

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

Dissanayake Mudiyanse Udaya Ranjith  
Municipal Engineering Department  
(Planning) Colombo Municipal Council,  
Town Hall, Colombo 7.

Court of Appeal Case No: CA (PHC) No:141/2010

Case No: HCRA 61/09

**Applicant – Petitioner.**

**H.C.R.A: 61/2009**

**Vs.**

Magistrate Court of

S.A. Rajalingam,

Colombo Case No: 9341/5

No: 102/2,

Sri Rathnajothe Saravanamuttu Mawatha,  
Colombo 03.

**Respondent.**

AND

In the matter of an Application in Revision in  
Terms of article 154(6) of the constitution  
read together with section 28(A0 (3) of the  
Urban Development Authority Act No. 41 of  
1978 as amended by Act No. 04 of 1988 and,  
Act (special Provision) No. 44 of 1984 read  
together with section 15 of the Provincial

High Court 9 (Special Provinces) Act No. 19  
of 1990.

Dissanayake Mudiyanse Udaya Ranjith  
Municipal Engineering Department  
(Planning) Colombo Municipal Council,  
Town Hall, Colombo 7.

**Applicant – Petitioner – Petitioner**

-Vs-

S.A. Rajalingam,

No: 102/2,

Sri Rathnajothe Saravanamuttu Mawatha,

Colombo 03.

**Respondent - Respondent.**

**AND NOW BETWEEN**

Dissanayake Mudiyanse Udaya Ranjith  
Municipal Engineering Department  
(Planning) Colombo Municipal Council,  
Town Hall, Colombo 7.

**Applicant – Petitioner –  
Petitioner - Appellant**

S.A. Rajalingam,

No: 102/2,

Sri Rathnajothe Saravanamuttu Mawatha,

Colombo 03.

**Before : W.M.M.Malinie Gunarathne, J**

**: P.R.Walgama, J**

**Counsel : Jacob Joseph with Nipuni Amarasinghe for the  
Complainant – Petitioner - Appellant.**

**: P. Narendran for the Respondent.**

**Argued on : 28.07.2015**

**Decided on: 16.10.2015**

**CASE- NO- CA (PHC) 141/ 2010- JUDGMENT- 16/01/2015**

**P.R.Walgama, J**

The instant appeal is directed against the orders of the Learned High Court Judge dated 19.11.2010 and the Learned Magistrate's order dated 20.02.2009, and urged Court to set aside the same.

The Applicant-Petitioner- Appellant(herein after called and referred to as the Appellant instituted legal proceedings against the Respondent-Respondent( herein After sometimes called and referred to as the Respondent) in terms of Section 28(a)(3) of the Urban Development Authority Act No.41 of 1978 as amended by Act No.

04 of 1982 and Act No. 44 of 1984(Special Provisions) in the Magistrate Court of Colombo in the Case bearing No. 9341/5 for constructing an unauthorized structure, namely a store room, toilet and a bath room without a valid permit, and thereby contravening Section 8(a)(1) of the Urban Development Authority Act.

The Learned Magistrate by his impugned order dated 20.02.2009 had observed the following;

That the Urban Development Authority made an application to issue an order in terms of Section 28 of the said Act.

To make order to pay a fine of Rs. 50,000/ in terms of Section 28(1) of Urban Development Act.

That after a conviction, if it continues to have the unauthorized structure exist, to order a fine of Rs. 1000/per day.

The Learned Magistrate was of the view since the Colombo Municipality has instituted action in terms of Section 28(3) of the above Act, the Court is empowered to authorized the Municipality to either to demolish, to alter the construction, or not to use the said construction. There fore the Learned Magistrate was of the view that to order a fine without a summery trial, is ultra vires, and for that purpose an action has to be instituted in terms of Section 136 of the Criminal Procedure Code.

In the above setting the Learned Magistrate held that the reliefs claimed under Section 28 and 28 (a) is contrary to each other

and there fore it was held that the said counts cannot be maintained, and had dismissed the application of the Applicant-Appellant.

Being aggrieved by the said order the Applicant -Petitioner has by way an application in revision applied to the Provincial High Court of Colombo to have the said order set aside or vacate.

The Learned High Court Judge in the impugned order dated 19.11.2010 has up held the order of the Learned Magistrate and was of the view that the Applicant- Petitioner has not established exceptional circumstances, to exercise the Revisionary jurisdiction of the High Court.

In the said back drop it was held that the facts averred by the Petitioner in the Petition to the High Court do not warrant an invocation of the Revisionary Powers of the High Court, and had dismissed the said application of the Applicant- Petitioner accordingly.

Being aggrieved by the said order the Petitioner- Appellant has preferred the instant appeal, seeking to set aside the said orders of the Learned Magistrate and the Learned High Court Judge of the above said dates.

The Section under which the Respondent- Respondent was charged by the Applicant –Appellant is Section 28(1) of the Urban Development Authority law No. 4 of 1982, states thus;

“Every person who contravenes or fails to comply with any provision of this law, of any regulation, rule, order, direction or requirement made or given there under shall be guilty of an offence under this law, and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.”

Therefore it is crystal clear that it is incumbent on the Magistrate to hold an inquiry in to the application of the Applicant and should make an appropriate order accordingly. In the instant matter the Learned Magistrate has made the impugned order that no fine should be imposed without an inquiry. Therefore after forming the said opinion had dismissed the Applicant’s application on the basis that the charges are not properly framed.

The above charges are framed well within the frame of Section 28(1) of the said Act. Therefore this Court is of the view that the Learned Magistrate and the Learned High Court has made a blatant error when it was decided that the Applicant-Petitioner’s application should be dismissed.

Hence for the reasons set out here in before we are inclined to set aside the above impugned orders and direct the Magistrate to hold a proper inquiry in to the application of the Applicant-Petitioner-Appellant accordingly.

In the said back drop when the said impugned orders are reviewed, we are of the view that same should be vacated forthwith.

Accordingly we allow the appeal, without costs.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**