

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

In the matter of an application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka, for the grant of Writs of Certiorari, Mandamus and Prohibition

CA Writ Application No:43/2019

1. **Transparency International Sri Lanka,**  
No. 5/1, Elibank Road,  
Colombo 5.
2. **NeethaDhammachariAriyaratne,**  
No. 114, Rawathawatta Road,  
Moratuwa.
3. **Christine Olive ShiraniDayananda,**  
No.67/1,  
Abdul GaffoorMawatha,  
Colombo 03.
4. **AjanthaSuranjan Fernando,**  
No.81,  
Station Road,  
Mt. Lavinia.
5. **PrabathNuwanPremaratne,**  
Aponsu Avenue,  
Dehiwala.
6. **IndraOviniTennakoon,**  
Aponsu Avenue,  
Dehiwala.
7. **BadraNirmaliSamaranayake,**  
Aponsu Avenue,  
Dehiwala.
8. **RamasamyKarupudayan,**  
Charlemont Road,  
Colombo 06.
9. **Gnanapragasam Alfred Chelvarathnam,**  
No.26A,  
Initium Road,  
Dehiwala.
10. **Raja Selvanayagam,**  
No.34,

Initium Road,  
Dehiwala.

11. **RoshanRanasinghe,**  
No. 17,  
Fairline Road,  
Dehiwala.

12. **DeepalDissanayake,**  
No. 2A,  
Simon AbeywickramaMawatha,  
Mount Lavana.

13. **Thilak De Alwis,**  
No. 2,  
Simon Abeywickrama Road,  
Mount Lavinia.

14. **KumiRajakaruna,**  
No. 7A,  
De Saram Road,  
Mount Lavinia.

15. **NadeeshaRajakaruna,**  
De Saram Road,  
Mount Lavinia.

**PETITIONERS**

**Vs.**

1. **Urban Development Authority,**  
Ministry of Megapolis & Western Development,  
6<sup>th</sup> & 7<sup>th</sup> Floors, "Sethsiripaya",  
Battaramulla.
2. **JagathNandanaMunasinghe,**  
The Chairman,  
Urban Development Authority,  
Ministry of Megapolis & Western  
Development,  
6<sup>th</sup> & 7<sup>th</sup> Floors, "Sethsiripaya",  
Battaramulla.
3. **Eng. SumedhaRathnayake,**  
Director General,  
Urban Development Authority,  
Ministry of Megapolis & Western Development,  
6<sup>th</sup> & 7<sup>th</sup> Floors, "Sethsiripaya",  
Battaramulla.

4. **Mr. D.N.D. Ranatunga,**  
Director Enforcement,  
Urban Development Authority,  
Ministry of Megapolis & Western Development,  
6<sup>th</sup> & 7<sup>th</sup> Floors, "Sethsiripaya",  
Battaramulla.
5. **Central Environmental Authority,**  
No. 104,  
Denzil Kobbekaduwa Mawatha,  
Sri Jayawardenepura Kotte.
6. **A J M Muzammil,**  
Chairman,  
Central Environmental Authority,  
No. 104,  
Denzil Kobbekaduwa Mawatha,  
Sri Jayawardenepura Kotte.
7. **The Sri Lanka Land Reclamation and  
Development Corporation,**  
No. 03,  
Sri Jayawardenapura Mawatha,  
Sri Jayawardenapura Kotte.
8. **Mr. Roshan Gunawardena,**  
The Chairman,  
The Sri Lanka Land Reclamation and  
Development Corporation,  
No. 03, Sri Jayawardenapura Mawatha,  
Sri Jayawardenapura Kotte.
9. **Eng (Dr) Asiri Karunawardena,**  
Director General,  
National Building and Research Organization,  
99/1, Jawatta Road,  
Colombo 05.
10. **Prof. P.B. Mandawala,**  
Director-General,  
Department of Archaeology,  
Sir Marcus Fernando Mawatha,  
Colombo 7.
11. **Condominium Management Authority,**  
Sir Chithampalam A Gardier,  
National Housing,  
Department Building,  
1<sup>st</sup> Floor,

Colombo 2.

12. **Mr. R.K. Jayaweera**,  
General Manager,  
Condominium Management Authority,  
Sir Chithampalam A Gardier,  
National Housing,  
Department Building,  
1<sup>st</sup> Floor,  
Colombo 2.
13. **Dehiwela-Mount Lavinia Municipal Council**,  
Galle Road,  
Dehiwela.
14. **Mr. Sunil Galagama**,  
Municipal Commissioner,  
Dehiwela-Mount Lavinia Municipal Council,  
Galle Road,  
Dehiwela.
15. **Colombo Municipal Council**,  
Town Hall,  
Colombo 7.
16. **V.K.A. Anura**,  
Municipal Commissioner,  
Colombo Municipal Council,  
Town Hall,  
Colombo 7.
17. **Sri Jayawardanapura Kotte Municipal Council**,  
No. 6,  
Sri Jayawardenapura Kotte.
18. **Ms. S.A.D. Sadeeka**,  
Municipal Commissioner,  
Sri Jayawardanapura Kotte Municipal Council,  
No. 6,  
Sri Jayawardenapura Kotte.
19. **Moratuwa Municipal Council**,  
Colombo-Galle Main Road,  
Moratuwa.
20. **Mr. W. Saman Lal Fernando**, Municipal  
Commissioner,  
Moratuwa Municipal Council,  
Colombo-Galle Main Road,

Moratuwa.

21. **Patali Champika Ranawaka,**  
Minister of the Ministry of Megapolis and  
Western Development,  
17<sup>th</sup> and 18<sup>th</sup> Floors,  
"Suhurupaya"  
Subhuthipura Road,  
Battaramulla.
22. **N. Rupasinghe,**  
Secretary of the Ministry of Megapolis and  
Western Development,  
Ministry of the Ministry of Megapolis and  
Western Development,  
17<sup>th</sup> and 18<sup>th</sup> Floors,  
"Suhurupaya"  
Subhuthipura Road,  
Battaramulla.
23. **National Water Supply and Drainage  
Board,**  
Galle Road,  
Rathmalana.
24. **Eng. K.A. Ansar,**  
Chairman,  
National Water Supply and Drainage Board,  
Galle Road,  
Rathmalana.
25. **Mr. Poojitha Jayasundara,**  
Inspector General of Police,  
Sri Lanka Police,  
Colombo 01.
26. **Sarath Jayamanne,**  
Director General,  
Commission to Investigate Allegations of  
Bribery or Corruption,  
36, Malalasekara Mawatha,  
Colombo 07.
27. **Sugathadasa Kulatunga,**  
No. 191/1A,  
Thimbirigasyaya Road,  
Colombo 05.
28. **Kishan Cuda Banda Ratnayake,**

No 4,  
Simon Abeywickrama Mawatha,  
Mount Lavinia.

29. Azra Yusuf Ibrahim Jfferjee,  
No. 5,  
Layards Road,  
Colombo-05.

### RESPONDENTS

**TO: HIS LORDSHIP THE PRESIDENT OF THE COURT OF APPEAL AND THE OTHER HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

On this 07<sup>th</sup> day of March, 2019

The Petition of the Petitioners above-named, appearing by Ashoka Niwunhella their registered Attorneys-at-Law, state as follows:

### PARTIES TO THE APPLICATION

#### THE PETITIONERS

1. The 1<sup>st</sup> Petitioner above named is Transparency International Sri Lanka, a Local Chapter of Transparency International (TI), the leading global movement against corruption, registered under the Companies Act, No. 7 of 2007, as a Guarantee Limited Company bearing Registration No. G.A. 279, and is possessed of the capacity to sue and be sued in their corporate name, and have come before Your Lordships in the larger public interest, in view of the rampant and on-going, persistent and flagrant violations of the existing governing and regulating the construction of condominium complexes and high rise buildings and the serious corruption that is tainting these processes, on a macro basis.
2. The 1<sup>st</sup> Petitioner, the Local Chapter of Transparency International (TI), the leading global movement against corruption, dedicated to promote accountability and eradication of corruption in all public institutions, departments and other spheres of government and private sector, and to encourage and work for suitable changes in laws, systems and procedures ensuring transparency and accountability in governmental functioning, has received numerous representations and complaints from a wide range demographic, who are seriously affected by the construction of illegal and unauthorized condominium complexes, as well as other high rise buildings, which pose a serious problem and disturbance to residents as well as substantial dislocation and nuisance factors, to say nothing of the grave threat to their lives, limbs, property and the environment of Sri Lanka.

*True copies of the Certificate of Registration dated 07.05.2009 and the Articles of Association of the said Transparency International Sri Lanka, are annexed hereto marked as "P1" and "P2" and are pleaded as part and parcel hereof.*

3. The 2<sup>nd</sup> to 15<sup>th</sup> Petitioners are citizens of Sri Lanka, who are gravely concerned about the acts and omissions of the Respondents and are affected/ will be affected by or are seriously concerned in the larger interest of the public of unlawful and/or unplanned and/or unsafe construction of condominium complexes, in the larger interest/s of the public, which are either a direct or indirect consequences of such omissions and acts of the 1<sup>st</sup> to 32<sup>nd</sup> Respondents, which will be described in detail in this Petition. Lives, limbs and property of citizens as well as indeed, the environment has/have suffered great losses, and against which, if prompt and systematic action is not taken, the said negative consequences will reoccur and will cause irreparable harm.
4. The 2<sup>nd</sup> to 15<sup>th</sup> Petitioners above named are property owners and ratepayers residing within the Municipality areas of Moratuwa, Colombo, and Dehiwala-Mount Lavinia, who are affected/imminently affected by completed/ongoing/proposed unlawful and/or unplanned and/or unsafe construction of condominium complexes and high rise buildings and have come before Your Lordships' Court, in order to safeguard their interests and rights, and most importantly in the wider public interest, as they most categorically understand the need for the reliefs prayed for in this petition, particularly in view of the magnitude of the serious consequences of these unlawful and most dangerous constructions, due to which their rights and interests are also most arbitrarily and capriciously violated, either due to non-implementation of the existing laws and regulations, and / or malpractices, and / or abuses, and / or insufficiency or irregularities in the existing laws and regulations governing the construction of high rise apartment complexes, given that they did not have sufficient means to come before Your Lordships' Court on their own at an earlier point of time.

*The 2<sup>nd</sup> to 15<sup>th</sup> Petitioners most respectfully state that they have not annexed herewith documents in proof of their ownership in order to avoid burdening the record and undertake to tender the same if deemed necessary.*

### **THE RESPONDENTS**

5. The Petitioners state that,
  - (i) the 1<sup>st</sup> Respondent above named is the Urban Development Authority, a body corporate with perpetual succession and having the capacity to sue and be sued in its corporate name, (hereinafter referred to as the 'UDA') established under the Urban Development Authority Act No. 41 of 1978 as amended (hereinafter referred to as the 'UDA Act').
  - (ii) the 1<sup>st</sup> Respondent is the statutory authority, empowered to monitor, regulate and administer development in and within, any declared development area, that has been declared as an Urban Development Area by the relevant Minister in terms of the *Section 3(1) of the UDA Act*, for the better physical and economic utilization of such area.
  - (iii) the 1<sup>st</sup> Respondent is empowered under and in terms of *Section 8 of the UDA Act*, to exercise the powers and functions of the Authority within any development area, which includes, *inter alia*, carrying out integrated planning and physical development within such development areas, to implement related programs of development work, activities and services in such areas, that are consistent with integrated planning in such areas, subject to any directions that may be given to the Authority by the Minister and to develop environmental standards and prepare schemes for environmental improvements in such areas.

(iv) The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents above named are respectively the Chairman, Director General and Director Enforcement of the Urban Development Authority.

6. The Petitioners state that:-

(i) The 5<sup>th</sup> Respondent above named is the Central Environmental Authority (hereinafter referred to as the 'CEA') and is a corporation duly incorporated under the *National Environmental Act No. 47 of 1980 as amended* (hereinafter mentioned as 'NEA Act') and can sue and be sued under its corporate name according to *Section 2(3) of NEA Act*.

(ii) The 6<sup>th</sup> Respondent above named is the Chairman of the Central Environmental Authority.

7. The Petitioners state that,

(i) The 7<sup>th</sup> Respondent above named is the Sri Lanka Land Reclamation and Development Corporation (hereinafter referred to as the 'SLLRDC').

(ii) The 8<sup>th</sup> Respondent above named is the Chairman of the Sri Lanka Land Reclamation and Development Corporation.

8. The Petitioners state that the 9<sup>th</sup> Respondent above named is the Director General of the National Building and Research Organization (hereinafter referred to as the 'NBRO').

9. The Petitioners state that the 10<sup>th</sup> Respondent above named is the Director General of the Department of Archaeology, and is responsible for the protection of all archaeological sites under and in terms of the *Antiquities Ordinance, No. 9 of 1940, as amended by Act No. 24 of 1998*.

10. The Petitioners state that the 11<sup>th</sup> Respondent above named is the Condominium Management Authority of Sri Lanka, responsible for the issuance of certificates for common elements and common amenities, certifying that the building is fit for occupation or use, and to enable the owner or Developer to register the condominium Plan in respect of condominium properties under and in terms of the *Apartment Ownership Law, No. 11 of 1973, as amendment by Act No.39 of 2003* and the 12<sup>th</sup> Respondent above named is the General Manager of the said Authority.

11. The Petitioners state that,

(a) The 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> Respondents above named are respectively, the Dehiwela-Mount Lavinia Municipal Council, Colombo Municipal Council Sri JayawardanapuraKotte Municipal Council and Moratuwa Municipal Council, constituted in accordance with the provisions of the *Municipal Council Ordinance No 29 of 1974* as amended.

(b) The 14<sup>th</sup>, 16<sup>th</sup>, 18<sup>th</sup> and 20<sup>th</sup> Respondents above named are respectively, the Municipal Commissioners of the Dehiwela-Mount Lavinia Municipal Council, Colombo Municipal Council, Sri



JayawardanapuraKotte Municipal Council and Moratuwa Municipal Council and, Designated Officers implementing/exercising the powers and functions of the said Municipal Councils.

12. The Petitioners state that the 21<sup>st</sup> and 22<sup>nd</sup> Respondents above named are respectively, the Minister and the Secretary of the Ministry of Megapolis and Western Development. The UDA, i.e, the 1<sup>st</sup> Respondent, comes within the purview of the Ministry of Megapolis and Western Development in terms of *Gazette Extraordinary* bearing No. 1933/13 dated 21.09.2015.

*A true copy of the said Gazette Notification bearing No. 1933/13 dated 21.09.2015 is annexed hereto marked as "P3" and is pleaded as part and parcel hereof.*

17. The Petitioners state that the 23<sup>rd</sup> and 24<sup>th</sup> Respondents above named are the National Water Supply and Drainage Board and the Chairman of the National Water Supply and Drainage Board and its mission is to serve the nation by providing sustainable water and sanitation solutions ensuring total user satisfaction.
18. The Petitioners state that the 25<sup>th</sup> Respondent above named is the Inspector General of Police.
19. The Petitioners state that the 26<sup>th</sup> Respondent above named is the Director General of the Commission to Investigate Allegations of Bribery or Corruption which was established by the *Act No.19 of 1994* to provide the establishment of a permanent Commission to investigate allegations of bribery and corruption and to direct the institution of prosecution for offences under the *Bribery Act and the Declaration of Assets and Liabilities Law, No. 1 of 1975*.
20. The 27<sup>th</sup> to 29<sup>th</sup> Respondents above named are persons whom the Petitioners have learnt, are persons who have already come before Your Lordships' Court on matters regarding unlawful and/or unplanned and/or unsafe construction of condominium complexes, in their respective municipalities.
21. The Petitioners further respectfully reserve their right to add as Respondents any other persons who may be responsible for the acts and/or omissions stated below, if and when their names are revealed to the Petitioners.

### **THE SUBJECT MATTER OF THIS APPLICATION**

22. The Petitioners state that the subject matter of this application relates to the safety and protection of lives, limbs, residences and property of the 2<sup>nd</sup> to 15<sup>th</sup> Petitioners and many other Sri Lankans, who reside in close proximity to unlawful and/or unplanned and/or unsafe condominium construction sites, and the environment of Sri Lanka from unlawful and/or unplanned and/or unsafe construction of condominium complexes and high rise buildings.
23. The Petitioners have come before Your Lordships' Court, at a critical time, due to the exigencies created by the increasing phenomenon of unlawful and/or unplanned and/or unsafe construction of condominium complexes and high rise buildings that is affecting the country and its people, and the sheer disappointment, distress and disgust towards proven lack of will and failure on the part of the 1<sup>st</sup> to 26<sup>th</sup> Respondents to act effectively and efficaciously to prevent and mitigate their impact on the lives, property and environment of the present and future generations of innocent citizens of Sri Lanka, by taking necessary and adequate preventive and curative measures.

24. The Petitioners state that the grave distress, sheer disappointment and disgust among the affected people and the general public who have an intense interest and concern in the welfare and wellbeing of the people, against the blatant violation of existing laws and the sheer lack of will on the part of 1<sup>st</sup> to 26<sup>th</sup> Respondents to take adequate and/or preventive and/or curative measures, was well reflected in almost every article written by members of the public and media, published in leading print media, following the disasters that occurred, in the recent past, and in particular, the sudden collapses of buildings that occurred in 2017, such as "The Excellency's collapse unearths unauthorized constructions aplenty" etc, and the views expressed by academics such as sociologist, Prof. SiriHettige and general public on electronic, print and social media.

*True copies of the relevant newspaper articles are annexed hereto, respectively marked as "P4 (a)" to "P4 (t)" and are pleaded as part and parcel hereof.*

25. The Petitioners state that this application is filed with the due objective of having the law duly applied, enforced, implemented and rendered effective, both *per se* and expeditiously and including *inter alia*, seeking the due promulgation of regulations and rules in this connection and under the existing Acts of Parliament, including *inter alia* the Urban Development Authority Act, the Town and Country Planning Act No. 49 of 2000, the National Environmental Act, the Sri Lanka Land Reclamation and Development Corporation Act, the Agrarian Development Act No.46 of 2000, the Antiquities Ordinance No. 9 of 1940, as amended, and etc., and to make provision/s for the same in order to render such Acts meaningful and efficacious, where such regulations and rules have not been duly framed/ issued or executed, due to inaction or apathy or due to other causes.
26. The Petitioners state that as members of the Public and as persons who have an inherent and intense interest and concern in the welfare of the country and the collective people, the Petitioners have watched with growing despair and have experienced over the years, the sense of apathy and inertia when there is systemic lack of coordination, inaction and inefficiency in public services and most poignantly, in the construction of unlawful and/or illegal and/or unauthorized and/or unplanned and/or unsafe condominium complexes, which indeed, persons from all walks of life and state of society, condemn with unison and which people are forced to look on in utter frustration and helplessness.
27. The Petitioners state that,
- (i) The Petitioners, like so many millions of other citizens of the country, have watched on the electronic media, and read newspapers and seen photographs depicting most graphically, the grievously heinous situations and disastrous repercussions that have been engendered, due to fatal inadequacies of the construction of condominium complexes and high rise buildings in the country, throughout the past.
- (ii) The Petitioners are gravely concerned and worried by the sudden collapsing of illegal and/or unsafe buildings that took place in:-
- a) Wellawatte on 18.05.2017,
- b) Negombo on 17.08.2017 and
- c) Ahangama on 18.09.2017,

causing serious damage to the lives, limbs and properties of the occupants and passers-by. [Produced marked **P4(a)** , **P4(b)** and , **P4(c)**]

(iii) It is the duty of the government authorities to address the causative factors of such disasters when it occurs once and then to take measures to prevent or mitigate the disastrous effects of unlawful and/or unplanned and/or unsafe construction of condominium complexes and high rise buildings occurring again, or the level of damage that was caused by such disaster once.

However, government authorities have looked askance and overlooked their statutory obligations under the Acts of the Parliament, By-Laws and the Regulations.

(iv) The failure of the government and its authorities to take action duly as per the existing laws governing the construction of condominium complexes and high rise buildings as submitted in the following paragraphs, to prevent, minimize and remedy disasters and has resulted in a continuous violation of the rights and interests of the people of Sri Lanka.

(v) The Petitioners further state that, in this application, they are seeking relief from Your Lordships' Court, against the relevant Respondents, in the paramount public interest, in order to identify, issue/put into operation and implement effective mechanisms, including *inter-alia*, appropriate Rules and/or Regulations, to ensure that legal and/or planned and/or safe construction of condominium complexes are provided to the Citizenry and at other times to take necessary preventive, mitigating and curative measures in the interests of the victimized, distressed and frustrated people in Sri Lanka.

28. The Petitioners respectfully state that the right of the people to have effective, efficacious and structured mechanisms for the construction of legal and/or planned and/or safe condominium complexes and high rise buildings must be the paramount and pervasive interest of all stakeholders in Sri Lanka.
29. The Petitioners state that effective mechanisms for the construction of legal and/or planned and/or safe of condominium complexes is essential for and has a direct bearing on the safety, protection and the quality of life of all Citizens.
30. The Petitioners state that one of the most fundamental duties that the State owes its people, in particular, by the 1<sup>st</sup> to 32<sup>nd</sup> Respondents, as a component of social welfare, is the protection of its citizens and their property from distress and disasters of all types by preventing, minimizing and remedying such disasters and damages caused.
31. The Petitioners state that they have felt both functionally, as well as morally constrained and compelled to come before Your Lordships' Court as a last resort, against the manner in which they and their fellow Citizens have been very gravely inconvenienced, their lives jeopardized and the irreparable damage suffered, by the actions, omissions and/or inactions of the 1<sup>st</sup> to 32<sup>nd</sup> Respondents.

32. Therefore, the Petitioners move to advance and prosecute this application on their behalf, as well as on behalf of the public of the country

33. The matter of very serious concerns, and which are sought to be vindicate before Your Lordships' Court are inter-alia:-

a) The continuing nature of inaction and failure to design, disseminate and implement mechanisms for the construction of legal and/or planned and/or safe of condominium complexes, to prevent, mitigate, respond and recover damages caused to lives, limbs, property of people and environment of Sri Lanka by the increasing phenomenon of illegal and/or unplanned and/or unsafe construction of condominium complexes and high rise buildings.

b) The increasing trend of the construction of illegal and/or unplanned and/or unsafe condominium complexes and the exponential rise in disasters and serious mishaps of tragic proportions, and the severe affectation and strain on residents in the areas, due to structural instability and lack of safety,, environmental issues regarding non-availability of well-structured drainage, sewerage, garbage disposal, traffic and fire control systems to accommodate the influx of residents in the area living in the proposed condominium complexes, the blockage of light and air of the residents who are already living in the areas where illegal and/or unplanned and/or unsafe condominium complexes are being constructed and destroying and/or damaging the properties with archeological importance.

#### SRI LANKA: CONDOMINIUM PROFILE

34. Sri Lanka has an area of 65,000 square kilometres and a population of 21.2 million (Department of Census and Statistics 2017).

35. According to Talking Economics, the blog of the Institute for Public Policy Studies of Sri Lanka (IPS), the total number of condominiums built in Colombo during the past decade is 727 and constitutes a total of 12,643 parcels.

*A true copy of the relevant web article titled "Building the Future: Sustainable Condominiums in Sri Lanka", dated 27/08/2018, is annexed hereto, marked as "P5" and is pleaded as part and parcel hereof.*

36. The Petitioners state that there are all manner of spurious and self-serving articles published in the internet regarding mushrooming condominium complexes all around the country, making numerous self-serving statements about the purported demand alleged to be existing.

*A copy of a typical purported article is annexed hereto marked as "P6" and is pleaded as part and parcel hereof.*

37. The Petitioners state that the Petitioners restrict this application to the laws and regulations applicable to high rise constructions in the Greater Colombo area, as stipulated in the City Development Plans of Colombo, Dehiwala-Mount Lavinia and Sri JayawardenapuraKotte and the examples of incidents of alleged violations of the same, due to the reason that, these are the areas that are seriously affected by the heavy influx of unlawful and/or illegal and/or unsafe construction of high rise buildings/ condominium property, due to the intensity of the heavy influx of illegal high rise properties coming up in the areas only, and that similar incidents have also been reported as pleaded below outside these areas, and therefore, call for immediate remedial action in all such circumstances, irrespective of the particular area.
38. The Petitioners state that infrastructural development is one of the aspects of a developed country, which raises the quality of life of people. While Sri Lanka is heading towards becoming a developed country, construction of high rise buildings or condominiums has become a norm in many cities. But the luxury of high rise buildings or condominium complexes are being built in flagrant violations of standards set out in Law and at the expense of lives, limbs, rights and property of the other residents and of the environment of that area.
39. Thus the Petitioners state that the threat and danger of disasters caused by unlawful and/or unsafe and/or illegal high rise buildings and condominium complexes, are increasing and Sri Lanka's manmade disaster profile is intensified over the last several decades, and owing to such intensity, Petitioners seek Your Lordships' intervention in this inescapable and obligatory matter to secure the lives, limbs and property of the citizenry and the environment of Sri Lanka, from the increasing threat of imminent severe disasters, due to the failure of the statutory and designated authorities to prevent the occurrence/presentation of the causative factors of the said disasters, i.e. disasters caused by unlawful and/or unauthorized and/or unplanned and/or unsafe constructions, by duly implementing existing laws and regulations, failure to take adequate preventive and/or curative measures, failure as a result of the patent lack of will on the part of the 1<sup>st</sup> to 26<sup>th</sup> Respondents and their arbitrary and/or unlawful and/or unreasonable and/or capricious and/or *ultra vires* administrative action/inaction/negligence in the due implementation and also, most importantly, the due and swift meaningful and honest enforcement of existing laws and regulations and to amend/ design and enact such further laws and regulations to ensure the safety of the people of Sri Lanka, their hard earned property, environment and future generations.

#### **NEED FOR THE CO-EXISTENCE OF SUSTAINABLE DEVELOPMENT AND CONDOMINIUM COMPLEXES AND HIGH RISE BUILDINGS**

40. The Petitioners state that Sri Lanka should and indeed, must now focus on achieving sustainable development goals, which recognize, sustainable cities and communities, as the 11<sup>th</sup> goal, in developing Sri Lanka's condominium profile. The key factor is sustainability. [Produced marked P5]

*True copies of articles presenting the importance of sustainable development and sustainable condominiums are annexed hereto marked as "P7 (a)" and "P7 (b)" and are pleaded as part and parcel hereof.*

41. The Petitioners state that the unfortunate and disappointing practices contrary to law as well as lacunae in laws and regulations governing development activities, detailed in paragraphs below, in particular relating to condominium complexes and high rise buildings, seriously deviate from the said goal and result in the wide range of problems stated below.
42. Therefore, the Petitioners, urge Your Lordships' Court to grant the reliefs prayed for in this Petition, in the wider public interest as well as the national interest, in order to regularize the construction of high rise condominium complexes and high rise buildings, to safeguard lives, limbs and property of residents, passers-by and neighbors of such condominium complexes, their properties and the protection of the environment for present and future generations, ensuring sustainable development.

### **CONSTRUCTION OF HIGH RISE BUILDINGS AND CONDOMINIUM COMPLEXES: EXISTING LEGAL REGIME**

43. The Petitioners state that there are numerous Laws enacted in Sri Lanka in the form of Statutes, Regulations and Rules that govern and regulate the development and construction of high rise buildings/ condominium complexes including , *inter alia*, The Urban Development Authority Act No.41 of 1978 as amended (UDA Act) , the National Environmental Act No. 47 of 1980 (NEA Act), the Sri Lanka Land Reclamation and Development Corporation Act No. 27 of 1978 (SLLRDC Act), the Agrarian Development Act No.46 of 2000, the Antiquities Ordinance No. 9 of 1940, the Condominium Management Authority Law No. 10 of 1973, the Apartment Ownership Law, No. 11 of 1973, as *amendment* etc., and the Development Plans for areas suitable for development including, *inter alia*, City of Colombo Development Plan (Amendment) 2008, Planning and Building Regulations 2008-2010 *inter alia* for the Sri JayawardenepuraKotte Municipal Council Area and Development Plan; Dehiwela-Mount Lavinia Municipal Council Area-Zoning Regulations: 2007-2020 of the UDA.

#### **i) URBAN DEVELOPMENT AUTHORITY ACT NO.41 OF 1978 AS AMENDED (UDA ACT)**

44. The Petitioners state that UDA Act provides "for the establishment of an Urban Development Authority to promote integrated planning and implementation of economic, social and physical development of certain areas as may be declared by the Minister to be Urban Development Areas and for matters connected therewith or incidental thereto".

*A true copy of the Urban Development Authority Act No.41 of 1978 as amended (UDA Act) is annexed herewith marked as "P8" and pleaded as part as parcel thereof.*

#### **ii) Development Plans**

45. The Petitioners state that under and in terms of *Sections 8A to 8H of the UDA Act*, the UDA has the power to prepare the development plan for development area, to appoint a Planning Committee to advise on the preparation, implementation and enforcement of a development plan and to call for information and recommendation from local authorities within whose administrative limits the development plan is being prepared.

46. The Petitioners state that, due to the exigency of the circumstances, that have arisen, and the intensity of the grave affectation, to residents in Colombo, Sri JayawardenapuraKotte and Dehiwala- Mount Lavinia Municipal Council areas, the Petitioners will be referring to the Development Plans relevant to the aforementioned Municipal Council areas.

ii.a)The City of Colombo is an area falling within the purview of the UDA Act and in terms of Section 8F of the UDA Act, the predecessor of the 21<sup>st</sup> Respondent on or about 15<sup>th</sup> March 1999, approved and promulgated the Planning and Building Regulations 1999 (commonly referred to as the 'City of Colombo Development Plan 1999'), in terms of which all development activities are to be carried out within the City of Colombo.

*A true copy of the City of Colombo Development Plan – 1999 Volumes I and II, are annexed herewith marked as “P9(a)” and “P9(b)”, and pleaded as part as parcel thereof.*

Thereafter, in or around 2008, the then incumbent Minister of Urban Development promulgated the City of Colombo Development Plan (Amendment) 2008 by which certain provisions of the aforesaid City of Colombo Development Plan – 1999 were amended and to date, the said City of Colombo Development Plan 1999 as amended by the City of Colombo Development Plan (Amendment) 2008 remains valid and in operation.

**THE CITY OF COLOMBO DEVELOPMENT PLAN (AMENDMENT) 2008** was issued under and in terms of *Section 8H* and approved under *Section 8F of the UDA Act*, with a view to promoting and regulating the integrated planning and physical development in the Colombo Development Area, declared under the *Gazette Notification No. 4/1 dated 1978.09.30*, containing provisions in respect of the matters in the schedule to the Law, and has come into operation on 6.2.2008.

*A true copy of the City of Colombo Development Plan (Amendment) 2008 is annexed herewith marked as “P10” and pleaded as part as parcel thereof.*

ii.b)**ZONAL REGULATIONS AND PLANNING AND BUILDING REGULATIONS 2008-2020** include the Development Plans for both Sri JayawardenapuraKotte Municipal Council Area and Dehiwela Mount Lavinia Municipal Council Area. It has been approved under *Section 8F of the UDA Act* and has come into operation with effect from 2008.04.21 in the Sri JayawardenapuraKotte Municipal Council Area by the *Gazette Notification No. 1546/3 dated 2008.04.21* and from 2009.03.27 in the case of the Dehiwela Mount Lavinia Municipal Council Area, by the *Gazette Notification No. 1594/32 dated 2009.03.27*.

*A true copy of the Planning and Building Regulations 2008-2020 is annexed herewith marked as “P11” and pleaded as part as parcel thereof.*

### iii) Regulations

47. The Petitioners state that, under and in terms of *Section 21 of the UDA Act* the Minister may make regulations, published in the *Gazette* and approved before Parliament, for the purposes of carrying out or giving effect to the principles and provision of UDA Act.

**iv) TOWN AND COUNTRY PLANNING ORDINANCE NO. 13 OF 1946**

48. The Petitioners state that, the Town and Country Planning Ordinance , provides for "the formulation and implementation of a National Physical Planning policy; the making and implementation of a National Physical Plan with the object of promoting and regulating integrated planning of economic, social, physical and environmental aspects of land in Sri Lanka; to provide for the protection of natural amenities, the conservation of the natural environment, buildings of architectural and historic interest and places of natural beauty; to facilitate the acquisition of land for the purpose of giving effect to such plan and to provide for matters incidental to or connected with the matters aforesaid."

*A true copy of the Town and Country Planning Ordinance No 13 of 1946 is annexed hereto marked as "P12" and pleaded as part as parcel hereof.*

49. The Petitioners state that, under and in terms of *section 23 of the UDA Act* the Minister may, by Order published in the *Gazette*, declare that in respect of any planning scheme or development project in a development area for which the provisions of the Town and Country Planning Ordinance or any other enactment applies and also in conflict with UDA Act, that the UDA Act prevails and that UDA will be responsible for the physical planning of such area according to the UDA Act.
50. Moreover *section 23(3) of the UDA Act* allows the Minister, by Order published in the *Gazette*, to cease the UDA to be the authority responsible for the physical planning in development area and the provisions of the Town and Country Planning Ordinance or any other enactment to be applicable.

**v) NATIONAL ENVIRONMENTAL ACT NO. 47 OF 1980 (NEA ACT)**

51. The Petitioners state that the NEA Act provides for, *inter alia*, the establishment of the Central Environmental Authority and its powers, functions and duties for the protection, management, and enhancement of the Environment and for the prevention, abatement and control of pollution.

*A true copy of the National Environmental Act No. 47 of 1980 as amended(NEA Act) is annexed hereto marked as "P13" and pleaded as part as parcel hereof.*

**vi) THE SRI LANKA LAND RECLAMATION AND DEVELOPMENT CORPORATION ACT NO. 27 OF 1978 (SLLRDC ACT)**

52. The Petitioners further state that the SLLRDC Act provides for the establishment of Sri Lanka Land Reclamation and Development Corporation for the development and reclamation according to the National Policy relating to land reclamation and development of such areas. Developers are required to obtain approval from this Authority, i.e, the SLLRDC, prior to filling or commencing any development activity on lands coming under the SLLRDC, i.e. wet, marshy or low lying land.

*A true copy of the Sri Lanka Land Reclamation and Development Corporation Act No. 27 of 1978 as amended (SLLRDC Act) is annexed herewith marked as "P14" and pleaded as part as parcel thereof.*



**vii) CONDOMINIUM MANAGEMENT AUTHORITY LAW NO. 10 OF 1973**

53. The Condominium Management Authority Law provides for "the establishment of a public authority known as the Condominium Management Authority for the Control, Management, Maintenance and Administration of the Condominium Property, Semi Condominium Property and Provisional Condominium Property and for the provision of common amenities thereto, and for matters connected therewith or incidental thereto."

*A true copy of the Condominium Management Authority Law No. 24 of 2003 is annexed herewith marked as "P15" and pleaded as part as parcel thereof.*

54. The said laws, regulations and rules address the following aspects that should be considered in carrying out development and construction activities regarding high rise buildings and condominium complexes within Sri Lanka, in order to ensure the safety and protection of the residents/ occupants of the said buildings, residents of the area, their property, and the environment as well as the safe and peaceful living of the said stakeholders.

**A) Structural Integrity and Safety**

- i. Number of Floors
- ii. Width of the Road
- iii. Strength of Foundation, columns and beams to be specified in a detailed plan designed and signed by a qualified person

**B) Environmental Protection**

- i. Low, wet and marshy lands
- ii. Change of weather patterns
- iii. Need for Environmental Impact Assessments

**C) Serious Disturbance to Peaceful and Healthy Living**

- i. Loss of peaceful enjoyment of light and air
- ii. Sewerage and drainage
- iii. Garbage disposal
- iv. Traffic Management
- v. Serious violation of/ interference with right to privacy
- vi. Fire Security
- vii. Insurance policy
- viii. Need to conduct EIA and/or Civic surveys

**D) Threat and Damage to Archaeological Heritage**

55. It is a trite and irrefutable principle and proposition in law, that building laws and regulations that govern construction, especially in urban areas, must be strictly adhered to and there can be no departing from the same.
56. The Petitioners state that despite the premium and importance that is attached to the aforesaid laws and regulations that govern the development and construction of high rise buildings/condominium property, the Petitioners became aware of numerous allegations of illegal and/or unplanned and/or unsafe construction of condominium complexes and high rise buildings in Sri Lanka, particularly in and around Colombo, i.e. Colombo, Dehiwala, Mount Lavinia and Sri Jayawardenapurakotte.
57. The Petitioners state that these allegations are directed against both the developers and the Respondent authorities, for constructing or permitting the construction of illegal and/or unsafe and/or dangerous high rise buildings and condominium complexes, and/ or constructing in violation of the approvals granted, or inaction of the Respondent authorities to take appropriate legal actions provided in Law, against such illegal and unsafe constructions.
58. The Petitioners state that following are the most prevalent allegations amongst the numerous allegations against illegal and/or unsafe and/or unplanned high rise buildings or condominium complexes:
- (i) Respondent authorities have issued permits contrary to applicable laws.
  - (ii) Contractors and engineers have built or are building against and in violation of applicable laws and regulations.
  - (iii) Existing laws are often being misinterpreted and misapplied by the Respondent authorities under the guise of mere practice (as opposed to legal provisions), abusing their powers as well as the objective discretion that is granted to them by Law, which is to be exercised in the most reasonable manner to regulate development for the benefit and safety of the people, their property and environment.
  - (iv) The existing laws and regulations are insufficient to address the issues created by the heavy influx of proposed construction of high rise buildings and condominium complexes.
59. The Petitioners state that they are also aware of allegations of abuse of power and corruption have led to the increasing number of incidents of construction of illegal and/or unsafe high rise buildings and condominium complexes.
60. Therefore, the Petitioners, wish to bring to Your Lordships' attention, several of such incidents that *prima facie* demonstrate blatant violations of the aforesaid laws and regulations, and which have put the lives, limbs and property of the residents of the areas, whilst seriously disturbing and impeding their peaceful living and destroying the surrounding environment.

61. The Petitioners state that the Petitioners, have hereinafter set out the existing Laws and Regulations pertaining to the development and construction of condominium property, with several of such recently completed as well as on-going constructions which have allegedly violated the same, being brought to the attention of the 1<sup>st</sup> Petitioner, through the complaints received by them, as well as information received via print and electronic media, and the personal experiences of the 2<sup>nd</sup> to 15<sup>th</sup> Petitioners, as morefully described in the following paragraphs, separately under the relevant areas of concern.
62. The Petitioners reserve the right to place before Your Lordships' Court, the detailed provisions of the various Law, that relate to development and construction of high rise buildings/ condominium property.
63. The Petitioners state that the paragraphs below, are categorized in to the aforesaid main aspects, that are critical in the development activities, in particular when it comes to the construction of high rise buildings or condominium complexes, and set out the relevant legal provisions and regulations that govern the said aspects, with reference to incidents of alleged violations of the same, by the developer and/or the Respondent authorities.

A) **STRUCTURAL INTEGRITY AND SAFETY**

64. The Petitioners state that the building regulations are introduced mainly to ensure the structural integrity of high buildings and condominium complexes, in order to safeguard lives, limbs and property of the resident/ occupants, the neighbours and the passers-by, as well as the environment.
65. The Petitioners state that these laws and regulations, in particular, set out regulations, pertaining to the detailed plans to be signed by qualified persons recognized in law, the approval of the said plans by the responsible authorities, and most importantly, the standards according to which the said plans should be designed and developments carried out.
66. The Petitioners state that the said standards, laws and regulations pertaining to the structural integrity of high rise buildings and condominium complexes, particularly in relation to the minimum plot coverage, permissible number of floors and the requirement of an approved, detailed floor plan prepared and signed by a qualified person recognized by law, are set out below and brought to Your Lordships' attention, with examples of flagrant violations of such laws and regulations, posing a serious threat to the lives, limbs and property of the residents/ occupants, passers-by and neighbours and to the environment.
67. The Petitioners state that under and in terms of *Section 8J of the UDA Act*, a Government agency or any other person is allowed to carry out or engage in any development activity in any development area or part thereof under the authority and in accordance with the terms and conditions of a permit issued in that behalf, by the UDA. A permit shall be granted if the UDA is satisfied that the development activity proposed or engaged in, is not in contravention of the existing or future Development Plan of that area.

68. The Petitioners state that, in terms of *Section 8J(1) of the UDA Act*, no Government Agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the UDA.
69. The Petitioners state that in terms of *Section 8J (2) of the UDA Act*, an application for a permit to carry out or engage in any development activity within a development area or part thereof shall be made to the UDA in such form, shall contain such particulars and be accompanied by such fees as may be prescribed by regulations made under this Law.
70. The Petitioners state that in terms of *Section 8J (3) of the UDA Law*, a permit shall be granted by the UDA if the UDA is satisfied that, *inter alia*, in any case where the development plan has been submitted to the Minister for approval or the development plan has been approved by the Minister, the development activity proposed to be carried out or engaged in will not be inconsistent with or in contravention of any proposal or provision in such development plan.
71. The Petitioners state that in terms of *Section 8K (1) of the UDA Act*, no development activity shall be carried out or engaged in, in contravention of, or in variance with, the permit issued in that behalf.
72. Moreover, the Petitioners state that *Regulation 2 of the Planning and Building Regulations, inter alia*, provides that the plan submitted under *Section 8J of the UDA Act* is to be prepared and signed by a qualified person in accordance with the said regulations; other than a plan in relation to the matters set out therein.
73. The Petitioners also state that *Regulation 13(2) of the Planning and Building Regulations, inter alia*, provides that the Detailed Structural Plans and design calculations are to be prepared in accordance with the provisions of the Law, the said regulations and any other written law relating to building construction and signed by the relevant qualified person who prepared the detailed structural plans and design calculation. *Regulation 13(3)* requires that a Certificate from the relevant qualified person also be submitted.
74. Most importantly, the Petitioners state that under and in terms of *section 8K of the UDA Act*, it is not allowed for a development activity to be carried out or engaged in, in contravention of or in variance of the Permit.
75. The Petitioners state that upon completion of any development activity under the authority of the Permit, the Certificate of Conformity that the development activity carried out or engaged in, has been effected in due conformity with the permit, has to be applied for and obtained from the UDA, and pursuant to the issuance of the Certificate of Conformity, it is not permissible in law, for any land or building to be used for any purpose other than for the

purpose specified in the permit and acting in contravention of the certificate of conformity is an offence under *section 8K(4) of the UDA Act*.

76. The Petitioners state that the legal requirement of the said Certificate of Conformity, is to further ensure the safety of the residents/ occupants, neighbours and passers-by, and their property.
77. The Petitioners now invite Your Lordships' attention to several incidents that were brought to the notice of the Petitioners, through reliable sources and, print and electronic media, where high rise buildings and condominium complexes are constructed or are being constructed, in flagrant violation of the laws and regulations which are set out in order to ensure the safety of residents/ occupants, neighbours, passers-by and their property and the environment.
78. The Petitioners state that the permissible number of floors, column details and the requirement for a detailed plan signed by a qualified person, is set out in law, in order to ensure the structural integrity of the building.
79. The Petitioners state that, the following incidents were brought to the notice of the Petitioners, by way of complaints and through print and social media, [Produced marked 'P4 (a)' to 'P4 (s)'] demonstrate, flagrant violations of the said laws and regulations, in particular the restrictions on the permissible number of floors, based on blatantly *ultra vires and illegal* misinterpretation of the existing laws and regulations.

*True copies of the advertisements published by the 1<sup>st</sup> Petitioner in all 3 languages, to which the 1<sup>st</sup> Petitioner received responses primarily via phone calls, and a response that was emailed to the 1<sup>st</sup> Petitioner and the relevant documents submitted to the Petitioners are annexed hereto respectively marked "P16 (a)" to "P16(c)" and "P16(d)" and pleaded as part and parcel hereof.*

*A true copy of newspaper article titled 'Transparency International to Assist Aggrieved Residents in Battle against Illegal Constructions' dated 20.01.2018 published in the Sunday Times is annexed here marked as "P17" and pleaded as part and parcel hereof.*

**THE UDA HAS IN SEVERAL INSTANCES, GRANTED DEVELOPMENT PERMITS TO/FOR HIGH RISE BUILDINGS AND CONDOMINIUM COMPLEXES, WHICH PATENTLY VIOLATE THE RESTRICTIONS ON THE MAXIMUM NUMBER OF PERMISSIBLE FLOORS, BASED ON A TOTALLY MISCONCEIVED AND MOST CONSPICUOUS MISINTERPRETATION, MISAPPLICATION AND ABUSE OF THE LAW.** (4)

80. The Petitioners state that, to the best of their knowledge, the UDA, i.e, the 1<sup>st</sup> Respondent, is issuing development permits, to high rise buildings and condominium complexes, discounting parking floors and mezzanine floors, regardless of the height of the building.
81. The Petitioners state that the discounting of the parking floors, was only applicable to the calculation of the floor area in terms of Forms C1, and not when satisfying the total number of

floors in Form C2, in terms of the Colombo City Development Amendment Plan 2008, item No. 7.30, which clearly states as follows:

*"The Authority may allow **additional floors for parking, irrespective of the regulatory requirement of Floor Area Ratio** mentioned in Form C1. Such additional number of parking stalls may exceed by 50% of the regulatory parking requirement. **However, such additional number of parking floors shall be counted for the total number of floors to satisfy the requirements of Form C2.** Further for the developments of thirteen (13 nos.) or more floors a maximum of four numbers parking floors may be permitted above the ground level with a plot coverage of not more than 65% of such lot. Above such parking floors, the plot coverage shall be reduced as stipulated in Form C2. This provision shall not apply for developments in the Special Primary Residential Zone except for developments indicated in 4.1(e)."*

*True copies of the relevant pages of the City of Colombo Development Plan (Amendment) – 2008 are marked "P18" and pleaded as part and parcel hereof.*

82. The Petitioners state that in the most arbitrary, conspicuous and unreasonable manner, the Minister of Megapolis and Western Development, i.e the 19<sup>th</sup> Respondent, had published the *Extraordinary Gazette bearing No. 2054/45*, and dated 18.01.2018, amending the said item no.7.30 of the 2008 Amendment of the Colombo City Development Plan.

*A true copy of the Extraordinary Gazette bearing No. 2054/45 dated 18.01.2018 is marked "P19" and pleaded as part and parcel hereof.*

83. The Petitioners state that the said amendment which, to the best of the knowledge of the Petitioners, which was effected without objective, adequate and meaningful technical input , provides that additional parking floors should be discounted not only when calculating the Floor Area Ratio but also from the calculation of the permissible number of floors, dangerously allowing monstrous and gigantic high rise constructions to come up, without even remotely considering the serious danger to the lives, limbs and properties of passers-by and neighbours.

84. The Petitioners state that, not only the substance of the said Gazette but the retrospective effect of the Gazette which is most artificially and in a highly strained manner, made operative from as far back as 2012, is even more shocking and irreconcilable with the basic and most fundamental principles of law.

85. The Petitioners state that they have come into possession of a purported letter issued by the UDA, on 18.10.2012, wherein the said UDA, permitted more floors in order to achieve the objective of "maximizing land use", yet without duly considering most vital factors such as safety of residents as well as neighbours and passers-by.

*A true copy of the letter issued by the UDA on 18.10.2012 is marked "P20" and pleaded as part and parcel hereof.*

86. The Petitioners state that, it is this nature of unreasonable exercise of administrative discretion that has led to unfortunate incidents stated above.

87. The Petitioners state that the preceding paragraphs set out few instances, in which the planning committees and/or the UDA, have exercised the powers that are vested with them for the benefit of the public, in the most unreasonable and unjustifiable manner and in flagrant violation of the existing building regulations, to the grave detriment of the public.
88. The Petitioners state that, according to the said purported practice, to the shock and surprise of the Petitioners, a proposed building which has 3 parking floors, a mezzanine floor and 4 other floors, is considered by the UDA, as a building with four floors and not eight floors.
89. The Petitioners state that this purported practice and the new law, of the UDA, renders the whole purpose of having laws and regulations governing the maximum number of permissible floors, absurd, particularly in view of the height of buildings.
90. Further the Petitioners state that it is vital to note that the height of a building is directly proportional to the amount of light and ventilation, the right to which is also recognized as a basic human need that guarantees one's right to health that will be blocked to the neighbourhood by way of the new condominium construction.
91. The Petitioners note with great emphasis that, given that form 'C' of the Building Regulations, does not have a maximum height but only goes by the number of floors, the situation is worsened when the UDA allows for increased numbers of floors, discounting the parking floors on narrow roads, leading to serious threat to the health of the residents and depriving them of their right to fresh air and natural light, which is essential for a healthy life.
92. The Petitioners further state that the failure of the developers to abide by the minimum plot coverage of 65%, as per the building regulations, also leads to the flooding of roads, during rains due to insufficient natural ground area in the compound for rain water to be absorbed to the ground.
93. The Petitioners state, most surprisingly, that even though the said new law, most emphatically excluded Special Primary Residential Zones from this purported practice, the Petitioners state that they became aware of situations in which the UDA has issued permits to developments in Special Primary Residential Zones, discounting parking floors, in complete contravention of the said law.
94. For example, the Petitioners state that in terms of paragraph 4.1(b)(ii) in the City of Colombo Development Plan (Amendment)-2008, the maximum number of storeys lawfully permissible within the Special Primary Residential Zone is five (G+4) and thus any Preliminary Planning Clearance or Building Permit / Approval issued in respect of construction of any building exceeding five floors (i.e. G+4) is unlawful and *ultra vires*, if the said construction is carried out in the Special Primary Residential Zone.
95. As pure examples for instance,
  - (a) it was brought to the attention of the Petitioners through brochures, newspaper articles and the website of the holding group of a construction company, which to the best of the Petitioners' knowledge is the Blue Ocean Group of Companies, that in complete contravention of the abovementioned law, a seventeen (17) or fourteen (14) storeyed high rise condominium complex is being constructed at Layards Road, Colombo 5, which, in terms of the City of Colombo Development Plan (Amendment) - 2008, falls within the "Special Primary Residential

Zone", where the maximum number of storeys lawfully permissible is five (G+4), as mentioned above.

*A true copy an extract from the website of the Blue Ocean Group of Companies is marked "P21" respectively and pleaded as part and parcel hereof.*

(b) the 3<sup>rd</sup> Petitioner states that a high rise condominium containing 14 floors in complete violation of the permissible number of maximum floors is being constructed at Abdul CaffoorMawatha, Colombo-03 squeezed in between existing residences down a road ending in cul-de-sac causing serious threat and danger to all neighbours, damaging the neighbouring premises obstructing access and exit to and from those premises as well as light and air to the said premises.

(c) There are 6 condominium complexes of 7 stories in the vicinity of Initium Road, Dehiwela, one particularly situated at No. 14, Initium Road, Dehiwela, in complete violation of several building regulations including the permissible number of floors, minimum plot coverage, rear space, fire escape and the boundary line. In addition, there are ongoing, unlawful constructions at Fairline Road, Dehiwela and at Station Road, Mount Lavinia.

*True copies of several photographs depicting illegal and unsafe apartment complexes mushroomed in Wellawatte area, bordering very narrow roads, a survey carried out by the Mount Lavinia Residents' Association depicting 19 unlawful constructions in Mount Lavinia and photographs of ongoing dangerous and illegal construction particularly depicting the heavy vehicle movement and the underground excavation carried out in a highly residential area, the manual unloading of iron girders causing unbearable noises, the deprivation of light to the neighbors, encroachment of the narrow road, unclean construction environment that facilitates mosquito breeding as well as the damages caused to neighbouring properties are annexed hereto respectively marked as "P22 (a)" , "P22(b)" and "P22(c)" as pure examples most clearly depicting flagrant violations of building regulations causing serious threat and damage to lives, limbs and property of the neighbours, passers-by as well as the future occupiers, and are pleaded as part and parcel hereof.*

96. The Petitioners state that, there are numerous other unlawful constructions which have been granted Development Permits, which violate the restriction on the maximum number of floors and/or the requirements on minimum site frontage and/or side spaces and/or plot coverage and/or rear space, as set out in law.

#### **DEVELOPMENT PERMITS ARE ISSUED IN VIOLATION OF THE COLOMBO CITY DEVELOPMENT PLAN AS AMENDED IN 2008**

97. The Petitioners state that they have become aware of the following incidents, where Development Permits have been granted in complete contravention of the rules and regulations set out in the City of Colombo Development Plan as amended in 2008, primarily pertaining to structural integrity and safety of the building, including *inter alia* the permissible, maximum number of floors, minimum frontage and/or the requirements on minimum site frontage and/or side spaces and/or plot coverage and/or rear space.

98. The Petitioners state that, one other incident, about which they became aware of, through the print media, is unlawful and unsafe construction of a high rise building in No.5/40 of Longdon Place, Colombo 07, which once again made it palpably clear that the violation of building regulations, (that set out the maximum number of floors permissible in each development zone, requirement of an approved detailed building plan designed in terms of the law and signed by a qualified person recognized in law, and the patently *ultra vires* actions of the UDA



and their inaction against unlawful and unsafe constructions), is not a matter that is confined only to high rise condominium developments.

- a. The said unlawful development which has exceeded the maximum number of floors permissible in a special primary residential zone, under and in terms of the Colombo City Development Plan 2008, i.e. G+2, is a dwelling house as opposed to all above examples where the development is a condominium complex.

99. The Petitioners further state that, for a development of a 13 storied building, in terms of Form C2 of the *City of Colombo Development Plan*, it is required to have a minimum site frontage of 35.0 m, a maximum plot coverage of 50%, a minimum rear space of 6.0 m, and side space (each side) of 4.0 m.
100. The Petitioners state that through reliable sources, the Petitioners became aware that a proposed 13 storied condominium complex, at No. 185 and 191/3, Ven. MuruththettuweAnandaNahimiMawatha (formerly known as Thimbirigasyaya Road, Colombo-5) for which a Development Permit has been issued by the 1<sup>st</sup> Respondent Authority, that the aforesaid Permit specifically indicates that the proposed condominium complex consists of 3 parking floors, a mezzanine floor and 9 apartment floors, totalling 13 floors.
101. The Petitioners state that to the best of the Petitioners' knowledge, as *per* its Preliminary Planning Clearance issued by the 1<sup>st</sup> Respondent, the proposed condominium complex is situated in an extent of 31.92 perches (approximately 807 m<sup>2</sup>) and is within a Primary Residential Zone, and thus, is in blatant violation of the regulations set out in the *City of Colombo Development Plan*.
102. The Petitioners state that, for reasons best known to the Respondent authorities, the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents have not considered floors for parking and the mezzanine floor as floors for the purposes of Forms C1 and C2 of the *City of Colombo Development Plan* and considered it to be a condominium complex of nine stories despite that the Item 13 of Schedule III – Parking and Traffic Control (Regulation 34) of the *City of Colombo Development Plan*, specifically dictating that additional parking floors shall be counted for the total number of floor/s requirement in Form C2.
103. Most importantly the Petitioners state that, to the great shock and disappointment of the Petitioners, even if the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents considered the proposed condominium complex to be 9 storied, in terms of Form C2 of the *City of Colombo Development Plan*, such a construction requires a minimum site frontage of 22.0 m, a maximum plot coverage of 65%, a minimum rear space of 5.0 m and minimum side space (each side) of 2.0 m. However, to the best of the knowledge of the Petitioners, the said proposed condominium complex does not satisfy any of the aforesaid requirements under the Development Permit, Primary Planning Clearance or the regulations set out in the *City of Colombo Development Plan*.

#### **DEVELOPMENT PERMITS ISSUED IN VIOLATION OF THE DEHIWALA - MOUNT LAVINIA DEVELOPMENT PLAN**

104. The Petitioners state, that the Petitioners became aware of the following incidents, where Development Permits have been granted in complete contravention of the rules and

regulations set out in the Dehiwala - Mount Lavinia Development Plan, primarily pertaining to structural integrity and safety of the building/s, including *inter alia* the permissible number of maximum floors, minimum frontage and/ or the requirements on minimum site frontage and/or side spaces and/or plot coverage and/or rear space.

105. The Petitioners state that as per the Zoning Regulations 2007-2020, set out in the Development Plan for Dehiwala - Mount Lavinia, identifies Lilian Avenue, Mount Lavinia under item 229 of clause 5.3 titled 'Roads Belonging to the Municipal Council', as a road coming under the jurisdiction of the Dehiwala-Mount Lavinia Municipal Council and indicates that the Building Limit for the said Lilian Avenue is 20 feet, and the said Lilian Avenue is known to be road a which is less than six feet in width.
106. The Petitioners state that they became aware that an unlawful and/or unsafe construction that is being carried out in assessment No. 15, on the said aforesaid Lilian Avenue, Mount Lavinia, which is a plot of land amounting to 19 perches, on which as per Schedule 8 of the Building Regulations, only a building which is 4 floors, *i.e.* G+4, could have been constructed, has been granted building approval by the Dehiwala- Mount Lavinia Municipal Council for the construction of a 6 or 7 storied building, *i.e.* G+5 or G+6, in complete contravention of the Law that governs developments in the Dehiwala- Mount Lavinia area.
107. Therefore, the Petitioners state that the said approvals granted to the unlawful and unsafe construction of a 6 or 7 storied building, is *ultra vires*, unlawful, arbitrary and clearly in excess of jurisdiction, and is in flagrant violation of the existing Zoning Regulations and Planning and Building Regulations that are applicable to the Dehiwala- Mount Lavinia Municipal Council Development Area, and thus, poses a serious threat to the lives, limbs and property of the future occupants/ residents, neighbours and passers-by.
108. The Petitioner states that, the Petitioner became aware of another seemingly unlawful and/or unsafe construction of a condominium building with 15 floors, *i.e.* G+14, without a valid building permit and, over and above the permissible number of maximum floors in a less than 6 meters width road, *i.e.* G+4, or on a Lot with 40 perches, *i.e.* G+7, as set out in the Dehiwala- Mount Lavinia Development Plan, at/on the allotment of land bearing assessment No. 6, De Alwis Avenue, Mount Lavinia, in blatant violation of the Building Regulations set out in the Dehiwala- Mount Lavinia Development Plan.
109. The Petitioners state that it was further brought to their notice that at least 11 condominium properties under construction in the Mount Lavinia area, are being developed in flagrant violation of the Building Permits and/or on Building Permits, irregularly issued by the Respondent authorities, and to the best of the knowledge of the Petitioners, the said properties include the following;
  - i. No. 3, Lilian Avenue – a G+ 5 approved project where only a G+3 +1P could have been approved.
  - ii. No. 56/4, De Saram Road – G+7 and 1 Mezzanine Floor approved project where only a G+4 and 1P could have been approved. However a G+8 and 1 Mezzanine Floor has been constructed.

- iii. No. 15, Lilian Avenue – a G+6 approved project where only a G+3 and 1P could have been approved
- iv. No. 30, Hotel Road – a construction is ongoing where no approvals have been granted for any purpose.
- v. No. 6, De Alwis Avenue – G+12 and 2 Mezzanine Floors of which G+2 and Mezzanine Floors for parking where only G+6 and 1P could have been approved.

109. The Petitioners state that, they also became aware that another construction company, which is to the best of the knowledge of the Petitioners, called Link Legends (Pvt) Ltd, is presently engaged in constructing a residential condominium complex at No 15, Lilian Avenue, Mount Lavinia within Ward No. 18 of the Municipality of the 13<sup>th</sup> Respondent, in violation of the above Zoning Regulations and/or the Planning and Building Regulations and/or building permit thereto.

111. The Petitioners state that these type of flagrant and blatant violations of the laws and regulations concerned about the structural integrity of high rise buildings and condominium complexes, have resulted in disastrous situations, both domestically and internationally, where buildings have collapsed, resulting in the death of innocent residents/ occupants, passers-by and neighbours, while causing serious damage to property and environment.

### **COLLAPSING BUILDINGS**

112. The Petitioners state that the following incidents (at least of the ones that have come to light publicly), which were reported on print and electronic media, in the recent past, palpably demonstrate the severe consequences of such violations:-

- i. building at Wellawatta collapsed on 18.05.2017 [Produced marked "P4(a)"]
- ii. building at Negombo collapsed on 17.08.2017 [Produced marked "P4(b)"]
- iii. building at Ahangama collapsed on 18.09.2017, causing serious damage to the lives, limbs and properties of the occupants and passers-by. [Produced marked "P4(c)"]

113. The Petitioners state that most unfortunately, due to the failure of the Respondent authorities, to the best of the Petitioners knowledge, an employee of Abans cleaning service, was killed by a steel poll that fell from a high rise apartment that is under construction, at Moor Road, Wellawatta. Moreover, a worker at the seemingly unlawful and dangerous construction at Abdul CaffoorMawatha, Colombo-03 passed away due to injuries suffered by falling from the 13<sup>th</sup> floor. There have been a great number of such instances, too numerous to mention due to the lack of safety methodologies, at great cost to human.

114. In view of such unfortunate events, the Petitioners state that the UDA, i.e., the 1<sup>st</sup> Respondent, must revisit conditions stipulated in the Development permits, and provide specific and legally binding standards/guidelines to Site Engineers, and managers, to ensure the safety of the passers-by and the neighbours, and their properties. An example can be drawn from the building regulations applied in the United Kingdom, which is highly progressive.

### **B) ADVERSE EFFECTS ON THE ENVIRONMENT**

115. The Petitioners state that the construction of unlawful and/or unsafe and/or irregular construction of high rise buildings and condominium complexes, in violation of the building and environmental regulations, not only cause irreparable damage to the environment, but also cause natural disasters, such as floods, and threatens the lives, limb and property of innocent people.
116. The Petitioners state that:-
- (a) in terms of the *National Environmental Act No. 47 of 1980* as amended (*NEA Act*), the discharge, deposit or emission of waste into the environment has been prohibited by law, unless effected in a manner approved by a project approving agency.
- (b) As such, in terms of *Part IVC of the NEA*, certain project approving agencies have been appointed to grant approval for prescribed projects as may be gazetted by the Minister under the said Act.
- (c) In terms of the *Government Gazette bearing No. 772/22* and dated 18.06.1993 which has been amended by Order published under the *Gazette Notification No. 1104/22* dated 05.11.1995, by the then Minister of Environmental and Parliamentary Affairs made order in terms of *Section 23Z of NEA* determining the projects and undertakings set out therein as projects and undertakings, for which approval shall be necessary under the provisions of *Part IVC of the NEA*.
- (d) The aforesaid *Gazettes* stipulate the projects and undertakings for which approval shall be necessary under the provisions of *Part IVC of the Act* and which include, *inter alia*; construction of dwelling housing units, irrespective of their magnitudes and if located wholly or partly within,
- i. any Flood Area declared under the Flood Protection Ordinance and any flood protection area declared under the SLLRDC Act or
  - ii. if situated 60 meters from the bank of a public stream as defined in the Crown Lands Ordinance (Chapter 454) and having a width of more than 25 meters at any point of its course.
  - iii. within 100 meters from the high flood level contour of, or within, a public lake as defined in the Crown Lands Ordinance (Chapter 454), including those declared under section 71 of the said Ordinance.”
- (e) In terms of the said Act, it is mandatory for all project approving agencies, to require any party who submit any prescribed project for its approval to submit within a specified time, an Initial Environmental Examination (IEE) report or an Environmental Impact Assessment (EIA) report, as required by the project approving agency relating to such project and containing such information and particulars as may be prescribed.
117. However, to the greatest shock and surprise of the Petitioners, the Petitioners state that they became aware from information received through certain personnel of the CEA, that the City of Colombo Development Plan (Amendment) 2008, which contains the regulations on development activities, has not been approved by the CEA, which is in flagrant violation of the *Gazette Extraordinary bearing No. 722/22* dated 24.06.1993, which makes an Environmental Impact Assessment (EIA) compulsory for Housing and Building integrated multi development activities consisting of housing, industry, commercial infrastructure covering a land area exceeding ten Hectares.

*A true copy of the said Extraordinary Gazette bearing No 722/22 dated 24.06.1993, is annexed hereto marked "P23" and is pleaded as part and parcel hereof.*

### **B.I) Low, Marshy and WetLands**

118. The Petitioners state that the Greater Colombo area, (which includes the City of Colombo, i.e, the largest in Sri Lanka, Dehiwala Mount Lavinia Municipal Council area, which is the second largest and Sri JayawardenapuraKotte, which has great historic value), is known as the most affected area, as a result of unlawful and dangerous high rise buildings and condominium complexes in Sri Lanka, and the majority of the areas in Greater Colombo, are lowland, within 6m above sea level. Along the rivers, there are marshy areas scattered within 1m above sea level, which serve as temporary reservoirs (retarding basins) in rainy weather.

119. The Petitioners state that according to a report published by a research team of Japan University of Social Welfare in the year 2001, on Greater Colombo Flood Control and Environmental Improvement, as urban development progresses, the area of marsh in Greater Colombo, is declining, and the long-term lack of maintenance on rivers, is reducing their drainage functions, leading to annual flooding.

*A true copy of the said report published by a research team of Japan University of Social Welfare in the year 2001, is annexed hereto marked "P24" and is pleaded as part and parcel hereof.*

120. The Petitioners state that the aforesaid Flood damage, caused by the decrease of marshy lands, mainly due to illegal construction and development activities, was particularly severe in the urban poor populations, residing along the river banks.

121. The Petitioners state that the said report further states that flooding into the homes of the urban poor and the spread of disease caused by flooding, were becoming serious social problems and recommended that remedial action was urgently required.

122. The Petitioners state that, in fact the damage caused by flood due to illegal filling of marshy and lowlands, by developers and the arbitrary and illegal actions and/or inactions of the respondent authorities, is not restricted to urban poor.

123. The Petitioners state that as presented below, despite the existing laws and regulations governing the filling and development of marshy, wet and lowlands, development activities, in particular, the illegal construction of high rise and heavy structures on marshy, wet and lowlands, have caused severe damage to the environment, property of residents living in the area and seriously disturbed their peaceful living.

124. The Petitioners state that once a land is declared by the Minister as 'Reclamation and Development Areas' and/or as 'Low lying, marsh, waste or swamp', in terms of *Section 2 and 2B of the SLLRDC Act*, it is prohibited under *section 2A (1) of the SLLRDC Act* to fill or develop in any manner whatsoever, any extent of land situated within any area of land declared to be a Reclamation and Development Area.

125. The Petitioners state that however, in terms of subsection (ii) under *section 2A(2) of the SLLRDC Act*, the SLLRDC is empowered to grant approval for a written application made by any person for filling or developing any extent of land within any area declared to be Reclamation and Development Area subject to terms and conditions, but any contravention of subsection (1) and failing to adhere to terms and conditions subject to which an approval has

been granted under subsection (2), is an offence punishable in terms of *section 2A of SLLRDC Act*.

126. The Petitioners state that, notwithstanding the fact that the above mentioned provisions have been enacted in the SLLRDC Act, there are well substantiated allegations that the Respondent authorities have acted in flagrant violation of such laws and that they have been permitting the construction of condominium complexes and/or high rise buildings in the areas declared as Reclamation and Development Areas and/or as low lying, marshy, waste or swampy.
127. The Petitioners state that in the case of low lying marshy lands, even if they have been approved for filling and construction, such filling and constructions have to be carried out in an extremely controlled manner and with proper drainage systems in place, well-constructed to isolate the said land, and to minimize the adverse impacts on the surrounding environment.
128. The Petitioners state that in instances where haphazard and ad-hoc filling is evident, no sooner the filling started, the neighbouring lands have experienced extensive ground water seepage.
129. Moreover, the Petitioners state that certain purported approvals granted by the authorities, (in particular, the 7<sup>th</sup> Respondent, i.e., SLLRDC), have considerably reduced the capacity of the existing drains and have raised serious suspicions of malpractice and/or corruption, as detailed below, particularly in view of the vulnerability of flooding of the marshy lands in Greater Colombo over time.
130. The Petitioners state that,
  - (i) on or about 17.04.2008, the Minister of Urban Development and Sacred Area Development, published *Gazette Extraordinary No. 1545/9*, by virtue of the powers vested in him in terms of *Section 2 (B) 1 of the SLLRDC Act* and declared that the Municipal Council of Sri Jayawardanapura, Kotte as an area of lowlands, marshes, barren or muddy lands.
  - (ii) it was brought to the attention of the Petitioners through newspaper articles that there are allegations that without the written approval from the SLLRDC and Respondent authorities, filling, developing and constructing a condominium complex, has/have been allowed, at Morris RajapaksheMawatha, which falls within the Municipality of Sri Jayawardanapura, Kotte, in flagrant and blatant violation of the aforesaid declaration made by the Minister and the prohibition imposed by *Section 2A(1) of the SLLRDC Act*.
131. The Petitioners became aware that illegal filling of wet and marshy lands in Sri JayawardenapuraKotte, has caused serious flooding in the area, damaging the property and environment, and causing serious disturbance to the daily activities of the residents of the area.

#### **B.II) Change of Weather Patterns Due to High Rise Constructions in Special Primary / Special Residential Zones**

132. The Petitioners state that, according to the United Nations, rising heat waves in the world's middle income and poorer nations are threatening the health and prosperity of about 1.1 billion

people, including 470 million in rural areas, without access to safe food and medicines, and 630 million in hotter, poor urban slums, with little or no cooling to protect them.

*A true copy of the article published in the Sunday Times dated 12.08.2018, is annexed hereto marked as "P25" and is pleaded as part and parcel hereof.*

133. The Petitioners state that, the negative change of weather patterns, such as the aforesaid rising heat waves, is one of the several compelling reasons in the general public interest, why uncontrolled, unplanned and/or irregular high-rise construction and/or condominium complexes in the Special Primary Residential Zone should not be permitted, especially in view of the following reasons, *inter alia*:
- i. The Special Primary Residential Zones (SPRZ), to the best of the knowledge of the Petitioners, are planned wind corridors, for example, the Special Primary Residential Zone in the Colombo City Development plan is a wind corridor for Rajagiriya and the A1A, in order to keep the daily exposure to concentrated vehicle exhaust emissions down, along the main artery between the administrative and commercial capitals of Sri Lanka.
  - ii. If uncontrolled high rises sprang up within the SPRZ, the venturi effect that still works effectively to draw pollution out of the commercial and residential zones, the very design of the SPRZ, will be violated. The wind's energy will be dissipated locally, adversely affecting the air quality far inland in addition to bringing down of some heritage trees that give Colombo its distinctive character.
  - iii. The city of Colombo is the single largest urban heat Island on the Island, and this is most apparent when the sun is moving directly overhead during the hottest time of year and when the winds are still. With the passage of the Inter Tropical Convergence Zone (ITCZ), twice a year, urban heat islands such as Colombo, draws hot surface air and create thunderstorms directly overhead by the low pressure systems they create, a process well understood by the chena system of agriculture, where the burning forest brings down the rains directly from overhead.
  - iv. As it stands now, Colombo draws most, if not all, of what has become the most regular rains of the year, both to the detriment of Colombo's already affected floods victims, and the rest of Sri Lanka's lowered inter-monsoonal thunderstorms that should land further inland, replenishing our hydroelectric reservoirs and providing the rainfall that rural farmers desperately need, metastasizing the drought cycle.
  - v. The effects of soil compaction and the accompanying reduction in the water carrying capacity of the soil can lead to flood prone areas being more susceptible to flood damage, due to reduced infiltration.
134. The Petitioners state that on the other hand, if the city of Colombo is punctuated by a low-rise, gradually narrowing corridor running East-West, with as many green areas and green parks, trees and enough ocean breeze blowing over Viharamaha Devi Park, and over the SPRZ, and inland, it breaks up the single largest urban heat Island on the Island of Sri Lanka.
135. In the totality of the above circumstances, the Petitioners state that, the Respondent authorities must take immediate and urgent and adequate and meaningful measures to make sure that

high rise constructions and/or condominium complexes will not be permitted on any ground whatsoever, in Special Primary/ Special Residential Zones.

### **C) SERIOUS DISTURBANCE TO PEACEFUL LIVING**

136. The Petitioners state that the said unlawful and/or unplanned construction of high rise buildings and condominium complexes will place severe strain/s on the common utilities and public resources in the area such as water and electricity supply, sewerage, garbage disposal facilities and will moreover aggravate the traffic congestion in the area, adversely affecting the residents of the area and also the future occupants of the high rise buildings and condominium complexes.
137. The Petitioners state that these constructions of unauthorized and/or unsafe high rise condominium complexes structures in the already highly populated City of Greater Colombo, on the subject premises, the adjoining properties and buildings, and the residents/ occupants of such buildings will suffer serious and irreparable damage including cracks to walls and foundations, serious disturbance and severe dislocation and disturbance will be caused to the daily activities of the residents/ occupants of neighbouring buildings and peaceful enjoyment of natural light, sewage and drainage facilities, and will put the lives, limbs and property of both future residents who will come to occupy these unlawful and unsafe constructions, and the neighbours residing in adjoining buildings, in serious danger in times of fire and other disasters which require quick evacuation and sufficient road width to facilitate such evacuation and entering of fire vehicles, quite apart from violation of applicable regulations and arising of environmental concerns.
138. The Petitioners, now wish to bring to Your Lordships' attention, the following disturbances that will most likely be caused to the peaceful and healthy living, due to unlawful and unsafe construction of high rise, unplanned and/or irregular buildings and condominium complexes.
- a) **Blockage of natural light and air**
  - b) **Sewerage and Drainage Issues**
  - c) **Garbage Problem**
  - d) **Serious violation of or interference with right to privacy**
  - e) **Intense Traffic congestion**
  - f) **Low Water Pressure**
  - g) **Damage to houses**
  - h) **Fire Security**

#### **a) Blockage of Natural Light and Air**

139. The Petitioners state that,

(i) right to enjoy natural light and air ensures healthy and quality living and that the said right to natural light has been accepted in other jurisdictions as well.



(ii) In 2014, when, the Chelsea Football Club was developing plans to build a new stadium, it was challenged by a family of four who feared a 'loss of light' in their London cottage that overlooks the Stamford Bridge stadium where the redevelopment is to take place and the High Court issued an injunction in favour of the said family's right to light.

*A true copy of the newspaper article reporting the said incident is annexed hereto, marked as "P26", and is pleaded as part and parcel hereof.*

(iii) The roof of the Aviva Stadium in Dublin, Ireland, was redesigned to allow a dip, following a planning dispute with neighbours who successfully argued that the original plans would stop their 'right to light'.

(iv) The case of *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 concerned a proposal by the Benevolent Society to knock down old three storey buildings it had at Bondi and put up one ten storey apartment block and one of five storeys. Waverley Council rejected the plan, as it would block views from existing residences and overshadow nearby buildings.

(v) *Prestige Building Services Pty Ltd v Coffs Harbour City Council* [2005] NSWLEC 435, rejected a developer's appeal against a decision by Coffs Harbour City Council to refuse an application to demolish a motel and build a six storey apartment block on the site. The Council said the proposal was higher than the four storey limit and would overshadow adjoining properties. The Land and Environment Court noted that most buildings in the area were two storeys high. It ruled that the development would overshadow adjoining properties.

140. The Petitioners state that, it is this statutory duty that is imposed on the civic authorities, i.e. the Respondent authorities, that is being blatantly violated and/or neglected by the said authorities in allowing and/or turning a blind eye to unlawful and irregular construction of high rise condominium complexes, which block the natural light and air in the most unhealthy and disturbing manner.

141. Therefore, the Petitioners are compelled to come before Your Lordships' Court, praying for Your Lordships' intervention to direct the said civic authorities, i.e. Respondent authorities, to duly perform and fulfil their statutory duty in order to safeguard the rights and interests of the innocent individuals and families who are deprived of their rights and interests by permitting or neglecting unlawful, unsafe and irregular construction of high rise buildings and condominium complexes.

142. The Petitioners state that, the Petitioners became aware of the construction of an allegedly illegal and/or unauthorized and/or unsafe 13 storied condominium complex at No. 185 and 191/3, Ven. MuruththettuweAnandaNahimiMawatha (formerly known as Thimbirigasyaya Road, Colombo-5), with a blind wall, at the boundary of the residences adjacent to the proposed condominium complex, which has serious adverse effects on the light and ventilation of the neighbouring residents of the area.

143. The Petitioners most emphatically state that violations of this nature, are evident of the fact that the responsible civic authorities in Sri Lanka, i.e. the Respondent authorities, have failed to 'control development in the interest of public health and other similar grounds' and the

Respondent Authorities are allegedly misapplying, misusing and acting *ultra vires* the powers conferred on them through laws and regulations, in favour of developers at the expense of the rights, safety and interests of the Public.

**(b) Sewerage and Drainage Issues**

144. The Petitioners, now wish to bring to Your Lordships' attention the following extract from the newspaper article published on 5.12.2016 in Daily News,

*"The Colombo sewer system is in serious need of a renovation; pipe failures, leaks, and blockages are becoming increasingly common as the system ages and Colombo's population continues growing. It is not unusual that the sewers get clogged to the point that water has nowhere to go but up onto the street.*

*The major reason for these shortcomings is the sewer's age. Construction on the Colombo Municipal Council (CMC) area sewage system was started all the way back in 1906. The original system was supplemented by the construction of another sewer scheme in Dehiwala, the Mt. Lavinia Municipal council area, and the Kollonawa Urban Council area that was built between 1983 and 1987."*

145. The Petitioners state that, as such, any further addition to the already high population, will further contribute to intensify the problem of sewage and drainage, unless permitted after conducting proper impact assessments and surveys.

146. The Petitioners state that in terms of Part VI of the *Planning and Building Regulations 2008-2010 inter alia for the Sri JayawardenapuraKotte Municipal Council Area*, it is mandatory that a condominium housing development exceeding 15 units be provided with a sewage treatment plant in order to satisfy standards specified by the relevant authorities.

147. The Petitioners further state that a study conducted by the Institute for Water, Environment and Health, United Nations University, Hamilton, ON L8P 0A1, Canada in its report titled 'Floods and Countermeasures Impact Assessment for the Metro Colombo Canal System, Sri Lanka', published online, reports its findings as follows:

(a) common reasons for urban flooding are lack of drainage facilities, inadequate openings, inadequate water storage, intense rainfall, encroachment and blocking in the drainage system and backwater effect at outfalls.

(b) KotteEla marsh is one of the three main marshy lands acting as retention areas for floods and Parliament Lake, Diyanawanna Lake are among the few detention ponds and lakes in the upper catchment area which can store flood water.

(c) increased surface run off due to urbanization, diminishing of retention areas, growing trend for rainfall intensity and inadequate conveyance capacities of canals, structures and outfalls, are primary reasons for recent floods.

(d) The Metro Colombo area has experienced severe floods in the recent past. Sri JayawardenapuraKotte Divisional Secretariat Division had the highest potential to be in the highly vulnerable area since the number of affected people in that DSDs was significantly high.

148. The Petitioners state that an article published at the National Conference on Water, Food Security and Climate Change in Sri Lanka, Volume 2 Water Quality, Environment and Climate Change, mentions that "according to the Sri Lanka Standard (SLS) 745-2003 for 'design and construction of septic tanks and associated effluent disposal systems' (Sri Lanka Standards Institution, SLSI 2003), average wastewater generation is 240-160 liters/capita/day (lcd), of which 75% is grey-water and 25% is black-water."
149. The Petitioners state that all findings presented above, note the vitality of the requirement of the examination of wastewater management and sewerage system plans, prior to granting building approvals for apartment complexes, especially in the Greater Colombo area.
150. On the other hand, the Petitioners state that such examination will not only benefit the neighbourhood and the environment, but also the buyers of apartments, where now to the best of the Petitioner's knowledge, there is a practice of condominium developers averting ground sewage treatment plants due to its cost, loss of ground area and for aesthetic reasons, leaving the unsuspecting buyers of these apartments to deal with long term turmoil, years after the developers have handed over the apartments and left. This type of practices are known to be prevalent in areas such as Sri JayawardenapuraKotte, where the water table is extremely high, due to there being low lying marshy areas, where the construction and maintenance of below ground sewage treatment plants of large capacities is difficult. In addition, residents of Charlmont Road, Colombo-06, Aponsu Avenue, Dehiwala including the 5<sup>th</sup> to 8<sup>th</sup> Petitioners also experienced drainage issues due to ongoing, unlawful and unsafe constructions.

### **(c) Garbage Disposal Problems**

151. The Petitioners state that the construction of unlawful high rise condominium complexes, will give rise to serious problems concerning garbage disposal.
152. The Petitioners state that in terms of the NEA Act, the discharge, deposit or emission of waste into the environment has been prohibited by law, unless done in a manner approved by a project approving agency.
153. However, the Petitioners state that, even when the aforesaid laws are in place, the Minister of Megapolis and Western Development, i.e, the 21<sup>st</sup> Respondent himself had stated, in an interview with Daily News, as reported in a web news article published on 22.04.2018, as follows:

"The Colombo District needs at least three landfills each with a capacity of 2,000 tons per day to manage the garbage problem"

*A true copy of the said newspaper article appearing on the Daily News website dated 22.04.2018, is annexed hereto marked as "P27" and is pleaded as part and parcel hereof.*

154. The Petitioners state that it is in this context, that unlawful high rise apartment complexes that accommodate at least 20 to 30 units, are being constructed in violation of the building laws and regulations, in areas that hardly can facilitate such influx of new residents and their daily garbage disposal.
155. The Petitioners state that, this problem has been scientifically analyzed and proven to take place in the event that the construction of high rise condominium complexes are not regularized and duly controlled in order to match the capacity of the area in which such complexes are being proposed to be constructed.

*A true copy of a study carried out by two researchers representing the Department of Building Economics, University of Moratuwa and Al Jaber L.E.G.T. Engineering & Contracting (ALEC) L.L.C Abu Dhabi, U.A.E, on "Opinion Study on Garbage Disposal System for Condominiums Using Quality Function Deployment", is annexed hereto, and marked as "P28" and are pleaded as part and parcel hereof.*

156. The Petitioners state that, they became aware that in most areas, where these unlawful and/or unsafe high rise condominium complexes are being constructed, i.e. Dehiwala, Mount Lavinia, Sri JayawardenapuraKotte and the City of Colombo, there are already serious problems in waste management, which will be further intensified if these type of irregular and/or illegal and/or unsafe high rise constructions and condominium complexes are to be built against the building laws, rules and regulations.
157. Moreover, the Petitioners state that most of these unlawful construction sites do not comply with the development permit conditions relating to garbage disposal, cleanliness, hygiene and protection from dust, and thereby cause serious health risks including dengue fever. In particular, 3<sup>rd</sup> Respondent states that her grandson contracted dengue fever due to the unclean environment maintained by the contractors of the ongoing unlawful, high rise condominium complex at Abdul CaffoorMawatha, Colombo-03. The 7<sup>th</sup> Petitioner states that her husband who is a retired University lecturer now suffers from a sore infection which is caused by cement dust from the unlawful construction site at Aponsu Avenue, Dehiwela.
158. The contractors often violate the development permit condition on the requirement of notice with the information of the owner and the contractor and thereby depriving the affected neighbours the opportunity to contact the relevant parties in a case of emergency. However, to the shock and surprise of the Petitioners none of the Respondent authorities take action against such violations and thereby encourages such illegal activity.

**(d) Serious Violation of or Interference with Right to Privacy and Security**

159. The Petitioners state that, it is a universally recognized right of the Petitioners to have a private life and live in a secure environment with dignity.
160. However, the Petitioners state that, as they are living in primarily Residential areas, where illegal high rise condominium complexes are being built without any adequate supervision, they are seriously concerned by these high rise illegal condominium complexes, as they most blatantly interfere with and violate the right to private life of the residents in the neighborhood.
161. The Petitioners state, in particular, that the violation of side space, rear space and the regulations on maximum number of floors seriously interfere with their right to private life and security outrageously, where most shockingly, the balconies and windows of these illegal apartments open directly into the rooms of the neighboring residences.

**(e) Intense Traffic Congestion**

162. The Petitioners state that the laws and regulations on the minimum road width requirement, pertaining to development and construction of high rise buildings and condominium complexes, is necessarily concerned primarily with efficient traffic control.
163. The Petitioners further state that more often than not contractors of unlawful, high rise condominium complexes violate development permit regulations pertaining to working hours and days, and thereby cause serious nuisance to all neighbours even during weekends, early mornings and late nights. In particular, the 5<sup>th</sup> to 7<sup>th</sup> Petitioners state that the workers at the ongoing unlawful, high rise construction at Aponsu Avenue, Dehiwela continued construction activities even on the Christmas Eve and obstructed the road depriving the said 5<sup>th</sup> to 7<sup>th</sup> Petitioners the ability to engage in religious activities. This is also experienced by the 2<sup>nd</sup> Petitioner due to an almost completed, yet unlawful high rise apartment complex at Rawathawatta Road, Moratuwa.

**THE UDA GRANTS DEVELOPMENT PERMITS TO BUILDINGS WHICH PATENTLY VIOLATES THE REQUIREMENT OF MINIMUM ROAD WIDTH, BASED ON A TOTALLY MISCONCEIVED AND MOST CONSPICUOUS MISINTERPRETATION AND MISAPPLICATION OF THE LAW.**

164. The Petitioners state that, despite the vitality of efficient traffic control for peaceful living in a residential area, the UDA, once again is purportedly following a spurious, deceptive, duplicitous and deliberate misinterpretation of the laws and regulations, on the required minimum road width.
165. The Petitioners state that most amazingly in respect of several developments adjacent/on roads that do not have the required width, the UDA, i.e, the 1<sup>st</sup> Respondent has been known to contrive to calculate the minimum road width requirement, by adding the road width of roads running parallel on either sides of the proposed building, when the proposed building site has two roads on either side, (thus most misconceived and perniciously resorting to the design of taking the aggregation of the width of both roadways) which in no way serves the purpose of setting a minimum road width.
166. The Petitioners state that to the best of their knowledge the UDA, the 1<sup>st</sup> Respondent, even calculates the width of roads that partially borders the construction site, in order to most surreptitiously arrive at a greater width to allow more floors in apartment complexes.
167. The Petitioners state that there is no provision of law or any regulation that provides for such a purported aggregation , which leads to the utter blatant violation of the law and also engenders traffic congestion, serious disturbance to daily activities, nuisance etc.
168. The Petitioners also state that the by-lanes, which are in most instances marked with only a building line and thus are not earmarked to be widened, are illegally taken into the calculation of the minimum road width, in fact, ONLY serve as separate entrances and/or exists for traffic within the apartment site while the rest of the length of the roads and the common amenities in a neighbourhood remains unchanged and thus, resulting in very high densities and heights being approved in totally low- key residential areas with twenty feet by-roads, without due regard to the surroundings, environmentally, socially and physically, resulting in the loss of neighbourhood concept and mounting to congestion.

169. The Petitioners state that, as expressed verbally by the officials in the UDA, this redundant calculation, is a so called practice, which is unfounded in law, and leaves room for undue flagrant violation of the existing laws and regulationsetc.
170. The Petitioners state that, there are also reported instances, where the Development Permits have been granted in complete contravention of the minimum road width requirement, without any form of justification for the same, causing serious disturbances to peaceful living of the residents of the neighbourhood.
171. The Petitioners further state that, this same concern and fear is felt by the residents of De Alwis Avenue, Mount Lavinia, since the said De Alwis Avenue at many places is less than 6 meters in width and cannot reasonably accommodate the number of vehicles that may be used by the residents of and visitors to such a condominium development with 62 units, particularly in view of the fact that the De Saram Road, which connects both De Alwis Avenue and SamudraMawatha, in Mount Lavinia is used by many commuters travelling from the swimming pool - side entrance of St. Thomas' College, Mt. Lavinia to gain access to and from Galle Road.
172. This issue pertaining to increased traffic congestion as well as the damages caused to the narrow roads is also experienced by numerous residents living in residential areas where unlawful, high rise condominium complexes are built and/or in the process of being built including *inter alia* Aponsu Avenue, Dehiwela, Abdul CafoorMawatha, Colombo-03, Charlmont Road, Colombo-06, Initiun Road, Dehiwela, Simon AbeywickremaMawatha, Mount Lavinia, De Saram Road, Mount Lavinia and Fairline Road, Dehiwela.

**THE UDA GRANTS DEVELOPMENT PERMITS TO HIGH RISE CONDOMINIUM COMPLEXES, WHICH SERIOUSLY AFFECTS THE TRAFFIC CONDITION AND CREATES MASSIVE TRAFFIC CONGESTION IN THE AREA, WITHOUT CONDUCTING THE NECESSARY TRAFFIC IMPACT ASSESSMENT.**

173. The Petitioners further state that under and in terms of the *Planning and Building Regulations 2008-2010 inter alia for the Sri JayawardenepuraKotte Municipal Council Area, City of Colombo Development Plan* as well as the Dehiwala - Mount Lavinia Development Plan, the UDA is empowered to carry out a Traffic Impact Assessment (TIA) in order to ascertain the impact of the proposed project on the traffic conditions of the surrounding area and most particularly, the effect such development may have on the highway network and public transport.
174. However, the Petitioners state that, to the best of the knowledge of the Petitioners, proper and official Traffic Impact Assessments have not been carried out in the recent past, where development permits have been granted to high rise condominium complexes, which accommodate huge number of residents.
175. For example, the Petitioners state, that to the best of the knowledge of the Petitioners, the exit and entrance to the proposed condominium complex with 3 parking floors at Ven. MuruththettuweAnandaNahimiMawatha, (Formerly known as Thimbirigasyaya Road) Colombo 5 is adjoining a pedestrian crossing and close to a busy junction where there is a high congestion of traffic even now and the construction of the proposed condominium complex will worsen the traffic situation at Ven. MuruththettuweAnandaNahimiMawatha, Colombo 5.

176. Therefore, the Petitioners state that, it is imperative that the Respondent Authorities, followed the law to the letter, and ensure that the minimum road width requirement, as it appears in the regulations, is ensured, without any spurious misinterpretation or misapplication of the same, and a Traffic Impact Assessment (TIA), is carried out prior to granting permission for high rise condominium complexes, which would cause increased traffic in the area.

#### **(f) Low Water Pressure**

177. The Petitioners state that according to the regulations made by the Minister of Housing, Construction and Cultural Affairs under *Section 24* read with *Section 6(e) of the Condominium Management Authority Law, No. 10 of 1973*, in *Extraordinary Gazette Notification No. 2026/25* dated 27.06.2017, in order to receive the certificate of common amenities and common elements, the water supply plan must be submitted.

*A true copy of the said Extraordinary Gazette notification No. 2026/25 dated 27.06.2017 is annexed hereto marked as "P29" and is pleaded as part and parcel hereof.*

178. However, the Petitioners state that most developers, as per the complaints received by the 1<sup>st</sup> Petitioner, do not follow the said procedure but connect the old water line to the development without drawing a new line on/to the premises as it is less costly, and thus has caused the plummeting of water pressure to existing residents. Due to which most of the Petitioners, in particular the Petitioners residing in De Seram's Road, Mount Lavinia, are facing serious difficulties due to low water pressure.

179. Moreover, the Petitioners state that, it is not only the neighbors who suffer due to the violation of this regulation by the constructors, but also the residents of the said unlawfully constructed condominiums.

180. The Petitioners further state that, it is shocking and surprising as to how these constructions are build when the law most categorically requires a water supply plan.

#### **g) Threat and Damage to Archeological Heritage**

181. The Petitioners state that, illegal and/or unsafe and/or irregular construction of high rise condominium property has, in fact led to the destruction of archeological heritage of Sri Lanka, in the most unacceptable manner, with the aim of securing commercial gains and benefits, at the expense of every other Sri Lankans' right to protect the cultural and historic heritage of Sri Lanka.

*A true copy of the newspaper article on the issue of threat and damage to archeological heritage published in Sunday Times on the 13/04/2018 is annexed hereto marked as "P30" and is pleaded as part and parcel hereof.*

182. The Petitioners state that under and in terms of *Section 18 of the Antiquities Ordinance No. 9 of 1940*, the Minister is empowered to declare monuments to be a protected monument. Consequent to such declaration it is prohibited to commence or carry out any work of restoration, repair, alteration or addition in connection with any protected monument, except under the authority and in accordance with the conditions of a permit issued by the Director-

General of Department of Archaeology or in accordance with an agreement entered into under section 20 of the said Ordinance.

183. The Petitioners state that due to unauthorized land filling and/or unplanned and/or illegal and/or unsafe construction of high rise buildings and condominium complexes without any consideration of protecting and safeguarding archaeological factors had caused a greater loss and irreparable damage to archaeological conservation.
184. The Petitioners state that, in terms of NEA Act, any archaeological reserve, ancient or protected monument is defined or declared under the Antiquities Ordinance (Chapter 188).
185. The Petitioners further state that the Antiquities Ordinance and subsequent Amendment Act No. 24 of 1998 have given substantial coverage to the archaeological history of Sri Jayawardenapura Kotte with heavy penalties for related offences. Furthermore, the inner-city and the ramparts are heavily cited in the Government Gazettes No. 1486 dated 23.02.2007 and No. 1505 dated 06.07.2007.
186. The Petitioners state that a binding agreement has been signed on 03.06.2013 between the Archaeological Department, Kotte Municipal Council and the '*Kotte Sangha Sabhawa*' for Kotte's regulated conservation which includes specific areas of 'Inner-City Area' (presently Ethul Kotte and its environs) and the 'Fortifications Around the City'.
187. The Petitioners state that the Petitioners became aware that the map of the inner city of Kotte, drawn during Dutch occupation, reveals the boundaries of the built rampart around the city and the rampart of Kotte is considered one of the longest ancient city walls in Sri Lanka.
188. The Petitioners state that Petitioners have come to learn that the rampart was a shallow marsh of around 80-100 meters wide, circling the entire city and the proposed and allegedly unplanned and/or illegal and/or unsafe condominium complex with 66 housing units on 60.5 perch marshy land along Morris Rajapaksa Mawatha at Sri Jayawardenapura Kotte, and is within the area of the 'designated marsh' of the Kotte kingdom and just beyond the inner-city ramparts and in blatant and flagrant violation of the aforesaid laws, which protects the archeological heritage of Sri Lanka.
189. The Petitioners state that they have become aware that the remains of an ancient drawbridge are in the premises of the Lions Club on Morris Rajapaksa Mawatha, which is the access road proposed to be used by the developers of the said proposed condominium complex. Furthermore, the North-Western boundary of the Rampart which can not be seen above ground level has been traced to be laid along the Jayanthi Mawatha which is other by-land the proposed unlawful and unsafe condominium complex will be accessed from.
190. The Petitioners state that, though this is the only incident that was brought to the notice of the Petitioners, of a violation of this nature, unplanned and/or irregular and/or illegal and/or unsafe constructions of this nature would continue to damage and destroy the historical heritage of Sri Lanka, in the most disappointing manner causing severe and irreparable damage.
191. The Petitioners further state that the increasing phenomenon of construction of high rise buildings without sufficient supervision, has adversely affected the maintenance and protection of historical heritage in areas such as Mount Lavinia, where age old houses, i.e. houses older than 50 years, which have a great architectural value are being indiscriminately demolished without any adequate evaluation.
192. The Petitioners also state that the building regulations that allow high rise constructions in such areas, lead to the serious destruction of cultural and architectural heritage.



193. The Petitioners, therefore, state that when the Berjaya Mount Royal Hotel was being constructed, the maximum number of floors was limited to four floors, i.e. G+3, taking into consideration the historical and cultural heritage of the area.
194. The Petitioners state if this practice continues, areas with great historical and architectural heritage, will soon be converted in to concrete jungles and will pose a great threat to tourism industry as well.
195. In that light, the Petitioners state that the maximum number of floors of high rise constructions, should be limited to four floors, i.e. G+3, especially in areas where the road width is less than 6m and special permission should be obtained from the Department of Archeology, prior to the demolition of properties that are older than 50 years, in order to preserve and protect the cultural heritage of Sri Lanka.

#### **h) Fire Security**

196. The Petitioners state that,
- (i) the Fire Protection Requirements for High Rise Buildings and condominium complexes issued by the Fire Service Department of the Colombo Municipal Council, under the section 7(a) titled Provision for External Access states that access openings along external walls and hard standing and access way shall be provided for firefighting and rescue operations.
  - (ii) section 7(c) states that the minimum width of road and the head room shall be 4 m and the turning circle between kerbs shall be 20 m for a 40 ton high reach appliance.
  - (iii) it is assumed that external walls means all external walls and not just a wall on one side of the building. Provision of access openings which is compulsory, will be of no use unless there is a roadway to reach them.
  - (iv) in the open space requirements stipulated in Form C2 of the City of Colombo Development Plan, minimum space of 4m and over is required for both sides in only buildings over 14 floors.

*A true copy of the said Fire Protection Requirements for High Rise Buildings and condominium complexes issued by the Fire Service Department of the Colombo Municipal Council is annexed hereto marked as "P31" and is pleaded as part and parcel hereof.*

197. The Petitioners state that to the shock and surprise of the Petitioners, the amendments to the City of Colombo Development Plan in 2018 permits side setback only on one side of the building. However the said regulation is in violation of the Fire Department requirement of a minimum of 4 m wide roadway along external walls. Such contradictions between the building regulations appearing in the City of Colombo Development Plan and the Fire Department, raises the serious need for these authorities to consult each other in forming regulations.
198. Further, the Petitioners state that, setback, is the minimum open space required around any building or structure, and that, the Building regulations make it mandatory for a specific distance to be maintained between a building and the boundary of the plot on which the building is being constructed on, in order to keep it away from roads, water bodies or other

buildings. These setbacks are required at the front, rear and sides of buildings and the specifications vary from one area to another.

199. The Petitioners state that, the purpose of setbacks is to ensure one building does not infringe on another building's right to sunlight, ventilation, greenery and most importantly vehicular access.
200. The Petitioners state that vehicular access is made extremely important by the fact that rising building density makes it harder for emergency services such as fire engines to move around during a mishap.
201. The Petitioners state that, to the best of the knowledge of the Petitioners, the relevant Municipal Councils, including the Colombo Municipal Council, Dehiwala- Mount Lavinia or Sri JayawardenapuraKotte, Fire Departments, generally do not monitor whether the ground plans of the proposed high rise condominium complexes in the respective areas allow the external access requirement of firefighting and rescue vehicles.
202. The Petitioners state that they are aware of unsafe and dangerously tall high rise constructions, for which development permits have been granted, including *inter alia*, the ongoing construction of a 13 story high rise apartment complex, where there is no sufficient set backspace, as set out in the regulations, to allow vehicular access at times of disasters including fire.
203. The Petitioners also wish to draw Your Lordships' attention to the increasing use of unsafe cladding by Sri Lankan construction companies and the non-availability of laws and/or regulations on the same.
204. The Petitioners state that even though the Fire Department guidelines in Sri Lanka are silent on the use of cladding in high-rise buildings and condominium complexes, other countries such as United Kingdom, have ordered to remove already installed, dangerous and unsafe claddings, from high rise buildings, based on the scientific research that suggest cladding spreads fire very fast.
205. The Petitioners state that as was reported in THE SUN, news website, on 14.06.2018, a **HORRIFIC fire broke out in the Grenfell Tower in West London and left 72 people dead in June 2017.**
206. The Petitioners state that during the inquiry on the said fire, which was held in 2018, it was discovered that the cladding encouraged the fast spreading of the fire and thus Theresa May has pledged £400 Million to remove all Grenfell-style cladding from high rises .

*A true copy of the said news article published in THE SUN, news website, on 14.06.2018 is annexed hereto marked as "P32" and is pleaded as part and parcel hereof.*

207. The Petitioners state that, it is visible all around Sri Lanka, almost all the high rise constructions are now using cladding, and such buildings are under the threat of disasters of this nature, and therefore, regulations must be made with regard to the use of cladding in high rise buildings, in order to ensure the safety and protection of innocent people and their property.

**ILLEGAL INACTION OF THE RESPONDENT AUTHORITIES AGAINST UNLAWFUL, UNSAFE AND DANGEROUS HIGH RISE CONSTRUCTIONS AND CONDOMINIUM COMPLEXES**

208. The Petitioners state that under and in terms of *section 28A of UDA Act*, UDA has the power to take actions against any person by written notice not less than seven days, who is executing or has executed or has caused it to be executed any development activity in a development area which has commenced, continued, resumed or completed without permit or contrary to any term or condition set out in the issued permit.

Remedies set out in *section 28A of UDA Act* include, *inter alia*,

- (a) to cease such development activity forthwith; or
- (b) to restore the land on which such development activity is being executed or has been executed, to its original condition; and
- (c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit, and for the purposes of compliance with the requirements aforesaid:
  - (i) to discontinue the use of any or building; or
  - (ii) to demolish or alter any building or work without a compensation for demolished unauthorized construction.

209. The Petitioners state to the best of the knowledge of the Petitioners, an unauthorized high rise condominium complex at No. 25 Frankfurt Place, Colombo 4, has been constructed in complete violation of the applicable rules and regulations.

210. The Petitioners state that to the best of their knowledge, notwithstanding the demolition order the aforesaid illegally constructed and seriously dangerous building remains to date, and to the greatest shock and surprise of the Petitioners the none of the responsible Respondent authorities have taken actions in terms of the law to give effect to the said demolition order and to ensure the protection and safety of the neighbouring residents, passersby and the occupiers.

211. Moreover, the Petitioners state that, in their own experience and by the complaints they have received they learnt that, the UDA, at all times fail to reply to the inquiries made by affected parties, even though they acknowledge such requests.

212. The Petitioners further state that even though the Petitioners, in particular the 1<sup>st</sup> Petitioner has preferred Right to Information requests to the UDA, the 1<sup>st</sup> Respondent, on behalf of different affected parties, seeking explanation as to why certain identified unlawful and illegal constructions are allowed with impunity, to date the Petitioners have not received any response to the said letters.

*True copies of the sample RTI request made and sample letter of acknowledgement, sample of an appeal to a designated officer, sample appeal to the RTI Commission, sample acknowledgment of the same and sample notice sent by the RTI Appeal Commission to the UDA, are annexed hereto, marked "P33 (a) to P33 (f)" and are pleaded as part and parcel hereof.*

*A table containing the details of all RTI applications and appeals filed by the 1<sup>st</sup> Petitioner to the UDA is annexed hereto, marked as "P34" and is pleaded as part and parcel hereof.*

213. The Petitioners state that, they have become aware that,
- (a) the residents at Ven. MuruththettuweAnandaNahimiMawatha, Colombo 5 made an information request in terms of the Right to Information Act No. 12 of 2016 seeking information concerning the Development Permit issued to condominium developer. However, the Information Office of the 1<sup>st</sup> Respondent has failed to provide the information as request.
  - (b) the residents have preferred an appeal to the Designated Officer of the 1<sup>st</sup> Respondent, however, the said Designated Officer too has failed to provide the said information.
214. The Petitioners state that they are aware of a meeting that took place between a group of representatives of the Mount Lavinia Residents' Association with the 19<sup>th</sup> Respondent, and the representatives of the UDA, the 1<sup>st</sup> Respondent, where the said residents have made representations with regard to unauthorized constructions.
215. The Petitioners state that even though, the Minister of Megapolis and Western Development, the 21<sup>st</sup> Respondent at the said meeting, has directed the Enforcement Division of the 1<sup>st</sup> Respondent to conduct an inspection of the condominium complexes that are being constructed in Mount Lavinia in order to identify any violations of the applicable Building Regulations and to take necessary action, the Petitioners are unaware of any positive/ any legal actions taken by the 1<sup>st</sup> Respondent , pursuant to such meeting, against such illegal and/or unsafe constructions.
216. The Petitioners state, it was also brought to their notice by reliable sources that the UDA, the 1<sup>st</sup> Respondent has failed to act in terms of the law, despite being well aware of constructions that are carried out in complete contravention of the Development Permit. The Petitioners further state that the constructions that have been carried out in No.5/40, Longdon Place, Colombo 07 is a clear example of such instances.
217. Therefore the Petitioners state that the Respondent authorities, who have a statutory duty imposed upon them under the relevant Acts, to protect and safeguard people of Sri Lanka and their lawful interests, from unlawful, unsafe, irregular and dangerous constructions, are acting in complete contravention of the said legal duty and their inaction and negligence has caused much distress and suffering to the affected parties as well as the environment.
218. The Petitioners state that the professional bodies of the respective professions are duty bound to see that highest standards of professional ethics are upheld. Often professionals in the field of condominium developments fall prey to lucrative packages offered by the developers in terms of fees and other incentives. This practice has to be brought to the notice of the respective professional bodies such as IESL, SLIA etc.

**ABUSE OF POWER, BRIBERY AND CORRUPTION LEADING TO THE INCREASING NUMBER OF INCIDENTS OF CONSTRUCTION OF ILLEGAL/ UNSAFE AND DANGEROUS HIGH RISE BUILDINGS OR CONDOMINIUM PROPERTY**

219. The Petitioners state that, under and in terms of *section 25 of the UDA Act*, UDA is deemed to be a scheduled institution within the meaning of the Bribery Act No.11 of 1954 as amended, which provides for the legal mechanism to investigate and prosecute corruption and/or bribery.
220. The Petitioners state that regardless of the civic duties imposed on the relevant officials of the Respondent authorities, through Statutes and regulations, to regulate the construction of high rise buildings and condominium complexes, and to take immediate, necessary and adequate action to prohibit, restrict or demolish, illegal, unsafe and/or unauthorized high rise constructions, officials of the Respondent authorities, have, in the recent past, have acted in total contravention of the said laws and regulations, and the legal duties imposed on them, flagrantly abusing the powers granted to them.
221. The Petitioners state that, the 1<sup>st</sup> Petitioner has received complaints of corruption, in some of the Respondent authorities, where the said officials have been completely neglecting the complaints made by affected parties, against unlawful and unsafe constructions, which are being constructed in violation of the development permits granted, and have been granting development permits to proposed high rise constructions, in contravention of the building regulations.
222. The Petitioners state that they became aware of an attempt by the UDA to purportedly regularize all unlawful constructions approved by it, by imposing a penalty of Rs. 1,000,000.00 per illegally constructed floor.
223. The Petitioners state that such illegal, *ultra vires*, unreasonable and mischievous mechanism would not rectify the illegality attached to such unlawful and unsafe constructions, and indeed would not serve the purpose of the restrictions placed by law in order to safeguard the right, interests and in particular the safety of the future residents/occupants as well as the members of the neighbourhood.
224. The Petitioners further state that such mechanism would in no manner act as a deterrent against such illegal constructions, particularly in view of the enormously high revenue, i.e. around Rs. 20,000,000/-, that is generated by selling the apartment units, but rather encourages such illegal acts.
225. Moreover, to the great shock and dismay of the Petitioners, it was later brought to the notice of the 1<sup>st</sup> Petitioner, by a reliable source, that the Chairman of the UDA, the 1<sup>st</sup> Respondent, works as a consultant to one of the major construction companies, which, to the best of the knowledge of the Petitioners, and as it appears in the website of the said company, is Blue Ocean Construction and Development (Pvt.) Ltd, against whom several allegations regarding unlawful constructions have been made.
226. The Petitioners state that, the Petitioners have, after further investigation, been made aware, that the 2<sup>nd</sup> Respondent, who is the Chairman of the 1<sup>st</sup> Respondent Authority is also/ or was a consultant of Blue Ocean Construction and Development (Pvt.) Ltd., during his tenure as the Chairman of the UDA, in blatant violation of the ethics of professional conduct, provisions of

- the Establishment Code as well as provisions against corruption and bribery contained in the Bribery Act No. 11 of 1954 as amended. [Produced marked "P21"]
227. The Petitioners state that the Petitioners verily believe that, the lethargic manner in which the 1<sup>st</sup> Respondent Authority, which is statutorily authorized to approve the constructions of this nature within any urban area, acts, i.e. granting of development permits blatantly violating the building laws and regulations, and/or their inaction to take any steps to halt illegal constructions, and/or to demolish such illegal constructions, which pose a serious threat to the safety, lives, limbs and property of the future residents as well as the neighborhood and passersby, as provided for in the aforesaid UDA Act No.41 of 1978, point towards corruption and/or bribery and complete lack of transparency.
228. The Petitioners state that, it is in the aforesaid circumstances, that they were compelled to seek the support of the 1<sup>st</sup> Petitioner, to come before Your Lordships' Court, seeking a judicial relief or orders in the nature of Writs of Mandamus, to direct the responsible authorities, i.e. the Sri Lanka Police and the Bribery Commission, the 30<sup>th</sup> and 31<sup>st</sup> Respondents, to take necessary action against such abuse of power and/or corruption and/or bribery, which in the belief of the Petitioners, has led to violations of the laws and regulations of the country at the expense of the lives, limbs and property of the future residents as well as neighbourhoods, as well as the environment.

## RECOMMENDATIONS

229. The Petitioners state that any development plan only becomes feasible and holistic if the unique character of a city is conserved while progressing ahead, and therefore, the development plans, must be amended to include laws and regulations, which protect the unique characters of a city, i.e. archaeological and environmental importance.
230. The Petitioners state that, they cannot overemphasize the minimum need for the implementation of the building rules and regulations as they are, without thwarting and frustrating their purpose by misapplying such laws, rules and regulations based on the most spurious, unjustified and unsound misinterpretations of the said laws, rules and regulations.
231. The Petitioners state that, there should be an online system available to the general public to lodge their complaints against seemingly unlawful/ unplanned and/or unsafe construction activities, and the chain of communication between responsible authorities, such as the UDA, the Municipal Councils, the CEA, the SLLRDC, the Water Supply and Drainage Board, and the Fire Department should be made more effective and efficacious.
232. The Petitioners state that, it will be the ideal situation if Sri Lanka can establish a one-stop shop for granting necessary approvals for development activities, where all primary authorities function under one roof in every province, or local government area.
233. The Petitioners state that each and every city, in Sri Lanka, faces its own challenges in terms of high density population, garbage disposal, sewage and most importantly, traffic congestion, and therefore, it should be made mandatory, for the developers to;
- a) conduct a civic and traffic survey, under the technical guidance of the UDA, and to submit the said reports to the UDA,

- b) conduct an Environmental Impact Assessment, as per the guidelines of the CEA, and to submit the same as a precondition for primary building approval together with a detailed garbage and sewage management plan approved by the Municipal Authority and the CEA,
  - c) provide the neighbours who are immediately affected by the said construction an adequate, sufficient and reasonable insurance coverage prior to the commencement of any type of construction work, such coverage shall be amended later based on pre and post crack assessment reports prepared by an independent body registered with the UDA,
  - d) conduct a pre-construction stakeholders meeting with the participation of all affected neighbours and/or their representatives, responsible officials from the UDA, relevant Local Authority, CEA, if relevant, the Department of Archaeology and the Fire Department, to ensure that the building will be constructed according to all applicable building laws and regulations, with the necessary approvals and that the reasonable fears of the neighbours are sufficiently addressed.
234. The Petitioners state that although the blanket law throughout the country, does not call for a comprehensive Archaeological Impact Assessment for a project falling below one hectare, the Petitioners believe that, with regard to proposed construction of high rise apartment complexes, where extensive excavation and filling is involved, in areas such as Sri JayawardenapuraKotte, which are of high archaeological value, an archaeological impact assessment shall be made mandatory prior to the granting of the Development Permit, despite the extent of the land area.
235. The Petitioners further state that the responsible authority granting the Development permit for condominium complexes shall supervise the construction throughout and shall be held accountable for any violation of the said permit by the developer.
236. The Petitioners state that the 'light pane' (meaning high rise buildings should be built at an angle), that was listed in 1984 Colombo Building Regulations, which allowed sunlight and ventilation for adjacent properties, should be reintroduced to the existing Building Regulations, in order to secure the citizens' right to light and air.
237. The Petitioners most respectfully reserve the right to furnish further documentation and or material, further affidavits, or add further parties as party Respondents, and to pray for additional reliefs and to amend papers, if the need for the same arises and/ or if directed to do so by Your Lordships' Court.
238. The Petitioners state that they have not invoked the jurisdiction of Your Lordships' Court in respect of this identical matter previously.

**WHEREFORE, The Petitioners pray Your Lordships' Court be pleased to,**

- a) Issue notice to all the Respondents in the first instance,
- b) Grant and issue a mandate in the nature of a **Writ of Prohibition**, prohibiting the UDA, i.e. the 1<sup>st</sup> Respondent, the relevant Municipal Councils / Urban Councils, including the Colombo Municipal Council, i.e. the 15<sup>th</sup> Respondent, Dehiwala Mount-Lavinia Municipal Council, i.e. the 13<sup>th</sup> Respondent, Sri JayawardenapuraKotte Municipal Council, i.e. the 17<sup>th</sup> Respondent, and the Moratuwa Urban Council, i.e. the 19<sup>th</sup> Respondent, from issuing development

permits, to any developer or contractor without duly submitting all necessary and prescribed approvals from the designated authorities, i.e. the Central Environmental Authority, the Fire Department, the Department of Archeology, and necessary assessments, including the Traffic Impact Assessment and, Waste and Sewage Disposal Management plans in the first instance.

- c) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the UDA, i.e. the 1<sup>st</sup> Respondent, to act, strictly and promptly in terms of *Section 28A(1) of the Urban Development Authority Law No. 41 of 1978* as amended, where there is evidence of non-compliance with development permit conditions, in order to secure compliance with the said permit under which the development activity is being carried out or engaged in, or with any term or condition of that permit, and for the purposes of compliance with the aforesaid i) to discontinue the use of any building or ii) to demolish or alter any building or work.
  
- d) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing all or any or more of the respondents and their successors in office and / or the holder of any such relevant portfolio in the future, to forthwith and expeditiously and strictly enforce all existing laws, regulations and rules which govern and are applicable to :
  - i) The approval process leading up to the issuance of the development permit.
  - ii) monitoring of the construction activities with regard to due adherence to the development permit conditions

AND to ensure strict and rigorous compliance therewith.

- e) In the further public interest, issue a mandate in the nature of a **Writ of Mandamus**, directing the Urban Development Authority, i.e. the 1<sup>st</sup> Respondent, and the Local Authorities, i.e., the 13<sup>th</sup> , 15<sup>th</sup> , 17<sup>th</sup> and 19<sup>th</sup> Respondents, to bring to the attention of the NBRO, i.e. the 9<sup>th</sup> Respondent, all completed constructions and ongoing constructions which are; a) suspected to be structurally compromised and/or suspected of posing any threat to the public or to the residents or occupiers of such building or to the residents of the area and to the passers-by, b) against which complaints have been lodged by any affected party, for the necessary action.
  
- f) Grant and issue a mandate in the nature of a **Writ of Mandamus** directing the NBRO, i.e. the 9<sup>th</sup> Respondent, to forthwith prepare and compile a report/reports with regard to the safety and structural integrity of all such constructions and buildings, and to submit the same to the UDA, i.e. the 1<sup>st</sup> Respondent, and the Local Authorities, i.e., the 13<sup>th</sup> , 15<sup>th</sup> , 17<sup>th</sup> and 19<sup>th</sup> Respondents, for necessary actions according to law.
  
- g) Grant and issue a mandate in the nature of a **Writ of Mandamus** directing the UDA, i.e. the 1<sup>st</sup> Respondent, to strictly enforce the zoning plans and to ensure that constructions within the different zones including residential, special primary residential, commercial, industrial and mixed development areas are strictly confined to the relevant zone depending on the nature and character of the development.



- h) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing any one or more of the above Respondents and their successors in office and/ or the holder of any such relevant portfolio in the future, Your Lordships' Court shall seem fit, to prepare noise zone maps separating residential, commercial and industrial zones.
- i) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, and his successors in office and / or the holder of such relevant portfolio in the future to promulgate and issue regulations, enforcing such noise zone maps, in terms of the Law.
- j) Grant and issue a mandate in the nature of **Writ of Prohibition** preventing the UDA, i.e. the 1<sup>st</sup> Respondent and the Local Authorities, i.e. the 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> Respondents, from granting approval for the construction of those categories of buildings or developments that are not permissible in terms of the relevant zoning plans for the relevant areas.
- k) Grant and issue a mandate in the nature of **Writ of Prohibition** preventing the UDA, i.e. the 1<sup>st</sup> Respondent and the Local Authorities, i.e., the 13<sup>th</sup>, the 15<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> Respondents from granting any approvals for the proposed construction or development of any building or high rise apartment complexes, which are in excess of the permitted number of laws in terms of the applicable and prevailing law and regulations, save and except for the impugned amendment to item no. 7.30 of the Colombo City Development Plan (2008), published in the Extraordinary Gazette bearing no. 2054/45, dated 18.01.2018, which has been challenged in this proceedings.
- l) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, and their successors in office and / or the holder of any such relevant portfolio in the future to promulgate and issue formal regulations in law, governing the height of all buildings and constructions in the country, and to thereby establish an ascertainable standard in law, by which buildings can be due classified as either low rise or high rise, for the purposes for the due application and enforcement of the law.
- m) Grant and issue a mandate in the nature of **Writ of Mandamus** directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, , the UDA, i.e., the 1<sup>st</sup> Respondent, and Inspector General of Police, i.e. the 25<sup>th</sup> Respondent, and their successors in office and / or the holder of any such relevant portfolio in the future, to take immediate action forthwith to halt and suspend all ongoing construction activities of development and constructions, which are in violation of the provisions of the UDA Law, the Municipal Councils Ordinance, the Urban Council Ordinance and the rules and regulations framed thereunder as well as applicable zoning plans and the development permit conditions.
- n) Grant and issue a mandate in the nature of a **Writ of Prohibition** restraining the Respondents, and their successors in office and / or the holder of any such relevant portfolio

in the future, from permitting constructions which are in violation of the UDA Law, the Municipal Councils Ordinance, the Urban Council Ordinance and the rules and regulations framed thereunder as or applicable zoning plans or the development permit conditions, to continue further.

- o) Grant and issue a mandate in the nature of a **Writ of Mandamus** directing the UDA, i.e. the 1<sup>st</sup> Respondent, the Local Authorities, i.e. the 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> and the 19<sup>th</sup> Respondents, and the Inspector General of Police, i.e. the 25<sup>th</sup> Respondent, and their successors in office and / or the holder of any such relevant portfolio in the future, to forthwith take punitive and deterrent actions against all developers and contractors who are constructing buildings and apartment complexes, without duly obtaining the necessary permits in terms of the law, or in violation of the permits that have been issued to them in terms of the law.
  
- p) Grant and issue a mandate in the nature of a **Writ of Certiorari**, quashing the 2018 Amendment to item No. 7.30 of the 2008 Amendment of the City of Colombo Development Plan, which purports to permit additional parking floors to be discounted not only when calculating the Floor Area Ratio but also from the calculation of the permissible number of floors, dangerously allowing monstrous and gigantic high rise constructions to come up, without even remotely considering the serious danger to the lives, limbs and properties of passers-by and neighbours, published in the Extraordinary Gazette bearing no. 2054/45, dated 18.01.2018.
  
- q) Grant and issue a mandate in the nature of a **Writ of Certiorari**, calling for and quashing all Development Permits issued to proposed apartment complexes, in terms of the said amendment to Item No. 7.30 of the City of Colombo Development Plan (2008), which purports to permit additional parking floors to be discounted not only when calculating the Floor Area Ratio but also from the calculation of the permissible number of floors, dangerously allowing monstrous and gigantic high rise constructions to come up, without even remotely considering the serious danger to the lives, limbs and properties of passers-by and neighbours, published in the Extraordinary Gazette bearing no. 2054/45, dated 18.01.2018.
  
- r) Grant and issue a mandate in the nature of a **Writ of Certiorari**, calling for and quashing all Development Permits issued to proposed apartment complexes, in violation of Item No. 7.30 of the 2008 Amendment of the City of Colombo Development Plan, prior to January 2018.
  
- s) In the alternative to the foregoing prayer, grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the UDA, i.e. the 1<sup>st</sup> Respondent, to duly and forthwith cancel all such permits issued in violation of Item No. 7.30 of the 2008 Amendment of the City of Colombo Development Plan, prior to January 2018.
  
- t) Grant and issue a mandate in the nature of a **Writ of Prohibition** restraining the UDA, i.e. the 1<sup>st</sup> Respondent, from permitting any developer or contractor from constructing any apartment

complex on the basis of a permit issued prior to January 2018, in violation of item no. 7.30 of the Colombo City Development Plan (2008).

- u) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the National Water Supply and Drainage Board, i.e. the 23<sup>rd</sup> Respondent, to duly and forthwith conduct inquiries in respect of all condominium developments, that have not established or drawn special or dedicated water lines to service their developments, but have instead connected to the preexisted water lines in the area, and thereby have violated Section 24 read with Section 6(e) of the Condominium Management Authority Law, No. 10 of 1973, in Extraordinary Gazette notification No. 2026/25 dated 27.06.2017, and to direct them to establish new and dedicated water line for the said development projects and to duly disconnect from the previous water line, in terms of Section 25 of the said Act.
  
- v) Grant and issue a mandate in the nature of **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, and the UDA, i.e. the 1<sup>st</sup> Respondent, and their successors in office and / or the holder of any such relevant portfolio in the future, in view of the challenges faced by citizens of Sri Lanka, in terms of high density population, garbage disposal, sewage and most importantly, traffic congestion, to promulgate and issue regulations making it mandatory, for the developers of condominium property to;
  - i) conduct a civic and traffic survey, under the technical guidance of the UDA, and to submit the said reports to the UDA,
  
  - ii) conduct an Environmental Impact Assessment, as per the guidelines of the CEA, and to submit the same as a precondition for primary building approval together with a detailed garbage and sewage management plans approved by the Municipal Authority, and the CEA
  
  - iii) submit a third party insurance coverage, that is valid for the lifetime of the construction, and amounts to 10% of the total project cost, prior to the commencement of construction activities.
  
  - iv) conduct a pre-construction stakeholder meeting with the participation of all affected neighbours and/or their representatives, responsible officials from the UDA, relevant Local Authority, CEA, Environmental Unit of the relevant police station, and if relevant, the Department of Archaeology and the Fire Department, to ensure that the building will be constructed according to all applicable building laws and regulations, with the necessary approvals and that the reasonable fears of the neighbours are sufficiently addressed.

- v) to make available to neighbours as well as authorities, when requested, the relevant building plan approval, approved survey plan, the development permit, CEA approval, fire department approval and any other approval necessary for the proposed construction in terms of the law.
- w) Grant and issue a mandate in the nature of **Writ of Mandamus** directing all Respondents to take all necessary and reasonable actions to draft and enact regulations to improve communication between Respondent Authorities, such as the Police, the UDA, the CEA, the NBRO, the Fire Department, the Water Supply and Drainage Board and the Local Authorities, in order to ensure the effective and efficacious implementation of the existing laws and regulations.
- x) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, to establish a Committee comprising of experts, stakeholders and Petitioners to revisit and review the existing laws and regulations pertaining to development activities, and to make recommendations for necessary amendments.
- y) Grant and issue a mandate in the nature of **Writ of Mandamus** directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent to grant the said Committee the mandate to conduct public consultations through a consultation task force, and to make recommendations to the said Ministers to amend the existing Building laws and regulations in Sri Lanka to secure and safeguard the rights and interests of the citizens of the country and its environment, while ensuring that Development activities of the country are not unreasonably obstructed.
- z) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Inspector General of Police, i.e. the 25<sup>th</sup> Respondent, to establish dedicated counters respectively in all police station in urban areas, and in all Municipal Councils, Urban Councils and Pradeshiya Sabhas, to accept and expeditiously process and duly act upon complaints of the members of the public with regard to illegal or unsafe constructions.
- aa) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the UDA, i.e. the 1<sup>st</sup> Respondent, and the Condominium Management Authority, the 11<sup>th</sup> Respondent, to make available online, in their respective websites, details of proposed and ongoing constructions of apartment complexes, with survey plans prepared according to scale, approved detailed building plans, development permits granted, fire approval, CEA approvals and the details of the developers, together with the applicable laws and regulations, and to regularly update the same.
- bb) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the UDA, i.e. the 1<sup>st</sup> Respondent, to establish an online system to lodge public complaints.

- cc) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the local authorities, i.e. the 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> and 19<sup>th</sup> Respondents and the UDA, i.e. the 1<sup>st</sup> Respondent, to require the developer or the constructor to duly submit in the first instance, prior to the issuance of the development permit or construction permit, a traffic impact assessment report prepared by the UDA, i.e. the 1<sup>st</sup> Respondent and endorsed by the IGP, i.e. the 25<sup>th</sup> Respondent and/or his designated subordinated.
- dd) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the CEA, i.e. the 5<sup>th</sup> Respondent to duly and forthwith enforce provisions for the National Environment Law No.47 of 1980 as amended and the regulations issued thereunder in their full amplitude and extent in respect of all developments and high rise constructions including taking action in terms of law in respect of such development that have not duly submitted the required environmental impact assessment reports or has not obtained necessary clearance from the CEA.
- ee) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, and the Department of Archeology, i.e. the 10<sup>th</sup> Respondent, to promulgate and issue regulations making it mandatory to conduct and submit Archeological Impact Assessment, issued by the Department of Archeology, i.e. the 10<sup>th</sup> Respondent prior to constructing high rise buildings or condominium complexes, in heritage or conservation areas .
- ff) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, the and the Department of Archeology, the 10<sup>th</sup> Respondent, to promulgate and issue regulations in terms of the law designating the maximum number of floors that can be constructed and the buildings that could be demolished, for development activities, in heritage areas and /or conservation areas.
- gg) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, , and their successors in office and / or the holder of any such relevant portfolio in the future to promulgate and issue regulations in terms of the law, making it mandatory to submit an archeological impact assessment report issued by the Department of Archeology and any other related designated governmental authority, as to your lordships court shall seem fit, prior to the demolition or renovation of any building of heritage value and or any building situated in any heritage and /or conservation area, in order to receive the development permit.
- hh) Grant and issue a mandate in the nature of a **Writ of Mandamus** directing the UDA, i.e. the 1<sup>st</sup> Respondent, the Chairman of the UDA, i.e. the 2<sup>nd</sup> Respondent, the Director Enforcement of the UDA, i.e. the 4<sup>th</sup> Respondent, the Director General of the UDA, i.e. the 3<sup>rd</sup> Respondent, the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent, and their successors in office and / or the holder of any such relevant portfolio in the future, to conduct an all island survey on high rise buildings including condominium complexes, assessing their legality, strength and safety, to publish it in their website, and to take legal action against such

illegal and unsafe constructions, subject to the terms and conditions as your lordships court shall seem fit.

- ii) Grant and issue a mandate in the nature of a **Writ of Mandamus** directing the the UDA, i.e. the 1<sup>st</sup> Respondent, the relevant Municipal Councils/Urban Councils, including the Colombo Municipal Council, i.e. the 15<sup>th</sup> Respondent, Dehiwala Mount-Lavinia Municipal Council, i.e. the 13<sup>th</sup> Respondent, Sri JayawardenapuraKotte Municipal Council, i.e. the 17<sup>th</sup> Respondent, the Minister of Megapolis and Western Development, i.e. the 21<sup>st</sup> Respondent , and their successors in office and/ or the holder of any such relevant portfolio in the future, to take all such preventive and punitive actions in terms of the law against officers of the said authorities who abuse and/or misuse and/or act in excess and/or violations of the administrative powers and/or duties vested with them.
- jj) In view of all the attendant circumstances including the character of this Writ application, which is filed in the public interest and in view of the existing precedent therefore, grant and issue an **interim order**, appointing a steering committee, comprising of senior officers of the Urban Development Authority, relevant officers from Local authorities, the Central Environmental Authority, the National Building and Research Organization, Condominium Management Authority, the Central Engineering Consultancy Bureau, the Sri Lanka Institute of Architects, an officer not less than the rank of DIG of Police, Representatives from the Ministry of Western Development and Mega Polis, and the Ministry of Housing, Construction and Cultural Affairs, two chartered engineers nominated by the Sri Lanka Engineering Council, two chartered architects nominated by the Sri Lanka Institute of Architects , two town and country planning experts, and all stakeholders, as to Your Lordships' Court shall seem fit, to identify, monitor, and report back to court on a regular basis , instances in which illegal permits have been issued for the construction of apartment complexes in violation of the law and subordinate legislation and the governing zoning laws, and shall be determined by Your Lordships' Court. Upon the recipe of such reports issue such directions to the relevant Respondents and the relevant authorities, in the larger public interest, in order to remedy, redeem and or mitigate the effects of the illegal activities that have been reported to court.
- kk) Grant and issue a mandate in the nature of a **Writ of Mandamus** directing the Inspector General of Police, i.e. the 25<sup>th</sup> Respondent, to conduct annual training program for the police officers, on laws and regulations governing development activities, in order to empower them with necessary skills to handle complaints regarding development activities. And to take all such other actions under and interns of the police ordinance as well as the regulations and rules framed thereunder.

ll) Grant and issue a mandate in the nature of a **Writ of Mandamus**, directing the UDA, to establish a special unit to raise awareness on laws and regulations governing development activities, country wide.

mm) Grant Costs,

nn) Grant such other and further relief as to Your Lordships' Court shall seem fit.



**ATTORNEY-AT-LAW FOR THE PETITIONERS**

ASHOKA NIVINDELLA  
Attorney-at-Law  
Commissioner for Oaths  
No 322/2, P. U. S. S. S. S.  
Kotaniya

Settled by: Kethmini Dharmasena, Attorney-at-Law  
Sarane Gunathilaka, Attorney-at-Law  
Sanjeeva Jayawardena, President's Counsel