

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

In the matter of an appeal in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka, against a judgment of the Court of Appeal.

S C Appeal 60 / 2017

SC Spl LA No. 246 / 2015

C A (PHC) No. 141 / 2010

H C Colombo No. R A 61 / 2009

M C Colombo No. 9341 / 5

S A Rajalingam,

No. 102 / 2,

Sri Rathanajothi Sarawanamuttu

Mawatha,

Colombo 13.

**RESPONDENT - RESPONDENT -**  
**RESPONDENT - APPELLANT**

-Vs-

Dissanayake Mudiyanseelage Udaya Ranjith,

Municipal Engineers Department (planning),

Colombo Municipal Council,  
Town Hall,  
Colombo 07.

**APPLICANT - PETITIONER - APPELLANT -  
RESPONDENT**

**Before:**                   **PRIYANTHA JAYAWARDENA PC J**  
**MURDU N. B. FERNANDO PC J**  
**P. PADMAN SURASENA J**

**Counsel:**

Manohara de Silva PC with Ms Imalka Abeysinghe for the Respondent - Respondent - Respondent - Appellant.

Jacob Joseph for the Applicant - Petitioner - Appellant - Respondent.

Argued on     :       04 - 12 - 2019

Decided on   :       18 - 06 - 2020

**P Padman Surasena J**

In this case, the Applicant - Petitioner - Appellant - Respondent (hereinafter sometimes referred to as the Respondent) has made an application to the Magistrate's Court of Colombo seeking a mandatory order from the learned Magistrate under section 28 A (3) of the Urban Development Law (hereinafter sometimes referred to as UDA Law), to demolish an unauthorized construction. This was pursuant to the Respondent - Respondent - Respondent - Appellant (hereinafter sometimes referred to as the Appellant) defaulting the compliance with a notice issued under section 28 A (1) of the UDA Law.

Learned Magistrate having considered the material before him, had pronounced his order dated 20-02-2009, rejecting the application made by the Respondent on the basis that the said application is misconceived in law.

Being aggrieved by this order, the Respondent filed a revision application in the Provincial High Court of Western Province holden in Colombo seeking to revise the said order of the learned Magistrate. The Provincial High Court after hearing parties had pronounced its order dated 19-11-2010 dismissing the said revision application.

Being aggrieved by the said order, the Respondent appealed to the Court of Appeal challenging the said order of the Provincial High Court. The Court of Appeal after the argument of the case, by its judgment dated 16-10-2015 set aside both the judgment of the Provincial High Court and the judgment of the Magistrate's Court. The Court of Appeal by the said judgment has directed the Magistrate to hold a proper inquiry in to the application filed by the Respondent.

It is against the said judgment of the Court of Appeal that the Appellant has filed the instant appeal in this Court.

This Court, when the leave to appeal application pertaining to the instant appeal was supported, having heard the submissions of the learned President's Counsel for the appellant and the learned Counsel for the Respondent, by its order dated 16-03-2017, has granted leave to appeal in respect of the questions of law set out in paragraph 35 (a) - (g) of the petition dated 27-11-2015. The said questions of law could be identified as follows.

- 1) Is the judgment of the Court of Appeal contrary to law and against the weight of evidence?
- 2) Is the delegation of authority made in favour of the Respondent to institute the action bearing No. 9341/5 in the Magistrate's Court of Colombo bad in law, illegal and ultra vires the provisions in section 23 (5) of the Urban Development Authority Law No. 41 of 1978 (as amended)?
- 3) Whether in the said circumstances, the Respondent could have lawfully instituted the case bearing No. 9341/5 in the Magistrate's Court of Colombo?

- 4) Did the Court of Appeal err in directing the Magistrate to hold a proper inquiry in to the application of the Respondent?
- 5) Did the Court of Appeal err by holding that the section under which the Appellant was charged by the Respondent is section 28 (1) of the Urban Development Authority Law 04 of 1982?
- 6) Did the Court of Appeal fail to consider that the application to the Magistrate's Court had been made in terms of section 28 A (3) of the Urban Development Authority Law (as amended) which is specifically to seek an order to demolish an unauthorized construction?
- 7) Did the Court of Appeal fail to consider that the Appellant would have to be found guilty of an offence in a case instituted in terms of section 136 (1) of the Criminal Procedure Code in order to impose a fine in terms of section 28 (1) or 28 (2) of the Urban Development Authority Law (as amended)?

The learned President's Counsel for the Appellant has advanced three arguments. They are as follows.<sup>1</sup>

1. The delegation of authority to the Respondent in terms of section 23(5) of the UDA Law is bad in law, illegal and ultra vires.
2. The Respondent has intervened unlawfully into a dispute between the Appellant and the landlord and therefore the application filed in the Magistrate's Court by the Respondent cannot be maintained.
3. The application of the Respondent filed in the Magistrate's Court is misconceived because it contained the prayers to convict the Appellant under section 28 (2) of the UDA Law and impose a fine of Rs.1000 per each day the Appellant continues to commit that offence.

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<sup>1</sup> Vide written submissions filed by the Appellant.

Considering the first argument set out above, would involve interpreting section 23 (5) of UDA Law as amended. Thus, it would be convenient at the outset to reproduce the said section. It is as follows.

S. 23(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.*

It is the contention of the Appellant that the delegation of power by the UDA in terms of the above section can only be done with regard to the activities of planning and not regarding development activities. The Appellant had relied on the judgement of Jayasinghe Vs Seethawakapura Urban Council and others<sup>2</sup>, which had been decided by a bench comprising a single Judge of the Court\_of Appeal. In that case, His Lordship Sripavan J (as he then was) in his judgment dated 09-06-2003, had held inter alia;

- i. that it is well settled that statutory powers can only be exercised by Public bodies invested with such powers and not by others;
- ii. that the powers which can be delegated are only the powers duties and functions relating to planning;
- iii. that the matters relating to development activities are not capable of being delegated under the said section.

Thereafter, by the judgment dated 29-05-2009, a bench of two judges of the Court of Appeal in the case of Muniyandy paneer Selvan Vs Kuragamage Harishchandra Perera of the Municipal Engineers' Department (Drawing) of Colombo Municipal Council and Hon. Attorney General<sup>3</sup> also took the same view as in Jayasinghe's case with regard to the interpretation of section 23(5) of UDA Law. His Lordship W L Ranjith Silva J in that case (Muniyandy paneer Selvan's case) cited Jayasinghe's case with approval and held;

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<sup>2</sup> 2003 3 SLR 40.

<sup>3</sup> CA (PHC) APN 170/2007, decided on 29-05-2009.

- i. that section 23(5) of UDA Law as amended has only conferred power upon the UDA to delegate to any officer of the local authority, its powers, duties and functions relating to planning and nothing else and nothing more; and
- ii. that therefore the UDA had no power or justification to delegate powers to District Inspector of the Colombo Municipal Council to file action against the petitioner in that case under section 28 A (3) of the UDA Law.

The Court of Appeal bench in Muniyandy paneer Selvan's case had disagreed with the judgment of a single judge bench of the Court of Appeal in the case of E R M Piyasena (Chairman Urban Council, Bandarawela) Vs H M Wijesooriya.<sup>4</sup> His Lordship Dr. A De Z Gunawardana J (as he then was) had stated in E R M Piyasena's case (decided on 04-11-1994) that the 'delegation of powers relating to planning' referred to in section 23(5) of the UDA Law would include the taking steps to enforce planning procedures and it was in the exercise of that function that the chairman Urban Council Bandarawela had filed the relevant case in the Magistrate's Court.

It would be pertinent to note that in 2002, a bench of two Judges of Court of Appeal had followed the decision of E R M Piyasena's case in the case of S Sivapragasam and two others Vs Robert Jayaseelan Perimpanayagam of Municipal Council Batticaloa and Saravanamuttu Navaneethan - Special Commissioner, Municipal Council Batticaloa.<sup>5</sup> His Lordship Gamini Amaratunga J in the judgment of that case (Sivapragasam's case) has cited and followed the judgment in E R M Piyasena's case confirming that the functions of planning would include the taking of steps to enforce planning procedures. His Lordship Gamini Amaratunga J in that case affirmed the conclusion of the learned High Court Judge that the Mayor of Batticaloa Municipal Council had the authority to institute proceedings against owner of an unauthorized construction to obtain an order for its demolition. The relevant part of the said judgment (Sivapragasam's case) is as follows.

*"The argument adduced on behalf of the present appellants was that delegation of functions relating to planning activities did not extend to the demolition of unauthorized*

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<sup>4</sup> CA Application No. 119/1990 decided on 04-11-1994.

<sup>5</sup> CA (PHC) Appeal 02/1997, decided on 16-05-2002.

*structures and accordingly Mayor did not have the authority to make an application for a mandatory demolition order. The learned High Court Judge held that the delegation of the functions of planning would include the taking of steps to enforce planning procedure and accordingly the Mayor had the authority to institute proceedings against owner of an unauthorized building for an order to demolish such building. The learned High Court Judge's conclusion finds support from the decision of this Court in Piyasena V Wijesooriya CA Application 119/90 - CA Minutes of 4-11-1994 where it was held that functions of planning would include the taking of steps to enforce planning procedure."*

It was in the above backdrop that the District Inspector of the Colombo Municipal Council being aggrieved by the judgment of the Court of Appeal pronounced in Muniyandy paneer Selvam<sup>6</sup>'s case had appealed to the Supreme Court. This was because (as has already been mentioned above), the Court of Appeal in that case, had held inter alia, that the UDA had no power or jurisdiction to delegate its powers to the Colombo Municipal Council to file action against the Respondent, as section 23 (5) of the UDA Act (as amended by Act No 04 of 1982) had only permitted delegation of powers duties and functions relating to planning.

The Supreme Court in the said appeal (Palligoda Withanage Keerthi Wimal Withana (District Inspector - Colombo Municipal Council) Vs Muniyandy paneer Selvam)<sup>7</sup> had focused on the following two questions of law.

- 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. 04 of 1982?
- ii. Did the Court of Appeal misconstrue the provisions of the Urban Development Authority Act No. 04 of 1982?

In the judgment of the Supreme Court, His Lordship Sripavan J, having analyzed the provisions in section 23 (5) and section 28 A, stated as follows.

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<sup>6</sup> Ibid.

<sup>7</sup> SC Appeal No. 123/2009 decided on 18-01-2012.

*"...for the reasons set out above, I hold that the provisions contained in section 28 A (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 Supreme Court answered the above two questions of law in the affirmative, set aside the judgment of the Court of Appeal and affirmed and restored the mandatory order of the Magistrate authorizing the Colombo Municipal Council to demolish the relevant unauthorized construction.

Indeed, the Supreme Court in the above judgement has referred to the case of Jayasinghe Vs Seethawakapura Urban Council.<sup>8</sup> The relevant portion in the judgment is reproduced below for convenience.

*"... The learned counsel for the First Respondent relied on the judgement 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... "*

In the instant case, the argument advanced by the learned President's Counsel for the Appellant is that the Bench hearing this case should not follow the judgment in Muniyandy paneer Selvam's<sup>9</sup> case. It is his submission that the observation by the Supreme Court that Jayasinghe's case dealt with a situation where there was no delegation of power under section 23 (5) of the UDA Act is erroneous and that therefore the Court of Appeal judgment in Jayasinghe's case must continue to be valid. Learned President's Counsel for the Appellant has advanced the above argument based on the sentence " ... *Learned Deputy Solicitor General urged that the third respondent has delegated its powers to the*

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<sup>8</sup> Supra.

<sup>9</sup> SC Appeal No. 123/2009 decided on 13-06-2011.

*Chairman of the second respondent under section 23(5) of the UDA Law ...* "which is found in the Court of Appeal judgment of Jayasinghe's case.

Perusal of the judgment of the Court of Appeal in Jayasinghe's case reveals the followings.

- i. What the petitioner in that case has filed is an application for a writ of certiorari seeking to quash, a notice issued by Seethawakapura Urban Council exercising its powers vested in it by virtue of section 84(1) of the Urban Councils Ordinance,
- ii. The basis the Court of Appeal in that case had issued a writ of certiorari was the fact that Seethawakapura Urban Council could not have invoked the powers given to it under section 84(1) of the Urban Councils Ordinance, as the relevant area has admittedly been declared as a "Development area" by the Minister in terms of section 3 of the UDA Law. Therefore the main thrust of the argument by the petitioner in that case was the fact that the relevant authority should have invoked section 28 A of the UDA Law and not section 84(1) of the Urban Councils Ordinance, as UDA Law alone can apply in respect of any development activity carried out in a "development area".
- iii. It was in those circumstances that the learned Deputy Solicitor General who had appeared for the respondents in that case had urged that in any case, the UDA has delegated its powers to the Chairman of the Seethawakapura Urban Council under section 23(5) of the UDA Law. It must be observed that interpretation of section 23(5) was not the issue in that case. The argument that the UDA has delegated its powers to the Chairman of the Seethawakapura Urban Council under section 23(5), has been put forward by the learned DSG in that case as a last ditch attempt to save the notice issued by Seethawakapura Urban Council under section 84(1) of the Urban Councils Ordinance.
- iv. Therefore, it is clear that the question whether the delegation of powers of UDA with regard to planning referred to in section 23(5) of the UDA Law would include the taking steps to enforce planning procedure in particular authority to file an application in terms of section 28 A (1) of the UDA Law in the relevant Magistrate's Court was not the contested issue in Jayasinghe's case.

- v. The statement that the matters relating to development activities are not capable of being delegated under the said section by His Lordship Justice Sripavan in Jayasinghe's case is a mere passing remark in reference to the above submission of the learned DSG. The said statement is therefore not the ratio decidendi of that case.

Be that as it may, it must be noted that the judgment in Jayasinghe's case is by a single Judge of the Court of Appeal and the judgment of Muniyandi paneer Selvam<sup>10</sup>'s case is by three-judge bench of the Supreme Court. Moreover, the ratio decidendi in the judgment of the Supreme Court in Muniyandy paneer Selvam<sup>11</sup>'s case can stand alone independent of its reference to the judgment in Jayasinghe's case. This is because His Lordship Sripavan J has considered the other provisions in UDA Law before arriving at his conclusion.

The said conclusion could be gathered from the ratio decidendi of the Supreme Court judgement, which is in the following paragraph. *"...for the reasons set out above, I hold that the provisions contained in section 28 A (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..."* Thus, it is not necessary for this Court to embark on an examination to ascertain whether the reference to Jayasinghe's case in the judgment of the Supreme Court in Muniyandy paneer Selvam's case is correct.

In any case, it would only require referring to few sections in the UDA Law to show that the interpretation provided by the Supreme Court in Muniyandy paneer Selvam's case is correct.

Section 8 of the UDA Law has set out powers, and functions of the UDA. The primary purpose of this section can be seen as conferring necessary powers on the UDA to carry out, integrated planning and physical development within and among 'development areas'

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<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

subject to any directions that may be given to the Authority by the Minister from time to time.

This is consonant with the preamble of the Law which states that it is *"A law to provide for the establishment of an Urban Development Authority to promote integrated planning and implementation of economic, social and physical development of certain areas as may be declared by the minister to be Urban Development Areas and for matters connected therewith or incidental thereto"*.

Moreover, when considering the scheme of section 8 of the U D A Law, one can observe that the powers and functions assigned to the UDA by the Law revolve around carrying out integrated planning of physical development of such areas and then implementing such planned development activities, which by law are required to be consistent with aforesaid integrated planning. Powers to approve, co-ordinate, control, regulate any development project or scheme of any Government agency in such areas are amongst these powers.

According to the interpretation section<sup>12</sup> of UDA Law, "physical planning" includes the physical and economic development of land. This clearly indicates, "Physical planning " includes "physical development". Therefore, 'planning' for the purposes of UDA Law clearly encompasses 'development' and hence one should not seek further reasons to deduce that 'development' in its common course of events encompasses 'development activity'. This is because development can only be done by development activities.

Section 29 of the UDA Law has also interpreted the term "development activity." It is as follows.

*" development activity " means the parcelling or sub-division of any land, the erection or re-erection of structures and the construction of works thereon, the carrying out of building, engineering and other operations on, over or under such land and any change in the use for which the land or any structure thereof is used, other than the use of any land for purposes of agriculture, horticulture and the use of any land within the curtilage*

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<sup>12</sup> Section 29.

*of a dwelling house for any purpose incidental to the enjoyment of a dwelling house, not involving any building operation that would require the submission of a new building plan;*

It is of some relevance to observe that while powers and functions of the UDA Law has been set out under Part II of the UDA law, a new Part (Part II A) was introduced to the Law by the UDA (Amendment) Act No. 04 of 1982. The said new Part II A has laid down a detailed 'Planning Procedure'.

It is under the said 'Planning Procedure' that section 8 J states that no Government Agency or any other person shall carry out or engage in any development activity in any development area except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the UDA. It was in that backdrop that Act No. 04 of 1982 amended the UDA Law by inserting the definition of a new term 'development activity' to its interpretation section, which is section 29. Thus, the concept of 'development activity' for the purpose of the UDA Law is nothing but part of 'Planning Procedure' described in the Law.

Further, it must be borne in mind that section 28 A (3) is also a new section introduced by UDA (Amendment) Act No. 04 of 1982 to lay down the procedure to be followed in respect of certain development activities commenced and continued without a permit or contrary to any term and condition of a permit. Thus, it could be seen that section 28 A (3) has a direct bearing on sections 8 J and 8 K introduced by Act No. 04 of 1982. Therefore, the procedure set out in section 28 A (3) is also indeed a part and parcel of 'Planning Procedure'. Indeed all the above new sections are found under Part II A - 'Planning Procedure' introduced by Act No. 04 of 1982.

Therefore, I have no hesitation to concur with the ratio decidendi of the judgment of the Supreme Court in Muniyandy paneer Selvam<sup>13</sup>'s case that the provisions contained in section 28 A (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.

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<sup>13</sup> Ibid.

For the above reasons, I am in full agreement with the interpretation given to section 23 (5) of the UDA Law by their Lordships in the cases cited above namely E R M Piyasena Vs H M Wijesooriya,<sup>14</sup> S Sivapragasam and two others Vs Robert Jayaseelan Perimpanayagam, Municipal Council Batticaloa and Saravanamuttu Navaneethan, Special Commissioner, Municipal Council Batticaloa<sup>15</sup> and Palligoda Withanage Keerthi Wimal Withana (District Inspector Colombo Municipal Council) Vs Muniyandy paneer Selvam.<sup>16</sup>

Thus, I am of the view that the delegation of authority to the Respondent to institute the case bearing No. 9341/5 in the Magistrate's Court of Colombo has been correctly done in accordance with section 23 (5) of the Urban Development Authority Law No. 41 of 1978 as amended.

The second argument advanced by the appellant is that the Respondent has intervened unlawfully into a dispute between the Appellant and the landlord and therefore the application filed in the Magistrate's Court by the Respondent cannot be maintained. I would now consider the said argument.

The Appellant is admittedly occupying the alleged unlawfully constructed premises as a tenant. It is the position of the Appellant that the said premises is a business premises coming under the purview of the Rent Act No. 07 of 1972 as amended, as the Appellant has been in occupation in that premises as the tenant since 1956.<sup>17</sup>

It is in the above backdrop that the Appellant takes up the position that his landlord has been instrumental in moving the City Planning Division of the Municipal Engineers Department of the Colombo Municipal Council to issue a notice on the Appellant under section 28 A (1) of the UDA Law.

The question of the application of the Rent Act to illegally constructed premises was considered by this Court in the case of Malwattage Vs Dharmawardena.<sup>18</sup> In the said

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<sup>14</sup> CA Application No. 119/1990 decided on 04-11-1994.

<sup>15</sup> CA (PHC) Appeal 02/1997, decided on 16-05-2002.

<sup>16</sup> SC Appeal No. 123/2009 decided on 13-06-2011.

<sup>17</sup> Vide paragraph (B)(i) at page 5 of the written submissions filed by the Appellant.

<sup>18</sup> 1991 (2) Sri. L. R. 141.

case, the Plaintiff filed a plaint in the District Court praying inter alia for a declaration of title to the premises in suit and an order to eject the Defendant and to demolish the unauthorized structure standing on the land. The Defendant took up the position that she was in fact the tenant of a house who came into its occupation under Plaintiff's father in 1965. It was therefore the position of the Defendant that the provisions of the Rent Act would apply to prevent her ejection from the premises in suit. In the trial, it was transpired that the father of the Plaintiff had at an earlier occasion (in 1969) had instituted action for ejectment of the Defendant from the premises in suit and for the recovery of arrears of rent and thereafter the mother of the Plaintiff had instituted an action for ejectment of the Defendant from the premises in suit and for the recovery of arrears of rent in 1972. Both those actions were subsequently withdrawn. The main point of contention in that case was whether the alleged contract of tenancy was invalid due to the fact that the premises in suit was constructed in contravention to the provisions of the Housing and town Improvement Ordinance. Having considered the relevant provisions of law, His Lordship Justice Wadugodapitiya in his judgment stated as follows.

*"... I am in entire agreement with the submissions of learned counsel for the Respondent. I must state here that in the circumstances, the Appellant's claim to protection under the Rent Act has no merit and must fail. An illegality cannot give rise to any such rights; nor can the Rent Act be used to cover up and rectify an illegality under the Housing and Town Improvement Ordinance.*

*It is pertinent to observe that in the instant case no one disputed the fact that the structure in question was an unauthorized one and that there was no certificate of conformity in respect of the said structure, which is the subject matter of the alleged tenancy. Thus, in terms of section 15(3) of the Ordinance, both the person who actually occupies such a structure as well as the person who allows another to occupy it, will be guilty of an offence and will be liable to a continuing penalty not exceeding Rs. 25/- for each day during which the contravention continues. There can be no doubt therefore, that there is an express statutory prohibition against occupying such a building, which in turn means that the structure in question is not one which is "capable of being let" under our law. According to Dr. H W Thambiah (Landlord and Tenant in Ceylon," citing*

*Vanderlinden and Maasdorp*), this is one of the essential requisites of a contract of letting and hiring. (Pages 2 and 3). Cooper in "The South African Law of Landlord and Tenant" agrees when he says: "A lease like any other contract must be legal; it must not be prohibited by statute .... " (Page 10). ..."

It is relevant to note that in the instant case too, section 8 J (1) of the UDA Law states that "notwithstanding the provisions of any other law, no Government agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Authority".

Further, section 8 K (2) of the UDA Law states that upon the completion of any development activity by any person under the authority of a permit issued in that behalf, it shall be the duty of such person to apply for and obtain a certificate of conformity from the UDA.

According to section 8 K (3) of the Law, upon the receipt of a certificate of conformity no land or building shall be used for any purpose other than for the purpose specified in the permit issued in that behalf.

Moreover, UDA (Special Provisions) Act No. 44 of 1984 has introduced a new section 8 K (4) which is as follows.

*"any person who occupies or allows to be occupied any building, in contravention of the provisions of sub section (2), shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees, and where the offence is a continuing offence to an additional fine of one hundred rupees for each day during which such contravention continues"*

The above provisions show clearly that the UDA Law has also expressly prohibited the occupation of premises constructed in contravention of its provisions. The provisions of the Rent Act therefore cannot have any application to such premises.

In these circumstances, I reject the argument of the Appellant that the Respondent has intervened unlawfully into a dispute between the Appellant and the landlord and therefore the application filed in the Magistrate's Court by the Respondent cannot be maintained.

Thus, I am of the view that the Respondent could have lawfully instituted the case bearing No. 9341/5 in the Magistrate's Court of Colombo.

The third argument advanced by the Appellant is that the application of the Respondent filed in the Magistrate's Court is misconceived because it contained the prayers to convict the Appellant under section 28 (2) of the UDA Law and impose a fine of Rs. 1000/= per each day the Appellant continues to commit that offence. This relates to the questions of law No's. 5-7. It is convenient to commence the consideration of this argument with the application made by the Respondent to the Magistrate's Court.

The said application states in its caption that it is an application made under section 28 A (3) of the UDA Law. This fact is further confirmed by the several averments set out in the said application as they show that necessary steps including the issuance of a notice under section 28 A (1) of the UDA Law have previously been taken. According to paragraph 5 of the said application the main prayer of the Respondent is for a mandatory order in terms of section 28 A (3) of the UDA Law authorizing the Respondent to demolish the unauthorized construction referred to in the sketch attached to it. Thus, there could not have been a difficulty for the learned Magistrate to identify the said application as an application made under section 28 A (3) of the UDA Law. Indeed the learned Magistrate in his order has done so in no uncertain terms. Therefore, there is no ambiguity that it is an application made under section 28 A (3) of the UDA Law.

However, it is a fact that the prayer 5(d) in the application is a prayer for an order to pay the UDA Rs. 50,000/= under section 28(1) of the UDA Law and the prayer 5(e) in the application is a prayer for imposing a fine of Rs. 1000/= per each day the Appellant continues to commit this offence after conviction under section 28 (2) of the UDA Law.

As has been correctly stated by the learned Magistrate, any conviction under section 28(1) of the UDA Law must be after a summary trial. This is also specifically mentioned in that section.

However, it is not an exaggeration to mention here that one can, more often than not find in any application many relief prayed from Court. This however does not mean that Courts have any obligation to grant every such relief merely because they have been prayed.

Looking at the application and relief prayed in the instant application, I am of the view that prayers 5(d) and 5(e) are relief prayed in excess and are liable to be ignored. This is because the application filed by the Respondent is clearly an application made under section 28 A (3) of the UDA Law.

Therefore, I am of the view that the most appropriate course of action by the learned Magistrate should have been to ignore the prayers 5(d) and 5(e) and proceed with the main application under section 28 A (3) of the UDA Law. The learned Magistrate in the instant case has failed to appreciate this position.

I will now consider the order made by the learned Provincial High Court Judge. It would be of some relevance to note that the case filed before the Provincial High Court is an application for revision. Thus, it is necessary to bear in mind that a Court exercising revisionary powers can examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings of such Court. Thus, three aspects, which a Court could consider in revisionary proceedings, are the legality or propriety of any order and the regularity of the proceedings.

I have already held that the course of action taken by the learned Magistrate is not the most appropriate one. The learned Provincial High Court Judge has failed to appreciate this position in its correct perspective. Further, the above circumstances could not have satisfied the learned Provincial High Court Judge as to the propriety of the order of the learned Magistrate. Therefore, the learned Provincial High Court Judge should have revised the order of the learned Magistrate.

The main complaint made by the Respondent to the Court of Appeal is that the learned Magistrate has misdirected himself and thereby erred in law by failing to give due consideration to the main relief sought in the application namely the demolition of the unauthorized structure in terms of section 28 A (3) of the UDA Law.

Although Her Ladyship of the Court of Appeal had not set out this position with clarity in her judgment she had clearly referred to the fact that the learned Magistrate had taken the view that the application of the Respondent was an application made in terms of section 28 (3) of UDA Law. It appears to be the basis on which the Court of Appeal was inclined to set aside both orders of the Magistrate's Court and the Provincial High Court and directed the Magistrate to hold a proper inquiry into the application of the Respondent. Therefore, the Court of Appeal has not erred in directing the Magistrate to hold a proper inquiry in to the application filed by the Respondents. Thus, the direction by the Court of Appeal to the Magistrate to hold a proper inquiry in to the application filed by the Respondents must stand.

For the above reasons, I cannot find any basis to deviate from the course of action adopted by the Court of Appeal to set aside both the judgment of the Provincial High Court and the judgment of the Magistrate's Court.

However, the Court of Appeal appears to have stated in its judgment that the 'charges are framed well within the frame work of section 28(1) of the UDA Law'. It has not stated any legal basis for the above statement. For the reasons I have already stated above, I am of the view that the said statement is neither necessary nor warranted. Further, there is no legal basis, which can substantiate that statement.

However, the said statements should not vitiate the judgment of the Court of Appeal as it has correctly granted the main relief to the Respondent namely the granting of the main relief to hold a proper inquiry into the application. In those circumstances, the judgment of the Court of Appeal must stand altered to the above extent.

In the above circumstances, and for the foregoing reasons, I answer the questions of law as follows.

- 1) The judgment of the Court of Appeal is not contrary to law and against the weight of evidence subject to the above alteration.
- 2) The delegation of authority made in favour of the Respondent to institute the action bearing No. 9341/5 in the Magistrate's Court of Colombo is not bad in law or illegal or ultra vires the provisions in section 23 (5) of the Urban Development Authority Law No. 41 of 1978 (as amended).
- 3) The Respondent could have lawfully instituted the case bearing No. 9341/5 in the Magistrate's Court of Colombo.
- 4) The Court of Appeal did not err in directing the Magistrate to hold a proper inquiry in to the application of the Respondent.
- 5) The Court of Appeal erred by holding that the section under which the Appellant was charged by the Respondent is section 28 (1) of the Urban Development Authority Law 04 of 1982.
- 6) The Court of Appeal has not failed to consider that the application to the Magistrate's Court had been made in terms of section 28 A (3) of the Urban Development Authority Law (as amended) which is specifically to seek an order to demolish an unauthorized construction.
- 7) The Court of Appeal has failed to consider that the Appellant would have to be found guilty of an offence in a case instituted in terms of section 136 (1) of the Criminal Procedure Code in order to impose a fine in terms of section 28 (1) or 28 (2) of the Urban Development Authority Law (as amended).

In view of the above answers I direct the learned Magistrate to treat the application of the Respondent as an application made in terms of section 28 A (3) of the UDA Law praying for a mandatory order in terms of that section authorizing the Respondent to demolish the unauthorized construction more fully depicted in the sketch attached to it. The prayers mentioned in the said application which are not falling under section 28 A (3) of the UDA Law should be ignored.

Subject to the above variations, the direction given by the Court of Appeal to the Magistrate to hold a proper inquiry into the application of the Respondent is affirmed. Appeal is dismissed without costs.

Appeal is dismissed without costs.

**JUDGE OF THE SUPREME COURT**

**PRIYANTHA JAYAWARDENA PC J**

I agree,

**JUDGE OF THE SUPREME COURT**

**MURDU N. B. FERNANDO PC J**

I agree,

**JUDGE OF THE SUPREME COURT**