

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

1. F. Najimudeen  
(Now deceased)
2. Fayaz Marikkar,

Both of  
No. 198/3,  
Sri Vajiragnana Mawatha,  
Colombo 09.

**Accused-Petitioner-Appellants**

C.A. Case No: **CA (PHC) 198/2012**  
H.C. Colombo Revision Case No:  
**HCRA/63/2009**  
MC Maligakanda Case No: **9942/M**

Jagath Chamila Hettiarachchi,  
Authorized Officer,  
Municipal Engineering Department  
(Planning),  
Colombo Municipal Council,  
Town Hall,  
Colombo 07.

**Applicant-Petitioner-Respondent-**  
**Respondent**

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

**&**

**Mahinda Samayawardhena J.**

**Counsel :** Sabry Nilamdeen for the Accused-Petitioner- Appellant.  
Channa Nilanduwa for the Respondent.

**Written Submissions:** By the 2<sup>nd</sup> Accused-Petitioner-Appellant on 01/10/2018  
and 04/07/2019

By the Applicant-Petitioner-Respondent on 04/07/2019

**Argued on:** 27/06/2019

**Judgment on :** 24/07/2019

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

This is an Appeal from an order made by the learned Provincial High Court Judge of Colombo dismissing an action filed by the 1<sup>st</sup> and 2<sup>nd</sup> Accused-Petitioner-Appellants (Appellants), in the exercise of revisionary jurisdiction of the Provincial High Court, in terms of Article 154 P (3) of the Constitution.

The Applicant-Petitioner-Respondent-Respondent (Respondent), the Authorized Officer of the Colombo Municipal Council instituted proceedings against the Appellants in the Magistrates Court of Maligakanda in terms of Section

28 (A) (3) of the Urban Development Authority Law No. 41 of 1978, (as amended), (UDA Act) for an order for the demolition of a building at No. 198/3, Vajiragnana Mawatha, Dematagoda, Colombo 09, on the basis that the said premises was an unauthorized structure. The Learned Magistrate by order dated 21/04/2009, directed the Respondent to demolish the purported building and also imposed a fine of Rs. 50,000/- to be paid by the Appellants.

When this case was taken up for argument, the counsel for the Appellants addressed Court on the following grounds;

- a) whether the powers given to the Urban Development Authority as contained in Section 28A of the UDA Act be considered as falling within the scope of "Planning" and not development activity, and,
- b) whether such powers could be validly delegated in terms of Section 23(5) of the UDA Act.

Section 23 (5) of the Urban Development Authority Law as amended by Act No. 4 of 1982 provides as follows;

*"23(5) 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 question whether the Mayor had any lawful authority to make an application for a demolition order under the provisions of the UDA Act was looked into by this Court in CA (PHC) No. 02/97, where Gamini Amaratunga J. cited with approval the case of ***Piyasena Vs. Wijesooriya CA. Application No. 119/90- CA. Minutes of 4/11/1994***, where this Court held that “*functions of planning would include the taking of steps to enforce planning procedure*” and was of the view that “*the delegation of the functions of planning would include the taking of steps to enforce planning procedure and accordingly, the Mayor had the authority to institute proceedings against an owner of an unauthorized building for an order to demolish such building.*”

In ***M.P. Selvam v. K.H. Perera (SC Appeal No. 123/09)*** Sripavan J. (as he was then) held that,

*“The “Planning Procedure” is governed by the amending Act No. 4 of 1982. This Amending Act brought into force Section 28A as well which deals with the “procedure to be followed in respect of certain development activities commenced, continued, resumed or completed contrary to any terms or conditions of a permit. The scope of Section 28A is therefore free from obscurity that the legislature intended to secure compliance with the development plan so that*

*proper implementation of the said plan is carried out. The “Planning Procedure” referred to in Part IIA in Section 8B identifies matters pertaining to the,*

- i. Preparation;*
- ii. Implementation and*
- iii. Enforcement of a development plan.*

*Hence, implementation of a development plan falls within the broad caption of “Planning Procedure”-----, Section 8J makes it clear that the purpose of issuing a permit is to ensure that all development activities in development areas should conform to the development plan.*

*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.”*

Therefore, the powers duties and functions of the Urban Development Authority within the scope of the term planning could be validly delegated to any officer of a local authority.

Section 8J (1) of the UDA Act provides that,

*“Notwithstanding the provisions of any other law, no Government agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Authority.”*

Even though, the Appellant submits that the order of demolition is in relation to a development activity, the Appellant has failed to submit a permit issued by the Urban Development Authority authorizing the construction of the building ordered to be demolished. Part II A of the Act provides that in terms of Section 8(j) of the Act, development activity in any development area can be undertaken only under and in terms of a permit issued by the Urban Development Authority.

The Appellant has failed to produce a valid permit issued in terms of the UDA Act. The Appellants must prove that their construction is according to law. Section 8(j) of the Amendment Act has clearly stated that if any person is carrying out or engaged in any development activity in any development area, there must be a permit issued by the Authority.

Therefore, I do not see any reason to overturn the judgment given by the learned High Court Judge or the order of the learned Magistrate, since the Appellants application is without merit.

Accordingly, the Petition is dismissed with costs fixed at Rs. 10,000/-.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**