

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

Court of Appeal Case No:
CA(PHC)0029/2019

High Court of Colombo
Revision Application:
HCRA 07/16

Magistrate
Court of Colombo
Case No: 18006

Urban Development Authority,
27, D. R. Wijewardena Mawatha,
Colombo 10.
Presently of Sethsiripaya,
Sri Jayawardenapura Kotte,
Battaramulla.

Petitioner

Vs

Pushpa Lakmali,
No. 23/7, Kumbukgahapokuna Road,
Udahamulla,
Nugegoda.

Respondent

AND BETWEEN

Pushpa Lakmali,
No. 23/7, Kumbukgahapokuna Road,
Udahamulla,
Nugegoda.

Respondent-Petitioner

Vs

1. **Urban Development Authority,**
Sethsiripaya,
Sri Jayawardenapura Kotte,
Battaramulla.

2. **Hon. Attorney General,**
Attorney General's Department,
Colombo 12.

Petitioner-Respondents

AND NOW BETWEEN

Pushpa Lakmali,
No. 23/7, Kumbukgahapokuna Road,
Udahamulla,
Nugegoda.

Respondent-Petitioner-Appellant

Vs

1. **Urban Development Authority,**
Sethsiripaya,
Sri Jayawardenapura Kotte,
Battaramulla.

2. **Hon. Attorney General,**
Attorney General's Department,
Colombo 12.

Petitioner-Respondent-Respondents

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Priyantha Alagiyawanna with Dulmi Jayasinghe
instructed by Nadeesha Alawatta for the
Respondent-Petitioner-Appellant.

Abigail Jayakody, SC for the Petitioner-
Respondent-Respondents

Argued on : 16.10.2025

Written Submissions
of the
Respondent-Petitioner-Appellant
tendered on : 29.08.2023

Written Submissions
of the Petitioner-
-Respondent-Respondents
tendered on : 19.07.2024

Decided on : 30.01.2026

K. M. S. DISSANAYAKE, J.

The instant appeal arises from an order of the learned High Court Judge of the Western Province holden at Colombo dated 22.03.2019 (hereinafter called and referred to as ‘the Order’) made in the case bearing No. HCRA 7/2016 wherein, the learned High Court Judge of Colombo had dismissed an application in revision preferred thereto by the Respondent-Petitioner-Appellant (hereinafter

called and referred to as ‘the Appellant’) against the order of the learned Additional Magistrate of Nugegoda dated 12.01.2016, wherein he had made order authorizing the 1st Petitioner-Respondent-Respondent (hereinafter called and referred to as ‘the 1st Respondent’) to demolish an unauthorized construction erected by the Appellant on the premises as morefully, described in the petition preferred thereto by the Respondent under and in terms of section 28A(3) of the Urban Development Authority Act No. 41 of 1978 as amended (hereinafter called and referred to as ‘the Act’) seeking an order for demolition of the same. Being aggrieved by the order, the Appellant has now, preferred to this Court the instant appeal on the grounds of appeal as morefully set out in paragraph 15(a),(b) and (c) of the petition of appeal among any other grounds of appeal that may be urged by Counsel at the hearing of this appeal and they may be reproduced *verbatim* the same as follows;

“(a) The said order is contrary to law and facts disclose in evidence.

(b) The Honourable High Court Judge has failed to realize the hardship caused to the Appellant in the event of demolishing three storied house.

(c) The Honourable High Court Judge has acted unreasonably by refusing to accept the approved plan and the building plan tendered to Court while the case was pending.”

The facts material and relevant to the instant appeal as is discernible from the averments in the petition of appeal, may be briefly, set out as follows;

An application dated 08.07.2013 had been made by the Respondent to the Magistrate Court of Nugegoda under and in terms of section 28A(3) of the Urban Development Authority Act No. 41 of 1978 as amended praying for a demolition order of an unauthorized construction erected by the Appellant on the premises as morefully described in the petition preferred thereto by the Respondent along with his application; that the Appellant had in her statement of objections,

sought to dismiss the application *in-limine* for the reasons stated therein; that however, the learned Additional Magistrate of Nugegoda had having inquired into and considered the application so made by the Respondent and the showing cause so tendered thereto by the Appellant, proceeded in his order dated 12.01.2016, to grant the application of the Respondent authorizing him to demolish the unauthorized construction; that being aggrieved by the order of the learned Additional Magistrate of Nugegoda, the Appellant had preferred an application in revision therefrom to the High Court of the Western Province holden at Colombo; that the learned High Court Judge of Colombo had in the order, proceeded to dismiss the application in revision by holding that the Appellant had not disclosed any exceptional circumstances warranting Court to exercise its extra-ordinary revisionary jurisdiction vested in it in revision of the order. It is this order, that the Appellant now, seeks to impugn before us in the instant appeal.

It is in this backdrop of the case, I would think it expedient at this juncture to examine the propriety and/or legal soundness of the order of the learned High Court Judge of Colombo sought to be impugned and set aside by the Appellant in the instant appeal.

In an application made by the Respondent to a Magistrate Court under and in terms of the provisions of section 28A(3) of the Act seeking an order for demolition of an unauthorized construction allegedly, erected by the party noticed under the Act, the pivotal question that would arise before the learned Magistrate for consideration is whether the construction in question has been effected by the person noticed upon a valid permit. Hence, existence of a valid permit is the only valid defence that may be raised by a party noticed under the Act to an application made to a Magistrate Court under section 28A(3) of the Act. Therefore, the burden of showing that the construction in question had been done on a valid permit will solely, rest on the person noticed.

It is significant to observe that although, the Appellant had clearly, and unequivocally admitted, that the construction in question had already, been constructed by her at the time of the application being made to the Magistrate Court of Nugegoda under and in terms of the provisions of section 28A(3) of the Act, she had never shown to Court that the construction in question had been effected by her upon a valid permit issued by the Respondent to her under and in terms of the provisions of the Act.

Hence, the Appellant had not in any manner, discharged the burden of proof so rested in her by producing a valid permit in respect of the construction in question as rightly, held both by the learned Additional Magistrate of Nugegoda as well as the learned High Court Judge of Colombo.

However, it is significant to observe that the Appellant had afterwards, made a futile attempt to show for the first time before the High Court of Colombo in the application in revision and then, before this Court in this appeal that the Respondent had granted to her a Development Permit to construct the construction in question by producing both to the High Court and this Court, a Development Permit dated 01.07.2016 purportedly, issued by the Chairman, Urban Council, Maharagama by and on behalf of the Respondent-Urban Development Authority.

Upon a careful scrutiny of the so-called Development Permit, it becomes abundantly, clear without an iota of doubt that it had been issued by the Chairman, Urban Council, Maharagama only on 01.07.2016 solely, for the purpose of constructing a new house and not for the purpose of regularising the unauthorized construction so effected by the Appellant.

It is in this context, it is significant to observe that the application under section 28A(3) of the Act for a demolition order had been made to Court by the Respondent on 08.07.2013 and the demolition order in pursuant thereto, had been made by the learned Magistrate of Nugegoda on 12.01.2016-long before the

purported Development Permit had been issued to the Appellant to construct a new house. Therefore, it clearly, appears that it was not a Development Permit issued to her by the Respondent in respect of the construction in question in the application filed before the Magistrate Court of Nugegoda under section 28A(3) of the Act but for a construction of a new house only.

It is no doubt that the Appellant had thus, clearly, attempted to mislead both the High Court as well as this Court by misrepresenting that construction in question had been done by her upon a valid Development Permit issued to her by the Respondent by furnishing for the first time to the High Court of Colombo and thereafter, to this Court in this appeal a Development Permit issued to her by the Urban Council of Maharagama acting on behalf of the Respondent only, on 01.07.2016-on a day after the demolition order was made by the learned Additional Magistrate of Nugegoda on 12.01.2016 as rightly, held by the learned High Court Judge of Colombo in the application in revision.

In view of the above, it clearly, appears to me that the order complained of, cannot in any manner, be regarded and/or construed as one that is palpably wrong and/or one tainted with illegality and/or one of such a nature that had shocked the conscience of the Court and/or one that had caused positive miscarriage of justice to the Appellant.

Hence, I would hold that the Appellant had not in any manner, shown any exceptional circumstances warranting the exercise of the extra-ordinary revisionary jurisdiction vested in the learned High Court Judge of Colombo in revision of the order complained of, as rightly, held by the learned High Court Judge of Colombo.

In the circumstances, I would hold that the learned High Court Judge of Colombo was entirely, right both in fact and law in dismissing the application in revision filed before it by the Appellant by holding that the Appellant had not disclosed to Court any exceptional circumstances warranting invocation of extra-ordinary

revisionary jurisdiction vested in it in revision of the order sought to be revised by the Appellant and therefore, there was no reason to interfere with the order of the learned Additional Magistrate of Nugegoda for; he had come to the impugned decision after having considered all the facts and circumstances and the law applicable thereto.

In the circumstances, I would hold that the application in revision is not entitled to succeed both in fact and law and as such, it ought to have been dismissed *in-limine* as rightly, done by the learned High Court Judge of Colombo.

In the circumstances, I would see no error whatsoever, in the orders of both-the learned Additional Magistrate of Nugegoda as well as the learned High Court Judge of Colombo.

In view of the foregoing, I would hold that appeal is not entitled to succeed both in fact and law and as such it should be dismissed *in-limine*.

In the result, I would proceed to dismiss the instant appeal with costs of this Court fixed at Rs. 50,000/- payable by the Appellant to the Respondent apart from the costs ordered by the learned High Court Judge of Colombo.

I would thus, affirm both the orders of the learned Additional Magistrate of Nugegoda and the Learned High Court Judge of the Western Province holden at Colombo.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL