

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

In the matter of an application under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka for a mandate
in the nature of a Writ of Mandamus.

K.D. Gunasekera
No. 80/3B, Layards Road,
Colombo 05.

PETITIONER

C.A. (Writ) Application No.195/2011

Vs

1. The Condominium Management
Authority
1st Floor, National Housing
Department Building,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
2. The Colombo Municipal Council
Town Hall, Colombo 07.

3. Ms. Ajantha Disanayake
No. 80/3/A, Layards Road,
Colombo 05.
4. National Building Research
Organization
99/1, Jawatte Road, Colombo 05.
5. Inspector General of Police
Police Head Quarters, Colombo 01.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor J.

COUNSEL

: Uditha Egalahewa for the
Petitioner.

Yuresha Fernando S.C. for the
1st, 4th and 5th Respondents.

M. Silva for the 2nd Respondent.

Chrishmal Warnasuriya with
W.Karunaratne for the 3rd
Respondent.

ARGUED ON

: 10th February, 2015

DECIDED ON

: 05th June, 2015

Deepali Wijesundera J.

The petitioner has filed this action praying for a writ of Mandamus against the first and second respondents to demolish the alleged illegal construction set out in document marked **P5(a)** and also to enforce the order date 14/09/2010.

The petitioner made a complaint to the first respondent The Condominium Management Authority with regard to illegal and unauthorized constructions done by the third respondent in the common area units causing hardship to the petitioner and structural damage to the condominium property. The first respondent conducted an inquiry in term of *Sec. 9A(1) of the Common Amenities Board Act* and both parties have participated at the inquiry, proceedings are marked as **P4(a)** and **R2**. Technical officers of the first and second respondents have submitted their reports at the inquiry which are marked as **P4(b)** and **P4(c)** and also marked as **R4**. After the conclusion of the inquiry the first respondent has come to the conclusion that both parties have carried out unauthorized and illegal constructions and directed both parties to demolish the said constructions within three months from the said order **P5(a)**.

The petitioner's counsel submitted the petitioner demolished the said illegal constructions within the stipulated period of three months but the third respondent failed to comply with the said order and continues to enjoy the benefits of the said illegal constructions to the detriment of the condominium property and the petitioner.

The first respondent's counsel stated that after receiving the petitioner's complaint an inquiry was held by the first respondent with the participation of all the respondents consequent to which the petitioner and the third respondent was informed to demolish the illegal constructions as per Sec. 9A(3) (1) of the *Common Amenities Board Act (as amended)*.

The first respondent has made a site inspection to see whether the parties have complied with the said order and found that the third respondent had failed to comply with the said order and as such steps could be taken as stipulated in Sec. 9A (3) (1) of the said Act. A copy of the inspection report dated 28/06/2011 is marked as **R4**. The first respondent's counsel stated the first respondent has acted in good faith and in accordance with the relevant provisions contained in the said Act, and that the petitioner is not entitled to the relief prayed for in the petition.

The second respondent submitted that the second respondent's officers inspected the premises in dispute and made a report and a sketch depicting the unauthorized construction. These documents have been marked as **2R1** and **2R2**. The second respondent has also informed the manager of the first respondent's authority regarding the unauthorized structures these documents are marked as **2R3**, **2R4** and **2R5**. He further stated that in terms of apartment ownership Act it is the duty of the first respondent to take steps to demolish the unauthorized construction in condominium properties.

The third respondent's counsel marking documents **3R1** to **3R9** submitted that the said condominium plan is not registered in the land registry and a building plan has been registered in the Colombo Municipal Council and that the second respondent has issued a certificate of conformity to the said plan. These documents are marked as **3R1**, **3R2** and **3R3**. The third respondent stated that the said property does not fall within the *Apartment Ownership Law No. 11 of 1973* and that the first respondent does not have the power to inquire into the complaint made by the petitioner therefore the said decision of the first respondent is *ultra vires* and made without jurisdiction.

The counsel for the third respondent further stated that the said alteration was done by the previous owner long before the third respondent became the owner and that there is a valid building permit dated 22/04/1964 issued by the second respondent for same, this is marked as 3R5.

The third respondent further stated that the petitioner has not come to court with clean hands and that he has not complied with the said order of the first respondent and demolished the unauthorized structures built by him.

The third respondent's argument that the third respondent's property does not come within the first respondent was not taken up at the inquiry held by the first respondent. At the inquiry the third respondent had been represented by an attorney at law as well but no objection has been taken.

The second respondent, the Colombo Municipal Council stated that this building does not come under them, to demolish an unauthorized construction which has to be done by the first respondent's authority. According to the second respondent the third

respondent's building is governed by the first respondent authority, now the third respondent can not say he does not fall within the act. This objection was not even mentioned at the inquiry.

The third respondent argued that the petitioner has not come to court with clean hands and that his unauthorized construction still stands. On perusal of the documents filed this court finds otherwise **2R1** and **2R2** shows the unauthorized constructions done by both parties. The inquiry was held and these reports were considered and parties were asked to demolish the said unauthorized constructions within three months. The first respondent's officer has inspected the said building and found that the third respondent had failed to comply with the said directive of the first respondent. The inspection report marked as **R4** clearly states that the third respondent has failed to comply with the said order.

Sec. 9A (3) (b) states that where an owner or occupier or management corporation or other person after being present at such an inquiry refuses to comply with any direction issued under *Sec. 9A (2)* within seven days from the date of issue of such direction the authority shall take appropriate measures to demolish such unauthorized constructions. The first respondent under the said Act has the authority

to demolish the construction which the first respondent found to be unauthorized.

For the afore stated reason I decide to allow the petitioner's application and issue a writ of Mandamus against the first respondent as prayed for in prayer "b" of the petition.

JUDGE OF THE COURT OF APPEAL.

M.M.A. Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL.