

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) / 02 / 2007

Provincial High Court of

Southern Province (Balapitiya)

Case No. 650 Revision

Magistrate's Court Balapitiya

Case No. 60161

P A Chrishanthi Dilpa Jeewanthi,

226/2,

Sri Rathanajothi Mawatha,

Kudawaskaduwa,

Waskaduwa.

RESPONDENT - PETITIONER -

APPELLANT

Vs.

Chairman,

Urban Council,

Ambalangoda.

COMPLAINANT - RESPONDENT -

RESPONDENT

Before: P. Padman Surasena J (P / C A)

K K Wickremasinghe J

Counsel; L M C Bandara with Namali Perera and E S Minoly De Zoysa for
the Respondent - Petitioner - Appellant.

Nalini Arumapperuma for the Complainant - Respondent -
Respondent.

Argued on: 2017-12-06.

Decided on : 2018 - 08 - 09

JUDGMENT

P Padman Surasena J

The Chairman Urban Council Ambalangoda who is the Complainant -
Respondent - Respondent (hereinafter sometimes referred to as the
Respondent) has made an application to the Magistrate's Court of

Balapitiya seeking a mandatory order from the learned Magistrate under section 28 A (3) of the Urban Development Law (hereinafter sometimes referred to as UDA Law), to demolish some unauthorized constructions.

This was pursuant to the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) defaulting the compliance with a notice issued under section 28 A (1) of the UDA Law.

Perusal of the journal entries of the MC record shows that the Appellant had appeared before the Magistrate's Court and moved for time to show cause against the demolition of the unlawful construction. This application has been made on 3rd November 2004.

The Appellant has obtained several other dates also in the pretext of negotiating with the Respondent about this matter.

The Appellant appears to have made an application on the 2nd March 2005 seeking permission of the Magistrate to lead oral evidence.

The Magistrate has refused the said application. It is that order that is being canvassed in this appeal by the Appellant.

This Court observes that all what the Appellant need to do, to satisfy the learned Magistrate, is to produce the permit he is required to obtain from

the UDA. He cannot achieve this by leading oral evidence before Court.

This is because section 64 of the Evidence Ordinance states that the contents of documents must be proved by primary evidence, except in the cases the Evidence Ordinance has specifically mentioned. The permit issued by the UDA as per the provisions of the UDA Law is a written permit. Therefore, it is a document. Thus, that document itself must be produced before Court to satisfy Court that the Appellant has a valid permit for the alleged unlawful constructions.

It can be clearly seen that the Appellant without making any attempt to do the above, has engaged in an attempt of jeopardizing the due process of law by making frivolous applications. The Appellant does not state any legal basis as to what has necessitated his seeking learned Magistrate's permission to lead oral evidence.

Learned Provincial High Court Judge, had pronounced his order dated 2007-02-07 dismissing the revision application filed by the Appellant with costs.

This Court has no legal basis to set aside the order of the learned Provincial High Court Judge or the learned Magistrate.

In these circumstances, it is the view of this Court that there is no merit in this appeal.

Therefore, this Court decides to dismiss this appeal with costs fixed at Rs. 50,000/= payable to the state by the Appellant.

Appeal is dismissed with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL