

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

1. Nildiya Hotel (Pvt) Ltd.,
2. Sarath Kumara de Silva,
3. Geethani Niranjali Edirisinghe,  
All of No.82/5B, Galle Road,  
Mt.Lavinia.  
Petitioners

**CASE NO: CA/WRIT/343/2016**

Vs.

1. Urban Development Authority,  
6<sup>th</sup> and 7<sup>th</sup> Floors,  
Sethsiripaya,  
Battaramulla.
2. Municipal Council of Dehiwala  
Mount Lavinia,  
Dehiwala.
3. Commissioner,  
(Competent Authority),  
Municipal Council of Dehiwala  
Mount Lavinia,  
Dehiwala.
4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Nuwan Bopage for the Petitioner.  
 Maithree Amarasinghe, S.C., for the 1<sup>st</sup>  
 Respondent.  
 S. Gamage for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Decided on: 18.07.2019

Mahinda Samayawardhena, J.

The Petitioners filed this application seeking to quash by way of writs of certiorari the decision of the 1<sup>st</sup> Respondent (Urban Development Authority) dated 06.05.2014 marked X24 and the decision of the 2<sup>nd</sup> Respondent (Municipal Council of Dehiwala-Mount Lavinia) dated 05.06.2013 marked X20. The Petitioners also seek a writ of prohibition prohibiting the Respondents from preventing the Petitioners from using the premises in issue as a business premises and also from demolishing the premises.

X1 is the application tendered to the 2<sup>nd</sup> Respondent for alteration of an approved Plan to start a hotel in the premises. The new Plan tendered was X3. As seen from X1, X3 and X4<sup>1</sup>, the 2<sup>nd</sup> Respondent has approved the new Plan for “Commercial Building” on 18.12.2003 subject to conditions.<sup>2</sup>

Thereafter commercial building has been put up and business commenced. The Street Line Certificate, Non-Vesting Certificate have been issued.<sup>3</sup> Trade licenses on yearly basis since 2005 to

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<sup>1</sup> X4 is the approved Building Permit.

<sup>2</sup> The Mayor himself has signed X1, X3 and X4.

<sup>3</sup> X8(i)-X8(ii).

conduct the hotel business<sup>4</sup>, Liquor Licenses with Sri Lanka Tourism Development Authority Approvals<sup>5</sup>, Environment Protection Licenses<sup>6</sup> etc. have all been issued. The assessment rates and the other taxes have been regularly paid.<sup>7</sup> These facts are undisputed.

When matters remained as such, about 10 years after the said Building Permit for Commercial Building was issued, and the business was in full swing, the Petitioners have received a letter from the 2<sup>nd</sup> Respondent<sup>8</sup> dated 05.06.2013 marked X20 stating that *“the Planning Committee decided to cancel the Development Permit No. RB/179/01 dated 18.12.2003 (X4) issued for Commercial building since only ten feet road available to the site. Therefore you should change use of building to Residential purpose as per approved Building Plan.”*

I must straightaway state that this decision has been taken without giving a hearing to the Petitioners in grave violation of a fundamental rule of natural justice—*audi alteram partem*. Hence, on that ground alone, X20 shall be quashed by certiorari.

The 2<sup>nd</sup> Respondent has taken the decision X20 on the direction given by the 1<sup>st</sup> Respondent marked 1R5 dated 06.08.2012<sup>9</sup> to cancel the Building Permit X4 already issued.<sup>10</sup>

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<sup>4</sup> Vide X5-X7, X14(i)-X14(vi), X28.

<sup>5</sup> X16(i)-X16(viii), X17(i)-X17(vi).

<sup>6</sup> X18(i)-X18(iii).

<sup>7</sup> X19(i)-X19(xxi).

<sup>8</sup> Signed by the Engineer Planning.

<sup>9</sup> Signed by the Director (Enforcement).

<sup>10</sup> Vide also paragraph 11 of the Statement of Objections of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The 1<sup>st</sup> Respondent in paragraphs 8 and 15 of the statement of objections states that powers were delegated to the 2<sup>nd</sup> Respondent under the Urban Development Act. Then it is clear that the 2<sup>nd</sup> Respondent has granted approval under the delegated power.

The 1<sup>st</sup> Respondent tendering 1R4a and 1R4b says that as this is in the residential area, the Planning Committee of the Municipal Council has decided not to approve the Plan for non-residential activities/tourism *inter alia* because the access road is only 10 feet wide.

Despite these infirmities, the approval for a commercial building has later been given by X4.

The decision contained in X20 is also unclear. There is no meaning in cancelling the Development Permit dated 18.12.2003 (X4) as clause 1 thereof says that the said Permit is valid for one year and could be extended for another two years only. The act permitted to be done had long been completed when X20 was issued. There is no complaint that any of the conditions mentioned in X4 has been violated by the Petitioners.

When that Permit was issued to construct a Commercial Building, the 2<sup>nd</sup> Respondent knew that the width of the road leading to this proposed building was 10 feet. Hence it is irrational to later rescind the approval on the ground that "*only ten feet road available to the site*".

Irrationality is a ground to quash an administrative decision by certiorari. (*Sesadi Subasinghe-Appearing through her next friend*

*v. Vishaka Vidyalaya*<sup>11</sup>, *Perera v. Tilakaratne*<sup>12</sup>, *Desmond Perera v. Karunaratne Commissioner of National Housing*<sup>13</sup>)

It is not clear what was meant in X20 by “*as per approved Building Plan*” in “*you should change use of building to Residential purpose as per approved Building Plan.*” Building Plan approved was for a Commercial purpose.

The Petitioners by producing X13 says that to improve the business *inter alia* they obtained a 20 million loan from the Commercial Bank by mortgaging the property and they cannot at once convert the use of the building from commercial to residential.

By X24 dated 06.05.2014 the 2<sup>nd</sup> Petitioner has been served with a Notice under the Urban Development Authority Act to inform him that he shall restore the building to the earlier position before 29.05.2014 wherein he has (according to the 1<sup>st</sup> Respondent), without any authorization, changed the use of the building from residential to business. This accusation is outrageous. The Petitioners have not without any authorization changed the use of the building. Change of the use of the building has been done with authorization. Whether that authorization is legal or illegal is a different matter. That has not been put in issue in this case. The case filed in the Magistrate’s Court based on this Notice X24 cannot proceed.

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<sup>11</sup> [2011] 1 Sri LR 75

<sup>12</sup> [2011] BLR 218

<sup>13</sup> [1994] 3 Sri LR 316

I quash X24 and X20 by way of writs of certiorari as prayed for in paragraphs (b) and (c) of the prayer to the petition. As I have already come to the conclusion that Magistrate's Court of Mt. Lavinia case No.9347/S/15 based on Notice X25 cannot proceed, there is no necessity to issue a general writ of prohibition as prayed for in paragraph (d) of the prayer to the petition. No costs.

This shall not prevent the Urban Development Authority, if so advised, to take fresh steps if they think that the Petitioners are violating the Urban Development Authority Act or any other Law. In that eventuality, the Urban Development Authority shall give a hearing to the Petitioner before coming to any conclusion. In such new inquiry the Petitioner cannot take up the position that the matter is *res judicata*.

Judge of the Court of Appeal