

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

*In the nature of two Applications alleging
infringement of Fundamental Rights invoking the
jurisdiction of the Supreme Court vested in it by
Articles 127 read with 17 of the Constitution.*

SC / FR Applications 311/2015 & 318/2015

SC/FR 311/2015

1. Nuwan Bopage
No. 30/4, Pansalhena Road,
Meethotamulla, Wellampitiya.
2. Keertiratna Perera
No. 15/1, 1st Lane, Jatika Niwasa
Idama, Wellampitiya.
3. D. A. Hemapala
No. 31, Pansalhena Road,
Wellampitiya.
4. Mohamed Saheed Mohideen
No. 316, Meethotamulla Road,
Wellampitiya.
5. Nalin Dammika Perera
No. 24, Pansalhena Road,
Wellampitiya.

6. Pradeep Nishantha
No. 475/30/1, Awissawella Road,
Kuruniyawatta.
7. Kasim Mohamed Mohideen
No. 73/14, Pansalhena Road,
Wellampitiya.
8. Dudley Dantanarayana
Dhapura, Wellampitiya.

Petitioners

v.

1. Colombo Municipal Council
Colombo 07.
2. A. J. M. Mussammil,
Mayor,
Colombo Municipal Council,
Colombo 07.
- 2A. Rosy Senananyake,
Mayor,
Colombo Municipal Council,
Colombo 07.
3. Municipal Commissioner
Colombo Municipal Council,
Colombo 07.
4. Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.

5. Western Province Waste Management Authority,
"Srawasthi Mandiraya,
32, Sir Marcus Fernando Mawatha,
Colombo 07.
6. Central Environmental Authority,
No. 104, Denzil Kobbakaduwa
Mawatha, Battaramulla.
7. Kolonnawa Urban Council,
Kolonnawa.
8. Honourable Attorney-General
Attorney-General's Department,
Colombo 12.

Respondents

9. P. D. P. C. Wasantha Kumar,
No. 127, 4th Lane, Vishakawatte,
Ekala.
10. U. L. S. Jayasena,
No. 64/A9, Minuwangoda Road,
Ja-Ela.
11. A. A. D. P. Perera,
No. 194/1/A, Gunasekara Mawatha,
Ekala.
12. M. A. M. Perera,
No. 159, Minuwangoda Road,
Ekala.
13. K. L. K. D. Kumara
No. 102/2/C1, Mathew Mawatha,
Ekala.

14. W. K. Anthony,
No. 217, Halwakkadawatte,
Ekala.
15. K. V. C. P. Viraj
No. G/64, Niwasipura,
Kotugoda.
16. A. T. P. Abeywickrama,
No. 63/C, Jaya Mawatha,
Temple Road,
Ekala.
17. A. S. Chandra
Temple Road,
Ekala.
18. S. N. Ramanayake
No. 158/A2, Church Road,
Minuwangoda Road,
Ekala.
19. S. C. Senanayake,
No. 80/D/1, Chandramali,
Gampaha Road,
Ekala.
20. P. D. U. Senaka
No. 75, Temple Road,
Ekala.
21. G. K. Wijedasa,
No. 14/37, Dharmapala Mawatha,
Ekala.
22. S. W. J. Silva,

No. 218/X, Halwakkada Watte,
Ekala.

23. D. S. Hewawitharana,
No. 106/11, Temple Road,
Ekala.

24. H. T. M. Jayawardane,
No. 37/10/A, Japerji Homes,
Gampaha Road,
Ekala.

25. P. Yasapala
No. 1/259, NawaJanapada Road,
Ekala.

26. D. H. K. Hemapala
No. K 18, Halwatte,
Ekala.

27. S. D. Sunil,
No. 35/14, Halwatte South,
Ekala.

28. W. R. R. Kumara
No. D 104, Niwasipura,
Kotugoda,
Ekala.

29. S. K. W. Rathnayake,
No. 21/2, Temple Road,
Ekala.

30. Ven. Balagalle Dhammaseeha Thero
Parish Incumbent of Sri Lanka
Dharmodaya Buddhist Center,

Sri Dharmodaya Buddhist Center,
Ekala.

31. Rev. Fr. Priya Jayamanne
Parish Priest – Ja-Ela,
Our Lady of Sorrows Church,
Ja-Ela.

Interventient Respondents

SC/FR 318/2015

1. Premalal Perera
Awiseewella Road,
Wellampitiya.
2. Bulathsinalage Jayasena Coorey,
No. 23/1A, Dahampura,
Kolonnawa.
3. Shantha Jayasingha
No. 31B, Pansalhena Road,
1st Lane, Kolonnawa.

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Intervenient Respondents

Before: **P. Padman Surasena, J.**
[As His Lordship the present Honourable Chief Justice was then.]
Yasantha Kodagoda, PC, J.
K. Priyantha Fernando, J.

Appearances: Saliya Pieris, PC with Waruna de Seram, Nuwan Bopage, R. D. D. Silva, Anjana Rathnasiri, Nuwan Beligahawatte, Susil Wanigapura Sarinda Jayawardane and Delan de Silva instructed by Nalin Samarakoon for the Petitioners in SC/FR 311/2015.

Eraj De Silva, PC with Lahiru Welgama, Manjuka Fernandopulle, Daminda Wijayaratne and Janagan Sundaramoorthy for the Petitioners in SC/FR 318/2015.

Senany Dayaratne with Eshanthi Mendis, Nishadhi Wickremasinghe, Nisala Seniya Fernando and T. Amirthalingam for the 1st, 2A and 3rd Respondents in both Applications.

Rajeev Amarasuriya with Chathurani Jayasena, Wathsala Udagearachchi, Shewanthi Samarakoon, P. W. Jayasekara, Ruvini Perera, Anne Devananda, Malith Pitipanaarachchi, Subani Hewapathirana, Sumudu Nanayakkara and Sumudu Nanayakkara instructed by P. G. L. M. de Silva for the 5th Respondent in both Applications.

Uditha Egalahewa, PC with Chathuri Gunawardane, N. K. Ashokbharan and Damitha Karunaratne instructed by Niluka Welgama for the 7th Respondent in both Applications.

Dr. Avanthi Perera, Deputy Solicitor General for the 4th, 6th and 8th Respondents in both Applications.

Dr. S.F.A. Cooray with Keith de Mel, Sudarshani Cooray, Nilanga Perera, Diana Rodrigo and Amanda Coorey for the 9th to 29th Respondents in both Applications.

Shammil J. Perera, PC with Chamath Fernando, Samurdhi Fernandopulle and Ravishani Peiris for the 30th and 31st Respondents in both Applications.

Hearing held on: 22nd September 2023

Written Submissions: SC/FR 311/2015
8th March 2021 and 3rd & 8th January 2024 for the Petitioners.
15th July 2020, 4th May 2021 and 5th February 2024 for the 1st to 3rd Respondents.
4th August 2020 and 3rd November 2023 for the 4th, 6th and 8th Respondents.
13th June 2016 and 8th July 2020 for the 5th Respondent.
10th January 2024 for the 7th Respondent.
19th August 2021 for the 9th to 29th Respondents.

SC/FR 318/2015

8th March 2021 and 3rd January 2024 for the Petitioners.

15th July 2020, 4th May 2021 and 5th February 2024 for the 1st to 3rd Respondents.

16th July 2020 for the 4th, 6th and 8th Respondent.

13th June 2016 and 8th July 2020 for the 5th Respondent.

19th August 2021 for the 9th to 29th Respondents.

10th January 2024 for the 7th Respondent.

Judgment delivered on: 31st March, 2026

“Meethotamulla Garbage Dump Case”

JUDGMENT

Yasantha Kodagoda, PC, J.

Formalities

- 1) In both these Fundamental Rights Applications, which were filed in July 2015, the Petitioners have invoked the jurisdiction of the Supreme Court vested in it by Article 126 read with Article 17 of the Constitution.
- 2) Following these two Applications being supported on 2nd September 2015, *Leave to Proceed* had been granted by a differently constituted bench under Articles 12(1) and 14(1)(h) of the Constitution. Though the Petitioners had prayed for the grant of an interim relief, following an *inter partes* inquiry, no such relief had been granted.
- 3) At the hearing held on 22nd September 2023, learned Counsel for all parties represented in Court agreed that the Court may conduct a composite hearing into both Applications with the pleadings being treated jointly. They also intimated to Court that this Court may be pleased to deliver a consolidated Judgment. This Court undertook to do so.

The case in a nutshell

- 4) These two Fundamental Rights Applications relate to the disposal of street and household refuse referred to as 'municipal waste' (commonly referred to as 'garbage') collected primarily from within the City of Colombo by the Colombo Municipal Council (CMC) at a site called *Pothuvil Kumbura* in Meethotamulla. [Meethotamulla is a suburban city in close proximity to Colombo. It is situated outside the municipal limits of Colombo and within the area of the Kolonnawa Urban Council (KUC)]. The process of dumping garbage at this site had commenced in April 2009, and in July 2015, when the Petitioners complained to this Court, the dumping of garbage was still ongoing. The Petitioners complained of the unlawful manner in which both the CMC and the KUC carried out their respective garbage disposal operations, and alleged that these practices created a public nuisance, caused environmental pollution, gave rise to public health concerns, threatened their lives, and tantamounted to an infringement of their Fundamental rights. Even after the filing of the two Applications and *Leave to Proceed* was granted, the process of dumping garbage continued. While proceedings were pending in this Court, the garbage dump in *Pothuvil Kumbura* gradually grew in size. In April 2017, it collapsed on the surrounding area, killing 40 residents who were living in the vicinity of the dump and causing serious damage to houses nearby. It is that tragic event which resulted in a termination of the disposal of garbage at *Pothuvil Kumbura*. This Court has been apprised of the implementation of the 'Metro Colombo Solid Waste Management Project', under which garbage is now being deposited at a purported sanitary landfill in Arukkaalu, within the jurisdiction of the Vanathawilluwa Pradeshiya Sabha in the North-Western Province.

The Judgment at a glance

- 5) This Judgment contains a detailed description of the positions taken up by the several parties to both Applications and a summary of the submissions made by Counsel on their behalf. Following an analysis of the evidence and the application of the law, this Judgment contains several findings on the respective roles of the several Respondents pertaining to the disposal of garbage at *Pothuvil Kumbura* in Meethotamulla, and their legality. The Court has also arrived at findings on whether the entire operation of disposing garbage from 2009 to 2017 at the Meethotamulla site by the 1st Respondent (Colombo Municipal Council) and by the 7th Respondent (Kolonnawa Urban Council) was lawful and whether their conduct amounted to an infringement of the Petitioners' Fundamental rights. The

Court has also examined the role of the 4th Respondent (Urban Development Authority), 5th Respondent (Western Province Waste Management Authority), and the 6th Respondent (Central Environmental Authority) with regard to the impugned garbage disposal operation at *Pothuvil Kumbura* and has arrived at certain other findings. This Judgment also contains certain declarations and orders aimed at strengthening the environmental Rule of Law and the protection of Fundamental rights.

The background and the previous Application

- 6) In 2009, a group of persons led by one time Parliamentarian and Attorney-at-Law Vasudeva Nanayakkara (at that time the Leader of the Opposition of the then suspended Colombo Municipal Council) together with five other Members of the Colombo Municipal Council and eleven residents of the Mahawatte area in Colombo 14, petitioned the Supreme Court (in SC/FR Application No. 218/2009) regarding a health and environmental hazard occasioned due to a public nuisance arising out of the disposal and accumulation of garbage at a site situated at No. 478, K. Cyril C. Perera Mawatha (previously named Bloemendhal Road), Colombo 14. The position of the Petitioners was that the Colombo Municipal Council (CMC - cited as the 1st Respondent to that Application) had contracted two related companies named Burns Trading (Private) Limited and Burns Environmental and Technologies (Private) Limited (cited respectively as the 4th and 5th Respondents to that Application) to (i) accept garbage collected from the city of Colombo; (ii) dispose such garbage in an environmentally friendly manner; and (iii) operate and maintain a compost plant for the purpose of converting garbage into organic fertilizer. Over a period of time, multiple disputes had arisen between the CMC and these two companies. The CMC and the two companies complained of breach of contractual obligations by each other.

- 7) This situation had resulted in garbage piling up at the site and remaining unprocessed. According to the Petitioners, that was due to the two companies to whom the CMC had contracted the conversion of garbage into compost fertilizer not fulfilling their contractual obligations. This situation had given rise to multiple litigation and arbitral proceedings between the parties. The Petitioners complained that the piling up of garbage at the site had given rise to a considerable health and environmental hazard and a public nuisance. Therefore, they sought the intervention of the Supreme Court to redress the situation that had arisen. Following a consideration of the Petition and the grant of *Leave to Proceed*, on 24th

March 2009, the Supreme Court issued an interim order which *inter-alia* resulted in the CMC having to halt transporting and dumping garbage at the Bloemendhal Road site and abandoning that operation. The consequential result was that the CMC stopped the collection of garbage from within the City of Colombo, and garbage piled up in the streets of Colombo. That in itself gave rise to a public health emergency and environmental pollution.

- 8) On 27th April 2009, the CMC sought the permission of the Supreme Court to use an alternative location [instead of the land on K. Cyril C. Perera Mawatha (Bloemendhal Road), Colombo 14] to dispose of garbage collected from the Colombo Municipal limits. The site proposed by the CMC was two (2) acres in extent and a part of a larger land called the *Pothuvil Kumbura* situated in Meethotamulla. Following a consideration of the request by the CMC, the Court had decided to grant permission, and noted that the permission being granted would be as a ‘**temporary measure**’ to use the land identified by the CMC (*Pothuvil Kumbura*) in Meethotamulla **two (2) acres in extent**.
- 9) Consequent thereto, in April 2009 itself, the CMC had commenced dumping unprocessed garbage at *Pothuvil Kumbura* in Meethotamulla. That was the beginning of the garbage dump in Meethotamulla, which is the subject matter of these two Applications. This activity was continued by the CMC till April 2017, when the tragic incident involving the loss of forty (40) lives occurred. It is against this backdrop that the 1st Respondent (CMC) and its Counsel repeatedly insisted that the CMC was not responsible for the matters complained of by the Petitioners in these two Applications, nor for the catastrophic harm caused by the garbage dump at *Pothuvil Kumbura* on 14th April 2017, as the garbage-dumping operation had been initiated with the ‘approval’ of the Supreme Court.

Complaint of the Petitioners in the instant Applications

- 10) As at 27th July 2015, when the present Petitioners (who were residents of Meethotamulla) filed the instant Applications (bearing Nos. SC/FR/311/2015 & 318/2015), the dumping of garbage at *Pothuvil Kumbura* in Meethotamulla which commenced in April 2009, was continuing over an extended area of eighteen (18) acres within *Pothuvil Kumbura*. That was notwithstanding the fact that the Supreme Court had, in April 2009, permitted only the use of a portion of *Pothuvil Kumbura* in Meethotamulla that was **two (2) acres** in extent, as a **temporary measure**.

- 11) The Petitioners lived in a densely populated urban area immediately surrounding *Pothuvil Kumbura*. The Petitioners claimed, without contest from the Respondents, that they were significantly affected by the CMC dumping garbage at this site. According to the Petitioners, as the process of dumping garbage continued over the years, the extent of the land on which the dumping of garbage took place gradually expanded up to eighteen (18) acres. As at the time the two Applications were filed, approximately 750 - 1200 tons of garbage were being dumped at this site on a daily basis. The garbage dump took the shape of a large mound, with its peak being the height of a building of several floors. The size and shape of the enormous garbage mound was noted by this Court, as it is depicted in several of the photographs produced by the Petitioners marked "P1(i)" to "P1(viii)". The Petitioners claimed that, notwithstanding the public nuisance being caused by the garbage mound, it was imminent that the use of the land on which the garbage mound was situated would be further expanded by another two to three (2 - 3) acres.
- 12) The Petitioners claimed that they petitioned the Supreme Court due to multiple reasons, including -
- i) the continuation of the dumping of garbage, being unlawful,
 - ii) the environmental pollution that was being caused,
 - iii) the unbearable nuisance the garbage dump was causing to those living in its environment,
 - iv) the adverse impact on living conditions and to the habitat,
 - v) the associated health hazards including threats to their lives, and the
 - vi) the imminent further expansion of the site, which would be illegal and would exacerbate the problem.
- 13) The Petitioners complained that the garbage dump at *Pothuvil Kumbura* in Meethotamulla was a grave environmental and health hazard and was a public nuisance resulting in unlivable conditions. Explaining in detail the nature of the habitat affected by the garbage dumping operation, the Petitioners stated in their joint Affidavit dated 27th July 2015 filed in SC/FR 311/2015, that approximately 65,000 persons belonging to nearly 20,000 families resided in the area bordering and surrounding the garbage dump. Out of the 65,000 inhabitants of the area, approximately 25,000 were children. Approximately 15,000 houses were situated in the affected area, along with seven (7) schools, five (5) temples, three (3)

mosques, and one (1) church. According to the Petitioners, in the immediate vicinity of the area surrounding *Pothuvil Kumbura*, there were two hundred and forty-eight (248) private wells, forty-eight (48) public wells and ninety-four (94) tube wells.

14) Setting out details of the adverse impacts of the garbage dumping activity by the CMC, the Petitioners complained that,

- (i) there was an unbearable stench in the surrounding area,
- (ii) the drinking water was polluted,
- (iii) residents of the area were regularly infected by germs, were falling sick and around thirty (30) people who lived in the vicinity had died due to various germs entering the body and other diseases such as dengue, rat flue, respiratory diseases, skin diseases and kidney disease,
- (iv) due to environmental hazards, the Meethotamulla Rahula College had to be closed down, and some other schools were likely to be closed in the near future,
- (v) public wells of the area and other public utilities were becoming unusable and were being closed,
- (vi) one hundred and twenty houses (120) had collapsed, and many other houses and other structures were damaged,
- (vii) the garbage recycling center carried out by the Kolonnawa Municipal Council at *Pothuvil Kumbura* was also damaged and had to be closed due to the expansion of the garbage dump, and
- (viii) their lives were at peril.

Due to these reasons, the Petitioners complained to this Court that the area was becoming uninhabitable and extremely dangerous to the lives of the Petitioners and to a large number of others who were living in the vicinity of the garbage dump.

15) The Petitioners alleged that over a period of time, notwithstanding protests by the community, the CMC had failed to find a sustainable and lawful solution to the problem of solid waste management. They alleged that this was *inter-alia* due to corruption. According to the Petitioners, there were certain parties who benefitted from the existence of the garbage dump. Once, when the Petitioners protested at the continued use of the site to dump garbage, they were met with thuggery and

were assaulted by such parties, including the Chairman of the Kolonnawa Urban Council.

- 16) The Petitioners expressed serious concern that the expansion of the garbage dumping site by another two to three (2 - 3) acres (which they claimed was imminent) would worsen the prevailing situation and would result in a grave and life-threatening situation. Furthermore, such conduct on the part of the CMC would be in contravention of the temporary and limited interim order issued by the Supreme Court on 27th April 2009 in SC/FR 218/2009.
- 17) The Petitioners further complained that the selection of the garbage dumping site (*Pothuvil Kumbura*) by the CMC had taken place without consulting those living in the area. This, the Petitioners claimed, was an infringement of the rules of natural justice. The continued and long-term dumping of garbage beyond the area of two (2) acres permitted by the Supreme Court was contrary to the interim order issued.
- 18) The Petitioners also complained of the garbage dumping operation being carried out in a manner that significantly polluted the surrounding environment, and that it was being carried out without a License issued by the Central Environmental Authority.
- 19) Due to the foregoing reasons, the Petitioners claimed that the entire activity of dumping garbage at *Pothuvil Kumbura* in Meethotamulla was an infringement of their Fundamental rights.

Unfortunate events of April 2017

- 20) In a calamitous tragedy of unimaginable seriousness, while the hearing of these two Applications was still pending in the Supreme Court, on 14th April 2017, at a time when a majority of the People of this country were participating in rituals and customs associated with the dawn of the traditional Sinhala & Tamil New Year and celebrating with their families and friends, suddenly, a portion of the mountainous Meethotamulla garbage dump at *Pothuvil Kumbura* collapsed on the surrounding areas. Parts of the large mountain of garbage fell on houses in the vicinity and some directly on people who were outside their homes. A large number of innocent people, some inside their homes and others outside, were buried alive in heaps of garbage. As a result, forty (40) people who lived in the vicinity of the garbage dump, including children and women, died. It took days

for the relief workers, including the armed forces, to extract human remains from the garbage that had fallen on the surrounding areas.

- 21) Filing papers in June 2017, bringing this tragic incident to the attention of this Court, the Petitioners claimed that, notwithstanding *Leave to Proceed* being granted on 2nd September 2015 in respect of these two Applications, and the Court having on 27th April 2009 granted only 'temporary permission' to the 1st Respondent (CMC) to use two acres of the land in Meethotamulla for disposal of garbage, the CMC continued to use the site on a long-term basis for the same purpose and kept on increasing the extent of the land that was being used. Furthermore, the mountain of garbage grew along with the seriousness of the threat that it posed. The Petitioners claimed that the events of 14th April 2017 occurred as a result of such continued unlawful action on the part of the 1st Respondent. It has also been documented that the downpour of rain during the preceding days exacerbated the situation, which resulted in the collapse of the mound of garbage at *Pothuvil Kumbura* in Meethotamulla.
- 22) As a result of the sheer size of the garbage mound that fell on people, despite continuous recovery attempts by the armed forces and other disaster relief workers, up to June 2017, the mortal remains of only thirty-two (32) out of forty (40) victims had been recovered. The Disaster Management Centre has documented that 1,782 persons of 418 families were affected by this disaster, causing 32 deaths (confirmed) and 8 persons being classified 'missing' due to their mortal remains not being found. Eleven (11) persons had sustained injuries. While sixty (60) houses had been fully damaged, twenty-two (22) had been damaged partially. These statistics reflect the magnitude of the tragedy that had occurred.
- 23) Among the dead were the wife, daughter, son-in-law and grand-daughter of the 2nd Petitioner in SC/FR 311/2015.
- 24) It was sequel to this tragic incident being brought to the attention of this Court that the 1st Respondent (CMC) notified this Court that it had decided to terminate the disposal of garbage at the Meethotamulla site and gave an undertaking to Court to that effect. The Petitioners have since then not complained to this Court of garbage being dumped at the Meethotamulla *Pothuvil Kumbura* site.

- 25) In view of the foregoing, in both SC/FR 311 and 318/2015, the Petitioners sought declarations from this Court that the continuous dumping of garbage at the Meethotamulla site and its proposed expansion was an infringement of their Fundamental rights guaranteed under Articles 11, 12(1), 12(2) and 14(1)(g) of the Constitution. They also sought an order from this Court directing the Respondents to implement a sustainable and lawful solution to the problem of waste disposal as an alternative to dumping garbage at the Meethotamulla site.
- 26) Mr. Saliya Peiris, PC, representing the Petitioners in SC/FR 311/2015, submitted that the 1st Respondent (CMC) by dumping garbage at the Meethotamulla *Pothuvil Kumbura* site, had acted contrary to (a) the statutory obligations conferred on the CMC by the Municipal Councils Ordinance, and (b) section 23A(2) of the National Environmental Act. He submitted that the allegation that the 1st Respondent had contravened provisions of the National Environmental Act was due to the reason that in terms of section 23A of the Act, dumping of garbage had been declared a 'prescribed activity' and dumping of garbage had been carried out without a License. Furthermore, learned President's Counsel submitted that by permitting such contravention of the law which enabled the 1st Respondent (CMC) to pollute the environment, the 6th Respondent - Central Environment Authority (CEA) had failed to enforce provisions of the law they were obliged to enforce and thereby, the CEA had failed to fulfil its statutory obligations under the National Environmental Act. Learned Counsel also submitted that the 6th Respondent (CEA) by permitting the 1st and the 7th Respondents to expand the dumping site to eighteen (18) acres and dump garbage at that expanded site at *Pothuvil Kumbura* in Meethotamulla had permitted further violation of the provisions of the National Environmental Act.
- 27) Learned President's Counsel submitted that the Supreme Court, which gave temporary permission to dispose of garbage only on a land two (2) acres in extent, did not subsequently grant permission for the expansion of the dumping site. Learned Counsel for the Petitioners also complained that the dumping of garbage at the Meethotamulla site by the CMC was contrary to the "Technical Guidelines on Solid Waste Management in Sri Lanka" issued by the 6th Respondent - Central Environment Authority. In these circumstances, learned President's Counsel submitted that the dumping of garbage at the Meethotamulla site amounted to an infringement of the Petitioners' Fundamental right guaranteed under Article 12(1) of the Constitution.

28) Mr. Saliya Pieris, PC also submitted that the tragic events of 14th April 2017 which resulted in the death of forty (40) persons could have been prevented, and human lives could have been saved had the 1st Respondent (CMC) not continued with the process of dumping garbage at the Meethotamulla site, in contravention of the temporary order made by the Supreme Court on 27th April 2009. He emphasized that at least when the Supreme Court granted *Leave to Proceed* in respect of these two Applications, the 1st Respondent (CMC) ought to have terminated their unlawful practice of dumping garbage at the Meethotamulla site.

29) In his post-argument written submissions, Mr. Saliya Pieris, PC drew the attention of this Court to a series of Judgments of the Supreme Court of India, including *Subhash Kumar v. State of Bihar and Others* [1991 AIR 420], *Rural Litigation and Entitlement Kendra & Others v. State of Uttar Pradesh & Others* [1985 AIR 652], *Municipal Council, Ratlam v. Shri Vardhichand & Others* [1980 AIR 1622], *M.C. Mehta v. Union of India (Gas Leak in Shriram Factory)* [1987 SCR (1) 819], *M.C. Mehta v. Union of India* [1988 AIR 1115], *Vellore Citizens Welfare Forum v. Union of India* [1996 (5) SCC 647], *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) & Others* [1994 (3) SCC 1], *M.C. Mehta v. Union of India (Vehicular Pollution Case)* [AIR 2002 SC 1696] and *Almitra H. Patel & Others v. Union of India and Others* [2000 (2) SCC 166] in order to impress upon this Court on the need to adopt an approach similar to that of the Supreme Court of India with regard to Public Interest Litigation (PIL) pertaining to situations involving environmental pollution. He submitted that a progressive approach aimed at the restoration and protection of the environment through the exercise of the Fundamental rights jurisdiction, application of the 'Polluter Pays Principle' and the 'Precautionary Principle' should be adopted by this Court as well. Learned President's Counsel urged this Court to consider the relevant judicial precedents and to adjudicate the present Applications accordingly, by holding the CMC on the one hand, and the statutory bodies cited on the other, responsible for the infringement of the Petitioners' fundamental rights. Learned President's Counsel urged this Court to issue the necessary orders to safeguard the Fundamental rights of the public in the future, in light of the unlawful manner in which local government authorities have been disposing garbage. Learned Counsel suggested that the Court direct all local government institutions to hereinafter dispose of garbage in a lawful and environmentally friendly manner.

30) Mr. Eraj De Silva, PC who appeared for the Petitioners in SC/FR 318/2015 submitted that, even after *Leave to Proceed* was granted by this Court, the 1st Respondent (CMC), through its agents, continued to dump garbage at the Meethotamulla site with impunity, causing serious nuisance, threat to human life and environmental pollution. He insisted that it was not only the CMC that dumped garbage at this site, but also the 7th Respondent (Kolonnawa Urban Council – KUC). He further insisted that the 1st Respondent was hiding behind the 2009 interim order issued by the Supreme Court in SC/FR 218/2009 and had acted in contravention of that interim order. Thereby, the 1st Respondent contravened the law. He further submitted that the dumping of garbage at the Meethotamulla site was terminated only after the tragic events of 14th April 2017.

31) Mr. De Silva submitted that not only was the CMC and the KUC responsible for the infringement of the Fundamental rights of the Petitioners guaranteed by Article 12(1), the Urban Development Authority, Western Province Waste Management Authority and the Central Environment Authority were also responsible, as they had not taken action in terms of the laws applicable to them, to stop the illegal activity perpetrated by the CMC and the KUC.

Position of the 1st Respondent (Colombo Municipal Council), 2nd and 2A Respondents (A.J.M. Musammil and Rosy Senanayake, Mayors of Colombo) and the 3rd Respondent (Municipal Commissioner of the Colombo Municipal Council)

32) The position of the 1st to 3rd Respondents as presented to Court by two Affidavits of the 3rd Respondent (Municipal Commissioner of Colombo – Vithana Kuruppu Arachchige Anura) is that, in compliance with the orders made by the Supreme Court in respect of SC/FR 218/2009, in March 2011, the CMC closed down the garbage disposal operation in Bloemendhal Road, Colombo 14. The interim order issued by the Supreme Court on 24th March 2009 led to street and household refuse piling up on the streets of Colombo. This according to the Municipal Commissioner resulted in *“repercussions for the entire citizenry, leading to health hazards, communal diseases, spread of odour and severe unsanitary conditions”*. Therefore, a variation of the interim order issued on 24th March 2009 was sought, and permission was obtained from the Supreme Court on 27th April 2009 to use land in Meethotamulla to dispose of garbage. In his affidavits, the Municipal Commissioner has sought to explain that, recourse to the Meethotamulla land (a reference to *Pothuvil Kumbura*) was had since there was no other location to dispose of garbage collected from the City of Colombo. Thus, the CMC commenced

disposing of garbage at the site situated in *Pothuvil Kumbura*, Meethotamulla. That was until a sustainable solution was found.

- 33) According to the 3rd Respondent, in July 2015, as at the time the Petitioners filed these two Applications (SC/FR 311 & 318/2015), the CMC was continuing to dispose garbage at the Meethotamulla site. The CMC did so on the strength of the interim order issued by the Supreme Court on 27th April 2009 in respect of the previous Application (SC/FR 218/2009). The Municipal Commissioner has asserted that, even after these two Applications were filed, it was lawful and possible for the CMC to have continued with the garbage disposal operation at the Meethotamulla site, since this Court did not, either when granting *Leave to Proceed* on 2nd September 2015 or thereafter, issue an interim order restraining the CMC from continuing to engage in the garbage disposal operation at *Pothuvil Kumbura*, Meethotamulla.
- 34) Indirectly accepting the allegation of the Petitioners that, though permission was granted by the Supreme Court to use only a land of two (2) acres of *Pothuvil Kumbura* for the disposal of garbage, the 3rd Respondent has taken up the position that gradual expansion of the garbage dumping site was necessary as the “*mound of garbage was increasing on a daily basis*”. Thus, to ensure that the mound does not collapse, it was necessary to expand the base of the garbage mound. Thus, according to the Municipal Commissioner, gradually increasing the extent of the land used to dispose garbage was the “*only viable option*”.
- 35) The 3rd Respondent has explained that over a period of time, the CMC has put in place several measures pertaining to the management of street and household refuse collected from within the City of Colombo. The Municipal Commissioner has highlighted that there were multiple stakeholders involved in decision-making regarding waste management. Therefore, the CMC alone could not take decisions. Obtaining the consensus of the several stakeholders was necessary. At times there were competing interests, and thus the CMC had to weigh, balance and adopt the most suitable course of action.
- 36) In the material presented to this Court, the 3rd Respondent has also set out in detail the historical antecedents relating to this matter, stemming from the several orders issued by this Court in respect of SC/FR 218/2009 and has pleaded that the

disposal of garbage at the Meethotamulla site was beyond the control of the CMC, as it had no other option.

- 37) Explaining in detail various steps taken by the CMC to find a sustainable solution to the problem, the 3rd Respondent has stated that in April 2009, the CMC had called for proposals for the generation of power / energy / gas and compost fertilizer using garbage collected from the City of Colombo. Sequel thereto, Western Power Company Ltd. had been selected to establish and operate a 'Waste to Energy Project' at the Meethotamulla site. The company received the approval of the Central Environmental Authority and the Sustainable Energy Authority. This project commenced and continued for some time. However, there was stiff resistance to the continuation of the project by those who lived in the vicinity.
- 38) Furthermore, in 2015, in order to minimize dependence on the Meethotamulla site, tenders had been called to either purchase or obtain on rent a suitable land to dispose solid waste collected in the Metro Colombo region. Following a consideration of bids received, a suitable land in Othekele, Ekala had been identified.
- 39) Consequent thereto, by Motion dated 30th August 2016, the CMC sought the approval of the Supreme Court to shift the dumping site to the identified site in Othekele in Ekala. Court, having considered the matter, permitted that Application. However, the shifting of the operation was met with stiff resistance from residents of that area in Ekala. On 28th February 2017, a group of residents of Othekele filed an Application to intervene in these two Applications. That Application was allowed by this Court. In view of the stiff opposition to the proposed shifting of the garbage dumping site in Othekele in Ekala, the CMC abandoned the plan and continued to use the Meethotamulla site.
- 40) As at the time these two Applications were filed, the 'Metro Colombo Solid Waste Management Project' initiated by the government was pending. That was to result in a 'sanitary landfill facility' being established in Arukkaalu, situated within the area of the Vanathawilluwa Pradeshiya Sabha in the North-Western Province. The project would effectively address the ground level issues in combatting waste disposal in the Metro Colombo region. During the hearing, Mr. Senany Dayaratne, who represented the 1st to 3rd Respondents, submitted to Court that this project

was being implemented and garbage collected from the municipal limits of Colombo was being transported to Arukkalu and deposited at a sanitary landfill.

41) Mr. Senany Dayaratne citing sections 46, 129 and 130 of the Municipal Councils Ordinance, conceded that the CMC had the statutory duty of collecting and disposing garbage generated within the City of Colombo. He revealed that the daily collection of household and street refuse amounted to approximately 700 metric tons. He submitted that collecting this amount of garbage and disposing it *“was by no means an easy task”*. During the period relevant to these two Applications, the only waste disposal system that was practicable for the disposal of garbage collected from the city limits of Colombo, was to dispose such garbage at the Meethotamulla site. He further submitted that continuing with the *“Meethotamulla operation”* was necessary to prevent accumulation of garbage within the City of Colombo. In his post-argument written submissions, learned Counsel responding to the consequences faced by the residents of the Meethotamulla area, submitted that *“the CMC bears a greater duty to the entire citizenry, as against the interests of a particular locality”*.

42) Mr. Dayaratne submitted that the disposal of municipal waste at the Meethotamulla site was not in breach of the National Environmental Act or its Regulations. Learned Counsel supported this submission on the basis that, the *‘Meethotamulla garbage disposal operation’* does not *“come within the definition of a prescribed activity for which a license was required”* as per the activities prescribed by the Minister under section 23A of the National Environmental Act contained in *Gazette Extraordinary* No. 1553/16 dated 25th January 2008 as those requiring a License. Elaborating on this point, he submitted that *“the Meethotamulla site was not a composting plant, processing plant or a facility at which solid waste was disposed in terms of Part B of the Regulations published in 2008”*. He also submitted that *“the Meethotamulla site was merely a site at which waste was disposed, with no further operation being conducted thereat”*.

43) Mr. Dayaratne summing up his submissions said that the CMC and the 2nd and 3rd Respondents, whom he represented, were not remiss in fulfilling their duties and they had not acted in an unreasonable, arbitrary or unlawful manner. He also submitted that his clients had acted in compliance with the State policy on disposal of waste. He concluded by submitting his view that no responsibility could be cast

on the 1st to the 3rd Respondents for having, since 2009, dumped garbage at the Meethotamulla site and for the collapse of the dump in April 2017.

44) Learned Counsel also submitted that, without prejudice to his clients' position, that they were not legally responsible for the collapse of the garbage dump in April 2017, he wished to appraise this Court that the CMC had paid a sum of Nine-hundred and eight million three hundred and fourteen thousand twenty rupees and seventy cents (Rs. 908,314,020.70) to persons affected by the collapse of the garbage dump, as "*compensation and financial assistance on its own volition, as a demonstration of its bona fides*".

Position of the 7th Respondent (Kolonnawa Urban Council)

45) Filing an Affidavit dated 21st October 2015, almost corroborating in full and supporting the narrative of the Petitioners, the Secretary of the Kolonnawa Urban Council Geethani Dilrukshi Lokuwella has admitted that the 1st Respondent (CMC) had been dumping garbage at the Meethotamulla site.

46) However, she has denied that the 7th Respondent (Kolonnawa Urban Council) had been dumping garbage at the Meethotamulla site.

47) She has confirmed that "*... there is a severe health hazard caused to the residents of the area and the environment has become uninhabitable and a number of the residents have fallen ill due to the environmental degradation caused by the said garbage dump*". Furthermore, she has averred that "*... the actions of the 1st Respondent in expanding the said garbage dump from 2 acres to more than 17 acres is unlawful. ... the 7th Respondent has at all times objected to the said disposal of waste by the 1st Respondent at the site and the 7th Respondent was not consulted or given a proper hearing before the Supreme Court prior to allowing as a temporary measure the disposal of garbage at the Meethotamulla site*". She has also attributed the delay by the 1st Respondent and other government institutions as the cause for a sustainable solution to the problem not been found.

Position of the 4th Respondent (Urban Development Authority)

48) The position of the 4th Respondent (UDA), as contained in Affidavit dated 14th October 2015 of the Director General of the UDA Nayana Nadeesha Mavilmada is that the land in Meethotamulla used to dump garbage had previously been a paddy field called *Pothuvil Kumbura* which later fell into disuse and had become a

marsh. In 1989, the land had been filled, and later it had been vested by the State in the Urban Development Authority. Therefore, it was not possible to dump garbage on that land.

49) In February 2009, the 4th Respondent had leased approximately four (4) acres of land from *Pothuvil Kumbura* to the 6th Respondent (Central Environmental Authority) for the purpose of composting of garbage under the '*Pilisaru Project*' which was implemented by the 6th Respondent together with the 7th Respondent (Kolonnawa Urban Council). The operations of this project continued until some of the buildings and machinery along with several houses in the vicinity were damaged by the collapse of a portion of the garbage dump. (The collapse of the dump referred to herein had occurred prior to the major collapse of the garbage dump in April 2017.)

50) In October 2012, a portion of *Pothuvil Kumbura*, approximately three point five (3.5) acres in extent was handed over by the 4th Respondent (UDA) to the Western Power Company Ltd. That was for the purpose of enabling that company to generate energy from waste using a gasification process. That was on the footing that the 6th Respondent (CEA) had granted approval for the project. However, this process did not materialize. The reason given by the company was that the 1st Respondent (CMC) was dumping garbage at the site. Therefore, the 4th Respondent on multiple occasions [by dispatching four (4) letters in 2013 - "4R8(A)" to "4R8(D)"] requested the 1st Respondent to refrain from dumping garbage at the site, to no avail.

51) Notwithstanding the abandonment of the waste to energy project, the Western Power Company Ltd. had failed to return the land to the 4th Respondent.

Position of the 5th Respondent (Waste Management Authority of the Western Province)

52) According to the Affidavit dated 23rd December 2015 of the Director of the 5th Respondent - Waste Management Authority of the Western Province, Chandrakumara Mannapperuma, in April 2009, the 5th Respondent had proposed to the 1st Respondent (CMC) an alternate garbage dumping site in Divulapitiya. However, the 1st Respondent did not take action to implement the said proposal.

53) By 2015, in addition to the CMC dumping approximately 750 to 800 metric tons of municipal solid waste at the Meethotamulla site, the 7th Respondent (Kolonnawa

Urban Council) had also been dumping approximately 35 to 40 metric tons of garbage per day at the same site.

54) Additionally, the 5th Respondent had also been aware that the 1st Respondent had leased the land belonging to it at *Pothuvil Kumbura* for the purposes of composting garbage under the 'Pilisaru Project' which ceased to function by the collapse of a portion of the garbage dump.

55) The 5th Respondent had been aware of the 1st Respondent (CMC) having called for proposals for the establishment of a 'waste to energy' project at Meethotamulla and the subsequent selection of the Western Power Company Ltd. to operate such project.

56) In 2012, the 5th Respondent had submitted to the Chief Minister of the Western Province a draft Cabinet paper (to be submitted to the Board of Ministers of the Western Province) containing a 'road map' pertaining to the Meethotamulla garbage dumping site. However, according to the Director of the 5th Respondent, since the 4th Respondent (UDA) and other 'agencies of the central government under the leadership of the Ministry of Defence and Urban Development' had taken up the matter in order to find a lasting solution, that Cabinet paper could not be proceeded with.

57) Chandrakumara Mannaperuma has explained that following the Urban Development Authority having initiated action to establish the 'Metro Colombo Solid Waste Management Project', the role of the 5th Respondent was limited to a supportive role. That had been because the Meethotamulla garbage disposal operation was taking place in land given to the 1st Respondent (CMC) by the 4th Respondent (UDA).

Position of the 6th Respondent (Central Environmental Authority)

58) By his Affidavit dated 9th November 2017, the Chairman of the 6th Respondent (Central Environmental Authority - CEA) Professor Lal Dharmasiri has adverted to the following:

- i) As at the time these two Applications were filed, in addition to the 1st Respondent (CMC) and the 7th Respondent (KUC), the Kaduwela Pradeshiya Sabha had also been using the same site in Meethotamulla to dump garbage.

- ii) Following site inspections carried out by its officers in 2012, 2013 and 2015, the 6th Respondent (CEA) had recommended to the 1st Respondent (CMC), to, on a daily basis, cover the dumped garbage with an adequate layer of soil. That was in order to mitigate the stench and the occurrence of other environmental and public health hazards.
- iii) In May 2009, founded upon an activity designed by the 6th Respondent (CEA) called the '*Pilisaru Project*', the CEA had entered into an agreement with the 7th Respondent (KUC) to establish a composting plant at the Meethotamulla garbage dumping site. This project had functioned for a considerable period of time, till the plant was partially damaged due to a portion of the garbage dump falling onto the premises of the dump. The 6th Respondent had filed a complaint regarding this incident with the Kolonnawa Police Station. However, the 1st Respondent (CMC) had not cooperated with the police inquiry.
- iv) In 2009, Western Power Company Ltd., had proposed the establishment of a 'Waste to Energy Project' to generate 12 MW of electricity per day using 400 – 500 metric tons of waste. As required by law, following the conduct of an Environmental Impact Assessment (EIA) in July 2012, the 6th Respondent (CEA) had, subject to conditions stipulated, granted its approval to carry-out the project for a period of three (3) years.

Submissions made on behalf of the 4th Respondent (Urban Development Authority), 6th Respondent (Central Environmental Authority) and the 8th Respondent (Attorney-General)

- 59) Deputy Solicitor General (DSG) Dr. Avanti Perera citing sections 129, 130 and 131 of the Municipal Councils Ordinance and sections 118, 119 and 120 of the Urban Councils Ordinance submitted that the collection, removal and disposal of garbage in the areas of the Colombo Municipal Council and the Kolonnawa Urban Council was the sole responsibility of the 1st and the 7th Respondents, respectively.
- 60) Citing item 4 of List I (Provincial Councils List) of the 9th Schedule of the Constitution, learned DSG submitted that local authorities (in this instance the 1st and the 7th Respondents) come under the direct supervision and control of the Western Provincial Council. Furthermore, the 5th Respondent (Waste Management

Authority Western Province) is responsible in terms of Statute No. 9 of 1999 for *inter-alia* the management of garbage of the Western Province.

- 61) Citing the Urban Development Authority Law, No. 41 of 1978 (as amended), learned DSG submitted that the collection, removal, disposal and the management of garbage is not among the several functions of the 4th Respondent (Urban Development Authority). Thus, she submitted that the 4th Respondent was in no way responsible for the Meethotamulla garbage disposal operation or consequences arising thereof.
- 62) Citing section 23A of the National Environmental Authority Act, No. 47 of 1980 (as amended), learned DSG submitted that the Minister had by order published in the *Gazette* (No. 1533/16 dated 25.01.2008) determined 'prescribed activities' in respect of which a License is required. Items 60, 61 and 62 of Part A and corresponding items 26, 27 and 28 of Part B of the Schedule refer to 'municipal solid waste and other solid waste composting plants' 'solid waste recovery / recycling plants or processing plants', and 'solid waste disposal facilities'. Learned DSG's submission was that the collection, removal, disposal and management of street refuse, house refuse, night soil or other similar matter collected by local authorities under the Municipal Councils Ordinance, Urban Councils Ordinance and the Pradeshiya Sabhas Act are not 'prescribed activities'. Her supporting argument was that none of the activities prescribed by the afore-stated Order published in the *Gazette* took place at the Meethotamulla garbage dump. Referring to definitions of the term 'facility' contained in two English language dictionaries, she submitted that the 'garbage dump at Meethotamulla' was only a 'mere place or site temporarily identified to dump garbage', and was by no means a 'facility' to the extent referred to in item 62 of Part A and the corresponding item 28 in Part B of the afore-stated *Gazette* notification. Thus, her submission was that what took place in Meethotamulla was not a 'prescribed activity' and thus, no License was required to be obtained for its operation under the provisions of section 23A of the National Environmental Act.
- 63) Learned DSG also submitted that the 6th Respondent (CEA) could not possibly have taken action against the CMC for disposal of garbage at the Meethotamulla site, as it was a process sanctioned by the Supreme Court.

64) Concluding her submissions, learned Deputy Solicitor General Dr. Avanti Perera highlighted that the Petitioners have not levelled any specific allegations, including the failure to perform any statutory obligations against either the 4th Respondent (UDA) or the 6th Respondent (CEA). Therefore, she urged no order to be made against those two institutions.

Analysis of evidence and application of the law and conclusions

65) **Overall responsibility for the commencement and the conduct of the garbage dumping operation at *Pothuvoil Kumbura* in Meethotamulla** - A useful starting point for the analysis of the evidence is to consider the background to the institution of these proceedings in July 2015. In that regard, a reflection on the several orders made by the Supreme Court in SC/FR 218/2009 would, in my view, be useful. That is primarily because, in these proceedings, in order to justify its conduct of continuously dumping garbage at the Meethotamulla site for 8 years (from April 2009 to April 2017), both the 1st to 3rd Respondents (the CMC, its Mayors and the Municipal Commissioner) and their learned Counsel, placed much reliance on an interim order made by the Supreme Court in that Application. The several orders that had been made by the Supreme Court in SC/FR 218/2009 including the afore-stated interim order of 27th April 2009, should, in my view, be considered in the context of the Petition that had been presented to the Supreme Court by the Petitioners in that matter and subsequent developments, both before and after the making of the relevant interim order.

66) The essence of the complaint of the Petitioners in SC/FR 218/2009 (as previously dealt with briefly in this Judgment) was that Burns Trading (Private) Limited and Burns Environmental and Technologies (Private) Limited with whom the Colombo Municipal Council had entered into two Agreements (“P2” and “P4”), had, over a period of time, failed to carry out their obligations under those Agreements. In that, these two companies had neglected to accept garbage collected by the CMC and brought to its premises at Bloemendhal Road, Colombo 14. These two companies had also failed to operate and maintain a compost plant at the garbage disposal site. This breach of Agreement and the ensuing situation had resulted in severe environmental problems and had also posed a major health hazard to many residents of Colombo 14. The 7th to the 17th Petitioners were victims of that situation. That was due to unprocessed garbage piling up at the garbage disposal site.

67) The following are the key orders and observations made by the Supreme Court in respect of that Application:

- 24th March 2009 - Having considered the Application of the Petitioners, the Supreme Court granted *Leave to Proceed* under Article 12(1) of the Constitution. Having also considered the “*enormous volume of garbage that had accumulated over a period of time reaching a height of nearly 180 feet at the site described as premises 478, K. Cyril C. Perera Mawatha, Colombo 14*” being a “*serious environmental / health hazard affecting not only the Petitioners but also the entire community*”, the Court had made an interim order effective till the final determination of the Application, suspending the operation of Agreements “P2” and “P4”. Court had observed that this situation had arisen due to the **abdication of its statutory obligation by the CMC**. Furthermore, the CMC was barred from entering into any agreement similar to the afore-stated Agreements, except with the prior approval of the Supreme Court.
- 30th March 2009 - The Supreme Court had observed that, “... any future arrangement for the dumping of garbage will be the direct responsibility of the Colombo Municipal Council”.
- 27th April 2009 - Counsel for the Colombo Municipal Council had tendered to the Supreme Court a letter dated 08.04.2009 addressed to the Municipal Commissioner of the Colombo Municipal Council by the Director General of the Urban Development Authority. That letter stated *inter-alia* that “*for the purpose of disposing garbage that had got accumulated in the City of Colombo, permission was being granted to temporarily handover a land of two acres which was a portion of Lot 1 depicted in Plan No. K. 8536 called Pothuovil Kumbura in Kolonnawa*”. That letter also stated that, “*the permission so granted was temporary, and that the garbage being disposed of should at the same time be covered by a layer of soil for the purpose ensuring that no prejudice should be caused to the environment*”. Following a consideration of the contents of the said letter and the submissions made on behalf of the Colombo Municipal Council, the Supreme Court had made the following order:

*“Having considered the submissions made, Court makes an interim order that the site referred to in the letter dated 08.04.2009 be used with immediate effect for the dumping of garbage in the city of Colombo. Since **the area of land available is 2***

Acres, this would only be a temporary solution of the matter.” [Emphasis added.]

- 4th May 2009 - The Supreme Court had noted that “... *the site identified at Wellampitiya, Kolonnawa, referred to in the proceedings of 27.04.2009 be used for the dumping of garbage collected in the City of Colombo till a further order is made by this Court in this regard*”. [The reference herein to ‘Wellampitiya, Kolonnawa’ is a reference to *Pothuvil Kumbura* in Meethotamulla.]

Mr. S. Parathalingam, PC who appeared for the Colombo Municipal Council had informed Court that the **site could be used for approximately one (1) year**.

- 22nd September 2009 - Attorney-at-Law Mr. J.C. Weliamuna who had represented certain Interventient Petitioners (who had been affected by the dumping of garbage at the Meethotamulla site) had informed Court that the dumping of garbage by the CMC at the Meethotamulla site was causing an environmental and health hazard, and that relief he is seeking would necessitate the setting aside of the interim orders already made by the Supreme Court which granted temporary permission to the CMC to use the Meethotamulla site.

Ms. Bimba Tillakaratne, DSG had notified Court that the garbage dumping site had to be rehabilitated as it was emitting large quantities of Methane gas causing adverse health effects, and it had been found that the gas leakage was extending to a distance of 40 km.

- 23rd October 2009 - Mr. J.C. Weliamuna had complained to Court that the original site on which the Court permitted garbage to be dumped was two (2) acres in extent, and that as at that date (23.10.2009), garbage was being dumped on land beyond two (2) acres. Mr. S.A. Parathalingam, PC who appeared for the Colombo Municipal Council had undertaken to look into the matter and report to Court on the next date. As the garbage dumping site in Meethotamulla had by that time reached a saturation point, he had sought permission of Court to dispose garbage **in any other site**. Court had approved that request, subject to the direction that the Colombo Municipal Council takes steps in consultation with the Central Environmental Authority and obtain ‘site approval’.

- 18th December 2009 - The Court had noted that it granted permission for the disposal of garbage on the land referred to in the proceedings (Lot 1 of Plan No. 8536, situated in *Pothuvil Kumbura*, in extent of 2 acres only), consequent to an application made by the Colombo Municipal Council. The Court further noted that, such dumping was permitted *“on a very strict routine of collection, dumping, leveling and overlaying of soil ... to be done every day”*. The Court has further noted that all parties except Counsel for the Colombo Municipal Council and for the Municipal Commissioner have agreed that *“dumping has taken place outside the dumping site of two acres. It appears that the land outside the dumping site is being used by the Kolonnawa Urban Council as well ... As long as the Kolonnawa U.C. was dumping solid waste material of the Municipality of Colombo was added to that area, problems have arisen and submissions have been made by other parties in this case to point out that mountains of garbage had accumulated even outside the two acres referred to as the dumping site. ... It is clear to this Court that the problem relating to the dumping of garbage occurred due to mismanagement by the 1st to 3rd Respondents as they have not done daily supervision of the process that agreed upon and which was ordered by this Court ... This has led to an exacerbated situation where the matter has now gone out of control that it is causing a health hazard to numerous poor residents who live in the vicinity. Under these circumstances this Court directs the 1st to 3rd Respondents to immediately level the mountains of garbage that are accumulated outside the dumping site and the cost of such to be proportionately distributed between the U.C. Kolonnawa and the Colombo Municipality ...”*.
- 17th July 2013 - Counsel for the parties had brought to the notice of Court that the reliefs prayed for had been substantially granted. In the circumstances, Counsel had informed Court that there was no reason as to why proceedings should be proceeded with.
- 23rd September 2023 - Based on an application by Counsel for the Petitioners, the Court has permitted the Application to be withdrawn. Accordingly, the Application had been dismissed and proceedings terminated.

68) It is to be noted that the issuance of the afore-stated interim order (suspending the operation of the two agreements “P2” and “P4”), had in effect halted the dumping of garbage collected from the Colombo City by the CMC at the garbage disposal site at 478, K. Cyril C. Perera Mawatha (referred to in these proceedings as the

'Bloemendhal site'). During the hearing of these two Applications (SC/FR 311 & 318/2015), learned Counsel briefed this Court that, due to the issuing of that interim order, the CMC had halted the collection of garbage in the City of Colombo, on the premise that it did not have any place to dispose of the collected garbage. Thus, the subsequent interim order issued by the Supreme Court on 27th April 2009 should be viewed as the Court having authorized the adoption of a temporary measure by the CMC. That interim order was aimed at resolving the crisis situation that had arisen due to the CMC having halted the collection of household garbage and street refuse within the municipal limits of Colombo and garbage piling up on the streets of Colombo.

69) In view of the afore-stated facts and circumstances relating to SC/FR 218/2009, based on the observations and rulings made by the Supreme Court, the following can be concluded:

- i) The 1st Respondent (CMC) had previously too caused garbage collected from the City of Colombo to be disposed of in an environmentally hazardous manner, causing, among others, both a health hazard and a public nuisance.
- ii) The 1st Respondent (CMC) had by entering into two Agreements with two companies with regard to the collection, processing and disposal of garbage, abdicated its statutory obligations pertaining to the collection and proper disposal of garbage.
- iii) It was only due to the intervention of the Supreme Court (by its order dated 24th March 2009), that the unlawful dumping of garbage by the 1st Respondent (CMC) at the Bloemendhal Road site was halted. Till then, for several years, the 1st Respondent had permitted the environmentally hazardous situation to get aggravated.
- iv) On 30th March 2009, the Supreme Court had noted that in the future, the responsibility for the disposal of garbage shall be with the 1st Respondent (CMC).
- v) The interim order issued on 27th April 2009 by the Supreme Court was sequel to a letter dated 8th April 2009 submitted by the 1st Respondent (CMC) to Court, seeking the permission of Court to use two (2) acres of land

in *Pothuvil Kumbura* in Meethotamulla to dispose garbage. It was the Urban Development Authority that had assigned that land to the CMC to be used temporarily for the purpose of disposing garbage. The permission granted by the Supreme Court to such request was to use land two (2) acres in extent of *Pothuvil Kumbura* as a temporary solution to the problem that had arisen.

- vi) On 4th May 2009, Counsel for the 1st Respondent (CMC) had informed Court that the land in *Pothuvil Kumbura* in Meethotamulla could be used for a period of only one (1) year. Thus, the CMC was fully aware of the limited use of the land authorized by the Supreme Court.
- vii) It is the afore-stated land (2 acres in extent) on which the Supreme Court permitted garbage collected from the City of Colombo by the 1st Respondent (CMC) to be disposed of as a temporary solution, which gradually expanded in extent to the land referred to in these proceedings which was approximately eighteen (18) acres in extent at the time these two Applications were filed.
- viii) At no point in time has the Supreme Court permitted the 1st Respondent to use a land in excess of two (2) acres, for the disposal of garbage or use *Pothuvil Kumbura* as a long-term site for the disposal of garbage.
- ix) By September 2009, the dumping of garbage at the Meethotamulla site had become an environmental and health hazard and had been causing hardships to those living in the vicinity of the garbage dump. [This is evident from the representations made to the Supreme Court on 22nd September 2009 by Mr. J.C. Weliamuna on behalf of a group of persons living in the vicinity, and by the submissions made by DSG B. Tillekeratne to Court on the same day.]
- x) In October 2009 when Mr. J.C. Weliamuna had complained to Court that the site on which the Supreme Court permitted garbage to be dumped was being unlawfully expanded by the CMC, counsel representing the CMC had not admitted that the CMC was using a land greater in extent than two (2) acres to dump garbage. Instead, what had been submitted to Court was that the garbage dumping site in Meethotamulla had by that time reached a saturation point, and therefore, learned Counsel had on behalf of the CMC

sought permission of Court to dispose garbage at some other site. Court had approved that request, subject to the direction that the CMC takes steps in consultation with the Central Environmental Authority and obtain 'site approval' for such other site.

xi) In December 2009, the Supreme Court had observed that there was 'mismanagement' of the Meethotamulla site by officials of the CMC.

70) In view of the foregoing, it is seen that the 1st Respondent (CMC) has clearly abused and acted contrary to the permission granted to it by the Supreme Court on 27th April 2009, to use land two (2) acres in extent at *Pothuvil Kumbura* in Meethotamulla to dispose of garbage as a temporary measure. After receiving such temporary permission, both directly as well as through Counsel, the CMC has suppressed from the Court that it was using land well in excess of two (2) acres to dump garbage, and that dumping of garbage was taking place on a long-term basis. Furthermore, as evident by the submissions of learned DSG Mrs. B. Tillekeratne and by representations made by Mr. J.C. Weliamuna (cited above), even as back as in September 2009, the CMC had been engaged in dumping garbage in an environmentally hazardous manner, posing a threat to the health and well-being of the residents of the area of Meethotamulla.

71) Furthermore, the permission granted by the Supreme Court related only to a temporary location to be used to dispose garbage. As had been pointed out by the Supreme Court on 30th March 2009, the CMC had to take responsibility for all the consequences arising out of such disposal of garbage at that location. In any event, the CMC was required to act in terms of the law with regard to the disposal of garbage. In these circumstances, this Court rejects in its totality the position taken up by the 1st Respondent (CMC) and the corresponding submissions made by learned Counsel for the 1st to the 3rd Respondents, that the commencement and the continuation of the Meethotamulla garbage dumping operation was occasioned due to the interim order made by this Court on 27th April 2009, and that it was carried out with the authorization received from the Supreme Court. Therefore, the attempt made by the CMC to impute responsibility for the consequences that arose from the Meethotamulla garbage disposal operation on the Supreme Court must be rejected in its totality. The 1st Respondent (CMC) must take full responsibility for the garbage disposal operation which was carried out at *Pothuvil Kumbura* in Meethotamulla and for its consequences.

72) **Lawfulness or otherwise of the garbage disposal operation by the CMC** - As pointed out by learned Counsel for the Petitioners, the 1st Respondent (CMC) and the learned DSG representing the 4th and 6th Respondents (UDA and the CEA) and the Attorney-General, section 129 of the Municipal Councils Ordinance (hereinafter sometimes referred to in this Judgment as “the M.C. Ordinance”), confers a statutory duty on all Municipal Councils (which would include the 1st Respondent), to, so far as it is reasonably practicable, take all necessary measures in every part of the respective municipality, to *inter-alia* (a) collect and remove all street refuse, (b) secure the due removal at proper periods of all house refuse, and (c) **properly dispose of** all street refuse, house refuse and night-soil. [The totality of these three items, namely street refuse, house refuse and night soil are in this judgment referred to in its common nomenclature as ‘garbage’]. It is thus seen that, in addition to collecting and removing garbage, the 1st Respondent (CMC) has been statutorily vested with the function of ‘**proper disposal**’ of such collected garbage.

73) The term ‘**proper disposal**’ has not been defined in the M.C. Ordinance. In view of (a) the nature of the substance (garbage), its constituents, and possible consequences arising out of mere disposal (as opposed to proper disposal), (b) purposes to be achieved by the disposal of garbage, (c) impact on human communities and habitat by inappropriate disposal, and (d) possible benefits to be achieved by the proper disposal of garbage (as opposed to mere disposal) such as achieving sustainable development, it is necessary to give the term ‘proper disposal’ a contextual and purposive interpretation which is consonant with contemporary norms and standards. Certainly, that interpretation of the term ‘proper disposal’ cannot be limited to mere dumping of garbage at any place, particularly as the legislature has qualified ‘disposal’ by using the term ‘proper’ immediately preceding it.

74) Given the factors referred to in the preceding paragraph and contemporary standards, this Court is of the view that ‘proper disposal of garbage (municipal waste)’ by a Municipal Council (or any other local government institution) would mean –

‘timely, regular, comprehensive, lawful, and ethical discarding of the substance (garbage) at an appropriate location, so as to -

where possible cause the conversion of its character from being a substance of disuse and potential harm to human beings, to one or more useful substances or sources of energy that is of potential benefit to the community, by subjecting such garbage (municipal waste) into processes such as -

(i) separation,

(ii) cleaning and re-use,

(iii) recycling,

(iv) composting,

(v) incineration in an environmentally safe manner to generate energy, and

(vi) where there are components of garbage that cannot be converted into useful substances or be used to generate energy, be disposed of at sanitary landfills or cause their complete destruction in an environmentally friendly and sustainable manner.

Thus, it is necessary to reiterate that, as it is evident from the afore-stated interpretation or any other meaningful interpretation that may be given to the term, **‘proper disposal of garbage’ does not mean mere dumping of garbage at any location, permitting it to get accumulated and remain unprocessed, giving rise to a source of public health danger, environmental pollution, public nuisance and unpleasant sight and smell.** Furthermore, the mere placement of a layer of soil over a layer of garbage does not amount to ‘proper disposal of garbage’. It would thus be seen that, the garbage disposal operation carried out by the 1st Respondent (CMC) fell far in short of the standard contemplated by the Municipal Councils Ordinance and thus was unlawful.

75) Section 130 of the M.C. Ordinance provides that all street refuse, house refuse, night soil or other similar matter collected in any municipality (an area assigned to a particular Municipal Council) shall become the property of the respective Council and the Council shall have the full power to sell or dispose of all such matter. The money arising therefrom shall be paid to the credit of the respective Municipal Fund. Thus, it is clear that once collected from within the limits of the Colombo Municipality, the garbage becomes the property of the 1st Respondent (CMC). Furthermore, Municipal Councils have been vested with statutory power to sell or otherwise dispose of garbage so collected, and thereby collect revenue to

the Council. This power vested in a Municipal Council facilitates the CMC to either directly attend to the 'proper disposal' of the collected garbage, or in the alternative, following collection, to sell such garbage for the purpose of 'proper disposal' and thereby generate revenue to itself. If, however, the municipal council decides to sell the garbage, it remains the responsibility of that municipality to ensure that the 'disposal' of the garbage by the purchaser is 'proper' and thereby is carried out in a manner that is compatible with the definition of 'proper disposal' described in the preceding paragraph of this Judgment.

76) Section 131 of the M.C. Ordinance provides *inter-alia* that every Municipal Council shall, from time to time, provide places convenient for the proper disposal of all street refuse, house refuse, night soil, and similar matter removed in accordance with the provisions of the Ordinance. Thus, in addition to being responsible for the 'removal' of street refuse, house refuse, night soil and other similar matter, every municipality shall be responsible for "*providing of places convenient for the proper disposal of such matter*". Therefore, in terms of section 131 of the M.C. Ordinance, it is the 1st Respondent that is responsible for the provision of the places at which 'proper disposal' of garbage should take place. However, given the nature and complexities of urban areas such as the City of Colombo, I do not hold the view that such places for the final disposal of garbage need necessarily be located within the municipal area of such Municipal Council. Thus, it is understandable that local government institutions such as the 1st Respondent (CMC) would need to secure suitable locations which may be situated outside the respective municipality (in this instance, outside the City of Colombo) for the proper disposal of garbage.

77) Furthermore, section 131 holds municipalities responsible for ensuring that "*all such measures and precautions are taken to ensure that no refuse, night-soil or similar matter removed, is disposed of in such a way as to cause a nuisance*". This statutory duty also supports the afore-stated definition prescribed by this Court pertaining to the term 'proper disposal', as a Municipality is obliged to ensure that both removal as well as disposal of garbage does not cause any nuisance to the Public. This need is strengthened by the fact that, in terms of sections 132 to 136 of the M.C. Ordinance, municipalities are required to abate public nuisances perpetrated by others.

78) Given the un-impugned evidence relating to the Meethotamulla garbage dump, the following features can be noted:

- i) The garbage dumped at the site by the 1st Respondent (CMC) remained in the long-term in its original form without being subject to any form of separation, cleaning and re-use, re-cycling, composting, conversion into energy, etc. (other than during periods of time when layers of soil was spread on the surface of garbage, mounds of garbage was partly flattened, and, during a short period, when biodegradable garbage was converted into compost fertilizer).
- ii) The garbage dumped at *Pothuvil Kumbura* was not disposed of in the manner required by law (proper disposal).
- iii) The garbage dump gave rise to numerous health hazards and posed a danger to those living in the vicinity.
- iv) The garbage dump caused significant environmental pollution, including water pollution and atmospheric pollution due to the release of methane gas (which is a greenhouse gas and therefore is injurious to the environment, and is poisonous and therefore unfit for inhalation by human beings).
- v) The garbage dump was a public nuisance.
- vi) A strong stench emanated from the garbage dump, giving rise to unlivable environmental conditions to those living in the vicinity.
- vii) Due to rainwater seeping through the garbage dump, leachates would have contaminated ground water.
- viii) The ultimate collapse of the garbage mound at *Pothuvil Kumbura* gave rise to loss of life, infliction of injury and damage to property.

In view of the foregoing, it is apparent that the '*Meethotamulla operation*' [as some Counsel referred to it, which is a reference made to the disposal of garbage by the 1st Respondent (Colombo Municipal Council) at the Meethotamulla site (*Pothuvil Kumbura*)], had been conducted by the 1st Respondent (CMC) in a manner that was contrary to sections 129 and 131 of the Municipal Councils Ordinance. Thus, the

entire operation at the Meethotamulla garbage dumping site was carried out contrary to law and was thus unlawful.

79) The 1st Respondent (CMC) has pleaded that garbage was dumped at *Pothuvil Kumbura* in Meethotamulla as it did not have any other location where garbage could be disposed of. In this regard, it is necessary to observe that the Supreme Court (in SC/FR 218/2009 and in this matter) did not at any stage refuse to grant permission to the 1st Respondent (CMC) to shift the location of disposal away from *Pothuvil Kumbura* in Meethotamulla. It is to be noted that, since 2008, when the contractors appointed by the CMC to accept garbage and operate a composting plant at the Bloemendhal Road site began defaulting in the performance of their contractual obligations, the CMC had ample time to identify a suitable location, either within or outside the limits of the Colombo Municipality, for the initial depositing of garbage and for its subsequent separation, recycling, cleaning and re-using, conversion into energy, and composting. Even if the CMC decided to use the two (2) acres plot of land in *Pothuvil Kumbura* in Meethotamulla to dispose of garbage, it could have been done in terms of the law coupled with other activities commissioned by the CMC in a timely manner, so as to ensure the 'proper disposal' of garbage. Such proper disposal, in addition to being compliant with the CMC's statutory obligations, would have resulted in optimal utilization of the garbage being disposed of in a sustainable, economically beneficial and environmentally friendly manner. Thus, the excuse provided by the 1st Respondent (CMC) that they had no other option than to dispose of garbage at the Meethotamulla site must be rejected.

80) The 1st Respondent (CMC) has taken up the position that the 'waste to energy project' initiated at the Meethotamulla site operated by the Western Power Company Ltd. had to be abandoned due to stiff opposition by the residents of the area. However, according to the evidence presented to this Court by the 4th Respondent (UDA), on the premise that the 6th Respondent (CEA) had granted approval for the project of converting waste to energy, it had allocated three and a half (3.5) acres of *Pothuvil Kumbura* in Meethotamulla to the Western Power Company to operate a 'waste to energy project'. That operation did not materialize in the long-term, as the 1st Respondent (CMC) had commenced to dump garbage on that site as well. This had resulted in the 4th Respondent (UDA) dispatching a series of letters ["4R8(A)" to "4R8(D)"] to the 1st Respondent (CMC) requesting the Council to refrain from dumping garbage at the site assigned to the Western Power

Company. It appears that the request by the UDA to the CMC had gone unheeded. It would thus be seen that the actual reason for the Western Power Company Ltd. abandoning the waste to energy project at the Meethotamulla site was due to the conduct of the 1st Respondent (CMC) itself.

81) In this regard, I have considered whether the doctrine contained in the maxim *Lex Non Cogit Ad Impossibilia* [the law does not compel the performance of what is impossible] applies in favour of the 1st Respondent (CMC). It is noted that this doctrine allows individuals or authorities to act in ways that may contravene established laws, provided in the given circumstances compliance with the relevant statutory requirement was not possible. In other words, given the circumstances of the situation, was it simply impossible for the CMC to properly dispose of garbage? As per Nanda Senanayake, Attorney-at-Law, in his work titled “Legal Maxims & Phrases” (First Edition, 2023, page 248), when considering whether this maxim applies in a particular circumstance, three main factors may be considered.

Firstly, the necessity invoked must be of the kind that the law itself recognizes as legitimate. A necessity arising from one’s own deliberate conduct, undertaken with full awareness of its likely consequences and at a time when those consequences could have been avoided, cannot meet this standard.

Secondly, the party invoking the necessity must demonstrate that they exerted every practical effort to overcome the difficulties said to have created the necessity, and that such efforts were, upon fair and reasonable trial, proven futile.

Thirdly, these elements must be established through clear, credible, and unambiguous evidence, for the strict commands of the law may be excused only upon the most compelling proof of an unavoidable necessity.

It would be seen that, in this instance, even though it may not have been possible for the 1st Respondent (CMC) to have in April 2009 itself put in place a proper garbage disposal scheme, a proper garbage disposal scheme could certainly have been commissioned, particularly with the participation of other organizations over a reasonable period of time. In this instance, the CMC had failed and neglected to do so for eight (8) years. Furthermore, the manner in which garbage was disposed

of by the CMC at *Pothuvil Kumbura* was contrary to the preservation of life, property and public interest. Thus, the doctrine contained in the maxim *Lex Non Cogit Ad Impossibilia* cannot be applied in the defence of the 1st Respondent (CMC). Therefore, it is not possible to excuse the 1st Respondent (CMC) for having acted in contravention of its statutory obligations under sections 129 to 131 of the Municipal Councils Ordinance.

82) **Lawfulness or otherwise of the garbage disposal operation from the perspective of Environmental law** - Albeit brief, the position of the Petitioners was that, for the purpose of section 23A of the National Environmental Act, No. 47 of 1980 (as amended), the garbage disposal operation at Meethotamulla was a '*prescribed activity*'. Thus, it was submitted on behalf of the Petitioners that the 1st Respondent was legally obliged to obtain a License under section 23A of the Act and conduct the garbage disposal operation in accordance with the conditions contained in that License. The Petitioners further alleged that the 1st Respondent (CMC) engaged in the garbage disposal operation without obtaining such a License and hence, the CMC acted in contravention of the National Environmental Act when it dumped garbage at *Pothuvil Kumbura*, in Meethotamulla from 2009 to 2017. Furthermore, the Petitioners alleged that the 6th Respondent (Central Environmental Authority - CEA) by having permitted the 1st Respondent (CMC) to engage in the garbage disposal operation at *Pothuvil Kumbura* in Meethotamulla, without such a License, permitted such illegal activity. Accordingly, it was submitted that the CEA failed to discharge its statutory obligation of enforcing the provisions of the National Environmental Act.

83) In response, the 1st Respondent (CMC) took up the position that the garbage disposal operation carried out by it at *Pothuvil Kumbura* in Meethotamulla was not a '*prescribed activity*' for the purpose of section 23A of the National Environmental Act. Therefore, learned Counsel for the 1st Respondent submitted that a License was not required for the garbage disposal operation. Learned Deputy Solicitor General Dr. Avanti Perera, who represented the 6th Respondent (CEA) also supported this contention. Dr. Perera elaborated on that position by submitting that item 62 of Part A of the Schedule of the Order dated 14th January 2008, issued by the Minister of Environment under section 23A of the National Environmental Act (published in *Government Gazette* No. 1533/16 dated 25th January 2008), refers to "*Solid waste disposal facility having a disposal capacity of 10 or more metric tons per day*" which learned Counsel submitted is relevant to the disposal of garbage.

However, she submitted, the operation at Meethotamulla pertaining to the disposal of garbage by the 1st Respondent (CMC) did not fall within the purview of item 62 of Part A. This is because, according to her, the Meethotamulla site was used as a '*mere place or site temporarily identified to dump garbage*' and the dumping did not occur at a '*solid waste disposal facility*'. Thus, she submitted that the said operation did not require a License issued under section 23B of the National Environmental Act.

84) Section 23A(1) of the National Environmental Act provides that the Minister shall determine by Order published in the *Gazette*, the activities in respect of which a License [commonly referred to as an 'Environmental Protection License (EPL)'] is required to be obtained in terms of the Act. Section 23A provides that these activities are those that involve or result in discharging, depositing or emitting waste into the environment or causing pollution. Section 23B of the Act empowers the Central Environmental Authority to issue such License, authorizing the licensee to discharge, deposit or emit waste into the environment in accordance with such standards and criteria as may be prescribed under the Act (which are commonly referred to as the 'conditions of the License'). Such conditions are imposed to ensure that the harm to the environment is ideally eliminated or if that is not possible, mitigated. Furthermore, section 23A(2) of the Act provides that no person shall carry on any '*prescribed activity*' except under the authority of a License issued by the CEA, and in accordance with such standards and other criteria as may be prescribed under the Act. Section 23A(3) provides that every person who carries on a '*prescribed activity*' in contravention of section 23A(2) shall be guilty of an offence.

85) As pointed out by learned Counsel for the Petitioner, the 1st Respondent (CMC) and by the learned DSG, item 62 of Part A of the Order dated 14th January 2008 issued by the Minister of Environment which lists out a series of '*prescribed activities*' provides that "*Solid waste disposal facility having a disposal capacity of 10 or more metric tons per day*" is a '*prescribed activity*'. Thus, in terms of section 23A(2) of the Act, carrying on such activity would require a License issued by the CEA under section 23B of the Act. It is not in dispute that the Meethotamulla garbage dumping operation of the 1st Respondent (CMC) involved dumping more than 10 metric tons of garbage per day, and that, the 1st Respondent (CMC) did not possess a License issued under section 23B of the Act. Furthermore, it was not disputed that, for the purpose of item 62, '*solid waste*' would include municipal waste or

garbage. The defensive position of both the 1st Respondent (CMC) and the 6th Respondent (CEA) was that the CMC did not require a License to carry on the garbage dumping operation at *Pothuvil Kumbura* in Meethotamulla, since it did not dump garbage at a 'facility' constructed for that purpose. Dr. Perera's contention was that contextually, a 'facility' was a special arrangement such as a 'construction' specially prepared or arranged for solid waste disposal, and the site at *Pothuvil Kumbura* in Meethotamulla did not fit that description.

86) I find myself unable to agree with that submission, due to the following reasons:

- i) Indeed, as pointed out by the learned DSG, a 'facility' is generally 'a building, a piece of equipment or service, set up or established for a particular purpose'. Indeed, a 'facility' facilitates the performance of a specified activity. A 'facility' would facilitate (enable or assist) achieving the desired objective, which would otherwise not be possible or difficult to perform. However, as recorded in the Black's Law Dictionary (Special Deluxe, 6th Edition), a 'facility' is '*something that is built or installed to perform some particular function, but it also means something that promotes the ease of any action or course of conduct*'. Thus, it would be seen that the term 'facility' would not necessarily only be used to refer to the existence of some logistical infrastructure or existence of a particular specialized service.

Furthermore, from the perspective of the intent of the Minister who listed out '*prescribed activities*' it is clear from the object and purposes of the National Environmental Act to be gleaned from the provisions of that Act, and in particular the wording of section 23A, that what was intended was to list out all activities which significantly involve or result in voluminous discharge, depositing or emitting of waste or other pollutants into the environment and thereby causing pollution. A careful consideration of all items in Parts 'A' and 'B' of the Order published in the *Gazette* reveals that the Minister had listed out such activities which significantly pollute the environment. The undisputed evidence presented to this Court was to the effect that the garbage dump of the 1st Respondent (CMC) at *Pothuvil Kumbura* in Meethotamulla was a major environmental hazard, which caused serious pollution. The existence of *Pothuvil Kumbura* owned by the 4th Respondent (UDA) and the use of it permitted by the 4th Respondent (UDA) is what facilitated the 1st Respondent to dump and thereby dispose

garbage at that site. Thus, if one were to attribute a purposive, contextual and functional interpretation to the term 'facility' to the extent of it being used in item 62, it would in my view mean '*any location or site which enables achieving the objective of waste disposal*' and would not be limited to a '*built infrastructure, special equipment or an enabling service*'.

- ii) An examination of the Sinhala language text of Part 'A' of the Order issued by the Minister and published in *Gazette* No. 1533/16 dated 25th January 2008 contains at item 62 the phrase “දිනකට මෙට්‍රික් ටොන් 10 හෝ ඊට වැඩි ධාරිතාවයක් සහිත සන අපද්‍රව්‍ය බැහැර කිරීමේ පහසුකම් හෝ ස්ථාන.” which would mean “*Solid waste disposal **facility or place** having a disposal capacity of 10 or more metric tons per day*”. (Emphasis added by me.) It would thus be seen that, according to the Sinhala language version, item 62 captures not only a 'facility' but any 'place' as well, provided it is used to dispose of solid waste and the quantity of disposal is 10 metric tons or more per day.

Article 18 of the Constitution provides that the official language of Sri Lanka shall be Sinhala. Tamil shall also be an official language. Whereas the Constitution provides that English shall be the link language. Article 23(2) of the Constitution provides that “... *all Orders, Proclamations, Rules, By-laws, Regulations and Notifications made or issued under any written law other than those made or issued by a Provincial Council or a Local Authority and the Gazette shall be published in Sinhala and Tamil together with a translation thereof in English.*”. [Emphasis added by me.] Thus, as observed by Justice Sripavan (as His Lordship the former Chief Justice was then) in *Don Tilakaratne vs. Indra Priyadarshanie Mandawala* [(2011) 2 Sri L.R. 280, p. 290] in the event of any inconsistency between two texts, the text in the official language shall prevail.

Thus, it would be necessary to recognize that the Sinhala language text of the afore-stated Order issued by the Minister of Environment shall prevail over its translation which is available in the English language. In these circumstances, it is clear that for the purpose of section 23A of the National Environmental Act, *Pothuvil Kumbura* at Meethotamulla which was used *inter-alia* by the 1st Respondent (CMC) to dispose garbage, came within the purview of a '*prescribed activity*', as it certainly was both a 'facility' and a 'place' used for the disposal of solid waste (garbage).

87) It would thus be seen that the garbage disposal operation at the *Pothuvil Kumbura* site in Meethotamulla was an activity in respect of which the 1st Respondent (CMC) was required to obtain a License under section 23A(2) of the National Environment Act. It is not in dispute that the CMC did not have a License to carry on the garbage disposal operation at the afore-stated site. Thus, the garbage disposal operation carried out by the 1st Respondent (CMC) was in violation of section 23A(2) of the National Environmental Act, and thus illegal from the perspective of Environmental law.

88) **Lawfulness or otherwise of the conduct of the 7th Respondent (Kolonnawa Urban Council)** - It is necessary to observe that sections 118, 119 and 120 of the Urban Councils Ordinance is almost identical to sections 129, 130 and 131 of the Municipal Councils Ordinance. Thus, the afore-stated exposition of the responsibility of the 1st Respondent (CMC) relating to the collection and disposal of garbage would apply *mutatis mutandis* in respect of the 7th Respondent (KUC), as well. Though the Secretary of the KUC has in her affidavit denied the allegation that the KUC had also been dumping garbage at *Pothuvil Kumbura* in Meethotamulla, both the 5th Respondent (Western Province Waste Management Authority) and the 6th Respondent (Central Environmental Authority) have corroborated the allegation of the Petitioners that KUC had also used *Pothuvil Kumbura* to dump garbage. Therefore, observations and findings of this Court relating to the 1st Respondent (CMC) would apply in equal force to the 7th Respondent (Kolonnawa Urban Council), which had also been responsible for dumping garbage at *Pothuvil Kumbura* in Meethotamulla contrary to its statutory obligation of engaging in 'proper disposal'.

89) For the reasons cited in the preceding paragraphs pertaining to the illegality of the garbage disposal operation by the 1st Respondent (CMC) in the context of Environmental law, it is apparent that the 7th Respondent (KUC) had also engaged in a parallel illegal operation of disposal of garbage at *Pothuvil Kumbura* in Meethotamulla without having obtained a License. Such action in addition to being contrary to sections 118, 119 and 120 of the Urban Councils Ordinance, was illegal in terms of section 23A(2) of the National Environmental Act.

90) Thus, the culpability of the 7th Respondent (KUC) is parallel to the culpability of the 1st Respondent (CMC). The degree of culpability differs only due to the

difference in the amount of garbage dumped at *Pothuvil Kumbura* by the 7th Respondent, as it was far less than the amount of garbage dumped per day by the 1st Respondent (limited to approximately 5% of the total volume of garbage the 1st Respondent had dumped daily).

- 91) **Lawfulness or otherwise of the conduct of the 4th Respondent (Urban Development Authority)** – The Affidavit tendered on behalf of the 4th Respondent (Urban Development Authority) by its Director General makes it clear that *Pothuvil Kumbura* as its name denotes, was originally a paddy-field. It had been used to dump garbage for a long period of time. Subsequently, the land had been vested in the 4th Respondent (UDA) changing the original purpose to that of ‘urban development’ (Paragraph 13 of Affidavit dated 14th October 2015 of the Director General, UDA.) Director General N.N. Mavilmada has been economical with the truth, by not revealing to the Supreme Court that it had been the UDA which assigned and released two (2) acres of *Pothuvil Kumbura* to the 1st Respondent. That is revealed by an examination of the letter dated 8th April 2009 issued by the UDA to the CMC, a copy of which had been tendered by Counsel representing the CMC to the Supreme Court in SC/FR 218/2009. The purpose for which land had been alienated to the Colombo Municipal Council had been garbage disposal.
- 92) An examination of the Urban Development Authority Law, No. 41 of 1978 (as amended), reveals that for the purpose of giving effect to the object and purposes of this law, the Minister has been empowered by section 15 to vest land in the Urban Development Authority. That would include State land as well as land previously owned by private parties and acquired by the State. Furthermore, according to section 18, the Authority (UDA) may, **for the purpose of urban development**, with the approval of the Minister, alienate, by way of sale, lease, rent or rent purchase, any land or interest in any land vested and held by the Authority, to a third party. Such alienation shall be carried out subject to such terms and conditions including those relating to the use or uses for which the land or interest in land is alienated, as may be determined by the Minister. Thus, while it is clear that the UDA has been vested with statutory authority to hold land vested on it by the State, it is also empowered to alienate such land vested in it to a third party. However, the purpose of alienation must be ‘urban development’. If not, such alienation would be *ultra vires* the powers of the UDA.

93) Though the statute itself does not contain a definition of the term 'urban development', an examination of section 8 of the Law reveals the object and purposes for which the UDA had been established, that being to facilitate and provide for urban development. According to section 8, the UDA has been established by the Urban Development Law to *inter-alia* enable, within a 'urban development area' the (i) carrying out of integrated planning and physical development, (ii) implementation of related programmes of development work, (iii) development of environmental standards and preparation of schemes for environmental improvement, (iv) causing infrastructure development, (v) formulating and executing housing schemes, and (vi) causing the clearance of slum and shanty areas.

94) In this regard, it would be pertinent to recall certain observations and findings of the Supreme Court as propounded by Justice Shiranee Tilakawardane in *Sugathapala Mendis and Another v. Chandrika Kumaratunga and Others (Waters Edge Case)*, [2008] 2 Sri L.R. 339 at 356:

"As evidenced by the preamble of the Urban Development Authority Law No. 41 of 1978 (hereinafter referred to as the "UDA Law"), the UDA was formed for the primary purpose of promoting "integrated planning and implementation of economic, social and physical development of certain areas" determined to be areas requiring urban development. Charged with this directive, the UDA's independent and autonomous discretion over the conveyance of state land is an extremely important power, one so important that the UDA must err on the side of caution and exercise only the utmost care in making its decision where there may be questions as to the feasibility of a proposed project and / or the safety of the citizenry and environment posed by the same. In the context of land taken from private owners, this already high threshold of their duty of care is further heightened as the land potentially conveyed is land which, when seen under the lens of the Public Trust principles, can be said to have been taken from the very People who conferred such power upon the UDA. ..."

95) It would thus be seen that the purpose for which (a) the UDA has been established, (b) provision has been made to vest land in the UDA, (c) the UDA has been empowered to alienate land to third parties, and (d) the UDA has been vested with this power, is to facilitate urban development, and for no other purpose. Furthermore, such action must be to achieve economic, social and physical development of urban development areas. Furthermore, as observed by Justice

Tilakawardane, when alienating land to third parties, the UDA must be acutely conscious of the feasibility of the proposed activity, safety of the citizenry, and the impact on the environment. Given these guiding principles, by no stretch of imagination can it be concluded that the alienation of land vested in the UDA [in this instance two (2) acres of *Pothuvil Kumbura*] to the 1st Respondent (CMC) for the purpose of enabling the latter local government institution to dispose of garbage of the City of Colombo in a manner contrary to its statutory obligations, is lawful. In other words, while alienating land to be used by a local government authority for 'proper disposal of garbage' would be *intra-vires* the powers of the UDA, alienating land to 'dump garbage', would be *ultra-vires* its powers. The decision of the UDA as contained in 8th April 2009 and the corresponding action of alienating land to the CMC is thus unlawful, particularly since (a) it resulted in action being taken by the CMC which was contrary to the law (both from the perspective of the Municipal Councils Ordinance and the National Environmental Law), and (b) it did not facilitate urban development, and instead gave rise to a situation which adversely affected the interests of the citizenry of the area. Thus, the action of the 4th Respondent (UDA) was *ultra-vires* and thus, unlawful.

96) Furthermore, the UDA was well aware that, in 2009, it alienated 2 acres of *Pothuvil Kumbura* to the 1st Respondent (CMC) on a 'temporary' basis. However, it permitted the CMC to use this land on a long-term basis for up to 8 years. Furthermore, while the UDA was watching, the CMC carried out garbage disposal at *Pothuvil Kumbura* in an area far in excess of two (2) acres to up to approximately 18 acres. The UDA has not taken any effective action to stop such unlawful activity being carried out by the CMC on land owned by the UDA and not assigned to the CMC. Thus, the 4th Respondent (UDA) had passively facilitated unlawful conduct on the part of the 1st Respondent (CMC).

97) In these circumstances, I hold the 4th Responsible (UDA) responsible for dereliction of its duties *vide* the Urban Development Law, and that it had therefore acted in an unlawful manner.

98) **Responsibility of the 5th Respondent (Western Province Waste Management Authority)** - In pursuance of the devolved legislative power conferred on it by Article 154G of the Constitution read with List I of the Provincial Council List of the 9th Schedule thereto, the Western Provincial Council had in 1999 enacted the Waste Management Statute, No. 9 of 1999. That Statute had been repealed and

replaced by the Waste Management Statute No. 1 of 2007, which remains in force to-date. The preamble of the Statute provides that this law is to provide for *inter-alia* (a) the establishment of the Western Province Waste Management Authority, (b) the management of the collection, segregation, transportation, transfer, treatment and disposal of waste in the Western Province, and (c) the delegation of certain powers to local authorities of the Western Province in connection with the implementation of these functions.

99) In terms of section 7 of the Statute, the Waste Management Authority established in terms of section 2(i) of the Statute has been created for the objectives of *inter-alia*–

(a) preventing the accumulation of waste in the environment and making provisions for the maintenance of a clean atmosphere for the wellbeing of the public, as well as the fauna and flora within the Province,

(b) planning, advising, organizing and supervising the regulation of the functions of disposal, transportation and storage of waste generated within the area of the Western Province in a manner not to cause any hazard to the environment and health,

(c) coordinating with local authorities and other institutions with similar interests, and determining and evaluating the hazardousness, if any, that may be caused, with a view to adopting necessary procedure for the prevention thereof,

(d) issuing directions with a view to redeeming the places, areas and zones that have been polluted due to injudicious disposal of waste, and implement measures and supervise activities in that regard, and

(e) coordinate with local authorities or any other institutions and supervise all the projects concerning waste management carried out within the Province.

100) That back in 2009, the 5th Respondent [at or about the time the CMC sought and obtained temporary permission from the Supreme Court to use a plot of two (2) acres of land of *Pothuvil Kumbura* to dispose of municipal waste of the City of Colombo] proposed to the 1st Respondent (CMC), that a piece of land in Divulapitiya, deemed appropriate by the 5th Respondent, be used for the disposal of garbage, is salutary. Furthermore, notwithstanding the Intervient Respondents to these two Applications vehemently objecting to that proposal, the Supreme Court did not make any order preventing the CMC from using that

alternate land in Divulapitiya to dispose of municipal waste (garbage) of the City of Colombo. Nevertheless, the 1st Respondent did not accept and implement that proposal. What appears to have happened since then is that, instead of insisting upon compliance with its directives (which the Waste Management Statute of the Western Province empowers the Western Province Waste Management Authority to issue and seek enforcement) and going ahead with its own plan for the Meethotamulla site ('Road Map for the Meethotamulla site', as formulated by the 5th Respondent), it has resiled itself to an observer status, and permitted the following:

- (a) 1st Respondent to implement its 'waste to energy project' with the Western Power Company Ltd. and later note its abandonment,
- (b) 6th Respondent (CEA) to implement its *Pilisaru* project in partnership with the 7th Respondent (Kolonnawa Urban Council) on land leased by the 4th Respondent (UDA) and also later see its abandonment as well, ostensibly due to the conduct of the 1st Respondent (CMC), and
- (c) Ministry of Defence and Urban Development to design and implement the 'Metro Colombo Solid Waste Management Project'.

101) According to the 5th Respondent, both activities '(a)' and '(b)' referred to in the preceding paragraph had been abandoned by the partnering agencies, due to the 1st Respondent (CMC) having dumped garbage at *Pothuvil Kumbura* in a manner that caused damage to the infrastructure set-up by the related companies. In this backdrop, the 5th Respondent provides no explanation as to why it did not flex its muscles (so to say) by enforcing its statutory power in respect of the 1st Respondent and prevent it from acting in an unlawful manner which was so apparently injurious to public health and polluted the environment. Particularly given the fact that in terms of Waste Management Statute No. 1 of 2007, the 5th Respondent is empowered to exercise some of its functions with regard to solid waste management through relevant local government institutions (such as the 1st and the 7th Respondents), the absence of an acceptable explanation from the 5th Respondent as to why it did not give effect to its statutory obligations is troubling. The only explanation which the 5th Respondent has provided is that, once the Ministry of Defence and Urban Development commenced its initiative named the 'Metro Colombo Solid Waste Management Project' (which received Cabinet approval on 14th August 2014), it permitted that initiative to be implemented. However, the fact that the Ministry of Defence and Urban Development took such initiative does not in the view of this Court absolve the 5th Respondent from

discharging its statutory obligations conferred on it by Waste Management Statute No. 1 of 2007 of the Western Province. What is apparent is that, while the relevant competent authorities including the 1st, 5th, 6th and 7th Respondents awaited the implementation of the 'Metro Colombo Solid Waste Management Project', the garbage dumping site at *Pothuvil Kumbura* in Meethotamulla grew in size with its peak reaching a height of 48.5 metres (as per a calculation made by the Disaster Management Centre), continuing to pose an imminent threat to public health and to the environment, and finally collapsing in April 2017 causing the death of 40 innocent people and serious damage to dwellings. The 5th Respondent has not presented to this Court any evidence to impress upon this Court that it attempted to enforce its statutory powers in the backdrop of these developments, before disaster struck. Thus, the 5th Respondent must also be held accountable for dereliction of its statutory duty.

102) Responsibility of the 6th Respondent (Central Environmental Authority) - As denoted in its long title, the National Environmental Act, No. 47 of 1980 (as amended by Acts Nos. 56 of 1988 and 53 of 2000) has been enacted by Parliament to make provisions for the -

- (i) protection, management and enhancement of the environment,
- (ii) regulation, maintenance and control of the quality of the environment, and
- (iii) prevention, abatement and control of pollution.

As provided for in section 10(a) of the Act, provision has been made for the establishment of the Central Environmental Authority (CEA) to administer the provisions of the Act and Regulations made thereunder. Thus, the 6th Respondent (CEA) is primarily agency of the State responsible to give effect to the provisions of the National Environmental Act and enforce provisions thereof.

Among the functions of the 6th Respondent, are the following:

- i) to be responsible for the co-ordination of all regulatory activities relating to the discharge of wastes and pollutants into the environment and the protection and improvement of the quality of the environment [section 10(f)];
- ii) to regulate, maintain and control the volume, types, constituents and effects of waste, discharge, emissions, deposits or other sources and sub sources of pollution which are of danger or potential danger to the quality of the environment or any segment of the environment [section 10(g)]; and

iii) to require any local authority to comply with and give effect to any recommendations relating to environmental protection within the limits of the jurisdiction of such local authority and in particular any recommendations relating to the following means of environmental pollution, including the prohibition of the unauthorized discharge, emission or deposit of litter, waste, garbage and sewer and the storage, transport and disposal of any material which is hazardous to health and the environment [section 10(i)].

For the purpose of giving effect to the foregoing among other functions vested in the 6th Respondent (CEA), the Act has conferred statutory authority on the CEA to, with the concurrence of the Minister, from time to time, give any local authority such directions, whether special or general, to do or cause to be done any act or thing which the CEA deems necessary for safeguarding and protecting the environment within the local limits of such local authority. Furthermore, sections 23H, 23K and 23N of the National Environmental Act prohibits pollution of the inland waters, the atmosphere, and the soil.

103) From the (a) evidence presented to this Court by the Petitioners, (b) some of the admissions made by the Respondents themselves, and (c) the key submissions made by counsel in SC/FR 218/2009 (which remain uncontradicted and directly referable to the environmental pollution caused by the Meethotamulla garbage dump), it is clear that the garbage disposal operation by the 1st Respondent (CMC), the 7th Respondent (KUC), and by the Kaduwela Pradeshiya Sabha (not a Respondent to these two Applications) at *Pothuvil Kumbura* in Meethotamulla, gave rise to the following manifestations of environmental pollution:

- i) Pollution of water in wells used by inhabitants of the area, causing some of the wells to be closed.
- ii) Spread of micro-organisms that cause adverse impact on the health and well-being of those living in the area near *Pothuvil Kumbura*, giving rise to the spread of diseases.
- iii) Atmospheric pollution being caused due to (a) large quantities of Methane gas emanating from the site (extending up to an area of 40 km), and (b) the

unbearable stench emanating from the site resulting in living in the vicinity becoming unbearable.

iv) Pollution of the layers of soil beneath the garbage mound due to toxic material sinking into the soil during rainy seasons.

104) Thus, it would be seen that during the period 2009 to 2017, the garbage dump at *Pothuvil Kumbura* in Meethotamulla gave rise to multiple facets of environmental pollution. Furthermore, it would be seen that such pollution fell well within the pollution referred to in sections 23H, 23K and 23N of the National Environmental Act. Such pollution is prohibited by the Act and causing such pollution constitutes offences *per-se*. Furthermore, as described in preceding paragraphs, both the 1st Respondent (CMC) and the 7th Respondent (KUC) had been engaged in the activity of garbage disposal at the afore-stated site in *Pothuvil Kumbura*, contrary to section 23A(2), which thereby constitutes an additional offence under 23A(3) of the National Environmental Act. Under these circumstances, it is seen that the 6th Respondent (CEA) has not taken measures as provided for by the National Environmental Act against the 1st Respondent (CMC) and the 7th Respondent (KUC).

105) Apart from (a) recommending to the 1st Respondent that a layer of soil be placed on top of each garbage layer, (b) partnering with the 7th Respondent (KUC) in the implementation of a composting activity under the *Pilisaru* project, and (c) granting a License to the Western Power Company Ltd. to operate a waste to energy project, the 6th Respondent (CEA) has not taken any measure to enforce provisions of the National Environmental Act against illegal action by the 1st and 7th Respondents and by the Kaduwela Pradeshiya Sabha which resulted in significant environmental pollution. This Court has not been presented with any evidence that the 6th Respondent (CEA) even notified any of these local government institutions that disposing garbage at *Pothuvil Kumbura* in Meethotamulla constituted an offence under the National Environmental Act, for which they would have to be prosecuted. Thus, the 6th Respondent (CEA) is responsible for dereliction of its statutory duties.

106) This Court has pointed out in the past that, when a statutory authority refrains from enforcing its law by neglecting or failing to perform its statutory duty, such

conduct is not only unlawful, it also constitutes an infringement of Article 12(1) of the Constitution.

- 107) **Discharge of statutory obligations of the Respondents** - Having considered the afore-mentioned factual situation in the backdrop of the statutory obligations of the 1st, 4th, 5th, 6th and 7th Respondents, it is evident that the said Respondents have, notwithstanding specific statutory duties and corresponding powers to give effect to such duties, failed and neglected to discharge such duties with the view of performing the functions entrusted to them by Parliament, and in the case of the 5th Respondent, by the Western Provincial Council. In the *MV X-Press Pearl Marine and Coastal Pollution Case*, [SC/FR Application Nos. 168/2021, 176/2021, 184/2021 and 277/2021 (SC Minutes of 24th July 2025)], a Divisional Bench of the Supreme Court made the following observations:

“In assessing the responsibility of the former Chairperson of MEPA, it is important to recognize that statutory duties imposed on public authorities are not optional, and failure to discharge such obligations invites consequences both institutional and individual.”

In support of this view, the Court cited with approval the Judgment in *Dr. B. L. Wadehra v. Union of India* [(1996) 2 SCC 594], wherein the Supreme Court of India held that; *“We have no hesitation in observing that the MCD and NDMC have been wholly remiss in the performance of their statutory duties. Apart from the rights guaranteed under the Constitution, the residents of Delhi have a statutory right to live in a clean city. The courts are justified in directing the MCD and NDMC to perform their duties under the law. Non-availability of funds, inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as grounds for non-performance of their statutory obligations.”*

- 108) In view of such judicial dicta, when considering the provisions of the Municipal Council Ordinance and the Urban Council Law, the 1st and the 7th Respondents (the Colombo Municipal Council and the Kolonnawa Urban Council) have individually failed and neglected to perform their statutory duties by not **properly disposing** garbage in accordance with the law, in a manner that does not pollute the environment and cause a public nuisance injurious to public health. When one considers the Urban Development Law, the Waste Management Statute and the National Environmental Act, it is seen that the 4th, 5th and 6th Respondents (the Urban Development Authority, Western Province

Waste Management Authority and the Central Environmental Authority) have been completely remiss in the discharge of their statutory duties and have adopted an ineffective approach towards the performance of their statutory duties. It is a combination of these two factors which led to the catastrophic incident of 14th April 2017, which caused the death of 40 innocent persons.

Findings

- 109) Due to the reasons contained in this Judgment, this Court holds that the 1st Respondent (CMC) is primarily responsible for (a) the unlawful disposal of garbage at *Pothuvil Kumbura* in Meethotamulla, (b) causing an ensuing health hazard and serious environmental pollution during the period 2009 to 2017 in and around *Pothuvil Kumbura* in Meethotamulla, and (c) the consequences that had arisen (including the death of 40 residents of Meethotamulla on 14th April 2017) due to the afore-stated unlawful garbage dumping operation in *Pothuvil Kumbura* in Meethotamulla. Furthermore, this Court finds the 7th Respondent (KUC) secondarily responsible for the afore-stated unlawful conduct.
- 110) Due to the reasons contained in this Judgment, this Court concludes that the dumping of garbage at the Meethotamulla site by the 1st Respondent (Colombo Municipal Council) and by the 7th Respondent (Kolonnawa Urban Council) was contrary to their statutory obligations contained respectively in sections 129 and 131 of the Municipal Council's Ordinance and sections 118 and 120 of the Urban Councils Ordinance, and was thus unlawful. Both the 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) are culpable for such unlawful conduct.
- 111) Due to the reasons contained in this Judgment, this Court concludes that the garbage dumping operation at *Pothuvil Kumbura* in Meethotamulla carried out by the 1st Respondent (CMC) and by the 7th Respondent (KUC) which is the subject matter of these two Applications, was an infringement of the prohibitions contained in sections 23B, 23H, 23K and 23N of the National Environmental Act, and thus was an illegal activity, which constituted offences for which the said two local government institutions are culpable.
- 112) For the reasons stated in the preceding Part of this Judgment, this Court holds the 4th Respondent (Urban Development Authority) responsible for acting in violation of the Urban Development Law by initially assigning a plot of two (2)

acres of *Pothuvil Kumbura* to the 1st Respondent (CMC) for a purpose not compatible with the purposes for which land vested in the Urban Development Authority may be alienated, thereafter permitting the CMC to unlawfully dump garbage at that site, and thereafter permitting the said Respondent to expand the area which it was using to dump garbage beyond two (2) acres to up to approximately eighteen (18) acres. Similarly, the 4th Respondent is responsible for permitting the 7th Respondent (KUC) to dump garbage at *Pothuvil Kumbura* in Meethotamulla. Accordingly, the 4th Respondent (UDA) is responsible for acting contrary to the provisions of the Urban Development Law.

- 113) For the reasons stated in the preceding Part of this Judgment, this Court holds the 5th Respondent (Western Province Waste Management Authority) responsible for dereliction of its statutory duties by remaining inactive and not fulfilling its statutory obligations while the 1st Respondent (CMC) and the 7th Respondent (KUC) were acting contrary to law and engaging in the unlawful disposal of garbage (municipal waste) causing a public health hazard and environmental pollution, which ultimately resulted in causing the death of 40 persons who lived in the vicinity of the garbage dump in *Pothuvil Kumbura* in Meethotamulla.
- 114) For the reasons stated in this Judgment, this Court holds the 6th Respondent (Central Environmental Authority) responsible for not fulfilling its obligations under the National Environmental Act by not enforcing the law against the 1st Respondent (CMC) and the 7th Respondent (KUC) while both such local government institutions were acting contrary to the provisions of the National Environmental Act by engaging in a prescribed activity without a License, polluting the environment and committing offences under the National Environmental Act.

Reliefs being granted

- 115) Based on the afore-stated findings contained in the preceding part of this Judgment (captioned 'Analysis of evidence and the law and conclusions'), this Court grants the following reliefs to the Petitioners, by issuing the following **declarations**:
- i) This Court declares that the 1st Respondent (Colombo Municipal Council) has during the period between 2009 to 2017, by its unlawful and illegal

conduct of dumping at *Pothuvil Kumbura* in Meethotamulla municipal waste in the nature of garbage collected from the City of Colombo, infringed the Fundamental rights of the Petitioners and by extension the people who lived in the vicinity of *Pothuvil Kumbura* in Meethotamulla, guaranteed under Article 12(1) of the Constitution.

- ii) This Court declares that the 7th Respondent (Kolonnawa Urban Council) has, during the period between 2009 to 2017, by its illegal and unlawful conduct of dumping at *Pothuvil Kumbura* urban refuse in the nature of garbage collected from the urban limits of Kolonnawa, infringed the Fundamental rights of the Petitioners and by extension the people who lived in the vicinity of *Pothuvil Kumbura* in Meethotamulla, guaranteed under Article 12(1) of the Constitution.
- iii) This Court declares that the 4th Respondent (Urban Development Authority) has during the period between 2009 to 2017, by its unlawful conduct of (a) alienating land at *Pothuvil Kumbura* in Meethotamulla to the 1st Respondent (Colombo Municipal Council), (b) permitting the 1st Respondent to use in excess two (2) acres of *Pothuvil Kumbura* for the disposal of garbage, (c) permitting the 1st Respondent to unlawfully dump garbage at *Pothuvil Kumbura*, (d) permitting the 7th Respondent (Kolonnawa Urban Council) to use a portion of the *Pothuvil Kumbura* for the unlawful disposal of garbage, and (e) failing to enforce provisions of the Urban Development Law against the 1st and 7th Respondents, infringed the Fundamental rights of the Petitioners and by extension the people living in the vicinity of *Pothuvil Kumbura*, guaranteed by Article 12(1) of the Constitution.
- iv) This Court declares that 5th Respondent (Western Province Waste Management Authority) has during the period between 2009 to 2017, by failing to give effect to its statutory duties in respect of the unlawful conduct of the 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) pertaining to their dumping of garbage at *Pothuvil Kumbura* in Meethotamulla, infringed the Fundamental rights of the Petitioners and by extension the people who lived in the vicinity of *Pothuvil Kimbura*, guaranteed by Article 12(1) of the Constitution.

- v) This Court declares that the 6th Respondent (Central Environmental Authority) has, by permitting the 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) to engage in a prescribed activity without a License and independent thereof by permitting such Respondents to pollute the atmosphere, water and soil in and around *Pothuvil Kumbura* in Meethotamulla, egregiously failed to enforce the provisions of the National Environmental Act, and has thereby infringed the Fundamental rights of the Petitioners and by extension the residents of Meethotamulla, guaranteed by Articles 12(1) of the Constitution.
- 116) Additionally, the following **directions** are issued as measures of reliefs to the Petitioners and the Public at large. These directions are issued by this Court in the fulfilment of its duty under Article 118(b) of the Constitution which confers on the Supreme Court the jurisdiction to make orders to protect the Fundamental rights of the People. These are also made in recognition of the emerging jurisprudence of this Court which recognizes the Court's duty towards the strengthening of the environmental Rule of Law.
- i) The 6th Respondent (Central Environmental Authority) with the participation of the 5th Respondent (Western Province Waste Management Authority) is directed to examine the affected areas of *Pothuvil Kumbura* in Meethotamulla, and ensure that all necessary steps have by now been taken to restore to the extent possible the affected areas of the land of *Pothuvil Kumbura* and mitigate the environmental harm that had been caused by the dumping of garbage at that site. If such action has not been taken by now, the 6th Respondent is required to direct the 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) to take necessary action in that regard and supervise the implementation of such measures aimed at restoration of the polluted environment. The cost of such restoration work should be jointly borne by the 1st and 7th Respondents.
- ii) The 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) are directed to, within a period of time not exceeding six (6) years from the date of this Judgment, establish and operationalize garbage disposal programmes which are in accordance with their statutorily vested obligations (as defined in this Judgment) pertaining

to the **proper disposal of garbage** collected from within their respective areas. In that regard, the 1st Respondent is required to review the garbage disposal operation in Aruwakkalu, and where necessary, in collaboration with the other stakeholders revise the scheme to ensure that the method of garbage disposal being adopted at that site is in conformity with the definition of ‘proper disposal’ of garbage, contained in this Judgment.

- iii) While acting diligently and in good-faith, should any of the Respondent institutions require further time to take necessary steps to ensure that mechanisms are in place for proper disposal of garbage, they may, if the necessity arises, move this Court by way of Motion for an extension of the period of time granted.

An observation and expectation of the Court

117) The events described in this Judgment, the plight of the Petitioners in both Applications, together with others who faced the same situation as they did, and the tragic events of 14th April 2017, is a testament to the dismal failure of one aspect of the local government system put in place during the early part of the 20th century and evolved over time, in expectation of that such institutions would ensure a safe, hygienic and a pleasant environment in which people can live freely according to their wishes. The 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) functioning through its elected and appointed officials together with the 4th Respondent (Urban Development Authority), 5th Respondent (Waste Management Authority Western Province), and 6th Respondent (Central Environment Authority) must bear both individual and collective responsibility for this entire saga and the immense suffering and loss caused to those affected by the unlawful and continuous dumping of garbage at *Pothuvil Kumbura* in Meethotamulla during the period between 2009 to 2017, and its ultimate collapse on 14th April 2017. Both elected and appointed officials of these institutions who are responsible for the dereliction of their duties including successive 1st citizens (Mayors) of the City of Colombo during the period 2009 to 2017, Municipal Commissioners of Colombo during that period and the senior management of the said two local government institutions, Urban Development Authority, Waste Management Authority Western Province and the Central Environmental Authority. They must engage in an introspective search of their conscience, repent and express remorse for the serious consequences of their own actions and failures. That this judgment does not give

rise to penal consequences being imposed on such individuals is purely due to the nature of the jurisdiction vested in this Court, the evidence placed before this Court (which does not contain evidence of individual lapses), and limitations regarding what this Court can reasonably and objectively pronounce through judicial adjudication. It is the fervent expectation of this Court that these authorities (both past and present) will at least hereinafter take serious cognizance of their duties and ensure that such duties are fulfilled in the manner required by law and in a manner that protects the people whom they are duty-bound to serve.

Outcome

- 118) In view of the foregoing, these Applications are allowed.
- 119) Acting in terms of Article 126(4) of the Constitution, it was possible for this Court to direct the Respondents to pay compensation to the affected parties. However, this Court noted that the 1st – 3rd Respondents have already paid a sum of Nine-hundred and eight million three hundred and fourteen thousand twenty rupees and seventy cents (Rs. 908,314,020.70) to the affected persons. The Petitioners have not satisfied this Court that further compensation is payable to them. Therefore, no order is made for the payment of compensation.
- 120) The 1st Respondent (Colombo Municipal Council) and the 7th Respondent (Kolonnawa Urban Council) being primarily responsible for the infringement of the Fundamental rights of the Petitioners are directed to jointly pay the Petitioners in both Applications the costs incurred by them in prosecuting these two Applications.

Judge of the Supreme Court

P. Padman Surasena, C.J.

- 121) I have had the privilege of going through the Judgment of Hon. Yasantha Kodagoda, PC, J. in its draft form. Thereafter I also have had the privilege of going through the views taken by Hon. K. Priyantha Fernando, J. on the Judgment of Hon. Yasantha Kodagoda, PC, J.
- 122) I agree with Hon. Yasantha Kodagoda, PC, J. that for the reasons set out in his Judgment Court must grant the declarations as set out in paragraphs 115 of the said Judgment.
- 123) However, I regret my inability to agree that this Court must make directions set out in paragraph 116 of the Judgment of Hon. Yasantha Kodagoda, PC, J.
- 124) I am also of the view that paragraph 117 of the Judgment of Hon. Yasantha Kodagoda, PC, J. should not form part of the Judgment of this Court.
- 125) I agree with the views expressed by Hon. K. Priyantha Fernando, J.

Chief Justice

K. Priyantha Fernando, J.

- 126) I have had the privilege of reading in draft, the Judgment of my learned brother, Hon. Justice Yasantha Kodagoda, PC. While I am in full agreement with the reasoning and the declarations of law that flow therefrom, I regret that I am unable to concur with the direction issued in paragraph 116 (ii) of the Judgment.
- 127) In my respectful view, the declarations made in the Judgment in draft adequately and conclusively determine the legal rights and obligations of the parties. However, the additional direction which is accompanied by a timeline imposed through paragraph 116 (ii) does not, in my considered view, appear to be a welcome consequence of those findings.

128) This is so because I am of the opinion that the proper disposal of refuse (as elaborately dealt with in paragraphs 73 and 74 of the Judgment in draft) is a legal duty already incumbent upon the 1st and 7th Respondents under S.129(c) of the Municipal Council Ordinance No. 29 of 1947, whereby they are, in any event, obliged to dispose of refuse properly as per statutory obligations imposed on them. In these circumstances, I am of the opinion that imposing a timeline would be an unwelcome addition given that such would lead to continuous litigation.

129) Therefore, in my considered view, the directions issued in paragraph 116 (ii) extend beyond what is required for the proper disposition of the matter before us. Accordingly, while I concur in the conclusions and declarations contained in the Judgment of my learned brother Hon. Justice Yasantha Kodagoda PC, I respectfully dissent from the issuance of the aforesaid direction.

Judge of the Supreme Court