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

In the matter of an Application in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Chandra Wickramasinghe,
   President,
   Rajagiriya Udyanaya
   Residents
   Association,
   No, 15, Rajagiriya Udyanaya,
   Nawala
   Road, Rajagiriya

2. Shelton Wijesinghe,
   Secretary,
   Rajagiriya Udyanaya
   Residents
   Association,
   No.4, Rajagiriya Udyanaya,
   Nawala
   Road, Rajagiriya
   (Now Deceased)

SC/FR Application 428/2008

3. Jayantha Jayawardena,
   No, 615/32, Rajagiriya
   Udyanaya,
   Nawala Road, Rajagiriya

4. Chula De Silva

No, 615/33, Rajagiriya
Udyanaya,
Nawala Road, Rajagiriya

5. Aurasa Gunasekara,
No, 615/14, Rajagiriya
Udyanaya,
Nawala Road, Rajagirya

Petitioners

Vs.

1. Sri Lanka Development
Corporation,
(previously known as Sri
Lanka Land
Reclamation and Development
Corporation),
No.5, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya.

2. Karunasena Hettiarachchi.
Chairman,
Sri Lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya.

2A. Harshana de Silva,
Chairman,
Sri Lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya

2B. M.H.M.Salaman,
Chairman,
Sri Lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagirya.

2C. Mr. Asela Iddawela,
Chairman,
Sri lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenpura
Road,
Rajagiriya.

2D. Mr. Roshan
Gunawardena,
Chairman,

Sri Lanka Reclamation and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya

2E. Major General M R W de
Zoysa,
Chairman,
Sri Lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya.

2F. Commodore Eng. Hiran
Balasuriya,
Chairman,
Sri Lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya.

2G. Eng. Saman Senaweera,
Chairman,
Sri Lanka Land Development
Corporation, No. 35, Kotte,

Sri Jayawardenapura,
Denapura Rd.
Rajagiriya.

3. Dilshan Gunasekara
Working Director
Sri Lanka Land Reclamation
and
Development Corporation,
No.35, Kotte Sri
Jeyawardenapura
Road,
Rajagiriya.

4. Hon. Dinesh Gunawadena,
Minister of Urban
Development and
Sacred Area Development,
Sethsiripaya,
Battaramulla.

4A. Hon. Rauff Hakeem M.P.,
Minister of Water Supply,
Drainage
and Urban Development,
Sethsiripaya,
Battaramulla.

4B. Hon. Champika
Ranawaka M.P.,
Minister of Megapolis &
Western
Development,

Sethsiripaya,
Battaramulla.

4C. Hon. Mahinda Rajapaksa,
Prime Minister and Minister of Urban
Development, Water Supply & Housing
Facilities
Sethsiripaya,
Battaramulla.

4D. Hon. Prasanna Ranatunge MP,
Minister of Urban
Development &
Housing,
Sethsiripaya,
Battaramulla.

4E. Hon. Anura Karunathilaka,
Minister of Urban
Development Constructions and Housing,
Sethsiripaya, Battaramulla.

5. Dr. D Ramanujan,
Secretary,
Ministry of Urban
Development and
Sacred Area Development and
Chairman Urban Development

Authority
Sethsiripaya,
Battaramulla.

5A. Gotabaya Rajapakse,
RWP, RSP, psc,
MSc,
Secretary,
Ministry of Defence,
Baladaksha Mawatha,
Colombo 3.

5B. Karunasena
Hettiarachchi,
Secretary, Ministry of Water
Supply,
Drainage and Urban
Development,
Sethsiripaya,
Battaramulla

5C. N. Rupasinghe,
Ministry of Megapolis &
Western
Development,
Sethsiripaya,
Battaramulla

5D. Dr. Priyath Bandu
Wickrama
Secretary, Ministry of Urban
Development, Water Supply &
Housing

Facilities,
Sethsiripaya,
Battaramulla.

5E. Mr. Pradeep Ratnayake,
Secretary, Ministry of Urban
Development & Housing,
Sethsiripaya,
Battaramulla.

5F. MR. W.S. Sathyananda,
Secretary, Ministry of Urban
Development & Housing,
Sethsiripaya,
Battaramulla.

5G. Mr. Ranjith Ariyarathne,
Secretary, Ministry of Urban
Development Constructions &
Housing,
Sethsiripaya,
Battaramulla.

6. Central Environmental
Authority;
Denzil Kobbekaduwa
Mawatha,
Battaramulla.

7. Jayantha Wickramaratna,
Inspector General of Police;
Police Head Quarters,
Colombo 1.

7A. Dr. Mahinda Balasuriya,
Inspector General of Police,
Police Head Quarters,
Colombo 1.

7B. N.K. Illangakoon,
Inspector General of Police,
Police Head Quarters,
Colombo 1.

7C. Pujitha Jayasundenra,
Inspector General of Police,
Police Head Quarters,
Colombo 1.

7D. Chandana D.
Wickremaratne,
Inspector general of Police,
Police Head Quarters,
Colombo 1.

7E. Deshbandu Tennakoon,
Inspector general of Police,
Police Head Quarters,
Colombo 1.

7F. DIG Priyantha
Weerasooriya,
Acting Inspector General of
Police,
Police Head Quarters,
Colombo 1.

8. Rohan Silva;
   Superintendent of Police,
   Presidents Security Division
   Presidential Secretariat,
   Colombo 1
   Also at
   No. 7 John Keels Housing
   Complex,
   Kaduwala.

9. K.K.D.F Sudarshani Silva
   No. & John Keels Housing
   Complex,
   Kaduwala.

10. Nawagamuwage Jayantha
    Lakshmi
    Perera,
    913/4B, Udawatte Road
    Malabe.

11. R A D Nihal Ranasinghe,
    1364, Kotte Road, Rajagiriya.

12. R A D Susil Ranasinghe,
    1366, Kotte Road, Rajagiriya.

13. R A D Mahinda
    Ranasinghe,
    1364/12, Kotte Road,
    Rajagiriya.

14. R A D Lalitha Manel Kothalawala,
1364, Kotte Road, Rajagiriya.

15. R A D Keerthi Ranasinghe,
296/12, Kotte Road,
Rajagiriya.

16. R A D Lakshmi Ketagoda,
1364, Kotte Road, Rajagiriya.

17. R A D Jayampathi Ranasinghe,
1364/6, Kotte Road,
Rajagiriya.

18. R A D Namal Kanthi Kuruppu,
1364/6, Kotte Road,
Rajagiriya.

19. Kotte Sri Jayawardena Pura Municipal Council,
Nawala Road,
Rajagiriya.

20. Urban Development Authority.
Sethsiripaya,
Battaramulla.

21. Hon. Jeevan Kumaratunge,

Minister of Land,
Ministry of Land,
Rajamalwatte Road,
Battaramulla.

21A. Hon. Janaka Bandara Tennekoon,
Minister of Land and Land Development,
"Govi Janan Madiraya",
80/5, Rajamawatte Lane,
Battaramulla.

21B. Hon. M.K.D.S.Gunawardena M.P,
Minister of Land and Land Development,
"Govi Janan Madiraya",
80/5, Rajamawatte Lane,
Battaramulla.

21C. Hon. John A.E. Amarathunga M.P,
Minister of Land,
"Govi Janan Madiraya",
1200/6/5, Rajamawatte Avenue,
Battaramulla.

21D. Hon. Gayantha Karunathillake M.P.,
Minister of Land and Parlimentary

Reforms,
“Govi Janan Madiraya”,
1200/6/5, Rajamawatte
Avenue,
Battaramulla.

21E. Hon. S.M. Chandrasena,
Minister of Land and Land
Development.
“Govi Janan Madiraya”,
1200/6/5, Rajamawatte
Avenue,
Battaramulla.

21F. Hon. Harin Fernando
M.P,
Minister of Tourism, Land &
Land
Section,
“Govi Janan Madiraya”,
1200/6/5, Rajamawatte
Avenue,
Battaramulla.

21G. Hon. K.D. Lal Kantha
M.P,
Minister of Agriculture,
Livestock Land and Irrigation,
No.80/5, Govijaya Mandiraya,
Rajamalwatta Lane,
Battaramulla.

22. Hon Attorney General,

Attorney General's
Department,
Colombo 12

Respondents

Before: **MAHINDA SAMAYAWARDHENA, J.**
K. PRIYANTHA FERNANDO, J.
MENAKA WIJESUNDERA, J.

Counsel: Dr. Romesh de Silva, PC with Sugath Caldera and Niran Anketel instructed by Abdeen Associates for the Petitioners.

Senaka de Saram with Tharindu Balasuriya instructed by Disna Amarasinghe for the 1st Respondent.

Dr. Avanti Perera, DSG instructed by Nimalika Wickremasinghe, SA for 4th, 5th, 6th, 7th, 20th, 21st, and 22nd Respondents.

Manohara de Silva, PC with Nadeeshani Lankatilleka and Dilmini de Silva instructed by Bandara Talgune for 8th, 9th, and 11th Respondents.

Sanjeeva Jayawardene, PC with Lakmini Warusavithana for 10th, 13th, 14th, and 16th Respondents

Chrishmal Warnasuriya with Wardani Karunarathne and Mahada Fernando instructed by Dimuthi Ginigaddara for 12th, 15th, 17th and 18th Respondents.

Neville Abeyratne, PC with Kaushalya Abeyratne Dias instructed by Aruni Gunarathne for the 19th Respondent.

Argued on: 14.10.2025

Decided on: 17.03.2026

K. PRIYANTHA FERNANDO, J.

1. The Petitioners state that they are citizens of Sri Lanka residing in the area close to the *Heen Ela* Marsh Water Retention Area. The 1st and 2nd Petitioners are the President and Secretary of the "Rajagiriya Udyana Residents' Association", an organization comprising residents of 44 houses in the Rajagiriya Udyanaya. The action is stated to be instituted on behalf of the Petitioners themselves and in public interest. The Petitioners allege that the fundamental rights guaranteed to them under Article 12 (1) have been violated by the Respondents. This Court granted leave to proceed and has granted the interim relief sought under sub paragraphs (f), (g), and (h) of the Petition dated 08.10.2008.

The Facts

The Petitioner's Position

2. The Petitioners state that the *Heen Ela* Marsh is the largest water retention in the Colombo and Kotte area where it acts as a water retention for rain and storm water collected from catchments of Rajagiriya, Welikada, Koswatta, Narahenpita, Elvitigala and Borella prior to the water being discharged to the sea via the Wellawatta Canal. It is further stated that the rain and storm water collected in Diyawanna and Kotte marsh are also discharged to the Heen Ela Marsh through a canal that runs parallel to the Sri Jayawardena Pura Mawatha. The Petitioners submit that this geographic situation renders the Heen Ela Marsh a very sensitive environmental area.

3. The Petitioners state that by Gazette Notification 685/11 dated 23.11.1991 the land area of 45.50876 hectares depicted in plan No. LA/63 – 1 made by P. Karunasundara licensed surveyor was acquired by the Government out of the Heen Ela marsh to be maintained as water retention alongside other acquisitions made in relation to the Heen Ela marsh. Following the acquisition, it is submitted that the 1st Respondent, the Sri Lanka Land Reclamation and Development and Sacred Area Ministry excavated a canal on the Northern Boundary on the said land adjacent to the property owned by the 3rd – 6th Respondents known as the Keells Housing Scheme. This canal is said to be 20 – 30 feet wide and 10 feet deep.

4. The Petitioners further state that by the said Gazette dated 23.11.1991, allotment of land Nos. 43 – 52 in plan No. 867 dated 10.10.1987 made by G.P. Abeynayake licensed surveyor which were owned by Mrs. Dona Grace Violet Ranasinghe, Lot No. 13 owned by Namal Kuruppu (18th Respondent) and Lot No. 53 which is a road reservation of the owners of various other allotments of land inclusive of the 1st Petitioner, were acquired for the public purpose of maintaining as the Heen Ela marsh water retention. The remainder of land area shown in the Plan No. 867 has been developed for residential purpose prior to the said acquisition.

5. Thereafter, upon acquisition the 1st Respondent has excavated up to 25 feet wide and 10 feet deep canal in the said lots 43 – 53 and 13. This canal has been maintained by the 1st Respondent by deploying a floating dredger from time to time.

6. The Petitioners have then become aware that the aforementioned Violet Ranasinghe (owner of land Nos 43 - 52) made an application to the 1st Respondent to divest the said property. The Petitioners state that this request was made despite the 1st Respondent having already built the said canal and have been maintaining the same whereby the land has been already used for the purpose for which it had been acquired by the state as the 1st Respondent has already developed the land by excavating a canal for drainage of rain/ storm water.

7. The Petitioners state that the 1st Respondent by letter dated 22.04.1998 informed Violet Ranasinghe that the Divesting Committee had already approved the divestiture of Lots 43 – 52 and 13 in plan No. 867 and that a separate plan ought to be drawn to divest the land, this letter however makes no reference to lot 53 which is shown in the plan as a right of way. The 1st Respondent has then, by letter dated 13.05.1998 requested Violet Ranasinghe to consider the request for development of the property in the name of the nine children who owned the property.

8. The Petitioners state that the aforementioned reference to Violet Ranasinghe's children as the owners of divided and defined shares is factually untrue as allegedly, prior to the vesting, the said allotments of land 43 – 52 were in fact owned by Violet Ranasinghe. They submit that this was a fraudulent scheme adopted by the 1st Respondent to deviate from the policy of the Government in divesting the marshy lands acquired. The Petitioners allege that this was done as it was the policy of the previous Government that a maximum of 10 perches would be divested from a marsh land if the previous owner did not have any other land to put up a residence for his occupation.

9. Therefore, the Petitioners state that Violet Ranasinghe was not entitled to make an application to divest over 10 perches as the land sought to be divested was an extent of 120 perches. It is further stated that as of 1998, the children of Violet Ranasinghe were grown adults who were not entitled to make any application as they were not owners of the land prior to divesting. Therefore, they allege this to be a fraudulent scheme.

10. The Petitioners state that in pursuing the aforementioned alleged fraudulent scheme, the Surveyor General had prepared a plan depicting the land sought to be divested as a separate lot bearing the number CO 7352. In this plan, the land sought to be divested is shown as Lot 7. The Petitioners state that the aforementioned Lot 7 in plan No. CO 7352 contains Lot 53 of plan 867 (marked "D") albeit it not being a part of allotment contemplated for divesting as per the letter dated 22.03.1998.

11. The Petitioners state that thereafter, through notice published in the Gazette No. 1089/4 dated 19.07.1999 the Minister of Land divested the allotment of land Lot 7 in plan CO 7352. It is submitted that the divestment was made in respect of a land to an extent of 0.2841 Hq (112 perches) despite the aggregate extent of Lots 43 – 52 and 13 being 99.52 perches.

12. It is submitted by the Petitioners that this divesting order was obtained by fraudulent suppression of facts for the following reasons. It is submitted that the said land area is a marsh, a natural water retention area where a canal is made and maintained by the Sri Lanka Land Reclamation and Development Corporation (SLLRDC). That Violet Ranasinghe was advised by the SLLRDC to make the application in the name of her children as she would not have been entitled to a divesting order otherwise. It is further stated that therefore, the applicants for the Divesting Order were not the former owners from whom the land actually was acquired by the Government.

13. The Petitioners further submit that some of them became aware of the said decision of divestment in or about March of 2002 following which they made representations to several including the Chairman and the Deputy Chairman of the 1st Respondent setting out the illegal conduct of the 1st Respondent where they have also made a request to re-vest the property and suspend from issuing a filling permit till the matter is investigated into.

14. Upon making these representations, the 3rd, 5th and 6th Petitioners have met with the Deputy Chairman of the 1st Respondent, where he has agreed to investigate the matter and not issue a development permit. The Petitioners submit that they have since inquired from time to time whether a development permit would be issued and they have been notified that owing to the environmental sensitivity of the Heen Ela marsh, a filling permit would not be issued albeit the land being divested.

15. It is further submitted that the Urban Development Authority has imposed a Moratorium against filling land even with permits in low lying areas and that such was in full force until July 2008. The Petitioners have also become aware that on or about 29.09.2008 the 4th Respondent with the concurrence of the 5th Respondent had instructed the 1st and 2nd Respondents to not permit filling this land upon representations made by the Petitioners.

16. However, the Petitioners state that on 02.10.2008 at about 8.00 am, a group of persons commenced hewing trees in the Heen Ela Marsh upon which, some of the Petitioners had notified the Police. Following the arrival of the Officer in Charge (OIC) of the Welikada Police to the scene, one of the individuals engaged in hewing the trees had informed him he was doing so under the instructions of the 8th Respondent. At this point the OIC had called the 8th Respondent over the phone and thereafter requested the individuals hewing the trees to leave the Heen Ela Marsh. However, it is submitted that when the 1st, 3rd, 4th, 5th and 6th Respondents were at work,

the aforementioned individuals had continued the cutting of the trees in the Heen Ela Marsh.

17. The Petitioners submit that on 02.10.2008 the 1st Respondent had revealed that the 1st Respondent had issued a development permit to the 10th – 18th Respondents although information regarding the date or any other particulars were not provided to the Petitioners. It is the position of the Petitioners that such development/ filling permit is not permissible given the environmental sensitivity and the risk of reduction of water retention.

18. The Petitioners state that Violet Ranasinghe passed intestate on 12.08.1999 where her intestate heirs became entitled to her intestate estate in equal shares. This included her children; Ananda Ranasinghe and the 11th – 18th Respondents. Her estate had been administered in DC Colombo Testamentary Proceedings No. 35888/T. By Administrators' Conveyance No. 958 dated 29.11.2003 attested by B.M. Wickremasinghe Notary Public, allotment of lands marked Lots 13, 44 – 52 and Lot 53 have been conveyed to the said intestate heirs in equal shares.

19. It is submitted that the aforementioned intestate heirs have purported to cause the Lots 13, 44 – 53 to be amalgamated and subdivided into 10 allotments of land alongside two road reservations where all the intestate heirs were given one allotment of land except for the 11th Respondent who was given two. This additional allotment had been gifted to the 9th Respondent.

20. On 05.10.2008 the Deputy Mayor of the Kotte Municipal Council alongside the Police had visited the land and ordered the 10th – 18th Respondents to halt the land filling immediately as they didn't possess a Development Permit issued by the Municipal Council. The Petitioners further state that the 1st Respondent had not issued an order suspending the Development permit issued to the 10th – 18th Respondents despite

instructions from the 5th Respondent to do so. It is submitted that the 8th – 18th Respondents have cut down marshy land trees and mangroves (some of which were 2 – 3 feet wide) in state land beyond the land purported to be divested.

21. Therefore, the Petitioners state that the initial water retention in the Heen Ela marsh water retention area was above 1000 acres and that the land filling has led to this area significantly reduced. It is also submitted that the grant given by the Japanese Government to rehabilitate the canal and the drainage network in and around Colombo was awarded upon the understanding that a minimum 1000 acres of water retention area would be maintained, whereby the subsequent land filling is in violation of such. They further submit that this land filling has rendered the areas close to Heen Ela Marsh going under water even with the slightest rain. Proof of such is submitted to this Court marked "O1" and "O2". It is submitted that the residents (amounting to about 3000 people) of Polwatta and Bandaranayakapura are the most affected by this landfilling.

22. It is submitted that scientists from the Environment Foundation Limited had visited the land and compiled a report highlighting the damage caused by the hewing of trees and the damage that could be caused if the land is filled.

23. It is submitted that the 6th Respondent and its Director General refused to consider the request of intervention by the Petitioners owing to the land in question being less than 4 Hq. The Petitioners state that there is no such limitation in its jurisdiction. Further that the legal officer of the 1st Respondent refused to divulge any information with regards to the divesting order.

24. Therefore, the Petitioners state that if the 1st – 3rd and 8th – 18th Respondents are allowed to fill this land, grave and irreparable loss and

damage would be caused to the Petitioners and all those occupying in the area bordering the Heen Ela Marsh. Therefore, it is alleged that the fundamental rights granted to the Petitioners by Article 12 (1) are in violation by the Respondents.

The 1st, 2nd and 3rd Respondents' Position

25. In their statement of objections, the 1st – 3rd Respondents have provided the following. It is stated that the land in question (depicted in Advance Tracing No. LA/63 – 1, an extent of 43.50876 hectares) was acquired by the State by Gazette Notification bearing 685/11 dated 23.10.1991. Thereafter lots bearing Nos. 43 - 52 and 13 in plan bearing No 867 was maintained for the purpose of water retention.

26. It is stated that the 1st Respondent constructed a peripheral canal which extended across Lots 43 - 52 and 13 in plan bearing No 867 for the purpose of preventing encroachment of the aforementioned land. It is further stated that this canal is not required to direct or discharge water but only to prevent encroachment.

27. Thereafter, it is stated that Violet Ranasinghe (original owner of the lands) and one of her children (D.L. Ranasinghe) had made several requests to divest their land in plan bearing No 867 owing to the fact that many of their lands were acquired by the State and as the land in question was the only land owned by Violet Ranasinghe.

28. Following the repeated representations by Violet Ranasinghe, it is submitted that the 1st Respondent made the decision to divest the lands described as Lots 43 – 52 and 13 in plan bearing No 867 as she was also not offered compensation for the lands acquired. The decision was made on 26.02.1998. It has been communicated to Violet Ranasinghe by letter dated 22.04.1998. It has subsequently been gazetted by Gazette dated 19.07.1999 bearing No. 1089/4. The gazette is submitted marked "1R11".

29. It is further submitted that upon the decision dated 26.02.1998 the land in question was released for development by reopening the old canal trace depicted as Depa Ela, closing down the peripheral canal which cut through the land in question. It is also stated that the 1st Respondent adopted a scheme forwarded to them by the Secretary to the Ministry of Housing, Construction and Public Utilities by letter dated 27.03.1997 (marked "1R12") which was approved by the Cabinet of Ministers.

30. It is stated that at the planning committee meeting of the 1st Respondent on 21.04.1998, each child of Violet Ranasinghe was asked to open a separate file to consider the application for development of the said land divested owing to there being numerous applicants for the development of the land in question. However, on 17.08.1999 the decision to fill the divested land has been cancelled.

31. Thereafter, on 28.12.1999 it has been decided that owing to a dispute as to the ownership of the divested land, to suspend previous approvals for developing until the conflict is resolved.

32. In May of 2006 as per a document submitted by the 1st Respondent's legal division regarding the ownership of the divested land, development approval has been granted for the land in question subject to drainage conditions being fulfilled.

33. It is stated that by letter dated 12.03.2008 the 1st Respondent has stipulated the guidelines and conditions relating to the development of the land in question for the children of Violet Ranasinghe (10th – 18th Respondents) who had sought permission to develop the land. Thereafter, by letter dated 06.10.2008 the development permission has been suspended owing to the complaints the 1st Respondent has received in relation to the drainage of water in the Rajagiriya Park. The 1st - 3rd

Respondents have made and submitted Report marked "1R18" in relation to the status quo of the land in question.

34. It is further submitted by the 1st Respondent that the flood threat to the low lying areas alleged by the Petitioners in paragraphs 29 and 30 of the Petition is due to the fact that a majority of these settlements are built without the authority of the 1st Respondent whereby they fall within the ambit of unauthorized structures built illegally.

The 8th, 9th, 11th Respondents', 10th, 13th, 14th, 16th Respondents' and 12th, 15th, 17th and 18th Respondents' Position

35. Through their written submissions the 8th, 9th, and 11th Respondents, 10th, 13th, 14th, 16th Respondents and the 12th, 15th, 17th and 18th Respondents have raised a preliminary objection alleging that the instant application is made out of time. It is submitted that the application has been filed on 08.10.2008, ten years after the issuing of the divesting order in question. A secondary preliminary objection is raised by the learned Counsel for the 12th, 15th, 17th and 18th Respondents alleging mala fide conduct on the part of Petitioners whereby it is submitted that the action should be dismissed *in limine*.

36. It is further submitted by the 12th, 15th, 17th and 18th Respondents that the interests of the Petitioners are not public but private whereby it is alleged that the application does not fall within the realm of public interest litigation.

37. In terms of facts, the 10th , 13th, 14th, 16th Respondents submit that the land was owned by Mrs. Dona Grace Violet Ranasinghe who is the mother of 11th – 18th Respondents and the mother-in-law of the 10th Respondent, who was also related to and a close family friend of the 9th Respondent. The land has been acquired on or about the 23rd of November 1991. It is submitted that even at the time of acquisition, 50% of the land has been lawfully developed by filling the land.

38. Thereafter, it is submitted that owing to the non-utilization of the land for an ostensible public purpose, the possession of the land not being taken over by the state and as Violet Ranasinghe has not been compensated for the land, she has made representations to the 1st Respondent upon which the land was divested on or about the 19th of July 1999. Upon the granting of the divesting order, repeated development approvals have been granted to this land. In this regard, development approvals have been granted on 8/3/1985, 20/4/1998 (approval of Kotte Municipal Council), 17/5/2006 and 12/3/2008.

39. To substantiate their position, the 8th, 9th, and 11th Respondents have submitted that looking at the geographical location, the Petitioners, being residents of the *Rajagiriya Udyanaya* are located on a horizontal line to lot 7 which is the divested lot as per plan bearing No. CO 7352. In this regard it is stated that if the Petitioners are allowed to remain, there is no logical basis to not divest lot 7 which is located parallel to the Petitioners place of location. It is further submitted that there are other properties located close by such as a housing scheme under the name "Lake Crescent".

40. To further substantiate this, the 8th, 9th and 11th Respondents in paragraph 3 (d) (iv) of their objections has stated that the 1st Petitioner is located in lot 11 (which has not been contested by the Petitioners). It is therefore argued that as lot 11 is parallel to lot 7 as per plan bearing no. 867 (marked "D") there is no logical basis to not divest lot 7 which is located parallel to the Petitioners place of location. It is further submitted that the canal is located further south of these lots and that there is a lot of land between the canal and the residences of the Petitioners.

41. Regarding the contention concerning the road reservation, two responses are submitted. Firstly, that the 20 feet road reservation as depicted in the Plan 867 is a part of Lot 6 whereby it is not a part of Lot 7 which forms the subject of the divesting order. It is also submitted that the road reservation is not necessary as a road reservation as Lots 44 – 52 can be accessed from the road north of those lots and that Lot 13 is accessible

through Lot 12 (also a road reservation). In this regard, it is submitted that the lots making up Lot 7 are small with around 10 perches or less whereby once they are marked there is plenty of land remaining in Lot 6 working as a buffer zone before reaching the "ela" (about 20 feet) if necessary.

42. It is also submitted that "8R4" and "8R5" show a road providing access to several houses, and that the vacant land visible is the disputed Lots 7 and 6. The parked vehicles in the picture are said to be parked on Lot 42, a road that gives access to Lots 39, 40, 41, 32 and 31.

43. It is also submitted that the Petitioners are mistaken in their claim that Lot 7 is part of the "Heenela Marsh." It states that none of the plans depict an area called "Heenela." Plan 867 is argued to refer to a smaller water channel called "Depa ela," which is not the same as "Heen ela." Therefore, it is submitted that the petitioners have misrepresented Lot 7 as belonging to Heen Ela marsh when such is not actually located near the site.

44. In these circumstances it is submitted that the Petitioner's application should be rejected for violating Article 126 of the Constitution as it is not submitted within the prescribed one month period, and as the Petitioners' application has been made mala fide as if Lot 7 is to be identified as a marsh, the Petitioner's lands should also be identified as a marsh and that the Petitioners have avoided mentioning the location of their properties to suppress the truth that the Petitioners' lands and those of the 8th – 11th Respondents are part of the same land. It is stated that it would be reasonable to allow the 8th – 11th Respondents to retain property which has been justly inherited by the Respondents.

45. Vis-à-vis the question of divesting, it is the position of the 12th, 15th, 17th and 18th Respondents that such was done legally and according to due procedure established by the law following the realization that the land in question was unutilized for the intended public purpose. It is submitted that the decision dated 26.02.1998 by the 1st Respondent to divest the

lands followed the statutory process and was subsequently published on gazette dated 19.07.1999 bearing 1089/4.

46. It is further submitted by the 12th, 15th, 17th and 18th Respondents that the development approval is valid and legal as pursuant to the divesting process where a scheme was formulated by the Cabinet, the Respondents have obtained permission to develop the said lands to thereby construct their residences.

47. The process followed is submitted to this Court as follows: there have been directions to have separate files to consider the several applications for development (these are marked "1R14" and "1R15"). Thereafter they have been issued conditional permission for development with attached conditions and guidelines that ought to be followed dated 12.03.2008 (marked 1R16).

48. For these reasons primarily, it is the position of the 12th, 15th, 17th and 18th Respondents that there was no illegality or procedural shortcomings in the process of divesting or the granting of the development permission.

The 5th, 6th, 7th, 20th, 21st and 19th Respondents' Position

49. The 5th Respondent in paragraph 19 of his affidavit states that the Ministry of Urban Development and Sacred Area Development imposed a moratorium on the filling of wetlands in the Western Province on or around 21.09.2003 which was subsequently published in national newspapers. The Urban Development Authority (20th Respondent) has been required to enforce this moratorium during its application (which was extended from time to time until July 2008).

50. He has further stated that the Chairman of the 1st Respondent was directed by the 5th Respondent to inquire into the complaint made by some of the residents regarding this and to stop the filling operation if it has

affected any person or property. It is further stated that the 1st Respondent has issued a letter marked "5R2" dated 06.10.2008 whereby the 10th – 13th and 15th – 17th Respondents were informed of the temporary halting of the approval granted for the Development Plan owing to an investigation. For these reasons primarily he submits that the Petitioners are not entitled to any relief against the 5th Respondent.

51. The 6th Respondent in paragraph 06 of his affidavit admits to the divesting carried out by the 1st Respondent in and out of the Heen Ela Marsh, however, he maintains the position that no material is submitted by the Petitioners to establish that the actions of the 6th Respondent has violated their fundamental rights. Through written submissions it is further submitted that the 6th Respondent has had no involvement in making the impugned decision or the granting of the development permit whereby it is submitted that the claims against the 6th Respondent are untenable.

52. Through the affidavit of the 7th Respondent it is admitted that he got a call on 02.10.2008 where it was stated that a group of people were engaged in filling a marsh located along Rajagiriya Gardens upon which the Officer in Charge of Welikada Police had proceeded to investigate the scene. At this point the 13th Respondent has claimed that he has obtained permission from the 1st Respondent to fill the land in question. To this, the Deputy Mayor of the 19th Respondent and its engineer had objected stating that the permission of the Urban Development Authority and the Central Environmental Authority too were required whereby the Officer in Charge had instructed to stop the land filling until aforementioned clearance has been obtained. As the officers of the Welikada Police have acted promptly with regards to the complaints made and as the only relief prayed for against them were those in paragraphs (f) and (h) of the Prayer of the Petition concerning interim relief (which have been granted by this Court), it is submitted that the Petitioners have not sought any further substantive relief against the 7th Respondent.

53. The 20th Respondent maintains that they did not impose a moratorium against the filling of land in low lying areas as claimed by the Petitioners. It is further submitted that the 1st Respondent did not obtain the written approval of the Urban Development Authority for any activity concerning the land that is presently in issue, and that there is no substantive relief sought against the 20th Respondent by the Petitioners. The 21st Respondent in his affidavit maintains that the divestiture of the land which forms the subject matter of the case at hand was carried out in accordance with the provisions of the Land Acquisition Act whereby he has not abused any authority in granting illegal favors to the 8th – 18th Respondents as alleged by the Petitioners whereby submitting that the Petitioners are not entitled to any relief against the 21st Respondent.

54. Through written submissions, the 19th Respondent has submitted that the 19th Respondent did not issue any permit or authorization to the 8th – 18th Respondents and that the 19th Respondent exercises delegated authority within the Municipal Council area as per S. 23 (5) of the Urban Development Act from the 20th Respondent. For these reasons it is submitted that the 19th Respondent acts under the supervision and direction of the 20th Respondent. It is further submitted that no substantive relief is sought from the 19th Respondent.

Preliminary Objection (a): The Application is Time Barred

55. As per article 126 (2) of the Constitution, any person alleging the infringement of a fundamental right must apply to the Supreme Court by way of a Petition within one month of the alleged violation in accordance with any rules of Court as may be in force.

56. The 1st Respondent, 8th, 9th, 11th Respondents, 10th, 13th, 14th, 16th Respondents, and 12th, 15th, 17th and 18th Respondents have argued that the instant application has been filed ten years after the issuance of the

divesting order in question as it is stated that the subject matter of the application was duly divested back in 1999 (see 1R11) following the due procedure. It is submitted that as per paragraph 16 (a) of the Petition, the Petitioners have admitted to becoming aware of the decision to divest some time in 2002.

57. Upon perusal I observe that paragraph 16 (a) of the Petition states the following:

> "*When some of the Petitioners became aware of the said decision in or about March 2002, they made written representations to the Chairman and the Deputy Chairman of the 1st Respondent…*"

58. It is the position of the 12th, 15th, 17th and 18th Respondents that upon the perusal of documents submitted by Petitioners marked "K1" "K2" and "I", it is evident that the Petitioners were aware of the divesting order much prior to the filing of the Petition.

59. It is further submitted by the 8th, 9th, and 11th Respondents that if the Petitioners wished to challenge the divesting order, they should have done so within one month from the gazetting as once the property is divested by gazette, the Petitioners should have known that the individuals in whose favor the divesting order was made, would ideally want to develop the land. It is further submitted that the Petitioners have not filed any proof of inquiring into the granting of the development permit and that the position that they relied on the purported undertaking given to investigate into the matter ought not to be accepted. It is argued that the divesting order was made by the Minister of Lands and there is no undertaking or assurance from the Minister that the divesting order would be cancelled or reversed.

60. The 8th, 9th, and 11th Respondents reject the position that the Petitioners became aware of the issuance of a development permit to the 10th – 18th Respondents on 02.10.2008 as this application was allegedly

filed on the same day which they submit is practically impossible. (However, I observe that the Petition has been filed on the 8th of October 2008.) For these reasons, they reject the position that the Petitioners got to know of the development permit on the 2nd of October 2008 and therefore argue that the application ought to be dismissed for being time barred.

61. Citing ***Edirisuriya v Navarathnam and Others [1985] 1 SLR 100, at pages 105 and 106*** where it states that the one month time limit is mandatory and that any delay must have adequate excuse, it is submitted by the learned Counsel for 12th, 15th, 17th and 18th Respondents that given the absence of a cogent or valid reason as to the failure to plead this matter within the prescribed time period, it ought to be dismissed for being time barred.

62. In response the Petitioners have submitted that the State party Respondents have not raised this objection. (However, I observe that by their written submissions dated 5th June 2013, the 1st Respondent has raised the issue of time bar.) It is further submitted that Petitioners came before this Court immediately after it was known to them that the development permit was issued without any notice to them. It is submitted that it was on the 2nd of October 2008 that the 1st Respondent has for the first time divulged that the development permit was issued to the 10th – 18th Respondents. As the Petition was filed in this Court on the 8th of October 2008, it is submitted that the Petitioners have filed this case within a month of the issuance of the development permit.

63. The argument brought by the 12th, 15th, 17th and 18th Respondents that the documents marked "K-1" "K-2" being proof of Petitioners having knowledge of the development is contested as it is submitted that the document states "***if*** *this filling permit is allowed to take place…*" (emphasis mine). I observe that this position has merit.

64. It is also argued that as per the dicta of ***Sugathapala Mendis and Another v Chandrika Kumaratunga and Others(Waters Edge Case) [2008] 2 SLR at page 339*** this Petition ought to be addressed and not dismissed on technical and procedural matters.

65. In the ***Waters Edge Case*** (supra) the fact that large scale developments occur over time and how the project in question therefore was still not concluded was given due consideration in allowing for a more liberal interpretation of the one-month rule. Further the following was stated by Justice Shiranee Tilakawardane at page 355:

> "*For this Court to ignore the continuing nature of a large-scale development project would be to ignore the continuing nature of any violations that stem out of such a project.*"

66. It is further submitted that owing to the potential environmental disaster that would be caused if the land filling is allowed, this action in question falls within the realm of continuing violation.

67. The case of ***H. Dilanka Wijesekera v Gamini Kulawansa Lokuge, Minister of Sports SC FR No. 342/2009 SC Minutes of 10.06.2011*** is cited in this regard where the following has been held:

> "*Though the Petitioner has indeed filed an Application more than one month after the issuance of the Order, to reject the Application on this basis alone would be to ignore the continuing nature of the violation of the Petitioner's fundamental rights at issue in this case. The decision in Sugathapala Mendis and another v. Chandrika Bandaranaike Kumarathunga and others (S.C.F.R. 352/2007) articulates the nature of the injustice we seek to avoid here, noting that the nature of a large-scale development project was one that, by definition, continued over time, and therefore, the commencement of the project could not fairly be used as the point from which time began [...]*

As in Sugathapala, the instant case involves the violation of the Petitioners' fundamental rights in the context of a situation, which by definition, continues this violation. Indeed, in a matter where the violation is of a serious nature, affecting material rights which are pertinent and critical to the Petitioner, where mala fides, bias or caprice can be established and if it is a continuing violation, this Court will not dismiss the case in limine, without at least considering the grievance of the Petitioners especially in a matter that affects youth and young persons. Therefore, this Court refuses to dismiss, in these particular circumstances, this case in limine based on non-compliance with Article 126(2)."

68. Having considered the arguments by all parties, it is my opinion that even if the application is seemingly filed out of time, owing to the gravity of the issue and the alleged continuing violation vis-à-vis the environmental sensitivity of the area in concern coupled with the exacerbated adverse implications of not addressing the merits of the instant application, the preliminary objection of the time bar ought to be overruled. I must mention that this position is taken owing to the exceptional circumstances of the case at hand.

69. I further observe that the issue of time bar was taken up on the 11th of July 2013 by a bench comprising of Chief Justice at the time, Mohan Pieris, PC, Justice Sri Pavan, and Justice Wanasundera, PC and the decision dated 29.07.2013 reflects a similar position on the matter as their Lordships and her Ladyship were also of the opinion that disposing the case at hand on the basis of it being time barred would be unsafe.

Preliminary Objection (b): *Mala Fidei* Conduct

70. The learned Counsel for the 12th, 15th, 17th and 18th Respondents raised a second preliminary objection alleging that the Petitioners have purposely attempted to misdirect this Court as to material facts and circumstances

whereby submitting that the Petitioners are guilty of suppression and or misrepresentation. To substantiate this position, they have provided the following.

71. It is submitted that the assertion of the disputed plot being situated next to the Heen Ela is factually inaccurate as the plot is abutting a 20 feet road reservation from the man-made canal called "Depa Ela". I observe that this position is factually accurate. However, the Petitioners have responded that this application is in respect of an attempt to fill a part of the Heen Ela Marsh (see "A1", and "A2") and not Heen Ela.
It is submitted that this position is affirmed by the affidavits of the 5th Respondent, 7th Respondent. I am inclined to accept the position of the Petitioners here.

72. However, the learned Counsel for the 12th, 15th, 17th and 18th Respondents also contest the position of the Petitioners that the Heen Ela being a marsh for water retention as it is not recognized as such in the data bases of the Central Environmental Authority (CEA). This position is further substantiated by the fact that the CEA maps which illustrate Colombo Flood Retention Areas and Wetlands not recognizing such a water retention marsh (see "8R1" and "8R2").

73. In these circumstances, citing the cases ***Commercial Bank of Ceylon v Nawa Rajarata Appliances [S.C Appeal No. 44/2016 S.C. Minutes of 05.10.2022]*** and ***Jayasinghe v National Institute of Fisheries and Nautical Engineering (NIFNE) [2002 1 SLR at page 277]*** it is submitted that owing to misrepresentation of material facts the Petitioners lack *uberrima fide* and that this Court ought to take these submissions into consideration in deciding on this matter.

74. Owing to the ambiguity as to the distinction between the "Heen Ela Water Retention Marsh" and "Heen Ela", I will move to discuss the merits of the matter keeping aside the second preliminary objection raised.

Locus Standi of the Petitioners

75. As per Article 126 (2) of the Constitution, an action in fundamental rights jurisdiction can only be filed by the person whose rights have been infringed or are about to be infringed (or an Attorney-at-Law acting on behalf of such person). In the case of ***Wanasinghe (Citizens Movement for Good Governance) v University of Colombo [2006] 3 SLR at page 322*** it has been held that an impugned order must be challenged by "*Persons directly affected by the said order in the appropriate forum provided by law*". It has further been held that "*another body of persons who are not directly affected cannot claim locus standi to challenge the said order on the basis of public interest*". In this regard, it has been argued by the learned Counsel for the 12th, 15th, 17th and 18th Respondents and the Presidents' Counsel for 10th, 13th, 14th, 16th Respondents that the instant application does not fall within the realm of public interest litigation and that the Petitioners are motivated by private interests.

76. In determining the question of standing, I observe that in the case of ***Azath Salley vs. Colombo Municipal Council [2009] 1 SLR at page 365*** the following was held at page 384:

> *"Where a person therefore complains that there is transgressing the law or it is about to transgress, which would offend the petitioner and several others, such a petitioner should be allowed to bring the matter to the attention of this Court to vindicate the rule of law and to take measures to stop the said unlawful conduct."*

77. In the circumstances of the instant application, I am of the opinion that the Petitioners do in fact have *locus standi* to come before this Court. This is for the following reasons. Firstly, the divested land is in close proximity to where the Petitioners reside whereby any activity taking place in such region is a valid concern of the Petitioners. For this reason alone, the Petitioners have *locus standi*.

78. I also observe that the document marked "P" is a representation made by 126 people living in settlements adjacent to the land in question who claim to be affected by the divestiture. I observe however, this document relates to an opposition to divesting the land in question and "Depa Ela" the latter which is not being filled. I also observe that the 1st Respondent has submitted that the flood threat to the low-lying areas alleged by the Petitioners is due to the fact that a majority of these settlements are built without the authority of the 1st Respondent whereby they fall within the ambit of unauthorized structures built illegally. In these circumstances I find it difficult to accept that this Application falls within the ambit of public interest litigation.

79. Nonetheless, I am of the opinion that the merits of the case ought to be addressed given the gravity of the situation and that in any event, the Petitioners have standing in this Court to file this application.

Alleged Violation of Article 12 (1) of the Constitution

80. The question to be addressed in this application is whether the fundamental rights guaranteed to the Petitioners under Article 12 (1) of the Constitution have been violated by the Respondents. In my opinion, primarily, the following questions ought to be answered in arriving at a decision on whether the fundamental rights guaranteed by Article 12 (1) of the Constitution are in violation: whether the issuing of the divesting order is an infringement of the Article 12 (1) of the Constitution, and whether the issuing of the development permit is an infringement of the Article 12 (1) of the Constitution whereby no arbitrary action has been involved in the obtaining of such. I will first consider the application of Article 12 (1) of the Constitution in these circumstances upon which I will address the aforementioned pertinent questions.

81. Article 12(1) of the Constitution provides:

"All persons are equal before the law and are entitled to the equal protection of the law."

82. In the case of ***Ariyawansa and others v. The People's Bank and others [2006] 2 SLR 145 at 152*** Bandaranayake J. stated that,

"The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality."

83. Dr. Jayampathy Wickremaratne in ***"Fundamental Rights of Sri Lanka 3rd Edn [2021]"*** at page 445 elaborates on the nature of equality in the context of fundamental rights as follows:

"*Equal protection does not mean that all persons are to be treated alike in all circumstances. It means that persons who are similarly circumstanced must be similarly treated.*"

84. When examining the jurisprudence in relation to the operation of Article 12 (1) of the Constitution, it is notable that its scope has significantly widened over the years. The case of ***Wijerathna v. Sri Lanka Ports Authority [SC/FR/ 256/2017 S.C. Minutes of 11 December 2020]*** captures this change as follows:

"…The concept of 'equality' was originally aimed at preventing discrimination based on or due to such immutable and acquired characteristics, which do not on their own make human being unequal. It is now well accepted that, the 'right to equality' covers a much wider area, aimed at preventing other 'injustices' too, that are recognized by law. Equality is now a right as opposed to a mere privilege or an entitlement, and in the context of Sri Lanka a 'Fundamental Right', conferred on the people by the Constitution, for the purpose of curing not

only injustices taking the manifestation of discrimination, but a host of other maladies recognized by law. While all Fundamental Rights are of equal importance and value, the 'right to equality' reigns supreme, as it can be said that, all the other Fundamental Rights stem from the 'right to equality'. The ability of human beings to live in contemporary society (as opposed to merely existing), and develop and reap the fruits of social, scientific, economic and political developments, is based on their ability to exercise fully the 'right to equality'. Similarly, for human civilizations may they be national or international, to reap the full benefits of knowledge, skills, experience, talents and wisdom that people possess, people of such societies must enjoy the 'right to equality'."

85. Having examined the jurisprudence of Article 12 (1) of the Constitution it is clear that the case at hand falls within the ambit of the same. In these circumstances, I will examine the facts of the case in relation to the pertinent questions priorly discussed.

Is the issuing of the divesting order an infringement of the Article 12 (1) of the Constitution?

86. In this regard the learned Presidents' Counsel for Petitioners argued that Lots 43 – 52 and 13 in plan bearing No 867 (marked "D") was acquired for a public purpose which was to maintain the Heen Ela Marsh Water Retention and that the said public purpose was carried out by excavating a 20 – 25 feet wide and 10 feet deep canal in the aforementioned Lots.

87. Bringing into attention S. 39A of the ***Land Acquisition Act [Act No.9 of 1950 as amended from time to time]***, it is argued that there are four requirements to be fulfilled prior to making a divesting order.
S. 39 A of the ***Land Acquisition Act*** provides the following:

(1) Notwithstanding that by virtue of an Order under section 38 (hereafter in this section referred to as a " vesting Order") any land has vested [§ 2,

8 of 1979.] absolutely in the State and actual possession of such land has been taken for or on behalf of the State under the provisions of paragraph (a) of section 40, the Minister may, subject to subsection (2), by subsequent Order published in the Gazette (hereafter in this section referred to as a " divesting Order ") divest the State of the land so vested by the aforesaid vesting Order.

(2) The Minister shall prior to making a divesting Order under subsection (1) satisfy himself that-

(a) no compensation has been paid under this Act to any person or persons interested in the land in relation to which the said divesting Order is to be made ;

(b) the said land has not been used for a public purpose after possession of such land has been taken by the State under the provisions of paragraph (a) of section 40 ;

(c) no improvements to the said land have been effected after the Order for possession under paragraph (a) of section 40 had been made ; and

(d) the person or persons interested in the said land have consented in writing to take possession of such land immediately after the divesting Order is published in the Gazette.

88. It is the position of the Petitioners that owing to the fact that the land has in fact been used for a public purpose i.e. maintaining the Heen Ela Marsh Water Retention (as particularly evident through the affidavit of 5th Respondent at paragraph 13) criteria (b) is unfulfilled. Therefore, it is argued that the divesting order is contrary to law.

89. In this regard, through their written submissions the Petitioners have cited the case ***De Silva v Athukorala Minister of Lands Irrigation***

[1993] 1 SLR 283 where at page 292 Justice Mark Fernando has held as follows:

> *"The Act contemplates a continuing state of things ; it is sufficient if the lack of justification appears at any subsequent point of time ; this is clear from paragraph (b) of section 39A (2): if the land has not been used for a public purpose after possession has been taken, there is then an insufficiency of justification ; and the greater the lapse of time, the less the justification for the acquisition.*
>
> *If compensation has been paid or improvements have been made, then despite the inadequacy of justification, divesting is not permitted. The purpose and the policy of the amendment is to enable the justification for the original acquisition, as well as for the continued retention of acquired lands, to be reviewed ; if the four conditions are satisfied, the Minister is empowered to divest. Of course, even in such a case it would be legitimate for the Minister to decline to divest if there is some good reason - for instance, that there is now a new public purpose for which the land is required. In such a case it would be unreasonable to divest the land, and then to proceed to acquire it again for such new supervening public purpose."*

90. I must note that the facts of the instant application are significantly different to those in the case ***De Silva v Athukorala Minister of Lands Irrigation (supra).*** There, the State party has attempted to re-acquire a land that was once acquired for a new supervening public purpose whereby the original owners of the land have filed the case against the State party. Justice Fernando in this judgment has repeatedly asserted the importance of divesting the land once the public purpose has faded. In page 292 he states as follows:

> "*Where the element of public benefit faded away at some stage of the acquisition proceedings, the policy of the Act was that the proceedings*

should terminate and the title of the former owner restored; hence section 39 and section 50."

91. In this regard I will observe the responses by the Respondents vis-à-vis this argument. The foremost argument is that as per Gazette bearing No. 685/11 dated 23.10.1991 it is evident that the land in question was not acquired for water retention to begin with.

92. It is further submitted through the written submissions of the 12th, 15th, 17th and 18th Respondents that the land was divested upon the realization that there was an unutilized portion beyond the intended public purpose. This position is further affirmed by the submissions made by the 1st – 3rd Respondents where it was stated that the canal which was built for public benefit is not required to direct or discharge water but only to prevent encroachment. It is further submitted that "Depa Ela" has been reopened upon the releasing the land in question to be developed.

93. It is stated in the written submissions of the 12th, 15th, 17th and 18th Respondents that there is no adverse environmental impact to the surrounding area, water retention or canal systems through the permitting of development in the land in question. It is further submitted that as per "1R1" it is apparent that more than 46 hectares have been used for this very purpose.

94. In the written submissions of the 12th, 15th, 17th and 18th Respondents, the case of ***Kapugeekiyana v Minister of Land [SC Appeal 161/2010 SC Minutes of 18.11.2013]*** is cited where it was further held that:

"It is not in dispute that lands are acquired… for the benefit of the public. Yet, in the process one must not unduly neglect the owner of the land. It would be overly harsh to forget the ties a landowner has to his property"

95. I must also note that according to the statement of objections filed by the 1st – 3rd Respondents and submissions made by the 10 – 18th Respondents, it is stated that Violet Ranasinghe was never compensated for the land that was acquired from her.

96. In these circumstances I am inclined to reject the position of the Petitioners as it is submitted by the relevant state authority that the land in question was not used for the purposes of water discharge or drainage and more importantly as the original landowner has not been compensated for the acquired land which is grossly unfair.

97. It is further argued by the Petitioners that the Land Minister does not have the power to divest a part of the land vested. In this regard the case of ***Kingsley Fernando v Dayaratne and Others [1991] 2 SLR 129*** is submitted by the Petitioners where it has been held that:

> "*The other matter that comes up for consideration is whether, in any event, the pre-conditions stated in section 39A(2) (b) and (c) have been met in relation to the particular land. Learned Counsel for the Petitioner submitted that this matter should be considered in relation to only the particular portion of land claimed by the Petitioner and not the entire extent of land. Learned Counsel for the Respondents submitted that this has to be considered in relation to the entire land acquired upon the vesting Order.*
>
> *Section 39A(1) empowers the Minister to "divest" the State of the land so vested by the vesting Order". The vesting Order referred to is that made under section 38. It is clear from the papers filed in the previous application that there was one vesting Order in respect of the entire extent of 12 acres. Therefore I am inclined to agree with the submission of learned Counsel for the Respondents that the divesting has to relate to the entire extent covered by the vesting Order. This view is further supported by section 39A (4)(a) which provides that upon a divesting Order that land shall be deemed never to have vested in the State by*

virtue of the vesting Order. Hence what is contemplated is a complete reversal of the status quo ante and not a piece-meal divesting of particular portions of a land that is vested. The Petitioner has sought in this application only a divesting of a particular portion of the land that was vested. Therefore his application for a Writ of Mandamus cannot, in any event, succeed."

98. For the above reasoning it is submitted that the alleged divesting a part of the land vested is without power and therefore jurisdiction by the Minister of Land which makes it a nullity. In these circumstances the case of ***Sirisena and Others v Kobbekaduwa, Minister of Agriculture and Land [1974] 80 NLR 182*** , is cited where it is stated that:

"*If an act or decision is outside jurisdiction, it is null and void for all purposes. There are no degrees of nullity. If an act is a nullity, it is automatically null and void and there is no need for an order of the Court to set it aside though it is sometimes convenient or prudent to have the Court declare it to be so"*

99. Therefore, it was submitted that the issuance of the divestiture order is a nullity whereby it is of no force or effect in law.

100. Observing the facts of the instant application I am of the opinion that the circumstances in the case of ***Kingsley Fernando v Dayaratne and Others (supra)*** are different to those of the instant case. In the latter, as per the 1st – 3rd Respondents submissions, it is clear that the divested land is no longer required for the intended public purpose (neither has it ever been used for such purpose) and there is an alternative water canal serving the purpose intended to be served by the divested land. In these circumstances I am inclined to take a pragmatic approach in assessing this matter, whereby I am of the opinion that the divesting order is not rendered illegal merely by virtue of there being previous precedent to that` effect given the fact that practically, allowing the divestiture order and the

filling order thereof has no adverse effect as per the representations made by the relevant state authorities.

101. Having considered both positions, given the fact that the 1st – 3rd Respondents have submitted that an alternate Ela named "Depa Ela" has been reopened, I am of the opinion that the divesting order is not a violation of the Article 12 (1) of the Constitution. It must be noted that this position is taken owing to the exceptional circumstances of the case at hand, as the 1st Respondent has repeatedly asserted that the canal was not even maintained by the 1st Respondent upon its construction and as the canal was constructed only to prevent encroachment and not required to direct or discharge water which seems to be the primary contention of the Petitioners.

102. It is also imperative that I repeat that the original owner was not compensated for the land that was acquired from her (keeping in mind that the land acquired is of a large extent in a commercially significant location).

103. In these circumstances, I believe that it is important that the power to make "just and equitable orders" granted to this Court be exercised to arrive at both a pragmatic and equitable decision as it is rather unfair to deprive the original land owners of their land under the technicalities of the Act given that there is a clear deviation from standard circumstances in the case at hand and the responsible State authority is satisfied that such divestiture order would cause no damage.

Is the issuing of the Development Permit an infringement of the Article 12 (1) of the Constitution?

104. In this regard, it is submitted by the Petitioners that the development permit issued to fill the land in question is illegal owing to the environmental sensitivity of the region, the intended public purpose of the land being the retention and drainage of water and as funds of the

Japanese government have been incurred to excavate the canal. It is also submitted that the development permit is contrary to the Moratorium issued by the Ministry of Urban Development which is submitted marked "J".

105. I observe that this Moratorium prohibits the filling of any wetland, marsh, paddy field or waterway from 21st of September 2003 until the 31st of January 2007. As per the objections of the 1st Respondent, it is apparent that the application of the Moratorium was extended until the 30th of April 2008. It is submitted by the learned Presidents' Counsel for the Petitioners that as the development permit that concerns the instant application has been issued on the 12th of March 2008 as per document marked "1R16", the development permit is illegal.

106. In this regard, I observe that development permits concerning the land in question have been issued starting from as far as 1/3/1985, and then on 17/5/2006 and 12/3/2008. In this regard, as the Moratorium refers to unauthorized and unlawful wetland filling, I am of the opinion that the case at hand ought to be considered as a gradual authorization process which was commenced well before 2003 when this Moratorium has first come into effect whereby this case ought to be excluded from the category of "unauthorized and unlawful" wetland filling.

107. Regarding the issue of legality of the Development Permit, the learned Counsel for 12th, 15th, 17th and 18th Respondents have submitted that the 1st Respondent has adopted a scheme that was formulated by the Cabinet upon which permission to develop the lands in question has been granted.

108. The Cabinet Memorandum (marked 1R13) reasons the decision to allow the development as follows:

"*In respect of the appellants who have grown up children each grown up child is considered a separate person and committee has recommended to release small extents of land for them to construct their own houses*"

109. The Petitioners in their written submissions state that this only refers to lands described in annexures 1,2, and 3 and that this land does not fall within that. However, the supporting documents containing the annexures have not been submitted to this Court.

110. It is submitted by the learned Counsel for 12th, 15th, 17th and 18th Respondents that the process of issuing the permit was in fact transparent and legitimate as the private party Respondents have opened separate files to consider the multiple applications for development, upon which the private party Respondents had been issued conditional permission for development with relevant conditions and guidelines that ought to be followed.

111. Having observed the facts of the case, I am inclined to hold that the issuance of the development permit is not a violation of the Article 12 (1) of the Constitution. I observe that the required steps have been followed by both the State party Respondents and private party Respondents in obtaining the development permit. This is evident though the perusal of documents marked "1R13", "1R14", "1R16", "1R17" and 1R18". It is also evident that the relevant State Authorities are satisfied that no detriment would occur if the lands were to be developed.

112. In these circumstances, taking a pragmatic and equitable perspective, I am of the opinion that the private party Respondents ought to be allowed to develop the land in question and not be unfairly deprived of what they are rightfully entitled to as there is no credible evidence to hold that allowing such would cause significant detriment.

Declarations and Orders

113. In the above premise, I declare that the fundamental rights that have been guaranteed to the Petitioners under Article 12 (1) of the Constitution have not been violated by the Respondents.

114. As per Article 126(4) of the Constitution, the Supreme Court is empowered to grant such relief as it may deem just and equitable in the circumstances in respect of any petition referred to it under Article 126(2). Therefore, in the circumstances of this case the Petitioners are not entitled to the relief sought through their Petition.

Application is Dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA

I AGREE

JUDGE OF THE SUPREME COURT

JUSTICE MENAKA WIJESUNDERA

I AGREE

JUDGE OF THE SUPREME COURT