

**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 appellate jurisdiction.

C A (PHC) / 277 / 2005

Provincial High Court of

Southern Province

Holden at Balapitiya

Case No. Appeal 177 / 2004

Godahenage Badrasiri Kumara,  
1/12,  
Chamith,

Brahkmanawatte

Balapitiya.

**RESPONDENT - APPELLANT -**

**APPELLANT**

-Vs-

The Chairman,

Balapitiya Pradeshiya Sabha

Balapitiya.

**PETITIONER - RESPONDENT -**

**RESPONDENT**

**Before:** **P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel; Riyad Ameen with Maduka Perera for the Respondent -

Appellant - Appellant.

Chula Bandara with Gayathri Kodagoda for the Petitioner

- Respondent - Respondent.

Argued on : 2017 - 06 - 14

Decided on : 2018 - 02 - 07

## JUDGMENT

### **P Padman Surasena J (P/CA)**

The Applicant - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) has made an application to the Magistrate's Court of Balapitiya seeking a mandatory order from the learned Magistrate under section 28 A (3) of the Urban Development Law (hereinafter sometimes referred to as UDA Law), to demolish an unauthorized construction. This was pursuant to the Respondent-Appellant-Appellant (hereinafter sometimes referred to as the Appellant) defaulting the compliance with a notice issued under section 28 A (1) of the UDA Law.

Learned Magistrate thereafter had afforded the Appellant an opportunity to submit any objection he may have regarding the

said application. The Appellant pursuant to that had filed his objections along with an affidavit and several documents.

Learned Magistrate having considered the material before him had pronounced his order dated 2002-05-13, granting power to the Respondent, under section 28 A (3) of the UDA Law, to demolish the said construction.

The Provincial High Court of Southern Province holden at Balapitiya, upon an appeal filed by the Appellant has also considered this case. The Provincial High Court after hearing parties had pronounced its judgment dated 2006-07-31. It had affirmed the learned Magistrate's order and dismissed the said appeal.

It is against that judgment that the Appellant has filed this appeal in this Court.

Learned counsel for the Appellant in the course of the argument which was concluded on 2017-06-14, confined only to one

argument. That was the argument that the Respondent has failed to carry out his delegated power according to the terms of the delegation. He relied on the document dated 1991-12-31 that had been produced marked Ex 1.

Referring to the last two lines of that letter, learned counsel for the Appellant submitted that the UDA has delegated its powers to the Respondent subject to the condition that the Respondent must act according to the direction control and supervision of the UDA. Thus, it was his submission that the Respondent (Balapitiya Pradeshiya Sabha) had not carried out this delegated power under the direction control and supervision of the UDA.

It must be mentioned here that the argument of this case was concluded before this Court as a normal appeal on 2017-06-14. Indeed this Court reserved its judgement consequent to the conclusion of the said argument on the merits of this case for a later date (i.e. 2017-08-10). The parties undertook to file written

submissions on the merits of the case, which they had done subsequently.

It is significant that neither of the parties had thought it necessary to place before this Court the very important fact, which directly shows that neither the Provincial High Court nor the Court of Appeal has jurisdiction to entertain this case.

This Court has perused the petition of appeal filed by the Appellant in the Provincial High Court. It is clear that it is an Appellate jurisdiction of the Provincial High Court that had been invoked by the Appellant. Learned counsel for the Appellant in his second set of written submissions<sup>1</sup> has conceded that the Appellant indeed has no right of appeal to do what he did before the Provincial High Court.

Thus, it is clear beyond doubt that the Provincial High Court had exercised a nonexistent appellate jurisdiction in respect of the

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<sup>1</sup> After this Court raised the issue of jurisdiction with the learned counsel for both parties.

order of the learned Magistrate. Unfortunately, this matter had not been brought to the notice of the learned Provincial High Court Judge by either party.

Since the Provincial High Court had dismissed the appeal, the appellant has filed an appeal against the said judgement to this Court. The intention of the Appellant has been clearly to get the judgement of the Provincial High Court overturned in his favour.

This is despite the fact that the Appellant had wrongfully persuaded the Provincial High Court to exercise a nonexistent appellate jurisdiction.

The Appellant had not stopped at that. He had attempted to do the same thing before this Court also. It is settled law that anyone aggrieved by any order or judgement of the Provincial High Court in the exercise of its appellate jurisdiction, must file its appeal before the Supreme Court. This Court does not have such appellate jurisdiction in respect of such an order. It is unfortunate

that the Appellant had used all his resources to get this Court also to exercise a non-existent appellate jurisdiction.

Pursuant to this Court reserving its judgement after the parties concluded their submissions on the merits of the case<sup>2</sup> this Court commenced preparing its judgement. It is only in that process that this Court found out that both the Provincial High Court and this Court do not have appellate jurisdiction to entertain the said appeals.

It is a fact that neither party had placed this matter before this Court either in their oral submissions or in the written submissions filed subsequent to the original argument.<sup>3</sup>

When the above question of want of jurisdiction crossed the mind of this Court, it decided to withhold its judgement and seek clarifications from the counsel for both parties. Then this Court

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<sup>2</sup> The argument concluded on 2017-06-14.

<sup>3</sup> Argument concluded on 2017-06-14.

fixed this case for that purpose for a subsequent date and placed this matter before the learned counsel for both parties.

Learned counsel for the Appellant had then filed his written submissions on that point. He seeks to argue that what the Provincial High Court had in fact exercised is its revisionary jurisdiction and not the appellant jurisdiction. There is no explanation forthcoming from the Appellant as to why that argument was not placed before this Court at the first instance.

On the other hand, from what appears from, the petition of appeal filed in the Provincial High Court, the record of the subsequent proceedings that followed from that time onwards and the judgement delivered by the Provincial High Court, it is amply clear that it is not the revisionary jurisdiction that the Provincial High Court had exercised. The above material show clearly that it is the appellate jurisdiction that the Provincial High Court had exercised. Therefore, this Court has to conclude that the argument put forward on behalf of the Appellant is an

argument belatedly formed without any basis to do so in order to wrongfully regularize the illegal abuse of Court process the Appellant had engaged in. This Court does not have any basis or justification to conclude that the Provincial High Court should have exercised its revisionary jurisdiction. This follows that there is no such basis for this Court also to exercise its revisionary powers. Hence, this Court has to firmly reject this argument.

As has been explained above this Court has to mention here that the Appellant has deliberately abused the Court process. It is to be noted that it was on 2002-05-13 that the learned Magistrate had ordered to demolish the relevant unauthorized construction. This order could not be enforced due to the abuse of court process by the Appellant.

In these circumstances, this Court decides to dismiss this Appeal. The Appellant is directed to pay a sate cost of Rs. 250,000/=.

The order of the learned Magistrate dated 2002-05-13, must remain valid and enforceable.

Appeal is dismissed with a state cost of Rs. 250,000/=.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**