

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

*In the matter of an Appeal consequent
to the grant of Special Leave to
Appeal.*

S.C. Appeal No: 203/2012

Lenin Fernando,
Chairman,
Urban Council, Panadura.

S.C. (Spl) LA No: 73/2012

APPLICANT

Vs.

C.A. (PHC) No: 22/95

S.P. Mercy Catherine Perera,
No. 1/1, Sinha Garage,
7th Cross Street, Panadura.

H.C.R.A. Panadura No. 19/94

RESPONDENT

M.C. Panadura No: 17780

1. K.D. Dharmasiri Senadheera,
No. 03, Rankothvihara Road,
Pananadura.
2. M. Saraswathi,
No. 3/1, Rankothvihara Road,
Pananadura.

3. U.L.A. Perera,
No. 5 & 7, Rankothvihara Road,
Panadura.
4. R.D. Fernando,
No. 9, Rankothvihara Road,
Panadura.
5. M.T.J. Peiris,
No. 15, Rankothvihara Road,
Panadura.
6. A.K. Susil Peiris,
No. 15A, Rankothvihara Road,
Panadura.
7. S.B. Wimalaratna,
No. 17, Rankothvihara Road,
Panadura.
8. K.D. Dayawathi,
No. 19, Rankothvihara Road,
Panadura.
9. D. Lakshman Wijesuriya,
No. 21, Rankothvihara Road,
Panadura.

CLAIMANTS

AND

1. K.D. Dharmasiri Senadheera,
No. 03, Rankothvihara Road,
Panadura.
2. M. Saraswathi,
No. 3/1, Rankothvihara Road,
Panadura.
3. U.L.A. Perera,
No. 05 & 07, Rankothvihara Road,
Panadura.
4. R.D. Fernando,
No. 9, Rankothvihara Road,
Panadura.
5. M.T.J. Peiris,
No. 15, Rankothvihara Road,
Panadura.
6. A.K. Susil Peiris,
No. 15A, Rankothvihara Road,
Panadura.
7. S.B. Wimalaratna,
No. 17, Rankothvihara Road,
Panadura.

8. K.D. Dayawathi,
No. 19, Rankothvihara Road,
Panadura.

9. D. Lakshman Wijesuriya,
No. 21, Rankothvihara Road,
Panadura.

CLAIMANT-PETITIONERS

1. Lenin Fernando,
Chairman,
Urban Council, Panadura.

APPLICANT-RESPONDENT

2. S.P. Mercy Catherine Perera,
No. 1/1, Sinha Garage,
7th Cross Street, Panadura.

RESPONDENT-RESPONDENT

AND

S.P. Mercy Catherine Perera,
No. 1/1, Sinha Garage,
7th Cross Street, Panadura.

RESPONDENT-RESPONDENT-

APPELLANT

Vs.

1. K.D. Dharmasiri Senadheera,
No. 03, Rankothvihara Road,
Panadura.
2. M. Saraswathi,
No. 3/1, Rankothvihara Road,
Panadura.
3. U.L.A. Perera, **(Deceased)**
No.05 & 07, Rankothvihara Road,
Panadura.

CLAIMANT-PETITIONER-

RESPONDENTS

- 3a. Uswatta Liyange Hemantha
Perera,
Pamunugama Road,
Pinkotuwa Junction,
Panadura.

3A SUBSTITUTED CLAIMANT-

PETITIONER-RESPONDENT

4. R.D. Fernando,

No. 9,

Rankothvihara Road,

Panadura.

5. M.T.J. Peiris, **(Deceased)**

No. 15,

Rankothvihara Road,

Panadura.

CLAIMANT-PETITIONER-

RESPONDENTS

5a. Hemage Sobi Charlotte,

5b. M.T. Padmaseeli Peiris,

5c. M.T. Dulcie Nimal Peiris,

No. 15, Rankothviahara Road,

Panadura.

5d. M.T. Nilshi Nalin Peiris,

No. 17B, Kahatagahawatta,

Minuwampitiya, Panadura.

5A to 5D SUBSTITUTED

CLAIMANT-PETITIONER-

RESPONDENTS

6. A.K. Susil Peiris,
No. 15A,
Rankothvihara Road,
Panadura.

7. S.B. Wimalaratna, **(Deceased)**

CLAIMANT-PETITIONER-
RESPONDENTS

7a. S. Mabel Fernando,
7b. S. Sampath Pushpakumara,
7c. S. Thanuja Pushpamali,
No. 17,
Rankothvihara Road,
Panadura.

7A to 7C SUBSTITUTED
CLAIMANT-PETITIONER-
RESPONDENTS

8. K.D. Dayawathi,
No. 19, Rankothvihara Road,
Panadura.

9. D. Lakshman Wijesuriya,
(Deceased)

No. 21, Rankothvihara Road,
Panadura.

CLAIMANT-PETITIONER-
RESPONDENTS

9a. Mohammed Nassim Sitti

Maseena,

9b. Don Sadun Surendra

Wijesuriya,

All No. 21 of Rankothvihara Road,

Panadura.

9A to 9B SUBSTITUTED

CLAIMANT-PETITIONER-

RESPONDENTS

10. Lenin Fernando,

Chairman,

Urban Council, Panadura.

APPLICANT-RESPONDENT-

RESPONDENT

10a. Deepthi Abeywickrama,

Chairman, Urban Council,

Panadura.

10b. Vijith Priyantha,

Chairman, Urban Council,

Panadura.

- 10c. Predeep Ratnayake,
Special Commissioner Urban
Council, Panadura.
- 10d. Mrs. Asoka Gunawardena,
Special Commissioner Urban
Council, Panadura.
- 10e. W.G. Premalal,
Commissioner Urban Council,
Pananadura.
- 10f. W.S.I. Wijesekara,
Special Commissioner Urban
Council, Panadura.
- 10g. M.D. Nandana Gunatileke,
Chairman, Urban Council,
Pananadura.

10A to 10G SUBSTITUTED

APPLICANT-RESPONDENT-

RESPONDENTS

AND NOW BETWEEN

4. R.D. Fernando,
No. 9, Rankothvihara Road,
Panadura.

6. A.K. Susil Peiris,
No. 15A, Rankothvihara Road,
Panadura.

CLAIMANT-PETITIONER-
RESPONDENT-PETITIONERS

7b. S. Sampath Pushpakumara,
No. 17, Rankothvihara Road,
Panadura.

7B SUBSTITUTED CLAIMANT-
PETITIONER-RESPONDENT-
PETITIONER

8. K.D. Dayawathi,
No. 19, Rankothvihara Road,
Panadura.

CLAIMANT-PETITIONER-
RESPONDENT-PETITIONER

9a. Mohammed Nassim Siththi
Maseena,
No. 21, Rankothvihara Road,
Panadura.

9A SUBSTITUTED CLAIMANT-
PETITIONER-RESPONDENT-
PETITIONER

Vs.

S.P. Mercy Catherine Perera,
No. 1/1, Sinha Garage, 7th Cross
Street, Panadura. **(Deceased)**

RESPONDENT-RESPONDENT-
APPELLANT-RESPONDENT

Hewafonsekage Swarna Hycinth
Anne Fonseka,
No. 22, M.E. Cooray Mawatha,
Wadduwa.

Hewafonsekage Kanthi Janet
Fonseka,
'Ratnawasa', Katuwalagoda Road,
Welipenna, Matugama.

Hewafonsekage Siransi Anita

Fonseka,

No. 585/9A/02, Arawwala,

Pannipitiya.

Hewafonsekage Shirley Lucius Tilak

Fonseka,

No. 164/12, Leon Silva Mawatha.

Hewafonsekage Swaneeta Ranjane

Agnus Fonseka,

No. 585/9A/12, Arawwala,

Pannipitiya.

Hewafonsekage Swanee Melinda

Fonseka,

No. 21, Janetvilla, Walpola,

Panadura.

Hewafonsekage Sunil Lucius Vijith

Fonseka,

No. 21, Janetvilla, Walpola,

Panadura.

Hewafonsekage Shamilton Lucius

Viraj Fonseka,

No. 21, Janetvilla, Walpola,

Panadura.

SUBSTITUTED RESPONDENT-

RESPONDENT-APPELLANT-

RESPONDENTS

K.D. Dharmasiri Senadheera,

No. 03, Rankothvihara Road,

Panadura.

M. Saraswathi,

No. 3/1, Rankothvihara Road,

Panadura.

Uswatta Liyange Hemantha Perera,

Pamunugama Road, Pinkotuwa

Junctions, Panadura.

Hemage Sobi Charlotte

M.T. Padmaseeli Peiris

M.T. Dulcie Nimal Peiris

M.T. Nilshi Nalin Peiris

No.17b, Kahatagahawatta,

Minuwampitiya, Panadura.

A.K. Susil Peiris,

No. 15A, Rankothvihara Road,

Panadura.

S. Mabel Fernando.

S. Sampath Pushpakumara.

S. Thanuja Pushpamali,

All of No. 17, Rankothvihara Road,

Panadura.

K.D. Dayawathi,

No. 19, Rankothvihara Road,

Panadura.

Mohammed Nassim Sitti Maseena,
Don Sadun Surendra Wijesuriya,
No. 21 of Rankothvihara Road,
Panadura.

1, 2, 3A, 5A-5D, 6, 7A-7C, 8, 9A-9B

CLAIMANT-PETITIONER-

RESPONDENT-RESPONDENTS

AND NOW

R.D. Fernando,
No. 09, Rankoth Vihara Road,
Panadura.

A.K. Susil Peiris,
No. 15A, Rankoth Vihara Road,
Panadura.

S. Sampath Pushpakumara,
No. 17, Rankoth Vihara Road,
Panadura.

K.D. Dayawathi,
No. 19, Rankoth Vihara Road,
Panadura.

4, 6, 7B and 8 CLAIMANT-
PETITIONER-RESPONDENT-
APPELLANT-PETITIONERS

Vs.

S.P. Mercy Catherine Perera,
No. 1/1, Sinha Garage, 7th Cross
Street, Panadura. **(Deceased)**

a. Hewafonsekage Swarna Hycinth

Anne Fonseka,

No.22,

M.E. Cooray Mawatha,

Wadduwa.

b. Hewafonsekage Kanthi Janet

Fonseka,

'Ratnawasa', Katuwalagoda Road,

Welipenna,

Matugama.

- c. Hewafonsekage Siransi Anita
Fonseka,
No. 585/9A/02, Arawwala,
Pannipitiya.
- d. Hewafonsekage Shirley Lucius
Tilak Fonseka,
No. 164/12, Leon Silva Mawatha.
- e. Hewafonsekage Swaneeta
Ranjane Agnus Fonseka,
No. 585/9A/12, Arawwala,
Pannipitiya.
- f. Hewafonsekage Swanee Melinda
Fonseka,
No. 21, Janetvilla, Walpola,
Panadura.
- g. Hewafonsekage Sunil Lucius
Vijith Fonseka,
No. 21, Janetvilla, Walpola,
Panadura.
- h. Hewafonsekage Shamilton Lucius
Viraj Fonseka,
No. 21, Janetvilla, Walpola,
Panadura.

- i. Hewafonsekage Shanthiman
Lucius Vasantha Fonseka,
No. 142/19, Bodhirukkarama
Road, Nalluruwa, Panadura.
- j. Hewafonsekage Sherman Lucius
Ansly Fonseka,
No. 21, Janetvilla Road,
Panadura.

SUBSTITUTED RESPONDENT-
RESPONDENT-APPELLANT-
RESPONDENTS

1. K.D. Dharmasiri Senadheera,
No. 03, Rankothvihara Road,
Panadura.

CLAIMANT-PETITIONER-
RESPONDENT-RESPONDENT

2. M. Saraswathi, **(Deceased)**
No. 3/1, Rankothvihara Road,
Panadura.

2aa. Muthuthanthrige Sansya

Jayanthi,

No. 3/1, Rankothvihara Road,

Panadura.

SUBSTITUTED 2ND CLAIMANT-

PETITIONER-RESPONDENT-

RESPONDENT

2a. M.S. Jayanthi,

No. 20/4, Daladawatta Lane,

Thalpitiya South, Wadduwa.

3a. Uswatta Liyange Hemantha

Perera,

Pamunugama Road, Pinkotuwa

Junctions, Panadura.

5. Hamage Sobi Charlotte

(Deceased)

5aa. Muthuthanthrige Padmaseeli

Peiris,

No. 3/1, Rankothvihara Road,

Panadura.

SUBSTITUTED 5AA CLAIMANT-

PETITIONER-RESPONDENT-

RESPONDENT

5a. M.T. Padmaseeli Peiris

5b. M.T. Padmaseeli Peiris

5c. M.T. Dulcie Nimal Peiris

5d. M.T. Nilshi Nalin Peiris

No. 17b,

Kahatagahawatta,

Minuwanpitiya, Panadura.

6. A.K. Susil Peiris,

No. 15A,

Rankothvihara Road,

Panadura.

7a. S. Mabel Fernando.

7b. S. Sampath Pushpakumara.

7c. S. Thanuja Pushpamali,

All of No. 17,

Rankothvihara Road,

Panadura.

8. K.D. Dayawathi,

No. 19, Rankothvihara Road,

Panadura.

9a. Mohammed Nassim Sitti

Maseena.

9b. Don Sadun Surendra

Wijesuriya,

No. 21 of Rankothvihara Road,

Panadura.

1, 2, 3A, 5A-5D, 6, 7A-7C, 8, 9A-9B

CLAIMANT-PETITIONER-

RESPONDENT-RESPONDENTS

11. M.D. Nandana Gunatilkake,

Chairman, Urban Council,

Panadura. **(Ceased to hold**

office)

SUBSTITUTED CLAIMANT-

PETITIONER-RESPONDENT-

RESPONDENT

11a. Manel Siyabalagoda,

Secretary, Urban Council,

Panadura.

11A ADDED RESPONDENT

Before : Kumudini Wickremasinghe, J.
: Arjuna Obeyesekere, J.
: Sampath B. Abayakoon, J.

Counsel : L.M.K. Arulanandam, P.C. with Krishantha Premasiri
for 4th, 6th, 7b and 8th Claimant-Petitioner-
Respondent-Appellant-Petitioners instructed by
Chitrananda Liyanage.
: Shiral Lakthilaka for the Substituted Respondent-
Respondent-Appellant-Respondent instructed by
Sarath Walgamage.

Argued on : 17-02-2025

Written Submissions : 14-03-2013 (By the 10G Substituted Applicant-
Respondent-Respondent-Respondent)
: 14-02-2013 (By the Respondent-Respondent-
Appellant-Respondent)
: 18-12-2012 (By the Above-mentioned appellants)

Decided on : 04-04-2025

Sampath B. Abayakoon, J.

The 4th, 6th, 8th claimant-petitioner-respondent- appellants as well as the 7b and 9a substituted claimant-petitioner-respondent-appellants (hereinafter commonly referred to as the appellants) filed the amended petition dated 25-06-2012 seeking to challenge the judgment pronounced by the Court of Appeal on 09-03-2012, in case No. CA(PHC) 22/95.

From the impugned judgment, the Court of Appeal set aside the judgment pronounced on 02-02-1995 by the Provincial High Court of the Western Province holden in Panadura in Revision Application No. H.C.R.A. 19/94, and affirmed the order made by the learned Magistrate of Panadura in Magistrate's Court of Panadura Case No. 17780 on 07-07-1994.

When this matter was supported for granting of leave, this Court, having considered the matters contained in the petition, granted leave to appeal on the following questions of law as stated in paragraph 22 (i), (j), (k) of the amended petition.

The said questions of law read as follows,

(i) Did the learned Judges of the Court of Appeal misdirect themselves and err in law in failing to consider the fact that the closing order issued in this case affected the rights of the petitioners and caused severe injury to them.

(j) Did the learned Judges of the Court of Appeal misdirect themselves and err in law in failing to consider the ground of collusion which amounted to abuse of legal process.

(k) Did the learned Judges of the Court of Appeal misdirect themselves and err in law in failing to consider that the application of the applicant should be dismissed in view of the omission to make the necessary parties, namely the occupants, respondents, parties to the said application.

Accordingly, when this appeal was taken up for hearing, this Court heard the submissions of the learned President's Counsel on behalf of the appellants, as well as the learned Counsel for substituted respondent-respondent-appellant-respondents (hereinafter sometimes referred to as the respondents) who were substituted in this case in place of the now deceased original owner of the dwelling house subjected to the closing order made by the learned Magistrate of Panadura, and the respondent named in the case instituted before the

Magistrate Court. For matters of clarity, hereinafter she will be referred to as the 'owner respondent' in this judgment.

The facts which led to the appeal preferred before the Court of Appeal can be summarized in the following manner.

The Chairman of the Panadura Urban Council had issued a notice to the owner respondent, informing her to take steps to demolish the building situated in Rankoth Vihara Road (7th Cross Street), Panadura, which has several assessment numbers, on the basis that the Work Superintendent of the Urban Council and Panadura Medical Officer of Health (MOH) have reported to him that the said building is in dilapidated and beyond repair condition, and therefore, not fit for human habitation.

Subsequent to this notice, the Chairman of the Panadura Urban Council has made an application before the Magistrate's Court of Panadura by way of a petition supported by an affidavit and several attachments to substantiate his position. This application has been made in terms of section 77 and 78 of House and Town Improvement Ordinance No. 19 of 1915 as amended.

In the said application before the Magistrate's Court, the Chairman of the Urban Council has informed the Court that the dwellings with assessment numbers 3, 1/3, 7, 9, 15, 15A, 17, 17A, 19 and 21 are situated in one building with a common roof, and it had been reported to him by the Work Superintendent of the Urban Council, as well as the Panadura Medical Officer of Health (MOH) that the said dwellings are unfit for human habitation and also in a state where it cannot be repaired, and therefore is in a dangerous state which may cause danger to the public.

Along with the petition and the affidavit, he has tendered the observations of the Work Superintendent of the Urban Council as well as that of the MOH to the Court.

He has named the owner of the building as the respondent in the application filed and had sought an order from the Court against the owner respondent in terms of section 77 of the Housing and Town Improvement Ordinance.

When this application was supported in open Court on 12-05-1993 with notice to the owner respondent, the learned Judge before whom the application was supported has issued a closing order, ordering the closure of the dwellings mentioned in paragraph 02 of the application before the Magistrate's Court. The paragraph 02 consists of the earlier mentioned assessment numbers for which the closing order was sought.

However, after the said closing order was issued, on 16-07-1993, the learned Additional Magistrate of Panadura, having considered an application made by the appellants as well as several others on the same basis as that of the appellants, had vacated the earlier made closing order on the basis that he gave that closing order only in relation to premises No. 1/1, Sinha Garage, 7th Cross Street, Panadura, but upon inspecting the case record, he has now found that another schedule has been attached to the case record including several business premises, and therefore, his previous order does not relate to the said other premises.

He has also decided to hold an inquiry and has ordered that notice be issued to the Chairman of the Panadura Urban Council and the competent officer as well as the owner of the building and other parties.

The 2nd order made by the learned Additional Magistrate of Panadura on 16-07-1993 denotes that the closing order issued on 12-05-1993 have been issued by the learned Additional Magistrate of Panadura. However, the copy of the said closing order, which is available at page 198 of the appeal brief, suggests that the said order dated 13-05-1993 has been in fact signed by the learned Magistrate of Panadura.

It also needs to be noted that although the learned Additional Magistrate has stated in his subsequent order where the previous closing order was set aside,

that he made the order only in relation to premises No. 1/1, Sinha Garage, 7th Cross Street, Panadura, there is no such number mentioned in the closing order. The premises numbers mentioned in the closing order are the premises numbers mentioned in the application before the Magistrate's Court of Panadura by the Chairman of the Urban Council of Panadura. Even in the said application, there is no such number as mentioned by the learned Additional Magistrate to justify his order to vacate the previous closing order.

It is with regret that I need to mention that the address used by the learned Additional Magistrate to vacate the previous closing order was the address of the owner of the dwelling house subjected to the closing order, and not the subject matter of the closing order, as wrongly viewed by the learned Additional Magistrate.

When this matter was brought to the notice of learned Magistrate of Panadura on 07-07-1994, the learned Magistrate of Panadura, having heard the applicant before the Magistrate's Court, as well as the owner respondent, and also the appellants and the other respondents who came before the Court as claimants, has decided that there was no basis for the learned Additional Magistrate to vacate the previous closing order made by the Court. Having considered the relevant provisions of the Housing and Town Improvement Ordinance, the learned Magistrate has determined that the order to temporarily vacate the closing order, as well as allowing the appellants and the other claimants to oppose the application of the Chairman of Panadura Urban Council, are orders made due to a mistake of facts. Accordingly, the learned Magistrate has decided to restore the closing order dated 12-05-1993.

Being aggrieved by the said order, the appellants and the other claimants before the Magistrate's Court has filed an application in revision before the High Court of the Western Province holden in Panadura seeking to invoke the discretionary remedy of revision granted to the said High Court in terms of Article 154P of The Constitution.

Having considered the application, the learned High Court Judge of the Provincial High Court of the Western Province holden in Panadura has allowed the revision application preferred by the appellants along with several other claimants.

The learned High Court Judge has ordered the quashing of the order made by the learned Magistrate on 07-07-1994, which in effect has restored the order made by the learned Additional Magistrate temporarily setting aside the closing order. It has been ordered that a fresh inquiry should be held.

It appears from the above judgment that the order made by the learned Magistrate on 07-07-1994 has been set aside on the basis that the learned Magistrate has no jurisdiction to set aside an order made by the learned Additional Magistrate of Panadura on 16-06-1993, irrespective of whether it has been decided rightly or wrongly, or being misled as to the facts.

It is against this judgment the owner respondent has preferred an appeal to the Court of Appeal, seeking to challenge the determination of the learned Provincial High Court Judge of the Western Province holden in Panadura.

After having considered the matters urged before the Court of Appeal, of the judgment dated 09-03-2012, their lordships of the Court of Appeal, after considering the legality of the order made by the learned Magistrate of Panadura and also having considered several judicial decisions in that regard, has decided that the learned Magistrate was correct in his order dated 07-07-1994. It has been held that the learned Magistrate is empowered to correct an obvious mistake by the Court, although it may be a mistake made by the Additional Magistrate of Panadura.

Therefore, the judgment of the learned High Court Judge of the Provincial High Court of the Western Province holden in Panadura pronounced on 02-02-1995 has been set aside, which in effect has restored the order made by the learned Magistrate of Panadura on 07-07-1994.

At the hearing of the appeal, it was the contention of the learned President's Counsel on behalf of the appellants that there was no basis for the Court of Appeal to set aside the judgment pronounced by the Provincial High Court of the Western Province holden in Panadura, as it was a judgment pronounced according to the law. It was his view that the subsequent order made by the learned Additional Magistrate where the previous closing order made on 12-05-1993 was vacated, was not an order made *per incuriam*. He also relied on the judgment of the Court of Appeal in **Titus Goonathilaka, Chairman of the Urban Council Panadura Vs. Samaraweerakankanamge Premasena in Court of Appeal Case No.467/77 decided on 02-02-1979**, to argue that the High Court was justified in ordering an inquiry into the matter.

He also submitted that the closing order has been made without giving due notice to the appellants, who are the tenants of the affected premises, and without giving them any opportunity to show cause as to why the closing order should not be made. It was also submitted that this is an action by the chairman of the Urban Council in collusion with the owner of the premises, who was the respondent named in the application made to the Magistrate's Court. Under the circumstances, it was his view that the appeal should be allowed and the learned Magistrate of Panadura should be ordered to hold an inquiry before allowing the application for a closing order.

It was the submission of the learned Counsel for the respondents that the learned Additional Magistrate was totally misdirected as to the relevant law when it was decided to vacate the previously made closing order and also allowing the so-called claimants before the Court to show cause in this matter. Citing the relevant section 77 of the Housing and Town Improvement Ordinance, it was his submission that an order made under this section should be a mandatory order, and the relevant procedural aspects after the closing order has also been clearly provided in the said section itself. It was his view that the learned Magistrate, who was the Judge who had in fact signed the closing order as the Magistrate of Panadura, was correct in his order dated 07-07-1994, which was an order in

accordance with the provisions of section 77 and other related sections of the Housing and Town Improvement Ordinance.

Since this appeal revolves totally on the provisions of section 77 of the Housing and Town Improvement Ordinance, I find it pertinent to reproduce the said section in its totality for the better understanding of the judgment.

77. (1) If on the representation of the health officer of the local authority or other information given any dwelling house used for human habitation appears to the Chairman to be unfit for human habitation, it shall be his duty to apply to the Magistrate to make a mandatory order prohibiting the use for human habitation of such dwelling house (herein referred to as a “closing order”) until such dwelling house is rendered fit for that purpose; and the Magistrate, upon serving a notice upon the owner of such dwelling house, shall have power to make such order accordingly.

(2) Where a closing order has been made, the Chairman shall affix in a conspicuous place in or on the dwelling house a notice calling upon one or more tenants occupying such dwelling house to quit the premises on or before the expiration of the calendar month next succeeding the date of the notice.

(3) A closing order shall become operative, notwithstanding any appeal that may be entered against it, from the expiration of the period fixed by such notice, or if the premises in question are earlier vacated, from the date when they are so vacated, or if the premises are vacant at the date when the order is made, from the date of the order.

(4) If the Chairman is satisfied that the dwelling house in respect of which any closing order has been made is or has been rendered fit for human habitation, he may by certificate under his hand authorize such dwelling house to be used for human habitation.

(5) If on the application of any owner of a dwelling house the Chairman refuses to grant such a certificate, the owner may apply to the Magistrate to determine the closing order.

(6) Where an appeal is made against a closing order, and such appeal is dismissed or is abandoned, the appellant shall be liable to a fine not exceeding twenty rupees a day during the non-compliance with the order, unless he satisfies the court before which proceedings are taken for imposing the fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay; and where the appeal is heard the Court of Appeal may, on dismissing the appeal, impose the fine as if it were the court before which the summons was returnable.

When considering the provisions of section 77 along with the application made to the Magistrate's Court of Panadura by the Chairman of the Urban Council, it is manifestly clear that the Chairman has made the said application after following due process. He has considered the documentary submissions made to him by the MOH of the Council and also the Work Superintendent in relation to the condition of the dwelling, which has several partitions with separate assessment numbers.

The owner of the dwelling house has been duly notified requiring her to demolish the said dwellings as it had been determined that those dwellings are not habitable or in reparable condition.

It was after the said notice, the Chairman has made this application to the Magistrate's Court. In the said application supported by an affidavit, the separate assessment numbers of the dwelling in question have been informed to the Court along with the purpose for which the said premises has been used. Therefore, there was no basis under any circumstances for the learned Additional Magistrate to hold that he made the initial closing order only with regard to premises No. 1/1, Sinha Garage, 7th Cross Street, Panadura, which was in fact the address of the owner of the dwelling house, which was a separate premises from the premises for which the closing order was requested.

Once a proper application is made to a Magistrate's Court as in this case with sufficient proof, it is the duty of the Magistrate of such Court to issue a mandatory closing order prohibiting the use of such dwelling house for human

habitation. It is only after such an order is made, the Chairman of the Urban Council is required to affix the closing order in a conspicuous place in or on the dwelling house calling upon one or more tenants occupying such dwelling house to quit the premises within a month of the said notice. This shows that there is nothing in the Ordinance which requires the Chairman to notify anyone other than the owner of the dwelling before seeking an order from the Magistrate for a mandatory closing order.

It is also clear from the provisions of the section that the purpose of obtaining a closing order from a competent Court is not for the purpose of removing any occupants of the dwelling house or to demolish it, but to see whether it is possible to bring back the dwelling house to a habitable condition, where whatever the trade or occupation carried out in such a place can be continued once the place is brought back to such a condition, if possible.

The section also provides that the owner of the dwelling house can make an appeal to the Chairman to the effect that the dwelling house has been restored to a habitable position, and the Chairman has the power to issue a certificate under his hand authorizing such a dwelling house to be used for human habitation. If in a situation where the Chairman refuses to issue such a certificate when applied, the owner has a right to apply to the Magistrate who made the closing order to determine in that regard.

In my view, it is the point upon which a Magistrate can decide to hold an inquiry as to the validity of the closing order previously made. I am unable to find any provision where a party other than the owner of the dwelling house subjected to the closing order can make an application to the Magistrate's Court or for a Magistrate to order an owner or any other claimant for that matter to show cause as to why a closing order should not be made as determined by the learned Additional Magistrate when he vacated the previous closing order made by the Court.

I am of the view that the learned Judge of the Provincial High Court of the Western Province holden in Panadura was not correct when it was ordered that an inquiry should be held as to the party who came before the Court as claimants subsequent to the closing order as there was no provision as such in the Ordinance. I find that this order has been made despite recognizing that the learned Additional Magistrate has gone on a completely wrong footing as to the facts and law when making his second order.

I find no relevance in the judgment cited by the learned President's Counsel on behalf of the appellants as the facts relating to that case was not similar. That was a case where the owner of the dwelling house was occupying the premises and the learned Magistrate before whom the application for a closing order was made against him was directed to allow the owner of the dwelling house an opportunity to show cause as to why the order should not be made.

However, in the instant appeal before this Court, it was not the owner who has requested an opportunity to show cause, but the occupants of the dwelling who were not the owners, who has not been provided with a right to be heard before imposing a closing order.

As I view the provisions of section 77 of the Housing and Town Improvement Ordinance, as stated previously, it is clear that the purpose of the section is to prevent damage to human life and property by not allowing a building to stand uninhabitable and dangerous, and not to make the said section as a tool to evict any occupant of such a building. I am of the view that if such a building cannot be restored back to a habitable condition, the purpose of the section and other relevant sections in the Ordinance needs to be brought into operation as the clear intention of the legislature has been expressed in formulating such a provision as applicable law.

It is clear from the order made by the learned Magistrate of Panadura on 07-07-1994 that the learned Magistrate was well aware of the relevant provisions of section 77. It was quite obvious that the learned Additional Magistrate has

decided to vacate the previous closing order on a totally wrong footing and without any basis. Since it was the Magistrate who has finally signed and issued the closing order, I do not find anything wrong in the learned Magistrate's determination in that regard, as viewed by their lordships of the Court of Appeal when pronouncing the judgment dated 09-03-2012. It has been well considered whether the Magistrate can make such an order on the basis that the previous order was made *per incuriam* by the learned Additional Magistrate.

At this juncture, I would like to cite the two judgments cited by the Court of Appeal as I find them appropriate for the purposes of this appeal as well.

In **Sivapathalingham Vs. Siva Subaramaniam (1990) 1 SLR 378**, the Supreme Court held thus;

“A Court whose act has caused injury to a suiter has an inherent power to make restitution. This power is exercisable by a Court of original jurisdiction as well as by a superior Court.”

In **Gunasena Vs. Bandaratilake (2000) 1 SLR 292**, the Supreme Court held:

“The Court of Appeal had inherent power to set aside the judgment dated 25-05-1998 and to repair the injury caused to the plaintiff by its own mistake, notwithstanding the fact that the said judgment has passed the decree of Court. This would not have been done otherwise than by writing a fresh judgment.”

The judgment of the Court of Appeal clearly shows that it has gone on the basis of the necessity to correct the mistakes made by the learned Additional Magistrate in vacating the closing order previously made, and also making several orders that are not within the law. It is in that process, the Court of Appeal has allowed the order made by the learned Magistrate of Panadura on 07-07-1994.

Although it may look like a collusive action since the owner of the dwelling house, who was the owner respondent named in the action has not opposed the closing

order, in my view, that in itself cannot be considered as a reason to refuse to allow a closing order made after following due process.

It is not possible for a Chairman of the Urban Council to demolish the dwelling house on the strength of the closing order alone, as issuing a closing order is not meant as an authorization for demolition. A separate provision has been made in terms of section 81 of the Housing and Town Improvement Ordinance for a Chairman to obtain an order for demolition only under certain conditions, which again shows that the legislature in its wisdom has made clear and unambiguous provisions in this regard.

For the reasons as considered above, I find no reason to interfere with the judgment pronounced by the Court of Appeal on 09-03-2012.

Accordingly, the three questions of law as stated above is answered in the negative.

The appeal is dismissed. There will be no costs of the appeal.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court