

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

*In the matter of an application under Article 17 read
with Article 126 of the Constitution.*

1. Environmental Foundation (Guarantee)

Limited No. 3A, 1st Lane
High Level Road
Kirulapone
Colombo 05.

- **Peti
tioner**

SCFR: 243/2017

Vs.

1. Central Environmental Authority

No.104, Denzil Kobbekaduwa Mawatha
Battaramulla.

2. Mr. Gamini Jayawickrema Perera Esq.

Minister of Sustainable Development and Wildlife
Ministry of Sustainable Development and Wildlife
9th Floor, Stage I
Sethsiripaya
Battaramulla.

3. Mr. W.S.K. Pathirathne

Director General of Wildlife Conservation
Department of Wildlife Conservation No.
811 A, Jayanthipura Battaramulla.

4. Mr. Faiszer Musthapha

Minister of Provincial Councils and Local Government
Ministry of Provincial Councils and Local Government
No. 330, Dr. Colvin R. de Silva Mawatha (Union Place)
Colombo 02.

5. Mr. Patali Champika Ranawaka

Minister of Megapolis and Western Development
Ministry of Megapolis and Western Development
17th and 18th Floors

"Suhurupaya" Subhuthipura Road Battaramulla.

6. Urban Development

Authority 6th & 7th Floors,
"Sethsiripaya"
Battaramulla.

7. Mr. Isura Devappriya

Provincial Minister of Local Government and Provincial
Administration
Office of the Chief Minister – Western Province
"Srawasthi Mandiraya"
No. 32, Sir Marcus Fernando
Mawatha Colombo 07.

**8. Waste Management Authority (Western
Province) "Srawasthi Mandiraya"**

No.32, Sir Marcus Fernando Mawatha
Colombo 07.

9. Mr. V.K. Anura

Municipal Commissioner
Colombo Municipal Council
Town Hall
Colombo 07.

**10. Colombo Municipal
Council**

Town Hall
Colombo 07.

11. Attorney General

Attorney General's Department
Colombo 12.

- Respondents

On this 13th day of July 2017.

**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES
OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA.**

**The Petition of the Petitioner above named, appearing by its Attorney-at-Law Ms. Gayani
Hewawasan states as follows:**

THE PARTIES

1. The **Petitioner** hereinabove mentioned is a non-profit making Company Limited by Guarantee, incorporated under the laws of Sri Lanka, having its registered office at the address given hereinabove. The objects of the Petitioner include, monitoring State departments and regulatory agencies and ensuring that the public interest in protecting the environment is fully considered in their administrative activities, and enforcing laws relating to the conservation of nature and protection of the environment through legal means.

A copy of the Certificate of Incorporation and the Articles of Association of the Petitioner are annexed hereto respectively marked **P1 & P2** and pleaded as part and parcel hereof.

2. The Petitioner has been registered with the Central Environmental Authority as a national level non- governmental organization engaged in environmental activities since 1981.

A copy of the said registration letter is annexed hereto marked **P3** and pleaded as part and parcel hereof.

3. The Petitioner states that the Petitioner is, and continues to be, genuinely concerned about the implementation and enforcement of the laws relating to the protection of the environment, and in performing the fundamental duty cast on every person under Article 28(f) of the Constitution of the Republic to protect nature and its riches. The Petitioner in its capacity has invoked the jurisdiction of Your Lordships' Court and other courts in several matters (earmarked from the famous Eppawala Phosphate Mining Case: Bulankulama and others vs Secretary, Ministry of Industrial Development and others [2000] 3 Sri LR 243) relating to the environment and has obtained relief in pursuance of its aims.

4. In addition to the aforementioned objectives, the Petitioner also presents this Petition "in the public interest" under Article 126 of the Constitution, particularly, *inter alia*, to ensure due compliance with environmental protection and pollution control laws, regulations and procedures, and to ensure performance of the Respondents' entrusted duties and obligations thereto, as contemplated in Articles 27(14), 28(d) and 28(f) of the Constitution of this Republic, for and on behalf of the citizenry of this Republic upon whom all such powers of government are absolutely and inalienably vested by virtue of their sovereign entitlement.

5. The Petitioner states that;

a. The **1st Respondent** is the Central Environmental Authority (hereinafter referred to as the "CEA") statutorily constituted under the National Environmental Act No. 47 of 1980 as amended (hereinafter referred to as the "NEA"). Its public duties constitute the implementation and administration of the NEA and Regulations made thereunder, including the issuance of environmental clearances and environmental protection licenses for prescribed projects. The **1st Respondent** is also generally responsible for the prevention of pollution and the improvement of environmental quality, and to this end is vested with the duties of regulating the nature and effect of waste and of coordinating all regulatory activities related to the discharge of waste, *inter alia* -a principal subject matter in this application.

b. The **2nd Respondent** is the Honourable Minister of Sustainable Development and Wildlife exercising ministerial purview over the Department of Wildlife Conservation, and holds the ministerial responsibility of ensuring the protection of protected areas and wildlife resources in terms of the provisions of the Fauna and Flora Protection Ordinance No. 2 of 1937 as amended (hereinafter referred to as the "FFPO").

c. The **3rd Respondent** is a public officer holding the statutory post of Director General of Wildlife Conservation under the FFPO and is mandated to give effect to the provisions of the same in relation to the protection of the protected areas declared under the Ordinance, including the Muthurajawela Sanctuary, subject to the general direction and control of the **2nd Respondent**.

d. The **4th Respondent** is the Honourable Minister of Provincial Councils and Local Government, and is made a party to this application on account of his ministerial powers and responsibilities *vis-à-vis* the activities of local authorities, and his involvement in the plan to construct a sanitary landfill in Muthurajawela.

- e. The 5th **Respondent** is the Honourable Minister of Megapolis and Western Development exercising ministerial purview over the Urban Development Authority, and is responsible for physical development of urban areas and the management of urban solid waste, *inter alia*.
- f. The 6th **Respondent** is the Urban Development Authority (hereinafter referred to as the “UDA”) statutorily constituted under the Urban Development Authority Law No. 41 of 1978 as amended, and is responsible for integrated planning and development within “Urban Development Areas” declared under the Urban Development Authority Law as amended.
- g. The 7th **Respondent** hereinabove named is the Honourable Chief Minister of the Western Province and the Provincial Minister of Local Government and Provincial Administration, and exercises ministerial purview over the implementation of the Municipal Councils Ordinance within the Western Province and over the Waste Management Authority of the Western Province, governed by and under the Waste Management Authority Statute No. 01 of 2007 as amended.
- h. The 8th **Respondent** is the Waste Management Authority (hereinafter referred to as the “WMA”) of the Western Province governed by and under the Western Province Waste Management Statute No.1 of 2007. Its objectives constitute planning, advising, organizing, and supervising the regulation of disposal of waste generated within the Western Province to prevent injudicious disposal of waste, and evaluating the hazardousness, if any, that may be caused by such disposal of waste with a view to adopting necessary procedures for the prevention thereof- a principal subject matter in this application.
- i. The 9th **Respondent** abovenamed is the Municipal Commissioner of the Municipal Council of Colombo and is the Chief Executive officer of the Council, second only to the Mayor.
- j. The 10th **Respondent** abovenamed is the Municipal Council of Colombo governed by and under the provisions of the Municipal Councils Ordinance No. 29 of 1947 as amended, and is entrusted with the duty of collecting and disposing of solid waste generated within its jurisdiction as more fully elaborated hereinafter- a principal subject matter in this application.
- k. The 11th **Respondent** is the Attorney General of the Republic and has been made a party to this application in terms of Article 35 of the Constitution of the Republic on behalf of His Excellency the President of the Republic in his capacity as the Minister of Environment, exercising ministerial purview over the environment and natural resources of the country, maintaining the equilibrium between the trends in rapid economic and social development, and the use of natural resource base which becomes a principal subject matter of this application. The 11th Respondent is also made a party to this application in terms of Article 134 of the Constitution and the Rules of Your Lordships’ Court.

EXECUTIVE AND/OR ADMINISTRATIVE ACTION

6. The Petitioner states that their principal grievance in this application to Your Lordships’ Court relates to, *inter alia*:

- a. The decision/permission/endorsement taken/granted by any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents to dispose of street refuse, house refuse or other similar matter and/or other types of waste material to injudiciously selected locations, such as the Muthurajawela Sanctuary and the Kotikawatte garbage disposal site, contrary to the provisions, rules and regulations made under the applicable laws and/or orders described herein below, and/or the irregular procedure adopted by any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th,

10th and 11th Respondents in doing so, contrary to the rights guaranteed under Articles 12(1) and 14(1)(h) of the Constitution of the Republic;

b. The irreparable, irreversible and grave damage caused to the citizens and the environment due to the imprudent and/or incautious and/or unlawful acts and/or omissions of any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents, in violation of the rights guaranteed under Article 12(1) of the Constitution of the Republic; and

c. The imprudent and/or incautious and/or unlawful acts and/or omissions of any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents in relation to clearance, collection, transportation, temporary storage, processing, separation, treatment and disposal of street refuse, house refuse or other similar matter in violation and/or in disregard of the applicable laws, rules, regulations, policies, guidelines and/or procedures, contrary to the rights guaranteed under Article 12(1) of the Constitution of the Republic.

7. The Petitioner is advised and states that the actions, and/or inactions, of any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents and/or their officers and/or agents, as more fully set out herein below, jointly and/or severally, constitutes executive and/or administrative action within the contemplation of Articles 17 and 126 of the Constitution of the Republic and, so long as they continue to stand, would constitute a continuing violation of their Fundamental Rights, and also amounts to an imminent infringement of the Petitioner's Fundamental Rights due to the irreversible loss, damage and destruction that maybe caused to the environment and natural resources of the Republic if clearance, collection, transportation, temporary storage, processing, separation, treatment, and disposal of street refuse, house refuse or other similar matter, continues and/or is further permitted to take place in violation of the applicable laws, rules, regulations, policies, guidelines and/or procedures, as more fully described herein.

THE FACTS IN BRIEF

Context: The Solid Waste Management Crisis in Sri Lanka

8. The Petitioner states that Sri Lanka's struggle with solid waste management and associated environmental concerns reached crisis point when on or about the 14.04.2017, the mass scale garbage dump in the heart of Colombo- Meethotamulla, collapsed, killing over 30 individuals and damaging approximately 100 houses in the area. As per reports issued by the Disaster Management Center, 8 individuals are currently reported missing and 1670 persons affected.

9. The Petitioner submits that the creation of the aforesaid garbage hillock was marked by a similar disaster, albeit of much smaller proportions, more than half a decade ago and that the Government's failure to prevent a repeat of a similar event is illustrative of the culture of bureaucratic negligence and blatant disregard for the applicable laws, rules, regulations, policies, guidelines and/or procedures associated with solid waste management in the country.

10. The Petitioner respectfully draws the attention of Your Lordships' Court to the fact that a significant portion of all municipal solid waste generated in Sri Lanka is currently being disposed of by way of open-dumping; a method of garbage disposal which is unsustainable, hazardous and fraught with negative externalities to the people and the environment.

11. In this connection, the Petitioner further respectfully draws the attention of Your Lordships' Court to the comments reported as having been made by the Director General of the CEA, Mr. K.H. Muthukudaarachchi, in a news article dated 27.04.2017 published in the Daily Lankadeepa newspaper to the effect that all currently functioning garbage disposal sites are operating in

contravention of the provisions under the NEA as amended insofar as none of the sites have been subjected to Environmental Impact Assessments, issued Environmental recommendations by the Central Environmental Authority, or operating under the authority of Environmental Protection Licenses, as required under the provisions of the NEA as amended.

*A copy of the newspaper article dated 27.04.2017 published in the Daily Lankadeepa newspaper is annexed hereto marked **P4** and pleaded as part and parcel hereof.*

12. In this context, the Petitioner respectfully submits that immediate, drastic, firm and scientifically sound steps, devoid of political interference and of corruption and bribery, must be taken to address the present crisis of solid waste management in Sri Lanka. The Petitioner further submits, that in view of its responsibility to protect the environment and to ensure the health, life and prosperity of all citizens, the State has an uphill task in educating the public and developing a proper national plan on responsible waste disposal.

History of the Meethotamulla garbage dump

13. Until the year 2009, the Colombo Municipal Council (hereinafter referred to as the “CMC”) had been dumping garbage collected within the local limits of its jurisdiction at Bloemandhal, Colombo 13. In March of 2009, the garbage mountain at the said site collapsed, burying several houses located in its periphery. Following this incident, the residents in the locality invoked the jurisdiction of Your Lordships’ Court in a Fundamental Rights application under case number 218/2009, alleging, *inter alia*, mismanagement on the part of the CMC and Burns Trading (Pvt) Ltd, a private company contracted by the CMC, in relation to the Bloemandhal garbage dump. The Petitioner states that the Petitioner was an Interventient Party in the aforesaid matter.

14. The Petitioner states that by Orders dated 27.04.2009 and 04.05.2009 issued in the aforesaid case, Your Lordships’ Court directed that, as a temporary measure, a part of the garbage which was previously being dumped at Bloemandhal be redirected to a two (02) acre plot in Lot 01 in Plan CO 8536 of Pothuwilkumbura, Kollonnawa, now referred to as “Meethotamulla”.

*Copies of the said Order issued by Your Lordships’ Court dated 27.04.2009 and 04.05.2009 are annexed hereto marked **P5(a)** and **P5(b)** respectively and pleaded as part and parcel hereof.*

15. The Petitioner states that in the years following the issuance of the aforesaid Orders, a familiar formula of bureaucratic negligence took hold at the Meethotamulla site, resulting in the garbage dump eventually spreading beyond the declared two (02) acres into a behemoth covering approximately twenty (20) acres and reaching up to three hundred (300) feet.

The aftermath of the Meethotamulla disaster

16. The Petitioner states, based on information received from newspaper articles and other public domains, that in the wake of the Meethotamulla disaster the Government arrived at a decision to halt further dumping at the site and to divert the garbage which was previously being disposed of at Meethotamulla to alternative disposal sites in the suburbs of Colombo.

*Copies of news articles dated 15.04.2017, 16.04.2017 and 17.04.2017 published in the Daily Mirror, the Sunday Times and Daily News newspapers reporting on the aforementioned decisions of the Government together with a media report dated 20.04.2017 published on <http://newsfirst.lk/english/> are annexed hereto marked as **P6(a)**, **P6(b)**, **P6(c)** and **P6(d)** and pleaded as part and parcel hereof.*

17. The Petitioner states that as per several newspaper articles on or about 17.04.2017 the Kesbewa Magistrate's Court, enabling the implementation of the aforesaid decisions, issued an Order accommodating a request by the CMC to dispose of the garbage collected within the local limits of its jurisdiction at the Karadiyana garbage disposal site for eleven (11) days from 17.04.2017 to 28.04.2017, subject to the limitation that only 350 Metric tons of garbage per day will be disposed of at the site. As per media reports, by an Order issued on or about 28.04.2017 by the Kesbewa Magistrate's court, the CMC has since been ordered to suspend garbage disposal at the Karadiyana disposal site.

*Copies of news articles dated 18.04.2017, 19.04.2017 and 29.04.2017 published in The Island, Ceylon Today, Daily Mirror and Daily Lankadeepa newspapers reporting on the issuance of the aforementioned Orders by the Kesbewa Magistrate's Court are annexed hereto marked **P7(a)**, **P7(b)**, **P7(c)** and **P7(d)** and pleaded as part and parcel hereof.*

18. The Petitioner further states that, based on newspaper articles and other public domains, the aforesaid decision to divert the garbage previously received by the Meethotamulla disposal site to alternative locations and its implementation prompted a series of strong public protests in the respective areas.

*Copies of news articles documenting the aforementioned public protests dated 18.04.2017, 19.04.2017, 20.04.2017, 21.04.2017 and 24.04.2017 published on <http://dailynews.lk>, Daily FT, Daily Mirror and Daily Lankadeepa are annexed hereto marked **P8(a)**, **P8(b)**, **P8(c)**, **P8(d)** and **P8(e)** and pleaded as part and parcel hereof.*

19. The Petitioner further states that the Petitioner is reasonably informed that no environmental impact assessments were undertaken to ascertain the suitability of selected alternative sites for the intended purpose prior to the implementation of the aforesaid decision.

Declaration of the Order under section 17 of the Public Security Ordinance (as amended) and its consequences

20. On or about 20.04.2017, His Excellency Maithreepala Sirisena acting in his capacity as the President of the Republic, declared by order published in Gazette (Extraordinary) Notification number 2015/53 dated 20.04.2017 that all services, work or labour of any description whatsoever, necessary or required to be done in connection with any undertaking performed or maintained by any local authority or for and on behalf of any such local authority, for the clearance, collection, transportation, temporary storage, processing, separation, treatment, disposal and sale of street refuse house refuse or other similar matter, to be essential services under section 17 of the Public Security Ordinance.

21. The Petitioner states that as a consequence of the aforementioned Order the public were effectively stripped of their democratic rights, albeit temporarily, to freely and publically question, criticize and challenge the unlawful and/or unreasonable and/or imprudent decisions and actions of local authorities in relation to solid waste management in any manner short of judicial action. However, as the abovementioned Order has not been extended by a further Order, before the end of the specified period, in terms of section 21(1) of the Public Security Ordinance, the order published in Gazette (Extraordinary) Notification number 2015/53 dated 20.04.2017 has no validity.

Disposal of solid waste in Muthurajawela

22. The Petitioner respectfully submits, based on information gathered from newspaper articles and other public domains, that within 24 hours from the coming in to effect of the Order dated 20.04.2017 issued under section 17 of the Public Security Ordinance as amended, the CMC, in clear violation of relevant legal provisions, particularly those included in the Fauna and Flora Protection Ordinance as amended and the National Environmental Act as amended, began disposing solid waste collected from within the Colombo Municipality in at least three areas, namely Delatura, Uswetakeyyawa and Bopitiya, all of which fall within the boundaries of the Muthurajawela Sanctuary. It is reported that a series of public protests were organized by the residents of the Muthurajawela area against the disposal of garbage within the Sanctuary.

23. The Muthurajawela Wetland Sanctuary declared by Gazette notification number 947/13 dated 31.10.1996 issued under the FFPO as amended, constitutes some 1285.4 hectares in the Northern portion of the Muthurajawela wetland. It is a cradle of biodiversity, housing several endemic and nationally threatened species, and provides an important area for migratory birds, in addition to offering a number of ecological and hydrological services. However owing to its location as a “conservation island” in the midst of intense urban and industrial development, the Sanctuary is also an extremely vulnerable ecosystem.

*A copy of the Gazette notification bearing number 947/13 dated 31.10.1996 is annexed hereto marked **P9** and pleaded as part and parcel hereof.*

*Copies of extracts, pages 178 -183, from the National Wetland Directory of Sri Lanka; prepared and published by the Central Environmental Authority, The World Conservation Union and the International Water Management Institute in 2006 outlining the ecological, hydrological and biophysical value of the Muthurajawela Marshes are annexed hereto marked **P10(a)** and pleaded as part and parcel hereof.*

*Copies of extracts, pages 1 and 9-17 from the Biodiversity Assessment done by IUCN titled - “An Assessment of the Status of Biodiversity in the Muthurajawela Wetland Sanctuary”, are annexed hereto marked **P10(b)** and pleaded as part and parcel hereof.*

*Copies of extracts, pages 17 -21, from the Economic Assessment done by IUCN titled – “Assessment of the Economic Value of Muthurajawela Wetland”, are annexed hereto marked **P10(c)** and pleaded as part and parcel hereof.*

24. Bordering the southern end of the Muthurajawela sanctuary is the Muthurajawela Environmental Protection Area (hereinafter referred to as “EPA”) declared by Gazette notification number 1466/26 dated 13.10.2006 issued under the NEA as amended and constitutes some 206.678 hectares of land in the Muthurajawela marsh. Schedule II to the aforesaid gazette lists the “Permitted uses” of the Muthurajawela EPA declared by the same.

*A copy of the Gazette notification bearing number 1466/26 dated 13.10.2006 is annexed hereto marked **P11** and pleaded as part and parcel hereof.*

*A map depicting the Muthurajawela Wetland Sanctuary, the Muthurajawela Environmental Protection Area and the reported garbage disposal sites in the area is annexed hereto marked **P12** and pleaded as part and parcel hereof.*

25. The Petitioner states that the Petitioner is reasonably informed that the CMC did not conduct an environmental impact assessment as required under the provisions of the NEA as amended, prior to disposing of solid waste within the Sanctuary. The Petitioner further submits that even if the disposal site is situated within the confines of private property as reportedly claimed by some

local residents, it can be reasonably assumed that over time the site will eventually expand as in the case of the Meethotamulla garbage dump more fully described in averment 15, and the Kotikawatte garbage dump more fully described hereinbelow in averment 30, onto the surrounding State Land, where garbage dumping is expressly prohibited under the provisions of the FFPO as amended.

26. For the purpose of full disclosure, the Petitioner draws Your Lordships' attention to the fact that the Petitioner has invoked the jurisdiction of the Court of Appeal in a Writ application under case number CA 1088/2003 in relation to the Muthurajawela Sanctuary, seeking a writ of mandamus compelling the Respondents of the said case to duly implement the provisions of the FFPO as amended against illegal settlements taking place within the Sanctuary and to develop a comprehensive National Wetland Policy for the protection, preservation, conservation and sustainable use of wetland resources. In late 2004 the Petitioner withdrew the case upon the Ministry of Environment and Natural Resources committing to developing a National Wetland Policy.

As the Petitioner has not been able to obtain a certified copy of the judicial settlement entered into in the aforementioned case due to the restraints of time, the Petitioner reserves the right to submit a certified copy of the same to Your Honours' Court on a subsequent date.

Proposal to build a Sanitary Landfill at Muthurajawela

27. The Petitioner states that on or about the 25.04.2017, the Cabinet of Ministers granted its approval to a proposal presented by Hon. Faiszer Musthapha, the Minister of Provincial Councils and Local Government, to expeditiously implement, utilizing the allocation set apart for the Ministry of Provincial Councils and Local Government for the year 2017, the construction of a sanitary landfill in a State owned land of five (05) acres in extent at Uswetakeiyawa, in the Muthurajawela area, of the Wattala Divisional Secretary's Division.

*Copies of the aforementioned Cabinet Memorandum and the associated Cabinet decision dated 23.04.2017 and 25.04.2017 are annexed hereto marked **P13(a) and P13(b)** respectively and pleaded as part and parcel hereof.*

28. In this regards, the Petitioner respectfully draws Your Lordships' attention to the fact that the Director General of the Central Environmental Authority, Mr. H.K.Muthukudarachchi has expressed the view that there are no lands in Muthurajawela suitable for the construction of such a permanent sanitary landfill.

*A copy of a news article dated 01.05.2017 published in the Daily News newspaper is attached hereto marked **P14** and pleaded as part and parcel hereof.*

Disposal of Solid Waste in Kotikawatte

29. The garbage disposal site at Kotikawatte referred to in averment 6(a) above constitutes twenty six (26) acres of land- both State owned and Privately owned, and was originally intended to serve as the disposal site for solid waste collected within the local limits of the Kollannawa – Mulleriya Pradeshiya Sabha. However, as stated by locals residing along the boundary of the dump yard, currently waste from Kolonnawa Urban Council, and industrial waste from the Awissawella and the Biyagama industrial zones are also dumped at the site discreetly in the night.

30. The Petitioner states, based on the information it received from the residents in the area, that the disposal site started off within a mere four (04) acre plot in the Kotikawatte cemetery premises in

2007, but eventually engulfed the surrounding areas resulting in the vast open dumping site that can be presently observed.

31. The Petitioner states that the garbage dump which is bordered by a school (Somadevi Balika, Vidyalaya, Kotikawatte), compounds of houses, and a wetland area on three sides causes great hardship to the residents of the area and poses a threat to their health and wellbeing. The Petitioner further notes that the dump has self-ignited at three occasions up to date and that to the best of its knowledge, the Kollonnawa-Mulleriya Pradeshiya Sabha has not undertaken any environmental impact assessment, as required under the provisions of the NEA as amended, prior to the commencement of disposal of garbage at the site.

32. For the purpose of full disclosure, the Petitioner draws Your Lordships' attention to the fact that on or about 21.04.2017 an injunction was issued by the Colombo Magistrates' Court in case No. 72135/02/2017, prohibiting the Kollonnawa – Mulleriya Pradeshiya Sabha from using private land (named "Kadjugaha Kumbura") located behind the Somadevi Balika Vidyalaya, Kollonnawa for the purpose of disposing garbage collected within the local limits of its jurisdiction. The said order was issued pursuant to complaints by the residents of the area that the disposal of garbage at the site caused severe inconvenience to the residents, particularly students of Somadevi Balika Vidyalaya, and the complaint lodged by the owner of the land to the effect that no legal procedure had been followed by the Pradeshiya Sabha prior to the commencement of garbage disposal on the land concerned. The said injunction was subsequently revoked by Order dated 27.04.2017 issued by the Colombo Magistrate's Court relying on the order published in Gazette (Extraordinary) Notification number 2015/53 dated 20.04.2017, issued in terms of section 17 of the Public Security Ordinance (discussed in detail in averment 21, hereinabove).

*Certified copies of the said Magistrates' Court Orders dated 21.04.2017 and 27.04.2017 are annexed hereto marked **P15(a)** and **P15(b)** pleaded as part and parcel hereof.*

33. It is pertinent to note that by direction of the learned Magistrate in the aforementioned case, the Environmental Officers of the Central Environmental Authority have carried out an inspection of the area ("Kadjugaha Kumbura") and made certain observations and recommendations to the Magistrate Court regarding the current situation of solid waste disposal and the relevant procedures to be followed. The recommendations are as follows;

- i. Unregulated open dumping of unsorted waste by the Kollonnawa – Mulleriya Pradeshiya Sabha in Kajugaha Kumbura, a low-lying area of marshy character, is not recommended; and
- ii. Steps should be taken to confirm with the Department of Agrarian Development if the land on which the landfill is situated is classified as paddy land; and
- iii. To cover the waste material disposed at the location with a layer of soil of 15 cm in thickness to control vector breeding and odour.

The recommendations made by the Central Environmental Authority are contained in the **Technical Guidelines on Solid Waste Management in Sri Lanka** published by the Central Environmental Authority in the year 2005.

*A certified copy of the said Report and Recommendations given by the Central Environmental Authority in case No.72135/02/2017 is annexed hereto marked **P16** and pleaded as part and parcel hereof.*

*A copy of the "Technical Guidelines on Solid Waste Management in Sri Lanka" published by the Central Environmental Authority in the year 2005, is annexed hereto marked **P17** and pleaded as part and parcel hereof.*

Petitioner's site visits in April and May 2017

34. The Petitioner states that the Petitioner was perturbed by the information received on or around late April 2017, through public domains, of another growing garbage dump in the midst of a residential area in Kotikawatte, a little over 3km from the Meethotamulla garbage dump, and the disposal of municipal solid waste within the Muthurajawela Sanctuary. The Petitioner thereafter made initial inquiries and conducted a preliminary site visits to the affected areas- Kotikawatte and Muthurajawela on or about the 20.04.2017 and 02.05.2017, respectively.

*Copies of the site visit reports titled “Report on the visit to the garbage dump at Kotikawatta: 20th April 2017” and “A note on the visit to Muthurajawela at Pamunugama: 02nd May 2017” outlining the observation made by the Petitioner during the visits are annexed hereto marked **P18** and **P19** respectively and pleaded as part and parcel hereof.*

35. The Petitioner states that being perturbed and distressed by the observations made during the course of the aforesaid site visits and by the actions of the CMC in general in the aftermath of the Meethotamulla disaster, the Petitioner in pursuance of the Petitioner’s right of access to information made a written request for information from the CMC, through a letter dated 03.05.2017, on the current and potential solid waste disposal sites used/ may be used by the CMC, their extents and their legal status. The Petitioner notes that not having received a response to the aforesaid request, the Petitioner forwarded a Letter of Reminder dated 15.06.2017 to the CMC. The 9th Respondent replied to the Reminder sent by the Petitioner dated above, stating that instructions have been given for necessary action to be taken in this respect and a decision will be informed within three weeks from receipt of the request.

*True copies of the aforementioned letters sent by the Petitioner to the CMC dated 03.05.2017 and 15.06.2017 and the respective postal receipts are annexed hereto marked **P20(a)** and **P20(b)** and pleaded as part and parcel hereof.*

*True copy of the aforementioned letter sent by the 9th Respondent dated 28.06.2017 is annexed hereto marked **P21** and pleaded as part and parcel hereof.*

LEGAL REGIME

36. The Petitioner sets out herein below the relevant legal provisions applicable to municipal solid waste management in the Republic:

The Municipal Councils Ordinance No. 29 of 1947 as amended, the Urban Councils Ordinance No. 61 of 1939 as amended and the Pradeshiya Sabha Act No. 15 of 1987 as amended.

37. As per the provisions of the Municipal Councils Ordinance No. 29 of 1947 as amended (hereinafter referred to as the “MCO”), the Urban Councils Ordinance No. 61 of 1939 as amended (hereinafter referred to as the “UCO”) and the Pradeshiya Sabha Act No. 15 of 1987 as amended (hereinafter referred to as the “PSA”), the statutory duties of local authorities (Municipal councils, Urban councils and Pradeshiya Sabhas) include the collection, removal and disposal of all street refuse and house refuse generated within the local limits of their jurisdiction (**Section 129** of MCO, **Section 118** of the UCO and **Section 93** of the PSO). The refuse so collected are the

property of the respective local authority and each such local authority has the full power to sell or dispose of such matter (**Section 130** of the MCO, **Section 119** of the UCO and **Section 94** of the PSA). In connection to the disposal of refuse collected by the local authorities, the local authorities are bound by a statutory duty to provide places for the convenient disposal of all street refuse, house refuse and other similar matter in accordance with the provisions of the MCO, UCO and the PSO, as appropriate, and in such manner as to not cause a nuisance (**Section 131** of the MCO, **Section 120** of the UCO and **Section 95** of the PSA).

National Environmental Act No. 47 of 1980 as amended

38. As per **Section 23A (1)** of the National Environmental Act as amended (hereinafter referred to as “NEA”) read with **Gazette (Extraordinary) notification No. 1533/16 dated 25.01.2008** and **Gazette (Extraordinary) notification number 1534/18 dated 01.02.2008**,

- i. Municipal solid waste and other solid waste composting plants (excluding household composting of less than 10 metric tons a day);
 - ii. Solid waste recovery/recycling or processing plants;
 - iii. Solid waste disposal facility,
- shall not be carried on by any person otherwise than under the authority of a license issued by the CEA, and in accordance with such standards and criteria prescribed under the Act.

39. Part IVC of the NEA outlines the procedure for the approval of projects under the Act. As per **Section 23AA** of the Act read with **Gazette (Extraordinary) number 772/22 dated 24.06.1993** amended by **Gazette (Extraordinary) number 859/14 dated 23.02.1995**, notwithstanding the provisions of any other written law, construction of a solid waste disposal facility wholly or partly outside the Coastal zone and/or within an area of 100m from the boundary of, or within, any area declared as a Sanctuary under the Fauna and Flora Protection Ordinance, undertaken by any Company, Government department or Local Authority from and after the coming into operation of the Act is required to be approved by an appropriate “Project Approving Authority” in accordance with the procedure laid out in the Act and Regulations thereto, and for this purpose, the project approving agencies are obliged to require the project proponent to, within a specified time, submit an Initial Environmental Examination Report (IEER) and/or an Environmental Impact Assessment Report (EIAR) on the proposed project.

40. Section 24C (1) of the NEA as amended empowers the Minister, by Order published in the Gazette, to declare any area to be an environmental protection area. By virtue of provisions under **Section 24D** of the Act read with provisions of **Gazette (Extraordinary) notification number 1466/26 dated 2006.10.13** the CEA is granted exclusive authority to exercise, perform and discharge powers, duties and functions relating to planning and development within the Muthurajawela EPA, subject to the limitations and conditions incorporated in schedule II and III to the Gazette.

Fauna and Flora Protection Ordinance No. 2 of 1937 as amended

41. The Fauna and Flora Protection Ordinance No. 02 of 1937 as amended (hereinafter referred to as the “FFPO”) at **Section 2(2)** provides that the Minister may by Order published in the Gazette declare that any specified area of land within Sri Lanka (other than land declared to be a National Reserve) be declared a Sanctuary for the purposes of the FFPO. As per **Section 07** of the FFPO, no person shall, except in accordance with regulations made thereunder, carry out in any sanctuary any act which disturbs or is likely to disturb any wild animals or carry out any act which interferes or is likely to interfere with the breeding place of any such animal, or dispose or cause the disposal of any garbage in any State land within the Sanctuary.

42. Thus and otherwise the Petitioner reiterates that in the circumstances aforesaid, grave, irremediable and irreparable loss, detriment and prejudice will be caused to them and to the current and future generations of the citizenry of the Republic of Sri Lanka and this application would be rendered infructuous and nugatory, unless Your Lordships' Court be pleased to Grant & Issue the following Interim Orders as a matter of urgency and pressing necessity to wit;

- i. directing the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents or any one and/or more of them to immediately suspend all steps in respect of solid waste disposal at the Muthurajawela Sanctuary, the Kotikawatte site and/or any other similar location which is being carried out in contravention of the guidelines provided in **P17** (the "Technical Guidelines on Solid Waste Management in Sri Lanka"-published by the Central Environmental Authority) ; AND
- ii. directing the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents or any one and/or more of them to immediately commence operations in respect of the proper disposal of solid waste accumulated at the garbage disposal sites at the Muthurajawela Sanctuary, Kotikawatte and/or any other similar location in terms of the guidelines provided by the 1st Respondent, in **P17** (the "Technical Guidelines on Solid Waste Management in Sri Lanka"-published by the Central Environmental Authority); AND
- iii. restraining the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents or any one and/or more of them, their servants, agents and/or employees, from proceeding to take any further steps and or acts with the view to further dispose of solid waste at the Muthurajawela Sanctuary, the Kotikawatte garbage disposal site and/or any other similar location in contravention of the guidelines provided in **P17** (the Technical Guidelines on Solid Waste Management in Sri Lanka" -published by the Central Environmental Authority):

UNTIL the final determination of this application.

14. The Petitioner states particularly that in view of the circumstances including restraints of time under which the Petitioner was compelled to complete and submit this Petition, the Petitioner begs the indulgence of Your Lordships' Court to reserve its right to:

- a. amend the Petition and/or add any person/persons as parties to this application in the event of any future material revealing their complicity in respect of the actions complained of in the preceding paragraphs;
- b. tender any such other further documents the Petitioners have called for, in exercising its rights in terms of the Right to Information Act No. 12 of 2016, if and when released by the relevant authorities and/or as and when the Petitioner collects such documents;
- c. tender any such other further affidavits and documents as may be required and/or necessary;

15. The Petitioner further states that it has not invoked the jurisdiction of Your Lordships' Court in respect of this matter previously.

16. The Affidavit of Dr. Eric Wikramanayake, the Chairman of the Petitioner Organization is annexed herewith in support of the averments herein contained.

WHEREFORE THE PETITIONER RESPECTFULLY PRAYS THAT YOUR LORDSHIPS' COURT BE PLEASED TO:

- a. Grant the Petitioner leave to proceed with this application to Your Lordships' Court in the first instance and issue notice on the Respondents;
- b. Declare that the Petitioner's Fundamental Rights guaranteed to them under Articles 12(1) and 14(1)(h) of the Constitution have been infringed and/or are continuing to be infringed and/ or are in imminent danger of being infringed by the action and/ or inactions of any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents;
- c. Issue an order restraining the 1st, 2nd, 3rd and/or 11th Respondents from releasing land from environmentally sensitive areas such as the Muthurajawela Sanctuary, to the 4th and/or 5th and/or 6th and/or 7th and/or 8th and/or 9th and/or 10th Respondents/their agents/servants/representatives and/ or any other person whether connected/ related to the 4th and/or 5th and/or 6th and/or 7th and/or 8th and/or 9th and/or 10th Respondents for the purpose of solid waste management..
- d. Issue an order restraining the 1st, 2nd, 3rd, 4th, 5th, 6th and/or 11th Respondents from permitting and/or endorsing the use of land vested in and/or under the authority and/or control and/or management of 1st, 2nd, 3rd, 4th, 5th, 6th and 11th Respondents for solid waste management purposes without abiding by the provisions and/or regulations and/or guidelines formulated under the National Environmental Act as amended and to direct the 1st, 2nd, 3rd, 4th, 5th, 6th and 11th Respondents to ensure that such processes are open to public scrutiny.
- e. Issue an order directing any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th and 11th Respondents to make arrangements for the rehabilitation of areas adversely affected by the inaction of any one and/or more of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents with regard to solid waste management.
- f. Issue an Order directing the 1st, 2nd, 3rd, 4th, 5th, 6th and 11th Respondent to formulate a National Policy on Solid Waste Management in the Island.
- g. Issue an Order directing the 1st, 2nd, 3rd, 4th, 5th, 6th and 11th Respondents to take all necessary measures to introduce and implement environmentally sustainable and scientifically sound garbage disposal mechanisms throughout the Republic.
- h. Grant and issue **Interim Orders:**
 - i. directing the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents or any one and/or more of them to immediately suspend all steps in respect of solid waste disposal at the Muthurajawela Sanctuary, the Kotikawatte site and/or any other similar location which is being carried out in contravention of the guidelines provided in **P17** (the "Technical Guidelines on Solid Waste Management in Sri Lanka"-published by the Central Environmental Authority) ; AND
 - ii. directing the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents or any one and/or more of them to immediately commence operations in respect of the proper disposal of solid waste accumulated at the garbage disposal sites at the Muthurajawela Sanctuary, Kotikawatte and/or any other similar location in terms of the guidelines provided by the 1st Respondent, in

P17 (the “Technical Guidelines on Solid Waste Management in Sri Lanka”- published by the Central Environmental Authority); AND

iii. restraining the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th Respondents or any one and/or more of them, their servants, agents and/or employees, from proceeding to take any further steps and or acts with the view to further dispose of solid waste at the Muthurajawela Sanctuary, the Kotikawatte garbage disposal site and/or any other similar location in contravention of the guidelines provided in **P17** (the Technical Guidelines on Solid Waste Management in Sri Lanka” -published by the Central Environmental Authority):

i. Grant costs and compensation in such amounts deemed just and equitable to Your Lordships’ Court for the violation of the above rights, and;

j. Such other and further relief as to Your Lordships’ Court shall seem meet.

Attorney-at-Law for the Petitioner

Settled by:

Sashikala Wijesiriwardane AAL

Uditha Egalahewa, Esq.

President’s Counsel