

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

In the matter of an application for orders in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA – WRT – 68/2020

Colombo Trading International (PVT) Ltd,
No. 123/1, Temple Road,
Maharagama.

PETITIONER

-Vs-

1. The Road Development Authority,
“Maharagama Mahamedura”
No. 216, Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

2. Kamal Amaraweera, Director General,
Road Development Authority,
No. 216, Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

And 6 others

RESPONDENTS

Before : **Hon. Justice A.H.M.D. Nawaz (P/CA)**
Hon. Justice Sobhitha Rajakaruna

Counsel : Shantha Jayawardhana with Chamara
Nanayakkarawasam for the Petitioner.
Manohara Jayasinghe, SSC for the Respondent.

Decided on : 24/08/2020

Hon. Justice A.H.M.D. Nawaz (P/CA)

Mr. Shantha Jayawardhena submits that the Magistrate has issued summons on the Petitioner without an important prerequisite namely no notice as required under Sec. 45(1) of the National Thoroughfares Act No 40 of 2008 has been served on the Petitioner. In fact Sec.45 (1) uses the word “shall” and states that there has to be a written notice requiring a person to demolish or remove an allegedly illegal structure before proceedings are taken against the person in the Magistrate’s Court. Mr. Jayawardhana cites the case of *Kandiah vs. Abeykoon* (1986) 4 SriKLR 96 in support of his argument. When one peruses the proceedings that have taken place in the Magistrate’s Court, one finds that after the service of summons, an Attorney – at-Law has appeared on behalf of the Petitioner on the 31st July, 2019 and moved for submissions to be made. The learned Magistrate has given time for objections to be filed.

This shows that the Petitioner may object to the jurisdiction of the Magistrate to proceed against the Petitioner and this objection has to be gone into by the learned Magistrate having regard to the submissions to be made by Counsel, Mr. Shantha Jayawardhana also submits that the Magistrate lacks power to order the demolition of this building as Sec. 45(1) has not been complied with.

The Magistrate has yet to rule on his jurisdiction to proceed with the matter if objection is taken in that regard. H. W. R. Wade and C. F. Forsyth, in their well known work, Administrative Law [Oxford: Oxford University Press, 11th ed., 2014], explain that a statutory tribunal is lawfully entitled to examine a jurisdictional issue that has been raised before it. They state, at p. 210, as follows: "Where a jurisdictional question is disputed before a tribunal, the tribunal must necessarily decide it. If it refuses to do so, it is wrongfully declining jurisdiction and the court will order it to act properly. Otherwise the tribunal or other authority 'would be able to wield an absolutely despotic power, which the legislature never intended that it should exercise. It follows that the question is within the tribunal's own jurisdiction, but with this difference, that the tribunal's decision about it cannot be conclusive."

This has been emphasized by this Court in the case of *The Commissioner General of Inland Revenue v Koggala Garment (Pvt) Ltd CA Tax 01 of 2008 (CA minutes of 05.04.2017)*. It is only after the learned Magistrate has made his ruling on jurisdiction, this Petitioner may be able to invoke the writ jurisdiction of this Court.

In the circumstances, we take the view the application is premature at the moment and there will be no impediment for this Petitioner to invoke the jurisdiction after his objection to jurisdiction has been ruled

upon by the Magistrate. Therefore, this application at this stage is rejected for prematurity.

PRESIDENT OF THE COURT OF APPEAL

Hon. Justice Sobhitha Rajakaruna

I agree.

JUDGE OF THE COURT OF APPEAL