

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

In the matter of an Appeal under the High Court of Provinces (Special Provisions) Act No. 19 of 1990 against an Order of the High Court, Gampaha made under Article 154P (3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Subhasinghe Arachchige Pushpa Chandralatha,
No. 299/1,
Suriyapaluwa,
Kadawatha.

Respondent-Petitioner-Appellant

Court of Appeal Case No:
CA/PHC/184/2016
HC Gampaha Case No:
REV 29/2015
MC Mahara Case No:
65065

-Vs-

Wanniarachchige Susantha Chandrasiri,
Chairman,
Mahara Urban Council,
Lower Karagahamuna,
Kadawatha.

Applicant-Respondent-Respondent

Pedi Kankanamge Anusha Nirangani,
No. 299/2,
Suriyapaluwa,
Kadawatha.

Intervenient-Respondent-Respondent

Before : **A.L. Shiran Gooneratne J.**

&

Dr. Ruwan Fernando J.

Counsel : Kaminda De Alwis for the Respondent-Petitioner-Appellant.

Chathura Galhena for the Applicant-Respondent-Respondent.

Yajish Tennakoon for the Intervenient-Petitioner-Respondent.

Written Submissions: By the Applicant-Respondent-Respondent on
14/01/2020

By the Intervenient-Petitioner-Respondent on
14/01/2020

By the Respondent-Petitioner-Appellant on 16/01/2020

Argued on : 08/07/2020

Judgment on : **04/08/2020**

A.L. Shiran Gooneratne J.

The Petitioner-Respondent-Respondent (hereinafter referred to as the Respondent) by application dated 08/08/2014, filed an action against the Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) in terms of Section 28A (3) of the Urban Development Authority Law No. 41 of 1978 (as amended) in the Magistrates Court of Mahara, to demolish a development activity commenced contrary to Section 28A (1) of the Act in an area declared as an Urban Development area under Gazette Notification No. 1225/30, dated 01/03/2002, in terms of Section 3 of the Act.

In the proceedings before the Magistrates Court, the Appellant failed to show cause as to why the relief prayed for by the Respondent should not be granted. The learned Magistrate having been satisfied with the application filed before Court, by order dated 13/02/2015, granted relief in favor of the Respondent as prayed for. The Appellant thereafter filed a revision application against the said order in the Provincial High Court of Gampaha, *inter-alia*, challenging the '*locus standi*' of the Respondent to file and maintain this action in the Magistrates Court. The learned High Court Judge by order dated 23/11/2016, rejected the objection on maintainability of the said application and dismissed the application for want of exceptional circumstances. The Appellant is before this Court to revise the said order.

When this case was taken up for argument the Counsel for the Appellant raised the following grounds of appeal.

1. The Respondent has no '*locus standi*' to file and maintain the said application in the Magistrates Court.
2. Gazette bearing No.1225/30, dated 01/03/2002 has no application to the Appellant's premises in question, since the development activity was carried out prior to the declaration of the area as an urban development area.

The same grounds of appeal were raised in the Provincial High Court as well.

The application before the Magistrates Court was filed by the Chairman of the Mahara Pradeshiya Sabhawa. The Appellant raised objection to '*locus standi*' of the Respondent, in the Provincial High Court on the basis that by document marked "ॐ३" tendered to the Magistrates Court, it was the Secretary of the Mahara Pradesiya Sabhawa who was delegated the power to institute action and not the Chairman of the said Pradesiya Sabhawa. Therefore, the Appellant contends that the Respondent has no '*locus standi*' to file and maintain the case in the Magistrate Court of Mahara, since there is no delegation of power to the Chairman of Mahara Pradeshiya Sabha to institute action. The Appellant argued that, when the issue of '*locus standi*' was raised in the High Court, the Respondent

tendered to Court a document delegating power to the Chairman of the Pradeshia Sabhawa marked “७1”, in terms of Section 23(5) of the Act.

The position of the Respondent is that the Appellant did not challenge the proceedings before the Magistrates Court, however, since the objection to '*locus standi*' was raised, the letter delegating power in terms of the law to the Chairman of the Pradeshia Sabhawa, was tendered to the Provincial High Court.

The Appellant questions the authenticity of the letter delegating power marked “७1” on the basis that it bears the same file number and the date as the letter of delegation of power to the secretary of the Pradeshia Sabhawa tendered to the Magistrates Court. However, there is no evidence before Court to doubt the genuineness of the said document.

When the application under Section 28A (3) was filed in the Magistrates Court, on 3 occasions the Appellant failed to show cause and defend her position. Accordingly, after having served notice on the Appellant to comply with the requirements of the law, and having been satisfied that the Appellant had not complied with the requirements specified in such notice, the learned Magistrate made order to demolish the unauthorized construction.

When '*locus standi*' of the Respondent to institute action was questioned by the Appellant in the proceedings before the Provincial High Court, the Respondent tendered document marked “७1”, which delegated power to the

chairman to institute action against the Appellant. Document “E1”, makes it clear that the said delegation was made prior to the institution of the action.

Section 23 (5) of the Urban Development Authority Law (as amended), provides as follows;

*“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 functions so delegated, under the direction, supervision and control of the Authority.”*

“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.” (M.P. Selvam Vs. K.H. Perera (SC Appeal No. 123/09) decided on 18/01/2012)

In the present case, the Chairman of the Pradeshiya Sabhawa was delegated power to institute action against the Appellant by letter dated 01/08/2008, in compliance with the statutory provisions of the law. Therefore, we do not see any illegality in the application dated 08/08/2014, entertained by the learned Magistrate to comply with the exercise of jurisdiction in terms of Section 28A (3)

of the Law. Accordingly, the 1st ground of appeal is without merit and should be rejected.

Section 28A (1) of the Urban Development Authority Law, as amended, provides for the procedure to be followed in respect of development activities commenced contrary to the terms and conditions of a permit; that is,

- (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 or building; or
 - (ii) to demolish or alter any building or work.

Accordingly, Section 28A (1) has laid down the procedure to be followed, where any development activity commenced continued, resumed or completed without a permit or contrary to any term or condition set out in a permit issued, pertaining to a development activity.

The Respondent relied on *Urban Development Authority Vs. H.W. Kulasiri (CA 2226/2003)*, where *Gamini Amarathunga J.* held that,

“in a situation where an application made under Section 28(A) (3) of the UDA Law had been made the relevant question is whether the structure in question has been erected upon a valid permit. The existence of a permit is the only valid answer to the application under Section 28(A) (3). The burden of showing that the construction had been done on a valid permit is on the person noticed.”

The Appellant argued that, she was resident in the house in question from year 2000, which is prior to the declaration of the area as an urban development area. However, the letter issued by the Grama Sevaka certifies that the Appellant was residing in the said premises since 2002. (Vide page 57 in brief, marked “පැ7”). The electricity bills marked “පැ8” and “පැ9” also reveals that the Appellant came into occupation in 2002.

The Intervenient-Petitioner-Respondent is affected by the unauthorized construction since an imminent risk exist of a wall collapsing on the residence of the said Respondent if the demolition order is not enforced. Several letters written to the Appellant by the Pradesiya Sabhawa confirms this position. The sketch depicting the unauthorized building is tendered as document marked “පැ5” (Vide page 54 of the brief).

The Mahara Pradeshiya Sabha area was declared as an urban development area under Gazette Notification Bearing No. 1225/30, dated 01/03/2002. (Vide page 52 of the brief, marked “පැ4”). In terms of the law a person involved in

constructing a building should have a valid permit and the said construction should be in conformity with stipulated terms and conditions. In the instant case, the Appellant has failed to produce any approved building plan or a valid permit for the construction of the house in question. For the aforesaid reasons, we do not see any merit in the 2nd ground of appeal as well.

In view of the above findings, we affirm the orders given by both Courts and dismiss the appeal.

Appeal dismissed with costs fixed at Rs. 15,000/-.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL