

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 119 / 2013

Provincial High Court of

Eastern Province (Trincomalee)

Case No. HCT/REV/ MC/ 316 / 2013

Magistrate's Court Kanthale

Case No. 42600

Warnasooriya Patabendige Keerthisena,
No. 278,
Near the Railway,
Kanthale.

RESPONDENT - PETITIONER -
APPELLANT

-Vs-

1. Secretary,
Pradeshiya Sabha,
Kanthale.

PETITIONER - RESPONDENT -
RESPONDENT

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

RESPONDENT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Nuwan Bopage for the Respondent – Petitioner - Appellant.

Ureka Perera ASA for the Petitioner-Respondent-Respondent

Decided on : 2017 - 09 - 07

JUDGMENT

P Padman Surasena J

When this case came up before us on 2017-06-27, learned counsel for all the Parties agreed to have this case disposed of by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the written submissions they had filed. This judgment would therefore be based on the material adduced by parties in their pleadings and the contents of their written submissions.

The Secretary, Pradeshiya Sabha, Kanthale, who has been named in the petition of appeal as the Petitioner - Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) had issued a notice dated 2012-05-29 on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 28 A (1) of the Urban Development Authority Law No. 41 of 1978 as

amended by Act No. 4 of 1982 and Act No. 44 of 1984 (hereinafter sometimes referred to as the UDA Act).

As the Appellant had failed to comply with the directions issued on him by the said notice, the Respondent had thereafter made an application to the Magistrate's Court of Kanthale under section 28 A (3) of the UDA Act seeking a mandatory order to demolish the building unlawfully constructed by the Appellant.

Learned Magistrate had then afforded an opportunity for the Appellant to show cause against issuance of the order sought. After an inquiry learned Magistrate had pronounced the order dated 2013-09-10 granting authority under section 28 A (3) for the Respondent to demolish the said construction.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had made a revision application to the Provincial High Court of the Eastern province holden at Trincomalee.

Learned Provincial High Court Judge upon the said application for revision being supported before him, by its order dated 2013-09-12, had refused

the interim relief sought by the Appellant but proceeded to issue notices on the Respondents¹.

Thereafter learned Provincial High Court Judge, by his order dated 2013-09-12, had allowed a subsequent application to withdraw the said revision application made on behalf of the Appellant. This had resulted in the dismissal of the said revision application.

Thereafter on 2013-09-16 the Appellant had filed a motion requesting permission of Court to reopen the case. However learned Provincial High Court Judge by his order dated 2013-09-16 had refused the said application. The order made by the learned Provincial High Court Judge in that regard is to the following effect: " ... Application made to reopen the case. The application has been withdrawn and the petition rejected accordingly. An application withdrawn cannot be reopened. Application to reopen case is disallowed. ... "

The Appellant has prayed in his petition of appeal to this Court that both the order dated 2013-09-12 and the order dated 2013-09-16 made by the learned High Court Judge be set aside .

¹ Paragraph 8 of the petition of appeal.

Upon a subsequent revision application filed by the Appellant this Court by its order dated 2013-09-25² had held that "...on perusal of the order dated 2013-09-16 it appears that the learned High Court Judge by stating that he rejects the petition has in fact meant that he was rejecting the motion to have the revision application restored to the roll. In the light of the above facts we are unable to see any error committed by the learned High Court Judge although the petitioner attempts to demonstrate that the learned High Court Judge had erred in law by making both orders, namely the order of the dismissal of the revision application and the order refusing to restore the revision application to the roll. ..."

We fully agree with the above findings of their Lordships who heard that application.

Further it must be noted that this Court has already pronounced a finding on the points canvassed by the Appellant in this appeal. Thus the Appellant cannot be permitted to have a second opportunity to agitate the same matter before the same forum. Once one bench has decided the points canvassed in a case it is not open for the parties to canvass the same points before another bench of the same Court to persuade it to re-decide

² Case No. CA (PHC) APN No. 118/2013 decided on 2013-09-25.

those points. The position should be the same when an appeal as well as an application for revision have been filed canvassing the same points seeking the same reliefs. In such a situation once, the first case³ is decided that decision must apply to the second case as well because the pronouncement on those points is by the same Court. Such decision on those points shall become final and conclusive as far as that Court is concerned.

Thus, for the foregoing reasons, this Court decides to dismiss this appeal. The Appellant must pay a state cost of Rs. 30,000/=

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

³ Whether it is the appeal or the revision application.