

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

Court of Appeal case no. CA/PHC/APN/37/2013

H.C. Kandy case no. CP/HCCA/Kan/ 27/2011/Writ

Mohamed Mukthar Mohamed Rains,
No. 54, Gampola Road, Nawalapitiya.

Petitioner Petitioner

Vs.

1. Commissioner of National Housing,
Central Province,
National Housing Department of Central
Province,
National Housing High Commission
Building, (1st Floor)
Yatinuwara Veediya, Kandy.
2. Casim MarikkarAhmad Hussain,
No.72, Ambagamuwa Road,
Nawalapitiya.

Respondent Respondent.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : M.C.M. Muneer for the Petitioner Petitioner.
: Suranga Wimalasena SSC for the 1st Respondent
Respondent.

: Murshid Maharoo with F.A. Mohamed for the 2nd
Respondent Respondent

Argued on : 23.1.2016

Written

submissions : Petitioner filed on 16.12.2016

Respondent not filed

Decided on : 13.02.2016

L.T.B. Dehideniya J.

The 2nd Respondent Respondent (the 2nd Respondent) presented an application to the 1st Respondent Respondent (the 1st Respondent) seeking permission to demolish the building where the Petitioner Petitioner (the Petitioner) was occupying as the tent and to redevelop the building under section 18A of the Rent Act as amended. After hearing both parties, the 1st Respondent made order allowing the application subject to depositing Rs. 443,500/= as 20% of the market value at the time of the application and Rs. 3,696/= as the rent for two years aggregating to a sum of Rs. 532,200/= to be withdrawn by the Petitioner as compensation.

Being dissatisfied with the order, the Petitioner filed an application for a mandate in the nature of a writ of certiorari in the High Court of Kandy. The learned High Court Judge after hearing both parties dismissed the application. This revision application is against the said order.

The 2nd Respondent raised preliminary objections to this application on the basis that there is an unexplained delay and no

exceptional circumstances. Further in his objection he submitted that the Petitioner has not disclosed all material facts.

The petitioner's application for a writ of certiorari in the High Court Kandy was dismissed on 13.07.2012. The Petitioner filed notice of appeal 26.07.2012 but did not file the petition of appeal and not prosecuted the appeal. Since the 2nd Respondent has deposited the money with the 1st Respondent to be paid to the Petitioner and was informed by the 1st Respondent to vacate the premises but being failed to do so, the 2nd Respondent filed action in the District Court to eject the Petitioner. The order nisi was served on the Petitioner and on 20.02 2013 he appeared in the District Court and obtained a date to file objections. This revision application was filed on 21.03.2013.

From the date of the order of the High Court, there is a delay of 09 months in filing this revision application. The Petitioner's explanation for the delay is that he has fallen ill. He tendered a medical certificate marked A5 issued by Dr. Kamal Abdul Naser MBBS, MD, MRCP(UK), MRCPS(Glasg) Consultant Physician of Peradeniya Teaching Hospital that the Petitioner has showed features of depression and he improved with antidepressants. The Doctor's opinion is that the Petitioner could not have attended to his normal duties due to the illness during the period from 7th August till mid September 2012. This explains the delay till mid September, but there is a further delay of about 6 months without any explanation. The Petitioner knowing that he could not proceed the appeal, he should have taken prompt action to institute the revision application but has neglected to do so. The only conclusion that the Court can come in to is that the Petitioner rouse from his deep sleep after serving the order nisi in the case filed against for ejectment and filed this revision application. Inordinate delay is fatal for a revision application. H.

A. M. Cassim v. Government Agent Batticaloa 69 NLR 403 is an application in revision filed on 29th July, 1966 to revise the order made by the Magistrate on the 20th April, 1964. It has been held in this case that *the applications of this nature must be made promptly if they are to be entertained by this Court. It must fail for that reason alone.*

The Petitioner's main argument is that the plan presented to the 1st Respondent by the 2nd Respondent in the application under section 18A is not for a new construction but only for an alteration and therefore the 1st Respondent should not have allowed the application. This objection has been taken before the 1st Respondent at the inquiry and after hearing both parties on the issue, the 1st Respondent has come to the conclusion that even though the heading of the plan marked Q8 is "alteration", it is for a redevelopment. This decision contains in the document marked 2R1 filed with the objections of the 2nd Respondent. The Petitioner has not disclosed the fact that the 1st Respondent has inquired into the issue of the heading of the plan and made the decision on it. The 1st Respondent had offered a hearing to both parties before coming to this conclusion. She has acted within the law.

The heading of the plan is not the material point; it is the content of it. The plan shows that how to construct the foundation, the columns, and the concrete slabs etc. The first item of the attached estimate to the plan is the cost of demolition of the existing brick wall. The demolition of the existing walls and constructing from the foundation is a redevelopment. The decision of the 1st Respondent that the plan marked Q8 is for a redevelopment is well considered correct decision.

The learned Counsel for the Petitioner made a lengthy submission that the learned High Court Judge has failed to consider the written submissions of the Petitioner because the Registrar of the High Court has

not filed the written submissions in to the file of record due to not tendering a motion with the written submissions. Tendering written submissions without a motion is not sufficient. There must be an application by way of a motion to file the written submissions in to the file of record. Without that application the document tendered will be filed in a common file. The negligence of the Counsel should not be directed towards the Registrar of the Court.

It has been held in the case of M. A. Don Lewis, v. D. W. S. Dissanayake and others 70 NLR 8 where the application to intervene was dismissed by the District Court the petitioner did nothing for 8 months *“that it was not the function of the Supreme Court, in the exercise of the jurisdiction now invoked, to relieve parties of the consequences of their own folly, negligence and laches. The maxim vigilantibus, non dormientibus, jura subvention provided a sufficient answer to the petitioner's application. Further, the petitioner did not display the honesty and frankness expected of a person seeking the extraordinary powers of the Court.”*

Under these circumstances, I see no reason to interfere with the finding of the learned High Court Judge.

Accordingly I dismiss the application subject to costs fixed at Rs. 15,000/=

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal