

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

*In the matter of an application in terms of Article 126 read
with Article 17 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

Ajith P. Dharmasuriya,
No. 1, New Town,
Aluthwatta Road,
Rajawella.

PETITIONER

SC/FRA/330/2015

Vs.

1. Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
2. Gotabaya Jayaratne,
- 2A. Keerthi B. Kotagama,
- 2B. M.L.D.C. Mahendra Abeywardana,
- 2C. H.M.J.K. Herath,

All are
Director-General
Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.

3. I.M. Udhaya Kalyana Kumara
- 3A. Prasanna Jayathilaka,

All are
Resident Project Manager – Victoria Project,
Mahaweli Authority of Sri Lanka,
Victoria Resident Project Manager's Office,
Digana, Nilagama, Rajawella.

4. Anura Dissanayake,
Secretary,
Ministry of Mahaweli Development and
Environment

4A. R.M.C.M. Herath
Secretary,
State Ministry of Canals and Common
Infrastructure Development in Settlements in
Mahaweli Zones

4B. Saman D. Pandikorala,
Secretary,
Ministry of Irrigation

4C. D.P. Wickremasinghe,
Secretary,
Ministry of Agriculture, Livestock, Lands and
Irrigation

All are
No. 500, T.B. Jayah Mawatha,
Colombo 10.

5. Divisional Secretary,
Divisional Secretary of Meda-Dumbara,
Theldeniya.

6. Meda-Dumbara Pradeshiya Sabha,
Theldeniya.

7. Kundasala Pradeshiya Sabha,
Menikhinna.

8. Central Environmental Authority,
"Parisara Piyasa",
No. 104, Robert Gunawardene Mawatha,
Battaramulla.

9. Hon. Attorney-General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

10. E.M.M.W.D. Bandaranayake,
No. 77/2A, Kanda

11. E.M. Wijeratne,
No. 250/06, Kandy Road

11A. Ekanayake Mudiyanseelage Tharindu
Bandara Ekanayake,
No. 250/06, Kandy Road

All are
Karaliyadda, Theldeniya.

12. R.K. Abeykoon,
No. 06, Kolongahawatta,
Kengalla.
13. J.M.R. Bandara Jayasundara,
C/o. Mahaweli Authority of Sri Lanka,
Victoria Resident Project Manager's Office,
Nilagama,
Rajawella.
14. W.M.M. Costa,
Rathmaloya Road,
Balagolla.
15. J.M.U.W. Barnes Rambukwelle,
Opposite Theldeniya Magistrate's Court/
District Court,
Theldeniya.

RESPONDENTS

Ajith P. Dharmasuriya v Mahaweli Authority of Sri Lanka and Others
Case No. SC/FRA/330/2015

Before: Janak De Silva, J.

Achala Wengappuli, J.

Dr Sobhitha Rajakaruna, J.

Counsel: Nishantha Sirimanne with Deshara Goonetilleke for the Petitioner

Rajitha Perera, DSG for the 1st, 5th, 8th and 9th Respondents

Manohara De Silva, PC with Dilmini De Silva and Nadeeshani Lankatilleka
for the 11th, 12th, 14th and 15th Respondents

Written Submissions:

Petitioner - 29 March 2021 & 05 December 2025

Respondents - 1st to 4th Respondents: 15 March 2016 & 12 October 2016

10th, 11th, 12th, 14th, 15th Respondents: 01 December 2025

1st - 3rd Respondents: 17 July 2020

1st-3rd, 5th, 8th and 9th Respondents - 18 December 2025

Argued on: 16 October 2025

Decided on: 16 July 2026

Judgement

Dr Sobhitha Rajakaruna, J

The Petitioner states that this application has been instituted in the public interest, particularly for the protection and preservation of the environment, relying, inter alia, on Article 28(f) of the Constitution. He alleges that the 1st Respondent, the Mahaweli Authority of Sri Lanka, unlawfully allocated lands situated within 100 metres of the full supply level of the Victoria Reservoir to the 10th to 15th Respondents and has subsequently sought to regularise both those allocations and the constructions erected thereon, notwithstanding legal prohibitions against such actions. The Petitioner contends that the State and its agencies are constitutionally obliged to protect, preserve and improve the environment and that the actions and omissions of the 1st to 8th Respondents constitute executive and/or administrative action within the meaning of Article 17 of the Constitution.

The Petitioner's Case in Outline

According to the Petitioner, extensive lands in and around *Theldeniya* were acquired and vested in the 1st Respondent Authority in or about 1980 for the construction of the Victoria Reservoir under the Accelerated Mahaweli Development Programme. While some of the acquired lands were expected to be submerged by the reservoir, others were designated for public infrastructure and services to facilitate the resettlement of displaced residents. The Petitioner submits that regulations made under Section 54 of the Mahaweli Authority of Sri Lanka Act prohibit the construction of buildings or structures within 100 metres of the

full supply level of a reservoir without the prior approval of the Director General of the 1st Respondent Authority. He further asserts that the relevant reservation area forms part of a “Special Area” declared under the said Act. The Victoria Reservoir has a full supply level of 438 metres, and the reservation area comprises the 100-metre zone extending beyond that level.

The Petitioner further relies on regulations made under the National Environmental Act, which require approval under Part IV C of that Act, including, where necessary, an Environmental Impact Assessment (EIA) or Initial Environmental Examination (IEE), before any dwelling house or commercial building may be constructed within 100 metres of the full supply level of a reservoir. Similar restrictions, he states, apply under the Fauna and Flora Protection Ordinance and the National Environmental Act to lands situated within 100 metres of a sanctuary boundary, requiring prior approval from the Department of Wildlife Conservation. The Petitioner also refers to building guidelines issued by the 1st Respondent in 1997 governing construction even on privately owned lands situated within the reservation area.

The Petitioner alleges that from about the year 2006 onwards, lands within the 100-metre reservation area of the Victoria Reservoir and/or within 100 metres of the boundaries of the Victoria–Randenigala–Rantembe Sanctuary were unlawfully alienated and developed. Despite requests for intervention, the 1st Respondent allegedly failed to prevent such alienations and constructions.

The Case Bearing No SC/FR/Application No. 459/2008

Consequently, the Petitioner and several others instituted SC/FR/Application No. 459/2008 challenging those actions. By judgement dated 17 June 2010, the Supreme Court held that the 1st Respondent had violated Article 12(1) of the Constitution, directed that investigations be conducted against the responsible officials, ordered that no further allocations of land in the area be made without complying with the National Environmental Act and its regulations, directed compliance with the applicable construction guidelines, and awarded costs to the petitioners.

The Petitioner states that, in light of the findings in the aforesaid judgement, he legitimately expected the 1st Respondent Authority not to regularise lands previously

alienated in violation of the law or constructions erected thereon. Rather, he expected the said Authority to recover possession of such lands and remove the unlawful structures. He further alleges that the directions of the Supreme Court requiring investigations into the officials responsible for the illegal alienations have not been implemented.

Alleged Infringement of Fundamental Rights

The Petitioner states that he subsequently became aware, on 17 July 2015, of a decision allegedly taken by the 1st Respondent on or about 28 May 2015 to issue annual permits to the 10th to 15th Respondents in respect of lands within the Victoria Reservoir reservation area, impose conditions relating to further construction on those lands, and take action against other persons who had carried out constructions within the reservation. He contends that this amounted to an attempt to selectively regularise the unlawful alienation of reservation lands and the constructions already carried out by the 10th to 15th Respondents. He further alleges that those Respondents were favoured in a discriminatory and arbitrary manner over others similarly situated, for ulterior and extraneous reasons.

The Petitioner contends that the impugned decision is contrary to law and inconsistent with the judgement in SC/FR/Application No. 459/2008. He maintains that lands vested in the 1st Respondent Authority and situated within 100 metres of the full supply level of the Victoria Reservoir cannot lawfully be alienated to private parties for private purposes, whether by annual permit or otherwise, and that constructions erected on such lands cannot be regularised. He further asserts that any construction activity within the reservation area requires prior approval under the applicable environmental laws, including EIA or IEE approval, which, according to him, the 10th to 15th Respondents do not possess. He also alleges that the 1st Respondent has failed to revoke permits granted to those Respondents, recover possession of the lands, or remove the unauthorised structures.

In those circumstances, the Petitioner alleges that the actions and omissions of the Respondents are illegal, arbitrary, unreasonable and contrary to his legitimate expectations arising from the earlier judgement of this Court. He contends that such conduct infringes his fundamental right to equality and equal protection of the law guaranteed by Article 12(1) of the Constitution and constitutes a continuing violation of those rights. The Petitioner further asserts that the impugned actions have caused, and

continue to cause, grave and irreparable harm to the environment and to the Victoria Reservoir.

The Petitioner's Thread of Argument

The Petitioner submitted *that* the impugned Board Decision of the 1st Respondent, reflected in the Memo dated 23 June 2015 (marked 'P7'/'2R4') and embodied in the Board Decision marked '2R3', was contrary to the aforesaid judgement of this Court in SC/FR/ Application No. 459/2008. It was contended that, having held in that judgement that the alienation of reservation lands to private parties for private purposes was inconsistent with the provisions of the Mahaweli Authority of Sri Lanka Act, the National Environmental Act, and the 1st Respondent's own Guidelines, the 1st Respondent could not lawfully revive or regularise such alienations by issuing Annual Permits to the 10th to 15th Respondents. The Petitioner further submitted that the absence of specific relief against the occupants in the earlier proceedings was solely due to their non-joinder and did not detract from the legal findings of this Court.

The Petitioner further contended that the impugned decision was not a mere extension or renewal of existing Annual Permits but an unlawful attempt to regularise, *ex post facto*, the possession of the 10th to 15th Respondents after their permits had lapsed. It was submitted that the permits had expired in December 2008, had never thereafter been renewed, and that for several years the 1st Respondent itself had accepted that they could not be renewed consistently with the judgement in SC/FR/ Application No. 459/2008. Relying on the decision in *A.M. Sanjaya Nayanaka Darshana v. J.J. Chamila Indika Jayasinghe* (SC/FR/Application No. 38/2018, S.C. Minutes of 28 June 2023), the Petitioner argued that a permit which had expired by effluxion of time could neither be cancelled nor extended, and that the impugned decision therefore amounted to the grant of fresh Annual Permits and a fresh alienation of reservation lands.

The Petitioner also submitted that the impugned Board Decision was inconsistent with the Mahaweli Authority of Sri Lanka Act and the Authority's own Guidelines. It was argued that the relevant Board Paper disclosed no lawful basis for the grant of the permits other than the existence of permanent structures, and failed to demonstrate compliance with section 12 of the said Act or the Special Committee Guidelines of 1997. The Petitioner

pointed to alleged departures from those Guidelines, including the grant of plots below the prescribed minimum extent, the existence of structures exceeding the permitted height, the failure to maintain prescribed distances between dwellings, and the absence of compliance with sewage and drainage requirements. It was contended that the selective disregard of the Guidelines amounted to an arbitrary, mala fide and unfair regularisation of reservation lands in violation of the directions contained in the judgement in SC/FR/Application No. 459/2008.

The Petitioner further submitted that the impugned permits failed to comply with Part IV(C) of the National Environmental Act No. 47 of 1980, as amended, and the Regulations made thereunder. It was contended that the lands in question were situated within the 100-metre reservation beyond the full supply level of the Victoria Reservoir, where prior environmental approval, including an Environmental Impact Assessment or Initial Environmental Examination where applicable, was mandatory. According to the Petitioner, no such environmental assessment had been undertaken despite the ecological sensitivity of the area and the potential impact upon the reservoir. The Petitioner also alleged that the 6th Respondent had granted planning approval for construction on reservation lands and had failed to take action against unauthorised structures due to political influence, notwithstanding its statutory powers to require their removal.

It was submitted that no intelligible or rational basis existed for distinguishing the 10th to 15th Respondents from the other persons referred to in the Board Paper and that the six individuals had been arbitrarily and selectively favoured. In support of this submission, reliance was placed on *Ramupillai v. Festus Perera* [1991] 1 Sri L.R. 11, *Rienzie Perera v. University Grants Commission* [1978-79-80] 1 Sri L.R. 128 and *Dayawathie v. Dr. M. Fernando* [1988] 1 Sri L.R. 371, and on *Munasinghe v. Vandergert* [2008] 2 Sri L.R. 223 and *Elmore Perera v. Jayawickrema* [1985] 1 Sri L.R. 285, for the propositions that permissible classification must rest upon an intelligible differentia rationally connected to the object sought to be achieved and that arbitrariness is antithetical to equality.

The Petitioner also submitted that the impugned decision violated the Public Trust Doctrine. It was contended that reservation lands and natural resources are held by the State in trust for the benefit of the public and future generations, and that discretionary public powers must be exercised only in furtherance of the public interest. Reliance was placed on *Bulankulama v. Secretary, Ministry of Industrial Development* (2000) 3 Sri L.R.

243, *Sugathapala Mendis v. Chandrika Kumaratunga* [2008] 2 Sri L.R. 339, *Vasudeva Nanayakkara v. Choksy* (S.C.F.R. Application No. 158/2007) and *Wijebanda v. Conservator-General of Forests* [2009] 1 Sri L.R. 337, to submit that the selective regularisation of reservation lands for private benefit conferred no public advantage, caused environmental harm, and amounted to a breach of the trust reposed in the 1st Respondent.

In answer to the Respondent's preliminary objections, the Petitioner submitted that the doctrine of *res judicata* was inapplicable because the parties and subject matter of the present proceedings differed from those in SC/FR/Application No. 459/2008, the impugned Board Decision of 2015 not having existed at the time of the earlier proceedings. Reliance was placed on *Stassen Export Ltd v. Lipton Ltd* (SC/CHC/Appeal No. 51/2006, S.C. Minutes of 19 November 2009) in support of this submission. The Petitioner further contended that the present Application was not time-barred, that the issue had already been determined by the Order of this Court dated 9 January 2017, and that, in any event, the conduct of the 1st and 2nd Respondents constituted a continuing infringement of his fundamental rights.

Accordingly, the Petitioner submitted that the decision of the 1st Respondent dated 28 May 2015 infringed his fundamental right to equality and the equal protection of the law guaranteed by Article 12(1) of the Constitution, and prayed for the reliefs sought in the Petition, including the declarations, consequential orders, compensation and costs.

The 1st to 3rd, 5th, 8th and 9th Respondents' Submissions in Synopsis

The 1st to 3rd, 5th, 8th and 9th Respondents submitted that their case rests on two principal grounds: first, that the present Application is time-barred; and secondly, that the impugned decision did not involve the issuance of any fresh Annual Permits to the 10th to 15th Respondents.

On the issue of maintainability, the Respondents submitted that the document marked 'P7' is not itself the impugned decision but merely a communication conveying the Board's decision. They contended that the decision reflected in 'P7' did not authorise the grant of fresh Annual Permits but only the extension of permits that had previously been issued. It was further submitted that the permits granted to the 10th to 15th Respondents had never

been quashed by this Court in SC/FR/ Application No. 459/2008 and that the Board's decision was limited to permitting the continuation of those permits upon the recovery of all outstanding lease rentals together with interest from the date of alienation. According to the Respondents, the requirement to recover arrears and interest itself demonstrated that the permits in question were continuations of existing permits rather than fresh grants.

The Respondents further submitted that the Petitioner, together with other parties, had previously instituted SC/FR/ Application No. 459/2008 and was, at that time, fully aware of the permits issued to the relevant parties, as evidenced by the averments contained in paragraphs 33 and 34 of the petition in those proceedings, which referred to the permits marked 'P22(a)' and 'P22(b)' dated 8 November 2005. It was contended that, although the Petitioner had the opportunity during those proceedings to seek the production of all permits issued by the 1st Respondent, he had failed to do so and could not now attribute that omission either to this Court or to the Respondents.

The Respondents also submitted that the substantive relief sought in the present Application substantially mirrors the relief sought in prayers (g) and (h) of the said SC/FR/ Application No. 459/2008. They pointed out that, although prayer (d) seeks to impugn the Annual Permits allegedly issued pursuant to the decision of 28 May 2015, prayer (e) extends beyond that decision by seeking relief in respect of the permits generally, while prayer (j)(IV) seeks production of all Annual Permits issued to the 10th to 15th Respondents from their inception to date. It was therefore contended that the Petitioner has merely sought to rely on the document marked 'P7' to revive a cause of action already litigated, with a view to overcoming the procedural deficiencies that existed in the earlier proceedings and circumventing the constitutional time limitation applicable to fundamental rights applications. The Respondents further submitted that the Board decision dated 28 May 2015 itself has not been produced before Court, that 'P7' expressly refers to an "extension of permits", and that, since this Court did not quash the earlier permits in SC/FR/Application No. 459/2008, the present Application raises no fresh cause of action but is founded upon the same matters considered in the earlier proceedings.

Addressing the merits, the Respondents submitted that no orders were made by this Court in SC/FR/Application No. 459/2008 affecting the permits already issued to the 10th to 15th Respondents. They stated that, following that judgement, several representations had been made requesting the renewal of the existing permits, including representations

addressed to the Attorney-General complaining that the 1st Respondent Authority had declined to renew them. It was submitted that the Attorney-General had thereafter tendered legal advice on the matter, following which Board Paper No. 2015/261/4019 (marked '2R2') was placed before the Board of the 1st Respondent. The Respondents submitted that, by the Board Decision marked '2R3', the Board resolved only to permit the continuation of the Annual Permits in respect of the six persons who had already constructed buildings on the relevant land within the 100-metre reservation, subject to the conditions stipulated in the Board Paper and upon payment of all outstanding lease rentals and interest. It was further submitted that the letter dated 23 June 2015 ('P7'/'2R4') merely communicated and implemented that decision. Accordingly, the Respondents maintained that no decision was taken to issue fresh permits and that no fresh Annual Permits were in fact granted.

In conclusion, the Respondents submitted that the present Application constitutes, in substance, an attempt to obtain the same relief that had not been granted in SC/FR/ Application No. 459/2008. They contended that this Court had declined to grant the relevant relief in those proceedings because the 10th to 15th Respondents had not been made parties, and that the Petitioner, having now joined them as parties, seeks to achieve indirectly what could not be obtained directly by relying upon the document marked 'P7'. The Respondents therefore submitted that the instant Application is misconceived in law, barred by lapse of time, and liable to be dismissed.

The 10th, 11th, 12th, 14th and 15th Respondents' Case as Argued

The 10th, 11th, 12th, 14th and 15th Respondents submitted that the Petitioner, together with two other Petitioners, had previously instituted the above mentioned SC/FR/ Application No. 459/2008 seeking, inter alia, a declaration that the alienation of lands situated within 100 metres of the full supply level of the Victoria Reservoir was illegal and null and void. They pointed out that the Petition in those proceedings also sought to impugn the decision contained in the document marked 'P25' dated 23 May 2006, which authorised allottees to construct buildings and obtain electricity and water connections, and further sought orders cancelling the permits already issued and ejecting the occupants from the lands. It was submitted that, although the 10th to 15th Respondents were among the allottees whose rights would have been directly affected by the relief sought, they had

not been made parties to those proceedings and were consequently denied an opportunity of being heard.

These Respondents further submitted that, by its judgement dated 7 June 2010 in the said SC/FR/Application No. 459/2008, this Court expressly declined to grant the relief sought in prayers (g) and (h), holding that it could not make orders affecting the grantees and occupants of the lands in their absence. They submitted that this Court had observed that the failure to join the permit holders as parties had deprived it of the ability to grant more effective and meaningful relief. Accordingly, it was contended that the judgement clearly demonstrates that this Court declined to grant any relief against the 10th to 15th Respondents or any other persons who had already been granted lands and had constructed upon them. It was therefore submitted that the Petitioner is precluded from now seeking substantially the same relief against these Respondents.

The Respondents further contended that the judgement in SC/FR/Application No. 459/2008 was directed only at preventing future alienations and future construction within the reservation area, and did not disturb existing grants or constructions. They submitted that, although this Court overruled the preliminary objection based on delay in the present proceedings, on the basis that the Application had been filed within one month of the Petitioner becoming aware of the document marked 'P7' and that the Court could not countenance a repetition of an unlawful act following the 2010 judgement, the Court nevertheless remained unwilling to make orders prejudicial to those persons whose lands had already been alienated. It was therefore argued that the Court's refusal to interfere with the existing alienations and constructions constitutes *res judicata* as between the Petitioner and the 10th to 15th Respondents.

On the merits, these Respondents challenged the legal status of the Guidelines marked 'P12' (this document marked 'C' is annexed to the motion dated 16 July 2025 filed by the 1st– 4th Respondents). It was submitted that those Guidelines had merely been formulated by a committee of officers of the 1st Respondent Authority and addressed to the Director-General, and that there was no evidence that they had ever been approved or formally adopted by the said Authority. They contended that the Guidelines amounted to no more than recommendations and lacked the force of law. In this regard, reliance was placed on sections 50, 54 and 55 of the Mahaweli Authority of Sri Lanka Act, it being submitted that regulations, rules and by-laws made under those provisions require publication in the

Gazette before acquiring legal effect, whereas the Guidelines had not been promulgated in that manner.

The Respondents further submitted that the applicable regulations published in the Gazette on 26 December 1986 do not impose an absolute prohibition on construction below the high flood level of a reservoir, but merely prohibit construction without the prior permission of the authorised officer. They contended that the Annual Permits had been issued by the Resident Project Manager, who was the authorised officer, and that paragraph 7 of the permits expressly authorised the construction of permanent buildings with his approval. It was further submitted that Clause 12 of the permits required construction to commence within six months of the handing over of possession, thereby demonstrating that the permits themselves contemplated and authorised residential development upon obtaining the requisite approval.

The Respondents also drew the attention of the Court to the documents produced and marked '10R1' to '10R22', '11R1' to '11R20', '13R1' to '13R14', '14R1' to '14R7' and '15R1' to '15R10', which, they submitted, evidenced the approvals obtained by them prior to construction. These documents included the Annual Permits issued under the Mahaweli Authority of Sri Lanka Act, approved building plans, survey plans, blocking-out diagrams relating to the housing allotments, and photographs of the completed houses.

With regard to the National Environmental Act, the Respondents submitted that the environmental approval requirements relied upon by the Petitioner were inapplicable to the present circumstances. They contended that, under the Order made pursuant to section 23Z of the National Environmental Act, environmental clearance is required only for specified categories of prescribed projects, including housing developments exceeding 1,000 housing units, commercial developments exceeding 10,000 square metres, and multi-development projects exceeding 10 hectares. It was submitted that the individual residential houses constructed by the Respondents did not fall within any category of prescribed project set out in Parts I, II or III of the relevant Order and, accordingly, no Environmental Impact Assessment or Initial Environmental Examination was required.

For these reasons, the 10th, 11th, 12th, 14th and 15th Respondents submitted that the instant Application is devoid of merit insofar as it concerns them and accordingly moved that this Court decline to grant any relief against them.

Analysis

Having carefully considered the pleadings, documentary material, the judgement of this Court in SC/FR/Application No. 459/2008, and the submissions advanced by learned Counsel for all parties, the principal issue that falls for determination is whether the decision communicated by document marked 'P7', read together with the Board Decision marked '2R3', constitutes a fresh executive or administrative act giving rise to an independent infringement of the Petitioner's fundamental rights under Article 12(1) of the Constitution.

At the outset, it is necessary to identify the true character of the impugned decision. The Petitioner seeks to portray the Board Decision (of the 1st Respondent) of 28 May 2015 as amounting to a fresh alienation of reservation lands through the issuance of new Annual Permits. However, the documentary material before this Court does not support such a characterisation. Document 'P7', upon which the Petitioner principally relies, is not itself the Board Decision but merely the communication by which the decision of the Board was conveyed for implementation. More significantly, both the Board Paper ('2R2') and the Board Decision ('2R3') demonstrate that the Board was concerned with the continuation of permits that had already been granted to six persons who had previously been allotted the relevant lands and had constructed dwelling houses thereon. The decision expressly required the recovery of all outstanding lease rentals together with interest from the date of the original alienation before the permits could continue. Such a condition is wholly inconsistent with the grant of fresh permits. Had the Board intended to effect a fresh alienation, there would have been no occasion to recover arrears calculated from the date of the original disposition. I am therefore unable to accept the Petitioner's submission that the impugned decision constituted a fresh grant of Annual Permits.

The Petitioner's argument that the earlier permits had lapsed by effluxion of time and were incapable of renewal does not alter this conclusion. Whatever may be the legal consequences flowing from a lapse of an annual permit, the material before the Court clearly establishes that the Board of the 1st Respondent did not purport to initiate a fresh process of alienation of reservation lands. Rather, it sought to deal administratively with persons whose occupation had its origin in permits issued long before the present proceedings and whose constructions had already been completed. The substance of the

Board's decision, and not merely the terminology employed by either party, must determine its legal character.

The earlier judgement of this Court in SC/FR/Application No. 459/2008 assumes considerable significance in determining the present dispute. That judgement undoubtedly declared that the arbitrary alienation of reservation lands and the failure to comply with applicable environmental requirements violated Article 12(1) of the Constitution. At the same time, however, this Court consciously refrained from granting relief affecting those persons who had already obtained permits and constructed buildings upon the lands. The reason for that refusal was explicitly stated. The Court observed that the permit holders and occupants, whose rights would be directly affected by any such order, had not been made parties to those proceedings. Consequently, this Court held that it was unable to make orders cancelling the permits or directing the ejectment of the occupants, notwithstanding the broader findings made regarding the illegality of the administrative conduct.

The observations of this Court in the earlier judgement leave little room for ambiguity. The Court expressly recognised that the failure to join the grantees had deprived it of the ability to grant "more positive and meaningful results". Thus, while prospective directions were issued restraining future alienations and requiring compliance with the applicable statutory framework, no order was made invalidating the permits already granted or directing the demolition of structures already erected. Those findings cannot now be ignored or treated as though they did not exist.

The instant Application, although framed as a challenge to the events of May 2015, substantially seeks to obtain relief which was specifically withheld in the earlier proceedings. This is apparent not merely from the substance of the Petition but also from the reliefs sought. Prayer (J)(IV), for example, seeks the production of all Annual Permits issued to the 10th to 15th Respondents "from the very inception up-to-date". Likewise, the declarations sought in prayers (d) and (e), properly examined, are directed not merely against the communication marked 'P7' but against the original alienations themselves. In substance, therefore, the Petitioner seeks to revisit matters which formed the very subject matter of SC/FR/Application No. 459/2008.

It is true that the Petitioner has now cited the permit holders as parties to these proceedings. However, that circumstance alone cannot convert what is essentially an attempt to reopen previously determined issues into a fresh constitutional cause of action. The constitutional jurisdiction conferred upon this Court under Article 126 is intended to remedy infringements arising from executive or administrative action. I take the view that this jurisdiction should not be abused to facilitate successive challenges to substantially the same administrative acts merely because a different procedural course has subsequently been adopted, unless there are adequate and exceptional circumstances warranting a reconsideration of the earlier acts.

I am also unable to accept the Petitioner's submission that the present cause of action arose only upon the communication of 'P7'. The material before the Court establishes that the Petitioner was fully aware, as early as 2008, of the permits issued to at least some of the relevant allottees. Indeed, paragraphs 33 and 34 of the Petition in SC/FR/ Application No. 459/2008 specifically referred to permits marked 'P22(a)' and 'P22(b)'. The Site Visit Report annexed to that Petition further identified the permit holders in occupation of the relevant lands. It cannot, therefore, be suggested that the existence of those permits or the occupation of the lands came as a matter of subsequent discovery.

While this Court, by its Order dated 9 January 2017, rejected the preliminary objection founded upon delay in relation to the communication marked 'P7', that determination merely enabled the present Application to proceed to hearing. It did not determine that the Board's communication created a new and independent constitutional grievance, nor did it conclude that the Petitioner could thereby reopen issues which had already been addressed in the earlier proceedings.

The submissions advanced by the 10th, 11th, 12th, 14th and 15th Respondents also merit consideration. Those Respondents have placed before the Court documentary material evidencing the permits issued to them, the approvals obtained for construction, the relevant survey plans and the building approvals granted by the competent authorities. They further contend that the applicable statutory framework did not impose an absolute prohibition upon construction within the reservation area but required only the permission of the authorised officer, which, according to the documentary material, had in fact been granted. Whether or not every aspect of those administrative approvals was legally impeccable is not the question presently before this Court. The issue before this Court is

whether the Board Decision (of the 1st Respondent) of May 2015 itself constitutes an independent violation of Article 12(1). In my view, it does not.

The Petitioner's reliance upon the Mahaweli Authority Guidelines and the Public Trust Doctrine, though advanced with considerable force, cannot ultimately alter the outcome of this case. The environmental concerns raised by the Petitioner are undoubtedly matters of public importance. Equally, the duty of public authorities to safeguard environmentally sensitive areas cannot be understated. Nevertheless, constitutional adjudication must proceed upon established legal principles and the actual executive or administrative action under challenge. Based on the circumstances of this case, I cannot disregard the limits imposed by the earlier judgement or characterise an administrative continuation of existing permits as though it were a fresh alienation merely because such a characterisation would facilitate the grant of the relief now sought.

Nor am I persuaded by the Petitioner's contention that the Board of the 1st Respondent acted arbitrarily by selecting only six permit holders. The material before the Court indicates that the Board's decision was confined to persons who had already constructed permanent buildings upon the relevant allotments and whose occupation had existed for several years. The Petitioner has failed to establish that the impugned decision constituted arbitrary discrimination amounting to a violation of Article 12(1).

Conclusion

Viewed in its entirety, the present Application seeks, in substance, to achieve indirectly what was not granted in SC/FR/ Application No. 459/2008 . The impugned communication marked 'P7' does not disclose a fresh alienation of reservation lands but merely communicates the implementation of a Board decision concerning the continuation of pre-existing permits, subject to the recovery of arrears and compliance with specified conditions. The earlier permits were never quashed by this Court, and no order was made affecting the rights of the existing permit holders. In these circumstances, I am unable to conclude that the Petitioner has established any fresh executive or administrative action which infringed his fundamental right to equality guaranteed by Article 12(1) of the Constitution.

For all the foregoing reasons, I hold that the Petitioner has not satisfied this Court, on a balance of probabilities, that the decision communicated by document marked 'P7' or the Board Decision marked '2R3' constituted an infringement of his fundamental rights under Article 12(1) of the Constitution.

Accordingly, the instant Application of the Petitioner is dismissed. In the circumstances of this case, I make no order as to costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court