

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of *Certiorari* and Prohibition.

Court of Appeal Case No:
CA/WRIT/526/2024

1. Isma Lebbe Abdul Rahuman,
69, Kuruppu Road, Colombo 08.
2. Aboobucker Atham Bawa,
69/1, Kuruppu Road, Colombo 08.
3. Wimala Premalatha De Silva,
69/2, Kuruppu Road, Colombo 08.
4. Kandiah Indrani,
69/3, Kuruppu Road, Colombo 08.
5. Fathima Nasliya Shafi nee Rasamany
Vettivelu,
69/4, Kuruppu Road, Colombo 08.
6. Fathima Fuzeena Hirshard Hussain,
69/5, Kuruppu Road, Colombo 08.

PETITIONERS

Vs.

1. Colombo Municipal Council,
Colombo 07.
2. Municipal Commissioner,
Colombo Municipal Council,
Colombo 07.

3. Anuja Mendis,
Director – City Planning,
Colombo Municipal Council,
Colombo 07.
4. PCN De Zoisa,
Architect,
City Planning Division,
Colombo Municipal Council,
Colombo 07.
5. MA Chathurika Wijekumari,
City Planner,
City Planning Division,
Colombo Municipal Council,
Colombo 07.
6. Chandani Weerasooriya,
Area Inspector,
City Planning Division,
Colombo Municipal Council,
Colombo 07.
7. Urban Development Authority,
6th and 7th Floors,
“Sethisiripaya”,
Battaramulla.
8. Sarath Jayathilake,
69/50, Kuruppu Road,
Colombo 08.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Manoj Bandara instructed by Thivanka Hettiarachchi instructed by Tharindu Dawakella for the Petitioners.
Ranil Samarasooriya with Shashiranga Sooriyapatabandi for the 1st to 6th Respondents.
Zuhri Zain, D.S.G. for the 7th Respondent.
Manohara de Silva, P.C. with Dilmi de Silva instructed by Lilanthi de Silva for the 8th Respondent.

Supported on: 17.06.2026.

Order delivered on: 31.07.2026.

Mayadunne Corea J

The Petitioners in this application sought, *inter alia*, the following reliefs:

- “c) Grant and issue Writs of Certiorari quashing the decision of the 5th Respondent contained in the letter dated 24.07.2024 marked P29 to the Petition, that the width of the private road abutting the Petitioners’ premises Nos. 69, 69/1, 69/2, 69/3, 69/4, and 69/5 of the Kuruppu Road, Colombo 08 should be 20 feet, and that the Petitioners had encroached on to the said private road
- d) Grant and issue Writs of Certiorari quashing the letter dated 24.07.2024 marked P29
- e) Grant and issue a Writ of Prohibition preventing the 1st to 7th Respondents from acting on the decisions based on which the letter dated 24.07.2024 marked P29 to the Petition was issued, and/or preventing them from instituting or proceeding with any proceedings or taking any further steps for the enforcement of the decisions contained in the said letter marked P29

- f) *Grant and issue a Writ of Prohibition preventing the 1st to 7th Respondents from taking any steps to demolish the houses or part of the constructions of the Petitioners, or disturbing the possession of the Petitioners in any way or manner, on the purported basis that part of the Petitioners' premises, boundary walls, and/or parapet walls and/or garden spaces, constitute encroachments of a purported 20 feet private road"*

Factual matrix

The facts of this case, in brief, are as follows. The Petitioners reside at premises bearing Nos. 69, 69/1, 69/2, 69/3, 69/4, and 69/5, Kuruppu Road, Colombo 08, which are situated adjacent to a private road. The Petitioners state that the private road has had a width of approximately 10 feet since 1959. It is alleged that on or about 16.05.2018, a third party, Tissa Jayaweera, lodged a complaint alleging that the Petitioners had encroached upon a portion of the private road, which was claimed to have an original width of 20 feet. Pursuant to the said complaint, the 7th Respondent initiated an inquiry. However, the inquiry did not proceed following the death of the complainant.

Thereafter, by letter dated 11.10.2023, the 4th Respondent informed the Petitioners that, upon a field inspection conducted by officers of the 1st Respondent, it had been observed that although the private road was required to have a width of 20 feet, its width had been reduced to approximately 10 feet due to alleged encroachments by the Petitioners. The 4th Respondent further directed the Petitioners to submit the approved building plans relating to their respective properties together with the relevant survey plans and reports. In response, the Petitioners without submitting the approved building plans made several representations to the relevant authorities disputing the allegation of encroachment. Subsequently, by letter dated 24.07.2024 (marked as P29), the 5th Respondent directed the Petitioners to demolish the unauthorised boundary walls on or before 13.08.2024. Aggrieved by the said decision, the Petitioners have preferred the present Writ application.

The Petitioners' contention

The Petitioners challenge the acts of the Respondents on the following grounds:

- The Respondents failed to afford the Petitioners a fair hearing.
- The Respondents failed to consider that the road is a private road and that the boundary walls have been depicted as a retaining wall in the master survey plan since 1959 or earlier.
- The extent of premises occupied by the Petitioners as depicted in the master survey plan and deeds have remained unchanged since 1959, and accordingly, the alleged encroachment area is part of the Petitioners' premises.
- The Respondents have acted contrary to the Municipal Council Ordinance, No. 29 of 1947 and the Urban Development Authority Law, No. 41 of 1978.
- The acts of the Respondents are illegal, arbitrary, *ultra vires* and in breach of the principles of natural justice.

The Respondents' contention

The 1st to 6th Respondents raised the following objections:

- The Petitioners have acted contrary to sections 18 and 19 of the Housing and Town Improvement Ordinance, No. 19 of 1915.
- The Petitioners have wilfully suppressed and misrepresented material facts.
- The Petitioners have failed to come to Court with clean hands.
- The Petitioners are guilty of laches.
- The Petitioners' application is vexatious and misconceived in law.

Analysis

It is common ground that the road adjacent to and in front of the Petitioners' houses is a private road, although it is maintained by the Colombo Municipal Council. It is also not disputed that the Petitioners have newly constructed the front boundary walls of their

respective houses which demarcates the boundary of the Petitioners' premises and of the road.

The parties are also not at variance that the applicable law pertaining to the construction in dispute is the provisions of the Urban Development Authority Law, No. 41 of 1987 as amended and also pursuant to section 8 of the Urban Development Authority Law (hereinafter UDA Law) a building development plan had been gazetted (P33, P34, P35).

The parties are also not in dispute that any improvement, construction or development activity in a developmental area has to be done with the permission of the Urban Development Authority. For ease of reference section 8J(1) is reproduced below;

(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."

It is not disputed that the Respondents have sent several letters to the Petitioners to submit the approved building plans. Upon inquiry by the Court, the learned Counsel for the Petitioner conceded that they had not replied to or adhered to the request of the 7th Respondent and submitted any approvals pertaining to the construction of the walls. Upon further inquiry, the Petitioners conceded that they have not obtained any Certificate of Conformity (hereinafter "COC") from the Respondents after the conclusion of the constructions to their houses. Hence, in the absence of the COCs, the only conclusion this Court can arrive at is that the said constructions, including the walls, are illegal as there is no approval submitted to Court pertaining to the said constructions.

At the support stage, in impugning the document marked and tendered as P29, the Petitioners' main grounds urged are twofold, namely, that the impugned document is in violation of the UDA Law and the Petitioners have not been given a fair hearing before the document P29 was issued. I will now consider the Petitioners' contentions along with the Respondents' objections. For a better understanding, I will consider the submissions made by the parties pertaining to the background that prompted the issuance of P29.

Fair hearing

It appears that the Petitioners' have been informed by the 7th Respondent as far back as 2018 that the Petitioners have constructed an unauthorised construction that has encroached onto the road (P12). It is the contention of the Respondents that the road is 20 feet wide. However, the Petitioners dispute this contention and submit that the said road is only 10 feet wide.

To establish this position, the Petitioners tendered a plan marked as P2. The said plan which bears a date in the year 1952 depicts the line of houses the Petitioners claimed are the houses they occupy. However, the Petitioners failed to demonstrate to Court the exact width of the road with the said plan. It is also pertinent to note that the said plan demonstrates that all the houses have a boundary adjacent to the Kuruppu road which will hereinafter be called 'the road'. The boundary appears to be on a straight line. Thereafter, the Respondents have drawn a plan marked P28(1) which demonstrates that the straight-line boundary of the houses bordering the road have shifted and no longer depicts a straight line. In the said plan the width of the road too, is demonstrated and the width of the road varies in front of the Petitioners' houses. While in some places the width of the road is given as 18.6 feet, the narrowest place depicts the road to be 8 feet. The Petitioners have failed to explain the discrepancy in the width of the road in front of their respective premises. The learned Counsels for the Respondents drew the attention of this Court to the discrepancy and contended that as per the differences in the width of the road, it is evident that some houses would have constructed the boundary walls encroaching onto the road. In my view, in the absence of any explanation, the Petitioners' contention of no encroachment, has to fail. It is also pertinent to note that the Petitioners' themselves contended that the road is 10 feet in width. If that is so, how the width in some places has reduced to 8 feet, was not explained by the Petitioners.

However, as per P12 the 7th Respondent issued a notice to the Respondents stating that, upon a field inspection, encroachments had been identified and required the Petitioners to be present with their approved building plans to enable the authorities to ascertain whether the walls had been built as per the approved plans and whether the Petitioners' alleged constructed walls fell within the building plan that has been submitted for approval.

“ඒ අනුව 2018.04.09 දින අප අධිකාරියේ නිලධාරීන් විසින් සිදු කරනු ලැබූ ක්ෂේත්‍ර පරීක්ෂණයේදී මෙම මාර්ගය දැනට අඩි 20 භෞතිකව නොමැති බව තහවුරු විය.”

The Petitioners concede that they did not respond to this letter or produce their approved building plans as requested.

Thereafter, in 2023 another notice had been received by the Petitioners which was marked and tendered as P14. The said letter had been issued by the city planning division of the 1st Respondent which appears to be a reiteration of the previous notice marked as P12. The said letter states as follows;

“එබැවින්, නිරවද්‍යතාවය සනාථ කර ගැනීම සඳහා ඉඩමේ අනුමත මිනින්දෝරු සැලැස්ම සහ අනුමත ගොඩනැගිලි සැලැස්මේ පිටපත් මෙම ලිපිය ලැබී දින 14 ක් ඇතුළත කොළඹ මහා නගර සභාවේ නගර සැලසුම් අංශය වෙත ඉදිරිපත් කරන ලෙස දැනුම් දෙමි.

ඔබ එසේ කිරීමට අපොහොසත් වුවහොත් නාගරික සංවර්ධන අධිකාරියේ රෙගුලාසි වලට අනුව අනවසර ඉදිකිරීමක් ලෙස සලකා ඔබට විරුද්ධව නීති මගින් කටයුතු කිරීමට සිදු වන බවද වැඩි දුරටත් දන්වා සිටිමි.”

This has been followed up by another notice dated 11.12.2023, marked as P18, whereby the Petitioners had been given notice to remove the unauthorised constructions. It appears that before P18 had been dispatched there had been a field inspection, whereby it was concluded that the Petitioners had constructed against the approved building plan, thereby making the constructions unlawful constructions. By this letter the Petitioners had been granted time to remove the said unauthorised constructions and had been warned that failure to do so would attract legal action.

“උක්ත කරුණ සම්බන්ධයෙන් කොළඹ මහ නගර සභාවේ නගර සැලසුම් අංශයට ලද පැමිණිල්ලකට අනුව නගර සැලසුම් අංශයේ නිලධාරීන් විසින් උක්ත පරිශ්‍රයන්හි ක්ෂේත්‍ර පරීක්ෂාවක් සිදු කරන ලදි.

එම ක්ෂේත්‍ර පරීක්ෂාවේදී අනාවරණය වූ කරුණු හා මව් ගොනු පරීක්ෂාවට අනුව ඔබ විසින් ඉහත පරිශ්‍රයන්හි අනුමත සැලසුමට පටහැනිව ඉදිකිරීම් සිදු කර ඇති බැව් අනාවරණය වී ඇත.

එබැවින්, ඉහත පරිශ්‍රයන්හි අනුමත සැලසුමට පටහැනිව සිදුකර ඇති සියලු ඉදිකිරීම් දින 14ක් තුල ඉවත් කර කොළඹ මහ නගර සභාවේ නගර සැලසුම් අංශය වෙත දන්වන ලෙස මෙයින් ඔබට දැනුම් දෙමි.”

Thereafter, another notice had been issued by the Colombo Municipal Council dated 08.02.2024 marked and tendered as P24, whereby parties have been summoned for a

meeting which has subsequently been postponed to 19.02.2024 by letter marked as P25. Whether or not this meeting took place was not addressed by the Counsel.

It is evident that the non-compliance by the Petitioners and their failure to submit the approval for the alleged constructions culminated in the Respondents dispatching P29, the impugned notice to the Petitioners.

In my view, the Petitioners were afforded ample opportunities to be heard and to present their approved plans which the Petitioners have failed to utilise. In any event, the Petitioners have not tendered any material to this Court to demonstrate that they availed themselves of those opportunities. In contrast upon inquiry by this Court, the Petitioners conceded that until the time of instituting this Writ application, the Petitioners had failed to tender any approved plan to the authors of the above-mentioned documents. Accordingly, this Court is of the considered view that the Petitioners failed to avail themselves of the opportunity afforded to them to be heard. Having failed to do so, they cannot now be heard to complain that they were deprived of a fair hearing.

P29 impugned notice

The impugned notice marked as P29 has been issued under section 23(5) read with section 28(a) and reads as follows;

“02. ඉහත දක්වා ඇති පරිදි කොළඹ 08, කුරුප්පු පාර, වරිපනම් අංක. 69, 69/1, 69/2, 69/3, 69/4, 69/5, 69/6 හා 69/6A දරණ ස්ථානවල ඉදිකර ඇති අනවසර මායිම් නාප්ප 2024 ක් වූ අගෝස්තු මස ...3... දිනට ප්‍රථම කඩා ඉවත් කර ගන්නා ලෙස ඔබට මෙයින් දැනුම් දෙමි.”

Although the Petitioners submitted that the said notice is illegal as it has been submitted by 1st to 6th Respondents utilising the powers vested with the 7th Respondent under the UDA Law, the Petitioners later did not pursue this contention. At this stage it is pertinent to note that, in any event, it is trite law that the powers conferred by the provisions stipulated in P29 have been delegated to the 1st to 6th Respondents. Accordingly, the said Respondents are legally entitled to issue the said notice under the UDA Law. This has been elaborated in the cases of ***Kumarapeli Arachchige Chithra Anandaseeli and 2 others vs. Colombo Municipal Council and 4 others*** CA Writ 540/2021, CA Minutes 19.06.2025 and ***Rajalingam v. Colombo Municipal Council*** 2020 (1) SLR 179.

Hence, the Petitioners' main ground of challenging P29 on the basis that the Municipality has usurped the UDA powers and P29 is *ultra vires* the powers of 1st to 6th Respondents, fails. The Petitioners also contended that P29 is bad in law as, before the issuance of P29 the Petitioners' have not been given a fair hearing. It is apparent as per the correspondence between the parties which I have specifically mentioned above in this judgment, before dispatching P29, the Petitioners' have been given ample opportunities to demonstrate that the alleged construction is in compliance with the UDA Law and that the Petitioners have obtained approval for the same. However, the Petitioners have failed to tender any material to substantiate that they have obtained any approval subsequent to the construction of the boundary wall nor, have they tendered any material to demonstrate that they have obtained a COC pertaining to the constructions in their respective premises.

The Petitioners submitted that they have made applications for renovations of their respective premises. This was specifically addressed by the Counsel for 1st to 7th Respondents and the Court will advert to this in a while. However, it is pertinent to note that merely obtaining a permit for development is not sufficient to make a construction legal. For a construction to be legal, the Petitioners' must obtain the approval subsequent to the construction, namely obtain the COC, which in the instant case the Petitioners' have failed to obtain and in any event, none have been tendered to this Court.

The Petitioners' attempted to demonstrate the origin of P29 firstly, to a land dispute,, thereafter, to a dispute with a person whom the Petitioners alleged has influenced the 1st to 7th Respondents to issue P29. However, careful consideration has been given by this Court to document P29. The crux of P29 appears to be the unauthorised construction of the boundary wall. The Petitioners have been given ample opportunities to demonstrate that the said construction is legal which the Petitioners have failed to utilize. Hence the Petitioners have failed to demonstrate that the construction is legal nor to contradict the position of the 1st to 7th Respondents that it is an unauthorised construction. Hence, in my view, section 28A UDA Law is applicable in this instance and the impugned notice has been dispatched pursuant to section 28A of the Law. As I have stated above, it has been issued by the 1st to 6th Respondents under the delegated powers pursuant to section 23(5) UDA Law.

Although the Petitioners attempted to demonstrate this as a land dispute and that P29 was a result arising from such dispute and has been submitted with malice, they failed to establish this contention with any material. Hence, the Petitioners' said contention fails.

Although the Petitioners submitted that P29 has been dispatched in bad faith as I have observed above, the Petitioners' have failed to demonstrate any bad faith in sending P29. It is apparent that by P29, the Petitioners have failed to attack the crux of P29 namely, the constructions mentioned therein to be unauthorised constructions. Now I will advert to the objections raised by the Respondents.

Suppression and misrepresentation of material facts

The 1st to 6th Respondents in their objections have submitted that prior to the UDA Law being enacted, even under the Housing and Town Improvement Ordinance, a roadway should be of not less than 20 feet in width. They have brought to the attention of this Court sections 18 and 19 of the Ordinance. Subsequently, as observed by this Court, with the UDA Law coming into operation and the disputed area being gazetted as a development area, the impugned premises are now governed by the UDA Law. This position is not disputed by the parties. The learned Counsel for the 1st to 6th Respondents submitted to this Court that the Petitioners in residences nos. 69, 69/1, 69/2, 69/3, 69/4 who are all Petitioners in this case had tendered applications to renovate the houses and to obtain a certificate on street lines. By documents marked as R2 to R7, the learned Counsel appearing for the Respondents demonstrated to this Court the occupants have been informed as far back as 22.01.1963 (R2) that the street lines and the road must be of 20 feet in width. Hence, the learned Counsel submitted that the Petitioners were aware that the road is 20 feet in width and also aware of the street lines, as all building approvals had been granted subject to the condition that no permanent structures be constructed within the sanctioned provisions, proposed street lines and building lines. The development permits pertaining to the said developments of the premises nos 69 to 69/4 had been tendered to this Court. However, this Court observes that the Petitioners throughout in their submissions maintain that this is a private street of approximately 10 feet in width and were silent on the existence of street lines and on obtaining approval for additions and alterations for their existing houses.

This Court observes that by R10 the occupant of premises no. 69/1 had been issued with a development permit and by R11 occupant of premises no. 69/2 and by R14 the occupant

of premises no. 69/3 had been issued with development permits subject to the condition of not constructing any permanent constructions within the street lines. Further, this Court observes that by R20, the 5th Petitioner had written to the planning division of the 1st Respondent seeking for approval of a building plan and in the said letter had specifically stated that they will demolish the boundary wall and maintain the correct width of the road in front. However, the Petitioners' have failed to disclose the existence of these permits, failed to demonstrate that they have been prohibited to construct any permanent structure within the street lines. In my view the suppression of these material facts clearly demonstrates that the Petitioners' have failed to invoke the jurisdiction of this Court with clean hands. This Court has constantly observed that a Petitioner who invokes the discretionary Writ jurisdiction of this Court should come with clean hands and must tender to this Court all material that is relevant for a Court to come to a proper adjudication. Hence, in my view, the Respondents' objection that the lack of *uberrima fides* has to succeed and this grave suppression and misrepresentation of facts, disentitles the Petitioners from seeking the reliefs they have sought.

In ***Liyanage and Another v Ratnasiri Divisional Secretary, Gampaha and others*** (2013) 1 SLR 6, it was stated

“It is now a well-established principle that when an applicant has suppressed or misrepresented the facts material to an application and when there is no complete and truthful disclosure of all material facts, the Court will not go in to the merits of the relevant application, but will dismiss it in limine” (emphasis added)

In ***Fonseka v Lt. General Jagath Jayasuriya and five others*** 2011 (2) SLR 372 it was held;

“A petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to court, bare every material fact so that the decision of court is not wrongly invoked or exercised.

In the same case, Justice Abdus Saleem further held, “material facts are those which are material for the judge to know as dealing with the application as made, materiality is to be decided by court and not by the assessment of the applicant or his legal representatives.”

It was brought to the attention of this Court the documents marked and tendered by the Petitioners' as P10a, P10b and P31a which clearly demonstrate the newly built walls with

roller gates. Even though the Petitioners attempted to submit that their boundary walls were quite old, that contention is contradicted by the above-mentioned documents, which the Petitioners themselves tendered.

Conclusion

I have considered the submissions of the learned Counsel and the documents tendered to this Court. For the reasons set out above, in my view the Petitioners have failed to establish a *prima facie* case for the issuance of formal notice on the Respondents. Further, as stated above, the Petitioners, by their own conduct, have disintitiled themselves from obtaining any relief from this Court. Accordingly, for the afore-stated reasons in this order, I refuse to issue formal notice on the Respondents and proceed to dismiss this Writ application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal