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

In the matter of an Application under Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Madappuliarachchige Oliver Gregory Ernest Fernando
No. 38/5, Peiris Mawatha,
Idama, Moratuwa.

Petitioner

SC/FR/Application No. 278/2021

Vs.

1. Municipal Council of Moratuwa
   Old Galle Road,
   Moratuwa.

2. Wannakuwattawaduge Samanlal Fernando
   Mayor of Municipal Council of Moratuwa
   Old Galle Road,
   Moratuwa.

3. S.D. Thevarapperuma
   Municipal Commissioner
   Municipal Council of Moratuwa,
   Old Galle Road,
   Moratuwa.

4. Warnakulasuriya Arachchige
   Dona Damayanthi
   No. 54/1, Weda Mawatha,
   Gorakana,
   Keselwatta,
   Panadura.

5. Honourable Attorney General
   Attorney General's
   Department,
   Colombo 12.

Respondents

Before:	**Jayantha Jayasuriya, PC, Chief Justice** **Yasantha Kodagoda, PC, J.** **Janak De Silva, J**
Counsel:	The Petitioner appeared in person. Mr. Ruwantha Coorey with Mr. Naamiq Nafath for the 1st to 3rd Respondents. Mr. G. Ananda Silva for the 4th Respondent. Deputy Solicitor General Mrs. Ganga Wakishta Arachchi for the 5th Respondent.
Argued on:	16th January 2024 and 27th June 2024
Written Submissions:	For the Petitioner on 14th August 2023 and 05th August 2024. For the 1st to 3rd Respondents on 31st August 2023 and 9th August 2024. For the 5th Respondent on 13th October 2023**.**
Decided on:	27th November 2024

Yasantha Kodagoda, PC, J.

Introduction

1) This judgment relates to an Application filed under and in terms of Article 126 read with Article 17 of the Constitution. On 12th January 2022, when this matter was supported, the Court has granted *leave to proceed* in respect of alleged violation of the fundamental right of the Petitioner guaranteed by Article 12 of the Constitution.

Case for the Petitioner

2) On 4th April 2016, the Petitioner claims to have entered into a 'Conditional Agreement' (No. 937 attested by Notary Public Muditha Bamunusinghe – "X9") with the 4th Respondent – W.A. Dona Damayanthi (hereinafter referred to as '4th Respondent - Damayanthi') for the purchase of a land on which a house was situated. The land comprised of two adjacent blocks of land bearing No. 30 (in extent perches 4.50) depicted in Plan No. 515A prepared by Licensed Surveyor S. Liyanage and No. 02 (in extent perches 2.97) depicted in Plan No. 2497 prepared by Licensed Surveyor W.P.M.P.L. De Silva. As consideration the Petitioner had paid a sum of Rs. 2,400,000/= to the 4th Respondent. Founded upon this agreement, the Petitioner had gained possession of both blocks of land and the house situated thereon. In terms of this agreement, the 4th Respondent undertook to make available to the Petitioner 'the *Bimsaviya* title registration certificates' relating to the two blocks of land. This undertaking was to have been complied with within three months of entering into the agreement. In which event, the Petitioner undertook to make a further payment of Rs. 400,000/= being the remaining amount of the full consideration for the purchase of the land.

3) This land (the two adjacent blocks) is situated in a housing estate named *"Bolgoda-Siripura Janawasaya"* in the general area known as the *Idama* in the town of Moratuwa. The *Bolgoda-Siripura Janawasaya* is situated in close proximity to the premises of the 1st Respondent (hereinafter sometimes referred to as 'the 1st Respondent - municipality'), between the said municipality and the Bolgoda Lake. Consequent to entering into this agreement, the Petitioner along with his wife had gone into occupation of the house situated on the land, the address of which being No. 38/5, Peiris Mawatha, Idama, Moratuwa.

4) It is not in dispute that the afore-mentioned two blocks of land are depicted as Lots 269 and 270 in the cadastral map No. 520206 Zone 4 sheet 1 prepared by the Surveyor General. Though the 4th Respondent – Damayanthi had inherited the land from her

father and possessed the two blocks of land (without any title to it), according to Gazette Notification No. 1767/19 dated 19th July 2012 issued by the Commissioner of Title Settlement, in terms of section 14 of the Registration of Title Act, No. 21 of 1998, the 1st Respondent – municipality has a 'complete 1st Class title' to these two blocks of land ("X6b"). In further proof of that contention, the Petitioner has produced marked "X8a" and "X8b" certified extracts of the relevant folios of the Title Register which depict the 1st Respondent – Moratuwa Municipal Council to be the owner of the two blocks of land.

5) The Petitioner claims that founded upon the title extracts that were prepared by the Title Registrar, *Bimsaviya* Certificates bearing Nos. 2523517 and 2523518 had been prepared in respect of the afore-stated two blocks of land, and they were to be vested with the 1st Respondent – municipality. The Petitioner claimed that the municipality had also obtained title to the most of the other blocks of land situated within the *Bolgoda-Siripura Janawasaya* housing estate. Accordingly, the occupants of the houses in the housing estate including the 4th Respondent were awaiting the transfer of title from the 1st Respondent – municipality to them. This belief was strengthened by certain assurances to that effect which had been given by certain authorities including an address in Parliament on 9th June 2011 by the then Deputy Minister of Local Government and Provincial Councils.

6) During the period 2017 - 2018, the Petitioner had without success attempted to obtain the title certificates to the land in question. Upon an inquiry being made, the 1st Respondent – municipality had informed the Petitioner that it had not received the title certificates to the lands in issue ("X10a", "X10b", "X11a" "X11b").

7) In 2018, filing an Application [CA (Writ) Application No. 190/2018 - "X12"] relating to the aforementioned lands, the Petitioner had sought from the Court of Appeal the following reliefs:
   (i) A writ of Certiorari to quash the decision of the Commissioner of Title Settlement to grant 1st class title of absolute ownership of the two land blocks in issue to the 1st Respondent – municipality in this Application.
   (ii) A writ of Certiorari to quash the decision of the Registrar of Titles to issue *Bimsaviya* certificates bearing Nos. 2523517 and 2523518 to the 1st Respondent – municipality in this Application.

(iii) A writ of Mandamus on the Commissioner of Title Settlement to require him to issue a fresh gazette notification naming the Petitioner as the person entitled to 1st class title pertaining to the afore-stated two blocks of land.

(iv) A writ of Mandamus to compel the Registrar of Title to issue *Bimsaviya* certificates in respect of the afore-stated lands to the Petitioner.

8) While the said Application filed by the Petitioner was pending in the Court of Appeal, the 1st Respondent – municipality had collected the *Bimsaviya* title certificates pertaining to the lands in the *Bolgoda-Siripura Janawasaya* housing estate. Those certificates included the two certificates pertaining to Lots 269 and 270.

9) By letter dated 20th July 2018, the 2nd Respondent – Mayor, Moratuwa Municipal Council (hereinafter sometimes referred to as 'the Mayor') had written to the occupants of the housing estate – *Bolgoda-Siripura Janwasaya* ("X14a"), inviting them to attend a meeting to be held on 25th July 2018 at the premises of the 1st Respondent - municipality. In the letter, the Mayor had explained that as a programme had been initiated by the municipality to issue deeds to those occupying lands owned by the 1st Respondent in the *Bolgoda-Siripura Janawasaya*, those who wished to receive the deeds should attend the meeting. They were called upon to bring certain documents including documents confirming 'occupancy and possession'. Subsequently, the 3rd Respondent – Municipal Commissioner of the Moratuwa Municipal Council (hereinafter sometimes referred to as 'the Commissioner of the municipality') had also written to the Petitioner a similar letter dated 17th December 2018. On 12th October 2018, the Petitioner had submitted to the municipality an Application seeking title of ownership to the earlier mentioned two blocks of land ("X15a"). In the said Application, the Petitioner had made reference to the case pending in the Court of Appeal.

10) On 7th February 2019, the 2nd Respondent – Mayor had while addressing a session of the Council of the municipality notified the members of the Municipal council that he proposes to issue deeds to the occupants of the lands by charging 1% of the valuation of the lands and had sought approval of the Council for that proposal. The Council had approved the proposal and had authorized the 3rd Respondent – Municipal Commissioner to implement the proposal.

11) On 5th May 2021 the Court of Appeal delivered its judgment relating to (Writ) Application No. 190/2018 ("X13"). A perusal of that judgment reveals that the Court of Appeal had arrived at the following findings:

(i) The Petitioner has not produced to the Court of Appeal any title deeds in respect of the two blocks of land.

(ii) The Petitioner has not produced to the Court of Appeal any title deeds to establish that prior to his entering in an agreement with the 4th Respondent, she had been the 'owner' of the two blocks of land.

(iii) The Petitioner has failed to establish ownership to the two blocks of land.

(iv) The Petitioner has admitted that the housing estate named *Bolgoda-Siripura Janawasaya* has been constructed on State land.

(v) The effectual relief that was sought by the Petitioner was an order directing that he be declared the owner of the two blocks of land, notwithstanding his not having title.

(vi) The Commissioner of Title Settlement acting in terms of section 11 of the Registration of Title Act has caused the Surveyor General to prepare a cadastral map of the area and the latter has prepared cadastral map No. 520206 which depicts *inter-alia* Lots Nos. 269 and 270.

(vii) In the tenement list attached to the afore-stated map, the State has been recognised as the claimant, and the 4th Respondent has been listed as the person in 'possession' of both lots.

(viii) Acting in terms of section 12 of the Registration of Title Act, the Commissioner of Title Settlement has published a Gazette notification dated 11th August 2010 bearing No. 1666/19, calling upon claimants if any to present claims in respect of land parcels specified in the Notice, which included the two blocks of land in issue.

(ix) The 4th Respondent had not presented any claim.

(x) Consequent to an investigation conducted into the claims received, acting in terms of section 14 of the Registration of Title Act, the Commissioner of Title Settlement has on 19th July 2012 published a Gazette notification (bearing No. 1767/19) declaring the 1st Respondent – Moratuwa Municipal Council to be having 'first class title' to Lots Nos. 269 and 270 and thereby conferring absolute ownership.

(xi) Therefore, the Commissioner of Title Settlement has acted in terms of the law. The decision of the Commissioner of Title Settlement to recognise the 1st Respondent – Moratuwa Municipal Council as the absolute owner of the two

lots of land has been taken based on material that was presented to him and is not illegal.

(xii) No person aggrieved by the afore-stated decision has acting in terms of section 22 of the Title Registration Act presented an appeal to the District Court challenging the decision of the Commissioner of Title Settlement.

(xiii) In terms of section 39 of the Title Registration Act, the conditional transfer entered into between the Petitioner and the 4th Respondent is void (in so far as ownership to the land is concerned), and therefore the Petitioner did not have *locus standi* to make an Application to the Court of Appeal seeking relief.

(xiv) The Petitioner is guilty of *laches* as he is seeking the annulment of a decision taken by the Commissioner of Land Settlement in favour of the 1st Respondent in 2012.

In view of the foregoing findings and certain other technical reasons, the Court of Appeal had dismissed the Petitioner's Application. During the hearing of this Application, the Petitioner conceded that he did not appeal to the Supreme Court against the afore-stated judgment of the Court of Appeal.

12) Following the delivery of the judgment by the Court of Appeal, by letter dated 1st June 2021 ("X17"), the Petitioner while notifying that the Court of Appeal had determined that the 1st Respondent was the owner of the two blocks of lands, had requested the 1st Respondent – municipality to transfer ownership of the two blocks of land (No. 269 and 270) to him. By letter dated 6th July 2021 ("X19") the 3rd Respondent – Municipal Commissioner informed the Petitioner that the issuance of deeds was being carried out only after confirmation of occupancy, and the conduct of a site inspection by officials of the 1st Respondent. The Petitioner was asked to call over at the municipality to provide a clarification of matters pertaining to the documents to be tendered. The Petitioner had complied. He was issued letter dated 9th July 2021 ("X20") by which the 3rd Respondent – municipal Commissioner required the Petitioner to handover a certificate issued by the *Grama Sewa Niladhari* issued within preceding 6 months certifying occupancy, and an affidavit by him affirming, to which the Petitioner was required to attach other documentation such as his birth certificate, marriage certificate, etc., and utility bills. The letter indicates that these documents were required for the purpose of formally establishing occupancy. The Petitioner claims that by letter dated 19th July 2021 ("X21"), he presented to the 3rd Respondent all the documentation required.

13) By letter dated 29th July 2021 ("X22"), the 3rd Respondent notified the Petitioner that as the judgment of the Court of Appeal in CA (Writ) Application No. 190/2018 had declared deed No. 937 dated 4th April 2016 attested by Notary Public Muditha Bamunusinghe to be a nullity, the municipality was unable to act upon it. Further, having taken that fact into consideration and the documents submitted by the Petitioner, in the future the Moratuwa Municipal Council will take action pertaining to the issuance of the deed. In response, the Petitioner by letter dated 2nd August 2021 addressed to the 3rd Respondent ("X23") had contradicted the position contained in "X22". In the said letter the Petitioner alleges that the 2nd and the 3rd Respondents were maliciously refraining from issuing the 'deeds' in respect of the lands occupied by him, since the Petitioner had previously successfully sued the 1st Respondent, and the municipality had to pay a sum of Rs. 10 million to the Petitioner. In "X23", the Petitioner had made reference to his intention to take legal action against the 1st to the 3rd Respondents, unless the 'deeds' are issued to him within 14 days.

14) As the Petitioner did not receive a favourable response to "X23", he petitioned this Court alleging that the failure by the 1st to 3rd Respondents to issue the title deeds pertaining to the two blocks of land in issue constitute an infringement of his fundamental rights.

Position of the 4th Respondent

15) The 4th Respondent – W.A. Dona Damayanthi has taken-up the position that, since 1989, she and her family lived in premises bearing No. 38/5, Peiris Mawatha, Idama, Moratuwa. On 4th April 2016, consequent to entering into an agreement with the Petitioner and obtaining from him a sum of Rs. 2.4 million, she had vacated the said premises, having handed over possession of the house and the two blocks of land to the Petitioner. Since then, she had not occupied the premises and it has been occupied by the Petitioner.

16) In July 2021, on the invitation of the 2nd Respondent, she and her husband have visited the 1st Respondent – Moratuwa Municipal Council and met with the 2nd Respondent – Mayor of the Moratuwa Municipal Council. She had been informed by him that title ownership certificates in respect of the afore-stated premises (two blocks of land) could be issued in her favour, if she requires. Furthermore, he had informed her that in any event, 'ownership certificates' in respect of the land will not be issued to the Petitioner, since he has 'lost the case filed in the Court of Appeal'. In response, she had informed the 2nd Respondent that since she has sold the land to the Petitioner and

obtained money from him, she does not require the ownership certificates. Furthermore, she had informed the 2nd Respondent that even if she were to receive the certificates, she was duty bound to re-transfer them to the Petitioner. She had also requested the 2nd Respondent to transfer the certificates directly to the Petitioner. She has drawn the attention of Court to document marked "X15c" and produced by the Petitioner, which is a copy of a letter dated 20th June 2016 she wrote to the 2nd Respondent, informing him that the possession of the premises in issue had been transferred to the Petitioner, and therefore to treat the Petitioner as the lawful occupant of the said premises.

Position of the 1st to 3rd Respondents

17) The position of the 1st to 3rd Respondents is that the 1st Respondent – Moratuwa Municipal Council is the owner of the two blocks of land in issue. The Petitioner has no title or any interests recognised by law in respect of the land. The 4th Respondent who previously possessed the land, also had no title to the two blocks of land. The 'Conditional Transfer' ("X9") has no force in law.

Position of the 5th Respondent - Honourable Attorney-General

18) For the purpose of advancing the position of the Attorney-General, an affidavit each from the Surveyor General Sundaramoorthy Sivanantharajah and Divisional Secretary I.D. Kumari Udawatte were placed before this Court.

19) According to them, as at the time Cadastral Map 520206 was prepared, the Petitioner was not in occupation of the two blocks of land. The 4th Respondent was in unauthorized occupation. The two blocks of lands (Nos. 269 and 270) 'belong' to the State. Lot No. 269 is a part of the Bolgoda Lake. Therefore, the ownership is with the State. Lot 270 is a part of Lot 2 of Plan No. 3909 and Lot 1 of Plan No. 7809. The land depicted in Plan No. 7809 had been given by the State to the 1st Respondent to conduct a veterinary clinic. 'Most lands in the *Bolgoda Siripura Janawasaya*' including blocks 269 and 270 are occupied by 'unauthorized occupants'. The 1st Respondent has no rights in respect of Lots 269 and 270 as they are State lands. Officers of the Department of Title Registration has erroneously determined that the 1st Respondent was the owner of the two blocks.

20) These officials have clearly taken up positions which are inconsistent with the findings of the Court of Appeal relating to the two blocks of land in issue.

Findings of Court

21) Upon a consideration of the totality of the evidence placed before this Court by the Petitioner and the Respondents, and the submissions made by the Petitioner and learned counsel for the Respondents, this Court has concluded that the following facts and circumstances should serve as the basis for the findings to be reached:

- Following the government having permitted people affected by the construction of the new Moratuwa – Panadura Road to construct houses on a land owned by the State situated to the rear of the 1st Respondent – Moratuwa Municipal Council and adjacent the Bolgoda Lake, the father of the 4th Respondent (Warnakulasuriya Aarachchige Don Marshall Anthony) had in 1989 constructed a house on Lot 269 (a land approximately 3 perches in extent) depicted in Cadastral Map No. 520206 and gone into occupation of the said house. Several other persons had done the same. The houses so constructed and occupied have become a housing estate comprising of approximately 50 houses.

- The assessment number assigned to the premises occupied by Don Marshall Appuhamy was No. 38/5 and the address of the premises was No. 38/5, Peiris Mawatha, Idama, Moratuwa.

- Following the filling of a portion of the Bolgoda Lake and certain constructions carried out by the 1st Respondent – Moratuwa Municipal Council, Marshall Appuhamy had expanded his possession to another 3 perches of adjacent land.

- The original land and the subsequent expansion occupied by Don Marshall Appuhamy are depicted in Cadastral Map No. 520206 Zone 4, Lots No. 269 and 270. These two blocks jointly will hereinafter be referred to as 'subject matter land' of this Application.

- In 1992, the housing estate on which the afore-stated house of Don Marshall Anthony and nearly another 50 houses were situated was named by the government as the *Bolgoda-Siripura Janawasaya.*

- In 2000, the 4th Respondent and her husband (Nimal Abeysinghe) had constructed a house on the land, as the original house was not suitable for living.

- In 2003, Don Marshall Anthony had transferred possession of the subject matter land and the house to the 4th Respondent. The said transfer is depicted in deed No. 5692 dated 28th July 2003 attested by P.H. Janapriya, Notary Public. By virtue of the said transfer, the 4th Respondent had gained formal possession of the subject matter land and the house situated on it.

- On 4th April 2008, Don Marshall Anthony had passed away.

- On or about 4th April 2016, in consideration for the Petitioner having paid a sum of Rs. 2.4 million to the 4th Respondent, the 4th Respondent had entered into an Agreement with the Petitioner (No. 937, attested by Notary Public Muditha Bamunusinghe) for the handing over of the possession of the land referred to in the schedule of that agreement and the house situated thereon, to the Petitioner. It was agreed by the parties that subsequent to the transfer of title certificates (*Bimsaviya* Certificates) pertaining to the subject matter land by the 4th Respondent to the Petitioner's son (Madappuli Aarachchige Shanka Fernando), the Petitioner would pay the 4th Respondent a further sum of Rs. 400,000/=.

- On 20th June 2016, the 4th Respondent had notified the 2nd Respondent – Mayor of the municipality of the afore-stated transfer of possession of the subject matter land from the 4th Respondent to the Petitioner.

- On or about the 4th April 2016, the Petitioner had come into possession of the subject matter land and the house situated on it, and continued in possession for some time. Thereafter, as the house became dilapidated and unlivable, the Petitioner had departed from the premises and gone into occupation elsewhere.

- In 2020, the 1st Respondent – Moratuwa Municipal Council while retaining assessment No. 38/5 for afore-stated Lot No. 270, has assigned assessment No. 38/5/A to Lot No. 269.

- The Court of Appeal when deciding and delivering judgment in CA (Writ) Application No. 190/2018 has arrived at the following findings:
    - Commissioner of Title Settlement acting in terms of section 11 of the Registration of Title Act has caused the Surveyor General to prepare a cadastral map of the area on which the housing estate is situated, and the latter has prepared cadastral map No. 520206 which depicts *inter-alia* Lots Nos. 269 and 270.

- In the tenement list attached to the afore-stated map, the State has been recognised as the claimant, and the 4th Respondent has been listed as the person in possession of both lots.
- Acting in terms of section 12 of the Registration of Title Act, the Commissioner of Title Settlement has published a Gazette notification dated 11th August 2010 bearing No. 1666/19, calling upon claimants if any to present claims in respect of land parcels specified in the notice, which included the two blocks of land referred to above.
- The 4th Respondent had not presented any claim.
- Consequent to an investigation conducted into the claims received, acting in terms of section 14 of the Registration of Title Act, the Commissioner of Title Settlement has on 19th July 2012 published a Gazette notification (bearing No. 1767/19) declaring the 1st Respondent – Moratuwa Municipal Council to be having first class title in respect of Lots Nos. 269 and 270 and thereby conferring absolute ownership to the 1st Respondent.

- The afore-stated findings of the Court of Appeal are valid in the eyes of the law, as they remain undisturbed, since there was no appeal against the said judgment to the Supreme Court. The said findings reached by the Court of Appeal cannot be impugned in these proceedings. Therefore, the findings reached by the Court of Appeal must be acted upon when reaching findings in this Application, to the extent such findings are relevant to this Application.

- The Registrar of Titles has issued title certificates (*Bimsaviya* certificates) to the 1st Respondent – municipality in respect of 45 blocks of land in the *Bolgoda-Siripura Janawasaya* which includes certificates bearing Nos. 2523517 ("X8(a)") and 2523518 ("X8(b)") in respect of *inter-alia* the two blocks (Nos. 269 and 270) which serve as the subject matter land.

- Founded upon title certificates being vested in the 1st Respondent – municipality, it has decided to transfer title to 'second class citizens' who were living in houses in the respective blocks of lands situated in the *Bolgoda-Siripura Janawasaya.*

- Of the certificates pertaining to the 45 blocks of lands, 27 certificates have already been transferred by the 1st Respondent municipality to various persons, of whom a majority are occupants of houses in the *Bolgoda-Siripura Janawasaya.* These 27 are persons who are referred to in the Cadastral Map ("R4(i) – R4(xxvii)") and have been long-term occupants of the *Janawasaya*.

- Title in respect of Five blocks of land (Nos. 244, 255, 260, 276, and 290) have been transferred to persons who have not been long-term occupants of the respective houses.

Analysis

22) The position of the Honorable Attorney-General is that all the blocks of land in the *Bolgoda-Siripura Janawasaya* including blocks bearing Nos. 269 and 270 are State land. In the circumstances, the submission of the learned Deputy Solicitor General was that vesting of title certificates (*Bimsaviya Certificates*) by the Commissioner of Title Registration to the 1st Respondent municipality was bad in law and fact. However, it is seen that the learned Justice of the Court of Appeal having examined the procedure followed by the Commissioner of Title Settlement and the associated documents and the positions taken up by the Respondents to CA Writ Application No. 190/2018, has concluded that the procedure adopted by the Commissioner of Title Settlement was in accordance with the provisions of the Title Registration Act and hence the vesting of first class title to the two blocks referred to above by the Commissioner of Title Settlement on the Moratuwa Municipal Council was correct and lawful. Accordingly, the Court of Appeal has concluded that as determined by the Commissioner of Title Registration, the 1st Respondent – Moratuwa Municipal Council has first class title to Lots Nos. 269 and 270 and thereby in the eyes of the law, the Moratuwa Municipal Council is the absolute owner of the two blocks of law in issue. The State has not appealed against the judgment of the Court of Appeal. Therefore, there remains no option than for this Court to proceed to determine this Application on the same footing, i.e. that the 1st Respondent municipality is the owner and title possessor of blocks 269 and 270.

23) In the aftermath of the afore-stated judgment of the Court of Appeal, what is the claim of the Petitioner? The Petitioner who also did not appeal against the afore-stated judgment of the Court of Appeal (notwithstanding his having been unsuccessful in challenging the title of the Moratuwa Municipal Council in respect of the two blocks of land in issue), claims that, though the 1st Respondent municipality having decided to transfer the title it possessed with regard to the blocks of land on which the houses of the *Bolgoda-Siripura Janawasaya* have been constructed to longstanding occupants of those houses who do not possess first class title, and his having been the occupant of the house situated on blocks 269 and 270 (following his having purchased possession from the 4th Respondent – Damayanthi in April 2016), and his having established occupation, the 1st Respondent did not divest title in respect of the afore-stated blocks

of land to him. The Petitioner claims that, the 1st Respondent municipality acted contrary to its own declared policy and treated him unequally, and thus the 1st Respondent infringed his fundamental right to equality guaranteed by Article 12 of the Constitution.

24) I shall now examine the purported 'policy' of the 1st Respondent municipality with regard to the divesting of title to the occupants of houses in the *Bolgoda-Siripura Janawasaya.* Neither the Petitioner nor the 1st Respondent municipality submitted to this Court a formal document which contains the afore-stated policy. Upon being questioned by this Court, the learned counsel of the 1st to 3rd Respondent quite frankly revealed to this Court that the 1st Respondent municipality did not have such formal policy in documentary form, though a programme founded upon a policy as revealed by the Petitioner was implemented. He conceded that the Petitioner was not a beneficiary of that policy and corresponding programme. He submitted that the 1st class title of blocks 269 and 270 remained with the 1st Respondent municipality. When specifically asked by Court, having obtained specific instructions from his client, learned counsel for the 1st to 3rd Respondents submitted that the programme for the vesting of title to longstanding occupants of houses in the *Bolgoda-Siripura Janawasaya* was not based on a resolution adopted by the Municipal council, but it was an initiative of the 2nd Respondent Mayor. The policy and the programme was not reflected in any formal document of the municipality, though the minutes of the meeting at which the Mayor announced the policy is available. Learned counsel agreed with the position of the Petitioner that the programme is contained in a speech made by the 2nd Respondent Mayor at a meeting of the Municipal council held on 07th February 2019 and the said speech is correctly reflected in the minutes of the Council meeting produced by the Petitioner marked as "X33".

25) In view of the foregoing, I shall now examine the policy and the title vesting programme of the 1st Respondent municipality relating to lands of the *Bolgoda-Siripura Janawasaya* as contained in document "X33".

26) The speech of the 2nd Respondent Mayor found in the minutes of the relevant meeting of the Council contains the following components, that describes the afore-stated policy and programme:

- The Mayor had proposed to issue deeds to the long-term occupants of the lands of the *Bolgoda-Siripura Janawasaya* by charging 1% of the valuation of the lands from the occupants of such lands.

- Despite the willingness of the Mayor to issue deeds without any consideration being charged, such measure was declared by him as practically impossible, thus, had determined 1% of the valuation as the maximum consideration that shall be charged from the occupants of the lands.
- The 'Peiris estate' (where the subject matter land is located) had been selected as the initial land plot to implement the afore-stated policy.
- The aforesaid policy proposed by the Mayor was approved by the Council and had authorized the 3rd Respondent – Municipal Commissioner to give effect to the proposal.

The above policy and programme was further reflected in the Programme budget speech and Policy statement for 2020 made by the Mayor on 19th December 2019, produced by the Petitioner marked as "X34". The Budget speech and Policy statement contains the following components:

- The Moratuwa Municipal Council is conducting a programme for the issuing of deeds to the long-term occupants of the lands under the municipality, who were recognised as 'second-class citizens' due to the absence of legally valid titles to such lands.
- Under the said programme, the Council was successful in issuing deeds to approximately 140 families, upon the basis of 'long-term possession' as the sole criterion applied for the issuance of deeds, irrespective of the application of any political or other criterion for the selection of persons to whom deeds shall be issued.
- As the second phase of the programme, in 2020, deeds shall be issued to the remaining occupants of the lands under the municipality.

27) Therefore, as per the policy and title vesting programme of the 1st Respondent municipality, what is observed is that the sole criterion applied for selecting occupants to issue deeds was 'long-term possession' of the lands.

28) I shall now examine whether the afore-stated policy and programme had been correctly implemented by the municipality in issuing deeds.

29) According to the minutes of the Municipal council monthly meeting held on 21st July 2022 submitted by the Petitioner marked as "X33a", the 1st Respondent municipality was vested with titles to 45 blocks of lands of the *Bolgoda-Siripura Janawasaya*. These 45 land blocks include *inter alia* blocks 269 and 270 that is the subject matter of the

present case, thereby, demonstrates that these two land blocks are also enlisted as lands of which the title could be transferred to longstanding occupant(s) if any. However, as per the minutes of the monthly Council meeting held on 01st September 2022 ("X33b"), the 1st Respondent had only divested title to 27 persons in respect of 29 blocks of lands. Through examination of those conferred titles in comparison with the details of the lands produced by the Petitioner marked as "X5a – X5f", the following aspects are observable:

- Titles in respect of five blocks of lands, i.e. Nos. 244, 255, 260, 276, and 290, have been transferred to total outsiders who had not been long-term occupants of such land blocks.
- Titles in respect of blocks 269 and 270 were not transferred to the claimant 4th Respondent Damayanthi, which would thereby be transferred to the Petitioner.
- The consideration charged in respect of three blocks of lands, i.e. Nos. 279, 282, and 283, exceeds the amount permitted by the policy of the municipality.

30) As correctly pointed out by the Petitioner, the issuance of deeds through the title divestiture programme should be to the persons who could actually be recognised as long-term residents of the respective land blocks and not anyone else. In response to a clarification sought by this Court in respect of the afore-stated five land blocks that were transferred to persons who had not qualified to be long-term occupants of the lands, the Counsel for the 1st – 3rd Respondents submitted that the recipients of the above land blocks despite being long-term occupants were identified to be 'second-class citizens', thus, were transferred title as per the policy of the 1st Respondent municipality. No proof in that regard was offered.

31) In respect of the above, the issue to be determined by this Court is whether the 1st Respondent municipality is permitted to deviate from its own policy and issue deeds to complete outsiders who had not been in long-term occupancy of the land blocks, solely on the basis of them being 'second-class citizens' who lacked legally valid titles to the lands in question. The answer in my view would be in the adverse. This is due to the criterion of 'long-term occupancy' being an obligatory criterion that was required to be satisfied for divesting titles outlined in the policy of the municipality. Once a policy has been declared by the municipality, such policy is ought to be implemented fully and consistently, by not tolerating any arbitrary deviations from it. Therefore, in view of the above, I am constrained to conclude that the 1st Respondent municipality had arbitrarily deviated from its own policy by transferring titles to persons who had not been long-term occupants of the lands, particularly in

respect of land block Nos. 244, 255, 260, 276, and 290. Furthermore, the municipality by exceeding the considerations that were permitted to be charged under the policy, particularly in respect of land block Nos. 279, 282, and 283, has recurrently violated its own title divestiture policy.

32) Furthermore, the counsel for the 1st – 3rd Respondents submitted that the Petitioner cannot be identified as a 'second-class citizen' due to the sole reason of his having claimed damages under case bearing No. 1329/Money in the District court of Moratuwa, that vested him with ownership to the respective subject matter of the case, and by selling such premises the Petitioner has made himself a 'homeless person'. Thus, learned counsel submitted that the Petitioner cannot be similarly circumstanced to that of the recipients of the afore-stated five land blocks.

33) In respect of this submission, the issue to be determined by this Court is whether the fact that the Petitioner had claimed damages under the case of the District court and his having sold such property makes him disqualified to be treated as a 'second-class citizen' for the purpose of the afore-stated programme of the Moratuwa Municipal Council relating to the '*Siripura Janawasaya*'. Does the Petitioner become not similarly circumstanced in comparison with the other recipients of the lands of which certificates were transferred? The fact that the Petitioner had claimed damages previously and was thus vested with ownership to another property, is irrelevant for the present case to be determined. What needs to be considered is whether the Petitioner in fact had long-term possession for the land blocks Nos. 269 and 270, particularly when taken in conjunction with the possession of the two blocks of land enjoyed by the 4th Respondent. With regards to this issue, when computing long-term possession, the Petitioner should be entitled to compute the previous possession of the 4th Respondent, particularly since she does not claim title to the subject matter, and had vested possession by virtue of the conditional transfer to the Petitioner. Accordingly, the 4th Respondent had been in possession of the subject matter since 1989 until possession had been transferred to the Petitioner in 2016. Since 2016 up to date the Petitioner is in possession of the subject matter. Therefore, it may be computed that the Petitioner had been in possession of the subject matter for approximately 34 years, that amounts to a 'long-term possession' of the premises. In my view, this makes the Petitioner be satisfied with the requirement of 'long-term possession' that is required to be vested with title under the title divesting programme of the 1st Respondent municipality. The satisfaction of long-term possession by the

Petitioner also makes him similarly circumstanced to the other lawful recipients of the land blocks.

34) Furthermore, as mentioned by the Mayor in the Programme budget speech and Policy statement, the deeds were issued to long-term occupants of the lands who were recognised as 'second-class citizens' due to the 'absence of legally valid titles to such lands'. This implies that in order to be classified as a 'second-class citizen', such person should be deprived of a legally valid title to the land possessed by such person for a long period of time. This has already been the case for the Petitioner as he along with the 4th Respondent Damayanthi was in possession of the subject matter since 1989 without having a legally valid title to such land. This makes the Petitioner qualified as a 'second-class citizen', in line with the programme of the municipality. Therefore, in my view, the Petitioner falls under the category of 'second-class citizens' and becomes similarly circumstanced to the other 'second-class citizens'.

35) I shall now examine the law on the right to equality and legal principles on classification based on reasonable criterion.

The right to equality as enshrined in Article 12(1) the Constitution of Sri Lanka states that "*All persons are equal before the law and are entitled to the equal protection of the law*". The right to equality is the cornerstone for equal treatment of persons before the rule of law and acts as a shield for the protection of persons from unlawful or discriminatory treatment. Does this fundamental right to equality encompass differential treatment based on reasonable classification? The answer shall be in the affirmative. As held by this Court in a series of previous judgments, equality does not prevent classification that is based on reasonable and intelligible differentia.

As correctly raised by learned counsel for the 1st – 3rd Respondents, as held by Justice S. Thurairaja in the case of ***D. Sarath Kumara and Another v. Road Passenger Transport Authority and Others*** *[SC FR No. 231/2018]*, "*…the law as established today provides that what amounts to discrimination for the purposes of Article 12(1) of the Constitution is that persons of similar circumstances who belong to a single class must be treated as equals, and should a member of the said class be treated differently on the grounds of sex, caste, religion, language, political opinion, and any other attribute within the aforementioned provision, then this would amount to discrimination and thereby a violation of Article 12(1) of the Constitution*".

Furthermore, as cited by the counsel, in the case of ***Amunupura Seelawansa Thero and Others v. Additional Secretary, Public Service Commission and Others*** *[(2004) 3 Sri LR 365]*, this Court has held as follows:

> *"The basic norm therefore is that unequals cannot be treated as equals as well as equals cannot be treated as unequals.* ***Equal opportunity therefore is for equals who are similarly circumstanced in life****."* [Emphasis added.]

Therefore, what equality entails is that similarly circumstanced persons must be treated equally before the law, and **differential treatment among similarly circumstanced persons shall not be permitted in the guise of equality.**

36) In the present case, why the Court cannot agree with learned counsel for the 1st – 3rd Respondents, is because though he has correctly appreciated the inter-relatedness between equal treatment and similarly circumstanced persons, he has not rightfully considered that the Petitioner is in fact a similarly circumstanced person to those whom title had been divested by his clients based on the criterion of 'long-term possession' coupled with being a 'second-class citizen'. Therefore, in the opinion of court, the 1st and 3rd Respondents should while respecting the notion of equality, adhere to the procedure contained in its own policy and calculate the period of possession. In that regard, consideration must be given to the Petitioner being a claimant having long-term possession of the subject matter, and hence his entitlement to claim title to the land block Nos. 269 and 270 under the title divesture programme of the Moratuwa Municipal Council. Similarly, the Petitioner may also be qualified as a 'second-class citizen', who has been deprived of a legally valid title to the subject matter, on the premise that he did not have title to the two blocks of land in issue.

37) In view of the foregoing, I shall now examine whether the 1st Respondent municipality has infringed the fundamental right of the Petitioner under Article 12(1) of the Constitution.

38) By the time the Petitioner invoked the jurisdiction of this Court, the final communication he had received from the Municipal Council of Moratuwa was a letter dated 29th July 2021 produced and marked by the Petitioner as "X22". The Petitioner alleges that what was explicit from this letter was that the 1st Respondent municipality was at the verge of deviating from the process of transferring title to him. With regards to this assertion, I shall examine what had actually been conveyed to the Petitioner

via the letter. In my view, the content of the letter had informed the Petitioner the following aspects:

- The letter was a communication sent in the outset of the judgment of the Court of Appeal (Writ) Application No. 190/2018.
- The letter reiterates the decision of the Court of Appeal, and specifies that as per the judgment, the conditional transfer effected between the 4th Respondent and the Petitioner has become void.
- Therefore, by considering the above aspect of the judgment along with the material proof provided by the Petitioner for claiming title, the 1st Respondent municipality shall follow the due procedure in issuing deeds to the Petitioner.

39) It must be noted that the content of the letter was limited to only the above aspects, and nothing beyond. The 1st Respondent had only conveyed that due consideration shall be made to the judgment of the Court of Appeal in the process of transferring title to the Petitioner. The letter had neither informed the Petitioner that the 1st Respondent refuses to transfer title under the programme, nor that he was not entitled to land under the programme by virtue of the judgment of the Court of Appeal. Furthermore, in response to the afore-stated communication received from the Municipal Council of Moratuwa, the Petitioner had sent a letter on 02nd August 2021 to the municipality, requesting a response favorable to the Petitioner within 14 days of such letter being sent. In the absence of a response from the 1st Respondent, the Petitioner has then filed the Fundamental Rights Application in this Court on 13th September 2021. However, the municipality had responded to the Petitioner through a letter dated 17th September 2021 marked as "X32", reiterating the same position of the Council conveyed by its afore-stated letter dated 29th July 2021. The municipality thus had not left the Petitioner unheard about his Application to obtain title, and had not caused any inordinate delays in responding to the request of the Petitioner. This reiteration of the Council's procedure further strengthens the position taken by this Court that the Council was following the due process of transferring title by the time the Petitioner had filed the Application in this Court. Therefore, the Petitioner had invoked the jurisdiction of this Court on 13th September 2021 with the mere assertion that his fundamental rights have been infringed. As per my analysis above, though the line of events that had occurred after the petition has been filed depicts the arbitrary nature of the decisions of the 1st Respondent municipality, by the time the petition was filed, the municipality was following the due procedure of divesting title to the Petitioner.

40) In order for a person to invoke the jurisdiction of this Court by way of a Fundamental Rights Application, the Petitioner must establish the requirements contained in Article 126 of the Constitution which reads that where any person alleges that his/ her fundamental rights have been infringed, in order to invoke the jurisdiction of the Supreme court, such fundamental rights should be 'infringed' or infringement should be 'imminent'. In the present case, at the time the Petitioner had invoked the jurisdiction of this Court, his fundamental right to the equal protection of the law was neither 'infringed' nor was it imminent that his fundamental right to equal protection of the law was to be infringed by 1st to the 3rd Respondents. Further, the 1st Respondent had not caused any inordinate delay that would amount to an implicit refusal, in responding to the Petitioner's requests. Therefore, in my view, this Fundamental Rights Application of the Petitioner is premature. In this context, further analysis on whether the Petitioner's fundamental right under Article 12(1), of the Constitution has been infringed is irrelevant.

41) However, it must be noted that, the fact that this Application is dismissed due to the premature nature it holds does not abate the afore-stated findings arrived at by this Court. This is due to the solemn duty and the expansive jurisdiction vested with the Supreme Court in protecting the fundamental rights of the people and the rule of law.

42) In the case of ***Noble Resources International (Pvt.) Ltd. v. Hon. Ranjith Siyambalapitiya, Minister of Power and Renewable Energy and Others*** *[SC/FR No. 394/2015]*, this Court has issued certain directions, notwithstanding the Court not having arrived at a finding that the Petitioner's Fundamental Rights had been infringed. In the interest of justice, the Court made a particular order which amounted to indirect relief to the Petitioner, notwithstanding dismissal of the Application. In my view, that was for the purpose of meeting the just goal of protecting fundamental rights of citizens through the enforcement of the rule of law. In that case, Chief Justice Sripavan observed as follows:

> "*If the Petitioner with a good case is turned away, merely because he is not sufficiently affected or the Petitioner has no "locus standi" to maintain this application, that means that some Government Agency is left free to violate the law and this is not only contrary to the public interest but also violate the Rule of Law, the object of which is to protect the citizens from unlawful governmental actions. It will be a travesty of justice if, having found as a fact that a fundamental right has been infringed or is threatened to be infringed, the Court yet dismisses the application on a preliminary objection raised by the Respondents. This Court has been given power to grant relief as it may deem just and equitable…The*

Supreme Court being the protector and guarantor of the fundamental rights cannot refuse to entertain an application seeking protection against infringement of such rights. The Court must regard it as its solemn duty to protect the fundamental rights jealously and vigilantly. It has an important role to play not only preventing or remedying the wrong or illegal exercise of power by the authority but has a duty to protect the nation in directing it to act within the framework of the law and the Constitution."

43) In view of the foregoing, I answer the several questions of law in respect of which *Leave to proceed* was granted in the following manner:

a) *Can the Petitioner have and maintain this Application in view of the judgment of the Court of Appeal in case bearing No. CA Writ 190/2018?*

The findings of the Court of Appeal remain undisturbed, as none of the parties had appealed against the decision of the Court of Appeal. The learned Justice of the Court of Appeal has concluded that the 1st Respondent – Moratuwa Municipal Council had first class title to Lots Nos. 269 and 270 and thereby in the eyes of the law, the Moratuwa Municipal Council has the absolute ownership to the subject matter in issue. The Petitioner in the present Application does not challenge the above finding of the Court of Appeal, i.e. the finding that the 1st Respondent is vested with absolute first-class ownership to the land blocks in issue. What the Petitioner demands through this Application is the rightful implementation of the title divesting programme of the municipality, in order to cause the title of the subject matter transferred from the Moratuwa Municipal Council to the Petitioner.

Therefore, in order to urge the implementation of the programme of the 1st Respondent, the Petitioner is entitled to have and maintain this Application, and the judgment of the Court of Appeal in case bearing No. CA Writ 190/2018, does not stand as an obstruction for seeking such relief.

b) *In any event, is the Petitioner entitled to a grant of the subject matter from the 1st Respondent in the circumstances of the case?*

The fact that the Petitioner had previously claimed damages through the case bearing No. 1329/Money in the District court of Moratuwa and was thus vested with ownership to another property, has been considered irrelevant for determination of the present case. What the 1st Respondent is ought to consider in implementing its policy is whether the Petitioner had in fact had long-term

possession for the land blocks Nos. 269 and 270. When computing long-term possession, the municipality must extend its computation back to the period since the 4th Respondent was vested with possession of the land blocks, up to date. The 1st Respondent must further consider whether the Petitioner is a 'second-class citizen' due to the fact that he was deprived of a legally valid title to the subject matter. As per my foregoing analysis, in my view, since the Petitioner qualifies himself to be a 'second-class citizen' with long-term possession to the land blocks in issue, the Petitioner is entitled to a grant of the subject matter from the 1st Respondent.

c) *Is the Petitioner similarly circumstanced to that of the recipients of Lots 244, 255, 260, 276 and 290 depicted in the Cadastral Map?*

This Court arrived at a finding that titles in respect of Lots Nos. 244, 255, 260, 276, and 290, have been transferred to total outsiders who had not been long-term occupants of such land blocks. It further found that the consideration charged in respect of Lots Nos. 279, 282, and 283, exceeds the amount permitted by the policy of the municipality. Thus, the 1st Respondent municipality had taken an arbitrary route in vesting titles to the above lands by unhesitatingly deviating from its own policy.

Therefore, for the rightful implementation of the programme for the transfer of title to the Petitioner, he must by no means be similarly circumstanced to the recipients of the afore-stated land blocks. What the municipality must consider is whether the Petitioner is similarly circumstanced to those persons with 'long-term possession' qualified as 'second-class citizens' who were lawful beneficiaries of the title divestiture programme. In my view, the answer is in the affirmative, thereby, the Petitioner is entitled to an equal implementation of the policy without any discrimination, unless the municipality has intelligible reasons, according to law, to treat the Petitioner separately.

44) In view of the foregoing, I hold that the fundamental right of the Petitioner guaranteed by Article 12(1) of the Constitution has not been infringed by the 1st Respondent. That is solely due to the premature nature of this Fundamental Rights Application.

45) Accordingly, I dismiss this Application.

46) **However, the 1st and 3rd Respondents, by placing due emphasis on the findings arrived at by this Court, including the findings in paragraphs (33), (34) and (36) above, is hereby directed to forthwith take necessary action to implement its policy and programme relating to the divestiture of the title in respect of the remaining lands in the *'Bolgoda-Siripura Janawasaya'*. That should include taking a decision regarding the blocks of lands depicted as Lots 269 and 270 in the cadastral map No. 520206 Zone 4 sheet 1 prepared by the Surveyor General.**

47) **When doing so, should the 1st and 3rd Respondents conclude that the Petitioner is entitled in terms of such policy to receive the title certificates in respect of the afore-stated blocks of land, the 1st and 3rd Respondents shall take necessary action to transfer such title to the Petitioner according to law and in terms of its afore-stated policy.**

Judge of the Supreme Court

Jayantha Jayasuriya, PC, CJ

I agree.

Chief Justice

Janak De Silva, J

48) I have had the benefit of reading in draft the judgment proposed to be delivered by my learned brother Kodagoda, J.

49) I am in agreement with his conclusion that the Application of the Petitioner should be dismissed. However, I respectfully disagree with his reasons and the further directions he proposes to make. My reasons are set forth below.

50) It is trite law that Article 12(1) guarantees only equal protection of the law and not equal violation of the law [See ***C.W. Mackie & Co. Ltd. v. Hugh Molagoda, Commissioner-General of inland Revenue and Others*** **(1986) 1 Sri. L. R. 300**]. Hence, the Petitioner is not entitled to obtain title of the subject matter from the 1st

Respondent merely because the 1st Respondent has previously transferred title to some other similar properties contrary to the stated policy of the 1st Respondent to grant title only to people with long-term occupation.

51) As my brother rightly points out, the Petitioner did not appeal against the judgment of the Court of Appeal in case bearing No. CA Writ 190/2018.

There, the Court of Appeal held that the Conditional Agreement No. 937 which the Petitioner entered into with the 4th Respondent for the corpus is void in view of Section 39 of the Registration of Tile Act No. 21 of 1998. This section reads as follows:

> *"No land parcel, title to which has been registered under this Act, or any interest therein shall be transferred or dealt with except in accordance with the provisions of this Act, and every disposition otherwise effected shall be void."*

The Petitioner claims to be in possession of the corpus from April 2016 on the strength of the Conditional Agreement No. 937. However, the Court of Appeal has declared it to be void. Thus, Conditional Agreement No. 937 is a nullity in law and no consequences flow therefrom. The Petitioner cannot rely on the possession that he obtained based on that agreement to attach his possession to the possession of the 4th Respondent to claim that he is in long-term possession of the corpus.

Therefore, I hold that the Petitioner is not similarly circumstanced to those persons with 'long-term possession' qualified as 'second-class citizens' who were lawful beneficiaries of the title divestiture programme.

52) Moreover, admittedly the Petitioner came into possession of the corpus only in 2016. The Parliamentary Debates on 9 June 2011 ("X76") contains answers given by the then Minister of Local Government and Housing to certain questions raised in relation to the land forming the subject matter to this application. The Parliament was informed that the houses were to be given to the occupants. Therefore, the policy of giving the houses to occupants has been made as far back as 2011, five years before the Petitioner came into possession of the corpus.

53) For all the foregoing reasons, I hold that the application of the Petitioner should be dismissed. No costs.

Judge of the Supreme Court