

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

In the matter of an appeal against the order of the
Honorable High Court of Colombo dated
9/3/2005 in case No. HCRA 446/03.

W.A. Gunawardana,
Prosecuting Officer,
Dehiwala-Mt Lavinia Municipal Council,
Anagarika Dharmapala Mawatha,
Dehiwala.

CA (PHC) 88/2005
HC Colombo Case No. HCRA 446/03
M.C. Mt. Lavinia Case No. 58139

Applicant

Vs.

Kumarasiri Raveendra Kulatunga,
No. 10, Dhakshinarama Road,
Mt.Lavinia.

Respondent

And

Kumarasiri Raveendra Kulatunga,
No. 10, Dhakshinarama Road,
Mt.Lavinia.

Respondent-Petitioner

Vs.

W.A. Gunawardana,
Prosecuting Officer,
Dehiwala-Mt Lavinia Municipal Council,
Anagarika Dharmapala Mawatha,
Dehiwala

Applicant-Respondent

And now Between

Kumarasiri Raveendra Kulatunga,
No. 10, Dhakshinarama Road,
Mt.Lavinia.

**Respondent-Petitioner-
Appellant**

Vs.

W.A. Gunawardana,
Dammika Muthugala,
Prosecuting Officer,
Dehiwala-Mt Lavinia Municipal Council,
Anagarika Dharmapala Mawatha,
Dehiwala

**Substituted-Applicant-
Respondent-Respondent**

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : E. A. Liyanagama for the Applicant
Sulari Gamage for the Applicant-Respondent-Respondent**

Argued On : 20 /09 /2016

Written Submissions On : 20 /09 /2016

Decided on : 19 / 01 /2017

H. C. J. Madawala , J

The Respondent-Petitioner-Appellant preferred this appeal to set aside the order of the Learned High Court Judge of Colombo dated 9/3/2005 in case No HCRA 446/2003 and dismiss the order of the Learned Magistrate of Mt. Lavinia dated 7/11/2003 in case No 58139 and to declare that there is no unauthorized structure constructed by the Respondent-Petitioner-Appellant own legal rear space at premises No 10, Dakshinarama Road, Mt. Lavinia.

The Learned High Court Judge of Colombo by his order dated 9/3/2005 dismiss the application of revision of the order of the Learned Magistrate of Mt. Lavinia delivered on 7/11/2003 in case No 58139 filed by the Applicant-Respondent-Respondent on the ground that there is no exceptional circumstances have been pleaded by the Respondent-Petitioner-Appellant. The Respondent-Petitioner-Appellant has been charged by the application dated 25/01/2001 under the UDA Law Section 23(5) No 41 of 1978 and Section 28(a) (3) of the said Act by the Municipal Council of the Mt. Lavinia. The effect of the Respondent-Petitioner-Appellant has erected an unauthorized structure at No 10 Dhakshinarama Road, Mt. Lavinia. That this construction had been done in the legal rear space and that this structure has also been built on a part of premises No 12/2 Dhakkshinarama Road, Mt. Lavinia.

The Learned Hon Magistrate of Mt. Lavinia after perusing the sketches dated 3/5/2000 and 24/8/2003 both of which marked P1 of an alleged unauthorized structure has been satisfied with the contents of P1 and has made order that this structure depicted as P1 to be demolished.

The provisions of Section 23(5) of the UDA of Law 41 of 1978 stated as follows,

“The authority may delegate to any officer of a local authority, in consultation with that local authority, any of its powers, duties and functions relating to planning within any area declared to be a development area under section 3, and such officer shall exercise, perform or discharge any such power, duty or function so delegated, under the direction, supervision and control of the authority.”

It was submitted that the Respondent Petitioner Appellant that the application of the applicant dated 25/1/2001 is misconceived and urge to dismiss this application of the Applicant-Respondent-Respondent in limine as it is unlawful.

The Appellant had totally violated the Urban Development Authority regulations when he constructed a toilet in extent 4.10 Perches without obtaining permission from the Municipal Council. According to the Urban Development Authority Act and its regulators there should be a rear space 7 ½ feet in extent from the building to the boundary wall. The Appellant did not comply with the

said regulations as well as with the direction given by the notice and as such the Respondent filed this application in the Magistrate Court of Mt. Lavinia in terms of section 28(a) (3) of the Urban Development Authority Act No 41 of 1978 as amended by Act No 4 of 1982 and 44 of 1984 seeking authority of Court to demolish the said unauthorized construction.

Section 28 (3) (a) of the Urban Development Authority Act states as follows,

*“ 3(a) When any person has failed to comply with any requirement contained any written notice issued under sub section (1) within the time specified in the notice or within such extended time as may have been granted by the authority. The authority may be way of petition and affidavit apply to the Magistrate to make an order authorizing the authority to.....
(b) to demolish or alter any building or work”*

We find that the Learned Magistrate has gone outside a limited powers and had considered all the grounds set out by the Appellant and being satisfied that there are no merits in them has rejected them. The Appellant has been given an opportunity to show cause, but the Appellant has failed to show any valid reasons. On being aggrieved by the said order of the Learned Magistrate a revision application bearing No. HCRA 446/03 in the Provincial High Court of the Western Province Holden at Colombo has

been filed. Parties conceded to resolve the matter by way of written submissions. This revision application was dismissed by the Learned High Court Judge on the ground that there was no exceptional circumstances to invoke the revisionary jurisdiction. We are in agreement with the Learned High Court Judge and find that there has been no exceptional circumstances pleaded to invoke the revisionary jurisdiction. Hence we find that we do not have to look in to the merits of this appeal. Accordingly we affirm the judgment dated 9/3/2005 of the Learned High Court Judge and dismiss this Appeal without cost.

Judge of the Court of Appeal

L.T.B. Dehideniya, J

I agree.

Judge of the Court of Appeal