulation 2021 of **P13(b)** and Regulation 7.3(xviii) of **P39**, permits the UDA to take the final decision depending on the practicality of the project in the application.

Mr. Ali Sabry, arguing for the 8th Respondent, contends that the amalgamated land is in extent of 3.R:28.60.P.; the owners can build up to 63% of the total land area. However, what is proposed to be constructed is only 50%, and on the podium, it is less than 50%. Thus, the Respondents have acted within the regulations and the law.

In addition to that, he based his arguments on the FAR and the height of the building are within the parameters of the regulations and the law, and the same is placed on the assumption that the two abutting roads are calculated for the purpose of giving approval.

Nevertheless, he also argues that the Claessen Place will not be made use of, according to the architectural plans, once the apartment housing complex is in full reparation; only the Havelock Road will be used to grant access.

He further argues that however, there may be inconvenience caused to the Petitioners; such inconvenience cannot be counted to issue a writ when a huge development project of the nature of the present project comes to effect which will come to benefit some people and the country's economy.

Mr. De Alwis, learned President's Counsel, for and on behalf of the 6th Respondent, argues that some of the relief that the Petitioners have sought, have already been sought from three other courts; namely, the Supreme Court in a Fundamental Rights application which was dismissed, the District Court which are still pending, and the Civil Appellate High Court where some of them are still pending while the others have been refused. Thus, the Petitioners have already exhausted their avenues and the applications, and therefore, are not entitled to maintain these Applications.

The thrust of Mr. Eraj de Silva's arguments is that the Petitioners were well-aware that the lands were amalgamated as way back as in 2017, with several parcels of land being amalgamated in 2017, and after the amalgamation was approved and done, the houses which had already been there were demolished and it became a bare land. Some of the residents who are Petitioners in this case can see what was happening from their balconies, but they still kept a blind eye and a deaf ear when such developments were occurring. However, suddenly they were awakened in 2025 when the Respondents commenced the construction of its project; therefore, the Petitioners are not entitled to obtain relief as prayed by reason of the delay.

In addition to that, he argued that when the Colombo Municipal Council City Plan was promulgated, there was a consultation process in which the Petitioners could have placed their objections, if any, but still they remained silent without participating. As such, the approval and permission for the said apartment housing complex that is proposed to be constructed has been given according to the Rules and Regulations. Therefore, now the Petitioners are prevented from obtaining relief, and formal notice should not be issued.

In reply, Mr. Pieris further elaborated on his main submissions by again adverting to the fact that the 6th, 8th and 9th Respondents (the Developer) are not entitled to have a development plan approved for an unlimited number of floors, or the number of floors that they have been granted. The number of floors has to be calculated according to the Colombo City Development Plan and the Regulations relevant thereto. According to the regulations and the Colombo City Development Plan, the height of a building depends on the road frontage and the width of the road.

He argues that the main road frontage is the Havelock Main Road, where the Developer made the application as disclosed as only twenty-eight meters (28m) in width; however, the land (site) abuts two roads, where the road in the rear is (the Claessen Place), which has a wider road frontage of Thirty-Nine meters (39m). Therefore, according to Ms. Nammuni, the height of the building has to be decided based on both roads as stipulated in Rule 50(1).

However, Mr. Pieris, the counsel for the Petitioners argue *vis-a-vis* that the Claessen Place cannot be counted as road frontage for two reasons: One, is since it is not the main road abutting the site, and secondly, it falls within the Special Primary Residential Development Zone. Therefore, only the main road frontage of the Havelock Main Road should be taken into consideration. Additionally, if that road frontage (Claessen Place) is counted to decide the height of the building, then the area where the Claessen Place is situated will be pushed back, and thereby, the area that the Claessen Place is situated will be further reduced and finally, the Claessen Place will also become part of the mixed development zone. Therefore, the regulations applicable cannot be interpreted in that manner interpreted by the UDA.

Further, Mr. Pieris argues that the Claessen Place is not connected to any other road, other than its entrance, which connects to Kappetipola Mawatha; thus, one side of the Claessen Place is dead-end. Therefore, if the vehicular traffic is diverted towards or to the Claessen Place from the premises once the said apartment complex is built, it will be a hazard and a nuisance for its residents, who are the Petitioners to this Application. As such, he argues that the height of the building should only be decided according to the road frontage of the Havelock Road, and nothing else.

Issues to be determined

In view of the matters asserted by the Petitioners in the Petition, as well as the Respondents in their Objections, and the arguments advanced by the counsel at support, it is my view that the following issues arise for consideration of the Court;

- (i) Was there was a change of zoning due to the amalgamation
- (ii) If there was such a change of zoning, does it affect the rights of the Petitioners
- (iii) Have the 1st and 2nd Respondents approved a development plan in favour of the 5th to 8th Respondents based on the said amalgamation
- (iv) If the answer to the above question is in the affirmative, does it affect the rights of the Petitioners
- (v) If the above the above questions are answered in the affirmative, are the Petitioners entitled to be heard before the amalgamation and before the development plan was approved
- (vi) If so, are the Petitioners entitled to notice at the first instance

Now I will consider the first question on whether there was a change in the zoning due to the amalgamation.

Change in the zoning due to amalgamation

The first matter that is raised by the Petitioners, challenging the development plan granted to the 5th to 8th Respondents, is based on the new zoning after the amalgamation and the construction of the new building.

It is common ground that one entity called NEM Property Developers (Private) Limited had purchased the property in extent of 2.R:28.74.P with the buildings thereon bearing Nos. 19, 19/1 and 19/2 of Havelock Road as depicted in the plan bearing No. 3308 dated 28.04.2016 and prepared by P.M. Sunil, Licensed Surveyor; the said plan is marked as **8R1(ii)(b)** and annexed to the Limited Objections of the 8th Respondent. The same body corporate had purchased a property in extent of 1.R:0.35.P with the buildings thereon bearing Nos. 11 and 11A of Claessen Place depicted in the plan bearing No. 3746 dated 14.06.2010 and prepared by D.D.C. Heendeniya, Licensed Surveyor; the said plan is marked and annexed to the Limited Objections of the 8th Respondent as **8R1(ii)(c**).

Thereafter the said purchaser had made an application to the UDA (the 1st Respondent) in 2017 to amalgamate both properties and register them as one entity. The said amalgamation as depicted in the plan marked as **1R1** is annexed to the Limited Objections of the 1st Respondent; the same amalgamated property plan is marked as **8R1(ii)(a)** annexed to the Limited Objections of the 8th Respondent. According to the 1st Respondent, the amalgamation was permitted by the UDA, subject to certain conditions. According to the Statement of Limited Objections filed by the UDA, those conditions are contained in the document marked as **1R1(a)**.

However, the said document was never produced before Court, although this matter was argued twice, first before a Bench comprising of two Judges and thereafter before a Bench comprising of three Judges. On both occasions, this issue was seriously raised by the Petitioners. However, on none of those occasions did the 1st Respondent take steps to file the said document. Therefore, I will comment on that aspect later. However, be that as it is, the conditions are not known to Court, and it appears that the 1st and 2nd Respondents have kept the said document as a secret document, since they have failed to produce it before Court.

For the purpose of record, I will reproduce what is stipulated in the Limited Objections of the 1st to 3rd Respondents regarding the conditions stipulated in **1R1(a)**, which reads thus;

> *"3. The Respondents state that the subject land is actually an amalgamation of two lands as far back as 2017. One lot (Lot containing assessment numbers 11, 11A Claessens Place) having access from Claessens Place and another Lot having assessment numbers 19, 19/1 and 19/2, Havelock Road, having access from Havelock Road. Therefore, the Lot X in Plan 3815 is the lot of land amalgamated in 2017 by the plan submitted by the submitted by the Predecessor of the Petitioner.*

> *A true copy of the Plan 3815 of the said amalgamated land in 2017 is annexed hereto marked 1R1 and the approval of the amalgamation by the UDA is annexed hereto marked* ***1R1(a) and are pleaded as part and parcel hereof****."* [Emphasis is mine]

Accordingly, there was a clear case of amalgamating two premises which falls within two separate zones which was admitted by all parties. However, from 2017, no development activity had taken place; therefore, the residents, namely the Petitioners, were not bothered about the amalgamation as their rights were not affected by such amalgamation.

However, it must be noted that the two separate plots falling within two separate zones, having now been amalgamated, but the new zoning is nowhere shown or depicted in a newly published plan by the UDA, who is responsible for planning and publishing even the Colombo City Development Plan. In addition, they kept it a secret, even **1R1(a)**, though referred to in the Limited Objections as mentioned above, without disclosing it to date till this order was made.

Therefore, it is my view that the rights of the residents of Claessen Place are affected by such amalgamation, as it appears now. The 1st to 3rd Respondents should have at least kept the Petitioners as the residents of Claessen Place informed of the new zoning as at 2017. The 1st Respondent, or anybody who was responsible including the NEM Property Developers, never took any steps or endeavoured to keep them (the residents of Claessen Place) informed as their rights were affected; because the residents of Claessen Place, who are the Petitioners, fall within the low density Special Primary Residential Zone, whereas the residents and occupants of the Havelock Road fall within a medium density Mixed Development Zone and enjoy different rights and duties. Therefore, being the statutory body who is responsible for taking decisions either to approve or disapprove the amalgamation which affects the rights of the residents of Claessen Place, who clearly complained of a grievance; therefore, the 1st Respondent should have informed the Petitioners as residents as at 2017, to hear them if they have any objections.

Nevertheless, according to the arguments advanced by the Respondents, the Petitioners should have noticed, had they have not kept a blind eye and a deaf ear towards what was happening in the neighbourhood, that the properties had become one entity. They also ought to have noticed that the building structures which had existed prior to the amalgamation were demolished by the new owner and, thereafter, the land became bare. Therefore, the contention of the 8th Respondent is that the Petitioners kept a blind eye and a deaf ear towards such amalgamation. Further, it is the contention of all the Respondents that, once the properties were amalgamated, they became one entity and that nobody can now dispute that position. In particular, the 8th Respondent advanced the argument that, if the Petitioners had not acted at that stage, it is to their own peril, and that they ought to have objected to the amalgamation and the demolition of the buildings at that time.

However, it must be borne in mind that, after the amalgamation, although the properties became one entity, there was no construction taking place thereafter. Further, there was no advertisement calling for construction or inviting the public to purchase the future properties proposed to be constructed on the land.

Non-disclosure of '1R1(a)'

According to the 1st Respondent, the 1st Respondent had permitted NEM Property Developers, who had made the application to amalgamate the two said parcels of land that fell within two different zones, namely the Mixed Development Zone and the Special Primary Residential Zone, subject to certain conditions. Those conditions are contained in the document referred to as **1R1(a)** by the 1st to 3rd Respondents themselves.

However, the said document on two occasions, as I have mentioned above, has not been produced although it took several months to argue and re-argue the matter though the concern of the Petitioners was raised in the course of arguments on both occasions by Mr. Pieris. Even in the reply (on the last occasion), he raised the same concern.

Therefore, several questions arise as to why they suppressed the said document, though it is referred to in their Limited Objections.

One is that they have given the approval for amalgamation on the basis that if there is any construction, it should not affect the rights of the residents of Claessen Place because it falls within the Special Primary Residential Zone, or there may have been permission given to them that it should keep any development consistent with the parameters of construction, if any, that apply to the residents of the Claessen Place as a part of it falls within the Claessen Place and directly affects the residents of the Claessen Place.

Alternatively, the 1st to 3rd Respondents may fabricate a document to suit the present requirement as the approval has already been granted without any conditions known to any of the parties, except the 1st to 3rd Respondents.

Therefore, it is my view that if such document is available, it could have been commended by the Petitioners and the 1st to 3rd Respondents, which was not available to any of the parties nor to the Court; thus, now the 1st to 3rd Respondents cannot rely upon such a document which is not there.

