

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

In the matter of an Appeal under and in terms of Section 154(P)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 09 of the provisions of the High Court of the Provinces (Special Provisions) Act No. 19/1990.

C.A.(PHC)Appeal No. 223/2009

P.H.C. Galle Case No. 645/2008(Rev)

M.C.Galle Case No. 85337

S. Usaandan (deceased)
No.137, Colombo Road,
Kaluwella, Galle.

Respondent-Petitioner-Appellant

Vairamuthu Kulamathi,
No.137,Colombo Road,
Kaluwella, Galle.

**Substituted-Respondent-Petitioner-
Appellant**

Vs.

01. Urban Development Authority
Sethsiripaya,
Sri Jayawardenapura, Kotte
Battaramulla.

**Petitioner- Respondent-
Respondent**

02. Hon. Attorney General,
Attorney General's Department,
Colombo -12

Respondent – Respondent

BEFORE : JANAK DE SILVA, J. &
ACHALA WENGAPPULI, J.

COUNSEL : K.V.S. Ganesharajah with Suganthi
Suppaih for the Substituted- Respondent-
Petitioner-Appellant
Chaya Sri Nammuni S.S.C. for the
Petitioner – Respondent-Respondent and
Respondent-Respondent.

DECIDED ON : 14th February, 2019

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant (later substituted and hereinafter referred to as the “Appellant”) invokes appellate jurisdiction of this Court, seeking to set aside an order of the Provincial High Court of Southern Province holden in Galle, dated 23.09.2009 in case No. H.C. Galle Rev 645/08.

In the said revision application, the Appellant sought to revise an order of demolition made against him by the Magistrate’s Court of Galle, upon an application by the Applicant-Respondent-Respondent (hereinafter referred to as the “Respondent”) who sought an order under

Section 28A(3) of the Urban Development Authority Act No. 41 of 1978 as amended. It is alleged by the Respondent that the Appellant has engaged in development activity in a development area, namely at premises bearing assessment No. 137, Colombo Road, Kaluwella, Galle, without a valid permit.

At the inquiry before the Magistrate's Court, it was asserted by the Appellant that the building standing on said premises was destroyed by the Tsunami of 2004 and at a subsequent stage 0.0033 Hectares of his land was acquired for widening of the main road. He sought approval "to carry out repair work" to the damaged building, but the Galle Municipal Council has "refused" to accept his plan for construction. He further claimed that he "expects" to obtain the necessary approval from the Municipal Council.

The Magistrate's Court, having noted that the Appellant himself admitted that there was no permit for the development work he had carried out, issued an order of demolition as sought by the Respondent.

In its impugned order, the Provincial High Court noted that the Appellant did not claim that he did not receive the notice issued by the Respondent dated 29.09.2006 under Section 28A(3) of the Urban Development Authority Act or has complied with the said notice. The Court also noted that the Appellant had no permit to engage in

development activity. The Court had then proceeded to dismiss his application. The Appellant lodged an appeal against the order of dismissal.

At the hearing of the appeal on 7.11.2018, parties indicated their willingness to dispose this appeal upon filing of written submissions. This Court then allowed the parties to tender written submissions on or before 28.01.2019. However, regrettably neither party was interested in filing any submissions and there was no motion seeking extension of time. This Court would nonetheless consider the Appellant's appeal on its merits.

The Appellant, in the averment No. 13 in his affidavit tendered to the Magistrate's Court, clearly admitted that he "expects" to obtain necessary approval for the construction. The report on his unauthorised construction indicates that the Appellant had demolished the old building and commenced a new construction. It is also stated therein that the new construction could not be approved since there was no prior approval obtained from the Coast Conservation Department. The correspondence tendered by the Appellant, in support of his affidavit also confirms this position.

In these circumstances, this Court notes that the Appellant has commenced and continued his development activity within a development area without a valid permit and therefore of the view that the Magistrate's Court has correctly issued an order under Section 28A(3) of the Urban Development Authority Act. We are in agreement with the determination

of the Provincial High Court that the order of demolition is a legally valid order and therefore the Appellant is not entitled to any relief. This is a correct finding by the Provincial High Court, upon the material present before it.

The appeal of the Appellant is clearly without any merit. We affirm the orders of the Magistrate's Court and the Provincial High Court.

Accordingly, the appeal of the Appellant is dismissed with costs fixed at Rs. 25,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL