

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

In the matter of an application
in terms of Article 140 of the
Constitution seeking mandate
in the nature of Certiorari
together with Section 7 of the
High Court of the Provinces
(Special Provisions) Act No. 19
of 1999.

W. Upali Abeywardena,
No. 11, Public Market,
Cross Road,
Anuradhapura.

Petitioner

VS.

CA (PHC) 214/2005

Anuradhapura HC No.48/2003 Writ

1. The Municipal Council,
Anuradhapura.
2. The Mayor,
Municipal Council,
Anuradhapura.

3. H.L. Caldera,
Member Municipal Council,
596/80,
K.B. Ratnayake Mawatha,
Stall 50,
Anuradhapura.

Respondents

AND

W. Upali Abeywardena,
No.11, Public Market,
Cross Road,
Anuradhapura.

Petitioner - Appellant

VS.

1. Municipal Council.
Anuradhapura.
2. The Mayor,
Municipal Council,
Anuradhapura.
3. H.L. Caldera,
Member Municipal Council,
596/80,
K.B. Ratnayake Mawatha,
Stall 50,
Anuradhapura.

Respondent – Respondents

BEFORE : W.M.M. Malinie Gunaratne, J. and
P.R. Walgama J.

COUNSEL : Appellant was absent and unrepresented.
: Dharmasiri Karunaratne
for the 1st and 2nd Respondents

Argued : 18.12.2015.

Written submissions
filed on : 18.01.2016

Decided on : 01.04.2016

Malinie Gunaratne, J.

The Appellant in this Appeal has sought to impugn the Judgment of the learned High Court Judge of Anuradhapura dated 29.06.2005 wherein the learned High Court Judge had dismissed the Petition of the Appellant.

The Appellant had instituted the action No.48/2003 /Writ in the High Court of Anuradhapura, seeking to quash the document dated 25.11.2003 marked as 'P 11' issued by the 2nd Respondent. The said notice had been sent under the Urban Development Authority Act No. 41 of 1978 as amended by Act No. 44 of 1984.

After considering the submissions made by both parties the learned High Court Judge dismissed the Appellant's application. Being aggrieved

by the said Judgment the Appellant has preferred this Appeal praying for annulling of the said Judgment.

The case was scheduled for argument on 18.12.2015. Only the Counsel for the 1st and 2nd Respondents was present and the Appellant was absent and unrepresented on that day, although the Appellant had been represented by a Counsel previously. In the circumstances submissions were made on behalf of the 1st and 2nd Respondents only.

The Appellant had made the application to the High Court of Anuradhapura, for a Writ of Certiorari to quash the notice marked as 'P 11' to the Petition. He averred that the 2nd Respondent, acting in excess or abuse of his powers and motivated by political and other extraneous reasons, was taking steps to demolish his building.

The 1st and 2nd Respondents filing their objections had stated in their affidavits, that to remove the unauthorised buildings within the town limit of Anuradhapura are subject to the control.

In the case of Biso Menika vs. C.R. De Alwis (S.C. 59/61), Sharvananda J. (as he was then) stated, "a Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course".

The exercise of this discretion by Court is governed by certain well accepted principles. The fundamental principal is that the rights of a person would have been affected by any decision or determination for the Court to consider. A Petitioner seeking a prerogative writ is not entitled to relief as a matter of course, as a matter of right or as a matter of routine.

Halsbury, Volume 11 Pages 85 and 86, Simonds Edition:- “The grant of a Writ is as a general Rule, a matter of discretion of the Court. It is not an order granted as of a right and it is not issued as a matter of course. Accordingly, the Court may refuse the order, not only upon the merits but also by reason of the special circumstances of the case (Halsbury’s Laws of England).

It is relevant to note, that the facts emerged in this case do not show, that the 1st and 2nd Respondents have acted in excess of their legal authority affecting the rights of the Appellant. The Appellant has not submitted to Court or shown any illegality or procedural irregularity in sending the said notice marked ‘P 11’.

Hence, I am of the view, that the 1st and 2nd Respondents have acted correctly and legally within their power and the Appellant is therefore not entitled for the reliefs prayed for in the Petition.

On perusal of the Judgment, it is apparent, that the learned High Court Judge has taken into consideration of the affidavits and documents filed by the parties and had come to his conclusion. As such I do not see any wrong in the manner in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

For the above reasons, I see no basis to interfere with the Judgment of the learned High Court Judge.

Accordingly, I affirm the Judgment of the learned High Court Judge dated 29.06.2005, and dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed