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

The Petition of Appeal against the order dated 22nd February 2000 of the learned High Court Judge of Vavuniya in Case No.HC/V/Rev/07/09 under the Provision of the Criminal Procedure Code and the High Court of Provinces (Special Provisions)Act No.19 of 1990

1. Ranasinghe Arachchilage Wilson,
2. Senerath Arachchilage Chandrasekera,
3. Mahadurage Jayantha Pathmalal
4. Bala Hamilage Ariyathunga
5. Ranasinghe Arachcilage Nelson Yasaratne
6. Hettiarachchilage Karunasekera,
7. Arachchilage Don Aronge Priyantha Kumara Seneviratne
8. Arachchilage Don Aronge Dharmapala Seneviratne.

All of ,
No.19, Y.M.B.A. Shopping Complex,
Kandy Road, Vavuniya.

Petitioner-Appellants

C.A.(PHC) No. 74/2000
H.C. Vavuniya Revision No. HCV/Rev/07/99
M. C. Vavuniya No. 2890

Vs.

1. Rajah Thanigasalam
   The Secretary,
   Urban Council,
   Vavuniya.

Petitioner-1st Respondent-1st Respondent

Welupillei Wasantha Kumar,
The Secretary, Urban Council,
Vavuniya
Substituted Petitioner-1st Respondent-1stRespondent

2. Rev. Siyambalagasweva Wimalasara Thero,
President,
Y.M.B.A. Kandy Road, Vavuniya.
Respondent-2nd Respondent-2nd Respondent

2a. D.M.R.P. Dassanayake,
President,
Y.M.B.A. Kandy Road, Vavuniya.
Substituted Respondent-2nd Respondent-2nd Respondent

2b. Madawalayalage Susitha Janaka,
President,
Y.M.B.A. Kandy Road, Vavuniya.
Substituted Respondent-2nd Respondent-2nd Respondent

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

COUNSEL : R. Chula Bandara for the 1st to 8th Petitioner-Appellants.
Shiral Lakthilaka instructed by N.J.P. Silva for the Substituted Respondent-2nd Respondent-2nd Respondent.

WRITTEN SUBMISSIONS
TENDERED ON : 13th July,2018 (Both parties)

DECICED ON : 24th July, 2018

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ACHALA WENGAPPULI, J.

This is an appeal lodged by the 1st to 8th Petitioner-Appellants (hereinafter referred to as the "Appellants") challenging the validity of the order of the Provincial High Court holden in Vavunia by which their application for revision has been dismissed.

At the hearing of this appeal on 22nd June 2018, the parties invited this Court to pronounce judgment on the written submissions.

In instituting proceedings before the Magistrate's Court of Vavunia, by the Applicant-1st Respondent-Respondent (hereinafter referred to as the "1st Respondent") under Section 28A(3)(a) of the Urban Development Law No. 41 of 1978 as amended, against the substituted Respondent-2nd Respondent-2nd Respondent (hereinafter referred to as the "2nd Respondent"). Thereafter, upon an application for transfer, this Court has transferred the said case to the Magistrate's Court of Anuradhapura.

After an inquiry, the Magistrate's Court, by its order dated 19.05.1999 directed the 2nd Respondent to cease development activities and to eject all tenants (the 1st to 8th Appellants) from the premises described in

the schedule to the application. The Court further directed not to demolish the building already erected.

It is against this order, the 1st to 8th Appellants have invoked revisionary jurisdiction to the Provincial High Court. The Appellants sought to revise the said order on several grounds including that the said order was made against the Appellants without giving them an opportunity to present their case.

In the impugned order of the Provincial High Court, the issue raised by the Appellants concerning that they were not given an opportunity to be heard before an adverse order was made against them, was extensively dealt with. The Provincial High Court has concluded that it is the 2nd Respondent "executed (put into effect) the development activity (the change in the use of the land) or the 2nd Respondent has caused (induced by giving the premises) the 1st to 8th Respondents to execute the development activity. Therefore, according to law the notice is to be given to the 2nd Respondent and not the tenants the 1st to 8th Respondents." The Appellants were the Petitioners before the Provincial High Court, but was mistakenly referred to as the Respondents.

In support of their appeal, the Appellants contended before this Court that the Provincial High Court has held that the "person" to whom the 1st Respondent should send notice is the 2nd Respondent and therefore

"in the absence of any interpretation in the UDA Law, the term "person" contained therein warrants an interpretation to ascertain the class of people that said provisions apply to."

In addition, the Appellants submit that the Provincial High Court, in affirming the order of the Magistrate's Court to eject the Appellants without giving a hearing to them, fallen into error.

The 2nd Respondent, in his submissions claimed that the Appellants have no *locus standi* in respect of the matter before the Magistrate's Court on the basis that under the UDA Law, primary responsibility lies on the owner of the premises, who has to comply with the conditions of the development permit and therefore, there is no provisions under Section 28A(1), for a third party to get notice. According to the 2nd Respondent, the only person who should be noticed is the person who executed the development permit.

In this context, it is appropriate for this Court to consider the factual background as revealed from the proceedings, in order to satisfy itself as to the legality of the impugned order of the Provincial High Court.

There is no dispute that the 1st Respondent has given a development permit to the 2nd Respondent to construct a pilgrim's rest in the land described in the application to the Magistrate's Court. Due to the situation

in the area, it was later decided to utilize the building as a shopping complex and the Appellants were offered tenancy of the building upon payment of certain amount of monies. Then the 1st Respondent initiated the legal proceedings against the 2nd Respondent.

The contention of the Appellants is based on the provisions of Section 28A(1) of the UDA Law. The relevant part of the said Section reads thus;

> *"Where in a development area, any development activity is commenced, continued, resumed or completed without a permit or contrary to any term or condition set out in the permit issued in respect of such development activity, the Authority may, in addition to any other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, on or before such day as shall be specified in such notice, ...". (emphasis added)*

The UDA Law also has defined what it meant by "development activity" in Section 29. According to the definition, the term development activity "means the parcelling or sub division of any land, the erection or re-erection of structures and the construction of works thereon, the carrying out of building, engineering and other operations on, over or under such land and any change in the use for which the land or any structure thereof is used, other than the use of any land for purposes of

agriculture, horticulture and the use of any land within the curtilage of a dwelling house, for any purpose incidental to the enjoyment of a dwelling house, not involved in any building operation that would require the submission of a new building plan; ... "

In effect, the word "person" should be construed with a view to identify the natural or a corporate personality who could clearly be attributed with responsibility for executing or has executed or has caused such development activity to be executed. This construction of the term "person" should be in line with the statutory provisions contained in Section 28A(2). In this sub section, it is stated that "it shall be the duty of such person on whom a notice is issued under subsection (1) to comply with the time specified in such a notice or within such extended time ...". This is a clear indication of the Legislative intent that the notice should be given to the person who has the capacity to comply with such notice.

He should have the necessary capacity to carry out the what has been laid down in Section28A (a), (b) and (c) as the situation demands. Section 28A(1)(c)(ii) involves a situation where the UDA would issue written notice to "demolish or alter any building or work". Then, in such an eventuality the "person" to whom the notice is issued should have the capacity to comply with it. A party who has no capacity to comply with such a notice, could therefore cannot be considered as a "person" who is responsible of executing or has executed or has caused such development activity to be executed. If that person could not be considered as the

"person" who is responsible of executing or has executed or has caused such development activity to be executed, then serving notice on him to comply with what he is incapable of would obviously be a futile exercise.

In the preamble of UDA Law, it is stated that the Authority is to "promote integrated planning and implementation of economic, social and physical development ..." in the designated areas. Thus, it is evident from the examination of the statutory provisions of the UDA Law, that the regulated environment under it, is meant for the common good of the community and if the UDA to effectively implement its mandate, then the word "person" in Section 28A had to be interpreted, to arrest any acts of transgressions by individual members whether natural or corporate, of such a community.

There is no contest that the Appellants are tenants of the 2nd Respondent. As observed by the Provincial High Court in its order that the "... 2nd Respondent's Counsel submitted that the said premises was constructed as a Pilgrims Rest, due to the situation prevailed at that time in Vavunia there were no pilgrims to occupy the said building. Therefore, the 2nd Respondent, the President of Y.M.B.A. Vavunia, rented out the said premises which belonged to the Y.M.B.A.Vavunia to the 1st to 8th Respondents. The Petitioners and Respondents admitted that the permit is to build a pilgrims rest and the building that it built now used as a shopping complex."This factual background was not contested by any party before us.

This portion of the order places each party to the appeal before us in the correct perspective. Obviously the Appellants could not be considered as the "person" on whom notice should be issued as their role could not be identified with the activities specified in the phrase in Section 28A(1). They became tenants only after the 2nd Respondent has carried out the development activity. In these circumstances, the Appellants are not "... the person involved with the executing or has executed or has caused such development activity to be executed, ...".

In view of the foregoing reasons, we are of the firm view that the appeal of the Appellant are devoid of merit and owing to that reason it ought to be dismissed.

Therefore, we affirm the orders of the Magistrate's Court of Anuradhapura on 19.05.1999 and Provincial High Court on 22.02.2000.

The appeal of the Appellants is accordingly dismissed. Considering the circumstances of the Appellants, no cost is ordered.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL