

**Court of Appeal case No. CA 126/2017 Writ**

**Before** : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : Ananda Kasthuriarachchi for the Petitioner.

**Decided on** : 15/09/2017

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

We have heard the Learned Counsel for the Petitioner in support of this application as well as the Learned State Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

The learned State Counsel has submitted the following preliminary objections to the maintainability of this petition.

- a) The Petitioner has no locus standi to have and maintain this action.
- b) The powers taken over by the 1<sup>st</sup> Respondent Urban Development Authority are powers that were delegated to the Kaduwela Municipal Council by a planning circular by the 1<sup>st</sup> Respondent Authority and therefore does not invoke Judicial review.

The learned State Counsel contends that the decision of the Board of Directors of the Urban Development Authority dated 6<sup>th</sup> December 2016, bearing reference No.

21/2016 and the order of the 3<sup>rd</sup> Respondent marked P 13, which is sought to be quashed by the exercise of the prerogative remedies, is not an order given to the Petitioner.

The letter dated 23<sup>rd</sup> January 2013 bearing No. DDG/P/01/11 is directed to the Commissioner of the Kaduwela Municipal Council. By the said letter, the Commissioner of the Kaduwela Municipal Council has been informed of the decision of the Board of Directors of the Urban Development Authority to retake some of the powers which had been delegated by a planning circular of the Urban Development Authority dated 1<sup>st</sup> March 1985.

By letter marked P 13 the said order has been sent to the Commissioner of the Kaduwela Municipal Council and not to the Petitioner. Therefore the learned State Counsel argues that the Petitioner as described in paragraph 3 of the Petition cannot seek relief from this Court in respect to a legal wrong or injury caused to the Kaduwela Municipal Council.

By letter dated 23/01/2017 marked P 13 the 1<sup>st</sup> Respondent Authority has taken over the powers that were delegated to the Kaduwela Municipal Council by planning circular dated 1<sup>st</sup> March 1985. The powers which were originally vested with the 1<sup>st</sup> Respondent Authority were delegated to the said Municipal Council by the direction dated 23/01/2017. By the said direction in P 13, the powers delegated by the Respondent Authority have been retaken. We find that the retaking of powers

which were previously delegated by the said Authority to the Kaduwela Municipal Council does not contemplate an excess or abuse of power by the said authority.

In the circumstances, we also find that the Petitioner does not possess a valid grievance or a sufficient interest to make this application.

Accordingly the application for notice is refused and the petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL