

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

In the matter of an appeal under and in terms of  
Article 128 (2) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**SC / APPEAL / 102 / 2021**

**SC / SPL / LA / 264 / 2018**

**CA / PHC / 74 / 2000**

**HC Vavuniya Revision**

**HCV / Rev / 07 / 99**

**MC / Vavuniya / 2890**

**1. Ranasinghe Arachchilage Wilson**

**And 7 others**

All of,

No.19, YMBA Shopping Complex,

Kandy Road,

Vavuniya.

**PETITIONERS – APPELLANTS –**

**PETITIONERS – APPELLANTS.**

**-Vs-**

**1. Welupillei Wasantha Kumar,**

The Secretary,

Urban Council,

Vavuniya.

**SUBSTITUTED PETITIONER – 1<sup>ST</sup>**

**RESPONDENT– 1<sup>ST</sup> RESPONDENT**

**– 1<sup>ST</sup> RESPONDENT**

**2. V. Jayatilleka,**

President,

Y.M.B.A, Kandy Road,  
Vavuniya.

**SUBSTITUTED RESPONDENT –**  
**2<sup>ND</sup> RESPONDENT 2<sup>ND</sup>**  
**RESPONDENT – 2<sup>ND</sup>**  
**RESPONDENT**

**Before:** E.A.G.R. Amarasekara, J,  
A.H.M.D. Nawaz, J, &  
Kumudini Wickremasinghe, J

**Counsel:** Manohara De Silva, PC with Nadee Lankatilleke and Kaveesha Gamage  
for the Petitioners – Appellants – Appellants.

K.S. Ratnavel with S. Thanikumar for the Petitioner – 1<sup>st</sup> Respondent –  
1<sup>st</sup> Respondent – 1<sup>st</sup> Respondent.

Gamini Hettiarchchi for the Substituted Respondent – 2<sup>nd</sup> Respondent –  
2<sup>nd</sup> Respondent – 2<sup>nd</sup> Respondent.

**Argued on:** 08.10.2024

**Decided on:** 16.06.2025

**A.H.M.D. Nawaz, J**

1. This appeal raises the usually recurring question whether a person who is not a party and who had no notice of proceedings in which his interest was at stake can impugn a judicial order that has been made against him or his interests. The Appellants in this case constitute a class of such interest holders who complained to the High Court of the Northern Province in Vavuniya and subsequently

preferred an appeal to the Court of Appeal when they did not succeed in their appeal. It all started in the Magistrate's Court of Anuradhapura where the Appellants before this Court had that adverse order issued against them as far back as 19 May 1999. It has to be mentioned at the outset that though the subject matter – a Pilgrims Rest turned a shopping complex – is situated in Vavuniya within the Urban Council limits of Vavuniya, the adverse order I have referred to above was issued by the learned Magistrate of Anuradhapura given that as is well known, Vavuniya was a theatre of war in 1993 and as the Courts in Vavuniya were non-functional, the *lis* between the Urban Council of Vavuniya and the President, YMBA Vavuniya commenced in the Magistrate's Court of Anuradhapura which eventually issued the adverse order against the Appellants.

2. Let me also introduce the parties to the case at bar in the Magistrate's Court of Anuradhapura. It was the Urban Council of Vavuniya who took the President, YMBA under Section 28 (A) (3) (a) of the Urban Development Authority Law, No. 41 of 1978 as amended by several Acts that followed the principal enactment (the UDA Law). The Appellants were never parties to this action but at the end of the action the Appellants were ordered to be evicted from the shopping complex where the Appellants ran their business.
3. Having described the parties to the Magistrate's Court proceedings, I must state the legal relationship that existed between the Appellants and the YMBA, Vavuniya. The YMBA had obtained a permit issued by the Urban Council, Vavuniya for construction of a Pilgrims Rest where the pilgrims could rest their souls after a spiritual journey or in the course of it. It is in evidence that the Appellants had made substantial contributions to the YMBA, Vavuniya which built such a place of repose but they could not prosecute that purpose as there was a prosecution of a war during that time. In consequence, the YMBA, Vavuniya let the building complex to the Appellants who became the tenants of the YMBA and successfully ran their respective businesses in the shopping complex.

4. In other words, there was a change of user and what was meant to be a Pilgrims Rest transformed to be a shopping complex. The Appellants thus were the tenants who held a contractual relationship with the YMBA, Vavuniya.
5. As it does happen in cases such as this, the Vavuniya Urban Council issued a notice on the President, YMBA Vavuniya in October 1993 under Section 28 (A) (1) (a) of the Urban Development Authority Law, No. 41 of 1978 (as amended) alleging that the YMBA had contravened Sections 8 J (1) of the aforesaid law by constructing a shopping complex within the premises bearing assessment No. 19, Horawapothana Road, Vavuniya and the said notice directed the President, YMBA Vavuniya, who it alleged had executed the said development activity, *to cease such development activity forthwith and to restore the land on which such development activity was being executed to its original condition*. The notice gave the President, YMBA 10 days before which the aforesaid directions were to be fulfilled.
6. As could be seen, the aforesaid directions are identically found in Section 28 (A) (1) (a) and (b) of the UDA Law. It is worth noting while the notice referred to (a) and (b) as above, the notice is silent on 28 (A) (1) (c). As the provision makes it clear, Section 28 (A) (1) (c) provides for the demolition of any building or work.
7. Thus, the notice issued on the YMBA, Vavuniya did not require it to demolish the shopping complex. It only required the YMBA, Vavuniya to restore the land on which such development activity has been executed to its original condition.
8. Subsequent to this notice, the Secretary, Vavuniya Urban Council made an application to the Magistrate's Court of Vavuniya praying *inter alia* ; for issuance of a mandatory order under Section 28 (A) (3) of the UDA Law authorizing the demolition of the unauthorized building at No. 19, Horawapothana Road, Vavuniya.
9. It repays attention that the notice initially issued did not necessitate a demolition of the shopping complex but it rather required the restoration of the premises to

its original condition. The upshot of the notice was the transformation of the shopping complex to Pilgrims Rest but the application quite strangely requested the authorization of the demolition of the shopping complex. In other words, even the recipient of the notice – the YMBA, Vavuniya was not served with any notice of a prospective demolition. The Vavuniya Urban Council clearly exceeded its jurisdiction when it asked for the demolition of the shopping complex.

10. Now the forum had shifted to the Magistrate's Court of Anuradhapura and the question arises as to what transpired in that Court.

11. The learned Magistrate of Anuradhapura did what neither party had sought. The learned Magistrate's order dated 19 May 1999 could be bifurcated into two parts. In the first part of the order, he took the side of caution and chose not to order the demolition of the building, which the Vavuniya Urban Council had sought in the prayer to its application to the Magistrate's Court. Even though the Vavuniya Urban Council had prayed for an order for demolition, given the fact that it could be used or converted as a Pilgrims Rest for which the permit had been granted the learned Magistrate appears to have leant against the demolition of the building. It was the second part of the order that Mr. Manohara de Silva, PC complained about as having adversely affected the interests of the tenants. The second part of the order mandated the eviction of the tenants (the Appellants) from the shopping complex before 19 June 1999.

12. The Appellants had taken on tenancy their space in the shopping complex but the learned Magistrate ordered their eviction when nobody had sought that remedy. Should the tenants not vacate the premises before 19 June 1999, the assistance of the police could be obtained to eject the tenants. Aggrieved by the order of the Magistrate, the Appellants preferred a revision application to the High Court of Northern Province holden in Vavuniya.

**The revisionary application of the Appellants to the High Court sitting in Vavuniya.**

13. Though the Appellants were not parties to the proceedings in the Magistrate's Court of Anuradhapura, they were entitled to move the High Court in revision as they had been adversely affected by the order of the Magistrate. The Supreme Court in *Fernando v. Republic of Sri Lanka*<sup>1</sup> declared that the Court can exercise its powers of revision when a matter is brought to its notice by a person who though not a party to the case, is adversely affected by any order or proceedings in the case.
14. The High Court concluded the Magistrate's order fell within Section 28 (A) (3) (a) of the UDA Law which empowers the Magistrate to make the following orders ;
- (a) to discontinue the use of any land or building.
  - (b) to demolish or alter any building of work.
  - (c) to do all such other acts as such person was required to do by such notice, as the case may be.
15. According to the learned High Court judge of the Northern Province Hon. S. Sriskandarajah (as he then was), the order of eviction made by the learned Magistrate was tantamount to effecting the discontinuance of the use of any land or building.
16. On an appeal preferred against the judgement of the High Court, the Court of Appeal affirmed the judgement of the High Court and stated that the Appellants were not entitled to any notice as those entitled to notice have been specifically mentioned in Section 28 (A) (1) of the UDA Law. Thus, the Court of Appeal by its judgement dated 13 July 2018 dismissed the appeal of the Appellants.
17. All three Courts have now declared in unison that the word "*person*" on whom notice should be issued would connote "... the person involved with the executing or has executed or has caused such development activity to be caused...". The Court of Appeal concluded that the tenants would not come within "*the person*" mentioned in Section 28 (A) (1). I would disagree with such a proposition. Section

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<sup>1</sup> 79 N.L.R Vol II at p 402

28 (A) (1) cannot be viewed in isolation and it has to be read with powers of Magistrates to hold an inquiry and make orders in terms of Section 28 (A) (3). Before I set down my reasons that the discretionary power bestowed on the Magistrate extends to giving notice and affording a hearing even to those parties who would be adversely affected by the order of the Magistrate, let me shed a few thoughts on some procedural matters that surface in the case.

18. However, it has to be noted if discontinuance of the use of the land would include the freeing of the shopping complex from the tenants, it was not specified in the notice that was served on the YMBA, which has obtained the permit from the Urban Council. The pre-condition to the exercise of the power in Section 28 (A) (1) of the UDA Law is a written notice that requires the recipient of the notice to effect the following ;

- (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 purpose of compliance with the requirements aforesaid –

- (i) to discontinue the use of any land or building; or

- (ii) to demolish or alter any building or work.

19. Section 28 (A) (2) states that it shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any requirement in such notice within the time specified in such notice or within such extended time as may be granted by the authority on application made in that behalf.

20. Thus, the Magistrate granted a relief of ordering the eviction of tenants when it was not even specified in the written notice. The written notice under Section 28 (A) (1) must be specific as to the violation of the permit and the discontinuance of the use of the land or building must be specified as to the steps that must be taken if it was a violation of the permit.

21. In the case of **Wilbert Perera v. Gunawardane, Prosecuting Officer, Urban Development Authority**<sup>2</sup>, Justice Jayalath with Justice Siva Selliah stated that it is manifest that the Respondent is entitled to show cause before the Magistrate before a mandatory order is pronounced and that the Magistrate is required to hear the Respondent when he evinces an interest to show cause against the mandatory order. In this context, Justice Jayalath remarked

*“The provision gives a Magistrate a measure of judicial discretion in making an order. Bearing this in mind we are of the opinion that the learned Magistrate should have held an inquiry that the UDA has complied with the requirements under Section 28 (A) (1) of the said law and thereafter, to have satisfied himself the Petitioner has failed to comply with the requirements in the notice before making his order – this he has failed to do”.*

22. Instead of exercising his discretion to hold a fair inquiry, the learned Magistrate has made an order in the instant case evicting the tenants when the precedent notice made no reference to Section 28 (A) (1) (c) (i) or (ii). I am compelled to observe that the learned Magistrate cannot order the termination of tenancy rights with no notice to the tenants or the landlords and without having embarked upon an inquiry.

23. In the circumstances the learned High Court judge of Vavuniya erred in law by affirming the decision of the Magistrate of Anuradhapura to eject the Appellants from the premises. Dheeraratne, J in **Sirisena Cooray v. Tissa Dias Bandaranayake**<sup>3</sup> observed;

*“Over the years frontiers of Lord Atkin’s formula – have been advanced by judicial decisions it is no longer the duty to act judicially or quasi-judicially which attracts review but the duty to act fairly...”*

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<sup>2</sup> CA 546 / 85, MC Mount Lavinia 24135, CA minutes dated 22<sup>nd</sup> October 1980

<sup>3</sup> (1999) 1 Sri.L.R. 1 at p 16



24. These principles have been extended not only to those having a legitimate expectation but also to those having interest in property or contingent rights. The force of the argument that the Appellants made contributions to the construction of the building on the YMBA premises in Vavuniya and having paid monthly rentals continuously they enjoy proprietary interest in the property as tenants cannot be lost on this Court.

25. I take the view that the Appellants before being ordered to be evicted must have been given notice and afforded a hearing to ascertain the extent of their interest as tenants of the property. It is a cardinal principle of natural justice that even if the statute is silent on giving notice and affording a hearing, rules of natural justice are implied standards which must be strictly followed by authorities vested with discretionary power. In the instant case, even though Section 28 (A) (3) of the UDA Law does not expressly provide for notice and hearing to parties other than those expressly recognized in Section 28 (A) (1), rules of natural justice require the Magistrate to summon those against whom adverse orders are going to be made and afford them a hearing. The rules of natural justice have not been observed in the case and both the Magistrate and the learned High Court judge were in error in concluding that the Appellants were not entitled to any notice.

26. It is an established principle of law that Courts will have no jurisdiction over parties who have not been summoned as summons constitute the very foundation that invests the Court with jurisdiction. If orders are passed against parties who have not been summoned and whose rights are adversely affected by the orders, the orders have to become perforce null and void – see *Ittepana v. Hemawathie*<sup>4</sup>

27. In these circumstances, this Court answers the questions of law raised in this case in favour of the Appellants and proceeds to set aside the order of the learned Magistrate dated 19 May 1999, the judgement of the learned High Court judge dated 22 February 2000 and the judgment of the Court of Appeal dated 24 July 2018. Thus, we allow the appeal of the Appellants.

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<sup>4</sup> (1981) 1 Sri.L.R at p 476

**Judge of the Supreme Court**

**E.A.G.R. Amarasekara, J**

I agree

**Judge of the Supreme Court**

**Kumudini Wickremasinghe, J**

I agree

**Judge of the Supreme Court**