

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

K.A.D.K.C. Kahandawala,
No.252, Ilukmodara,
Gurudeniya.
Petitioner

CASE NO: CA/WRIT/357/2017

Vs.

1. Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
2. Jagath Nandana Munasinghe,
Chairman,
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
3. M.P. Ranathunga,
Former Director (Central
Province),
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.

4. Kandy Four Gravets and
Gangawata Korale,
Pradeshiya Sabha,
Ampitiya.
5. C.P. Nawarathna,
Secretary,
Kandy Four Gravets and
Gangawata Korale,
Pradeshiya Sabha,
Ampitiya.
- 5A. R.M.P.W.M.S.B. Yatawara,
Chairman,
Kandy Four Gravets and
Gangawata Korale,
Pradeshiya Sabha,
Ampitiya.
6. N.A.S.A. Nissanka,
Director (Central Province),
The Central Province Office of
the Urban Development
Authority,
No.18, Keppitipola Mawatha,
Kandy.
7. Patali Champika Ranawaka,
Minister of Megapolis and
Western Development,
18th Floor, "Suhurupaya",
Sri Subuthipura Road,
Battaramulla.

- 7A. Mahinda Rajapaksa,
Prime Minister and Minister of
Urban Development, Water
Supply and Housing Facilities,
(And, Minister of Finance,
Economy and Policy
Development; Minister of
Buddhasasana, Cultural and
Religious Affairs),
18th Floor, "Suhurupaya",
Sri Subuthipura Road,
Battaramulla.
8. N. Rupasinghe,
Secretary to the Ministry of
Megapolis and Western
Development,
18th Floor, "Suhurupaya",
Sri Subuthipura Road,
Battaramulla.
- 8A. Priyath Bandu Wickrama,
Secretary to the Ministry of
Urban Development, Water
Supply and Housing Facilities,
18th Floor, "Suhurupaya",
Sri Subuthipura Road,
Battaramulla.
- Respondents

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

Counsel: Shantha Jayawardena with Chamara
Nanayakkarawasam for the Petitioner.
Parinda Ranasinghe, P.C., A.S.G., with
Madubashini Sri Meththa, S.C., for the 1st,
2nd, 3rd, 6th, 7th and 8th Respondents.
Bharatha Abeyanayake for the 4th, 5th and 5A
Respondents.

Argued on: 15.07.2020

Decided on: 02.09.2020

Mahinda Samayawardhena, J.

The Petitioner submitted a building plan for a proposed house consisting of two basement floors, a ground floor and two upper floors to the 4th Respondent Pradeshiya Sabha for approval. The land is in an Urban Development area coming under the Urban Development Authority. The 3rd Respondent, the Director (Central Province) Urban Development Authority, granted approval by P9 for the Petitioner's plan, subject to conditions. The third condition reads as follows:

1986.03.10 අතිවිශේෂ ගැසට් පත්‍රයේ 34(2) අනුව යාබද දේපලවල දර්ශන පථය අවහිර නොවන පරිදි ගොඩනැගිල්ලේ මහල් ප්‍රමාණය අර්ධ පා මහල් 03 ක් සහ බිම් මහලකට (B3+G) සීමාවිය යුතුයි. පොළව මට්ටමේ සිට වහලයේ මුදුන් මට්ටම දක්වා ගොඩනැගිල්ලේ උස අඩි 20 ක් විය යුතුය.

According to this condition, the Petitioner could build three basement floors and a ground floor, with the height of the building not exceeding 20-feet from the ground-level to the roof-top of the building.

This is confirmed by paragraph 14 of the statement of objections of the 4th and 5th Respondents, the Pradeshiya Sabha and its Secretary, quoted below:

The characters B3+G that comes in the said 3rd condition means 3 Basements and the Ground Floor, in a building the Ground Floor is existing above all the Basements of it, and accordingly the total height of all the Basements has to be got rid of and the described 20 feet have to be measured from the level of the Ground towards the Top of the roof of the building.

It is clear from the third condition in P9 that the 20-foot height limit is imposed to prevent any obstruction to the view of the property owners of the neighborhood. Such an obstruction, according to the 3rd Respondent, violates regulation No.34(2) made by the Minister under the Urban Development Authority Law marked P10. Regulation 34 reads as follows:

*CONSERVATION OF PLACES OF HISTORICAL,
ARCHITECTURAL INTEREST OR LANDSCAPE VALUE*

34(1) If any premises or area or monument not covered by the Antiquities Ordinance is in the opinion of the Authority, of historical or architectural interest, the Authority may give directions as it deems fit for the conservation of such buildings, groups of buildings, area or monument as the case may be.

(2) If any premises or area, in the opinion of the Authority is of scenic or landscape interest, the Authority may give directions as it deems fit for the conservation and maintenance of such premises or area as the case may be.

In my view, the 3rd Respondent could not, relying on regulation 34(2), impose the said height limit on the basis the view of the adjoining landowners would be obstructed if the building is constructed higher than 20-feet from the ground-level. Regulation 34(2) serves a different purpose. It attempts to preserve premises or areas, which—in the opinion of the Urban Development Authority—are of scenic or landscape value; it is not concerned with the view of adjoining landowners. By 1R1 it is clear this height limit was imposed due to a complaint by “*the property owner who is on the other side of the road*”. However, the name of such owner has not been disclosed nor has such a complaint been produced before this Court.

Having been dissatisfied with the said condition, the Petitioner appealed to the 2nd Respondent, the Chairman of the Urban Development Authority, and the 7th Respondent, the subject Minister. As a result, the Petitioner was formally called before the Main Planning Committee of the Urban Development Authority and allowed to make a PowerPoint presentation in pursuance of his appeal.

The decision of the Main Planning Committee of the Urban Development Authority, as contained in 1R1, is as follows:

Committee has decided to approve the clearance only for G+3 (Maximum height as per the regulations) from the existing ground level of the proposed land.

The 3rd Respondent accordingly *amended* the third condition in P9 by P13. The amended third condition as per P13 reads as follows:

ගොඩනැගිල්ලේ මහල් ප්‍රමාණය පවත්නා භූමියේ පහලම මට්ටමේ සිට බිම් මහල හා තවත් මහල් 03 කට (G+3) පමණක් සීමාවිය යුතුයි.

However, before the Petitioner tendered the amended building plan prepared in accordance with P13, the 3rd Respondent arbitrarily *amended* P13 by P16 to have the third condition read as follows:

1986.03.10 අති විශේෂ ගැසට් පත්‍රයේ 34(2) අනුව යාබද දේපලවල දර්ශන පථය අවහිර නොවන පරිදි ගොඩනැගිල්ලේ උපරිම මහල් ප්‍රමාණය බිම් මහල සහ තවත් මහල් 03 කට (G+03) පමණක් සීමා විය යුතු අතර, මාර්ග මට්ටමේ සිට වහලයේ මුදුණ දක්වා ගොඩනැගිල්ලේ උස අඩි 20 කට සීමාවිය යුතුය.

The Petitioner has filed this application seeking to quash P16 by certiorari.

The 4th and 5th Respondents in paragraphs 19 and 20 of the statement of objections admit: (a) by P16 the 3rd Respondent reversed the decision of the Main Planning Committee of the Urban Development Authority marked P13; (b) P16 is unacceptable, as a building with a ground floor and three upper floors cannot practically be constructed with a maximum height limit of 20-feet from the ground-level. I totally agree.

In the same breath, I totally disagree with the standpoint of the 1st-3rd and 6th Respondents taken in paragraph 8(ix) of their statement of objections that although P16 states the third condition in P13 has been amended, “*in actual fact the condition*

remains unchanged". If this is the position of the said Respondents, P16 is redundant and can be withdrawn, and the Petitioner can withdraw this application, as the only relief sought by the Petitioner is to quash P16 leaving P13 intact.

I agree with learned Counsel for the Petitioner when he says that by P16 the 3rd Respondent re-imposed the maximum height limit of 20-feet from the road-level, which was removed by the Main Planning Committee of the Urban Development Authority on appeal.

As I stated earlier, regulation 34(2) is inapplicable in this context. Furthermore, a ground floor and three upper floors cannot practically be built without exceeding the 20-foot limit from the ground-level to the roof-top of the building.

The 3rd Respondent had no authority to amend the appeal decision of the Main Planning Committee of the Urban Development Authority. The decision of the 3rd Respondent, as reflected in P16, is arbitrary and *ultra vires*. I quash the decision by way of a writ of certiorari. I also direct the Respondents by way of a writ of mandamus to comply with the appeal decision contained in P13.

The reliefs as prayed for in paragraphs (c)-(f) of the prayer to the petition are granted.

The application of the Petitioner is allowed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal