

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

In the matter of an application for Special Leave to Appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC APPEAL NO. 128/13

SC.SPL. LA. No. 122/2011
CA (Writ) No. 878/08

1. The Municipal Council of Moratuwa,
2. His Worship Lord Mayor Moratuwa,
3. The Municipal Commissioner,

All are of
Moratuwa Municipal Council,
Galle Road, Moratuwa.

Respondent-Petitioners

Vs.

Weerahennadige Shian Hiresh
Fernando,
No. 04, De Vos Avenue,
Colombo 04.

Petitioner-Respondent

BEFORE : Sisira J. de Abrew, J.
K. T. Chitrasiri, J. &
Prasanna S. Jayawardena, PC, J.

COUNSEL : Rasika Dissanayake for the 1st – 3rd Respondent-Appellants.

Chrishmal Warnasuriya with Jayathu
Wickramsuriya for the Petitioner-Respondent.

**ARGUED &
DECIDED ON** : 25.07.2016

Sisira J. de Abrew, J.

Both Counsel submit that the parties in the case SC. Appeal 130/2013 would abide by the judgment in the case SC. Appeal 128/2013. Having allowed the said application, Court decides to take up for argument SC. Appeal 128/2013.

Heard both Counsel in support of their respective cases.

The Petitioner-Respondent filed an application in the Court of Appeal seeking a writ of mandamus issued on the 1st to 3rd Respondents. The Petitioner-Respondent in his petition filed in the Court of Appeal, inter alia, has sought the following relief referred to in paragraph “c” in the prayer.

“Grant and issue writs of mandamus compelling the 1st to 3rd Respondents or any one and/or more of them to dully perform their statutory duties by demolishing/clearing the unauthorized constructions on the Petitioner’s land and premises presently bearing assessment Nos. 35/18 and 35/19, Jubilee Road, Moratuwa”. (vide paragraph ‘C’ of the prayer to the petition)

The Court of Appeal, by its judgment dated 12th May 2011,

issued a writ of mandamus as per the said paragraph 'c' of the prayer to the petition referred to above.

Being aggrieved by the said judgment the Respondent-Appellant has filed this appeal.

This Court by its order dated 23/09/2013, granted leave to appeal on the following questions of law:

1. Did the Court of Appeal err in rejecting the affidavits of the 2nd and 3rd Respondents-Appellants in the circumstances of this case?
2. Did the Court of Appeal err in Law in granting a writ of mandamus without satisfying itself of the existence of the requirements necessary for the grant of the writ?
3. Did the Court of Appeal have any other alternative but to grant the relief prayed for in the absence of any valid affidavits as admitted by the Respondent in the Court of Appeal?

After considering the said questions of law, we would like to consider first, the 2nd question of law as set out above. It is an undisputed fact that premises Nos. 35/18 and 35/19 belong to the Petitioner-Respondent. The Petitioner-Respondent has sought a writ of mandamus to demolish the said houses. The Petitioner-Respondent submits that the said premises are unauthorized constructions. The Petitioner-Respondent in para '9' of the petition filed in the Court of Appeal admits that one Mr. Dickman Cooray is presently in unlawful

occupation of the said premises.

Learned Counsel appearing for the Petitioner-Respondent submitted that he did not make Dickman Cooray a party, as he is in unlawful occupation of the said premises. In short he submitted that Dickman Cooray is an unlawful occupier of the said premises.

The question that arises for consideration is whether there is any judicial pronouncement to the effect that Dickman Cooray is an unlawful occupier of the said premises. This question has to be answered in the negative. There is no judicial pronouncement that Dickman Cooray is an unlawful occupier of the said premises.

Court of Appeal has issued a writ of mandamus without giving a hearing to Dickman Cooray who is presently occupying the said premises. In the event of this order being carried out Dickman Cooray will definitely be affected.

It is an accepted principle in law that when Court makes an order, the party that may be affected by the said order must be given a hearing. In the present case Court of Appeal has failed to grant a hearing to Dickman Cooray. Furthermore, the Petitioner has failed to name Dickman Cooray as a party to the action filed in the Court of Appeal.

In these circumstances, we hold that the Court of Appeal has not followed the rules of natural justice. We therefore hold the view that we are unable to permit the judgment of the Court of Appeal to stand.

SC. Appeal No. 128/2013

For the above reasons, we answer the 2nd question of law set out above in the affirmative. In view of the conclusion reached above, the 1st and 3rd questions do not arise for consideration.

For the reasons set out above, we set aside the judgment of the Court of Appeal. We allow the appeal with costs fixed at Rs. 75,000/-.

JUDGE OF THE SUPREME COURT

K. T. Chitrasiri, J.

I agree.

JUDGE OF THE SUPREME COURT

Prasanna S. Jayawardena, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

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