

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

In the matter of an Appeal against  
the judgment by the Provincial High  
Court Trincomalee in terms of Article  
No.138 & 139 of the Constitution of  
the Democratic Socialist of Sri Lanka.

C.A.(PHC)Appeal No. 71/2014

P.H.C. Trincomalee Case

No. 207/2010(Rev)

M.C. Trincomalee Case

No. 19726/209

Jayapalan Iruthayamarie  
No.1208/1, Palaiyoothu,  
Trincomalee.

Respondent-Petitioner-Appellant

Vs.

Urban Development Authority,  
"Sethsiripaya",  
Sri Jayawardenapura, Kotte,  
Battaraumlla.

Petitioner-Respondent- Respondent

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

COUNSEL : N. P. Ganeshwaran for the Respondent-  
Petitioner-Appellant  
Ishan Ratnapala SC for the Petitioner-  
Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 01-11-2018( by the respondent)

DECIDED ON : 01<sup>st</sup> March, 2019

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ACHALA WENGAPPULI, J.

The Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") made an application under Section 28A(3) of the Urban Development Authority Act No. 41 of 1978 seeking an order of demolition and his entitlement to recover the cost of demolition against the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") upon her failure to comply with a direction under Section 28A(1).

After an inquiry by the Magistrate's Court of *Trincomalee* into the said application under case No. 19726/S/2009, an order of demolition was issued on 19.04.2010, as prayed for by the Respondent. The Appellant

sought to set aside the said order by invoking revisionary jurisdiction of the Provincial High Court of the Eastern Province holden in *Trincomalee* under Case No. HCT/Rev/207/2010.

At the conclusion of the inquiry before the Provincial High Court, the Appellant's application was dismissed by the order dated 31.07.2014 after affirming the order of the Magistrate's Court.

Being aggrieved by the said order of dismissal, the Appellant now seeks to set it aside by invoking appellate jurisdiction of this Court.

The Appellant, having obtained her copy of the appeal brief upon noticed by this Court, was represented on the date of hearing of her appeal. Since the order of the Magistrate's Court was made in Tamil language, the Appellant was directed to provide an English translation, which she did on 09.10.2018, in compliance of the said direction of Court.

When this appeal was taken up for hearing on 12.12.2018, the parties indicated their willingness to dispose the matter on written submissions and the Appellant was directed to tender her written submissions on or before 31.01.2019 since the appeal was fixed for judgment today.

However, the Appellant thereafter opted not to file any written submissions in support of her appeal.

Nevertheless this Court would consider whether there is any merit in the appeal of the Appellant.

It appears that her position before the Provincial High Court is the Respondent has failed to annex the Gazette by which the development area of *Trincomalee* has been demarcated. Due to this failure it was

contended by the Appellant that the Respondent has failed to establish the property on which the disputed development work was carried out is in fact located within the development area of *Trincomalee*.

The Provincial High Court, having considered the complaint of the Appellant, taken note of the sketch by which the Respondent has clearly shown the illegal construction on the premises bearing assessment No. 1208/1, *Palaiyuthu, Trincomalee*, which was located within the development area and thereafter proceeded to dismiss the revision application. The Court ruled that the Magistrate's Court could take judicial notice of the Gazette by which the development area of *Trincomalee* was declared. In coming to the said conclusion, the Provincial High Court relied on the reasoning of the judgment in *Arumugam v Range Forest Office, Deniyaya* (1986) 2 Sri L.R. 398 where it was held that:-

*"... it is not necessary that notification should be tendered as exhibits in the case for the Court has to take judicial notice of them"*.

In fact, the Gazette No. 690/3 of 26.11.1991 by which the demarcation of the development area of *Trincomalee* was tendered to the Provincial High Court by the Respondent, annexed to his objections, marked as R4.

In view of the above considerations, we are of the opinion that the appeal of the Appellant is without any merit and therefore ought to be dismissed.

We affirm the orders of the Courts below and make further order dismissing the appeal of the Appellant with costs fixed at Rs. 25,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL