

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

In the matter of an application for orders in the nature of writ of certiorari Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Writ Application No: CA 866/2008

Andrea Brito Babapulle
2D Sukhastan Gardens,
Colombo 7.

Petitioner

Vs.

1. The Urban Development Authority
Sethsiripaya
Battaramulla.
2. Janaka Kurukulasuriya
Chairman
Urban Development Authority
Sethsiripaya
Battaramulla
3. Colombo Municipal Council
Town Hall
Colombo 7.

4. U.M. Imtiaz
Mayor
Colombo Municipal Council
Town Hall
Colomo 7.
5. Badrani Jayawardena
Municipal Commissioner
Colombo Municipal Council
Town Hall
Colombo 7.
6. Ananda Gamage
The Director Planning
Municipal Engineers Department
Colombo Municipal Council
Town Hall, Colombo 7.
7. Vijyaratnam
142 Dawson Street
Colombo 2.
8. Mrs. Vijyaratnam
142, Dawson Street
Colombo 2.
9. Mr. Siriwardena
The Director Enforcement
Urban Development Authority
Sethsiripaya
Battaramulla
10. The Special Commissioner
Colombo Municipal Council
Town Hall

Colombo 7.

RespondentsBEFORE : **S.SRISKANDARAJAH, J (P/ CA).**

COUNSEL : Shantha Jayawardane

for the Petitioner.

Ranil Samarasooriya,

for 3rd ,5th ,6th ,and 10th Respondent.

Lasantha Hettiarachchi

for the 7th and 8th Respondent

M.N.B.Fernando D.S.G

for Attorney General

Argument on : 28.04.2011

Decided on : 02.10.2012

S.Sriskandarajah, J.

The Petitioner is the owner of the premises bearing Assessment No.2D, Sukhastan Gardens, Colombo 07. The 7th and 8th Respondents are husband and wife and are developers who had executed construction in the premises bearing Assessment No. 2C , Sukhkastan Gardens, Colombo 07. This construction was commenced in October 2003. An application to construct an apartment was submitted by the 7th Respondent to the 3rd Respondent Municipal Council, seeking a development permit. As the Petitioner has objected to the grant of the said permit, the objections of the Petitioner were considered and as a result, on 18/03/2004 and 26/03/2004, the

Planning Committee of the 3rd Respondent Council refused the said building application submitted by the 7th Respondent on 12/09/2003. Thereafter the Council considered the building plan subsequently submitted by the 7th Respondent and the approval of the building plan was granted on 3rd March 2005 under reference No.MC/PBT/BA/170/03, and a development permit was issued with the approval of the said building plan. The 6th Respondent denied that he has not taken into consideration the objections raised by the Petitioner in relation to the obstructions caused to the Petitioner's right of movement on her roadway, and the 6th Respondent submitted that he has instructed the 7th Respondent to stop all deviations from the approved plan, and the 6th Respondent, by letter dated 3rd November 2006 informed the 7th Respondent not to construct unauthorized construction and not to deviate from the approved plan. The 6th Respondent also submitted that the 7th Respondent has sought amendment for the approved plan that was submitted under reference ME/PBP/DA/68/06 dated 21/09/2006 for internal alterations and an entrance from the 10 foot wide private road, but the application for the said amendment was rejected by the Planning Committee and this was communicated by letter dated 11/06/2007, since the 7th Respondent has no right of way for vehicular access through the 10 foot wide private road. The 6th Respondent also submitted that the parking space provided by the 7th and 8th Respondents is in accordance with the building plan and that the parking space is adequate for the said building, and as the number of parking spaces do not exceed 5, that the Regulation 48(3) of 1986 has no applicability to this construction. It was further stated that the officers of the 3rd Respondent Council have advised the 7th Respondent not to have any entrance from Lot 5 in Plan No.2015, and the 7th Respondent has corrected this by constructing a plastered brick wall. The Respondents further stated that the 7th Respondent has given an undertaking that windows would not be opened towards the 10 foot wide access road, (Plan No. Lot No. X5 of 2015). The Respondent also states, the site of the construction in question is more than 150 square meters and the width of the road is more than 6 meters and it confirms to the Municipal Regulations for the construction of the said building. In the given circumstances the 6th

Respondent submits that the construction carried out by the 7th and 8th Respondents at premises bearing No.2C, Sukhustan Gardens, Colombo 07, is not illegal or unlawful or unauthorized.

The Petitioner in this application is seeking a Writ of Certiorari to quash the development permit issued to the 7th and 8th Respondents to construct a building at No.2C, Sukhustan Gardens, Colombo 07. The Development permit that was issued was by the 3rd Respondent, power of issuing development permits to the 3rd Respondent was devolved by the 1st Respondent and as such the 3rd Respondent has the legal authority to issue development permits within the Colombo Municipal area, and the said development permit was issued after careful consideration by the Planning Committee, and it has taken into consideration the objection raised by the Petitioner from time to time in relation to the construction of the said premises in terms of the said development plan. The 3rd Respondent and his officers are competent to look into any violations of any provisions in relation to development plans and they have confirmed that the construction is in accordance with the development plan and the development plan is in accordance with the regulations framed for the development that could be caused in the Colombo City. The matters that are raised by the Petitioner are matters in relation to the dispute of the right of way along the private road that gives access to the Petitioner and the other issues raised by the Petitioner are matters involving the compliance of the 7th and 8th Respondents to the development plan. The 3rd Respondent has the power and authority to inspect and supervise the compliance of the said development plan, as submitted to this court that the 7th and 8th Respondents have complied with the development permit issued to them, this Court cannot issue a Writ of Certiorari to quash the development permit issued to the 7th and 8th Respondents. In these circumstances this Court dismisses the application of the Petitioner without costs.

President of the Court of Appeal