

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

M.D. Premaleela,
No. 37/11, 2nd Lane,
Rajamahavihara Road,
Pitakotte.

Defendant-Petitioner-Appellant

Court of Appeal Case No:
CA (PHC) 159/2011
HC Colombo Case No:
HCRA 154/2009
MC Colombo Case No:
17334/05/07

-Vs-

Shantha Priyanthy Liyanage,
(Officer, under the Urban Development
Authority Act)
Urban Commissioner,
Municipality Council Sri Jayawardenapura
Kotte,
Rajagiriya.

Applicant-Respondent-Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : K.V.S. Ganesharajan with Sriranganathan Ragul and Hashintha Vidanapathirana for the Appellant.
Neville Abeyratne, PC with Kaushalya Abeyratne and Ravindu Heiyantuduwa for the Applicant-Respondent-Respondent.

Written Submissions: By the Applicant-Respondent-Respondent on
04/01/2019

Argued on : 02/09/2019

Judgment on : 16/10/2019

A.L. Shiran Gooneratne J.

The Applicant-Respondent-Respondent (Respondent), instituted proceedings in the Magistrates Court of Colombo, in terms of section 28 A (3) of the Urban Development Authority Law No. 41 of 1978 (as amended) (referred to as the Act), against the Defendant-Petitioner-Appellant (Appellant), regarding an illegal structure constructed by the Appellant in premises bearing No. 37/8, 2nd Lane, Rajamahavihara Road, Pitakotte, within the limits of the Sri Jayawardenapura Kotte Municipal Council. The learned Magistrate by order dated 12/06/2009, directed that the impugned construction be demolished. The Appellant being aggrieved by the said order preferred a revision application to the High Court of the Western Province holden in Colombo, which was dismissed by the learned High Court Judge and hence this appeal.

The main issue of contention put forward by this application is whether the Appellant is possessed with a valid legal permit to construct a building in the said premises.

Section 28A (3) (a) of the Act provides that;

“where any person has failed to comply with any requirement contained in any written notice in pursuance of a notice issued under subsection (1), any building or work is not demolished or altered within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may apply to the Magistrate to make a mandatory order authorizing the Authority to demolish or alter the building or work, and the Magistrate on serving notice on the person who had failed to comply with the requirement of the Authority under Subsection (1) to demolish or alter the building or work, may, if he is satisfied to the same effect, make order accordingly.”

In terms of section 23(5) of the Act, the Urban Development Authority (UDA) acting in terms of subsection (1) of section 28A of the Act issued a written notice to the Appellant, marked P4, to demolish the unauthorized construction. The Appellant has not denied receiving the said written notice, and has failed to respond.

The Appellant has drawn attention of Court to document No. 546, marked P2, a plan which the Appellant contends has been approved by the UDA.

However, there is no authentication on the face of the document as contended by the Appellant.

When an application is filed under Section 28A (3) of the Act, the burden of showing a valid permit to commence, continue resume or complete a development activity shifts to the party noticed.

This position was clearly illustrated by Gamini Amaratunga J. in the case of ***Urban Development Authority vs. H.W. Kulasiri*** (CA 2226/2003), where it was held that,

“in a situation where an application made under Section 28(A) (3) of the UDA Law had been made the relevant question is whether the structure in question has been erected upon a valid permit. The existence of a permit is the only valid answer to the application under Section 28(A) (3). The burden of showing that the construction had been done on a valid permit is on the person noticed.”

The Appellant has constructed an unauthorized structure in premises bearing No.37/8, 2nd Lane, Rajamahavihare Road, Pita-Kotte, within the municipal council limits of Sri Jayawardanapura Kotte, in contravention of Section 3 of the said Act as depicted in plan marked P3. The proceedings contained in the brief makes it manifestly clear that the Appellant had not obtained a valid permit. It is an essential requirement that a person obtains a valid permit under the provisions of the UDA Act before the commencement of any construction. In terms of Section 23(5) of the Act, the Respondent is statutorily empowered to file an action against a person responsible for an illegal construction, as defined in the Act.

Accordingly, the Respondent duly noticed the Appellant, by document marked P4. The Appellant neither responded to the notice nor demolished the said construction. The Appellant has failed to produce any document that proves the impugned construction was carried out upon a valid permit. In the circumstances, the application of the Appellant must fail.

Accordingly, I affirm the orders made by the learned High Court Judge and the Court below.

Petition is dismissed with costs fixed at Rs. 10,000/-

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL