

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

In the matter of an appeal in terms of  
Section 49(b) of the Survey Act No. 17 of  
2002.

**CA/Misc/No: 4/2016**

A.G.W.Giragama,  
Ratwatte Walawwa, Ukuwela.

**APPELLANT**

Vs.

Land Survey Council,  
Surveyor General's Office,  
P.O.Box 506, Colombo 5.

**RESPONDENT**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Sampath Hewapathirana for the Appellant

Ms. Maithri Amerasinghe Jayathilake, State Counsel  
for the Respondent

**Written Submissions:** Tendered on behalf of the Appellant on 11<sup>th</sup> February  
2019

Tendered on behalf of the Respondent on 7<sup>th</sup> June  
2019

**Decided on:** 22<sup>nd</sup> November 2019

**Arjuna Obeyesekere, J**

When this matter was taken up on 12<sup>th</sup> July 2019, the learned Counsel for the Appellant and the learned State Counsel for the Respondent moved that this Court pronounce its judgment on the written submissions that had been filed on behalf of the parties.

This is an appeal filed in terms of Section 49 of the Land Survey Act No. 17 of 2002, (the Act) seeking to challenge an Order made by the Land Survey Council (the Council) on 10<sup>th</sup> June 2016 suspending the Annual Practicing License of the Appellant for the period 1<sup>st</sup> July 2016 – 30<sup>th</sup> June 2017, and the imposition of a sum of Rs. 10,000 as costs of the Council.

The facts of this matter very briefly are as follows.

The Appellant states that he joined the Survey Department in 1960 and served as a Government Surveyor until 1982. Since then, the Appellant has been engaged in private practice as a surveyor. The Appellant states further than in terms of Section 41 of the Act, he is deemed to be a registered surveyor and that on an application submitted by him, the Survey Council has issued him with an Annual Practicing License, which enabled the Appellant to call himself a 'Registered Licensed Surveyor'.

By a letter dated 10<sup>th</sup> July 2015, A.M.Nizardeen had filed a complaint with the Council against the Appellant. In the said complaint, Nizardeen had stated that the Appellant had surveyed a land in extent of 2A belonging to Nizardeen and prepared Plan No. 3019 dated 14<sup>th</sup> July 1993, sub-dividing the said land into 20

lots, numbered as Lots 1-20. A copy of this Plan had been annexed to the complaint marked 'D1'. There is no dispute between the parties that 'D1' was prepared by the Appellant.

Lot No. 3 in 'D1' contained an extent of 18P. Nizardeen states that Lot No. 3 was subsequently sub-divided as Lot Nos. 3A and 3B and that Lot No. 3A had been sold by him to one Thambyrajah, by Deed of Transfer No. 9896 dated 15<sup>th</sup> October 2007. Although a plan depicting the said sub-division of Lot No. 3 into two lots of 3A and 3B has not been submitted, 'D1' shows the manner in which Lot No. 3 had in fact been sub-divided.

Nizardeen states that the Appellant had **thereafter** connived with Thambyrajah and issued Plan No. 3019/3A which has been annexed to the complaint marked 'D2', depicting Lot No. 3A. The grievance of Nizardeen is that the western boundary of Lot No.3A as depicted in 'D2' does not tally with the western boundary of Lot No. 3 in 'D1'. This Court has examined 'D1' and observes that the western boundary of Lot 3 is not a straight line, whereas the western boundary in 'D2' is straight. The length of the northern boundary and the southern boundary of the Lot shown as 'A' on Lot No. 3 of 'D1' also appears to be different in 'D2'.

The Appellant had issued a further Plan numbered as 3019, annexed to the complaint marked 'D3' depicting Lot No. 3B, with the western boundaries being Lot Nos. 1 and 2 of 'D1' and the eastern boundary being Lot No. 3B. Lot No. 3B cannot have the same lot as its boundary, and it is the position of Nizardeen that these boundaries are in fact the boundaries of Lot No. 3A.

The complainant has stated further that the Appellant had issued two other plans, annexed to his complaint marked 'D5' and 'D6' which depict Lot No. 1 of 'D1'. Although 'D5' and 'D6' depict the same lot and has been prepared according to the same scale, it is the position of the complainant that the boundaries are different.

This Court must observe at this stage that a common feature of all the plans referred to above is that none of them contain a schedule of the boundaries of each lot, as is generally done when preparing a survey plan.

The essence of the complaint of Nizardeen relates to acts of professional misconduct on the part of the Appellant. Provisions with regard to professional misconduct are contained in Section 45 of the Act. The portions of Section 45 which are relevant to this application are re-produced below:

*"A registered surveyor shall be guilty of professional misconduct if he is found in any proceedings or appeal –*

- (a) to have been negligent or incompetent in the conduct of any survey;*
- (b) to have failed to comply with any guidelines or directions pertaining to the practice of surveying or the requirements pertaining to the preparation of and maintenance of survey plans and cadastral maps as are prescribed;*
- (c) to have certified as to the accuracy of any survey or any plan or map in relation to a survey –*

(i) where such surveyor being an officer in the service of the Government has conducted the survey or certified the plan or map without exercising due care or caution;

(ii) where such surveyor being a registered licensed surveyor :-

**(A) has conducted such survey or certified such plan or map, without exercising due care or caution;**

(B) ....;

(C) ....;

**(D) has certified to the accuracy of such survey, map or plan knowing it to be defective;**

(d) ....;

(e) ....;

(f) ....”

Pursuant to the receipt of the said complaint, the Council had requested the Appellant to submit his response, which was duly complied with by the Appellant through his letter dated 16<sup>th</sup> October 2015. With the said letter, the Appellant had submitted a copy of Plan No. 3019 depicting Lot No. 3A bearing his signature and a copy of Plan No. 3019 containing all 20 lots, signed by him, which Plan bears an endorsement that it has been approved by the Matale Municipal Council. The Appellant had super imposed Lot No. 3A on the latter

plan, which very clearly shows that the boundaries of Lot No.3A encroach on the boundaries of Lot Nos. 1, 2 and 3B, thereby confirming the complaint of Nizardeen.

Section 46 of the Act provides for the holding of an inquiry. Sub-section (4)(b) reads as follows:

*“At an inquiry held under this section, the Council shall –*

- (i) act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal norms; and*
- (ii) not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.”*

The Council had accordingly requested the Appellant and the Complainant to be present for an inquiry. On 29<sup>th</sup> October 2015, the Complainant had made a statement confirming the above matters. The Appellant had not attended the inquiry due to ill health and the Council had therefore issued the following questionnaire dated 22<sup>nd</sup> January 2016 to the Appellant, and requested that he provide his explanation:

*“ඒ අනුව මෙම පරීක්ෂණ කටයුතු විධිමත්ව සිදු කිරීම සඳහා පහත සඳහන් තොරතුරු 2016.01.31 දිනට පෙර ඉඩම් මැනුම් සභාව වෙත ලබා දෙන ලෙස කාරුණිකව දන්වමි.*

- 01. ඔබේ අංක 3019 හා 93.7.14 දරණ D1 ලෙස ලකුණු කර ඇති පිඹුරේ එක ද මායිමක්වත් විස්තර කර නැත. හේතු දක්වන්න.
- 02. ඔබ විසින් සකස් කර ඇති 3019 දරණ මුල් පිඹුරු ඇතුළු අනෙකුත් උද්ධෘතවල මනින ලද දිනය සඳහන් වුවත් ඔබේ අත්සනට යටත් පිඹුර සහතික කළ දිනය

සඳහන් කර නැත. මේ හෙයින් පිඹුර නිකුත් කළේ කවුදැයි දැනගැනීමට හැකියාවක් නැත. මෙය බලවත් අඩුපාඩුවකි. D2 ලෙස පෙන්වා ඇති 3019/3 A දරණ උද්ධෘතයක් යයි සිතාගත හැකි පිඹුරේ කැබලි අංකය ලියා නැත. (තාවකාලිකව 3A ලෙස පැන්සලෙන් ලියා ඇත) මෙය මුල් පිඹුරේ මායිම් සමග කිසිසේත් ගැලපෙන්නේ නැත. මීට හේතු දක්වන්න.

03. D3 ලෙස සඳහන් කර ඇති 3019 දරණ පිඹුරේ 3B කැබැල්ල සඳහා සකස් කළ උද්ධෘතයේ මායිම් විස්තර කර නැත. පිඹුර නිකුත් කළ දිනය සඳහන් නැත. මෙම 3B කැබැල්ලේ නැගෙනහිර මායිම ද 3B ලෙස සඳහන් කර ඇත. සැලකිලිමත්කම ප්‍රමාණවත් නොවීම ගැන හේතු දක්වන්න.

04. D4 ලෙස පෙන්වා ඇති 3019 පිඹුරේ 3B කැබැල්ල සඳහා සකස් කර ඇතැයි සිතෙන උද්ධෘතයේ 3B කැබැල්ලේ නැගෙනහිර මායිම මුල් පිඹුර සමග කිසිසේත් ගැලපෙන්නේ නැත. හේතු දක්වන්න.

05. D5 හා D6 ලෙස සඳහන්කර ඇත්තේ 3019 පිඹුරේ කැබලි අංක 1 සඳහා සකස් වූ නැවත මැනීමක් හා උද්ධෘතයක් වේ. මෙහිදී නැවත මැනීමක් කියා සඳහන් කළ ද එක් මායිමක්වත් විස්තර කර නැත. මුල් මැනුම සමග මායිම් ගැලපෙන්නේ නැත. උද්ධෘතයේ මායිම් මුල් පිඹුරේ මායිම් සමග ගැලපෙන්නේ නැත. අවශ්‍ය යා-ලකුණු යොදා නැත. පිඹුරු පිළියෙල කිරීමේදී අවශ්‍ය පමණ සැලකිලිමත් නොවීම ගැන හේතු දක්වන්න.”

This Court must observe that the above explanations called from the Appellant related to negligence, incompetence, certifying a plan without exercising due care or caution, and certifying the accuracy of a survey plan knowing it to be defective, which are all matters on which a Registered Licensed Surveyor can be found guilty of professional misconduct, in terms of Section 45 of the Act.

The Appellant, by his letter dated 5<sup>th</sup> March 2016 admitted that he carried out a survey of the said land but took up the position that he requested the

Complainant to produce his deed in order to prepare the final plan, and that as he failed to do so, he did not issue a certified copy of the said Plan. This Court must observe that the Appellant, having admitted the complaint of Nizardeen by his letter dated 16<sup>th</sup> October 2015, failed to respond to any of the queries raised by the Council by its aforementioned letter of 22<sup>nd</sup> January 2016.

The Council, by its decision dated 10<sup>th</sup> June 2016 held as follows:

“සතරවාරයක් ලියාපදිංචි තැපැලෙන් දන්වා යවා ඇතිමුත් වගඋත්තරකරු ඉඩම් මැනුම් සභාව ඉදිරියේ පෙනී සිටීමට අපොහොසත් වී ඇත. මනුමදෝරුවරයා සකස් කර ඇති පිඹුරුවල ගුණාත්මක භාවය හා අඩංගු විය යුතු තොරතුරු (මායිම් විස්තර) යනාදිය ඇතුළත් නොවන අතර ඉඩම් හිමිකරුවන්ගේ ඉල්ලීමක් හෝ දැනුවත් භාවයක් නොමැතිව ඉඩම මැනීමක් හා මායිම් වෙනස් කිරීමක් සිදුකර ඇති බව පෙනී යයි. මෙය පවතින නීති රීති හා රෙගුලාසි වලට පටහැනි වන බැවින් හා අනෙක් පාර්ශවයන් අගතියට ලක් වීමක් සිදුව ඇති බැවින් වගඋත්තරකරුගේ වාර්ෂික මැනුම් බලපත්‍රය 2016.07.01 දින සිට වසර එකකට අත්හිටුවීමට ඉඩම් මැනුම් සභාව තීරණය කරන ලදී.”

This Court must observe at this stage that the above punishments imposed on the Appellant are within the powers conferred on the Council by Section 47 of the Act.

Dissatisfied by the said decision, the Appellant invoked the jurisdiction of this Court in terms of Section 49 of the Survey Act.

This Court would now consider the grounds of appeal set out in the written submissions tendered on behalf of the Appellant.



The first and second grounds of appeal are that the Council did not take into consideration the explanations offered by the Appellant. As observed earlier, the complaint of Nizamdeen was that the Appellant had issued copies of Plan No. 3019 marked 'D2' and 'D3' in respect of Lot No. 3A and Lot No. 3B, respectively, depicting boundaries that were different from the boundaries shown in the original Plan No. 3019 marked 'D1'. The Appellant's initial explanation, offered by his letter dated 16<sup>th</sup> October 2015 amounted to an admission of the complaint against him. It was only after clarifications were sought that the Appellant denied the issuing of the certified copies marked 'D2' and 'D3', and took up the position that the land is not owned by Nizardeen. However, the complainant had produced the certified copies of such Plans before the Council on 27<sup>th</sup> May 2016,<sup>1</sup> thus rebutting the position taken up by the Appellant that he did not issue certified copies of 'D2' and 'D3'. The explanation offered by the Appellant, which is one of denial, has therefore been rejected by the Council, and hence, this Court is of the view that the argument of the Appellant that the Council did not take into consideration the explanations offered by the Appellant has no merit.

The third ground of appeal was that necessary guidelines stipulating offences which amount to professional misconduct had not been stipulated. The fourth ground of appeal is that the rules that are said to have been violated has not been specified. These two grounds will be considered together. This Court must observe that the explanations called from the Appellant, by letter dated 22<sup>nd</sup> January 2016, is not referable to a particular rule or guideline, and hence, reference to a rule or guideline in the decision of the Council is not correct, suffice to state that the Council did have the power to inquire into the matters

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<sup>1</sup> Vide page 1 of the Order of the Council.

set out in Section 45. Thus, the Council did act within its powers when it called for explanations in respect of the following:

- (a) The Plan 'D1' did not contain the boundaries of the land, which is a fundamental requirement of any survey plan;
- (b) The date on which the survey plan has been issued has not been specified in the Plans marked 'D2' and 'D3';
- (c) The boundaries of Lot No. 3A in Plan No. 'D2' and 'D4' does not tally with the boundaries in Plan 'D1'.

Section 45 of the Act is not limited to a violation of a guideline or rule, for a surveyor to be found guilty of misconduct. In terms of Section 45, a surveyor:

- (a) who has been negligent in the conduct of any survey;
- (b) who certifies as to the accuracy of any plan without exercising due care and caution; and
- (c) certifying as to the accuracy of a plan, knowing it to be defective,

is guilty of professional misconduct. Hence, this Court does not see any merit in the third and fourth grounds of appeal. This Court must state that the evidence before the Council, which has been referred to earlier in this judgment, was sufficient to find the Appellant guilty of professional misconduct.

The final ground of appeal is that the Council failed to appreciate that the Plan complained of had been drawn in 1993, whereas the Act was introduced only in 2002. There is no dispute that the Plan 'D1' had been drawn in 1993. The complaint of Nizardeen is that he sold Lot No. 3A to Thambyraja in October 2007, and that the Appellant connived with Thambyrajah and prepared the Plan 'D2'. This could not have happened prior to Thambyrajah purchasing the property, and even though 'D2' is not dated, it is clear that the incident complained of occurred after the Act came into force. In any event, the Appellant was required to specify the date on which he certified the copies of a Plan drawn by him, which he has failed to do. Furthermore, whether the incident complained of, was before or after the Act came into force is a fact which was within the knowledge of the Appellant which he could have proved by providing the relevant material to the Council. If it was the position of the Appellant that he had issued a draft of a plan at the request of Thambyrajah, he could have very well explained when such request was made. The Appellant has however failed to provide any material in this regard, probably for the reason that this ground of appeal was never raised before the Council. For the said reasons, the final ground of appeal too is rejected by this Court.

In the above circumstances, this Court does not see any merit in the grounds of appeal placed before this Court by the Appellant. This Court affirms the decision of the Respondent dated 10<sup>th</sup> June 2016 and accordingly, this appeal shall stand dismissed, without costs.

**Judge of the Court of Appeal**