

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

In the matter of an application for orders in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/Writ/0220/22

R. W. R. G. Tharanga Udayanganee Rajapakse  
No. 484/10, Lifestyle Residencies,  
Averihena,  
Hokandara.

PETITIONER

**Vs.**

1. Ceylon Electricity Board  
No. 50, Sri Chinthampalam A. Gardiner Mawatha,  
Colombo 02.
2. Chief Engineer (Construction)  
Lower Floor, Ceylon Electricity Board,  
No. 664, Sri Jayawardanepura Road,  
Ethul Kotte.
3. Divisional Secretary  
Kaduwela Divisional Secretariat,  
Kaduwela.

4. Kaduwela Municipal Council  
Kaduwela.
5. Municipal Commissioner,  
Kaduwela Municipal Council,  
Kaduwela.
6. The Urban Development Authority  
Sethsiripaya,  
Battaramulla.
7. The public Utilities Commission  
6<sup>th</sup> Floor,  
St. Michaels Road,  
Colombo 03.
8. Regent Living (Pvt) Ltd  
No. 941/1, Jayanthi Mawatha,  
Kotte, Ethul Kote.
9. U. D. Victor  
483-D, Avarihena,  
Hokandara.

#### RESPONDENTS

Before : Sobhitha Rajakaruna, J.  
Dhammika Ganepola, J.

**Counsel** : Shantha Jayawardana with Azra Basheer for  
the Petitioner.  
Manohara Jayasinghe D.S.G. with Ishara  
Madurasinghe S.C. for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup>, and 7<sup>th</sup>  
Respondents.  
Dulani Peiris for the 8<sup>th</sup> Respondent.

**Argued On** : 08.09.2023

**Written Submission** : Petitioner : 05.02.2024  
**tendered On** 8<sup>th</sup> Respondent : 22.01.2024  
1<sup>st</sup> and 2<sup>nd</sup> Respondents : 12.02.2024

**Decided On** : 07.03.2024

Dhammika Ganepola J,

***Factual Matrix of the case***

***Position of the Petitioner***

The Petitioner's husband owns the land depicted in Lot 10 in plan no. 2005/75 dated 13.10.2005 together with the house in which the Petitioner and her family reside. The western boundary of the said property is a roadway which leads to the 8<sup>th</sup> Respondent's housing project situated about 500 meters away from the Petitioner's residence. The 8<sup>th</sup> Respondent had made an application to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in order to obtain an electricity connection to his land on which he was planning to construct 8 houses. There had already been a single-phase electricity

line to the 8<sup>th</sup> Respondent's land along the western boundary of the Petitioner's property. Accordingly, the 1<sup>st</sup> Respondent has provided the 8<sup>th</sup> Respondent the cost estimate for the supply of three-phase electricity supply to the 8<sup>th</sup> Respondent's land and the 8<sup>th</sup> Respondent had made the payment in respect of the said estimated cost for the said electricity supply. Thereafter the 2<sup>nd</sup> Respondent had sent notices to the Petitioner and the other residents who reside on either side of the roadway seeking a wayleave for a 33Kv electricity line along the said roadway. The Petitioner had objected to the laying of a 33Kv electricity line along the boundary of the Petitioner's residential property. Afterwards, the 2<sup>nd</sup> Respondent had requested the 3<sup>rd</sup> Respondent to hold an inquiry and had sought permission to install such an electricity line. Accordingly, an inquiry had been held by the Assistant Divisional Secretary of Kaduwela. After obtaining certain clarifications from the 2<sup>nd</sup> Respondent pursuant to said inquiry, the 3<sup>rd</sup> Respondent had permitted the 1<sup>st</sup> Respondent to lay the 33Kv electricity line using the bundle system along the existing electricity line by his letter dated 01.02.2019 marked P27. A copy of the said letter P27 has also been forwarded to the Petitioner. The Petitioner states that she was unable to foresee the impact of laying the electricity line due to the ambiguous wording of the said letter and due to her lack of knowledge on the technical aspects.

At the time said electricity line was laid along the western boundary of the Petitioner's property on 03.09.2019, the Petitioner had noticed that said electricity line at the closest point is only 125cm and at the furthest point it is 165 cm away from the Petitioner's house. In terms of the height of the wires, it had been at the level of the second floor of the house. Accordingly, the Petitioner had objected to the laying of an electricity line on their property, as it posed a serious danger to residents and would decrease the property's market value. This objection had been communicated to the 2<sup>nd</sup> Respondent via a letter dated 04.09.2019. However, as the issue persisted, the Petitioner had filed a case bearing no. 523/SPL before the District Court of Kaduwela making the 1<sup>st</sup> to 3<sup>rd</sup>, 8<sup>th</sup> Respondents and the Attorney General as parties. The Petitioner had been able to obtain an enjoining order and an interim injunction to prevent any further action until the matter is resolved in the said case. The 8<sup>th</sup> Respondent instituted the action bearing no. CARI/15/2019 seeking to revise the said orders made in the District Court action and CA Transfer Application bearing no. 08/2019 seeking to have transferred the said case to a different District Court. In the said application bearing no. CARI/15/2019, the Court

of Appeal set aside the orders made in the case no. 523/SPL in the District Court of Kaduwela.

The Petitioner states that the 8<sup>th</sup> Respondent's Subdivision Plan no.3814 marked P13 does not indicate the electricity lines or the connection to the electricity supply as required by the "Planning and Building Regulations 2008-2020" issued by the Urban Development Authority applies to the Kaduwela Municipal Council area. However, the said plan P13 has been approved [P13(a)] by the 4<sup>th</sup> Respondent Municipal Commissioner of Kaduwela Municipal Council. Therefore, it is claimed that the approval granted for the Subdivision Plan of the 8<sup>th</sup> Respondent is illegal and void *ab initio*.

The Petitioner states that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have failed to consider the safer underground cable options. The Petitioner further states that the laying of the electricity line as authorized by the 3<sup>rd</sup> Respondent is in blatant violation of the Electricity (Safety and Continuity) Regulations and Electricity (Transmission) Performance Standard Regulations promulgated under the Sri Lanka Electricity Act No. 20 of 2009 and is an act of ultra vires.

Based on such circumstances the Petitioner seeks an order in the nature of a Writ of Prohibition, prohibiting 1<sup>st</sup> and 2<sup>nd</sup> Respondents from energizing the 33Kv electricity line laid along the western boundary of the Petitioner's residential property as per P27, Writs of Certiorari quashing the decision contained in P27 granting approval for the Subdivision plan P13, and a Writ of Mandamus directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents remove and/or uninstall the said 33Kv electricity line.

### ***Stance of the Respondents***

The Respondents argued that the Petitioner and other occupants in the area themselves suggested that the 8<sup>th</sup> Respondent could opt to obtain the supply of electricity through either the bundled cabling method or underground cabling, as an alternative to what is demonstrated by the letter dated 27.04.2018 marked P21. The Respondents further state that as borne out by the report submitted by the Assistant Divisional Secretary of Kaduwela marked P22 the Petitioner has unconditionally consented to the supply of electricity to the 8<sup>th</sup> Respondent's land through the

bundle cabling method. Hence the Petitioner is estopped from objecting to the same.

The 3<sup>rd</sup> Respondent's authorization to install the said electrical line employing the alternative Ariel Bundled Conductor cabling method has been communicated to the 1<sup>st</sup> Respondent by letter dated 01.02.2019 (P27) with a copy to the Petitioner. However, the Petitioner belatedly sought to object to the said installation of the electrical line by letter dated 04.09.2019 (P27) after the lapse of 7 months. Therefore, it is claimed that the said letter P27 is tainted with laches.

The Respondents further claim that the impugned electrical line has been installed in compliance with the CEB: DCS-7 Guidelines, Medium Voltage Lines with Ariel Bundled Conductors marked 1R2 and the Electricity (Safety Continuity) Regulations and that Electricity (Transmission) Performance Standard Regulations (P40 and P41) which the Petitioner refers to apply to Bare Aluminum Conductor electrical lines.

Even though the Planning and Building Regulations 2008-2020 (P39) required electrical, telecom or radio transmission lines to be reflected on the survey plan, at the time Subdivision Plan no.3814 was prepared the electrical line did not exist. Hence it has been submitted that the approval of the Subdivision plan was not in violation of the above Urban Development Authority Regulations.

### ***Estoppel***

The Respondents have taken up the position that the Petitioner's unconditional acquiescence to the supply of electricity to the 8<sup>th</sup> Respondent's property through the bundle cabling method estops her from objecting to the same at a later stage. It is observed from the letter dated 27.04.2018 marked P21, that the Petitioner and the other occupants in the said area themselves have suggested the possibility of supplying electricity through the bundled cabling method or underground cabling alternatively. The Petitioner doesn't deny that she had consented to the laying of the electrical line using the bundle cabling method. The said alternative suggestion

had been constructively taken into consideration by the Assistant Divisional Secretary of Kaduwela who held the inquiry as evinced by his Report P22. Further, the Divisional Secretary has inquired the 2<sup>nd</sup> Respondent about the possibility of constructing the proposed electrical line with distance limitation as provided under the Electricity Act, assessment of the alternative economical electrical supply methods (including underground supply method) and the cost of such methods before coming to a conclusion (See P23 and P24). It appears that the 3<sup>rd</sup> Respondent has afforded a fair hearing and has taken into consideration the relevant facts and circumstances in arriving at a conclusion. The decision of the 3<sup>rd</sup> Respondent to allow construction of the electrical line using the bundle cable method has been communicated to the 2<sup>nd</sup> Respondent by his letter dated 01.02.2019 (P27) with a copy to the Petitioner. However, the Petitioner had not objected to the 3<sup>rd</sup> Respondent's decision regarding the laying down of the electrical line using the bundle cable method. Hence the Petitioner is estopped from objecting to the decision of the 3<sup>rd</sup> Respondent at a subsequent stage.

***Regulations, Guidelines and laying the Electricity line.***

However, the Petitioner is challenging the construction and energizing of the electrical line by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents as such construction is not in accordance with the applicable law. The Petitioner submits that her concern is about the electrical line being laid at a close distance from her house but not the supply of electricity to the 8<sup>th</sup> Respondent. Hence this Court is expected to consider such aspect.

The Petitioner states that the impugned electricity line which was laid along the western boundary of the Petitioner's property is contrary to the 'The Electricity (Safety and Continuity) Regulations' and Electricity (Transmission) Performance Standard Regulations (P40 and P41), promulgated under Section 54 of the Sri Lanka Electricity Act No.20 of 2009. Further, it is claimed that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed to consider and apply the said Regulation while constructing the said electricity line. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents claim that said Regulations stipulated in P40 and P41 apply to the Bare Aluminum Conductor electrical lines. Thus, it is advanced that the impugned electricity line has been installed in compliance with

the CEB: DCS-7 Guidelines, Medium Voltage Lines with Ariel Bundled Conductors marked 1R2. However, applicable Regulations as reflected in P40 to the instant application do not differentiate Bare Aluminum Conductor electrical lines from Ariel Bundled Conductor electrical lines. Therefore, I am not convinced with the submission that Regulations P40 and P41 do not apply to the circumstances of this case.

Further, it appears that the CEB: DCS-7 Guidelines, Medium Voltage Lines with Ariel Bundled Conductors marked 1R2 have been formulated by the Distribution Design Committee of the Ceylon Electricity Board (page 2 of the 1R2). The said Guidelines have the flexibility to modify or update according to internal requirements whereas the Regulations have a wider scope and are rigid. As such regulations can be altered only through a regulatory/statutory process. The Regulations P40 and P41 published in the Gazette No.1975/44 dated 13.07.2016 are made by the Minister under Section 54 of the Sri Lanka Electricity Act No.20 of 2009 read with Section 56 of the aforesaid Act. The said Regulations have the effect of written law as per Article 170 of the Constitution.<sup>1</sup> Therefore, the relevant Regulations made by the Minister under the power vested with him under the Statute cannot be overridden by Guidelines formulated by a committee appointed by the Ceylon Electricity Board. The applicability of the relevant Regulations in the P40 cannot be denied in the installation of an impugned bundle cable electrical line and the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents are bound by law to give effect to such statutory regulations. The 1<sup>st</sup> and the 2<sup>nd</sup> Respondents' failure to take into consideration applicable Regulations in P40 particularly not considering horizontal distance in terms of the said Guidelines and laying down the electrical line are irrational.

Regulation No.37 of the P40 stipulates that where an overhead line is constructed over or near any building or structure, the distance from such building or structure to any part of the overhead line, at the maximum likely temperature of that line,

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<sup>1</sup> "Written law" means any law and subordinate legislation [and includes statutes made by a Provincial Council, Orders], Proclamations, Rules, By-laws regulations made or issued by anybody or person having power or authority under any law to make or issue the same.



shall not become less than the limits specified in Part 11 of Schedule 2 of P40. Further, Regulation No.40 specified that no overhead line shall so far as is reasonably practicable, come so close to any building, tree or structure as to cause danger. The said Regulations do not expressly make a difference between wire or cable lines. The said Part 11 of Schedule 2 of P40 specifies the required minimum distance to be maintained. The 2<sup>nd</sup> Respondent sought to way leave for 33,000 Volts electricity line. In the case of an electricity line in which the nominal voltage is between 11,000 Volts to 33,000 Volts a minimum of 3.00 meters of vertical distance (minimum height) and 2.00 meters of horizontal distance (minimum width) is to be maintained from the building as per Part 11 of Schedule 2 of P40. The vertical distance would not become an issue in the instant application as the impugned electrical line is not constructed over the Petitioner building.

The Petitioner contended that the electricity line in question is only 125 cm away from her building at the nearest point and 165 cm away at the furthest point along the western boundary. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not disputed these findings. It is apparent that said distance is not in terms of the required distance set out in Regulations marked P40. At this juncture, it is noteworthy to observe that the 3<sup>rd</sup> Respondent's inquiry marked P23 on whether the electrical line could be constructed within due distance limitations according to the Sri Lanka Electricity Act was met with a positive response from the 2<sup>nd</sup> Respondent by letter marked P24. However, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents have failed to take into consideration and comply with the Regulations marked P40 while constructing the electrical line as per the authorization given by the 3<sup>rd</sup> Respondent in P27.

The 1<sup>st</sup> and the 2<sup>nd</sup> Respondents submit that the Regulations produced by the Petitioner do not provide for a distance to be maintained between the balcony and the electrical line. Therefore, what needs to be considered is the distance from the outermost wall of the Petitioner's property. However, no adequate materials have been tendered to the Court that the distance cannot be counted as leaving the balcony although such Regulations stipulated '*minimum distance from any building or structure to any position*'. Hence, based on these facts and circumstances of this case I am of the view that if the balcony exists towards the electrical line beyond the

boundary wall of the approved building plan, the endpoint of such a balcony should be considered the outermost point of the building.

As observed by His Lordship Justice Janak de Silva in **H.K. Kumara Vs. The Ceylon Electricity Board and Others, C.A. Writ Application 100/2017**, The Ceylon Electricity Board is under a statutory duty to provide an electricity connection to the owner or occupier of any premises within its authorized area provided all the legal requirements are satisfied. As well the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents are also under a mandatory statutory duty to follow the Regulations set out in P40 while providing electricity by implementing such a decision of the 3<sup>rd</sup> Respondent reflected in P27. Accordingly, I am of the view that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents have failed to discharge their statutory/public duty according to the law merely because they have failed to follow the Regulations stipulated in the P40.

It appears to me that the Petitioner has objected to the construction of the electrical line by letter marked P28 after the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents have physically laid down the electrical line. Until such time the Petitioner had had no reason to object to construction of said electrical line. Once the Petitioner identified the danger posed upon the construction of the electrical line only, she had complained about the circumstances. Hence the Petitioner cannot be considered guilty of laches in complaining against the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents in respect of the electrical line.

The Petitioner contends that as the 8<sup>th</sup> Respondent's Subdivision Plan no.3814 marked P13 does not indicate the electricity lines or the connection to the electricity supply as required by the "Planning and Building Regulations 2008-2020" issued by the Urban Development Authority, said Subdivision Plan is illegal and void *ab initio* and is liable to be quashed. The authorization for the construction of the electrical line has been given by the 3<sup>rd</sup> Respondent. This Court determined to abbreviate the matter in issue in the instant application, to whether the construction of the alleged electrical line complies with the relevant Regulations. Therefore, I am of the view that the consideration of the legality of the Subdivision plan does not arise at this stage relating to this application.

### ***Conclusion***

In light of the above, I am not inclined to issue a Writ of Certiorari against the decision in P27. However, I take the view that the decision reflected in the P27 should be executed in accordance with the Regulations in P40 especially in regards to the distance. Thus, I proceed to issue a mandatory order directing the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to comply with the order in P27 but strictly abiding by the rules relating to the distance in Regulations P40. In other words, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents should install the said impugned electrical line while considering the minimum distance from the outermost wall of the building without ignoring even short walls jutting out such as in balconies. Subject to the above, I am not inclined to issue any relief as prayed for in the prayer to the Petition.

**Judge of the Court of Appeal**

**Sobhitha Rajakaruna J.**

**I agree.**

**Judge of the Court of Appeal**