

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

In the matter of an Application for
revision under Constitution 138 and
145 of the Constitution from an order
of High Court of the Western
Province Holden at Gampaha.

01. Nakandalage Don Chandra Jayanthi,
No.220/2, Pahala Karagahamuna,
Kadawatha.
02. Sudath Janaka Indra Kumara,
No. 219/4, Pahala Karagahamuna,
Kadawatha.

RESPONDENT-PETITIONER-
APPELLANTS

C.A.(PHC) No. 11/2013

PHC Gampaha No. 31/2008(REV)

Vs.

Urban Development Authority,
No.27, D.R. Wijewardhana Mw.,
Colombo 10
Presently Sethsiripaya
Sri Jayawardhanapura, Kotte,
Battaramulla.

PETITIONER-RESPONDENT-
RESPONDENT.

BEFORE : JANAK DE SILVA, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Sumith Senanayake with H.A.P. Rashmika for
the Respondent-Petitioner-Appellants.
Sumathi Dharmawardane S.D.S.G. for the
Petitioner-Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 04.06.2018 (by the respondent)
26.06.2018 (by the appellants)

DECIDED ON : 13th July, 2018

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellants (hereinafter referred to as the "Appellants") invokes appellate jurisdiction of this Court to set aside the order of the Provincial High Court holden in Gampaha by which their revision application was dismissed. With the revision application, the Appellants sought to set aside the order of demolition issued by the Magistrate's Court of Gampaha on an application made by the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent")

under Section 28A(3) of the Urban Development Authority Act No. 41 of 1978 as amended.

With the application filed before the Magistrate's Court, the Respondent sought an order of Court to demolish parapet walls constructed by the Appellants obstructing road access to premises bearing assessment No. 219/3A. This construction has been carried out by the Appellants without any authority by the Urban Development Authority. A sketch showing the obstruction to road access is annexed to the application marked as P1. In the said application it is stated that the Appellants were notified by registered post.

Upon an application made by the Respondent, the Magistrate's Court has issued notices on the Appellants and since they failed to appear before Court, a warrant was also issued. On 31.07.2008, the Magistrate's Court issued an order of demolition of the specified unauthorized construction in the absence of the Appellants. On 21.08.2008, the Fiscal of Court reported that he has demolished certain parts of the unauthorized construction but allowed certain parts to remain as its removal could damage the buildings adjacent to it.

Thereafter, the Appellants have moved in revision and obtained interim relief by staying the continuation of demolition activities. After an inquiry, the Provincial High Court made order dismissing the Appellant's

petition on the basis that they failed to satisfy Court that there are exceptional circumstances to invoke its revisionary jurisdiction.

Being aggrieved by the said order of dismissal, the Appellants lodged an appeal addressed to this Court.

At the hearing of the appeal on 4.06.2018, parties invited this Court to pronounce its judgment on written submissions.

The Appellant's grievance against the order of dismissal is confined to the failure of the Provincial High Court to consider the fact that the demolition order was issued in respect of premises bearing assessment No. 219/3A whereas the demolition was carried out in respect of premises Nos. 220/2 and 219/4. It is contended by the Appellants that this disparity should have been accepted as an exceptional circumstance by the Provincial High Court.

This submission made by the Appellants is based on a mistaken notion of the factual position. It is clear from the application and the annexed sketch tendered to the Magistrate's Court, that the parapet walls that were constructed on either side of the road access to the premises bearing No. 219/3A. Hence the reference to that assessment number in the application. When the order of demolition is carried out by demolishing the two parapet walls, the Fiscal has demolished the parapet walls

constructed on the boundary of premises bearing assessment Nos. 220/2 and 219/4.

If this submission is accepted, then the order of demolition was issued by the Court to demolish the premises bearing assessment No. 219/3A. The demolition order was issued by the Magistrate's Court is, in effect, to clear the obstruction to road access of premises bearing No. 219/3A and not to demolish that premises.

The Respondent instituted proceedings under Section 28A(3) of the Urban Development Authority Act No. 41 of 1978 upon a complaint by the owner of premises bearing No. 219/3A. The 1st and 2nd Appellants occupy the premises bearing assessment Nos. 220/2 and 219/4 respectively. Therefore, when the demolition order is carried out clearing the obstruction to premises at No. 219/3A, it is inevitable that the parapet walls of premises Nos. 220/2 and 219/4 are demolished. However, that fact could not be stretched to denote a position that the fiscal was only authorized to demolish premises No. 219/3A but instead of the said specific order, he carried out demolition of premises bearing Nos. 220/2 and 219/4.

In view of this reasoning, it is our considered view that the appeal of the Appellant is devoid of any merit and ought to be dismissed.

Accordingly, the order of the Provincial High Court dated 08.02.2013 is hereby affirmed.

The appeal of the Appellants is dismissed.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL