

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

1. A. M. C. Faraj,
No.147, Dematagoda Road,
Colombo 09.
 2. A.C. M. Fahri,
No.147, Dematagoda Road,
Colombo 09.
- Petitioners

CASE NO: CA/WRIT/358/2018

Vs.

1. Sulochana Gamage,
Committee Chairman,
Public Petitions Committee,
Western Provincial Council,
No.204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.
2. Sirikamal Felician De Silva,
3. Upul Mahendra Rajapakse,
4. Neil Sunethralal,
5. Lakshman Nipunarachchi,

6. Morris Wijeratna,
All Committee Members,
Public Petitions Committee,
Western Provincial Council,
No.204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.
7. Constane Mary Dabarera,
Assistant Secretary,
Public Petitions Committee,
Western Provincial Council,
No.204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.
8. Secretary,
Public Petitions Committee,
Western Provincial Council,
No.204,
Denzil Kobbekaduwa
Mawatha,
Battaramulla.
9. Maharagama Urban Council,
Urban Council of Maharagama,
Maharagama.
10. Tiraj Lakruwan Piyaarathna,
Mayor,
Maharagama Urban Council,
Maharagama.

11. Sisira Kumara Jayasinghe,
No.19A, Cornelis Road,
Thalapathpitiya,
Nugegoda.
12. R. A. V. V. Senevirathna,
No.45, Temple Road,
Maharagama.
13. Pradeep Udugoda,
Member,
Western Provincial Council,
No.204,
Denzil Kobbekaduwa
Mawatha,
Battaramulla.
Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Shantha Jayawardena with Chamara
Nanayakkarawasam for the Petitioners.
S. L. Bulathsinalage with Kumari Hettige for
the 9th and 10th Respondents.
Shiraz Hassan for the 11th Respondent.
Rohana Fernando with Malika Herath for the
12th Respondent.

Argued on: 28.07.2020

Decided on: 06.08.2020

Mahinda Samayawardhena, J.

The Petitioners are admittedly tenants of the business premises No.14, 1st Cross Street, Maharagama, owned by the 12th Respondent. The 12th Respondent's attempt to eject the Petitioners by a *rei vindicatio* action was unsuccessful. Both the District Court and, on appeal, the Civil Appeal High Court held that the Petitioners are tenants protected under the Rent Act, No.7 of 1972, as amended, and cannot be ejected otherwise than under the provisions of the said Act.

Less than five months after the appeal Judgment, the occupant of the adjoining premises sent the letter marked P5 dated 24.07.2018 to the Chairman of the Public Petitions Committee of the Western Provincial Council through a Member of the Provincial Council, seeking to demolish the premises in suit on the ground that the premises, which the said occupant claims is more than ninety years old, is in a dilapidated condition endangering his and his employees' lives.

The Public Petitions Committee of the Provincial Council held an inquiry into the matter and recommended to the 9th Respondent, the Maharagama Urban Council, that the premises be demolished.

By filing this application, the Petitioners seek to quash the said recommendation by certiorari predominantly on the basis that the Public Petitions Committee of the Provincial Council has no power to recommend the demolition of the premises when the premises are admittedly governed by the Rent Act.

The Petitioners say this is a collusive attempt between the owner of the premises in suit and the occupant of the adjoining premises to eject the Petitioners, which the former could not achieve through lawful means.

Learned Counsel for the Maharagama Urban Council submits that Rule 87 of the Rules of Procedure of the Western Province Provincial Council empowers the Public Petitions Committee of the Provincial Council to make recommendations, which it did by P7(b).

I regret my inability to agree with this submission. By recommending the demolition of the premises that two competent Courts successively held are governed by the Rent Act, the Public Petitions Committee effectively wipes out the tenancy of the Petitioners.

According to Rule 87(11) of the Rules of Procedure of the Western Province Provincial Council, the implementation of a recommendation of the Public Petitions Committee is virtually compulsory.

What cannot be done directly cannot be allowed to be done indirectly.

If the premises are very old, section 18 of the Rent Act provides for demolition, and steps can be taken under the Rent Act.

If a building is in a ruinous state, section 60 of the Urban Councils Ordinance, No.61 of 1939, as amended, empowers the relevant Urban Council (not the Public Petitions Committees of

Provincial Councils) to take appropriate steps. Section 60 of the Urban Councils Ordinance reads as follows:

If any house, building, boundary wall or gateway adjoining any street or thoroughfare in any town, or anything affixed thereon, be deemed by the Urban Council of that town to be in a ruinous state, whether dangerous or not, or to be likely to fall, the Council shall immediately, if it appears to be necessary, cause a proper hoarding or fence to be put up for the protection of persons using such street or thoroughfare, and shall cause notice in writing to be served on the owner or occupier forthwith to take down, secure, or repair such house, building, boundary wall, gateway or thing affixed thereon, as the case may require.

Learned Counsel for the Petitioners does not contend the Urban Council cannot act under section 60 of the Urban Councils Ordinance. Counsel's argument is the Urban Council cannot demolish the premises "based on P7(b)", i.e. the recommendation of the Public Petitions Committee — *vide* paragraph (e) of the prayer to the petition.

The word "ruinous" used in section 60 is not defined in the Urban Councils Ordinance. According to the Oxford Advanced Learner's Dictionary of Current English, the word "ruinous" is defined as "(of a town, building, etc.) destroyed or severely damaged". The Cambridge Advanced Learner's Dictionary defines "ruinous" as "causing great harm and destruction". The Chambers 20th Century Dictionary defines the word "ruinous" as "fallen to ruins: decayed: bringing ruin: as of crashing (Military)".

The Urban Council may, if it so desires, invoke the provisions of section 60 independently. I hasten to add this section is not meant to subvert justice and fair play or to circumvent the rigors of the Rent Act. According to the Plan marked 12R10, the building in suit is at least sixty-two years old. However, the word “*ruinous*” in section 60 is not synonymous with very old. Moreover, demolition is not the only option under this section. The Urban Council can direct “*to take down [demolish], secure, or repair*” such premises. This section shall, in my view, be invoked to avert imminent danger to life and limb due to the ruinous state of a building. It is predominantly for the purpose of preventing impending danger that the legislature includes the word “*forthwith*” in this section: “...*shall cause notice in writing to be served on the owner or occupier forthwith to take down, secure, or repair such house, building, boundary wall, gateway or thing affixed thereon, as the case may require.*” It is also relevant to note that notice to demolish, secure or repair the building shall be served “*on the owner or occupier*”. The fact that even an occupant of a building, such as a tenant or licensee, can be asked to demolish such a building forthwith, underscores that section 60 is most applicable to a situation of grave danger and urgency.

When taking the decision to demolish, secure or repair a building, the Urban Council shall hear all relevant parties and exercise its discretion reasonably and not arbitrarily, bearing in mind considerations such as whether the premises are governed by the Rent Act, as in the instant case.

Learned Counsel for the 12th Respondent vehemently submits that recommendations are not amenable to writ jurisdiction. Although this may have been the traditional view, administrative law has developed to a stage where recommendations are now amenable to writ jurisdiction, if such recommendations affect the rights of citizens. Hence, I take the view the recommendation in issue is subject to judicial review.

The recommendation of the Public Petitions Committee of the Provincial Council is *ultra vires* and has no force or avail in law.

The preliminary objection raised by learned Counsel for the Urban Council that the 1st-6th Respondent Members of the Public Petitions Committee were not served with notice and therefore the application shall be dismissed *in limine* is not entitled to succeed. Notice was served on the said Respondents several times by registered post, notwithstanding they are no longer holding office.

I grant the Petitioners the reliefs as prayed for in paragraphs (b)-(e) and (h) of the prayer to the petition.

The application is allowed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal