

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

In the matter of an Appeal in terms of Article 154P of
the Constitution of the Democratic Socialist Republic
of Sri Lanka

Court of Appeal case no. CA/PHC/140/2004

H.C. Colombo case no. 1469/99

M.C. Maligakanda case no. 46103

Sisira Poson Nanayakkara,
Colombo Municipal Council,
Colombo 07

Applicant Petitioner

Vs.

H.M.A.Piyasena,
No. 54/14, Sri Dharmarama Road,
Colombo 09.

Respondent.

AND

H.M.A.Piyasena

Respondent Petitioner

Vs.

Sisira Poson Nanayakkara

Applicant Petitioner Respondent

AND NOW

H.M.A.Piyasena

Respondent Petitioner Appellant

Vs.

Sisira Poson Nanayakkara

Applicant Petitioner Respondent

Respondent

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Anil Silva PC with Sandamal Rajapakshe for the Respondent
Petitioner Appellant.

: Ranil Samarasooriya with Mangala Ranasinghe for the
Applicant Petitioner Respondent.

Argued on : Agreed to decide on written submissions

Written submissions filed on: Not Filed

Decided on : 05.04.2017

L.T.B. Dehideniya J.

This is an appeal from High Court of Colombo.

The Applicant Petitioner Respondent Respondent (hereinafter sometimes called and referred to as the respondent) as an officer of the Colombo Municipal Council filed an application in the Magistrate Court Maligakanda seeking for an order to demolish the unauthorized construction done by the Respondent Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant). The Appellant admitted that the construction was unauthorized and the Court allowed time to regularize or to remove the unauthorized part of the construction. On failure to do so the Court issued the demolition order.

The Appellant moved in revision against this order in the High Court of Colombo without success. This appeal is from the order of the High Court.

The parties being agreed to dispose the argument by way of written submissions, were directed to file the same on or before the 17th of March, but none of them have filed their written submissions leaving the Court to decide on the available material on record.

The main argument of the appellant in the petition of appeal is that the Colombo Municipal Council does not have the authority to institute legal action against an unauthorized construction.

Section 23(5) of the Urban Development Authority Act empowers the Authority to delegate its powers to an officer of a local authority. The Respondent in his application presented to the Magistrate Court has stated that the power has been so delegated.

The appellant in the Magistrate Court admitted that the construction was unauthorized and obtained time to regularize the same. He did not question the authority of the Respondent to institute action. After submitting to the jurisdiction now he cannot question the authority of the prosecutor.

I see no reason to interfere with the finding of the learned High Court Judge. Accordingly the appeal is dismissed without costs.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal