

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

In the matter of an application for
revision of an the order of the High
Court of Northern Province, holden in
Jaffna; in terms of Article 138(1) and
154P(6) of the Constitution read with the
provisions of the High Court of the
Provinces (Special Provisions) Act
No.10/1990.

C.A. (PHC) APN Application

NO.102/2012

H.C. Jaffna (Rev) No.1527/12

M.C. Jaffna No. 17803

Velupillai Mahadevan
205.1 Vaddukoddai Road,
Vaddukoddai

Petitioner

Karthigesu Varatharajan
257/1 Stanly Road, Jaffna.

Respondent-Petitioner-1st Respondent

Commissioner, Municipal Council Jaffna
Applicant-Respondent-2nd Respondent.

BEFORE : K. K. WICKREMASINGHE, J. &
P. PADMAN SURASENA, J.

COUNSEL : M.A.Sumanthiran P.C. with Niran Anketell for
the petitioner.

V. Puvitharan P.C. with Subhani Kalugamage
and Anuja Rasanayakam for the respondent-
petitioner-1st respondent.

ARGUED AND

DECIDED ON : 16th June, 2017.

P. PADMAN SURASENA, J.

This matter was taken up for argument. Learned President's Counsel for the respondent-petitioner-1st respondent and the learned Counsel for the petitioner were heard in support of their respective cases. Learned Counsel for both parties conceded the followings: _

- (i) The applicant-respondent 2nd respondent namely the Commissioner of Municipal Council, Jaffna had filed one single case for the purposes of seeking a mandatory demolition order under Section 28(A)(3) and for

prosecution of the person responsible for that construction under Section 28(1) of the Urban Development Authority Law as amended (hereinafter referred to as UDA Law).

- (ii) that the best course of action for the Commissioner of Municipal Council, Jaffna to have field two separate cases for these purposes
- (iii) that the Commissioner of Municipal Council, Jaffna had not filed either an affidavit or a sketch or any report by a technical officer along with the application seeking a mandatory order for demolition.

In the light of the above factual positions it is the view of both parties that the proceedings pertaining to this case is vitiated ab-initio. This Court is also of the view that it would be in the best interest of all parties that the Municipal Council of Jaffana takes initiative to file two separate cases before Court according to law.

Learned Counsel for the petitioner wishes to place on record before this Court that it would not be open for the respondent-petitioner-1st respondent to take up the position that there was no affidavit filed by the Municipal Council as that objection was not taken up before the Magistrate's Court or even before the High Court.

In the circumstances, we decide to set aside the order dated 2012.06. 22 made by the learned High Court of Jaffna as well as the order dated 2012.03. 12 made by the learned Magistrate's Court of Jaffna.

It would be open for any authorities concerned to file suitable applications before the relevant Magistrate's Court in respect of the orders that were initially sought in the single case filed before the Magistrate of Jaffna in this case.

JUDGE OF THE COURT OF APPEAL

K. K. WICKREMASINGHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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