

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

In the matter of an application for
mandates in the nature of Writ of
Certiorari and Writ of Mandamus
under and in terms of article 140 of
the Constitution.

C.A. Writ Application No.744/2008

Ven Eheliyagoda Dhammasiddhi,
Ashokaramaya,
No.19, Thimbirigasyaya Road,
Colombo 05.

Appearing through his Power of
Attorney Holder, Ven. Thalagala
Rewatha of Ashokaramaya, No.19,
Thimbirigasyaya Road,
Colombo 05.

Petitioner

Vs.

01. Maharagama Urban Council,
Maharagama.

02. Kanthi Kodikara,
Chairman,
Urban Council, Maharagama.

03. Ven. Kithalagama Hemasara,
Registrar of the Regional
Shasanarakshaka

Mandalaya, Maharagama and
 District Shasanarakshaka
 Mandalaya, Colombo,
 Viwekaramaya, Mirihana,
 Nugegoda.

Respondents

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

COUNSEL : Saliya Peiris,

for the Petitioner,

Mahinda Ralapanawa with I Marapana,

for the 1st and 2nd Respondents

R.Jayaratne,

for the 3rd Respondent

Argued on : 29.11.2011

Decided on : 21.02.2013

S.Sriskandarajah, J,

The Petitioner is the Power of Attorney holder of Ven. Eheliyagoda Dhammasiddhi Thero. The Petitioner submitted that he prepared a building plan to build a hostel for foreign bikkhus who will be staying in Sri Lanka and the said building plan was submitted to the 1st Respondent Urban Council as the said building was to be built in a private land owned by the Petitioner situated in Pamunugama Road, Maharagama. After the said plan was handed over to the 1st Respondent on 27th December 2000, for approval, it was not considered favourably because of certain

objections by the general public with regard to the construction of a bikkhu hostel in that area. This was communicated to the Petitioner by the 1st Respondent by letter dated 26/07/2007, and the 1st Respondent Council had decided to hold a discussion with all parties concerned and the Petitioner was also summoned for a discussion on 7th August 2007. In the said discussion the 3rd Respondent was also present. Thereafter, considering the objection raised by several parties present in the said discussion, the 1st Respondent Council refused the said building plan.

It is the position of the Petitioner that the refusal of the said building plan by the 1st and 2nd Respondents is arbitrary, illegal and unreasonable and based on irrelevant consideration as the Petitioner has fulfilled all the requirements stated in the building application and, in these circumstances, the Petitioner has sought a writ of certiorari to quash the said decision for not granting approval for the said building plan.

It is the contention of the Respondents that the residence of the area, including the Maharagama Viharadipathi, Sangamaya of Maharagama, objected to the construction of the aforesaid building.

The building approvals were given by the local authority considering the purpose for which the said building is built, and also whether that purpose is permitted within the zoning that was identified by the said local authority. The local authority's zonings are based on commercial, residential and mixed development areas, and these areas are identified by the local authorities and were given permission according to the use of the said building that will fall within the relevant zone. The present application is made for a residential hostel in a residential area, but the objection raised by the residents is, and it appears that the purpose of the said building is, not for the residence of foreign bikkhus, but for the propagation of a sector of Buddhism which is not followed by the residents of that area, and that had caused concern of the general public and had made objections for the approval of a building for the said purpose.

On the representation made by the Petitioner for reconsideration of the building application, the 1st Respondent summoned the Petitioner, the 3rd Respondent, and the representatives of the organization who objected to the construction of the said building, and the Members of the 1st Respondent Council and, at the said meeting, it was decided to refer the matter to the Commissioner- General of Buddhist Affairs to table this issue before the All Island Sasanarakshaka Mandalaya. In response to this request, the Commissioner-General of Buddhist Affairs replied to the 1st Respondent stating, that if approval was given to establish the proposed Centre, it may result in a breach of peace situation in the area. In view of the above observation of the Commissioner-General of Buddhist Affairs, and in considering the objection raised by the residents and other organizations of that area, the 1st Respondent had refused the building permit.

The planning approval was delegated to the 1st Respondent by the Urban Development Authority. As I have already observed, the 1st Respondent is empowered to identify the relevant zones and grant building approval according to the zone it has identified. The Petitioner's application is for the building of a Centre which cannot be strictly considered as residential, and the purpose for which the said building is to be constructed is not strictly falling within a residential premises. As the 1st Respondent has the power and authority to determine this issue, and has come to the conclusion that the Centre is not strictly for a residential purpose, and the purpose for which the Centre is established, may cause breach of peace situation in the area, the 1st Respondent is justified in rejecting the said building plan and in those circumstances the Petitioner cannot seek a writ of certiorari quashing the decision embodied in P3 and P7 and, therefore, this Court dismisses this application without cost.

President of the Court of Appeal