

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

In the matter of an Application for Revision against the Order of the High Court of the Southern Province Holden in Matara dated 31<sup>st</sup> October 2012 in terms of Article 138 and Article 154P (3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions of Section 11 (1) of the High Court of the Provinces (Special Provinces) Act as amended and Rule 2 (1) of the Court of Appeal (Procedures for Appeals from High Court) Rules.

**Court of Appeal**  
**Case No. CA/PHC/APN 25/2013**

**High Court Matara**  
**Case No. Rev/73/2010**

Urban Development Authority  
No. 27, D.R. Wijewardene Mawatha  
Colombo 10.

**Petitioner**

**Magistrate's Court Matara Vs.**  
**Case No. 95184**

K.B. Sumedha Ajith Priyankara  
'Rasangi'  
Jayabodhi Junction Road, Gandhara  
Devinuwara.

**Respondent**

**AND**

K.B. Sumedha Ajith Priyankara  
'Rasangi'

Jayabodhi Junction Road, Gandhara  
Devinuwara.

**Respondent – Petitioner**

**Vs.**

Urban Development Authority  
No. 27, D.R. Wijewardene Mawatha  
Colombo 10.

**Petitioner – Respondent**

**AND NOW BETWEEN**

K.B. Sumedha Ajith Priyankara  
'Rasangi'  
Jayabodhi Junction Road, Gandhara  
Devinuwara.

**Respondent - Petitioner -  
Petitioner**

**Vs.**

Urban Development Authority  
No. 27, D.R. Wijewardene Mawatha  
Colombo 10.

**Petitioner – Respondent –  
Respondent**

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

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

**Counsel : Anura Meddegode with Andrea Ranasinghe for the  
Respondent – Petitioner – Petitioner.**

**: Respondent is absent and unrepresented.**

**Argued on : 16.11.2015**

**Decided on: 04.12.2015**

**CASE NO- CA (PHC)- APN- 25/2013- JUDGMENT- 04.12.2015**

**P.R.Walgama, J**

The Respondent- Petitioner (in short the Petitioner) by his petition has assailed the order of the Learned High Court Judge dated 31<sup>st</sup> of October 2012 and the order of the Learned Magistrate dated 26<sup>th</sup> of May 2010.

The shortly stated facts in the above petition are as follows;

That the Petitioner- Respondent (in short the Respondent), the Urban Development Authority, instituted action against the Petitioner, in the Magistrate Court of Matara in the case bearing No. 95184, for constructing an unauthorised structure without a valid permit, in terms of Section 28 A(3) of Urban Development Authority Act No. 41 of 1978 as amended by Act Nos. 4 and 44 of 1982, and sought an order to demolish the subject premises.

The Learned Magistrate after considering the facts placed before Court, by his order dated 26<sup>th</sup> May 2010 made order issuing a Decree authorising the demolition of the said premises.

Being aggrieved by the said order the Petitioner filed an application in Revision to have the said impugned order set aside. The Learned High Court Judge by his order dated 31<sup>st</sup> October 2012, dismissed the Petitioner's application and affirmed the order of the Learned Magistrate dated 26<sup>th</sup> May 2010.

Being aggrieved by the said order, the Petitioner came by way of a Revision to this Court to have the said order of the High Court Judge be set aside or vacate.

It is salient to note, that the argument was taken, in the absence of the Respondent, as such this Court had the opportunity to hear only the argument of the Petitioner.

The facts emerged from the instant petition is fundamentally based on the ground that the Learned Magistrate and the Learned High Court Judge has made said impugned orders without considering the legal concepts in the correct perspective as stated below;

That the Learned Magistrate and the Learned High Court Judge had failed to consider the building permit marked as X2 and the document marked X4, which is the decision of the Devinuwara Pradeshiya Sabha , further the Certificate of Conformity marked as X5, issued by the Urban Develop Authority dated 25<sup>th</sup> December 2010.

It is also contended by the Petitioner that the Urban Development Authority has imposed taxes on the alleged building, although it is alleged by the Respondent that the said premises in suit is an unauthorised structure.

Besides it is the position of the Petitioner that the Respondent has no locus standi to institute action in the Magistrate Court as the premises in suit does not come within the development area and more fully it is stated that the Respondent has violated the Section 13(4) of the Urban Development Authority Act as the Legal Officer has instituted the action against the Petitioner

in the Magistrate Court without proper authorisation by the Director of the Urban Development Authority.

The Petitioner has adverted Court with many decided cases to buttress his position as to why this Court should exercise Revisionary Jurisdiction to grant reliefs as prayed for in the petition.

It is a salutary principle that the Revisionary Jurisdiction is an extraordinary power that the Appellate Court will exercise only in a situation where a irreparable damage or grave miscarriage of justice has occurred. The above principle was observed in the case of MARIAM BEEBEE .VS. SYED MOHAMMED- 68 NLR- 36.

In the instant Revision application the Petitioner has adverted court to the documents marked X2 which is the Building Permit, X4 decision of the Pradesiya Sabha of Devinuwara and Certificate of Conformity marked as X5. The above documents substantiate the legality of the procedure that was followed by the Petitioner in constructing the alleged premises. Therefore any order to demolish such building will be illegal and perversive.

The Counsel for the Petitioner has referred to plathora of decided cases that was given weight in the legal parlance.

In the case of ATTORNEY GENERAL .VS. PODISINGHO- (51.NLR-385) stated thus;

“in exercising its powers of revision, this Court is not trammelled by technical rules of pleadings and other procedure”.

In the case of POTMAN .VS. IP DODANGODA [71 .NLR. 115] it was held “that the powers of revision are so wide that revision is available even after the appeal has been disposed of...”

In the case of BISO MANIKA .VS.CYRIL DE ALWIS[ 1982 SLR-368] it was observed by Sharvananda J. That “when the Court has examined the record and satisfied, that the order complained of is manifestly erroneous or without jurisdiction, the Court be loathe to allow the mischief of the order to continue and reject the application simply on the ground of delay unless there are very extraordinary reasons to justify such rejection”.

Hence in the afore said legal and factual matrix this Court is of the view that the said impugned orders of the Learned High Court Judge and the order of the Learned Magistrate should be set aside forthwith.

Accordingly Petitioner’s application is allowed. We order no costs.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**