

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

In the matter of an application in terms of Article 105 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Hewa Heenipallage Leelananda,  
No.15/1, Center Road,  
Jayanthipura,  
Battaramulla.

**Case No: CA/COC/ 0003/22**

**Petitioner**

**-vs-**

1. National Housing and Development Authority,  
5<sup>th</sup> Floor,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
2. R. Duminda Silva,  
Chairman,  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
3. Eng. K.A. Janaka,  
Acting General Manager,  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
4. Anura Keerthi Dissanayake,  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
5. Madara de Silva,  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
6. Wimalasiri Wanniarachchi,  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.

7. D.A.P. Weeratne,  
President's Counsel,  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
8. K.K. Gavesha Sanirathna  
National Housing and Development Authority,  
5<sup>th</sup> Floor, Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
9. Sudath Abeywardene,  
No.B 5/1/4 Himbutu Uyana Housing Scheme,  
Mulleriyawa New Town,  
Mulleriyawa.

**Respondents**

**Before:** **N. Bandula Karunarathna J.**

**&**

**R. Gurusinghe J.**

**Counsel:** N.M. Reyaz AAL with G.B. Madushani Chandrika AAL for the Petitioner

Yuresha Fernando SSC with Madhubashini Sri Meththa SC for the 1<sup>st</sup>  
to 8<sup>th</sup> Respondents

Kamal Surendra Perera AAL with Anjalee Fernando AAL instructed by  
K.H.C. Jayalath for the 9<sup>th</sup> Respondent

**Supported on :** 23.03.2022

**Decided on :** 07.04.2022

**N. Bandula Karunarathna J.**

Learned counsel for the petitioner supported his application in Open Courts.

The petitioner had instituted Case number CA (Writ) 121/2021 before this Court on 02.03.2021. The respondents in the present case have been named as respondents in the said Case No.CA (Writ) 121/2021 as well.

When the said case was taken up for support on 10.03.2021 the Court made an order *inter alia* that “the 1<sup>st</sup> respondent-refrain from taking steps to interdict the petitioner. The Board of Directors of the 1<sup>st</sup> however shall be entitled to initiate the civil proceedings against the Petitioner pending the support of this matter.”

The learned counsel for the petitioner submitted that the very next day at the Board meeting it was decided to send the petitioner on compulsory leave. Accordingly, by letter dated 15.03.2021 the petitioner was sent on compulsory leave.

The said letter stated *inter alia* that at the meeting of the Board of Directors held on 12.03.2021 it was decided that:

- (i) The Petitioner had committed serious omissions (බරපතල විෂමාචාර) under Chapter XLVIII of Part II of the Establishments Code read with Schedule A of the Disciplinary Code of the 1<sup>st</sup> Respondent,
- (ii) The Petitioner should be sent on compulsory leave,
- (iii) That the Petitioner was prohibited from entering the main office, district office or any other officer in relation to his duties,
- (iv) The Petitioner was prohibited from leaving the Island without permission,
- (v) The Petitioner is to hand over all documents including his Employee Identity Card to the Deputy General Manager.

The learned counsel for the petitioner further submitted that by letter dated 09.12.2021 the petitioner was informed to give a statement in respect of a housing scheme at Hambantota and that he should be present at the premises of the 1<sup>st</sup> respondent on 20.12.2021 at 10:00 am. By letter dated 12.12.2021 the petitioner informed the 3<sup>rd</sup> respondent that he was unable to make a statement giving reasons thereto.

On 15.12.2021 the petitioner was interdicted. A copy of the said letter dated 15.12.2021 was marked as P 11 and annexed along with the petition.

The Petitioner states that the Respondents wanted to subvert the order of the Court of Appeal. Although the substance of P 3 was to send the petitioner on compulsory leave, the petitioner was interdicted contrary to the order marked P 2.

At the meeting of the Board of Directors held on 12.02.2021, it was decided that the petitioner should be sent on compulsory leave. Learned Counsel for the petitioner argued that there was no evaluation of the alleged material placed against the petitioner by the Board and the decision to send the Petitioner on compulsory leave was taken for a collateral purpose.

The Petitioner states that the 1<sup>st</sup> to 9<sup>th</sup> respondents acted jointly and or severally pursuant to a Board meeting and decided to interdict the petitioner by P 11 thereby acting in violation of the order marked P 2 and that this action amounts to a contempt of the authority of the Court of Appeal which is liable to be punished.

The petitioner further states that P 11 is in contempt to the order marked P 1 and it is in clear violation of the Order of this Court marked P 2. Therefore, the learned counsel for the petitioner states that this court ought to deal with the respondents in terms of the jurisdiction vested in the Court of Appeal in article 105 (3) of the Constitution of Sri Lanka.

Learned Senior State Counsel appearing on behalf of the 1<sup>st</sup> to 8<sup>th</sup> respondents indicated that preliminary investigation into the activities of the petitioner had been carried out and it was revealed that the petitioner had committed serious illegal activities in the 1<sup>st</sup> respondent authority namely NHDA. The petitioner was served with a charge sheet on 05.07.2021 containing 13 allegations. The learned counsel informed the court despite all those allegations, the management decided to call the petitioner for an interview for the post of General Manager by letter dated 13.08.2021.

Learned counsel who appeared on behalf of the 9<sup>th</sup> respondent confirmed the submissions made by the learned Senior State Counsel and added further that the allegations were different during the period when he was sent on compulsory leave and later revealed more illegal activities of the petitioner and thereafter the board of directors decided to interdict him with effect from 15.12.2021.

Learned Counsel for the respondents re-iterated that none of the respondents violated the court order marked P 2 by issuing P 3 and P 11.

Considering the submissions made by both parties and the documents filed by the petitioner in the present case, we are of the view that this Court should issue summons on the respondents as to why they should not be punished for their contemptuous conduct.

Registrar is directed to issue summons to the respondents to show cause why each one of them either jointly or severally should not be punished for contempt of this court for violating the order marked P 2 by issuing P 3 and P 11, interdicting the petitioner.

Summons returnable on 31.05.2022.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree.**

**Judge of the Court of Appeal**