

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

1. Ganesha Amarasinghe,
No.417/6,
Anagarika Dharmapala Mawatha,
Paburana,
Matara.
 2. Ishani Dimundu Gunasekara
Dissanayake,
No.417/6,
Anagarika Dharmapala Mawatha,
Paburana,
Matara.
 3. Dinesh Gajamange,
No.417/6,
Anagarika Dharmapala Mawatha,
Paburana,
Matara.
- Petitioners

CASE NO: CA/WRIT/376/2018

Vs.

1. P.N.D. Jayarathna,
Deputy Director (Planning),
Urban Development Authority,
H.G.P.M. Matara District
Building,

Old Tangalla Road,
Kotuwegoda,
Matara.

- 1A. K.G. Kalyani Indika,
Urban Development Authority,
H.G.P.M. Matara District
Building,
Old Tangalla Road,
Kotuwegoda,
Matara.
2. K.H.M.W.K. Abeyrathna,
Southern Province Director,
Urban Development Authority
(Southern Province office),
No.588 1/1, Hiribura Road,
Karapitiya,
Galle.
3. R. Lakmali Thenuwara,
Deputy Municipal Commissioner,
Matara Municipal Council,
Matara.
4. Agulugaha Gamage Pradeep
Susantha Kumara,
“Senani”,
Borolla Road,
Kuburugamuwa.
5. Senaka Palliyaguru,
Municipal Commissioner,
Matara Municipal Council,
Matara.

- 5A. Ranjith Yasarathna,
Mayor,
Matara Municipal Council,
Matara.
6. Matara Municipal Council,
Matara.
7. Andaramanage Lakshmi Saroja,
Suriyawatte,
Aththuduwa,
Palatuwa.
8. Attorney General,
Attorney General's Department,
Colombo 12.
9. Chairman,
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Dr. Sunil Cooray with Nilanga Perera for the
Petitioners.
Vikum de Abrew, S.D.S.G., for the 1st, 2nd and
9th Respondents.
Shiral Lakthilaka for the 4th Respondent
Thushara de Silva for the 5th, 5A and 6th
Respondents.

Argued on: 31.08.2020

Decided on: 05.10.2020

Mahinda Samayawardhena, J.

This is a slightly complicated matter, perhaps because of the voluminous documents filed by the parties at different stages of the case, not in keeping with the Court of Appeal Rules. Some of the documents appear to be contradictory not *per se* but *inter se*. Several Plans have been tendered for approval to the Urban Development Authority (UDA); the approvals have been granted and thereafter revoked etc. Discussion of each and every document will confuse the reader. Let me endeavour to separate the wheat from the chaff and address the issue straightaway.

The dispute relates to the use of the road marked Lot 4 in Plan No.694 marked P1.

By filing this application, the Petitioners, who claim to be the owners of Lots 5, 6 and 8 of Plan No.694, mainly seek to quash the Permits marked P28 and P31, and Plan No.1363 marked P27 presented for the approval of the said two Permits.

P28 is a residential development Permit issued by the UDA to the 4th Respondent to develop Lot 1 in Plan No.1363, subject to certain conditions.

In regard to P28, the contention of the Petitioners is twofold.

One contention is Plan No.1363 does not represent the correct position of the ground situation, in that, although a portion of the projected part of the land lying to the west of the turning circle has been sold to the 7th Respondent by the 4th Respondent, it is not reflected in the Plan. In other words, Lot 10 of Plan No.694 was subdivided into two lots (311 and 312) as seen from Plan No.1173A marked P26(a), and it is the position of

the Petitioners that it was Lot 311 which was sold to the 7th Respondent by Deed P10. This is not disputed by the 7th Respondent.

The other contention is Lot 4 in Plan No.694 serves as a roadway to Lots 3, 5-9 and Lots 311 and 312 in Plan No.1173A (altogether eight lots). The Petitioners say this is in contravention of the UDA Regulations as gazetted in P8(a), which say the width of a road with less than eight residential units shall be 15 feet. Lot 4, according to Plan No.694, is 15 feet wide.

Even with the subdivision of Lot 10 into two, the roadway marked Lot 4 in Plan No.694 serves only eight residential units. There is no violation of P8(a).

Therefore, I see no reason to quash by certiorari P28, which has been issued for the residential development of Lot 1 in Plan No.1363 as one unit.

By the same token, I am not inclined to quash Plan No.1363 marked P27 by certiorari. Seeking to quash a Plan by certiorari is, in my view, misconceived in law.

The next document the Petitioners seek to quash by certiorari is P31.

P31 is not a residential development Permit. It is a Permit issued to grant permission to the 4th Respondent to sub-divide Lot 1 in Plan No.1363.

The 4th Respondent is a land developer. He had purchased the larger land, namely Ahalagahawatta, abutting Lot 10 in Plan No.694 to the south, and amalgamated Ahalagahawatta with Lot

10 as one unit to subdivide and sell. This is crystal clear from P31, although learned Senior Deputy Solicitor General for the UDA attempted to say at the argument that P31 is a residential development Permit similar to P28. P28 and P31 have been issued for different purposes.

The 1st, 2nd and 9th Respondents, the Deputy Director Planning, the Provincial Director and the Chairman of the UDA, respectively, state in paragraph 17 of their joint statement of objections:

- (i) *Lot number 1 of Plan marked P27 has been approved for residential use at the Planning committee held on 01.11.2017;*
- (ii) *By the document marked P31, the 4th Respondent has been Permitted to develop lot number 1 of P27 as one lot for residential purpose;*
- (iii) *The 4th Respondent is not Permitted to sub-divide the said lot as per P31.*

However, in paragraph 19 of the corresponding affidavit, the Director General of the UDA says the subdivision of the said lot was Permitted by P31:

- (i) *Lot number 1 of Plan marked P27 has been approved for residential use at the Planning committee held on 01.11.2017;*
- (ii) *The approval has been given to the Petitioner by P31 to develop lot number 1 of P27 as one lot for residential purposes and the subdivision of the said lot as per the aforesaid document is Permitted.*

The objections and the affidavit are contradictory. Either way, the UDA fails.

If subdivision of Lot 1 in Plan No.1363 is allowed for commercial purposes, the road to be used for the subdivided lots is Lot 4 in Plan No.694. The Petitioners' position is the said road violates regulation 20(1) marked P8(b) read with the 1st schedule to the Gazette marked P8(a). That is, in that event, more than eight residential units will be using Lot 4 in Plan No.694 as a road, which is not permissible according to the UDA Regulations as gazetted in P8.

According to the UDA's own explanation, the P31 subdivision Permit cannot be allowed to stand. Hence I quash P31 by certiorari.

This does not prevent the UDA from reconsidering afresh the application of the 4th Respondent for subdivision of Lot 1 in Plan No.1363 for commercial purposes, and making a suitable order in accordance with the law. If a fresh decision is to be taken, both parties (the 4th Respondent and the Petitioners) shall be given a hearing and reasons shall be given for the decision. In that regard, the argument advanced on behalf of the 4th Respondent, i.e. that the disputed road is a public road in accordance with the development Plan of the Matara Municipal Council as gazetted in Gazette No.1645/22 dated 17.03.2010 and the Petitioners have no soil rights to the road, can *inter alia* be taken into account. In that process, attention shall also be drawn to the Rules in the old Gazette marked P8 in order to reconcile them with the new Rules if there is any contradiction.

In summary, the Petitioners' application is partly allowed. The P28 Permit and P27 Plan shall not be quashed. The P31 Permit is quashed by certiorari. The UDA can consider the 4th Respondent's application for subdivision afresh.

Let the parties bear their own costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal