

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

1. The Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 7.
 2. Director Planning,
Colombo Municipal Council,
Town Hall,
Colombo 7.
 3. The Municipal Engineer,
Colombo Municipal Council,
Town Hall,
Colombo 7.
- Respondent-Appellants

CA CASE NO: CA (PHC) 36/2005

HC COLOMBO CASE NO: HC/WA/12/2000

Vs.

1. Gamage Herbert Hemachandra
Perera,
No.22/1, Sulaiman Terrace,
Colombo 5.
 2. Gananamallika Hunukumbura
Perera,
No.22/1, Sulaiman Terrace,
Colombo 5.
- Petitioner-Respondents

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Gamini Senanayake for the Appellant.
Nalin Ladduwahetti, P.C., for the Respondents.

Decided on: 18.07.2019

Mahinda Samayawardhena, J.

The Petitioner-Respondent (Petitioner) received the Notice marked P4 from the Respondent-Appellant, Colombo Municipal Council (CMC) asking the Petitioner to demolish the unauthorized addition made to the upstairs section of the condominium property within one week. Then the Petitioner made an application to the CMC to regularize the said unauthorized construction. The CMC sent P12 dated 05.03.1999 to inform the Petitioner their inability to process the said application as no consent of the ground floor owner of the said property has been obtained for that addition.

The Petitioner filed this application in the High Court seeking to quash P12 by way of writ of certiorari and compel the CMC to process his application to regularize the unauthorized construction by way of writ of mandamus.

The CMC in paragraph 19 of their statement of objections has stated that consent of the ground floor owner is a must in terms of by-law 2(dd) of the Second Schedule of the Apartment Ownership Law, No.11 of 1973, as amended by Apartment Ownership (Special Provisions) Act, No.4 of 1999.

It is significant to note that the Apartment Ownership (Special Provisions) Act, No.4 of 1999, by which the said by-law was introduced was certified by the Speaker on 10.03.1999. Hence it is illogical to say that P12 dated 05.03.1999 was based on the said by-law which became law on 10.03.1999.

Therefore the conclusion of the High Court that the writs prayed for shall be issued is correct.

The CMC has also taken up a jurisdictional objection in paragraph 21(f) of the statement of objections, which has been rejected by the High Court. The way it has been taken, it is clear that, the CMC was not very serious on the said jurisdictional objection. Otherwise they would have, I am certain, taken up that objection not in paragraph 21(f) of the objections, but in paragraph 1, if not by way of a motion, no sooner had they received notice of the application. By that paragraph the CMC says that the Urban Development Authority acting under section 23(5) of the Urban Development Authority Law, No.41 of 1978, as amended, has delegated its powers with regard to planning within the city of Colombo to the CMC by the document marked R2, and the CMC is therefore acting under the said delegated power, but the Urban Development Authority is not a devolved subject, and therefore High Court has no jurisdiction to hear the matter.

It is the submission of the learned counsel for the CMC that, the subject under consideration does not come under Provincial Council List of the Ninth Schedule to the Thirteenth Amendment to the Constitution, and it comes under item 5 of the Concurrent List,

and therefore the Provincial High Court cannot exercise writ jurisdiction over that matter.

Notwithstanding the Urban Development Authority does not come under the Provincial Council List, once the Urban Development Authority delegates its powers on planning to the local authority in accordance with law, the exercise of that power by the local authority comes, in my view, under item 4 of the Provincial Council List, and therefore the Provincial High Court is clothed with the jurisdiction to deal with that matter.

I might add that the 4th Respondent Urban Development Authority does not take up such a position, and the Urban Development Authority has not even filed objections to the application of the Petitioner notwithstanding it was fully represented by a State Counsel in the High Court. Now I find that the CMC in filing this appeal has dropped the 4th Respondent Urban Development Authority altogether for reasons best known to them.

I take the view that Provincial High Court of the Western Province had the jurisdiction to inquire into the *vires* of P12 issued by the CMC by way of writ.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal