

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

In the matter of an application made in  
terms of Article 127 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.

**SC / SPL / LA / 220 / 2022**

**CA / PHC / APN – 104 / 2020**

**PHC / Panadura / 04 / 2019 WRIT**

**Buddhi Suranjaya Kaluthantri,**

8/5, Samudra Mawatha,

Panadura.

**PETITIONER**

-Vs-

**1. Urban Council,**

Panadura.

**2. Nandana Gunathilaka,**

Chairman,

Urban Council,

Panadura.

**3. P.H. Wilmon,**

Vice Chairman,

Urban Council,

Panadura.

**4. Manel Siyambalagoda,**

Secretary,

Urban Council,

Panadura.

**5. Provincial Commissioner**

Western Provincial Council,

204, Denzil Kobbakaduwa Mawatha,

Battaramulla.

**6. T. Somawathie Fernando,**

14/5, Samudra Mawatha,

Panadura.

**7. Hon. Attorney General**

Attorney General's Department,

Colombo 12.

**RESPONDENTS**

**AND THEN BETWEEN**

**Buddhi Suranjaya Kaluthantri,**

8/5, Samudra Mawatha,

Panadura.

**PETITIONER – APPELLANT**

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**RESPONDENT – RESPONDENTS**

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Attorney General's Department,

Colombo 12.

**RESPONDENT – RESPONDENT -  
RESPONDENTS**

**Before** : **A.H.M.D. Nawaz, J.**  
**Kumudini Wickremasinghe, J. &**  
**Arjuna Obeyesekere, J.**

**Counsel** : Nihal Jayawardene PC with Radhya Herath for the  
Petitioner.

Nilanga Perera instructed by Hashani Gunathilake for the  
1<sup>st</sup> and 4<sup>th</sup> Respondents.

Kushan D' Alwis, PC with Chamath Fernando instructed  
by Yashodya Thambavita for the 6<sup>th</sup> Respondent.

**Argued &** 22.07.2025

**Decided on:**

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

At the very outset, both the learned President's Counsel and the learned Counsel for the Respondent agreed to this court adopting the course of disposing of this matter forthwith, though this is a leave to appeal application and accordingly, this court proceeds to act under the *proviso* to Rule 16(1) of the Supreme Court Rules. This mandates the Court to grant leave on the question of law that has been raised, namely whether the learned High Court Judge of Panadura erred in law by not addressing the relevant questions raised before the High Court. This question is raised as a question of law that should determine the case today.

We treat the arguments made before us as having been made after leave has been granted and we proceed to answer the aforesaid question of law by indulging in an analysis of the factual matrix immanent in the case.

This Court has heard the learned President's Counsel Mr. Nihal Jayawardena for the Petitioner, Mr. Nilanga Perera for the 1<sup>st</sup> and 4<sup>th</sup> Respondent and Mr. Kushan D' Alwis President's Counsel for the 6<sup>th</sup> Respondent.

This is a case in which the Petitioner had invoked the writ jurisdiction of the High Court, seeking several reliefs, among which is a remedy sought against the 1<sup>st</sup> Respondent Urban Council to have a drainage way constructed so as to prevent flooding of the premises of the Petitioner.

Thus, there was a writ of *mandamus* that was sought as regards a duty which the Petitioner alleged the 1<sup>st</sup> Respondent, Urban Council Panadura owed the Petitioner. This relief is found in prayer (c) of the petition made to the High Court dated 19/12/2019. At the very outset this court would point out that it will not concern itself with the other remedies that have been sought in this petition.

When this matter was taken up before the learned High Court Judges, preliminary objections were raised to the maintainability of the application for judicial review and the learned High Court Judge upheld those preliminary objections. In the end, there was a dismissal of the application made by the Petitioner in the High Court.

The said preliminary objection centered around laches that was raised against the maintainability of the other remedies as well.

We find that the learned High Court Judge in exercise of the writ jurisdiction of the High Court did not bring to bear his mind on the question whether there is a right-duty relationship between the Petitioner and the Urban Council of Pandura, namely the 1<sup>st</sup> Respondent.

There is an absence of consideration of whether a duty is owed by the Urban Council to the Petitioner having regard to the provisions contained in Part IV of the Urban Council Ordinance.

In other words, the learned High Court Judge has failed to take into account the all-important question that was raised before him - namely whether a *Mandamus* could be issued against the Urban Council on the assertion of a right of the Petitioner to be

facilitated with a drainage for the purpose of having a healthy and clean environment that should render dwelling houses fit for habitation.

The powers held by the Urban Council are held in public trust for the purpose of promoting among other things sustainable development which should include a right to a clean and safe environment in terms of Article 12 (1) of the Constitution and the directive principles of state policy and the fundamental duties enumerated in Chapter VI of the Constitution also mandate a duty on the part of statutory authorities to ensure compliance with fundamental rights and directive principles.

On 28 July 2022, the United Nations General Assembly adopted Resolution 76/300, titled *“The human right to a clean, healthy and sustainable environment”*.

The resolution “recognizes the right to a clean, healthy and sustainable environment as a human right; the right to clean air, safe water, a healthy climate, and non-toxic surroundings”

It also notes that this right is “related to other rights and existing international law,” and affirms that promoting this right requires “the full implementation of the multilateral environmental agreements under the principles of international environmental law.”

The resolution calls upon States, international organizations, business enterprises, and other relevant stakeholders to adopt policies, strengthen cooperation, build capacity, and share good practices to scale up efforts to ensure a clean, healthy and sustainable environment for all. These developments should permeate the domain of decision making when the question of public powers held by statutory authorities are assayed as necessary concomitance for public purpose and it is the view of this Court the exercise of statutory powers must be tempered with the principles adumbrated aforesaid.

Accordingly, we find that the learned High Court Judge barely paid his attention to the principles of emerging Administrative Law when he failed to direct his mind to the relevant questions that were before him; when a duty is owed by a statutory authority, should that power be exercised with a view to promoting ideals of equality and good governance while promoting a clean and healthy environment?

In the circumstances, we find that the High Court Judge fell into an error by merely dismissing the Petitioner's application solely on the ground of delay and laches without having considered the merits of the case.

When the Petitioner, having thus been shut out of judicial review in the High Court of Panadura, sought the revisionary relief of the Court of Appeal to assay the Judgment of the High Court, he was met with preliminary objections and we find that the Court of Appeal itself has dealt with only the legality of the preliminary objection raised before the High Court of Panadura.

Even the Court of Appeal had not taken upon itself the task of examining whether the relief prayed for in regard to the *mandamus* was ever examined by the High Court.

The Court of Appeal has also dismissed the petition of the Petitioner solely on the ground of laches. Thus, both the Court of Appeal and the High Court have not dealt with the issues that were posed to them.

In the case of *Anisminic Corporation Ltd v. Foreign Compensation Commission*<sup>1</sup>, the judges articulated the view that if the decision maker posed a wrong question and did not endeavor to ask the relevant question while making a decision, then his decision is capable of being invalidated by *certiorari* eventuating in the decision becoming null and void.

Thus, we set aside both the orders of the High Court and the Court of Appeal only to the extent of the High Court not having dealt with prayer (C) of the petition. This Court finds fault with that approach and directs the learned High Court Judge to examine the question of whether the Petitioner owed a duty to have the said drainage constructed by the 1<sup>st</sup> Respondent. This Court grants this relief and directs the learned High Court Judge to examine this question because, both the Courts have failed to investigate this matter.

This Court will not interfere with any other decisions and determinations that were made by the two Courts in regard to the other matters that were raised before those Courts.

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<sup>1</sup> (1969) 2 AC 147

The rights of the 6<sup>th</sup> Respondent are not determined or prejudiced or shall not be gone into by the two Courts as regards the title and all other entitlements that flow to the 6<sup>th</sup> Respondent. It is a matter that would fall beyond the scope of the jurisdiction of the judicial review courts.

Accordingly, we allow the appeal of the Appellant to the extent as enumerated above and remit this case back to the High Court of Panadura to go into this limited question of the right-duty relationship between the Urban Council and the Petitioner.

The learned High Court Judge is directed to cause all such inquiries as necessary and determine this judicial review application as speedily as possible.

In the meanwhile, there is an undertaking given by the learned Counsel for the Respondent to examine the feasibility of an inquiry that would be held with the participation of all the stakeholders in this matter and the progress of that inquiry could be notified to the High Court when this case comes up for determination.

The learned High Court Judge is directed to commence its judicial review as if notices had been issued, and the 1<sup>st</sup> Respondent and any other Respondent can file their objections.

The Registrar is directed to communicate this judgment immediately.

**Judge of the Supreme Court**

**Kumudini Wickremasinghe, J.**

**Judge of the Supreme Court**

I agree.

**Arjuna Obeyesekere, J.**

**Judge of the Supreme Court**

I agree.