

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

In the matter of an application for revision under and in terms of Article 154P (6) of the Constitution read together with Section 11 High Court of the Provision (Special Provisions) Act No.19 of 1990 (as amended).

The Secretary  
Pradeshiya Sabha, Bible.

**Petitioner**

**CA PHC 0168/16**

PHC(Monaragala) Case No.UP/PHC/09/2016/Rev.

MC (Bibile) Case No.29363

**Vs.**

Buddhika Ediriweera,  
Casual Park, Bible.

**Respondent**

AND BETWEEN

Buddhika Ediriweera,  
Casual Park, Bible.

**Respondent-Petitioner**

**Vs.**

1. The Secretary  
Pradeshiya Sabha, Bible.

**Petitioner-Respondent**

2. Hon. Attorney-General,  
Attorney General Department  
Colombo

**Respondent**

**And Now Between**

Buddhika Ediriweera,  
Casual Park, Bible.

**Respondent-Petitioner-Appellant**

**Vs.**

1. The Secretary

Pradeshya Sabha,  
Bible.

**Petitioner-Respondent-Respondent**

2. Hon. Attorney General

Attorney General Department  
Colombo.

**Petitioner-Respondent-Respondent.**

BEFORE: **PRASANTHA DE SILVA, J.**  
**K.K.A.V. SWARNADHIPATHI, J.**

COUNSEL: Shantha Jayawardena  
For the Respondent-Petitioner-Appellant.  
R.P.H. Rajapaksha  
For the Petitioner-Respondent-Respondent.

Date of argument: 08.03.2022

Date of Judgment: 28.10.2022

**K.K.A.V. SWARNADHIPATHI, J.**

**JUDGMENT**

Petitioner-Respondent-Respondent [from now on referred to as Respondent] instituted an action at the Magistrate Court of Bible under Urban Development Act No.41 of 1978 (as amended) to

demolish a building constructed by Respondent-Petitioner-Appellant who will be referred to as Appellant, for this appeal.

The Appellant is a businessman operating a small textile shop on Bible-Batticaloa Road.

With the written authority of the Vice-Chairman of Bible Pradeshiya Sabha, the small shop was constructed in 2001. In the year 2002 same Vice-Chairman issued a letter of no objection to obtaining electricity. In 2003, the Appellant obtained a trade license from the Pradeshiya Sabha and had been in business since then.

In 2015, the Secretary of the Bible Pradeshiya Sabha instituted an action in the Magistrate's Court under Section 28(A)(1) of the Urban Development Authority Law No.41 of 1978 to demolish the building of the Appellant.

On 28.04.2016, the Magistrate of Bible held with the Respondents and ordered the Appellant to demolish the building. Aggrieved by this order, the Appellant went before the High Court of Monaragala, but even the learned High Court Judge had refused the plea of the Appellant. The Appellant then invoked the jurisdiction of this Court.

The Appellant argued that since the construction is done with the permission of the Vice-Chairman of the Pradeshiya Sabha, it becomes a lawful construction. Since the action filed before the Magistrate's Court was based on the land being a state land, the Secretary to the Pradeshiya Sabha cannot file an action under the Urban Development Authority law.

The question is, "does the Appellant have the authority to build? It will be discussed first. The Appellant depends on the letter given to him by the Vice-Chairman and the letter of consenting by the same person to obtain electricity.

The Respondents argued that the Appellant was informed by a registered post letter to remove the construction. The Appellant had not produced a development permit in response to the letter or at the Magistrate's Court.

The Respondents had argued that the Vice-Chairman has no authority to give permission. Within the Pradeshiya Sabha Limits, one can construct only on a valid Development permit under the provisions of the Urban Development Authority Act. The Vice-Chairman gave the letter of permission, which violates the rules and regulations of the Pradshiya Sabha.

Gazette Extraordinary No.87/7, dated 18.04.1980, declared the area in question as an Urban Development Area. Once it is gazetted, the area comes under the Urban Development Authority Act, and the letter given in the year 2000 becomes invalid. The case was filed in the Magistrate's Court under Section 28(A)(3) of the Urban Development Area Act.

Therefore, the duty of the Appellant was to prove that he had obtained a valid development permit, not a letter by an officer of the Pradeshiya Sabha, the only way to satisfy the Magistrate that the Appellant's building was a lawful construction.

When considering the above position, we see no exceptional grounds that the learned High Court Judge could have considered. As the Respondent pointed out, two Petition of Appeals is filed in the brief.

On 09.11.2016, Attorney-at-Law Susantha Rathnayaka filed one appeal, and Attorney-at-Law R.M. Gunathilake filed the 2nd Petition of appeal without a date but November 2016. The Appellant cannot be careless. However, perusing both Petitions, they look similar.

Therefore, whichever is considered, the prayers and pleadings are the same. A perusal of the Magistrate's Court's record indicated that the Appellant had only requested to settle with the authorities and not given any explanation or argument regarding his rights. He had never argued regarding the maintainability of the action filed against him. Therefore, the learned High Court Judge observed that the Appellant had not taken any arguments raised before the High Court or at the Magistrate Court.

In *Jayaweera Vs. Assistant Commissioner of Agrarian Services Rathpanpura and Another*,<sup>1</sup> "If a litigant wishes to contradict the record, he must file necessary papers before the Court at the first instance, institute an inquiry before the Court and thereafter raise the matter before the Appellate Court. So, the Appellate Court would be in a position on the material to adjudicate the issues with the benefit of the Court's order."

Unless the Appellant had challenged the authority of the Respondents to act under the provisions of the Urban Development Authority Act before the Magistrate, he has no footing to raise that argument before the High Court.

Since the Petitioner stated that Vice-Chairman granted permission, he had a duty to submit to court material to prove that power, responsibilities and functions were delegated to the Vice-Chairman to issue such a letter by law.

For the reasons discussed above, we dismiss the Appeal of the Appellant. We make no order for costs.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**

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<sup>1</sup> (1976) 2 SLR 70