

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

C.A. Appeal No.470/2000 (F)
D.C. Kalutara No.3830/Spl

A. Sunil Dabare
of No.795, Galle Road,
Katukurunda, Kalutara.

Plaintiff-Appellant

Vs.

Kalutara Urban Council
Kalutara.

Defendant-Respondent

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Ronald Perera P.C. with Anslam Kaluarachchi for the Plaintiff -
Appellant.

H. Withanachchi with Shantha Karunadhara for the Defendant -
Respondent.

Argued on: 04/04/2019.

Written Submissions: of the Plaintiff-Appellant on 06.08.2013 and 26.09.2018
of the Defendant – Respondent on 23.05.2014

Judgment on: 27/05/2020

N. Bandula Karunarathna J.

The Plaintiff- Appellant [hereinafter referred to as “the Plaintiff”] instituted an action in the District Court of Kalutara, on 11.10.1991 against the Defendant – Respondent [hereinafter referred to as “the Defendant”] and sought inter alia, a declaration that the Defendant is the owner of the boutique room bearing No.1A. Further, that the Defendant rented-out the said boutique room to the Plaintiff and a declaration that the Plaintiff is the lawful tenant of the said boutique room under the Defendant.

Also, the following reliefs were sought;

- a) An injunction restraining the Defendant from demolishing the said boutique room except in accordance and compliance with the terms of law and under due process of law;
- b) An injunction restraining the Defendant from obstructing or hindering the Plaintiff carrying on the said business in the said boutique room until he is lawfully ejected therefrom;
- c) For an enjoining order in terms of section 664(2) of the Civil Procedure Code restraining the Defendant, its officers, servants, agents and others under the Defendant from demolishing the said boutique room, from ejecting the Plaintiff and from obstructing or hindering the Plaintiff carrying on the business in the said boutique room otherwise than in accordance and compliance with the terms of law and under due process of law until the determination of the inquiry into the application for injunction

The Plaintiff claims that;

- i) The Defendant Council was the owner of the "Super Market Complex", had permitted several persons to construct buildings within the complex and in the vicinity of the Complex.
- ii) That the Plaintiff on 07.04.1989 made an application to put up a building on a bare land in the said Complex and the former Chairman of the Defendant Institution, on 11.04.1989 had granted approval for it.
- iii) That after the construction of the shop premises, the Plaintiff requested for a shop number and for the fixing of a monthly rent for the shop. Monthly rent of Rs.100/- was fixed for the shop, bearing No.'P1A'
- iv) That the Plaintiff had obtained water and electricity supplies to the said shop and had paid the Defendant, annual Trade Licenses to carry on business under the name and style of 'Lakrasa Cool Bar' for the years 1989 to 1991
- v) That the Plaintiff had paid rent to Defendant up to October, 1991 and by reason of the said arrangement and by operation of law had become the lawful tenant under the Defendant Council.
- vi) That the Defendant had fixed a notice dated 07.10.1991 on the wall of the said shop, demanding the Plaintiff to remove the said shop within 3 days and such notice had been served on the employee of the Plaintiff at the Kalutara South Police Station.

- vii) That although the said notice had been issued on the wrong premise that the building was unauthorized, it was approved by the Defendant and the Plaintiff was being differently treated owing to his political affiliations.
- viii) That if the said shop was demolished, grave loss and harm would be caused to the Plaintiff.

In response to the aforesaid arguments of the Plaintiff, the Defendant stated that;

- i) Although the then Chairman of the Urban Council had allowed the Plaintiff to construct the boutique room, the Chairman did not have authority to do so.
- ii) That the then Chairman did not have authority to sign the purported Agreement sought to be enforced by the Plaintiff and in any event with a one month's notice such agreement could be terminated.
- iii) That lawful notices have been issued under the provisions of Urban Council Ordinance and by reason of continued unlawful occupation, the Plaintiff was causing damages in a sum of Rs.2,000/- per mensem.

The Defendant filed its answer dated 06-10-1992 and pleaded, inter alia, that the permission given by the then Chairman of the Urban Council Kalutara to erect the boutique room referred to in the Schedule to the Plaint was unlawful as the then Chairman had no powers to have entered into such agreement. Accordingly, the Defendant- Council stated that the then Chairman had no powers to have signed the purported agreement sought to be enforced by one month's notice and that the Defendant by one month's notice to the Plaintiff has terminated the same.

In the circumstances, the Defendant pleaded that the Plaintiff cannot have maintained the said action in the District Court. Accordingly, the Defendant sought the following reliefs;

- a) Dismissal of the Plaint;
- b) The Plaintiff be evicted from the premises subject to this action;
- c) Damages at the rate of Rs.2,000/- per month until such time the Plaintiff is evicted and vacant possession thereof is delivered to the Defendant;
- d) Deliver vacant possession of the said premises to the Defendant;

When the case was taken up for trial on 02.07.1996, the parties raised 16 Issues. It is important to note that, the document 'P1' by which the Plaintiff sought permission to construct a boutique room on a strip of bare land inside 'the Kalutara Super Market Complex', had been approved by the then Chairman without any sanction from the Urban Council. It is evident that, at the bottom of the page marked P 4 (a), the Chairman of the Council had indicated "no need to get the sanction of the Council ". According to that minute, the assigning of a number, the fixing of the rent and the signing of the Agreement had all been

arranged and done by the Chairman himself. The Urban Council being an institution created for the welfare of the residents, should have conducted itself in a regular manner than this way.

The Plaintiff under cross-examination conceded that he did not make a Building Application or tender a Building Plan to the Defendant for approval. Further, in his evidence the Plaintiff had marked documents 'P1 to P29' and took up the position that only he had been singled out to treat differently and no notices had been given to remove similarly constructed few other shops. As this is not a Fundamental Rights application, alleged discrimination cannot be considered to grant relief for the Plaintiff. The Plaintiff's cause of action is a different issue.

The question then arises whether the permission granted to erect the boutique and signing of the lease agreement by the Chairman of the Kalutara Urban Council is *ultra vires* and therefore Plaintiff could not claim any rights which derives from lease agreement or any protection in law. When somebody wants to put up a building on a land, he has to get approval for the building plan and the Council too is obliged to follow the same method.

It was held in Edirisuriya and others Vs. National Salaries and Cadre Commission 2011 (2) SLR 221, "The Central principle of administrative law", *ultra vires* is a Latin phrase meaning simply "acting beyond one's power of authority", the general idea behind the term is that a decision or action of a functionary is said to be *ultra vires* when that functionary acts outside the ambit or scope of his authority.

It very clear that by signing the said lease agreement, the Chairman of the Kalutara Urban Council has acted outside his authority.

Chief Revenue Inspector of the Defendant Council, had stated in his evidence that the File with the documents marked, 'P1 to P27', kept in the Council are missing from the cupboard and it is not available at their Office. The Defendant Council did not call any witnesses and after the written submissions of both parties, the Learned Trial Judge delivered the Judgment dismissing the action of the Plaintiff. The present appeal preferred against the said Judgment.

The Members and the Chairman of a Council cannot have arbitrary authority and their decisions and the acts should be, within the due procedure and the regulations. Therefore, it is my view that the entire transaction commencing from 'P1 to P27', is highly irregular and has been '*ultra vires*'.

The Plaintiff's argument is that the said losses had to be borne by the Defendant Council, since the effect of doing would be to spread the loss in minute proportions through those who benefit from performance of the public duty and therefore the Plaintiff should be allowed to reliefs sought in his plaint. This argument cannot stand when there is an agreement between the two parties.

They are bound by the conditions in the agreement marked P 27, which they signed on the 20/10/1989. The Defendant Council has no liability at all, under the provisions of that P 27 agreement and they can cancel the lease agreement without giving any reason to the Plaintiff.

Therefore, I do not feel it necessary nor indeed do I feel qualified without further consideration to go into the other points which have been argued by the Plaintiff. Thus, I believe on those grounds this appeal needs to be dismissed and that the decision of the Learned District Judge dated 18/07/2000 must be upheld.

Appeal dismissed with cost.

Judge of the Court of Appeal

Janak De Silva, J

I agree.

Judge of the Court of Appeal