

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

C A. PHC 140/05

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PHC Balapitiya 577/2004

MC Balapitiya 51962

Godaheva Malinie,

No. 38, Halwathura Housing
Scheme, Ambalangoda.

**RESPONDENT-PETITIONER-
APPELLANT**

Vs

Chairman,
Urban Council,
Ambalangoda.

**PETITIONER-RESPONDENT-
RESPONDENT**

BEFORE: A.W.A.SALAM, J & MALINIE
GUNARATNE, J

COUNSEL: Mewan Bandara for the
Respondent-Petitioner-Appellant Mrs. Nilmini
Arumapperuma for the Petitioner-
Respondent-Respondent

ARGUED ON : 31.03.2014

DECIDED ON: 29.08.2014

A.W.A. Salam, J (P/CA)

This appeal has been filed against the judgment of the learned High Court Judge dated 3 June 2005. The said judgment has been delivered consequent upon a revision application filed by the respondent-petitioner-appellant (hereinafter referred to as the "appellant") against the order of the learned Magistrate allowing an application filed by the Petitioner-Respondent-Respondent (hereinafter referred to as the "respondent") seeking an order of demolition of a building said to have been constructed by the appellant in violation of the Provisions of the Urban Development Authority Act.

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The impugned order of the learned Magistrate has been challenged in the High Court mainly on two grounds. They are as follows....

1. That no notice has been issued against the person responsible for the construction of the unauthorised building under and in terms of Section 28 (b) (1) of the relevant Act.
2. That the application made by the respondent to the Magistrate's Court has not been filed by way of a petition and affidavit.

It was urged before the learned High Court Judge that the order for the demolition of the building in

question had been entered without the learned Magistrate having ascertained the credibility of the information furnished in the said affidavits. The learned High Court Judge dealing with this ground, correctly stated that the Magistrate was not bound by the law to ascertain the credibility of the content of the said affidavits for two reasons. Firstly, that no evidence is allowed to be called or necessary to ascertain the correctness of the contents of the affidavit when proceedings are filed under the relevant Act. Secondly, that they had been no proper proof of the notice having been served on the respondents.

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As regards the failure on the part of the respondent to issue notice on the appellant, the learned High Court Judge has summed up that it is rather a technical objection than an objection based strictly on law.

Another objection raised at the argument related to the question of delegation of power to institute proceeding of this nature against persons contravening the provisions of the UDA Act. In this respect, the respondent has adverted us to the judgment in Kuragamage Harischandra Perera, Municipal Engineer's Department (planning) Vs Muniyadi Paneer Selwam SC Appeal No. 12309- SC Special Leave Application No. 139/09 – SC Minute

dated 18.01.2012 in which the Supreme Court held *inter alia* that the powers given to the UDA as contained in Section 28A of the UDA Act may be considered as falling within the scope of “planning” and consequently such powers can be delegated in terms of Section 23 (5) of the UDA Act. Page | 4

As was observed by the Supreme Court in the aforementioned case the intention of the legislature by bringing in Section 28A is to ensure the implementation of the development plan. Whenever any person fails to comply with the notice received under 28A (1) of the UDA Act may apply to the Magistrate in terms of subsection 3 (a) to obtain a mandatory order authorising the UDA to give effect to such notice and such mandatory order may permit the UDA to demolish a building or alter such building in accordance with the permit.

Taking into consideration the draconian Legislation, I am of the opinion that the learned High Court Judge cannot be faulted for his judgment refusing the revision application, on the basis that no exceptional circumstances have been established for him to exercise the discretionary powers of revision.

In the circumstances, the appeal filed by the appellant stands dismissed. There shall be no costs.

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President/Court of Appeal

Malinie Gunaratne, J.

I agree.

Judge of the Court of Appeal

KRL/-