

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

---

*In the matter of an application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Prohibition, Certiorari and Mandamus*

Environmental Foundation (Guarantee) Limited,  
3A, First Lane,  
Kirulapone,  
Colombo 05.

**Petitioner**

CA (Writ) Application No:

v.

1. Prabath Chandrakeerthi  
Director General  
Coast Conservation and Coastal Resources  
Management Department  
4<sup>th</sup> Floor, Ministry of Fisheries Building  
New Secretariat  
Maligawatte  
Colombo 10.
2. Gamini Hewage  
Director (Coastal Resource Management)  
Coast Conservation and Coastal Resources  
Management Department  
4<sup>th</sup> Floor, New Secretariat Building  
Maligawatte  
Colombo 10.
3. M. Uthayakumar  
District Secretary – Batticaloa District  
District Secretariat  
Kachcheri  
Batticaloa.
4. A. Sutharshan  
Assistant Director Planning  
District Secretariat  
Kachcheri  
Batticaloa.

5. Central Environmental Authority  
“Parisara Piyasa”  
104, Denzil Kobbekaduwa Mawatha  
Battaramulla.
6. John Amaratunga  
Minister of Tourism Development and  
Christian Religious Affairs  
Ministry of Tourism Development and  
Christian Religious Affairs  
6<sup>th</sup> Floor, Rakshana Mandiraya  
21, Vauxhall Street  
Colombo 2.
7. M.R. Jeyachandran  
Director General of Buildings  
Department of Buildings  
2<sup>nd</sup> Floor, Sethsiripaya  
Sri Jayawardanapura Kotte  
Battaramulla.
8. The Attorney General  
Attorney General’s Department  
Hulftsdorp  
Colombo 12.

### **Respondents**

On this 29<sup>th</sup> day of March 2018

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

The Petition of the Petitioner above named appearing by its Registered Attorney-at-Law Mrs. Lakni Silva states as follows:

1. The Petitioner is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No. 07 of 2007) as a company limited by guarantee and may sue and be sued in such name.

*True copies of the certificate of registration and articles of association of the Petitioner is annexed to the Petition marked "P1" and "P1(a)" respectively and pleaded as part and parcel hereof.*

2. The Petitioner is a non-profit organisation, actively engaged in public interest litigation for several decades, dedicated to the pursuit of preventing environmental degradation by promoting sustainable development practices and by efforts to resolve conflicts in the interests of all stake-holders, while balancing the equilibrium between the protection of the environment and sustainable development.
3. The Respondents to this application are as follows:
  - a) The 1<sup>st</sup> Respondent above named is the Director General of the Coast Conservation and Coastal Resources Management Department and bears responsibility *inter alia* for the administration and implementation of the provisions of the Coast Conservation and Coastal Resources Management Act, for the coordination of activities of other departments, institutions and agencies in connection with activities being carried out within the coastal zone and for the preparation and implementation of the Coastal Zone Management Plan;
  - b) The 2<sup>nd</sup> Respondent above named is the Director (Coastal Resource Management) of the Coast Conservation and Coastal Resources Management Department, coming under the purview of the 1<sup>st</sup> Respondent, and was involved in the correspondence and/or decisions pertaining to the matters set out hereinafter;
  - c) The 3<sup>rd</sup> Respondent above named is the District Secretary for the Batticaloa District and is charged with the direction of the responsibilities of the District Secretariat – Batticaloa and the organization and execution of its powers, functions and duties. The District Secretariat – Batticaloa is the Implementing Agency of the project in question as hereinafter further explained;
  - d) The 4<sup>th</sup> Respondent above named is the Assistant Director Planning of the District Secretariat Batticaloa, coming under the purview of the 3<sup>rd</sup> Respondent, and was involved in the correspondence and/or decisions pertaining to the matters set out hereinafter;
  - e) The 5<sup>th</sup> Respondent is the Central Environmental Authority which is a body corporate established in terms of the National Environmental Act No.47 of 1980 as amended, and is capable of suing and being sued in its corporate name. Its objectives are to make provision for the protection, management and enhancement of the environment, regulation, maintenance and control of the quality of the environment and prevention, abatement and control of pollution;
  - f) The 6<sup>th</sup> Respondent above named is the Minister of Tourism Development and Christian Religious Affairs and exercises powers under and in terms of the Tourism Act No.38 of 2005 and the Tourist Development Act No.14 of 1968 as

amended. The Ministry of Tourism Development and Christian Religious Affairs is the source of funding for the project in question as hereinafter further explained;

- g) The 7<sup>th</sup> Respondent above named is the Director General of the Department of Buildings which is responsible for the execution and construction of all works of the government. The Department of Buildings is the Technical Monitoring Agency of the project in question as hereinafter further explained; and
  - h) The 8<sup>th</sup> Respondent is made party to this application according to and in terms of Article 35(3) of the Constitution as H.E. Maithripala Sirisena (who is President of Sri Lanka as at the date hereof) in his capacity as the Minister of Mahaweli Development and Environment bears responsibility for the management of the environment and natural resources of the country while maintaining the equilibrium between development and the use of the natural resource base and accordingly the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents come under his purview.
4. The Petitioner makes this application in the public interest, with the objective of safeguarding the rights and interests of the general public of Sri Lanka, particularly with regard to the protection of the environment, in ensuring that the laws and mechanisms in place to maximize sustainable development are enforced in a manner so as to safeguard all resources and stakeholders.
  5. The Petitioner welcomes responsible and duly compliant measures taken towards economic development of the nation and is in fact committed to aiding the best use of resources, to harness the fullest potential of development opportunities, while also ensuring that all efforts, measures and projects are sustainable and consistent with the national policy of sustainable development and compliant with the requirements of laws promulgated to secure environmental protection in Sri Lanka.

#### **Background to the instant application**

6. The Petitioner states that in or around March 2017, the Petitioner came to learn that a tourism project under the name “Leisure and Pleasure Pristine Eco Culture” was being carried out at Sallitivu Islet, in Vakaraai.
7. Located in the Batticaloa district, in the eastern province of Sri Lanka, the Sallitivu Islet is approximately 275 meters in length and 155 meters wide and is seasonally connected to the mainland through a sand bar or sand bridge that is about 250 meters in length.
8. A report published by the Coast Conservation and Coastal Resources Management Department titled “Ecological Profile of Uppar Lagoon and Salli Island in the Eastern Province” which was obtained in terms of the Right to Information Act No. 12 of 2016 states that more than 98% of the plant species observed in the island were native to Sri Lanka with a total number of 50 plant species, including one nationally endangered, two nationally vulnerable and four nationally near threatened plant species (*Vide pages 18-19 of P2a*).

*A true copy of the Ecological Profile of Uppar Lagoon and Salli Island in the Eastern Province published by the Coast Conservation and Coastal Resources Management Department is annexed hereto marked "**P2a**" and pleaded as part and parcel hereof.*

*A copy of the letter of request dated 7<sup>th</sup> November 2017 from the Petitioner and true copies of the Acknowledgement dated 8<sup>th</sup> November 2017 and Decision to provide information dated 21<sup>st</sup> November 2017 are annexed hereto marked "**P2b**", "**P2c**" and "**P2d**" respectively and pleaded as part and parcel hereof.*

9. The said report published by the Coast Conservation and Coastal Resources Management Department (Vide **P2a**), further describes the potential impact of tourism and other activities in the area as follows:

*"...the main natural habitats observed in the area include mangroves, coastal scrub, beach and beach associated vegetation. These habitats support a rich biodiversity and therefore can be considered as important natural resources that need to be managed carefully if we are to get the maximum benefit from these natural resources. **All of these natural habitats are impacted by ongoing activities in the area.**" (Vide 4.1 on page 31 of **P2a**)*

*"...the main non consumptive natural resource usage in the study area is tourism. However, the tourism activities taking place in the area are poorly regulated at present and as such there are multiple issues that affect tourism in its present state. Therefore, **the current level of non consumptive natural resource usage is unsustainable and if continued in this fashion will result in the degradation of the natural resource base that will reduce the future benefits that can be accrued through the non consumptive usage of these valuable natural resources.** (at 4.4 of page 33 of **P2a**)*

10. Emphasising the need to properly regulate the tourism industry in the area, the report (Vide **P2a**) further states as follows:

*"Therefore, the main predicted future development in the area is likely to be in the tourism sector. The tourism development will heavily depend on the natural resource base as it will be one of the key tourism products that can be offered to the potential tourist. However, based on the lessons learnt from how tourism is handled at present, it is evident that the tour operations in the region have given little consideration to the sustainable use of natural resources. It should also be noted that for many years this phenomenon has been identified and recommendations have been provided as to how this should be converted to a sustainable practice. Yet these recommendations have not been converted to practice and thereby these impacts continue to mount threatening the very existence of the resource base upon which it depends. Therefore, **sustainable use of natural resources should be the guiding principle for future tourism development in the area** and implementing the recommendations that have been put forward by successive studies should be given priority..."(Vide 4.5 on page 33 of **P2a**).*

11. Therefore, the Petitioner states that safeguarding the long-term conservation of natural resources in the area is of utmost importance when considering any development

initiative, as recognised expressly by the Coast Conservation and Coastal Resources Management Department under the purview of the 1<sup>st</sup> Respondent.

### **Circumstances which necessitate the making of this application**

12. The Petitioner states that having appreciated the ecological sensitivity of the area and having come to learn of the tourism development project in progress, Ms. Shala Amarasuriya, Investigations & Communications Officer of the Petitioner organization, initially contacted the Batticaloa representative of the Coast Conservation and Coastal Resources Management Department, only to be informed that the project was yet to be approved (*Vide paragraph 3 of P3*).

*An Affidavit from Ms. Shala Amarasuriya, Investigations & Communications Officer of the Petitioner Organization is annexed hereto marked "**P3**" and pleaded as part and parcel hereof.*

13. Being utterly shocked and alarmed that the first stage of the project was nearing completion without the requisite approvals, in an ecologically sensitive area, Ms. Shala Amarasuriya, Investigations & Communications Officer of the Petitioner organization, on or about 6<sup>th</sup> March 2017, spoke to Mrs. P.S.M. Charles, the then District Secretary of Batticaloa and the predecessor in title to the 3<sup>rd</sup> Respondent, who confirmed that the first stage of the project was nearing completion and that approval had been granted in June 2016. She further informed the Petitioner that the Implementing Agency for the project was the District Secretariat of Batticaloa and that it was funded by the Ministry of Tourism Development and Christian Religious Affairs under the purview of the 6<sup>th</sup> Respondent (*Vide paragraph 4 of P3*.)

14. Consequently, on or about 8<sup>th</sup> March 2017, Gayani Hewawasan, Manager – Investigations and Legal Projects of the Petitioner organisation sent letter to Mrs. P.S.M. Charles, the then District Secretary of Batticaloa, referring to the conversation on 6<sup>th</sup> March 2017 and seeking clarification and requesting the relevant approval documents, on the basis that the Coast Conservation and Coastal Resources Management Department had stated that approval had not been granted for the said project.

*A copy of the letter dated 8<sup>th</sup> March 2017 from the Petitioner to the then District Secretary of Batticaloa is annexed hereto marked "**P4a**" and pleaded as part and parcel hereof.*

15. Thereafter, the Petitioner received a response from Mrs. P.S.M. Charles, the then District Secretary of Batticaloa dated 21<sup>st</sup> March 2017, annexing copies of letters of consent from some local stakeholders and approval for the revised budget from the Ministry of Tourism Development and Christian Religious Affairs under the purview of the 6<sup>th</sup> Respondent. She had further stated that the land clearance documents submitted to the Divisional Land Use Committee and District Land Use Committee were yet to be approved.

*A true copy of the letter dated 21<sup>st</sup> March 2017 from the then District Secretary of*

*Batticaloa to the Petitioner is annexed hereto marked “P4b” and pleaded as part and parcel hereof.*

16. Thereafter, having realised that the aforesaid tourist project had in fact not been approved, given that there was no sign of a permit from the Coast Conservation and Coastal Resources Management Department headed by the 1<sup>st</sup> Respondent nor land clearance documents among the purported approval documents sent by Mrs. P.S.M. Charles, the then District Secretary of Batticaloa, in or around the beginning of April 2017, Shala Amarasuriya, Investigations & Communications Officer of the Petitioner Organization spoke to the 4<sup>th</sup> Respondent who stated that before the commencement of the project in or around June 2016, recognising the need for environmental clearance, they had requested the Coast Conservation and Coastal Resources Management Department to conduct an Environment Impact Assessment (EIA) for the project (*Vide paragraph 6(a) of P3*).
17. According to the 4<sup>th</sup> Respondent, the Coast Conservation and Coastal Resources Management Department had requested for the Waste Management Plan, the Master Plan of the project and land clearance documents in order to ascertain whether approval can be granted for the project in question. However, the 4<sup>th</sup> Respondent stated that the District Secretariat of Batticaloa was not in a position to submit the requisite documents as they were yet to obtain land clearance. Furthermore, on inquiring with the Coast Conservation Department, it transpired that the Coast Conservation Department had not been furnished with the Waste Management Plan either (*Vide paragraph 6(b) of P3*).
18. The Petitioner states that when they inquired from the 4<sup>th</sup> Respondent as to why they, as the implementing agency for the project, proceeded without a permit from the Coast Conservation and Coastal Resources Management Department, environmental clearance for a project of this nature and land clearance, the 4<sup>th</sup> Respondent stated that if they delayed, the funding allocated by the 6<sup>th</sup> Respondent would have been cut off and they would have had to re-apply the following year and therefore they decided to proceed with the project without obtaining the necessary approvals (*Vide paragraph 6(c) of P3*).
19. The Petitioner states that on or about 16<sup>th</sup> May 2017, a few representatives from the Petitioner organisation including Shala Amarasuriya, Investigations & Communications Officer of the Petitioner organization conducted a site visit in order to ascertain the situation and *inter alia* the following was observed:
  - i. Garbage, including plastic bottles, plastic wrappers, polythene bags and glass bottles were seen in the areas consisting of sparse vegetation, clearly indicating the presence of people within the inner areas of the islet.
  - ii. Closer to the connection with the mainland on the dead coral beach, along the south eastern boundary, indications of the movement of a heavy vehicle was observed. Cracked corals and divisions created by the vehicular movement on the dead coral bed were visible.
  - iii. Two areas were cleared within the islet and pathways had been created for access. A few solar powered lamp posts had also been erected.

- iv. Within the two areas cleared, there were 2 eco homes partially constructed, each consisting of two adjacent container boxes. One of these sites was contiguous to the mudflat.
- v. Along the western edge of the islet, a heap of blue and orange plastic floats were observed for the construction of a pontoon.
- vi. Next to the floats, a plastic water tank and two plastic septic tanks were observed. A mound of river sand, possibly to be used for construction was also to be seen, along with metal box bars.

Photographs of some of the observations at the site on 16<sup>th</sup> May 2017 are annexed hereto compendiously marked "**P5**" and pleaded as part and parcel hereof. (*Vide paragraph 8(a) of P3*)

20. Having observed that measures did not seem to be in place to safeguard and protect the environment in the project implementation process, on or about 17<sup>th</sup> May 2017, some of the representatives from the Petitioner organisation including Shala Amarasuriya, Investigations & Communications Officer, met with Mrs. P.S.M. Charles, the then District Secretary of Batticaloa and expressed their concerns. However, she emphatically stated that the project was granted approval in June 2016 and that the first stage of the project is near completion. The said representatives of the Petitioner organisation were directed to the 4<sup>th</sup> Respondent (*Vide paragraph 9 of P3*).
21. Thus, the said representatives from the Petitioner organisation were informed that an EIA was yet to be carried out, but that they have proceeded with the project due to funding reasons (*Vide paragraph 9 of P3*).
22. The Petitioner states that upon highlighting the environmental concerns, at that meeting on or about 17<sup>th</sup> May 2017, it was indicated by the planning team, including the 4<sup>th</sup> Respondent, that all activities on the project will be halted until an EIA is conducted (*Vide paragraph 10 of P3*).
23. The 4<sup>th</sup> Respondent further shared information regarding the second stage of the project and also the Master Plan and Waste Management Plan of the tourism project on Sallitivu Islet (*Vide paragraph 10 of P3*).

*A copy of the Master Plan and Waste Management Plan are annexed hereto marked "**P6**" and "**P7**" respectively and pleaded as part and parcel hereof.*

24. The Petitioner states that the purported Waste Management Plan prepared by the 4<sup>th</sup> Respondent (*Vide P7*) does not provide specifications for the soakage pit for waste water, nor its location on the islet. Furthermore, it does not demonstrate any sign of approval from the 5<sup>th</sup> Respondent which is the mandated government body to administer waste management activities.
25. Having observed that there could be serious implications on the environment if the project progresses without the requisite approvals and environment clearance, Chamila Weerathunghe, Chief Operations Officer of the Petitioner organisation sent letter dated



24<sup>th</sup> May 2017 to the 4<sup>th</sup> Respondent, copying Mrs. P.S.M. Charles, the then District Secretary of Batticaloa, the District Engineer of Batticaloa and the 1<sup>st</sup> Respondent, highlighting the importance of conducting an EIA with regard to a project of this nature.

*A copy of the letter dated 24<sup>th</sup> May 2017 from the Petitioner to the 4<sup>th</sup> Respondent, copying Mrs. P.S.M. Charles, the then District Secretary of Batticaloa, the District Engineer of Batticaloa and the 1<sup>st</sup> Respondent is annexed hereto marked “P8” and pleaded as part and parcel hereof.*

26. The Petitioner further expressed its commitment to extend support and share expertise and recommendations in mitigating any environmental and social impacts that could be caused by the project, while pledging their fullest support towards sustainable tourism, for the benefit of the nation.

27. The Petitioner states that on or about 22<sup>nd</sup> June 2017, Gayani Hewawasan, Manager – Investigation and Legal Projects of the Petitioner organisation wrote to the 1<sup>st</sup> Respondent, drawing his attention to the fact that the 1<sup>st</sup> stage of the project was nearing completion without the requisite approvals and reiterating that when they made inquiries from the Coast Conservation and Coastal Resources Management Department, they were emphatically told that the project is yet to be approved as the preparation of the EIA is yet pending. The Petitioner further informed the 1<sup>st</sup> Respondent of the fact that due to the location of the project, his department should be the Project Approving Agency, but that they had been informed that they had undertaken the responsibility of conducting or outsourcing the EIA.

*A copy of the letter dated 22<sup>nd</sup> June 2017 from the Petitioner to the 1<sup>st</sup> Respondent and copied to Mrs. P.S.M. Charles, the then District Secretary of Batticaloa is annexed hereto marked “P9” and pleaded as part and parcel hereof.*

28. The Petitioner states that in the meantime, the said Ms. Shala Amarasuriya, Investigations & Communications officer of the Petitioner organization continued telephone correspondence with the 4<sup>th</sup> Respondent, particularly on the progress of the EIA and development activities and the 4<sup>th</sup> Respondent repeatedly gave assurances that all work had been halted until an EIA is conducted, as agreed by the parties (*Vide paragraph 11 of P3*).

29. The Petitioner states that it eventually received a response from the 2<sup>nd</sup> Respondent to their letter (to P9, dated 22<sup>nd</sup> June 2017) only on or about 18<sup>th</sup> September 2017, stating *inter alia* as follows:

- i. That they have received an application from the District Secretary Batticaloa to implement the said project.
- ii. Confirming that the site is located within the coastal zone and that the Coast Conservation and Coastal Resources Management Department was the Project Approving Agency.
- iii. That they have asked the District Secretary Batticaloa to submit relevant documents pertaining to the ownership of the land from the Land Commissioner

- General's Department, but that that had not been furnished yet.
- iv. That once the land clearance documents are received, they will call for a scoping committee meeting with relevant government agencies to decide on the approval procedure, considering the possible environmental and socio economic impacts due to the project.
  - v. That the Coast Conservation and Coastal Resources Management Department has not granted any approval for the project.

*A true copy of the letter dated 8<sup>th</sup> September 2017 sent for the 1<sup>st</sup> Respondent to the Petitioner is annexed hereto marked "**P10**" and pleaded as part and parcel hereof.*

30. The Petitioner states that around the same time, the Petitioner came to learn that new developments were taking place on the site and on or about 28<sup>th</sup> September 2017, Ms. Shala Amarasuriya, Investigations & Communications Officer and some representatives from the Petitioner organisation conducted another site visit together with Nalinda Peries, Consultant who was on the team of Consultants that conducted a flora and fauna survey of the Sallitivu islet in 2013, which was later published by the Coast Conservation and Coastal Resources Management Department. (*Vide **P2a** and paragraph 7 of P3*)

31. The Petitioner states that on the said site visit, *inter alia* the following was observed:

- i. There was a notable increase in solid waste in the islet, including mainly plastic/ glass bottles. Improper waste disposal can lead to serious pollution on the islet and surrounding ocean which could also in turn affect the livelihood of fishermen, as aquatic life would get affected as a result of polluted waters.
- ii. The partially installed container box structures were now further developed with both the interior and exterior almost complete. One of the container homes was located directly next to the mudflat located on the islet and this is highly likely to disrupt the migratory birds visiting the islet.
- iii. The pontoon was now constructed using the plastic floats observed from the previous visit. The motor boat too was alongside the jetty.
- iv. There were a few workers and a vehicle parked on the islet near one of the eco homes. Balloons were hung, giving the impression of a ceremony. They were further informed by an unknown person on the mainland that the opening ceremony was due to be held.
- v. The single endangered plant species *Tournefortia Argentea* (Karan) that was last recorded in 2013 by the Consultant was not observed during this visit.
- vi. As the clearing of vegetation has been carried out haphazardly without any consideration of endangered, vulnerable and near threatened species, it is possible that some of these species could have been destroyed.

*Photographs of some of the observations at the site on 28<sup>th</sup> September 2017 taken are annexed hereto compendiously marked "**P11**" and pleaded as part and parcel hereof. (*Vide paragraph 8(b) of P3*)*

32. The Petitioner states that despite the several assurances and agreements to halt all development activities on the site until the EIA is conducted, it was utterly shocking and

alarming to note the significant progress made on the project. The District Secretariat of Batticaloa had surreptitiously chosen not to disclose such information but instead falsely gave assurances to the contrary, as set out by Ms. Shala Amarasuriya, Investigations & Communications Officer of the Petitioner organization (Vide paragraph 12 of P3).

33. The Petitioner states that Nalinda Peries, the Consultant who joined on the said site visit on or about 28<sup>th</sup> September 2017 has expressed his opinion on the possible impacts of a project of this nature, especially in light of the manner in which it is being conducted and comparing the current situation to the situation in 2013 when the initial survey was conducted.

*An affidavit from Nalinda Peries, Consultant and an opinion from him on the subject are annexed hereto marked "**P12a**" and "**P12b**" respectively and pleaded as part and parcel hereof.*

34. The Petitioner states that thereafter on or about 10<sup>th</sup> October 2017, Gayani Hewawasan, Manager – Investigations and Legal Projects of the Petitioner organisation sent letter of demand to the 1<sup>st</sup> Respondent, stating *inter alia* as follows:

- i. That the inaction of the 1<sup>st</sup> Respondent in not preventing the development activity sans requisite approval is a violation of the mandated duties and obligations of the 1<sup>st</sup> Respondent under the Coast Conservation Act No.57 of 1981 as amended; and
- ii. Calling upon the 1<sup>st</sup> Respondent to take immediate action to remove all existing structures and further prohibit and prevent activities prohibited by law which will cause irreversible damage to the islet.

*True copies of the letter of demand dated 10<sup>th</sup> October 2017 sent from the Petitioner to the 1<sup>st</sup> Respondent and the Registered Postal Article are annexed hereto marked "**P13**" and "**P13(a)**" respectively and pleaded as part and parcel hereof.*

35. The Petitioner states that, on the same day, Gayani Hewawasan, Manager – Investigations and Legal Projects of the Petitioner organisation sent a letter of demand to the predecessor of the 3<sup>rd</sup> Respondent, stating *inter alia* as follows:

- i. That the District Secretary – Batticaloa District is well aware of the significance of the issue and the blatant disregard and violation of the laws and regulations by the 3<sup>rd</sup> Respondent; and
- ii. Calling upon the District Secretary – Batticaloa District to take immediate action to remove all existing structures and further stop all activities prohibited by law which will cause irreversible damage to the islet

*True copies of the letter of demand dated 10<sup>th</sup> October 2017 sent from the Petitioner to the District Secretary – Batticaloa District and the Registered Postal Article are annexed hereto marked "**P14**" and "**P14(a)**" respectively and pleaded as part and parcel hereof.*

36. The Petitioner states that there was no response to the aforesaid letters from the 1<sup>st</sup> or

3<sup>rd</sup> Respondents and/ or their predecessor/s in title.

37. The Petitioner states that on or about 24<sup>th</sup> November 2017, Ms. Shala Amarasuriya, Investigations & Communications Officer and some representatives from the Petitioner organisation met with the 2<sup>nd</sup> Respondent who informed them of the following:

- i. That the Coast Conservation and Coastal Resources Management Department had on multiple occasions informed the then District Secretary of Batticaloa and/or the 3<sup>rd</sup> Respondent that due procedure has not been followed and requested them to halt activities until they had obtained the relevant approvals;
- ii. That the next step of the Coast Conservation and Coastal Resources Management Department was to approach the Police and to file legal action against the 3<sup>rd</sup> Respondent but that they do not wish to do so because they are both government entities and it will not 'look good' on them;
- iii. That they would send a letter to the Secretary of the Ministry of Mahaweli Development and Environment to inform and ask for assistance in the resolution of this matter;
- iv. That they would send a letter to the 3<sup>rd</sup> Respondent re-informing him of the issue; and
- v. That he had requested the officers of the Coast Conservation and Coastal Resources Management Department in Batticaloa to visit the site and send a full report on the current situation including pictures, to share with the Secretary of the Ministry of Mahaweli Development and Environment.

*(Vide paragraph 13 of P3)*

38. The Petitioner states that on or about 12<sup>th</sup> December 2017, Gayani Hewawasan, Manager – Investigations and Legal Projects of the Petitioner organisation sent a follow-up to the letter of demand already sent to the predecessor in title to the 3<sup>rd</sup> Respondent (*Vide P14*), highlighting *inter alia* that this project can produce a negative outcome considering the highly sensitive and exclusive environment of the islet and surrounding ocean and the illegality in the failure to follow due procedure with regard to the project, in violation of the provisions of law.

*A copy of the further letter of demand dated 12<sup>th</sup> December 2017 from the Petitioner to the predecessor in title to the 3<sup>rd</sup> Respondent and the registered postal article are annexed hereto marked "**P14b**" and "**P14c**" respectively and pleaded as part and parcel hereof.*

39. However, the Petitioner states that up to date the Petitioner has not received a response from either the 1<sup>st</sup> or 3<sup>rd</sup> Respondents and/ or their predecessor/s in title.

40. The Petitioner states that subsequently, on or about 30<sup>th</sup> January 2018, some representatives from the Petitioner organisation including Shala Amarasuriya, Investigations & Communications Officer conducted yet another site visit and observed that there was a notable increase in solid waste on the islet and progress had been made on the project.

*Photographs of some of the observations at the site on 30<sup>th</sup> January 2018 are annexed hereto compendiously marked "P15" and pleaded as part and parcel hereof (Vide paragraphs 7 and 8(c) of P3).*

41. The Petitioner states that they were informed by a fisherman on the beach that the constructions on the islet were near completion but not officially opened yet. An Army officer from the mainland confirmed this but further stated that the reason for the delay was due to difficulties in installing water facilities on the islet (Vide paragraph 14 of P3).
42. The Petitioner states that such conduct on the part of the Respondents with regard to the "Leisure and Pleasure Pristine Eco Culture" project on Sallitivu Islet is illegal, arbitrary, irrational, and capricious and ought to be dealt with and remedied forthwith in the public and national interest.

### **Grounds for Review**

#### **The Respondents have disregarded the mandatory permit system regulating development activity in the coastal zone**

43. The Petitioner is advised and states that Section 14(1) and 14(2) of the Coast Conservation and Coastal Resource Management Act No.57 of 1981 as amended provides as follows:

*"(1) Notwithstanding the provisions of any other law, no person shall engage in any development activity other than a prescribed development activity within the coastal zone except under the authority of a permit issued in that behalf by the Director.*

*(2) The Minister may, having regard to the effect of those development activities on the long term stability, productivity and environmental quality of the Coastal Zone, prescribe the categories of development activity which may be engaged in within the Coastal Zone without a permit issued under subsection (1)."*

44. The Petitioner is advised and states that "development activity" as defined in Section 42 of the Coast Conservation and Coastal Resource Management Act No.57 of 1981 as amended is,

*"any activity likely to alter the physical nature of the Coastal Zone in any way, and includes the construction of buildings and works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, seagrass or other substances, dredging and filling, land reclamation and mining or drilling for minerals, but does not include fishing".*

45. The Sri Lanka Coastal Zone Management Plan 2004 published in Gazette Extraordinary No.1429/11 dated 24<sup>th</sup> January 2006 further defines development activity (Vide page 75A) to include *inter alia*:

- Dwelling houses and related structures
- Tourism, commercial and industrial structures
- Recreational and/or water sports facilities
- Dredging, filling, grading or breaching of sand bars
- Removal of vegetation

*A copy of the Sri Lanka Coastal Zone Management Plan 2004 published in Gazette Extraordinary No.1429/11 dated 24<sup>th</sup> January 2006 is annexed hereto marked "**P16**" and pleaded as part and parcel hereof.*

46. The Petitioner is advised and states that the Sri Lanka Coastal Zone Management Plan 2004 further lists activities that may be engaged in without a permit within the coastal zone as follows (*Vide page 75A of **P16***):

- Fishing
- Cultivation of crops that do not destabilise the coast
- Planting of trees and other vegetation
- Construction and maintenance of coastal protection works by the CCD in accordance with the Coast Erosion Management Strategy and the emergency procedures as outlined in Chapter 2.

47. The Petitioner is advised and states that undoubtedly the nature of the project in question is a development activity that requires a permit from the 1<sup>st</sup> Respondent.

48. Such position is further evident in that it is very clear that the only type of activities which do not require a permit are of a particular genre which is non-invasive and/ or necessary and/ or protective activities and the tourism project on Sallitivu Islet, a highly sensitive area ecologically, does not fit into that genre.

49. Furthermore, as demonstrated hereinbefore, in all correspondence with the Respondents, it has never been contended that the project is not a development activity that requires a permit, but only that even though approval is required, it has not been obtained due to the inability to satisfy the requirement of land clearance documents.

50. The Petitioner states further that the Coastal Zone Management Plan (*Vide page 74A of **P16***) emphatically highlights the importance of the permit system in the regulatory mechanism as follows:

*"The principal tool used by the CCD in managing the activities of the CZ is the Permit System, which is described in Part III of the CCA. The purpose of the Permit System is to direct development activities in the CZ in such a manner that negative impacts of development activities are averted or minimised. It also envisaged to minimise the risk of investment especially those coastal areas are more prone to natural coastal disasters. It is made obligatory under the Act for any person, whether in the private or state sector, intending to engage in a development activity within the Coastal Zone (other than those for which permits are not required) to obtain a permit from the Director."*

51. The Petitioner states that going ahead with the project on Sallitivu Islet, completely disregarding the requisite permit system, can cause detrimental effects including,
- i. The possible negative impacts of the development activity carried out at the Sallitivu Islet have not been assessed in order to avert or minimise same;
  - ii. The wastage and/ or misuse of public funds without carefully and responsibly ascertaining the risk of investment;
  - iii. The irresponsible conduct of the District Secretariat headed by the 3<sup>rd</sup> Respondent as the Implementing Agency in wholly disregarding the permit system, especially in light of the fact that Divisional Secretaries under their purview are empowered to issue minor permits;
  - iv. The irresponsible conduct on the part of the Coast Conservation and Coastal Resources Management Department headed by the 1<sup>st</sup> Respondent in failing to take action against parties acting in clear disregard of the law;
  - v. The wrong precedent created in disregarding the mandatory permit system and the failure to take action to remedy same could pave the way for several other state and private entities to flout the clear provisions and requirements of the law for extraneous considerations, resulting in inevitable depletion and destruction of natural resources.

**The Respondents have disregarded the requirement of Environmental Impact Assessment (EIA) and Initial Environmental Examination (IEE) for development activity in the coastal zone**

52. The Petitioner states that according to and in terms of Section 16 of the Coast Conservation and Coastal Resources Management Act as amended, the 1<sup>st</sup> Respondent is under a duty to correctly ascertain the need for environment clearance, prior to granting approval.
53. The Petitioner states that at page 74A of the Coastal Zone Management Plan (*Vide P16*) it is clearly borne out that the requirement of an EIA and/or an IEE are an integral part of the regulatory mechanism pertaining to coastal zones.
54. It further provides that,
- “The permit appraisal process involves an assessment of the probable impacts of a proposed development activity and a determination on whether the magnitude and severity of potential impacts will outweigh the benefits derived.”
55. The Petitioner is advised and states that the effective functionality of the permit system which regulates the coastal zone rests on a proper analysis and assessment of the proportionate impacts of development activity, prior to carrying out such activity.
56. As set out in the Coastal Zone Management Plan (*Vide page 74A of P16*), the entire purpose of the permit system is to direct development activities in a manner so as to altogether avert or minimise the negative impacts of proposed development activity.

57. The procedure for ascertaining the requirement of an IEE and/or an EIA is extensive and takes into cognisance impacts from several spheres influencing the proposed development activity, including the following (*Vide page 82A of P16*):

Consideration for IEE

- i. The nature, aim and scope of the proposed activity
- ii. The socio-economic and ecological benefits/costs of the proposed project
- iii. The long-term monitoring programme for the proposed activity
- iv. The foreseeable direct and indirect, long-term and short-term effects of the activity on the coastal zone
- v. Identification of irreversible or irretrievable commitments of resources
- vi. The potential impacts on *inter alia* coastal habitats and the abundance and diversity of plant and animal life
- vii. Proposed measures to minimise impacts and the effectiveness of such measures

For EIA

An EIA is defined under the Coast Conservation and Coastal Resources Management Act as amended as follows:

“A written analysis of the predicted environmental consequences of a proposed development activity, and includes a description of the avoidable and unavoidable adverse environmental effects of the proposed development activity, a description of alternatives to the activity which might be less harmful to the environment of the Coastal Zone, together with the reasons why such alternatives were rejected, and a description of any irreversible or irretrievable commitments of resources required by the proposed development activity”

58. The Petitioner states that page 83A of the Coastal Zone Management Plan (*Vide P16*) states that an EIA will be required in case of a project that is considered by the Director to have significant impacts on the coastal environment.

59. The Petitioner further states that according to the report published by the Coast Conservation and Coastal Resources Management Department (*Vide P2a*) headed by the 1<sup>st</sup> Respondent, the Sallitivu Islet has been recognised as an ecologically sensitive area where development activity must be carefully regulated and monitored and therefore the impacts on the coastal environment of the islet is indeed significant and would require an EIA.

60. It would therefore be the duty of the District Secretariat of Batticaloa headed by the 3<sup>rd</sup> Respondent to correctly analyse alternatives to the activity which might be less harmful, together with why such alternatives were rejected, among many other factors.

61. However, the Petitioner states that being fully aware of the significance of the potential impacts on the environment of the coastal zone, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and/or other Respondents have clearly disregarded the need for obtaining environmental



clearance prior to commencing work on the project and have continued with the project, completing same, without any environmental clearance, failing to appreciate that such conduct could result in irreversible and detrimental consequences.

**The Respondents have acted on extraneous considerations with regard to development activity on Sallitivu Islet**

62. The Petitioner states that as set out above, the 4<sup>th</sup> Respondent clearly indicated that as the Implementing Agency for the project, they proceeded with the work on the project without requisite approvals due to funding reasons, as if work on the project was delayed, they would have to re-apply for funding for the project.
63. The Petitioner states that the 2<sup>nd</sup> Respondent too conceded that the next step of the Coast Conservation and Coastal Resources Management Department was to approach the Police and to file legal action against the District Secretary – Batticaloa District but that they do not wish to do so because they are both government entities and it will not 'look good' on them.
64. The Petitioner states that such considerations of funding and 'looking good' in the eyes of other government departments constitute immaterial and extraneous considerations to those set out in law as requisite considerations, when deciding the granting of approval for a proposed development activity.

**The Respondents have disregarded the criteria to be used in formulating and/or approving a proper waste management plan in accordance with the law and/or failed to take action against violation of legal stipulations**

65. The Petitioner states that the purported waste management plan prepared by the District Secretariat (*Vide P7*) does not provide specifications for the soakage pit for waste water, nor its location on the islet. Given the sandy soil and the coral bed, in addition to the mudflat ecosystem, it is essential that these details ought to have been clarified and authorised prior to the commencement of construction.
66. Furthermore, it does not demonstrate any sign of approval from the 5<sup>th</sup> Respondent which is the mandated government body to administer waste management activities in accordance with Regulation 2 read with Regulation 7 of the Regulations published in Gazette Extraordinary No.1534/18 dated 1<sup>st</sup> February 2008 under the National Environmental Act.
67. Therefore, the Petitioner states that pursuing the project without a sound waste management plan entails a real prospect of detriment to the sensitive environment of the islet.
68. However, as set out above, significant progress has been made on the project, without taking cognisance of the deficiencies of the purported waste management plan (*Vide P7*).

## **The Respondents have disregarded the minimum setback areas for small islands**

69. The Petitioner states that the 'permit guideline' (*Developers Guide for Developments in Coastal Zone*) by the Coast Conservation and Coastal Resources Management Department (on page 8) stipulates the setback (or coastal buffer zones) for small coastal islands. It reads as follows;

### **"Set Back Areas for Small Island**

Approval will be granted for the development activities within the coastal zone in islands around Sri Lanka with the following set back requirements.

(i) A 100M structure free set back (buffer zone) from the Mean High Water line should be delineated for the development activities that are carried out in the islands located in the West and the South coast from Kala Oya river mouth (Ganga Wadiya) to Kirindi Oya river mouth.

(ii) A 200M structure free set back (buffer zone) from the Mean High Water line should be delineated for the development activities that are carried out within the coastal zone in the islands located from Kirindi Oya river mouth to Kala Oya covering East and North coast."

70. Accordingly, a 200 meter structure free buffer zone is mandatory in the Sallitivu Islet but the Respondents have completely disregarded same and conducted and/or permitted development activity within the buffer zone.

## **1<sup>st</sup> Respondent has disregarded compliance monitoring mechanisms according to law**

71. The Petitioner states that Section 28 of the Coast Conservation and Coastal Resources Management Act as amended, states that a person who acts in contravention of the provisions of Section 14 of the said Act shall be guilty of an offence under the Act.

72. The Petitioner is advised and states further that Section 31(1) and 31(2) of the Coast Conservation and Coastal Resources Management Act as amended, further states as follows:

*"(1) No person shall, with effect from the appointed date, erect or construct any unauthorized structure, house, hut, shed or other building on any part of the Coastal Zone.*

*(2) The Director may, by giving notice to the owner or occupier, as the case may be, by affixing a notice to some conspicuous part of such structure, house, hut, shed or other building, direct such owner or occupier to take down and remove such unauthorized structure, house, hut, shed or other building within such time as the Director may specify in the notice."*

73. The Petitioner is advised and states therefore that the 1<sup>st</sup> Respondent has abdicated his duty by failing to take action with regard to the conduct of the 3<sup>rd</sup> and/ or other

Respondents in continuing development activity on Sallitivu Islet without requisite approvals.

74. Being aggrieved by the said conduct of the 1<sup>st</sup> to 8<sup>th</sup> Respondents, the Petitioner now makes application to Your Lordships' Court, on *inter alia*, the following grounds:

- a) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have disregarded the mandatory permit system regulating development activity in the coastal zone;
- b) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have disregarded the requirement of Environmental Impact Assessment (EIA) and Initial Environmental Examination (IEE) for development activity in the coastal zone with a potentially significant impact;
- c) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have acted on extraneous considerations with regard to development activity on Sallitivu Islet;
- d) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have disregarded the criteria to be used in formulating and/or approving a proper waste management plan in accordance with the law and/or failed to take action against violation of legal stipulations;
- e) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have disregarded the minimum setback areas for small islands to be free of all structures;
- f) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have disregarded compliance monitoring mechanisms to ensure sustainable development and action for violation of legal stipulations;
- g) The 1<sup>st</sup> to 8<sup>th</sup> Respondents have acted under fettered discretion in constraining themselves by extraneous considerations;
- h) The 1<sup>st</sup> Respondent has failed to take cognisance of his duty to exercise power in furtherance of the objects of the Coast Conservation and Coastal Resources Management Act as amended, in the circumstances;
- i) The conduct of the 1<sup>st</sup> to 8<sup>th</sup> Respondents is unreasonable, irrational and procedurally flawed; and
- j) In the circumstances, *inter alia*, the conduct on the part of the 1<sup>st</sup> to 8<sup>th</sup> Respondents to proceed with and/ or directly or tacitly approve development activity on Sallitivu Islet without requisite approvals is illegal, has been made by taking into consideration irrelevant factors and/or refusing to take into consideration relevant factors, contravenes relevant provisions of the law and is of no force or avail in law.

75. The Petitioner is advised and states that thus and otherwise, it is apparent that the 1<sup>st</sup> Respondent and/ or other relevant Respondents have effectively refused to take remedial action and decided to permit the 3<sup>rd</sup> Respondent and/or his servants and/or agents to conduct and/or engage in activity on Sallitivu islet without securing requisite approvals under and in terms of the National Environmental Act as amended, or to tolerate same.
76. The Petitioner is advised and states that in the aforesaid circumstances, it is entitled in law to mandates:
- a. in the nature of a Writ of *Prohibition* preventing the 3<sup>rd</sup> Respondent and/or his servants and/or agents from proceeding with any activity on Sallitivu Islet until requisite approvals have been obtained;
  - b. in the nature of a Writ of *Certiorari* to quash any decision of the 1<sup>st</sup> Respondent to permit the 3<sup>rd</sup> Respondent and/ or other Respondents and/or their servants and/or agents to conduct and/or engage in activity on Sallitivu islet without securing requisite approvals under and in terms of the Coast Conservation and Coastal Resources Management Act and National Environmental Act as amended;
  - c. in the nature of a Writ of *Mandamus* compelling the 1<sup>st</sup> Respondent to take action against all unauthorised activity on Sallitivu islet;
77. The Petitioner is advised and respectfully states that serious irreparable loss, harm and damage will be caused to the Petitioner, the environment and the public and the instant application will be rendered nugatory, unless an appropriate interim order is made by Your Lordships' Court to prevent engaging in, permitting or facilitating development activity and/or use of such developed facilities on Sallitivu Islet until the hearing and final determination of this application.
78. The Petitioner respectfully reserves the right to furnish such further and other material as may subsequently transpire and/or become necessary due to or arising from the conduct of the Respondents, their servants and/or agents and to seek such other reliefs as may become necessary in the light thereof through this application.
79. The Petitioner has appended true copies of annexes available to the Petitioner and respectfully reserves the right to secure and furnish duly certified copies of same, if/when they may become available to the Petitioner, should it be deemed necessary to do so.
80. The Petitioner has not previously invoked the jurisdiction of this Court in respect of this matter.
81. An Affidavit of Dr. Eric Wickramanayake, Chairman of the Petitioner organisation is appended hereto in support of the averments made by the Petitioner contained herein.

**WHEREFORE** the Petitioner respectfully prays that Your Lordships' Court be pleased to grant and issue:

- a. Notice on the Respondents in the first instance;
- b. An interim order to prevent the Respondents from taking any steps to engage in, permit, or facilitate development activity and/or the use of such developed facilities on Sallitivu Islet until the hearing and final determination of this application;
- c. A Mandate in the nature of a Writ of *Prohibition* preventing the 3<sup>rd</sup> Respondent and/or his servants and/or agents from proceeding with any activity on Sallitivu Islet until requisite approvals have been obtained under and in terms of the Coast Conservation and Coastal Resources Management Act and National Environmental Act as amended;
- d. A Mandate in the nature of a Writ of *Certiorari* to quash any decision by the 1<sup>st</sup> Respondent to permit and/or tolerate the 3<sup>rd</sup> Respondent and/ or other Respondents and/or their servants and/or agents to conduct and/or engage in any activity on Sallitivu islet without securing requisite approvals under and in terms of the Coast Conservation and Coastal Resources Management Act and National Environmental Act as amended;
- e. A Mandate in the nature of a Writ of *Mandamus* compelling the 1<sup>st</sup> Respondent and/or his successors in office to take action to prevent and address any unauthorised activity on Sallitivu Islet;
- f. An order for Costs; and
- g. An order for such further and other relief(s) as to Your Lordships' Court shall seem meet.

**REGISTERED ATTORNEY-AT-LAW FOR THE PETITIONER**

*Settled by:*

**Ms. Subhashini Samaraarachchi**

**Ms. Sarita de Fonseka**

**Viran Corea Esq.**

Attorneys-at-Law