

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

In the matter of an application for orders in the nature of writs of *Certiorari* and *Mandamus* under and in terms of Article 154 (P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with section 7 of the Provincial High Courts (Special Provisions) Act, No. 19 of 1990.

CA Case No. CA/PHC/APN/104/20
PHC Panadura Case No. 04/2019 WRIT

Buddhi Suranjaya Kaluthantri
No. 8/5, Samudra Mawatha,
Panadura.

PETITIONER

1. Urban Council,
Panadura

2. Nandana Gunathilaka
Chairman,
Urban Council,
Panadura.

3. P.H. Wilmon
Vice Chairman,
Urban Council,
Panadura.

4. Manel Siyambalagoda
Secretary,
Urban Council,
Panadura.

5. Provincial Commissioner
Western Provincial Council,
No. 204, Densil Kobbekaduwa
Mawatha,
Battaramulla.
6. T. Somawathie Fernando
No. 14/5, Samudra Mawatha,
Panadura.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

ANDNOW BETWEEN

In the matter of an application for Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Buddhi Suranjaya Kaluthantri
No. 8/5, Samudra Mawatha,
Panadura.

PETITIONER-PETITIONER

1. Urban Council,
Pandura
2. Nandana Gunathilaka
Chairman,
Urban Council,
Panadura.
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6. T. Somawathie Fernando
No. 14/5, Samudra Mawatha,
Panadura.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT-RESPONDENTS

Before: M.T. MOHAMMED LAFFAR, J. and
S.U.B. KARALLIYADDE, J.

Counsel: Nihal Fernando, P.C., with Gamini Cahndrasekera, instructed
by Radhya Herath for the Petitioner-Petitioner.

Mahinda Nanayakara with Manoj Sanjeewa for the 6th
Respondent-Respondent.

A. Weerakoon, S.C., for the 7th Respondent.

Supported on:
08.10.2020.

Order delivered on:
09.11.2021.

MOHAMMED LAFFAR, J.

The Petitioner-Petitioner (“Petitioner”) filed this Revision application on 07.09.2020, in terms of Article 138 of the Constitution to revise an order dated 09.07.2020 delivered by the learned Provincial High Court Judge of Panadura (marked X7) by which, the learned High Court Judge had dismissed a writ application filed by the Petitioner in terms of Article 154 (P) of the Constitution.

Having satisfied with the petition of the Petitioner, this Court on 08.10.2020, made directions to issue notices to the Respondents. Upon receiving the notice, meanwhile, only the 6th Respondent has filed her Statements of objection on 18.05.2021.

Subsequently, on 06.09.2021, the Petitioner, by way of motion filed a further affidavit dated 06.09.2021 and sought this Court to accept the same as file of record.

However, when this matter was mentioned on 09.09.2021, the learned Counsel for the 6th Respondent raised his objection to accept the purported affidavit dated 06.09.2021 on the basis that the said affidavit filed by the Petitioner after couple of months of the completion of the pleadings by the parties (*vide para 1 and 2 of the Statement of Objections of the 6th Respondent dated 24.09.2021*).

The learned Counsel for the 6th Respondent further submitted that by filing the purported affidavit dated 06.09.2021, the Petitioner has made an attempt to introduce new facts and documents after the completion of the pleadings and therefore, those matters cannot be considered in the instant application. Accordingly, the learned Counsel for the 6th Respondent seeks to the reject the further affidavit filed by the Petitioner.

This order is in respect of the objection raised by the learned Counsel for the 6th Respondent.

Having heard the learned Counsel on both sides, we have perused the purported affidavit and other material placed on record.

The Petitioner instituted this proceeding in the Provincial High Court of Panadura, challenging, *inter alia*, the alleged *ultra vires* acts of the 1st Respondent as per the statutory provisions contained in the Local Authorities Housing Act, No. 14 of 1964 (as amended) relating to transfer of a land to the 6th Respondent wherein a drainage system has been blocked from outside by the 6th Respondent. The Petitioner also challenging the inaction of the 1st Respondent Urban Council Panadura in interfering with the alleged unlawful activities of the 6th Respondent.

Meanwhile, in his further affidavit dated 06.09.2021, the Petitioner, *inter alia*, brought to this Court's attention,

- (a) that after filing of this instant application, the Divisional Secretariate of Panadura has commenced a project to reconstruct the blocked part of the above-mentioned drainage system (*vide para 14 of the further affidavit of the Petitioner dated 06.09.2021*).
- (b) that soon after the Petitioner got to know about the said reconstruction project, he has requested the Divisional Secretary of Panadura and the 1st Respondent to extend the above drainage system towards his land as well (*vide para 15*).
- (c) that even though the said reconstruction project commenced, the said reconstruction work stopped at the exact point of starting the boundary wall of the 6th Respondent and thereby leaving only about 10 meters of length towards the tiny strip of land, without finishing and allowing to remain the blockage made by the 6th Respondent.
- (d) that all these issues in this case can easily be settled by mere participation of the Respondents (*vide para 27*).

In the above, the Petitioner apparently brought some vital facts (due to changing of circumstances) which are occurred afterwards of filing this instant application. To my mind, these contents of the further affidavit of the Petitioner, may assist this Court to adjudicate the case properly.

The mere filing of the supplementary founding affidavit does not constitute an irregular step. The affidavit will in any event not be considered admitted until leave is granted by the Court dealing with the application. However, if good cause is shown why the further affidavit should be permitted, and the court, in its discretion allows the affidavit.

It is my respectful view that, the proper function of a Court is to try disputes between litigants who have *real grievances* and so see to it that justice is done. The rules (e.g., the Supreme Court Rules 1990 in our Country) exist in order to enable Courts to perform this duty with which, in turn, the orderly functioning, and indeed the very existence, of society is inextricably interwoven. The Rules of Court are designed not only to allow litigants to come to grips as expeditiously and as inexpensively as possible with the real issues between them, but also to ensure that the Courts dispense justice uniformly and fairly.

Further, the *audi alteram partem* rule is a fundamental principle of a Court procedure. Courts are enjoined not to shut the door in the face of a litigant for flimsy reason or for minor technical defences raised by the other party. To my mind, this Court has a wide discretion to allow the filing of further affidavits and documents upon good cause. It is upon the litigant who seeks to file a further affidavit to provide an explanation to the satisfaction of the Court that it was not malicious in its endeavour to file the further affidavit and that the other party will not be prejudiced thereby. I do not see any such prejudice or unfairness caused to the 6th Respondent. The 6th Respondent

has had the liberty to file a counter objection to the further affidavit. Learned Counsel for the 6th Respondent has done so.

Disposing of cases on technical grounds is easy and speedy. But that is not what an aggrieved party expects from Court. An aggrieved party wants case to be disposed of on merits rather than on technical grounds. I fully endorse the following observations made by Justice Wigneswaran in *Senanayake v. Siriwardene* [2001] 2 Sri LR 371 at 375,

“Courts are fast making use of technical grounds and traversing of procedural guidelines to dispose of cases without reaching out to the core of the matters in issue and ascertain the truth to bring justice to the litigants. This tendency is most unfortunate. It could boomerang on the judiciary as well as the existing judicial system.”

In the circumstances, I proceed to overrule the objection of the 6th Respondent and accept the further affidavit of the Petitioner dated 06.09.2021.

Objection overruled.

JUDGE OF THE COURT OF APPEAL

S.U.B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL