

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application made in terms of
Article 126 of the Constitution.

Viraj Priyankara Abeyratne,
No.179, Wijaya Road,
Kolonnawa.

Petitioner

SC (F/R) No. 222/2016

Vs.

1. Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mawatha,
P.O. Box 50, Colombo 02.
2. W.D.A.S. Wijepala,
The Chairman,
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mawatha,
P.O. Box 50, Colombo 02.
3. M.C. Wickramasekara,
The General Manager,
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mawatha,
P.O. Box 50, Colombo 02.
4. S.S. Kahanda,
Deputy General Manager,
Southern Province,
Ceylon Electricity Board,
No. 167, Matara Road,
Galle.

5. Public Utilities Commission of Sri Lanka,
6th Floor, BOC Merchant Tower,
St. Micheal's Road,
Colombo 03.
6. G.G.C.S. Kumara,
Pradeshiya Electrical Engineer,
Ceylon Electricity Board,
Tangalle.
7. Udaya Hettige,
Electrical Superintendent,
Ceylon Electricity Board,
Tissa Road,
Tangalle.
8. Priyantha Lal Ratnayake,
The Secretary,
Pradeshiya Sabha,
Tangalle.
9. R.M.S. Yapa,
Divisional Secretary – Tangalle,
Beliatte Road,
Kadurupokuna,
Tangalle.
10. W.H Karunaratne,
The District Secretary,
Hambanthota District,
District Secretariat,
Hambanthota.
11. Ediriweera Patabendige Ranjith,
No.276, Galagahawatta,
Unakuruwa,
Tangalle.

12. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **Justice L.T.B. Dehideniya**
 Justice A.H.M.D. Nawaz
 Justice A.L. Shiran Gooneratne

Counsel: Dammika Jayanetti instructed by Nayana Dissanayake **for the**
 Petitioner.

Rajitha Perera, SSC, **for the 1st to 7th, 9th and 12th Respondents.**

Harishke Samaranayake instructed by Ms. Shamila Karunaratne **for**
the 8th Respondent.

Yohan Cooray instructed by Thushara Pieris **for the 11th**
Respondent.

Argued on: 09/07/2021

Decided on: 22/02/2022

A.L. Shiran Gooneratne J.

The Petitioner is the owner and developer of the land called Walatahena, alias, Kesbatuduwe Wellawatte and Aliyawetuna Hena, more fully described in the schedule to the Petition. Upon the purchase of the two blocks of land, the Petitioner cleared and created a private road from the upper block, Aliyawetuna Hena to descend to the lower block, Walatahena alias Kesbatuduwe Wellawatte and therefrom, to the beach. The

Petitioner claims that the 8th Respondent has arbitrarily certified that the said road constructed by the Petitioner within his land, as a public road belonging to the Tangalle Pradeshiya Sabha and along with the 6th and 9th Respondents and at the behest of the 11th Respondent, facilitated the drawing of electricity lines over the said private road to provide an electricity connection to the 11th Respondent who is forcibly occupying a portion of the said land owned by the Petitioner, in violation of the Petitioner's fundamental rights guaranteed under Article 12(1) and 14(1)(g) of the Constitution.

The Petitioner, *inter alia*, also prays for an order directing the 1st to 4th and 6th and 7th Respondents to remove all electrical lines, poles and any other apparatus and/or equipment from the land belonging to the Petitioner described more fully in the schedule to the Petition.

When this case came up for support, the Court was inclined to grant leave to proceed for the alleged violation of fundamental rights enshrined in Article 12(1) and 14(1)(g) of the Constitution by the 4th, 6th, 8th and 9th Respondents.

The facts of the case as established from the pleadings and the documents therein are set out as follows:

The Petitioner is the Managing Director of Suduwella Resort Limited and the owner of the two portions of land more fully described in the Petition. The Petitioner claims title to Walatahena, alias Kesbatuduwe Wellawatte and Aliyawetuna Hena by Deed of Transfer No. 3223 and No. 17916 and the half share of the Petitioner's deceased wife, transferred to the Petitioner by Executors Conveyance No. 6489 and No. 6488 respectively (P1 to P4).

The Petitioner contends that the 11th Respondent who was in forcible occupation of a portion of the land named Walatahena alias Kesbatuduwe Wellawatte, voluntarily vacated the illegal occupation upon receiving a cash settlement from the Petitioner, however, reentered the said portion, consequent to the 26/12/2004 Tsunami, and has

been forcibly occupying the said portion of the land to date. The land unlawfully occupied by the 11th Respondent is depicted in Survey Plan No. 2103/ 9000, marked 'P5'. The said cash settlement arrived between the Petitioner and the 11th Respondent dated 20/05/2003, is marked 'P49'.

The Petitioner instituted Case Bearing No. 2968/L and No. 2972/L in the District Court of Tangalle to prevent the 11th Respondent entering the land called Aliyawetuna Hena, for vindication of title of the land called Walatahena alias Kesbatuduwe Wellawatte and the eviction of the 11th Respondent from the portion of the said land. Consequent to an order obtained in Case No. 2968/L, a survey carried out by the Survey General's Department and the plan, super imposed on the Survey Plan No. 1301, had established that the impugned road from Aliyawetuna Hena to Walatahena, claimed to be used by the public is within the Petitioner's land as reflected in the Surveyors' Report marked 'P51'. After an inspection of the land, the said plan has been approved by the 8th Respondent. In Case Bearing No. 22650, the 8th Respondent by letter dated 16/12/2016, has informed the Magistrates Court of Tangalle, that the impugned road does not belong to the Tangalle Pradeshiya Sabaha (P52). Presently, due to a court order made in Case Bearing No. HCRA 07/2017, the Petitioner has fenced the impugned road.

It is contended that from the year 2008, the 11th Respondent who was in forcible occupation was attempting to obtain electricity to the said portion of the land claiming that the impugned road is a public road. The Petitioner has raised objections to such attempts with the 6th to 8th Respondents, as more fully set out below.

By letter dated 01/12/2008 addressed to the Electrical Superintendent of Tangalle (7th Respondent) marked 'P21', the Petitioner objected to any attempt made by the 11th Respondent to obtain electricity through the Petitioner's land. Thereafter, the Petitioner's lawyers and the Petitioner addressed letters dated 24/03/2010 and 05/01/2012, to the Electrical Superintendent Tangalle, marked 'P22' and 'P23' respectively, objecting to the supply of electricity to the 11th Respondent through the

Petitioner's land. The Petitioner further states that the 11th Respondent in an attempt to claim that the impugned road is a public road, instigated fishermen to make representations to the Pradeshiya Sabha, when in fact, there was a public road for the use of the fishermen. In response, the Petitioner through his lawyers sent letter dated 26/02/2009 marked 'P24', and informed the Grama Sevaka and the Chairman of the Pradeshiya Sabha, that the road was constructed by the Petitioner for private use. Survey Plan No. 2103/9000 (P29), submitted to the Pradeshiya Saba and approved after inspection of the land on 05/04/2016, does not reflect a public road belonging to the Pradeshiya Sabha.

A Way Leave Notice dated 07/03/2013, marked 'P27', received by the Petitioner from the 6th Respondent and copied to the 8th Respondent seeking permission to draw electricity lines through the Petitioner's land to the portion of land forcibly occupied by the 11th Respondent was objected to by the Petitioner by letter dated 22/03/2013, marked 'P25'. The said letter addressed to the Chairman of Tangalle Pradeshiya Sabha sought intervention to prevent the drawing of electricity lines over the Petitioner's private land. On the same day by letter dated 22/03/2013 marked 'P26', the Petitioner also informed the Electrical Superintendent Tangalle, objecting to the drawing of electricity lines over his land.

Around June 2016, the Petitioner was once again informed that the 11th Respondent was attempting to obtain electricity to the land forcibly occupied and accordingly the Petitioner by letter dated 16/06/2016 marked 'P11', addressed to the 7th Respondent, objected to the drawing of electricity lines over his land. The Petitioner by letter dated 24/06/2014 marked 'P12', also informed the 5th Respondent (Public Utilities Commission of Sri Lanka) informing the said authority that electricity lines were being installed over the Petitioner's land without his consent.

The application before this Court was necessitated by the issuance of letter marked '8R6', dated 21/06/2016, by the Secretary Pradeshiya Sabha Tangalle (8th Respondent)

to the Divisional Secretary Tangalle (9th Respondent) and copied to the Pradeshiya Electrical Engineer (6th Respondent) stating that the impugned road is a public road belonging to the Pradeshiya Sabha and the Pradeshiya Sabha has no objection to the supply of electricity to the said road. The Petitioner claims that the said letter was written at the behest of the 11th Respondent to facilitate the supply of electricity and not at the request of the residents of the area to provide lighting to the impugned road as reflected in documents marked '8R1' to '8R5'. The Petitioner denies the assertion of the 8th Respondent that the impugned road is a public road as reflected in letter dated 21/06/2016, marked '8R6'. In this context it is important to note that in Case Bearing No. 22650 in the Magistrates Court of Tangalle, filed in terms of Section 66 of the Primary Courts Procedure Act, the 8th Respondent by letter dated 16/12/2016 (P52), submitted that the impugned road is used by the public, however, does not refer to the said road as a road vested with the Tangalle Pradeshiya Sabha.

Application dated 30/05/2016, seeking electricity to the portion of land occupied by the 11th Respondent.

It is necessary to refer to the facts in some detail since the events culminating in the supply of electricity to the 11th Respondent, is in issue.

- The 11th Respondent submitted an application to the 6th Respondent for an electricity connection by application dated **30/05/2016** (6R1).
- The D.S. 04 certification on residence and character by the Grama Niladhari of the area is dated **30/05/2016** and countersigned by an administrative Grama Niladhari on 30/05/2016. (The D.S. 04 Certificate issued by the Grama Niladhari of the Division in which the applicant resides is valid only for 6 months from the date countersigned by the **Divisional Secretary**) (6R2).
- The Petitioner by letter dated **16/06/2016** objected to the supply of electricity and sought an inquiry (6R3).

- By letter dated **20/06/2016**, the 11th Respondent informs the 9th Respondent that he has lodged an application to obtain electricity and electricity lines could be drawn through the road belonging to the Pradeshiya Sabha (9R4). The date stamp on ‘9R4’ indicates that the said document was received by the Pradeshiya Sabha on 06/06/2016.
- By letter dated **21/06/2016**, approval of the 9th Respondent was sought in terms of item 3(1) to schedule I of the Sri Lanka Electricity Act No. 20 of 2009 as amended, due to the objections raised by the Petitioner (9R1) (this application clearly states that the Petitioner is objecting to the supply of electricity).
- The 9th Respondent receives letter dated **21/06/2016**, sent by the 8th Respondent (copied to the 6th Respondent) informing him that the impugned road belongs to the Pradeshiya Sabha and the Pradeshiya Sabah has no objection to the supply of electricity to the impugned road (9R2).
- The 9th Respondent by letter dated **22/06/2016**, informs the 6th Respondent to proceed with the application to obtain electricity since the Pradeshiya Sabha has no objection to the said application (9R3).

Objections raised by the Petitioner.

Apart from the Petitioner’s letter dated 16/06/2016 objecting to the supply of electricity, the Petitioner by letters dated 24/06/2016, informed the Public Utilities Commission (5th Respondent) and the 8th Respondent that electricity lines were installed without the consent of the Petitioner and to withhold such activity until a proper inquiry is held by the 9th Respondent. (P12 and P13)

However, on the 25/06/2016, the 8th Respondent with the licence of the Ceylon Electricity Board, (1st Respondent) facilitated the 6th Respondent to enter the land owned by the Petitioner to draw electricity lines to the portion of the land occupied by the 11th Respondent. (P14A to P14D). Moreover, the Petitioner contends that he came

to know that the installation of electricity lines was approved by the 6th, 8th and 9th Respondents on the previous day.

Consequently, the Petitioner lodged a complaint with the Tangalle Police on the 25/06/2016, with reference to the unauthorized entry and the commencement of installing electricity lines through the land belonging to the Petitioner (P15). The Petitioner further claims that the 11th Respondent along with a few other individuals had unlawfully entered the Petitioner's land and commenced felling of trees to facilitate the said process.

By letter dated 26/06/2016 (P17), the Petitioner informed the 4th Respondent, the immediate superior of the 6th Respondent, outlining the circumstances mentioned above and seeking the 4th Respondents intervention to stop drawing electricity lines over the Petitioner's land. The Petitioner states that he received no response to the said letter. The Petitioner by letter dated 27/06/2016, (P18) again sought clarification as to how a private road constructed by the Petitioner could be deemed as a public road vested in the Pradeshiya Sabha, as the Petitioner had not been notified of such acquisition or intended acquisition by the Pradeshiya Sabha or neither do any Gazette Notifications deal with regard to an acquisition/ intended acquisition of the Petitioner's land.

The position taken by the Pradeshiya Electrical Engineer, (6th Respondent) the Secretary Pradeshiya Saba Tangalle, (8th Respondent) and the Divisional Secretary Tangalle. (9th Respondent)

The 6th respondent in his affidavit claims that he sought approval to draw electricity lines from the 9th Respondent on 21/06/2016 (6R4) in terms of item 3(i) to schedule I (sic) of the Sri Lanka Electricity Act No. 31 of 2013 as amended, due to the objections raised by the Petitioner. (P11) However, he received a copy of letter dated 21/06/2016, (6R5) sent by the 8th Respondent and the letter dated 22/06/2016, (6R6) by the 9th Respondent informing that the impugned road belongs to the Pradeshiya Sabha and the Pradeshiya Sabha has no objection to the drawing of the electricity lines. In the

circumstances, in terms of schedule I of the said Act, approval was no longer required from the 9th Respondent.

The 8th Respondent claims that, according to the Grama Sevaka report, (8R5) the impugned road is used by more than 200 families (public petitions dated 16/03/2016, 16/07/2016, and 13/07/2016 marked '8R1', '8R2', and '8R3') and accordingly, letter dated 21/06/2016 (8R6) was issued stating that the impugned road is a public road and that he has no objection in supplying electricity to the said road.

The stand taken by of the Divisional Secretary Tangalle (9th Respondent) is that by letter dated 21/06/2021 (9R2), the 8th Respondent informed him that the impugned road belongs to the Tangalle Pradeshiya sabha and that the Pradeshiya Saba has no objection for the supply of electricity and accordingly informed the 6th Respondent to take necessary action. (9R3) He further states that when the Pradeshiya Sabha confirms and informs the 6th respondent that the land belongs to them, there is no approval needed from the Divisional Secretary.

The 11th Respondents claim to a part of the land claimed by the Petitioner is based on the Survey Plan Bearing No. 6839 marked '11R1', submitted by the 11th Respondent in Case Bearing No. 2972/L pending before the District Court of Tangalle.

Article 12(1)

Article 12(1) of the Constitution, deals with the right to equality and reads as follows:
"All persons are equal before the law and are entitled to the equal protection of the law."

In C.W. Mackie & Co Ltd vs. Hugh Molagoda, Commissioner General of Inland Revenue and Others (1986) 1 SLR 300, Sharvananda, C.J. commented that;

"The essence of the right of equality guaranteed by Article 12(1) and the evil which the article seeks to guard against is the avoidance of designed and intentional hostile

treatment or discrimination on the part of those entrusted with administering the law. In order to sustain the plea of discrimination based upon Article 12(1) a party will have to satisfy the court about two things, namely (1) that he has been treated differently from others, and (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis.

It was further observed that To succeed in the plea the petitioner has to establish discrimination in the performance of a lawful act. The doctrine of equality is intended to advance justice according to law, by avoiding hostile discrimination. Justice is not advanced if breach of the law is to be countenanced in the process. As stated, earlier Article 12 does not guarantee equal violation of the law.”

Subsequent to the inspection of the land belonging to the Petitioner and approval of Survey Plan No. 2103/9000, (P29) on 05/04/2016, the 8th Respondent issued letter dated 21/06/2016, (8R6) to supply electricity through the Petitioner’s land on the basis, that the impugned road is a public road belonging to the Tangalle Pradeshiya Saba. However, the existence of a public road is not evident in the said plan. The 8th Respondent by letter dated 16/12/2016, in Case Bearing No. 22650, informed the learned Magistrate that the impugned road does not belong to the Pradeshiya Sabha but a road used by the public (P52). As borne out by ‘P53’, and ‘P54’, when the land was surveyed on 21/03/2003 and on 30/05/1998, respectively, there was no connecting road or a footpath in existence through the land claimed by the Petitioner.

Documents marked ‘P21’, ‘P22’, ‘P23’ and ‘P26’ makes it clear that since 2008, the 11th Respondent attempted to obtain electricity through the Petitioner’s land. Due to objections raised by the Petitioner a Way Leave Notice was sent by the 1st Respondent Board (P27). The Petitioner filed a written objection to the said Notice and called for an inquiry to be held. Thereafter no steps were taken to provide electricity to the 11th Respondent.

The defining moment to the present application was when the 8th Respondent by letter dated 21/06/2016, informed the 9th Respondent with a copy to the 6th Respondent that the impugned road belongs to the Tangalle Pradeshiya Saba and further states that the said letter is issued at the request of the residents of the area. (8R6) The Petitioner contends that the said letter '8R6' was received by him only through the objections filed by the 8th Respondent. On the very next day, (22/06/2016) the 9th Respondent informs the 6th Respondent to proceed with the application to supply electricity since the Pradeshiya Sabha has no objection to the said application. (6R6)

The 8th Respondent has not submitted any document to this court which justifies that the impugned road belongs to the Tangalle Pradeshiya Sabha.

According to the affidavit of the 6th Respondent, the Electrical Engineer has examined the address given in the application on 04/06/2016. Due to the objections raised by the Petitioner by letter dated 17/06/2016, the approval of the 9th Respondent was sought on 21/06/2016, in terms of item 3(1) to schedule I of Act No. 20 of 2009 as amended.

Item 3(3) to schedule I, states thus: -

(3) where paragraphs (1) or (2) applies and-

(a) the licensee has made all reasonable efforts to secure the grant of a way leave; and

(b) such efforts have been unsuccessful, the Divisional Secretary of the administrative District in which the land, over which the way leave is being for or from which an electrical line which is installed is requested to be removed, as the case may be, shall within six weeks of an application being made in that behalf by the licensee concerned, and-

(i) upon holding an inquiry after giving an opportunity to the owner or occupier of the land concerned, of being heard;

(ii) -----

Having clearly known the procedure that should be followed in the event of an unsuccessful effort to obtain necessary way leave, the 6th Respondent decided to act on the letter issued by the 8th Respondent (6R5) on the basis that approval of the 8th Respondent is no longer required. Having received '6R5' on 22/06/2016, on the same date the installation of electricity lines through the impugned road was completed within a period of 3 days during the weekend, as borne out by the Police Complaints marked 'P15' and 'P16'.

By letter dated 21/06/2016, the 9th Respondent was informed by the 8th Respondent that the impugned road belonged to the Tangalle Pradeshiya Sabhawa. (9R2) By this time, the 9th Respondent was aware that the Petitioner had objected to the granting of electricity through the impugned road by the Petitioner and also by the 6th Respondent. Furthermore, the Way Leave Notice dated 07/03/2013, was also copied to the 9th Respondent informing that the impugned road is a private road. The contention of the 9th Respondent was that when the Pradeshiya Sabha states it owns the road there is no further need to go to the Secretary of the Pradeshiya Sabha.

In terms of Item 3 to Schedule I, it is mandatory that the Divisional Secretary of the administrative district in which the land is situated hold an inquiry within 6 weeks of an application being made to grant an opportunity to the owner or occupier of the land concerned to be heard. Completely overlooking the said process, the 9th Respondent, by letter dated 22/06/2016, purporting to act on the no objection letter sent by the 8th Respondent, dispensed with the way leave inquiry and on the same day permitted the drawing of power lines through the land claimed by the Petitioner.

The Petitioner thereafter by letter dated 27/06/2016, (P18) sought clarification from the 9th Respondent as to how a private road constructed by the Petitioner could be deemed as a public road to which the 9th Respondent has failed to reply to date.

In *Wijesinghe vs. Attorney General and Others* (1979) 1 SLR 102 Sharvananda C.J. said “*a mere violation of law by the executive does not amount to a violation of equal protection.*”

Following the ratio laid down in *Wijesinghe vs. Attorney General* (supra), it is necessary that the court examine whether the actions of the 6th, 8th and 9th Respondents were mere errors of judgment or intentional or purposeful discrimination of the Petitioner’s personal rights.

Objections were raised by the Petitioner in 2008, when the 11th Respondent was attempting to obtain electricity. When the Petitioner objected to the Way Leave Notice, no further steps were taken in that regard. When a similar application was made by the 11th Respondent in the year 2016, the 6th Respondent having received objections to the Way Leave Notice, disregarded the administrative action contemplated in terms of Item 3 to Schedule I of the Act for necessary way leave, citing a decision of the 8th Respondent that the road to which electricity lines were to be drawn is a public road. There is no evidence before court to justify the said decision. However, answering a question posed by court during oral submissions as to whether the 9th Respondent was aware at the time he received the letter that there was a dispute whether the road belongs to the Pradeshiya Sabha, the counsel replied in the affirmative. If this issue had arisen for the first time, such action could be expected, however, the 9th Respondent was already aware of conflicts between the parties. If so, it was the duty of the 9th Respondent to check and clarify issue, prior to asserting authority as reflected in ‘9R3’.

The Supreme Court in *Kaviratne and others vs. Commissioner General of Examinations and others* 2012 (BLR) 140, held that the court is not concerned with the motivation for the impugned action, but only with its effects.

As observed earlier, the application for electricity is made on 30/05/2016, the certificate on residence and character is issued by the Grama Niladhari on 30/05/2016, countersigned by another grama Niladhari (according to D.S. 4 form, should be

countersigned by the Divisional Secretary) is also dated 30/05/2016. The Petitioners objections to the supply of electricity is dated 16/06/2016. The Way Leave Notice is dated 21/06/2016 and the determination by the 8th Respondent that the impugned road is a public road is also dated 21/06/2016. The installation of electricity lines through the impugned road commenced on 22/06/2016 and completed within a period of 3 days during the weekend.

Then the question to be posed is whether the denial of the Petitioner's right to a fair and an objective inquiry, prior to the process to install or to keep installed an electrical line over the land claimed by the Petitioner violates, equal protection of the law.

Referring to the concept of equality, in *Ananda Dharmadasa and others vs. Ariyaratne Hewage and Others (2008) 2 SLR 19*, the Supreme Court cited with approval the case of *Royappa vs. State of Tamil Nadu AIR 197, S.C. 555*, where Bhagawati, J. had stated that,

"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies."

In 2008, the 11th Respondent made a similar application to obtain electricity to the portion of land he claims to own and possess. In that instance the Petitioner objected to the way leave notice on the basis that the impugned road is a private road. The 8th Respondent has pleaded a document titled, a road document applicable to the Hambanthota District for the year 2000, marked '8R7', giving a list of the roads vested with the Pradeshiya Sabha. The said Respondent has not specifically drawn the attention of court to the impugned road in the said document. Accordingly, it is absolutely clear that the 8th Respondent arbitrarily informed the 6th and 9th Respondents that the impugned road is a public road.

Necessary way leave is defined in the said Act as;

“Consent for the licensee to install and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing altering, replacing or removing the electric line;”

The issuance of a way leave notice in writing would be an acknowledgement of sought, that the road over which the electricity lines are to be drawn is not a public road. A way leave notice is issued when the licensee has made all reasonable efforts to secure a necessary way leave and when all such efforts have been unsuccessful. In such instance, it is mandatory that the Divisional Secretary, within 6 weeks of such application decide on the matter. As observed earlier, the Petitioner on his part, on various occasions, has brought to the notice of the said Respondents that the impugned road which runs through the Petitioner’s land is a private road constructed by the Petitioner. No evidence was brought before court to establish that the Petitioner’s position was ever considered by the Respondents or that the Respondents position was made known to the Petitioner. The said Respondents cannot deny the existence of such facts and circumstances as disclosed by the Petitioner, which would warrant an inquiry to be held according to law. Therefore, the Petitioner has been deprived of a lawful inquiry, to any other person similarly circumstanced in the subject matter, would be entitled to.

The decisions taken by the 8th and 9th Respondents, consequent to the decision taken by the 6th Respondent, that the impugned road is a public road and accordingly to dispense with the inquiry process is not justified by the evidence tendered by the 6th, 8th and 9th Respondents. The evidence in this case clearly points to the fact that the said Respondents were aware that the Petitioner objected to a similar application filed in the year 2008. Therefore, clearly the Petitioner’s right to object to the Way Leave Notice at an inquiry has been dispensed with, discriminating the Petitioner in the performance of a lawful act. *“Discrimination may be bona fide or mala fide. If the person who alleges discrimination succeeds in establishing that the step was taken intentionally for the purpose of injuring him or in other words that it was a hostile act directed against him,*

the executive act complained of must be annulled—". (Elmore Perera vs. Major Montague Jayawickrema Minister of Public Administration and Plantation Industries and others (1985) 1 SLR 285)

When the 11th Respondent attempted to obtain electricity in the year 2008, the Petitioner by letter dated 26/02/2009, (P24) informed the Chairman of the Pradeshiya Sabha that the impugned road was constructed by the Petitioner for private use. The document purporting to claim that the impugned road is a public road belonging to the Tangalle Pradesiya Sabawa does not state any reasons for its decision or the basis on which such decision was made and therefore is unjustifiably made. The 8th and 9th Respondents were aware that the Petitioner had objected to the supply of electricity, not once but twice, in separate applications. However, the Petitioner's right to an inquiry in terms of the law was denied.

When considering this application, the Court necessarily should take note of the effort taken by the Petitioner to initiate or be a party to multiple actions filed in court to assert his property rights, as a result of the actions of the 6th, 8th and 9th Respondents enforcing the law inconsistently and/or unlawfully. The 8th Respondent was possessed with sufficient material to be well informed that the impugned road was a private road, however, chose not to act upon. Most of the official correspondence between the 6th, 8th and 9th Respondents, claimed to be received and sent on the same date, have no date stamp. The lightning speed in which the process to supply electricity to the 11th Respondent was executed, would not have been possible in the normal procedure, to coordinate official acts and issue corresponding letters within a day, if not for collusion between the 6th, 8th and 9th Respondents.

The manner in which the Respondents were dealing with the administration of providing electricity to the 11th Respondent, the sole beneficiary of such act, clearly had an adverse impact on the Petitioner. The conduct of the said Respondents as observed in detail, in chronological order, culminating in the supply of electricity to the 11th

Respondent, falls nothing short of an attempt to frustrate and demoralize the Petitioner to compel him to submit to an illegal act initiated by the 8th Respondent. In this background the Respondents application of the law to deny the Petitioner's right to a fair, objective and an informed inquiry mandated by statute, cannot be construed as a mistake or an error of judgment. The facts and circumstances of this case to deny the Petitioner of an inquiry, clearly points to a deliberate design and a well calculated act on the part of the 6th, 8th and 9th Respondents to intentionally discriminate the Petitioner, in denial of equal protection of the law, enshrined under Article 12(1).

Article 14 (1) (g)

The Petitioner's intention was to construct a high-end luxury resort in the said land with the support of investors. However, due to the electricity lines being drawn through the Petitioner's land, it is contended that, the investors were hesitant to invest, due to the unlawful conduct of officials to favor one party. Other than the evidence which the court has already dealt with, there is no evidence to suggest that there was any other act or omission, additionally to be considered as constituting an infringement under Article 14(1)(g). Therefore, I find that it is not necessary to consider whether the acts of the said Respondents constituted an infringement of Article 14(1)(g).

Accordingly, I grant the Petitioner a declaration that his fundamental rights under Article 12(1) has been infringed by the 6th, 8th and 9th Respondents and make order that the Petitioner be paid a sum of Rs. 300,000/- as compensation, by each of the said Respondents.

I make further order to quash the decision made by the 8th Respondent declaring that the impugned road belongs to the Tangalle Pradeshiya Sabha, as reflected in document '8R6'.

Taking into consideration all the circumstances of this case, I am of the view that an order to remove all electricity lines poles and any other apparatus from the land claimed

by the Petitioner, may cause an undue disturbance and therefore, the respective parties are directed to maintain the status quo until the 9th Respondent decide on the matter.

The application is allowed. No costs ordered.

Judge of the Supreme Court

L.T.B. Dehideniya J.

I agree

Judge of the Supreme Court

A.H.M.D. Nawaz J.

I agree

Judge of the Supreme Court