

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

1. W.S.P. Wijewardena,
No. 38,
Ratnayake Mawatha,
Pelawatta,
Battaramulla.
2. D. Wijewardena,
No. 38,
Ratnayake Mawatha,
Pelawatta,
Battaramulla.
Petitioners

CASE NO: CA/WRIT/145/2015

Vs.

1. Gamini Gunasekera,
Municipal Commissioner,
Kaduwela Municipal Council,
Kaduwela.
- 1A. G. Lekha Geethanjali Perera,
Municipal Commissioner,
Kaduwela Municipal Council,
Kaduwela.

- 1B. Saparamadu Mahabala
Mayadunna Vijitha Mayadunna,
Municipal Commissioner,
Kaduwela Municipal Council,
Kaduwela.
 2. Kaduwela Municipal Council,
Kaduwela.
 3. G.H. Buddhadasa,
Mayor,
Municipal Council,
Kaduwela.
 - 3A. G. Lekha Geethanjali Perera,
Municipal Commissioner,
Kaduwela Municipal Council,
Kaduwela.
 - 3B. Gabadage Buddhika Thushara
Jayavilal,
Mayor,
Municipal Council,
Kaduwela.
 4. Ariyaratne,
Member.
 5. Mr. Priyashantha,
Member.
 6. Mr. Oscar,
Member,
(The 3rd-6th are Members of the
Plaining Committee of the
Kaduwela Municipal Council)
- Respondents

Before: Mahinda Samayawardhena, J.
Counsel: J.C. Weliamuna, P.C., with Thilini Vidanagamage for
the Petitioner.
Ananda Kasturiarachchi for the Respondents.

Decided on: 01.02.2019

Samayawardhena, J.

The two petitioners, husband and wife respectively, have filed this application seeking (a) to quash the decision of the 1st respondent Municipal Commissioner contained in P14 and (b) to compel the 1st respondent to approve the Development Plan without the restrictions in P14.

This application of the petitioners revolves around an application made by the petitioners to the Kaduwela Municipal Council for approval to construct a parapet wall around their land described in Deed P1.

By P14, Municipal Commissioner has, it appears, agreed to approve the Plan P11 on two conditions: (a) the existing boundary wall shall be removed, and (b) 2 ½ foot reservation shall be left for the western access road.

After the petitioners purchased this land by Deed P1, they have admittedly erected a “chain-link fence” without the approval of the Municipal Council, and have later agreed to obtain the necessary approval for it—vide the letter of the 1st petitioner sent to the Municipal Council marked P6. This approval has not

been obtained up to now. Hence condition (a) in P14 is not illegal (although it says “wall” instead of “chain-link fence”).

The western boundary of the land is Colonel Ashoka Mawatha. This boundary has not been described in the Development Plan P11 (and only Northern, Southern and Eastern boundaries are described in it).

In Plan P11, the western boundary is “Road 10 feet wide”, but according to paragraph 1 of the petition and the corresponding paragraph of the affidavit, the western boundary is “12 foot road”.

Further, it is clear even to the naked eye, by looking at the petitioners’ Plan P11 itself, (but subject to verification) that the road running abutting the western boundary is 10 feet wide only in the western side of the petitioners’ Lot, but above the petitioner’s Lot, Colonel Ashoka Mawatha is wider.

However it is not clear (if at all) how many feet the petitioners or their predecessors have encroached from the western boundary; and how and why the Municipal Council by P14 says that 2 ½ foot strip of land shall be left from the western boundary for Colonel Ashoka Mawatha.

The respondents in their written submissions have drawn the attention of Court to Regulation 19 of the UDA Planning and Building Regulations, 1986, published in the Gazette No. 392/9 dated 10.03.1986 which *inter alia* states that “*Where no street lines have been determined for any street under any act or regulations the authority may determine a street line for such street taking into account the existing and proposed character of development and the nature and volume of traffic anticipated in*

such street.” However there is no proof that the Municipal Council took the decision P14 in terms of those Regulations. In fact, there is no indication on what basis P14 was taken.

I must stress that when P14 is compared with P12, it is clear that the Municipal Council takes decisions and changes decisions without any seriousness and responsibility. There is no consistency in their decisions.

There is a misconception that in exercising writ jurisdiction, this Court has no power to give directions to the authorities concerned. In *Wickremasighe v. Chandrananda de Silva, Secretary Ministry of Defence [2001] 2 Sri LR 333 at 353* Gunawardena J. held:

That justice is blind does not mean judges should not be clear sighted. Besides, as stated above as well under the judicial review procedure the court exercises a supervisory jurisdiction. A court exercising such supervisory powers can inspect and even direct. Under the judicial review procedure, far from being confined to the matters averred in the petition, the court is less inhibited and is free to adopt a more interventionist attitude-not with a view to withholding or denying relief but with a view to grant it when justice of the case demands that such a course of action be adopted.

For the aforesaid reasons, I make the following orders.

- (a) This Court cannot direct the Municipal Council by mandamus to approve Plan P11 as it is.
- (b) The first condition in P14 is not illegal or arbitrary and therefore cannot be quashed by certiorari.

- (c) The second condition in P14 is *pro forma* set aside by certiorari and direct the 1st respondent to review the said condition and make a fresh decision after a fresh inquiry with the participation of the petitioners. In that decision, the 1st respondent shall state the basis/reasons for the decision.

The application is partly allowed. No costs.

Judge of the Court of Appeal