
**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.*

1. L.B.P Nissanka
34/6, Baseline Mw,
Borella, Colombo 08.

2. W.K Thusitha Samith
34/4 Baseline Mw,
Borella, Colombo 08

3. K.A. Gunaratna
34/28 Baseline Mw,
Borella, Colombo 08

4. Samaradeera Samankanthi
34/2 Baseline Mw,
Borella, Colombo 08

Petitioners

CA (Writ) Application No: **283/14**

-Vs-

1. The Urban Development Authority
6th and 7th Floors, Sethsiripaya,
Battaramulla.

2. Mr. Nimal Perera, Chairman
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
3. Brig. S.A.R. Samarasinghe,
Project Director, Urban Regeneration
Project City of Colombo,
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
4. The Colombo Municipal Council
Town Hall, Colombo 07.

Respondents

On this 20th day of August 2014

**TO: HIS LORDSHIP THE PRESIDENT AND THEIR LORDSHIPS THE OTHER JUDGES
OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

The Petition of the Petitioners above-named appearing by their Registered Attorney-at-Law, Mr. Sunil Watagala states as follows:

1. The 1st – 3rd Petitioners are owners of Condominium units respectively marked 24, 22 and 4 and depicted in Condominium Plan No 2 drawn by N.M.R Premaratne Licensed Surveyor and dated 3rd December 1979.

The Petitioners reserve their right to submit a copy of the Condominium Plan No 2 drawn by N.M.R Premaratne Licensed Surveyor and dated 3rd December 1979 once obtained, and mark the same as "**P1**".

A copy of the title Deeds of the 1st to 3rd Petitioners are annexed hereto marked "**P2a – P2c**" respectively and pleaded as part and parcel hereof.

2. The 4th Petitioner resides in Condominium unit marked 14 and depicted in Condominium Plan No 2 drawn by N.M.R. Premaratne Licensed Surveyor and dated 3rd December 1979 (**P1**). The 4th Petitioner claims rights to the said Condominium unit through her father to whom the said Condominium unit was transferred by the Colombo Municipal Council.

A copy of title deed No 1016 executed under the common seal of the Municipal Council of Colombo and dated 14th December 1979 is annexed hereto marked "**P3**" and pleaded as part and parcel hereof.

A copy of the Birth Certificate of the said Samaradeera Samankanthi is annexed hereto marked "**P4**" and pleaded as part and parcel hereof.

3. The Petitioners and their predecessors in title have continuously occupied these premises since 1950's and made payments to the 4th Respondent above captioned in order to obtain title to said premises. As a result the Petitioners and their predecessors were given formal title deeds by the 4th Respondent in 1979.

4. The Respondents are as follows;

- The 1st Respondent is the Urban Development Authority which in terms of Act No 41 of 1978 (as amended) is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- The 2nd Respondent is the Chairman of the 1st Respondent.
- The 3rd Respondent is an officer of the 1st Respondent and is the director of the unit which is alleged to have made the decision impugned in the present proceedings.

- The 4th Respondent is the Municipal Council of Colombo a body corporate duly incorporated under the Municipal Councils Ordinance (Chapter 252) and having its principal office at the above captioned place.

Background

5. Reports on the Ministry of Defence website indicate that the government has planned to construct 70,000 housing units for people living in “underserved settlements” through the “Urban Regeneration Project - City of Colombo”. “Underserved Settlements” are described as “low income areas which represent different characteristics of development constrained by inadequacy or total lack of urban basic services and mostly improvised buildings with no secure land ownership”.

A news report captioned “Development Drive to see Slums and Shanties free Colombo” published on the Ministry of Defence website is annexed hereto marked “P5” and pleaded as part and parcel hereof

6. The area in which the Petitioners’ residences are located is known as “34 Watta” and is situated in the Wannathamulla area. The allotment of land on which the Petitioners’ premises is located is situated in Ward 30, Wanathamulla within the Municipal Council Limits and District of Colombo and morefully described in the first Schedule to this Petition.
7. In 2010 officers of the 1st Respondent gathered information from residents in 34 Watta on the number of occupants in a house, their income and education level. Residents were made to stand for a photograph in front of their premises holding a number allocated by the 1st Respondent. The Petitioners were also asked if they would consider moving from their current premises and had responded that they would do so if it was to a better house (larger floor area) and also located within the Borella Wannathamulla area.

8. During the latter half of 2011 the 1st Respondent had commenced the construction of two multistory apartment complexes in the immediate vicinity in the premises previously known as 54 Watta (Sirisara Uyana) and 66 Watta (Methsiri Uyana) purportedly under the said Urban Regeneration Project - City of Colombo.
9. In or around November 2013 officers of the 1st Respondent distributed forms to residents living in 34 Watta. Residents were asked to complete the said form which was in Sinhala and captioned "Application for housing under Urban Regeneration Project" and return it to the 1st Respondent's officers within 2 to 3 days.
10. Many residents who were not aware of the terms and conditions on which the proposed houses would be allocated completed the said forms and handed them over to the officers of the 1st Respondent.

Two such "Application forms" which the residents were directed to complete together with the certificate from the Police and Grama Niladhari officer dated December 2013 are annexed hereto marked "**P6**" and pleaded as part and parcel hereof.

11. The Residents of the area and the Petitioners subsequently became aware -when they were handing over document in the form marked **P6** - that;
 - a. They would be required to make an initial payment of Rs. 50,000 with a further Rs. 50,000 to be paid within the first 3 months towards maintenance and upkeep and monthly installments of Rs. 3960 over the next 20 years for the proposed new apartments; and
 - b. The floor area of the proposed new apartments was smaller than the floor area of the Condominium unit they presently reside in;
12. In the circumstances, when told by officers of the 1st Respondent including the 3rd Respondent to do so, the residents of "34 Watta" including the Petitioners refused to move to the new multistory apartment complex as it did not conform to their basic requirements and as they would have to make substantial payments for the said premises over a period of 20 years.

13. The Secretary to the Ministry of Defence and Urban Development (Gotabhaya Rajapaksa) visited the Wanathamulla area in February 2014 and inquired from the residents including the Petitioners as to why they refused to move. The residents including the Petitioners raised concerns as to the quantum of payment, the floor area and the condition of the Condominium units in the new apartment complex with the Secretary.
14. Despite the aforementioned concerns being raised with them, officers and/or agents of the 1st Respondent including persons in military uniforms frequented the 34 Watta area to convince the residents therein including the Petitioners that they should move to the Condominium units in the new apartment complex.

Proceedings before Human Rights Commission of Sri Lanka

15. The Petitioners state that they were amongst the group of persons who complained to the Human Rights Commission of Sri Lanka (HRC/4816/13) on 13th December 2013, given that the 1st Respondent and its agents were attempting to remove them from the Condominium units they reside in, without legal process and in an illegal manner.

A true copy of the Complaint dated 13th December 2013 made to the Human Rights Commission of Sri Lanka (HRC/4816/13) is annexed hereto marked "**P7**" and pleaded as part and parcel hereof.

16. At the inquiry into the said complaint on the 6th of March 2014, the 3rd Respondent undertook on behalf of the 1st Respondent, not to remove any individual from the Condominium unit they reside in, unless such individual(s) consents to it.

A true copy of the proceedings of Case No HRC/4816/13 before the Human Rights Commission of Sri Lanka on the 6th March 2014 is annexed hereto marked "**P8**" and pleaded as part and parcel hereof.

17. Contrary to the undertaking by the 3rd Respondent, servants and/or representatives and/or agents of the 1st Respondent including the 3rd Respondent and others in military uniform continued to visit the Petitioners and other persons in the surrounding areas and informed them that they should accept the new apartments being offered to them, because the Condominium unit they presently reside in is to be demolished in the near future. The conduct of the 1st Respondent especially as it involved persons in military uniforms, created a fear psychosis within the community.

18. In fact, a person in military uniform had told another group of persons from Narahenpita who had also complained to the Human Rights Commission of Sri Lanka (HRCSL) that the HRCSL is only a mediating force and that they cannot prevent the 1st Respondent from evicting these residents from these lands.

A news report captioned "Wanathamulla Residents Raise Concerns" published Sunday Leader of 20th April 2014 is annexed hereto marked "**P9a**" and pleaded as part and parcel hereof.

A Compact Disc containing a video of a person in military uniform making the said statement which was aired on the 11th April 2014 News broadcast of Sirasa TV is annexed hereto marked "**P9b**" and pleaded as part and parcel hereof.

19. The 1st to 3rd Respondents' evident lack of respect for their own undertakings and their scant disregard towards institutions and legal mechanisms in place to protect citizens' rights is deeply troubling to the Petitioners and raises concerns as to whether undertakings given by the 1st to 3rd Respondents can be taken seriously.

20. In or about June 2014 the 1st, 2nd and 4th Petitioners homes were visited by representatives of the 1st Respondent including the 3rd Respondent in order to "value" the said premises.

21. The said Petitioners were asked to sign a document, the contents of which were not disclosed to the Petitioners, which was not read over and/or explained to them. The Petitioners were also not provided a copy of the said document.

22. The 1st, 2nd and 4th the Petitioners subsequently received letter dated 23rd July 2014 under the hand of the 3rd Respondent. The Petitioners received three (03) separate letters with similar content, which only differed in terms of the quantum of compensation, and which stated that;

- a. The 1st Respondent had planned to provide them with an apartment in the "Sirisara Uyana" apartment complex;
- b. However, as the Petitioners refused this arrangement the 1st Respondent had the Condominium units they presently reside in valued by the officers of the government Valuation Department;
- c. The Petitioners should accept the quantum of compensation mentioned therein or accept alternative housing from the "Methsiri Uyana" apartment complex.
- d. The Petitioners should inform the 3rd Respondent of their decision on or before the 28th of July 2014

True copies of the letters written to the 1st, 2nd and 4th Petitioners by the 3rd Respondent dated 23rd July 2014 are annexed hereto marked "**P10a** – **P10c**" respectively and are pleaded as part and parcel hereof.

23. The 3rd Petitioner's premises was not visited nor has the 3rd Petitioner received the aforementioned letter. The 3rd Petitioner is of the opinion that this is because there are no occupants in his premises during the day.

24. The Petitioners are unaware of any steps that have been taken to acquire their property (i.e. Condominium units) by the 1st Respondent or any other functionary of the state. Furthermore, the 1st Respondent's representatives -including the 3rd Respondent, have never informed the Petitioners that their property has been acquired by the 1st Respondent or any other functionary of the State.

25. Other residents who live in the vicinity of the Petitioners have, accepted the houses (i.e. Condominium units) at "Sirisara Uyana" and have moved out. The Condominium units owned by these residents have been subsequently demolished by the 1st Respondent's agents.

26. The Petitioners are reliably aware that:

- a. These residents who accepted Condominium Units at "Methsiri Uyana" are required to make an initial payment of Rs. 50,000 with a further Rs. 50,000 to be paid in three installments towards maintenance and upkeep and either monthly installments of Rs. 3960 over the next 20 years or alternatively monthly installments of Rs. 2,640 over the next 30 years;
- b. The floor area of the Condominium units at "Methsiri Uyana" are smaller than the floor area of the Condominium unit they previously resided in;

A true copy a letter in Sinhala issued under the hand of the 3rd Respondent titled "Urban Regeneration Project - City of Colombo Borella 'Methsara Uyana' Housing complex" is annexed hereto marked "**P11**" and pleaded as part and parcel hereof.

27. The Petitioners state that they are unable to make such payments and that they have already invested in improving and expanding their existing premises that is proposed to be demolished by the 1st Respondent.

28. The Petitioners are also aware that they are unable to make any improvements to the Condominium Units at "Methsiri Uyana" including expanding the floor space.

29. The 1st Respondent whilst trying to gain possession of the Petitioners' houses (i.e. Condominium units) through illegal and/or irregular means, is refusing and/or evading and/or failing to compensate the Petitioners for the loss of property. In fact, the 1st Respondent is compelling the Petitioners and those similarly placed to pay the value of the proposed new premises.

30. The entire process initiated by the 1st Respondent is shrouded with secrecy and with very little access to information and **meaningful**, genuine public consultation. Surveys, which have not been made public, and one-time meetings of communities facing relocation involving senior officials of the 1st Respondent, in the presence of military and police personnel, are being passed off as 'consultation'.

31. Furthermore, the Petitioners are aware that the communities that are to be relocated have not been consulted and/or involved in designing and developing resettlement sites, the new housing, have been designed and have been built long before the specific needs of communities have been assessed or determined through any participatory process.

32. The 1st Respondent and/or its agents have also caused damage to the basic infrastructure surrounding the Petitioners' premises including to the drainage and sewage system and thereby making residing in the said premises extremely difficult.

A true photograph depicting part of the damaged drainage and sewage system taken on about 17th August 2014 is annexed hereto marked "**P12**" and pleaded as part and parcel hereof.

33. The 1st Respondent and its agents and/or servants and/or representatives are thus acting unreasonably and in an arbitrary manner.

34. Several houses (i.e. Condominium units) in the immediate vicinity of the Petitioners have been demolished and equipment used to demolish houses have been menacingly parked in the immediate vicinity of the Petitioners' houses.

A true photograph depicting the demolished houses in the immediate vicinity of the Petitioner's houses is annexed hereto marked "**P13a**" and pleaded as part and parcel hereof.

A true photograph depicting the heavy machinery parked in the immediate vicinity of the Petitioners' houses is annexed hereto marked "**P13b**" and pleaded as part and parcel hereof.

35. In early May 2010, the 1st Respondent with the assistance of armed soldiers demolished the homes and businesses in Mews Street in Colombo's Slave Island. The Petitioners are advised that this was done contrary to the provisions in the Land Acquisitions Act which provides for a legal framework for the acquisition of private property. Many of these residents are yet to be given the alternative accommodation they were promised and continue suffering the consequences of their forced eviction.
36. Being amongst the few who have refused to accede to the 1st – 3rd Respondents' unlawful, arbitrary and unreasonable demands, the Petitioners fear that their houses (i.e. Condominium units) are in imminent danger of being demolished.
37. On or about the 14th August 2014, officers and/or agents of the 1st Respondent informed the Petitioners that they will have to leave their premises on or before the 30th August 2014. The Petitioners were further informed that it would be futile to pursue any legal action.
38. If the Petitioners' houses are demolished contrary to the protections and safeguards provided by law, they would be forced on to the street with the inadequate and unfair quantum of compensation proposed by the 1st Respondent or be forced to accept the alternative accommodation at "Methsiri Uyana" which does not fulfill the Petitioners' basic needs and would saddle them with debt for more than two decades.
39. The Petitioners have made this application with the limited material available to them, in view of the grave urgency and the imminent prejudice being faced by them and state that this application would be rendered nugatory, frustrated and futile unless Your Lordships' Court is pleased to grant and issue the interim relief prayed for until the hearing and final determination of this application.
40. The Petitioners are advised and respectfully reserve to themselves, the right to furnish any further material and/or effect such other changes or amendments to this application including the addition of further parties as Respondents and/or seeking any further or other reliefs, should the same become necessary or expedient in the future.

41. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

42. An affidavit of the 1st Petitioner is appended hereto together with supporting affidavits by the 2nd to 4th Petitioners in support of the averments contained herein.

WHEREFORE the Petitioners respectfully pray that Your Lordships' Court be pleased to grant and issue:

- a) Notice on the Respondents;
- b) An interim order restraining the 1st – 3rd Respondents their agents and/or servants and/or representatives from acting in any manner which would be prejudicial to and/or interfere with the Petitioners' peaceful and quiet possession of their property (i.e. Condominium units) morefully described in the 2nd Schedule to this Petition until the final hearing and determination of this Application;
- c) An interim order Preventing the Respondents, their servants or agents from taking, facilitating or permitting any steps in respect of the property morefully described in the 2nd Schedule to this Petition on the basis of the said letters marked **P10a – P10c** until the hearing and final determination of this application;
- d) A mandate in the nature of a Writ of Certiorari quashing the decisions contained in the letters marked "**P10a – P10c**";
- e) A mandate in the nature of a Writ of Prohibition preventing the 1st – 3rd Respondents their agents and/or servants and/or representatives from acting in any manner which would be prejudicial to and/ or interfere with the Petitioners' peaceful and quiet possession of their property (i.e. Condominium units) morefully described in the 2nd Schedule to this Petition;
- f) An order for costs; and

- g) An order for such further and other reliefs as to Your Lordships' Court shall seem meet.

Registered Attorney at Law for the Petitioners

THE FIRST SCHEDULE ABOVE REFERRED TO

An allotment of land marked Lot 1 with all the buildings and plantations thereon bearing assessment Nos. G. 34, 34/1 to 34/12, 34/14 to 34/37, Sri Nigrodharama Mawatha and G 43, 43/1 to 43/12 Saranapala Himi Mawatha situated in Ward No 30, Wanathamulla within the Municipal Council Limits of the District of Colombo, Western Province bounded in entirety as follows:

North by	Sri Nigrodharama Mawatha
East by	Assessment No. G54, Sri Nigrodharama Mawatha
South by	Assessment No. G34, Sri Nigrodharama Mawatha and G 43, Saranapala Himi Mawatha
West by	Assessment No. G34, Sri Nigrodharama Mawatha and G 43, Saranapala Himi Mawatha
Lot 1	Containing in extent One Acre and twenty five decimal four six Perches (A 1. R 0. P 25.46) according to Survey Plan No. 2 dated 3 rd December 1979 made by N.M.R Premaratne, Licensed Surveyor and Leveller.

THE SECOND SCHEDULE ABOVE REFERRED TO

1. All that Condominium Unit marked 24 depicted on page five of the said Condominium Plan No. Two bearing Assessment No 34/6, Sri Nigrodharama Mawatha in Ward 30, Wanathamulla located on the First Floor off Sri Nigrodharama Mawatha and used as Residence and having immediate access to Common areas marked CE 5 CE 6 CE 7 CE 8 CE 19 CE 20 CE 27 CE 28 also depicted on page Five of the said Plan and bounded as follows;

North by Centre of masonry wall separating unit from unit 23
East by Centre of masonry wall separating unit from open space above premises
South by Centre of masonry wall separating unit from Bathrooms and Latrines CE (7)
West by Centre of masonry wall separating unit from Balcony CE (28)
Zenith by Roof
Nadir by Centre of Floor of First Floor

Containing in extent of Three Hundred and Forty six square feet (346 Sq. Ft)

2. All that Condominium Unit marked 22 depicted on page five of the said Condominium Plan No. Two bearing Assessment No 34/4, Sri Nigrodharama Mawatha in Ward 30, Wanathamulla located on the First Floor off Sri Nigrodharama Mawatha and used as Residence and having immediate access to Common areas marked CE 5, CE 6, CE 7, CE 8, CE 19, CE 20, CE 27, CE 28 also depicted on page Five of the said Plan and bounded as follows;

North by Centre of masonry wall separating unit from stairwell CE (20)
East by Centre of masonry wall separating unit from open space above premises
South by Centre of masonry wall separating unit from unit 23
West by Centre of masonry wall separating unit from Balcony CE (28)
Zenith by Roof

Nadir by Centre of Floor of First Floor

Containing in extent of Three Hundred and Forty six square feet (346 Sq. Ft)

3. All that Condominium Unit marked four depicted on page three of the said Condominium Plan No. Two bearing Assessment No 34/28, Sri Nigrodharama Mawatha in Ward 30, Wanathamulla located on the Ground Floor off Sri Nigrodharama Mawatha and used as Residence and having immediate access to Common areas marked CE 1, CE 2, CE 3, CE 4, CE 17, CE 18, CE 25, and CE 26 also depicted on page three of the said Plan and bounded as follows;

North by Centre of masonry wall separating unit from stairwell CE (17)

East by Centre of masonry wall separating unit from open verandah CE (25)

South by Centre of masonry wall separating unit from unit 5

West by Centre of masonry wall separating unit from premises

Zenith by Centre of Floor of First Floor

Nadir by Centre of Floor of Ground Floor

Containing in extent of Three Hundred and Forty six square feet (346 Sq. Ft)

4. All that Condominium Unit marked 14 depicted on page five of the said Condominium Plan No. Two bearing Assessment No 34/2, Sri Nigrodharama Mawatha in Ward 30, Wanathamulla located on the Ground Floor off Sri Nigrodharama Mawatha and used as Residence and having immediate access to Common areas marked CE 5, CE 6, CE 7, CE 8, CE 19, CE 20, CE 27, CE 28 also depicted on page Five of the said Plan and bounded as follows;

North by Centre of masonry wall separating unit from unit 13

East by Centre of masonry wall separating unit from premises

South by Centre of masonry wall separating unit from unit 15

West by Centre of masonry wall separating unit from open verandah CE (27)

Zenith by Centre of Floor of First Floor

Nadir by Centre of Floor of Ground Floor

Containing in extent of Three Hundred and Forty six square feet (346 Sq. Ft)

Registered Attorney at Law for the Petitioners