

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

In the matter of an application in
terms of Article 140 of the
Constitution seeking mandate in the
nature of Certiorari together with
Section 7 of the High Court of the
Provinces (Special Provisions) Act
No. 19 of 1999.

**CA (PHC) 209/05
Writ Application No. 50/2003
High Court of Anuradhapura.**

Chandrani Sisiralatha,
No. 05,
Public Market Cross Road,
Anuradhapura.

Petitioner

VS.

1. Municipal Council,
Anuradhapura.
2. The Mayor,
Municipal Council,
Anuradhapura.
3. H.L. Caldera,
Member of the Municipal Council,
596/80, K.B. Ratnayake Mawatha,
Stall 50,
Anuradhapura.

Respondents.

AND

Chandrani Sisiralatha,
No.05, Public Market Cross Road,
Anuradhapura.

Petitioner – Appellant

VS

1. Municipal Council,
Anuradhapura.
2. The Mayor,
Municipal Council,
Anuradhapura.
3. H.L. Caldera,
Member of the Municipal
Council,
596/80, K.B. Ratnayake Mawatha,
Stall 50,
Anuradhapura.

Respondents – Respondents.

**BEFORE: W.M.M. Malinie Gunaratne, J. and
 P.R. Walgama, J.**

**COUNSEL: P. Karunaratne for the 1st and 2nd Respondent
 Appellant absent and unrepresented.**

Argued on : 11.06.2015

Decided on: 24.11.2015

Malinie Gunaratne, J.

The Appellant of this case filed an application in the High Court of Anuradhapura for the issuance of a Writ of Certiorari to quash the notice marked as P 11 to the Petition, sent to the Petitioner by the 2nd Respondent. The said notice had been sent by him under the Urban Development Authority Act No.41 of 1978 as amended by Act No. 4 of 1982 and Act No. 44 of 1984.

After considering the submissions made by both parties the learned High Court Judge dismissed the Appellant's application. Aggrieved by the said order the Appellant has appealed to this Court against the decision of the learned High Court Judge praying for annulling of the said order.

The case was scheduled for argument on 11.06.2015. Only the Counsel for the 1st and 2nd Respondents were present and the Appellant was absent and unrepresented on that day, although the Appellant had been represented by a Counsel previously. In the circumstances submissions were made on behalf of the 1st and 2nd Respondents only.

The Appellant had made the application to the High Court of Anuradhapura, for a Writ of Certiorari to quash the notice marked as P 11 to the Petition. She averred that the 2nd Respondent, acting in excess or abuse of his powers and motivated by political and other extraneous reasons, was taking steps to demolish her building.

The 1st and 2nd Respondents filing their objections had stated in their affidavit, that to remove the unauthorised buildings within the town limit of Anuradhapura, they have taken steps lawfully and legally in their official capacity.

Lord Justice Atkin in *R vs. The Electricity Commissioner* (1924) 1 KB 171 at 205, has given the circumstances in which a Writ of Certiorari will lie. It was held in that case “Where anybody or persons having legal authority to determine questions affecting the rights of subjects and having duty to act judicially, acts in excess of their legal authority, they are subject to the control”.

In the case of *Biso Menike Vs. C.R. De Alwis* (S.C. 59/61), Sharvananda J. (as he was then), stated, “a Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a writ of right or one issued as a matter of course”.

The exercise of this discretion by Court is governed by certain well accepted principles. The fundamental principal is that the rights of a person would have been affected by any decision or determination for the Court to consider.

It is relevant to note, that the facts emerged in this case do not show, that the 1st and 2nd Respondents have acted in excess of their legal authority affecting the rights of the Appellant. The Appellant has not submitted to Court or shown any illegality or procedural irregularity in sending the said notice marked as P 11.

Hence, I am of the view, that the 1st and 2nd Respondents have acted correctly and legally within their power and the Appellant is therefore not entitled for the reliefs prayed for in the Petition.

On perusal of the entirety of the Judgment of the learned High Court Judge, it is apparent that learned High Court Judge has taken into consideration the submissions made by both parties and has come to the

conclusion that the 1st and 2nd Respondents have the legal right to send the said notice marked as P 11 to the Petitioner and the availability of an alternative remedy precludes the Appellant from seeking relief by way of a prerogative writ.

Hence, I do not see any error in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

Accordingly, I see no basis to interfere with the Order made by the learned High Court Judge and affirm the Order dated 29.06.2005.

For the reasons stated above the appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed with costs.