

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

Mohamad Mohamed Thasim,
No. 48/1, Jeelani Road,
Dharga Town.
Petitioner

CASE NO: CA/WRIT/275/2015

Vs.

1. The Secretary,
Beruwala Pradeshiya Sabha,
Aluthgama.
 2. The Duty Officer/Officer in Charge
Chairman,
Beruwala Pradeshiya Sabha-Sub Office,
Dharga Town.
 3. The Attorney-General,
Attorney-General's Department,
Colombo 12.
- Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Nimal Jayasinghe for the Petitioner.

P.S. Amarasinghe for the 1st and 2nd
Respondents.

Decided on: 10.12.2018

Samayawardhena, J.

The petitioner filed this application against the 1st and 2nd respondents—the Secretary and the Officer in Charge of the Beruwala Pradeshiya Sabha—seeking to quash P10 by way of a writ of certiorari and to compel the respondents to approve Plan No.246 by way of a writ of mandamus.

Plan No.246 is a Final Partition Plan prepared after an appeal Judgment of this Court.

By P10 the 2nd respondent has refused to approve that Plan on two grounds: (a) there is no turning circle on the road; and (b) the Plan is not in conformity with the regulations made under the Urban Development Authority Act.

It is not clear which end of the road, the respondents expect to have a turning circle. When one looks at Plan No.246, definitely it cannot be at the beginning of the Jailani Road. Then from the other end, there is no necessity to have a turning circle as this road is to be used as a common road only to the two Lots marked A and B.

The Plan is not in conformity with the regulations made under the Urban Development Authority Act is a general statement. The respondents shall be specific on that point. The respondents in their objections stating that “*The petitioner is presumed to know the relevant regulations of the Urban Development Authority which have been published in the Government Gazette*”, has annexed a copy of the Gazette running into 18 pages. Even at this stage both the petitioner and the Court are unaware which regulation or regulations of the said Gazette, the Plan is not in conformity with.

The respondents have in the objections taken up the position that the decision in P10 has been taken not by the respondents, but by the Planning Committee of the Beruwala Pradeshiya Sabha comprising of seven members, and without them being made parties, this application is not maintainable.

When the application cannot be defended on merits, it is usual to cling on high technical objections. I am firmly of the view that cases must, as far as possible, be disposed of on merits and not on high technical grounds. These are Courts of Justice and not Academies of Law where high-flown theories are taught.¹ In this regard, I fully endorse the following observations made by Justice Wigneswaran in *Senanayake v. Siriwardene*:²

“Courts are fast making use of technical grounds and traversing of procedural guidelines to dispose of cases without reaching out to the core of the matters in issue and ascertain the truth to bring justice to the litigants. This tendency is most unfortunate. It could boomerang on the judiciary as well as the existing judicial system.”

P10 has been signed by the 2nd respondent. It has not been signed on behalf of or by order of the Planning Committee of the Beruwala Pradeshiya Sabha.

In any event, the Secretary of the Pradeshiya Sabha, who is the chief administrative officer according to section 9 of the Pradeshiya Sabhas Act, No.15 of 1987, as amended, has been

¹ *Vellupillai v. The Chairman, Urban District Council* (1936) 39 NLR 464 at 465, *W.M. Mendis & Co. v. Excise Commissioner* [1999] 1 Sri LR 351 at 354-355

² [2001] 2 Sri LR 371 at 375

made a party. That is sufficient compliance for the present purpose.

I reject that technical objection.

Having rejected that technical objection, I must also state the following. P10 is dated 21.01.2015. No submissions have been made by either party on the question whether the Pradeshiya Shabha was in operation when this application was filed before this Court on 30.06.2015. It appears to me (subject to correction) that the Pradeshiya Shabha ceased to exist by operation of law as the term of the Pradeshiya Shabhas expired on 15.05.2015. If that is correct, in terms of section 9(3) of the Act, it was the duty of the 1st respondent-Secretary to discharge all the duties on behalf of the Pradeshiya Sabha.

I quash P10 by certiorari and compel the respondents by mandamus to approve the Plan without further ado.

Application is allowed with costs.

Judge of the Court of Appeal