Development plan is based on amalgamation

There was an argument advanced for and on behalf of the 5th, 7th and 8th Respondent by Mr. Sabry and Mr. Eraj de Silva, to the effect that the 5th to 8th Respondents acted within the legal parameters imposed by the Regulations and the law so long as having acted as so, they had obtained the approval for the development permit only on the basis of a larger land that is the amalgamated land now as depicted in **1R1**. In fact, the said approval has been granted on the basis of the extent of the land and width of the road frontage considering both roads.

It was further argued by Mr. Eraj de Silva that the developer (as the owner) can construct from the bowels of the Earth, right up to the sky.

Further it was argued that although they might not use the Claessen Place, still they are entitled to use it because of choice, and according to the architectural plans of choice, they have decided not to use it as the access; but right of way cannot be denied.

Now I will consider this argument in relation to the scenario.

The above arguments may be very attractive if the two parcels of land that were amalgamated in 2017, had not fallen into two distinct zones, where the residents of those two zones enjoy two different sets of rights and are bound by two different sets of duties, and instead, were situated within one zone (the mid-density Mixed Development Zone). However, due to the amalgamation, now the development permits have been approved on the basis that the entirety of the land falls within the mid-density Mixed Development Zone. Therefore, those arguments cannot be taken for granted.

Imminent threat to the Petitioners

The amalgamation was approved in 2017; but the original owner who obtained the approval for amalgamation had never started construction; then the ownership changed. The new developers came in and now the new developers commenced construction, and for that purpose, obtained approval.

In fact, when the development activities commenced only in 2025, the Petitioners made inquiries from the 1st Respondent under the Right to Information Act. Then only they have come to know that there is a high-rise building been constructed. However, the full information had not been given unless certain payments were made. This itself shows that even there they have not given all the information, and the Petitioners had to make payments for that purpose; vide **P3(d)** and **P5(b)**.

Therefore, it is very clear that the 1st to 3rd Respondents seem to keep the matters in camera without publishing it and without notifying the affected people, since they claim that they have been affected, and have a grievance to object to any high-rise building that might affect their rights. Thus, it is my view that the Petitioners should have been given an opportunity to raise their objections first before the approval for the amalgamation was granted, and secondly in the absence of **1R1(a)**, the document subject for which approval was given, at least before the approval for the development plan was granted herein at that time, which was also denied.

Therefore, it is my view that they should have been given a hearing in this Court at least, for them to make representation properly.

As such, with the approval granted on the basis of the amalgamation, the area treated as falling within the Mixed Development Zone has become enlarged. Therefore, it is my view that there is a clear case to issue notice on that ground itself.

However, in the course of the arguments, it was submitted on behalf of the 8th Respondent, as well as the 6th Respondent and the 1st Respondent, that when the Colombo City Development Plan, marked as **P13(a)**, was promulgated, there was a consultation process, and all the residents were called upon to submit their views before the regulations were adopted.

However, none of the residents who are now the Petitioners of Claessen Place raised their concerns, even by way of objections, nor did they express any concern regarding the Colombo City Plan.

However, it must be borne in mind that when the Colombo City Plan was promulgated and adopted, there had been several City Plans earlier, and none of those City Plans affected the area of Claessen Place. Even by the adoption and promulgation of the present Plan under the UDA Act applicable as reflected in **P14**, the residents of Claessen Place, including the Petitioners to this Application, were not affected.

It was only after the amalgamation and the grant of the development permit that they became affected because now the Special Primary Residential Zone, within which Claessen Place is situated, has become reduced in terms of its surrounding development context, and in the future, the traffic in the area may be affected, despite there was no road access from Claessen Place permitted for the residents of the future Pentara Tower (according to the architectural designs reflected in **8R4**).

Therefore, it is my view that the question as to whether the Petitioners were entitled to be consulted, or at least to have their views considered, or to be notified before granting the development permit, is a question that has to be gone into after issuing notice. This position was vehemently resisted by the Respondents. Therefore, that is another question which should be taken into consideration.

Number of floors based on two roads

It is further argued for and on behalf of the Petitioners that since now the developers of the amalgamated land were permitted by **P22** to erect a high-rise building, it was decided based on the road frontage and width of both roads, affecting the environment and rights of the Petitioners. Now I will consider that.

The number of floors was decided based on the road frontage of two roads.

Now I will elucidate it below.

As I mentioned above, the Claessen Place is not the main road, and although I persistently asked whether it was thoroughfare or a public road, none of the parties have placed any material before this Court for the Court to decide on it. However, it is common ground that the Claessen Place is a road to be used only by the residents of the area because one end of the road is a dead-end, where nobody has access to or from one end, except for the entrance of the road from the Kappetipola Mawatha. Additionally, the Claessen Place falls within the low density Special Primary Residential Zone. Therefore, if the Respondents also use the Claessen Place to decide the height and number of floors of the building, it will affect the rights of the parties, and that amounts to circumventing the relevant Regulations because the main access is only the 30m wide access to the Havelock Main Road, which only should be counted as the parameter to decide the same.

If the Claessen Place frontage is also added, the building's height and number of floors should be calculated in the following manner;

Havelock Main Road Frontage = 28m
Claessen Place Frontage = 39m

Havelock Main Road width = 18m
Claessen Place width = 09m

If both road frontages are to be considered:
28m + (39m x 9 ÷ 18)

28m + 19.5m = 47.5m

Then it is my view that there is a matter to be looked into: Whether in such scenario, the UDA cannot be the sole authority to grant permission for the Developer to construct such a tall building which will affect the rights of the residents on the Claessen Place (the Petitioners of the present Application) in two ways.

Firstly, just because of the amalgamation of the two properties, one of which was once facing Havelock Road and the other which was situated on Claessen Place, they have now become one entity. Based on that, if the developer, as the present owner, having amalgamated the properties, makes use of Claessen Place also as a road of access for the larger property, which on the other side has now extended its road frontage to Havelock Road, then, by virtue of such a claim, Claessen Place, which falls within the Special Primary Presidential Zone, will become part of the Mixed Development Zone.

Therefore, if a property which falls within the Mixed Development Zone is expanded by the addition (by amalgamation) of a parcel of land which earlier fell within the Special Primary Residential Zone, such amalgamation causes two problems: firstly, the Mixed Development area is expanded; secondly, the Special Primary Residential area is diminished by such amalgamation. Thus, the rights enjoyed by the residents of the Special Primary Residential area will be seriously affected, as high-rise buildings are not allowed beyond a certain height in such areas. Therefore, such amalgamation also affects the rights of the residents of Claessen Place. This is because, if there are more floors in the building proposed to be erected, there will be more residential units, which would lead to more inhabitants; and more inhabitants will, in turn, result in increased vehicular traffic. Thereafter, if at any given time such persons use Claessen Place rather than the heavier traffic access of Havelock Road, it will adversely affect the rights of the residents of Claessen Place.

Arbitrariness of the decisions

The said development plan has been approved by virtue of the Regulation 7.3.(xviii), titled as "Planning, Development, and Regulations Guidelines" in the document marked as **8R6(i)** (the same is marked as **P39** by the Petitioners), which states that when the land belongs to two or more zones, the zone of the land shall be determined by the zone that belongs to the main access road. Accordingly, the height of the building has been decided based on the access to the main road, which is the Havelock Road and also falls within the medium density Mixed Development Zone.

In addition to that, it was also argued that the authority shall have the power to decide the final approval of any use which are not mentioned in the premise permissible use as per the Zoning Plan, which is Regulation 7.3(xviii) at page 293 of the same document and reads thus;

> *"XVIII. The Authority shall have powers to decide final approval of any uses which are not mentioned in the permissible uses category as per zoning plan."*

Therefore, it is very clear that according to that, only the authority has the power to take a final decision.

To see whether the authority has taken a final decision or not according to the stipulated regulation, **1R1(a)** is a necessary document which the Respondents have failed to file. Therefore, that itself is a ground to give notice at this stage for them to give another chance to produce the said document later. Even if it is going to be a doctored document, that can also be ascertained in the course of the main arguments.

The next matter that should be mentioned is that since there are powers reserved for the authority in the said Regulation 7.3(xviii) to take the final decision, the question arises whether the authority can take a decision without having a proper hearing to the affected parties; in this case, it is common ground that the Petitioners in this Application have not been given a proper hearing or that their grievance has not been taken into consideration. Therefore, the question arises whether the Petitioners are entitled to hearing.

In addition to that, a question arises whether the decisions taken in this case by the 1st to 3rd Respondents have to be taken cautiously and judiciously. This can only be ascertained only in the final arguments after proper hearing.

It is my view that at least at this stage both parties should be granted an opportunity to hear this case and the Applications of the Petitioners in detail, whether the approvals have been granted properly, and whether the change of zoning has taken place properly.

Therefore, when the development permit was approved, what was mainly taken into consideration was the width of the Havelock Road as the main road. In addition, the width of

Claessen Place was also taken into consideration for the purpose of calculating the height of the building and the number of floors that could be permitted.

In addition to that, the Floor Area Ratio has now become higher than the Floor Area Ratio permitted within the Special Primary Residential Zone, within which Claessen Place falls. Therefore, if the resident of the premises bearing No. 11A or No. 11 of Claessen Place could not have been permitted to erect such a high-rise building, the eligibility came only with the amalgamation.

Consequently, with the amalgamation, the zoning has gone beyond the parameters of the original boundaries of Claessen Place, which has adversely affected the residents of Claessen Place who fall within the Special Primary Residential Zone.

Now, with the amalgamation, Nos. 11A and 11 of Claessen Place have become part of the Mixed Development Zone; thus, it had been considered, for the purpose of erecting the building, as falling within the Mixed Development Zone because of the larger extent of land that was created by amalgamating and merging with No. 11A of Claessen Place.

To buttress my view, I rely on the following passages in the case of *Heather Therese Mundy v. Central Environmental Authority and Others*[27], which reads thus;

> *"Historically the writ jurisdiction had limitations, arising from its linkage to the English 'prerogative' writs in regards to which it has been observed:*
>
> > *'... the development of administrative law remedies in the common law sphere proceeded piecemeal from a variety of historical antecedents and, unto well into the [twentieth] century, without any recognition of the character and needs of administrative justice as a separate legal discipline. In fact, the main traditional remedies are classed as 'extraordinary remedies'...' (Friedmann, Law in a Changing Society, 1959, p 403)*
>
> *The jurisdiction conferred by Article 140, however, is not confined to "prerogative" writs, or "extraordinary remedies", but extends - "subject to the provisions of the Constitution" - to "orders in the nature of" writs of Certiorari, etc. Taken in the context of our Constitutional principles and provisions, these "orders" constitute one of the principal safeguards against excess and abuse of executive power: mandating the judiciary to defend the Sovereignty of the People enshrined in Article 3 against infringement or encroachment by the Executive, with no trace of any deference due to the Crown and its agents. Further, this Court itself has long recognized and applied the "public trust" doctrine: that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred, and that their exercise is subject to judicial review by reference to those purposes (see de Silva v Atukorale, [1993] 1 Sri LR 283, 296-297;*

[27] SC Appeal No. 58/2003 (SC Minutes 20.01.2004).

Jayawardene v Wijayatilake, [2001] 1 SriLR 132, 149, 159; Bandara v Premachandra, [1994] 1 SriLR 301, 312); and that doctrine extends to national and natural resources (such as the air-waves, Fernando v SLBC, [1996] 1 SriLR 157, 172, and mineral deposits, Bulankulame v Secretary Ministry of Industrial Development, [2000] 3 SriLR 243, 256-257). Besides, executive power is also necessarily subject to the fundamental rights in general, and to Article 12(1) in particular which guarantees equality before the law and the equal protection of the law. For the purposes of the appeals now under consideration, the "protection of the law" would include the right to notice and to be heard. Administrative acts and decisions contrary to the "public trust" doctrine and/or violative of fundamental rights would be in excess or abuse of power, and therefore void or voidable. The link between the writ jurisdiction and fundamental rights is also apparent from Article 126(3) - see Perera v Edirisinghe, [1995] 1 SriLR 148, 156 - which contemplates that evidence of an infringement of fundamental rights may properly arise in the course of hearing a writ application, whereupon such application must be referred to this Court which may grant such relief or make such directions as it may deem just and equitable. Thus, although this Court would still be exercising the writ jurisdiction, its powers of review and relief would not be confined to the old "prerogative" writs. These Constitutional principles and provisions have shrunk the area of administrative discretion and immunity, and have correspondingly expanded the nature and scope of the public duties amenable to Mandamus and the categories of wrongful acts and decisions subject to Certiorari and Prohibition, as well as the scope of judicial review and relief."

As such, it is my view that the area falling within the Mixed Development Zone has now become enlarged, and on that basis, there is a serious question as to whether the 5th to 8th Respondents are entitled to obtain the development permit beyond the limits permitted, for a land which now straddles onto the Special Primary Residential Zone. Further, the question also arises as to whether the 1st and 2nd Respondents could take such an arbitrary decision without consulting the Petitioners, who would undoubtedly be affected by that decision, prior to granting approval for the proposed development permit.

Denial of fair hearing

Ms. Nammuni argued that though the Petitioners complain that they have not been heard, sufficient hearing had in fact been given, and that by way of correspondence they were afforded an opportunity to be heard. She further contended that the said correspondence itself establishes that the Petitioners were given sufficient hearing.

However, if that argument is to be accepted, that itself is a question upon which notice should be granted because Mrs. Nammuni's said argument itself scuttles the authoritative concepts founded upon the rules of natural justice developed throughout in judicial decisions and authoritative legal texts. Therefore, whether certain correspondence amounts to a sufficient hearing being afforded is a question that has to be decided at the hearing.

In my view, according to the observations of Justice Fernando in the case of *Karunadasa v. Unique Gem Stores Ltd and Others*[28], sufficient hearing means not only that a hearing is afforded, but also that the parties must be given a reasoned judgement. Therefore, being the authority empowered to finally decide whether the amalgamation and development plan should be approved under Rule XVIII of Regulation 7.3 must provide reasons for its decision.

To buttress my view, I rely upon the observations made by Justice Mark Fernando in the said case of *Karunadasa* [1997];

> *"The 2nd respondent says that he delegated to the 3rd respondent. an Assistant Commissioner of Labour, the function of holding an inquiry, as permitted by section 11. At that inquiry several witnesses gave evidence. The 2nd respondent says that, having considered the notes of inquiry (which were made available to the parties), and the 3rd respondent's recommendation (which was not), he approved that recommendation and made his order dated 30.4.95. which recorded, without further elaboration, that the appellant's services had been terminated contrary to section 2(1) of the Act, and directed reinstatement with effect from 1.6.95 and back wages of Rs. 13,200. Although by letter dated 19.5.95 the 1st respondent expressed dissatisfaction with that order, and asked the 2nd respondent to disclose his reasons, he merely repeated what he had already said. The 1st respondent applied to the Court of Appeal for certiorari to quash the order on the ground that the failure to give reasons was a violation of the principles of Natural Justice.*
>
> *...**To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded: it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision**, it they are withheld, once judicial review commences, the decision 'may be condemned as arbitrary and unreasonable': certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd respondent's failure to produce the 3rd Respondent's recommendation thus justified the conclusion that there were no valid reasons, and that Natural Justice had not been observed..."*
> [Emphasis is mine]

I also rely upon the case of *Piyasena De Silva and Others v. Ven. Wimalawansa Thero and Another*[29].

As such, it is my view that this itself is a question which should be decided at the conclusion of the hearing of this case.

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[28] [1997] 1 Sri L.R. 256.
[29] [2006] 1 Sri L.R. 219.

Conclusion

For the reasons adumbrated above, it is my view that at this stage only notice should be granted on the first five questions that I have raised under the heading of ‘issues to be determined’ since there is a serious matter to be determined and no final decision is taken at this stage.

In addition to that, for the reasons mentioned above, I wish to grant a modified interim order as prayed for in prayer *(d)* of the Petition, preventing the 5th to 8th Respondents from taking further steps to continue construction.

Judge of the Court of Appeal