

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

In the matter of an Application for Special Leave
to Appeal under Articles 127/128(2) of the
Constitution

1.

Kuragamage Harischandra Perera,
The Municipal Engineers' Department
(Planning),
Colombo Municipal Council
Colombo 07.

Applicant

1A. Palligoda Withanage Keerthi Wimal
Withana,
District Inspector,
The Municipal Engineers' Department
(Planning),
Colombo Municipal Council
Colombo 07.

Substituted Applicant.

Vs.

Muniyandy Paneer Selvam,
No. 12, Janaki Lane,
Bambalapitiya.

Respondent

AND

Muniyandy Paneer Selvam,
No. 12, Janaki Lane,
Bambalapitiya.

Respondent-Petitioner

S.C. Appeal No. 123/09
S.C. Spl. L.A. Appln. No. 139/09
MC Mt. Lavinia Cse No. 1974/S/5

Vs.

1. Kuragamage Harischandra Perera,
The Municipal Engineers' Department
(Planning),
Colombo Municipal Council
Colombo 07.
Applicant-Petitioner-1st Respondent

2. Hon. Attorney-General
Attorney-General's Department,
Colombo 12.

2nd Respondent

AND NOW

Muniyandy Paneer Selvam,
No. 12, Janaki Lane,
Bambalapitiya.

Respondent-Petitioner-Petitioner

Vs.

1. Kuragamage Harischandra Perera,
The Municipal Engineers' Department
(Planning),
Colombo Municipal Council
Colombo 07.
*Applicant-Petitioner-1st Respondent-
Respondent*

2. Hon. Attorney-General
Attorney-General's Department,
Colombo 12.

2nd Respondent –Respondent

NOW

Palligoda Withanage Keerthi Wimal
Withana,
District Inspector,
The Municipal Engineers' Department
(Planning),
Colombo Municipal Council
Colombo 07.

*1A Substituted -Applicant-
Petitioner-1st Respondent-Petitioner.*

Vs.

1. Muniyandy Paneer Selvam,
No. 12, Janaki Lane,
Bambalapitiya.

*Respondent-Petitioner-Petitioner-
Respondent*

Vs.

2. Hon. Attorney-General
Attorney-General's Department,
Colombo 12.

*2nd Respondent –Respondent
-Respondent-Respondent-*

Before **Gamini Amaratunga, J.**

K.Sripavan, J.

S.I. Imam, J.

Counsel : Jacob Joseph with Sandamalee Somarathna for the 1A
Substituted-Applicant-Petitioner-1st Respondent-Petitioner

V. Puvitharan with Ms. S. Kalugamage for the Respondent-Petitioner-Petitioner-Respondent.

M. Gunathilleke, S.S.C. for the 2nd Respondent-Respondent-Respondent-Respondent.

Argued on : 13.06.2011

Written Submissions

Filed : By the Petitioner on – 26.07.2011
By the 1st Respondent on – 26.07.2011
By the Hon. Attorney-General on – 21.10.2011

Decided on : 18.01.2012

SRIPAVAN. J.

The 1A substituted-Applicant- Petitioner-1st Respondent-Petitioner (hereinafter referred to as the “Petitioner”) in this application seeks to set aside the judgment of the Court of Appeal dated 29th May 2009, on the basis that the Court misconstrued certain provisions of the Urban Development Authority Law No. 41 of 1978 as amended.

Special Leave was granted by this Court on 21st October 2009 on the questions of law set out in paragraphs 11(i), 11(ii) and 11(iii) of the amended petition dated 29th September 2009. At the hearing before us, all Counsel agreed to restrict their argument to the following two questions of law only :

- (i) Did the Court of Appeal err in Law in interpreting Section 23(5) and 28(A)(3) of the Urban Development Authority Law as amended by Act No. 4 of 1982?

- (ii) Did the Court of Appeal misconstrue the provisions of the Urban Development Authority Act No. 4 of 1982?

On 1st July 2005, the Petitioner instituted an action in the Magistrate's Court of Mt. Lavinia in terms of Section 28(A)(3) of the Urban Development Authority Law No. 41 of 1978 as amended (hereinafter referred to as the "UDA Act") against the 1st Respondent-Petitioner-Petitioner-Respondent (hereinafter referred to as the "First Respondent") seeking an Order of demolition of an unauthorized construction. After hearing the parties, the Learned Magistrate on 28th April 2006 made a mandatory order authorizing the demolition of the said unauthorized construction, by the Urban Development Authority. The revision application filed by the First Respondent against the Order made by the Learned Magistrate was dismissed by the Learned High Court Judge of the Western Province on 15th November 2007. The First Respondent, thereafter made an application to the Court of Appeal to revise the Order made by the Learned High Court Judge. The Court of Appeal, inter alia, held that the Petitioner had acted without jurisdiction in making the application to the relevant Magistrate's Court and that the Urban Development Authority (hereinafter referred to as the UDA) had no power or jurisdiction to delegate its powers to the Petitioner to file action against the First Respondent, as Section 23(5) of the UDA Act as amended by Act No. 4 of 1982 permitted delegation of powers duties and functions relating to **planning only** to the Petitioner (emphasis added). Thus, the Court of Appeal by its judgment held as follows :-

"Hence any unauthorized structures put up by the Respondent falls within the definition of "development activity" as provided in Section

29 of the Law. When any “development activity” is commenced, continued, resumed or completed without a permit issued by the Third Respondent in the development area, action has to be taken only by the Urban Development Authority, in terms of Section 28A of the UDA Law and not by the Officers of the Local Authority....”

Section 23(5) of the UDA Act as amended by Act No. 4 of 1982 reads thus:

“(5) The Authority may delegate to any officer of a local authority in consultation with that local authority, any of its powers, duties and functions relating to planning, within any area declared to be a development area under Section 3, and such officer shall exercise, perform or discharge any such power, duty or function so delegated, under the direction, supervision and control of the Authority.”

The “Planning Procedure” is governed by the amending Act No. 4 of 1982. This Amending Act brought into force Section 28A as well which deals with the “procedure to be followed in respect of certain development activities commenced, continued, resumed or completed contrary to any terms or conditions of a permit.” The question therefore to be considered is whether the powers given to the UDA as contained in Section 28A of the UDA Act may be considered as falling within the scope of “Planning” and consequently, whether such powers could validly be delegated in terms of Section 23(5) of the UDA Act.

For purposes of convenience, I shall reproduce Section 28A as introduced by amending Act No. 4 of 1982.

28A. (1) *Where in a development area, any development activity is commenced, continued, resumed or completed without a permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the Authority may in addition to any other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, on or before such day as shall be specified in such notice, not being less than seven days from the date thereof...*

- (a) to cease such development activity forthwith; or*
- (b) to restore the land on which such development activity is being executed or has been executed, to its original condition; or*
- (c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit, and for the purposes of compliance with the requirements aforesaid-*
 - (i) to discontinue the use of any land or building; or*
 - (ii) to demolish or alter any building or work.*

(2) *It shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any*

requirement specified in such notice within the time specified in such notice or within such extended time as may be granted by the Authority on application made in that behalf,

- (3) (a) *Where in pursuance of a notice issued under subsection (1), any building or work is not demolished or altered within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may apply to the Magistrate to make a mandatory order authorizing the Authority to demolish or alter the building or work, and the Magistrate on serving notice on the person who had failed to comply with the requirement of the Authority under Subsection (1) to demolish or alter the building or work, may, if he is satisfied to the same effect, make order accordingly.*

(b) If such person undertakes to demolish or alter the building or work, the Magistrate may if he thinks fit postpone the operation of the order for such time not exceeding two months as he thinks sufficient for the purpose of giving the person an opportunity of demolishing or altering the building or work.

- (4) *Where a mandatory order has been made under subsection (3), it shall be the duty of the police authorities to render all necessary assistance to the Authority in carrying out the order,*

(5) The Authority shall be entitled to recover any reasonable expenses incurred by the Authority in demolishing or altering any building or work in pursuance of an order made by the Magistrate under subsection (3)

Every subsection under 28A of the Act must be considered as a whole and self-contained. It is not permissible to omit any part of it and must therefore be read as part of an integral whole throwing light on the rest so that harmonious construction be placed on them for the purpose of giving effect to the legislative intent and object. Thus, one could see that Section 28A(1) (a) to (c) provides that the UDA, in order to ensure compliance with the permit could request the person to whom such permit was issued to cease such development activity, to restore the land to its original condition and for the purposes of doing so discontinue the use of any land or building or demolish or alter any building or work. None of the subsections of Section 28A imposes a penalty or punishment on the permit holder.

It is therefore abundantly clear that the intention of the legislature by bringing in Section 28A is to ensure the due implementation of the development plan and the permit issued thereunder. Where any person fails to comply with the notice received under Section 28A(1), the UDA may apply to the Magistrate in terms of Subsection 3(a) to obtain a mandatory order authorizing the UDA to give effect to such notice. The mandatory order permits the UDA to demolish a building or alter such building in accordance with the permit. It is to be noted that Subsection 5 does not provide for any punitive measures to be taken against the person who has failed to comply with the permit. The UDA shall only be entitled to recover

any reasonable expenses incurred by it in demolishing or altering any building or work, pursuant to an order made by the Magistrate

The scope of Section 28A is therefore free from obscurity that the legislature intended to secure compliance with the development plan so that proper implementation of the said plan is carried out.

The “Planning Procedure” referred to in Part IIA in Section 8B identifies matters pertaining to the (i) preparation; (ii) implementation and (iii) enforcement of a development plan. Hence, implementation of a development plan falls within the broad caption of “Planning Procedure”. While Sections 8A to Section 8H deal with the manner in which a development plan has to be prepared, Section 8J makes it clear that the purpose of issuing a permit is to ensure that all development activities in development areas should conform to the development plan.

Section 8K further provides that upon the completion of any development activity by any person under the authority of a permit, he shall apply for a Certificate from the Authority confirming that the development activity has been carried out in accordance with the permit.

The learned Counsel for the First Respondent relied on the judgment in *Jayasinghe v. Seethawakapura Urban Council* (2003) 3 S.L.R. 40. It is observed that Jayasinghe’s case dealt with a situation where there was no delegation of power under Section 23(5) of the UDA Act. Further, in that case the Urban Council purported to act under Section 84(1) of the Urban Councils Ordinance within an area declared as a “development area” by the

UDA without any delegation of power by the UDA. The dicta in Jayasinghe's case is distinguishable from the present case and cannot apply to the facts and circumstances of this application.

For the reasons set out above, I hold that the provisions contained in Section 28A(3) fall within the scope of the term "planning" and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of a local authority. The two questions of law on which special leave was granted are answered in the affirmative. The judgment of the Court of Appeal dated 29th May 2009 is accordingly set aside. The mandatory order of the Learned Magistrate dated 28th April 2006 is affirmed and restored.

I make no order as to costs.

Judge of the Supreme Court.

Amaratunga, J.

I agree

Judge of the Supreme Court.

Imam, J.

I agree.

Judge of the Supreme Court.

Amaratunge, J.,

I agree.

JUDGE OF THE SUPRME COURT

S.I. IMAM, J.,

I agree.

JUDGE OF THE SUPREME COURT