

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

In the matter of an Appeal under Article  
154P (6) read together with Article 138 of  
the Constitution.

Court of Appeal Case No:  
**CA/PHC/119/2015**  
HC Ratnapura Case No:  
**HC/RA 102/2012**  
MC Ratnapura Case No:  
**27778**

Hettiarachchilage Sheela Ramani Perera,  
No. 39/B,  
Bus Stand Road,  
Kuruwita.

**Respondent-Petitioner-Appellant**

**-Vs-**

Urban Development Authority,  
27, D.R. Wijewardane Mawatha,  
Colombo 10.  
And presently of  
“Sethsiripaya”,  
Battaramulla,  
Sri Jayawardanapura.

**Petitioner-Respondent-Respondents**

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

**&**

**Dr. Ruwan Fernando J.**

**Counsel :** Ashan Nanayakkara and Iresh Senevirathne instructed  
by Subhani Abeysekera for the Petitioner-Appellant.  
Sabrina Ahmed, SC for the Respondent.

**Written Submissions:** By the Respondent-Petitioner-Appellant on 06/06/2019

By the Petitioner-Respondent-Respondent on  
03/05/2019

**Argued on :** 30/07/2020

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

**A.L. Shiran Gooneratne J.**

The Petitioner-Respondent-Respondent (hereinafter referred to as the Respondent) by application dated 17/08/2012, filed an action in terms of Section 28A (3) of the Urban Development Authority Law No. 41 of 1978 (as amended) in the Magistrates Court of Ratnapura against the Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) for constructing an unauthorized building at No. 39/B, Bus Stand Road, Kuruwita.

In the proceedings before the Magistrates Court, the Appellant took up the position that her husband entered into a Lease Agreement with Sri Lanka Railway

Department (not pleaded in Court proceedings) to the land where the house to be demolished stands, and produced documents marked “D1” to “D4” in support. The learned Magistrate by order dated 07/12/2012, found that the said documents have no relevance to the land in question and accordingly, authorized the demolition of the building on the basis that the Appellant has failed to produce a valid permit in terms of Section 28A (1) of the Act. The Appellant thereafter, filed a revision application against the said order in the Provincial High Court of Ratnapura and the learned High Court Judge by order dated 25/06/2015, upheld the Order of the learned Magistrate and dismissed the application for want of exceptional circumstances. The Appellant is before this Court to challenge the said order.

When this case was pending before this Court the Appellant made an application under Article 139 (2) of the Constitution to receive and admit as new and additional evidence of documents marked “A1a”- “A5”. The Applicant relied on the dicta laid down by *Lord Denning L.J.* in *Ladd Vs. Marshall (1954) 3 AFR 745* in support of his application.

In the application to receive additional evidence made under Article 139(2) of the constitution, the Appellant mainly relied on a letter which is unsigned marked “A2”, issued by the Department of Local Government of Sabaragamuwa Provincial Council informing the Secretary of the said Council that rates have been paid in respect of Assessment No. 39/B for the year 1988. The said letter, *inter alia*, confirms that there is no approved development plan in respect of the

said construction. The Appellant also relies on Gazette Notifications No. 821/23, dated 02/06/1994 and No. 1629/16, dated 26/11/2009, marked "A1" to assert that the construction to be demolished was carried out before the area was declared as an Urban Development Area in 1994. Documents marked "A3a" to "A3r" are certified copies of electoral register extracts for the years 1993-2010 for assessment bearing No. 680A, which the Appellant contends was issued to the disputed premises bearing No. 39/B. The Appellant relies on document dated 20/12/2018, marked "A4", to prove that both assessment numbers relate to one and the same property. However, the said letter is not authenticated by the Kuruwita Pradeshiya Sabhawa, the authority empowered to impose rates on immovable property. "A5" is a document dated 15/10/2018, prepared after the institution of this action, purports to refer to assessment rates imposed for the period from 1996-2005, by the Kuruwita Pradeshiya Sabhawa which clearly relates to a period subsequent to the declaration of the area as a development area. Therefore as noted above, the documents sought to be admitted as additional evidence marked "A2"- "A5", are irrelevant and/ or unverified documents and therefore, cannot be admitted or relied upon as evidence in favor of the Appellant and accordingly, the application to admit new evidence is refused.

Section 28 (A) (1) of the Urban Development Authority Law as amended by Act No. 44 of 1982, provides for the procedure to be followed in respect of

development activities commenced contrary to the terms and conditions of a permit;

- (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 in respect of such development activity.

The position of the Appellant is that the purported building was in existence for at least 30 years prior to the declaration made in the Gazette Notification relied upon by the Respondent.

In the Magistrates Court, the Appellant took up the position that the disputed land was leased out to the Appellant's husband by the Railways Department and that a house was constructed in the said land to which a certificate

of conformity (marked “ඨ5”) was issued by the Kuruvita Pradashiya Sabawa. The Appellant has also attached payment receipts on the Lease Agreement for 2011 and 2012 marked “ඨ6”, and the electricity and water bill payment receipts marked “ඨ7”- “ඨ9”. The said documents are clearly not relevant to the premises in issue and the learned Magistrate rightly refused to act on it. The Appellant re-agitated the same issues before the Provincial High Court, However, failed to tender any admissible evidence to substantiate her position that the relevant premises was in existence prior to the area being declared as an urban development area.

In the case of *Urban Development Authority Vs. H.W. Kulasiri (C.A. Revision Application No. 2226/2002)* decided on 21/11/2003, Gamini Amaratunga J. held that,

*“Where an application under section 28A (3) of the UDA Law has 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 28A (3). The burden of showing that the construction had been done on a valid permit is on the person noticed. This burden is not discharged by producing an approved building plan. It is the permit that contains the terms and conditions relating to the construction.”*

The Kuruwita Pradeshiya Sabha area was declared as an urban development area under Gazette Extraordinary No. 821/23, dated 02/06/1994 and 1629/16, dated 26/11/2009. The document marked “ඨX1”, dated 25/10/2012,

(Vide page 113 of the brief) confirms that no permit has been issued by the Pradeshiya Sabha to the Appellant relating to the construction to be demolished. The document marked “ඉප්ප” tendered to the Magistrates Court clearly indicates that the premises to be demolished was constructed in the year 2000, which was subsequent to the area been declared as a development area. (Vide page 107 of the brief). The Appellant has failed to provide an approved building plan or a certificate of conformity in support, to resist the application filed under Section 28A (3) of the Act and therefore, has failed to offer any explanation as to her claim of non-applicability of the said section.

In all the above circumstances, the Orders delivered by both Courts are affirmed and the revision application is dismissed.

Application 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**