

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

In the matter of an Appeal against  
judgment of Provincial High Court  
exercising its writ jurisdiction.

C A (PHC) / 172 / 2003

Provincial High Court (

Hambanthota)

Case No. HCA 08 / 2002

Magistrate's Court

Tissamaharama

Case No. 56694

M B Susil Kumara,

No 7,

Udaya Niwasa Place,

Depot Road, . .

Kataragama.

**PETITIONER - APELLENT**

-Vs-

Urban Development Authority of Sri

Lanka,

Sethsiripaya,

Battaramulla.

**RESPONDENT - RESPONDENT**

**Before:      K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel;    S A Kulasooriya for the Petitioner - Apellant

Maithri Amarasinghe SC for the Respondent - Respondent.

Decided on :    2017 - 11 - 30

JUDGMENT**P Padman Surasena J**

Learned counsel for both the Parties, when this case came up on 2017-08-01 before this Court, agreed to have this case disposed of, by way of written submissions. They indicated that it would not be necessary for them to make oral submissions. They requested this Court to pronounce the judgment after considering the contents of their written submissions. Therefore, this judgment would be based on the material adduced by parties in the pleadings and the written submissions.

The Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had issued a notice<sup>1</sup> on the Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of the provisions of the Urban Development Authority Law No. 41 of 1978 as amended by Act No. 4 of 1982 and Act No. 44 of 1984 (hereinafter sometimes referred to as the UDA Act).

As the Appellant had failed to comply with the directions issued to him by the said notice, the Respondent had thereafter made an application in the Magistrate's Court of Tissamaharama under section 28 A (3) of the UDA

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<sup>1</sup> Produced in the Provincial High Court, marked ඉප 2

Act seeking a mandatory order to demolish the building constructed unlawfully by the Appellant.

As the Appellant had failed to produce any permit for the said construction learned Magistrate had granted authority<sup>2</sup>, to the Respondent under section 28 A (3) to demolish the said unlawful construction.

The Appellant had thereafter filed an application in the Provincial High Court holden in Hambantota praying for a writ of prohibition to prohibit the enforcement of the said order of the learned Magistrate.

The Provincial High Court after hearing parties, by its judgment dated 2003-05-22 had proceeded to dismiss the said application holding that it had no basis to issue the writs sought by the Appellant.

It is against that judgment that the Appellant has appealed to this Court.

In the written submissions filed, the Appellant has advanced a solitary argument. The said argument is that the learned Provincial High Court Judge had failed to consider the fact that the Respondent had no authority at all to institute the relevant proceedings in the Magistrate's Court.

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<sup>2</sup> by the order dated 2002-01-11

It is the argument of the Appellant that 'a gazette notification under section 23 (1) of the Act had not been published by the Minister seeking to stay any other planning scheme or project under any other enactment'.<sup>3</sup>

Learned counsel for the Appellant has opted to totally rely on written submissions to place his argument before this court. Therefore it is his duty to articulate whatever the argument he wished this court to consider, in such a way that this court would be able to comprehend them clearly. I have perused the written submissions filed by the Appellant. However, I am unable to gather any legal basis as to why the learned counsel for the Appellant has taken up the above ground in this case. Further, his written submission does not make his argument precise.

Be that as it may, the gist of the argument advanced by the learned counsel for the Appellant is that the Respondent had no power to institute the impugned proceedings in the Magistrate's Court. According to Section 28 A (3) it is the Urban Development Authority which has been empowered by the Act to apply to the Magistrate's Court to obtain an order authorizing the authority to demolish any unlawful construction when the person

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<sup>3</sup> Paragraph B (a) of the written submissions filed by the Appellant.

responsible for such construction fails to comply with a notice issued under section 28 A (1) of the said Act. Therefore, there is no merit in the argument<sup>4</sup> that the Respondent lacks any statutory authority to do what he has done in the instant case.

Perusal of the judgment of the learned Provincial High Court Judge shows that he had rather confused about the nature of the application before that Court. It appears that the learned Provincial High Court Judge had dealt with it sometimes as a revision application and sometimes as a writ application. Although the petition of appeal contains averments to that effect, no submission with regard to that has been made by the learned counsel for the Appellant before this Court. Thus, it is not a ground relied upon by the Appellant before this Court.

In any case, it can clearly be seen that the said confusion has been due to the failure on the part of the Appellant to properly identify the nature of the application he had filed before the Provincial High Court. The caption of his application does not state whether it is a writ application or an application for revision. For that reason, this court is of the view that the

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<sup>4</sup> Advanced by the Appellant

application filed before the Provincial High Court by the Appellant is defective and therefore it is the Appellant who is responsible for the said confusion. In these circumstances, the Appellant cannot have any entitlement to complain about that confusion now.

Another observation that this Court has to make is that the writs the Appellant had prayed for, are against the Urban Development Authority which is an Authority under the Central Government. The subject matter of this case is an unlawful construction in a state land.

This Court would only state here that the Supreme Court in the case of The Superintendent, Stafford Estate and two others Vs. Solaimuthu Rasu<sup>5</sup> had held that the jurisdiction conferred on the Provincial High Courts under Article 154 P 4(b) does not extend to matters in respect of powers relating to recovery/dispossession encroachment or alienation of State lands since they are not found in the Provincial Council List (List 1) in the 9<sup>th</sup> Schedule to the 13<sup>th</sup> amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

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<sup>5</sup> 2013 (1) Sri. L. R. 25.

However since the Provincial High Court in the instant case has refused to issue the writ sought by the Appellant, this court would not proceed to consider that aspect at this stage in this case.

In these circumstances and for the foregoing reasons this Court decides to dismiss this appeal with costs.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**