

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

CA (PHC) APN 105/2012

PHC Badulla No. 107/11 Rev.

01. B.P.H. Gamini De Silva
No:100,
Nuwara Eliya Road,
Welimada.

Or

No:98,
Nuwara Eliya Road,
Welimada.

Petitioner

Vs.

01. The Chairman
Pradeshiya Sabawa,
Welimada.

Respondent

C.A. (PHC)APN No. 105/2012

P.H.C.Badulla No. 107/11Rev.

BEFORE : SISIRA DE ABREW, J. &
K. T. CHITRASIRI, J.
COUNSEL : Rasika Dissanayake for the respondent-
petitioner-petitioner instructed by
Sirinanda Gunawardane
DECIDED ON : 28th August, 2012.

SISIRA DE ABREW, J.

The Magistrate in this case has made an order dated 22nd of September 2011 to demolish unauthorized construction, constructed by the petitioner in this case. Being aggrieved by the said order of the learned Magistrate the petitioner has filed a revision application in the High Court and the learned High Court Judge by his order dated 26th of June 2012 dismissed the revision application. Being aggrieved by the said order of the learned High Court Judge the petitioner has filed this petition to revise the order of the learned High Court Judge and the learned Magistrate.

The contention of the learned Counsel for the petitioner is that he did not receive summons from the Magistrate's Court when the Magistrate made the order on 22nd of September

2011. Learned Counsel therefore contends the procedure adopted by the learned Magistrate is wrong. Although learned Counsel contends on the said line, we note that after the learned Magistrate made order on 22nd September 2011, the petitioner on 06th of October 2011 had appeared in Court. Thereafter again on three occasions the petitioner was present in Court. The Learned Magistrate on 10th of October 2011 has re-fixed the inquiry. We note that the petitioner has failed to produce any plan approved by the relevant Pradeshiya Sabha to the Magistrate. The petitioner on all four occasions that he appeared before the Magistrate has failed to show cause as to why the unauthorized building should not demolished. The petitioner has failed to produce any plan approved by the relevant Pradeshiya Sabha to construct the building in question. We note that the petitioner has constructed the building on a reservation. We are unable to accept the contention that the petitioner was not given any opportunity to show cause as to why the building should not be demolished by the Magistrate. We note that the petitioner, on 06th of October 2011, 10th of October 2011, 17th of October 2011, and on 24th of October 2011 was present in the Magistrate's Court. But he has failed to produce any document or plan approved by the relevant Pradeshiya Sabha. In these circumstances we refuse to intervene with the order made by the High Court Judge and the Magistrate

and refuse to issue notice on the respondent. We dismiss the petition. The Registrar is directed to send a copy of this order to the High Court of Badulla and to the relevant Magistrate's Court.

Petition dismissed.

JUDGE OF THE COURT OF APPEAL

K. T. CHITRASIRI, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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