

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

In the matter of an Appeal against  
judgment of Provincial High Court  
exercising its revisionary jurisdiction.

C A (PHC) / 175 / 2012

Provincial High Court of

Southern Province (Galle)

Case No. REV/ APN/ No. 764 / 2010

Magistrate's Court Galle

Case No. 5548

Chairman,

Sarvodaya Sramadana Samithiya,

Kirihandigoda,

Hikkaduwa.

**RESPONDENT - PETITIONER -**  
**APPELLANT**

-Vs-

Urban Development Authority,

Sethsripaya,

Sri Jayawardhanapura.

Kotte,

Battaramulla.

**PETITIONER - RESPONDENT -**  
**RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; S A D S suraweera with P Raveendiran for the Respondent -  
Petitioner - Appellant.

Mathri Amerasinghe SC for the Petitioner – Respondent - Respondent

Decided on : 2017 - 10 - 25

### JUDGMENT

## **P Padman Surasena J**

Learned counsel for both the Parties, when this case came up on 2017-08-02 before this Court, agreed to have this case disposed of, by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the contents of their written submissions. Therefore, this judgment would be based on the material adduced by parties in their pleadings and their written submissions.

The Petitioner - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had issued a notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 4 of the Uburn Development Authority Law No. 41 of

1978 as amended by Act No. 4 of 1982 and Act No. 44 of 1984 (hereinafter sometimes referred to as the UDA Act).

As the Appellant had failed to comply with the directions issued on him by the said notice, the Respondent had thereafter made an application in the Magistrate's Court of Galle under section 28 A (3) of the UDA Act seeking a mandatory order to demolish the building allegedly constructed unlawfully by the Appellant.

Learned Magistrate having afforded an opportunity for the Appellant to show cause, had after an inquiry, pronounced the order dated 2010-09-16 granting authority to the Respondent under section 28 A (3) to demolish the said unlawful construction.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had made a revision application to the High Court of Galle.

The High Court of Galle after hearing parties, had by its judgment dated 2012-11-29 had proceeded to dismiss the said revision application affirming the learned Magistrate's order.

It is against that judgment that the Appellant has filed this appeal in this Court.

Learned counsel for the Appellant has advanced two arguments in the written submissions he had filed. They are as follows;

- i. that the Appellant is entitled to challenge the quit notice issued upon him
- ii. that the Provincial High Court erred when it held that no exceptional circumstances had been placed before it by the Appellant.

At the outset, it must be stressed here that in this case there is no quit notice issued on the Appellant by the Respondent. Thus, it is an irrelevant argument and the said argument has no application to the instant case.

Perusal of the judgment of the Provincial High Court shows that the absence of exceptional circumstances is not the only ground upon the said revision application had been refused. Indeed, reading the said judgment as a whole, makes it clear that the learned provincial High Court Judge had refused the said application because he had found no merit in the said application.

The Appellant has not established that he had not contravened the relevant provisions of UDA Act as amended. Indeed the written submissions filed on behalf of the Appellant is silent on that issue.

For the foregoing reasons, this Court is of the view that there is no merit in this appeal. Therefore this Court decides to dismiss this appeal with costs.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**