

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

CA Writ 25/2013

Sadna Indunil Kasthuriarachchi
No: 87/40,
Gemunupura,
2nd Land,
Kottawa,
Pannipitiya.

Petitioner

Vs.

Mahara Pradeshiya Sabha
Pahala Karagahamuna,
Kadawatha.

And 02 others.

Respondents

Before : S. Sriskandarajah, J P/CA

P.W.D.C. Jayathilaka, J

Counsel : M. Rathnayaka with L.L.De Silva
for the Petitioner.

**Argued &
Decided on** : 07.02 2012.

S. Sriskandarajah, J P/CA

The petitioner in this application is seeking a writ of certiorari to quash the decision contain in P4 & P6 of the respondents particularly the wall is dangerous to users of the adjoining road way.

The respondent contended under section 35 of the Pradeshiya Saba Act No. 15 of 1987. “ *if any house or building, bounding wall or gateway adjoining any street or thoroughfare in any area or anything affixed thereon, be deemed by the Pradeshiya Sabha of that area to be in a ruinous state, whether dangerous or not, or to be likely to fall, the Pradeshiya Sabha shall immediately if it appears to be necessary, cause a proper boarding or fence to be put up for the protection of persons using such street or thoroughfare, and shall cause notice in writing to be served on the” owner or occupier forthwith to take down, secure, or repair such house, building, boundary wall, ‘gateway or thing affixed thereon, as the case may require”*

In view of the above section the Pradeshiya Sabaha is entitled to issue notice to the owner or occupier of the house, building, or boundary wall that if the

structure is in ruinous state whether dangerous or not or to be likely to fall and if it appears to the Pradeshiya Sabaha that is it necessary it could course a notice in writing to the owner in terms of that section.

The learned counsel for the petitioner submitted that the boundary wall that was complained of was not in a state of ruinous state and not dangerous to the public. The petitioner submitted that he has got a report from a Structural Engineer, and the said Structural Engineer's Report is marked as "P7".

The Structural Engineer's Report has stated during the visual inspections of the existing boundary wall he has observed that the boundary wall has got slightly slanted at some locations and some crakes had appeared in some of the wall planters one of the covering plasters has subjected to spalling.

In view of the above observation and the fact that the test that the Pradeshiya Saba has to applying in arriving at a decision under section 35 it's a subjective test, this court cannot interfere in the said decisions of the said Pradeshiya Saba and therefore this court refuses to issue notice on the respondents.

President of the Court of Appeal

P.W.D.C. Jayathilaka, J

I agree

Judge of the Court of Appeal

Na/-