

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

In the matter of an Application under and in terms of Article 126 read with Article 17 of the Constitution.

Application No. **SC FR 212/ 2021**

1. Hansa Brahmana Malthunga
Mudiyanselage Saddha Mangala
Wijerathna
No. 272/B, Kande Kumbura,
Kurunegala.
2. Aparakkalage Aruna Kamal
No. 54, Godawela,
Polgahawela.
3. Werawellalage Siri Adman
Gunnerathna
No. 05, Wijaya Samagipura,
Aswedduma, Kurunegala.
4. Galbokka Hewagei Pransis Silva
Chathurani, Harumalgoda,
Habaraduwa.
5. Aparakkage Sumithra Kumari
H.M. Karunathilaka,
Rambottukulama, Galgamuwa.

And 55 others

Petitioners

v.

1. Kurunegala Municipal Council
Kurunegala.
2. Thushara Sanjeeva Vitharana
Mayor,
Kurunegala Municipal Council,
Kurunegala.
3. Pradeep Thilakarathna
Municipal Commissioner,
Kurunegala Municipal Council,
Kurunegala.
4. Commissioner of Local Government
- North Western Province
2nd Floor – Gate B,
Provincial Council Office Complex,
Kurunegala.
5. Honourable Attorney-General
Attorney-General's Department,
Colombo 12.

Respondents

Before:

**S. Thurairaja, PC, J.
Yasantha Kodagoda, PC, J.
A.H.M.D. Nawaz, J.**

Appearance:

Shantha Jayawardena with Chamara Nanayakkarawasam instructed by Sunil Watagala for the Petitioners.

Initially, Mr. Saliya Peiris, PC with Anjana Rathnasiri appeared for the 1st to 3rd Respondents.

At the hearing, Mr. Saliya Peiris, PC with Anjana Rathnasiri instructed by Praveen Premathilaka appeared only for the 1st and 3rd Respondents.

Shavindra Fernando, PC with Ruchindra Fernando and Ms. Natasha Wijeyesekera instructed by Ms. Mirthula Skandaraja for the 2nd Respondent.

Ms. Sabrina Ahmed, SSC for the 4th and 5th Respondents.

Argued on: 09th October 2024

Written submissions tendered on:

For the Petitioners on 09th January 2023 and 11th November 2024.
For the 1st to 3rd Respondents on 13th January 2023.
For the 1st Respondent on 13th November 2024.
For the 2nd Respondent on 16th October 2024.
For the 4th and 5th Respondents on 14th October 2024.

Judgment delivered on: 6th February 2026

Judgment

Yasantha Kodagoda, PC, J.

Case for the Petitioners

- 1) The Petitioners who collectively filed this Application are traders at the Kurunegala Public Market (also referred to as the “Central Market”, and for convenience and clarity will hereinafter sometimes be referred to as the “Kurunegala old public market”) owned and managed by the 1st Respondent (Kurunegala Municipal Council). The Petitioners have been maintaining trading outlets at the public market for a considerable period of time, and have been engaging in the retail trade of vegetables, fruits and household items. They all have tenancy agreements with the 1st Respondent.
- 2) In early January 2020, the 1st Respondent - Kurunegala Municipal Council (hereinafter sometimes referred to as the “KMC”) commenced the construction of a new five-storied building in an area adjacent to where the existing Kurunegala old public market is situated. That was for the purpose of housing the proposed new Kurunegala Public Market (hereinafter for convenience and clarity be sometimes referred to as the “proposed public market”). As at the time this Application was filed, the construction was underway. (This Court has been notified that construction has been completed by this point.) The primary complaint of the Petitioners stems from the fact that they have not been assigned shops in the proposed public market building, and that such shops have been awarded to certain ‘outsiders’ who are presently not carrying-on businesses in the existing public market. To facilitate the construction of the new market building, twelve shops in the existing public market had to be demolished, and the traders who occupied those twelve shops have been offered alternative shops in the new proposed public market. The Petitioners have been informed by the 1st Respondent that, following the construction of the proposed public market, the building in which the present public market is situated will be demolished, paving the way for the construction of phase III of the proposed public market. At a discussion held with the 1st Respondent on or about 26th August 2020, the Petitioners have been informed that, should they be willing to pay Rs. 3 million each, the 1st Respondent was willing to reserve shops for them in the proposed public market (phase III). The Petitioners claim that they are not in a position to pay that sum of money. They have thus informed their inability and disagreement to pay Rs. 3 million

to the 1st Respondent. The Petitioners also allege that the 2nd Respondent (Mayor of the Kurunegala Municipal Council as at the time this Application was filed), had, when allocating shops to bidders, engaged in corrupt practices and awarded several shops to those near and dear to him.

- 3) Shortly prior to this Application being filed, on or about 1st July 2021, the Petitioners have received from the 3rd Respondent (Municipal Commissioner of the KMC) a letter each, dated 29th June 2021, directing them to vacate their shops within 30 days from the date of that letter. The Petitioners concede that the demand on them to vacate their premises was to enable the demolition of the building in which the existing public market is situated, enabling the construction of phase III of the proposed public market. It is evident that it is the receipt of this letter that necessitated the Petitioners to file this Application.
- 4) The Petitioners have claimed that the conduct of the 1st to 3rd Respondents is unlawful, and that such unlawful conduct amounted to an infringement of the Petitioners' Fundamental rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution.
- 5) The Petitioners have prayed for:
 - i. declarations from Court pertaining to the infringement of their Fundamental rights,
 - ii. a direction to the 1st to 3rd Respondents to allow the Petitioners to occupy and engage in the conduct of their businesses in their respective shops at the Kurunegala Central Market (existing old public market), until construction of phase III of the proposed Kurunegala Public Market is completed,
 - iii. a direction to the 1st to 3rd Respondents to, pending the construction of phase III of the new (proposed) Kurunegala Public Market, provide alternate business premises for the Petitioners, and
 - iv. a direction to the 1st to 3rd Respondents, to allocate to the Petitioners shops in the new (proposed) Kurunegala Public Market.
- 6) Following the Support of this Application, a differently constituted bench of this Court had granted *Leave to Proceed* to the Petitioners under Articles 12(1) and 14(1)(g)

of the Constitution. On 28th July 2022, the Court had also issued an interim order directing the 1st Respondent (Kurunegala Municipal Council) not to allocate shops in the proposed Kurunegala Public Market, until the final determination of this case. However, the Court had not prevented the 1st Respondent from continuing with the construction of phase III of the proposed public market.

- 7) When this matter was taken up for hearing, learned Counsel for the Petitioners submitted that what the Petitioners were in fact seeking is to impugn three tender decisions taken by the 1st Respondent (KMC) relating to the allocation of ninety-nine (99) shops in the proposed construction of phase III of the proposed public market. Learned Counsel submitted that it is the position of the Petitioners that the procedure followed for the allocation of shops was contrary to the provisions contained in the applicable government circular which governs the relevant procedure (produced marked "P5"), and that calling for tenders and the allocation of shops in phase III of the proposed public market had been carried out without obtaining a valuation report for the purpose of determining the amount to be prescribed as the minimum bid amount. Furthermore, the learned Counsel for the Petitioners claimed that the allocation of shops had been founded upon certain collateral reasons reflective of corruption by the 2nd Respondent. Learned Counsel also submitted that the entire tender process was a sham. He submitted that he was able to establish that there was a minimum of 17 instances where the assignment of shops had been based on corrupt motives. He submitted that this is evident from the Reports of the Auditor General, produced marked "P27" and "P28".
- 8) Learned Counsel for the Petitioners, responding to the position taken up on behalf of the Respondents that the applicable circular pertaining to the allocation of shop premises in the proposed public market to be constructed following the demolition of the existing old public market is not governed by circular "P5", and is instead governed by "R22" and "R23", submitted that, assuming without conceding that the applicable procedure is contained in "R22" and "R23", the 1st Respondent (KMC) had not complied with the procedure contained in that circular as well.

Position of the 1st to 3rd Respondents

- 9) As the facilities available at the Kurunegala old public market, owned and managed by the 1st Respondent, were grossly inadequate, the building itself was in a state of neglect, and some areas were dilapidated, the 1st Respondent had developed a plan

titled the 'Central Market Development Project'. This was for the purpose of providing newer and better services to the citizenry of the Kurunegala Municipal area by constructing a building to house multiple public facilities including a public market. The project was to also provide for the construction of a mixed development, comprising of trading establishments (retail and wholesale shops), hotels, restaurants, residential apartments and parking facilities. The proposed construction was to have taken place in three stages, with shops and restaurants being constructed in phase I, a cinema, gaming premises and condominium apartments being constructed during phase II, and one hundred retail outlets being constructed in phase III. Construction of phase III would necessitate the existing old public market to be demolished. The old public market would be replaced with a new public market containing hundred (100) shops.

- 10) The 1st Respondent has asserted that circular No. 02/2019 dated 10th January 2019 (produced by the Petitioners marked "P5") is not applicable to the assignment of shop premises in the proposed new public market, as that circular applies only to Urban Councils and Pradeshiya Sabhas, whereas the 1st Respondent is a Municipal Council. The 4th Respondent, by a letter dated 14th July 2021 (produced marked "3R5") has affirmed this position. The 1st Respondent's position is that the circular applicable to the assignment of shop premises in the proposed public market is contained in "R22 / R23" bearing No. 1980/46. According to clause 5 of that circular, should existing traders require shop premises in the new complex, they too should follow the tender procedure and bid for stalls. Stalls should ordinarily be assigned to the highest bidders. However, if the relevant local government institution is satisfied that the proposed market can be run in a profitable manner, stalls may be offered to existing traders at a discounted amount, based on the higher amount between the amount bid by the relevant trader and an amount calculated on the basis of deducting an amount not exceeding 20% from the value of the highest bid received. Thus, learned President's Counsel for the 1st and 3rd Respondents emphasised that, even to receive this benefit, existing traders should have presented bids when tenders were called.
- 11) The Respondents have pointed out that all the Petitioners were in fact offered an opportunity to secure places in the proposed public market. However, the Petitioners, as well as anybody else who wished to secure shops, had to participate in the bidding process. However, the Petitioners did not participate. The position of the 1st to 3rd Respondents is that a transparent bidding process was conducted, prospective tenants

were selected, shops were assigned to them, and a sum of Rs. 262 million was collected from the successful bidders as 'key money'. Thereafter, a tender for the construction of the proposed public market was awarded to a contractor whose estimated cost was Rs. 265 million, which was later increased to Rs. 269 million according to a cost forecast report. The construction of phase III (proposed public market) was to be funded using the funds collected from the successful bidders. The position of the 1st to the 3rd Respondents is also that the minimum bid amount per one square foot was calculated at Rs. 30,000.00, which was in the best financial interest of the 1st Respondent (KMC). In order to give maximum relief to the Petitioners, the 1st Respondent had also decided to offer shops to those who already had trading stalls in the old market (such as the Petitioners) at Rs. 2 million, as opposed to Rs. 3 million for outsiders, and had also provided for the payment to be made in installments. These decisions were conveyed to the Petitioners.

- 12) The existing traders (including the Petitioners) were also informed that the last day for the reservation of shops in the proposed public market complex was 28th February 2021, and that thereafter, shops would not be reserved. The 41st Petitioner and 10 other traders (who are not Petitioners) who had stalls in the old public market had bid, secured reservations of stalls in the proposed public market and paid the key money (as per document produced marked "R37"). None of the other Petitioners have presented bids. Upon the expiry of the period given to the existing traders to reserve shops in the proposed public market, tenders were called on three occasions to lease the remaining shops. The first round of tenders was called on 13th March 2021, sequel to which ninety-seven (97) tenders were received. The bids had been opened on 9th April 2021, and subjected to a technical evaluation. By 11th June 2021, the Report of the Technical Evaluation Committee was available and the 1st Respondent, having accepted the recommendations contained in the said Report, identified tenderers (bidders) to whom the remaining shops should be allocated. Two further rounds of tendering had taken place in July and September 2021. As at the time the Petitioners had filed this Application, assignment of shops in the proposed public market had been completed.
- 13) The 2nd Respondent has vehemently denied the allegations of corruption against him. Responding to the allegation that some of the stalls have been allocated by the 2nd Respondent to his relatives and close associates, he has stated that as a response to the existing traders dissuading other parties from applying for bids, the Kurunegala

Municipal Council was compelled to launch a counter-campaign to encourage bids from other parties, which resulted in the Respondents approaching their family, friends and known associates to secure bids from them. Additionally, he has stated that (i) J.S. Vitharana is his brother, (ii) R.P.N. Sanjeeewani is a relative of his wife, and (iii) K.S.R. Jayananda is a former employee of his. However, according to the 2nd Respondent, all of them have presented bids and have secured shop premises based on the bids they presented. Though accused by the Petitioners that J.E.D. Chandrasiri, I.T.M.M.R. Rohitha Bandara, K.G.J. Jayawardena and G.D. Sunil Shantha are also relatives / close associates of the 2nd Respondent and have secured shop premises in the proposed public market, the 2nd Respondent, while admitting that they have also received shop premises, have denied that they are in any way connected to him.

- 14) In these circumstances, the Respondents have prayed for the dismissal of this Application.

Analysis and Conclusions

- 15) It is evident that, a dispute has arisen between the Petitioners and the Respondents with regard to the applicable procedure governing the assignment of new shop premises in a building constructed / to be constructed on land where similar premises previously existed but were later demolished / would have to be demolished in order to make way for a new complex,. The core of this dispute relates to whether the relevant procedure is governed by circular "P5" or "R22" / "R23". [What appears to be the distinction between "R22" and "R23", is that the latter is a slightly clearer copy of the former which is almost illegible.] While insisting that the applicable procedure is contained in "P5" and not in "R22" / "R23", learned Counsel for the Petitioners submitted that even if one were to concede that the applicable procedure is contained in "R22" / "R23", still, the procedure followed by the 1st Respondent (KMC) was contrary to the procedure contained in even the said circular ("R22" / "R23").
- 16) "P5" bearing No. 02/2019 dated 10th January 2019 has been issued by the Local Government Commissioner of the North Western Province and has been addressed to "*All Chairman / Secretaries of Urban Councils and Pradeshiya Sabhas*". It has been captioned "*Lease of shops in markets, supermarkets, weekend markets and other shop premises owned by local government institutions*". "R22" / "R23" bearing No. 1980/46 dated 31st December 1980 has been issued by the Commissioner of Local Government and has been addressed to "*All chieftains of local government institutions*". It has been captioned "*Calling for tenders for the lease of shop premises owned by local government*

institutions". Thus, *ex facie* it is apparent that, unlike "R22" / "R23", when issuing "P5", the Local Government Commissioner of the North Western Province had limited the application of the circular to Urban Councils and Pradeshiya Sabhas, thereby excluding its' application to Municipal Councils (such as the Kurunegala Municipal Council). Thus, I accept the position advanced on behalf of the 1st to 3rd Respondents that the applicable circular governing the procedure to be followed in the allocation of premises in a new public market to be constructed, is contained in "R22" / "R23" and not in "P5", as the 1st Respondent is a Municipal Council. Furthermore, given this reason, it is not possible to accept the argument that "P5" overrides "R22" / "R23".

17) Given the fact that "R22" / "R23" contains the procedure local government institutions are required to follow with regard to the assignment of shop premises in the proposed public market of Kurunegala, it is my view that its provisions should be recognised as the 'applicable law' governing the leasing out of premises owned by the 1st Respondent. As held time and again by this Court, including in the Judgments such as *N.C. Gajaweera and Others v. Prof. Siri Hettige and Others* [SC/FR Application No. 14/2017, SC Minutes of 20th March 2024], *K.W.S.P. Jayawardhana v. Gotabhaya Jayaratne* [SC/FR Application No. 338/2012, SC Minutes of 07th September 2018] and *D.S.R.D. Fernando and Others v. State Minister of Home Affairs and Others* [SC/FR Application No. 112/2021, SC Minutes of 29th May 2025], an applicable law governing a certain procedure to be followed is stipulated for the sole purpose of affording an equal opportunity to every person governed by such applicable law. Therefore, strict compliance with such applicable law is necessary to safeguard fairness and equal protection before the law. Therefore, given the fact that *Leave to Proceed* has been granted under Article 12(1) of the Constitution, for the purpose of determining whether the Petitioners' Fundamental right to the equal protection of the law has been infringed by the 1st Respondent by adopting the procedure it did in the allocation of shop premises in the proposed new public market of Kurunegala, and not having allocated shop premises to the Petitioners, it would be necessary to audit the procedure followed by the 1st Respondent (KMC) against the procedure stipulated in "R22" / "R23" being the applicable and governing law.

18) To the extent relevant to this matter, "R22" / "R23" can be summarised in the following manner:

- i. The monthly lease rental per each shop should be determined by the relevant local government institution, following a consideration of the valuation of the premises by either the Chief Valuer or a Valuer attached to the local government service. (Clause 1)
- ii. In a case where, having demolished an old market, a new market has been constructed using the funds of the government or those of the relevant local government institution, if traders of the old market have made a request for shop premises in the new market, shop premises should be assigned to them based on the afore-stated valuation. (Clause 3)
- iii. After assigning shop premises to such former traders, remaining shop premises (if any) should be assigned following the calling of tenders on the basis of an once and for all single payment (lump sum payment) plus payment of rentals calculated based on the afore-stated valuation. (Clause 4)
- iv. If the construction of a new market was funded using funds obtained from commercial banks, local development finance funds or private funds, assignment of shop premises should be based on calling of tenders with due regard to the monthly rentals calculated based on the afore-stated valuation and a lump sum payment. In such instances, even traders of the old market should participate in submitting tenders. Ordinarily, shop premises should be assigned to the highest bids. However, if the relevant local government institution is convinced that the market can be maintained in a profitable manner, shop premises should be assigned to traders of the old complex at an amount which is the higher amount between a) the amount calculated by discounting an amount not exceeding 20% from the highest bid received, and b) the amount bid by the respective trader. (Clause 5)

19) Therefore, it is evident that the entire process relating to the assignment of shop premises of phase III of the proposed public market of Kurunegala should have commenced with the causing of a valuation of the shop premises in the manner stipulated in Clause 1 of "R22" / "R23". It is necessary to note that, that step has not been complied with by the 1st Respondent (KMC). As correctly submitted by the learned Counsel for the Petitioners, the report of the Chief Urban Accountant (produced marked "R26") is the only document that reveals how the 1st to 3rd Respondents had fixed the minimum bid values. Nevertheless, the said report is not a valuation as required by "R22" / "R23". Instead, it is a calculation done by the Chief Urban Accountant of the Kurunegala Municipal Council. Thus, there is a valid basis

for the Petitioners to complain that the 1st Respondent (KMC) had acted in a manner contrary to the applicable circular.

20) According to the Affidavit tendered on behalf of the 1st Respondent (KMC), the funding of the construction of phase III was secured through 'key money' received from successful bidders. Thus, 'private funds' have been mobilized for the construction of the proposed new public market. As the Petitioners (being traders of the old public market) have admittedly shown interest in securing shop premises in the proposed public market, assignment of shop premises to them should have been carried out in terms of Clause 5 of the circular. In order to do so, the Petitioners should have presented bids when tenders were called. However, except for the 41st Petitioner, the other traders have not presented bids. (The said 41st Petitioner has been successful in securing a reservation of a shop in the proposed new public market, by presenting a bid and making an advance payment of Rs. 200,000.00 to the 1st Respondent.) In these circumstances, though the Petitioners can complain of non-compliance with Clause 5 of "R22" / "R23", as the Petitioners themselves have not placed bids as required by the procedure contained in the applicable law, they have no entitlement in law to claim redress.

21) Be that as it may, it is an admitted fact that the Petitioners (save the 41st Petitioner) did not present bids seeking to obtain on lease, shop premises from the proposed public market complex. Thus, the Petitioners are not similarly circumstanced with the successful bidders who effectively responded to the call for tenders in compliance with the stipulated procedure. As also held by this Court in *Amunupura Seelawansa Thero and Others v. Additional Secretary, Public Service Commission and Others* [(2004) 3 Sri LR 365], "*Equal opportunity ... is for equals who are similarly circumstanced in life*". Therefore, as a result of the Petitioners (except the 41st Petitioner) not having presented bids, they are disentitled from claiming equal opportunity to secure shops in the proposed public market complex, notwithstanding the fact that they are successful in complaining of action by the 1st to the 3rd Respondent which has been in violation of the provisions of the applicable circular. As they did not present bids, they are not in a position to allege that the non-compliance with or deviation from the provisions contained in the applicable circular by the 1st to 3rd Respondents resulted in a disadvantage occurring to them. By not presenting bids, the Petitioners (except the 41st Petitioner) lost the entitlement to secure shop premises in the proposed public market. The situation would have been different had the Petitioners presented bids

and due to non-compliance with the applicable circular by the 1st Respondent or due to corrupt practices by the 2nd Respondent, the Petitioners lost the opportunity to secure shop premises in the proposed public market. Therefore, it is the view of this Court that the Petitioners do not have an entitlement to complain to this Court of an infringement of their Fundamental rights occasioned due to the conduct of the 1st to the 3rd Respondents and secure relief. That is due to the reason that, unless it is an Application filed in public interest (Public Interest Litigation), in a normal Fundamental rights Application (as in this instance) the Petitioner must establish a causal nexus between the alleged conduct which amounted to Executive or Administrative action which the Petitioner claims to have been unlawful due to infringement of the Petitioner's Fundamental rights, and the occurrence of the loss suffered (grievance). In this matter, this Court observes no such causal nexus, since the Petitioners had voluntarily decided to opt out of the bidding process. Thereby the Petitioners lost the entitlement to complain and obtain relief.

- 22) Nevertheless, as rightly pointed out by the Petitioners, the Reports of the Auditor General dated 12.10.2022 and 23.11.2022 (produced marked "P27" and "P28" respectively) reveal that the Auditor General had noted that the tender procedure followed by the 1st to 3rd Respondents had resulted in several of the shop premises being allocated to persons who were connected with the 2nd Respondent (then Mayor of the Kurunegala Municipal Council). While the 2nd Respondent has denied this allegation, this Court does not have specific evidence based upon which this Court can arrive at a finding that the assignment of shop premises to such beneficiaries was due to corruption, due to the 2nd Respondent having got involved in the tender procedure in an unlawful manner or due to any other reason. That can be determined only following the conduct of a comprehensive investigation.
- 23) In the afore-stated circumstances, I am not in a position to determine that the actions taken by the 1st to the 3rd Respondents in contravention of "R22" / "R23" resulted in the infringement of the Fundamental rights of the Petitioners. Therefore, no declaration can be issued in favour of the Petitioners, nor can any relief be granted.
- 24) In the circumstances, this Application stands dismissed. Furthermore, the interim order previously issued by a differently constituted Bench of this Court, is hereby vacated.

25) However, given the (a) observations made by the Auditor General (contained in "P27" and "P28") pertaining to the assignment of shop premises by the 2nd Respondent (then Mayor of the Kurunegala Municipal Council) to certain persons connected to him, (b) allegations made by the Petitioners that assignment of certain shop premises to certain third parties was due to corruption, and (c) several admissions made by the 2nd Respondent, it is the view of this Court that the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) should investigate this matter for the purpose of determining whether the 2nd Respondent has committed or engaged in one or more instances of corruption in the process relating to the calling of tenders and assignment of shop premises in the proposed new public market to certain third parties. Accordingly, the CIABOC is directed to conduct an investigation into the afore-stated matter and take steps according to law.

26) For the purpose of giving effect to the order contained in the preceding paragraph, the Registrar of this Court is directed to submit to the Director General of the CIABOC a copy of this Judgment along with certified copies of the entire docket as early as possible, drawing his attention to the order contained in the preceding paragraph.

Judge of the Supreme Court

S. Thurairaja, PC, J.

I agree.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court