

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

Taj Divisional Development
Co-operative Society,
Downpatna Road,
Diyathalawa
Respondent-Petitioner-Appellant

C.A.(PHC)Appeal No. 01/2014

P.H.C. Badulla Case No.12/2013(Rev)

M.C. Bandarawela Case No. 42518

Vs.

Secretary,
Haputale Pradeshiya Sabha
Diyathalawa
Applicant -Respondent-
Respondent

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

COUNSEL : Kapila Suriyaarachchi with Dilini
Wijesekera for the Respondent-Petitioner-
Appellant
Malaka Herath instructed by Sudath
Jayawardhana for the Applicant-
Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 12-09-2018(by the Appellant)
21-02-2019 (by the Respondent)

DECIDED ON : 01st March, 2019

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant Co-operative Society titled "*Diyatalawa Taj Regional Development Co-operative Society limited*" (hereinafter referred to as the "Appellant") has sought intervention of this Court, invoking its appellate jurisdiction to set aside an order of the Provincial High Court of the *Uva* Province holden in *Badulla* by which its application for revision of an order of demolition made by the Magistrate's Court of *Bandarawela*, under Section 28A(5) of the Urban Development Authority Act No. 41 of 1978 as amended, was dismissed.

In his application before the Magistrate's Court (Case No. 42518), the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") sought an order of Court seeking demolition of the

unauthorised structures erected by the Appellant and also to recover the expenses he would incur in carrying out the demolition. It was stated by the Respondent in the said application that the Appellant has caused illegal construction as shown in the sketch annexed to it. The Appellant claimed that it has a valid building plan, approved by the Chairman of the *Haputale* Pradeshiya Sabha before it commenced any development activity.

After an inquiry, the Magistrate's Court made its order authorising the demolition of the unauthorised construction and sanctioned the Respondent's entitlement to the recovery of expenses of demolition.

Thereafter the Appellant sought to challenge the said order by invoking revisionary jurisdiction of the Provincial High Court in case No. PHC *Badulla* 12/2013. The Provincial High Court, in its impugned order has considered the claim of the Appellant that it had an approved plan for development activity and the validity of the conclusion reached by Magistrate's Court as to its genuineness. Having satisfied that there were no exceptional circumstances warranting its intervention, the Provincial High Court then decided to dismiss the application of the Appellant.

Being aggrieved by the said orders, the Appellant seeks intervention of this Court to set them aside on the grounds of that the Provincial High Court misdirected itself in refusing its application upon an erroneous conclusion reached in relation to the acceptability of the approval that had been granted by the Chairman of the *Haputale* Pradeshiya Sabha on 03.01.2011.

It was contended by the Appellant that "... if the Respondent alleges that the signature to the plan was taken at the residence of the President of the

Pradeshiya Sabha the burden lies on the Respondent to prove such fact under Section 101 of the Evidence Ordinance. But not an iota of evidence was placed before the Court by the Respondent to prove the same." In these circumstances, the Appellant states that " ... it is very clear that the learned High Court Judge has misdirected himself by holding that no approval was given to construct the building."

It appears from the above quoted passage that the Appellant now seeks to reargue before this Court, the question whether there was an approved plan for the development activity in respect of which an order of demolition was issued or not.

In the application invoking revisionary jurisdiction of the Provincial High Court, the Appellant stated that the approved plan that had been tendered before the Magistrate's Court marked as "Annex 4", bears the signature and official seal of the Chairman of the *Haputale Pradeshiya Sabha* and is dated 03.01.2011. Therefore, the Appellant states that prima facie it is an authentic document and therefore, it was up to the Respondent to substantiate his allegation that it is a "*forged and a fraudulent document*".

The Respondent sought to counter this claim by stating in his objections that the Appellant has failed to pay the required fee to consider any plan for approval and the signature of the Chairman depicting the plan was obtained by deceitful means .

In dealing with this issue as to the validity of the plan relied upon by the Appellant to justify its development activity, the Provincial High Court has considered contents of a letter addressed to Provincial Secretary dated

27.09.2012. It is stated in the said letter the circumstances under which the Chairman of *Haputale Pradeshiya Sabha* has placed his signature and seal. The relevant portion is reproduced below;

“ 2011 ජනවාරි මස අප සමිතියේ - සභාපති සරත් කදුරුගමුව වන මා ද, භාණ්ඩාගාරික - කේ. සුමනාවතී මහත්මියද, සාමාජික - එස්. සිද්දික මහත්මිය, සර්ධාවතී මහත්මිය, අසංක සමරවීර මහතා, එස්. කරුණාවතී මහත්මිය, අජිත් කුමාර මහතා, එස්. එම්. වන්දුවතී ද සහ ධනුෂ්ක සමිත රණවිර යන අය සමග දියනාලාව රිගල් සිනමා හල අසල පිහිටි වයි. එම්. බාසුන්තැගේගේ නවාතැනේ සභාපති තුමා නවාතැන් ගෙන සිටින බව අපහට දැනගැනීමට ලැබීමෙන් පසු, අප සියලුම දෙනා උදය වරුවේ එම ස්ථානයට ගොස් සිටි අතර, සභාපති තුමාත් එම අවස්ථාවේදී එහි නොසිටි බැවින් අප සියලු දෙනා දහවල් වන තුරුම රැඳී සිටි අතර දහවල් 1.00 ට පමණ සභාපති තුමා සුදු පැහැති වැන් රථයකින් එම ස්ථානයට පැමිණි අතර ඉන් අනතුරුව අප දැක ප්‍රාදේශීය සභාවේ සේවකයකු වන බබ්. එම්. විමලරත්න මහතා එතුමා හමුවට එන්න කියා පැවසූ පසු අප එතුමන් හමුවීමට ගියෙමු. අනතුරුව අප බාර දී තිබූ ගොඩනැගිලි සැලැස්මක් සභාපති තුමා අනුමත කරමි යන රබර් මුද්‍රාව ගොඩනැගිලි සැලැස්මේ තබා එතුමාගේ අත්සන යෙදූ පසු, අනතුරුව මා විසින් රබර් මුද්‍රාවේ වර්ෂය 2000 සඳහන් වී ඇති බව පැවසූ පසු බිංදු දෙකට එතුමා එකේ ඉලක්කම් දෙකක් යොදා 2011 ලෙස සකසා අප වෙත ලබා දී 2011 වර්ෂයේ ප්‍රාදේශීය සභා මැතිවරණයෙන් පසු ගොඩ නැගිලි ඉදිකිරීම් කටයුතු ආරම්භ කරන ලෙස අප වෙත දන්වා සිටි අතර ඒ අනුව අප එකඟව සුභදව කතාබස් කරමින් ඉදිරි මැතිවරණය පිළිබඳව උදවු කිරීමට එකඟවී අප එම ස්ථානයෙන් පිටට ගියෙමු”.

Section 14(1) of the Pradeshiya Sabhas Act No. 1 of 1987 states that “all matters or questions authorised by this Act or by any other written law to be decided by a Pradeshiya Sabha shall be decided upon the majority of members present at any meeting” and Section 15 makes it mandatory for a Pradeshiya Sabha to maintain minutes of all proceedings,

decisions, orders and acts of such Sabha. The effect of these provisions is the decisions of a Pradeshiya Sabha must be taken by the majority of the people's representatives and should have a traceable record of the decision-making process.

When the Appellant Society itself described the circumstances under which the seal of approval was obtained for its proposed commercial building from the Chairman of the Pradeshiya Sabha, the Provincial High Court ought to take note of them. The Respondent's claim that the said "approved plan" is a fraudulent document receives legitimacy when the Appellant Society itself admitted that the plan was approved by the then Chairman on the verge of an election at a "බස් උන්නැහේගේ නවතැන" upon the understanding that the members of the Appellant society supports him at the next election. It is relevant to note the significance of his direction that the Appellant should commence construction only after the forthcoming elections, during the decision-making process in granting "approval" of the building plan. When the fact that it is the same Pradeshiya Sabha that now states that there was no prior approval granted by it for the construction undertaken by the Appellant society is considered by the Provincial High Court, it leads to the reasonable inference that the "seal of approval" given by the then Chairman on 03.01.2011 was not a decision of the *Haputale* Pradeshiya Sabha. Considered under the backdrop of these attendant circumstances, it is clear that the Appellant society had no valid approval for its plan in respect of the construction it had undertaken. Therefore the order issued by the Magistrate's Court under Section 28A(3) of the Urban Development Authority Act is in accordance with the applicable law. The Provincial

High Court has correctly held that the demolition order of the Magistrate's Court is legally valid.

It is our considered view that the appeal of the Appellant is devoid of any merit and ought to be dismissed upon that basis.

The order of dismissal made by the Provincial High Court is accordingly affirmed by this Court along with the order of the Magistrate's Court made under Section 28A(3) of the said Act.

The appeal of the Appellant society is dismissed with costs fixed at Rs. 50,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL