

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

In the matter of an appeal made in terms of Article 154(G)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 09 of the High Court of the Provinces (special Provisions) Act No.19 of 1990.

CA NO: CA/PHC 130/2018
Galle High Court Revision No : ප්‍රති
313-18
Galle (Additional) Magistrate Court
Case No: 68707

Municipal Commissioner,
Municipal Council-Galle,
Galle.

Petitioner

Vs.

Samarasinghe Kankanam Gamage Jeewani
Nimali,
No.166/1, Mathara Road, Galle.

Respondent

AND

Samarasinghe Kankanam Gamage Jeewani
Nimali,
No.166/1, Mathara Road, Galle.

Respondent-Petitioner

Vs.

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

1st Respondent

Municipal Commissioner,
Municipal Council Galle,
Galle.

Petitioner- Respondent

AND

Samarasinghe Kankanam Gamage Jeewani
Nimali,
No.166/1, Mathara Road, Galle.

Respondent-Petitioner-Appellant

Vs.

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

1st Respondent- Respondent

Municipal Commissioner,
Municipal Council Galle,
Galle.

Petitioner- Respondent-Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Asthika Devendra with Aruna Madushanka for the Petitioner-
Respondent- Respondent.
Pradeep Hewawasam with C.A. Betlein Instructed by Nipuni
Dasanayaka for the Respondent-Petitioner- Appellant.

Argued: 21.07.2025

Written submissions 29.06.2021 By Respondent- Petitioner- Appellant.
tendered on: 13.02.2023 By Petitioner- Respondent- Respondent.

Judgement
Delivered: 21.11.2025

Thotawatte, J.

Proceedings had been instituted by the Petitioner-Respondent-Respondent, the Municipal Commissioner of Galle Municipal Council (hereinafter sometimes referred to as “the Respondent”) by filing an application in the Magistrate’s Court of Galle under Case No. 68706 in terms of Section 28A(3) of the Urban Development Authority Law, No. 41 of 1978 as amended (hereinafter sometimes referred to as “the UDA Act”), by a Petition and Affidavit dated 27.01.2017 (found at pages 28 and 30 of the Appeal Brief) for a demolition order with regards to premises bearing No. 166/1, Matara Road, Galle (hereinafter sometimes referred to as “the subject premises”) built by the Respondent-Petitioner-Appellant (hereinafter sometimes referred to as “the Appellant”). It had been alleged therein that the subject premises, situated within a development area declared by Extraordinary Gazette No. 38/16 dated 01.06.1979, in terms of Section 3 of the UDA Act had been constructed without obtaining a valid development permit required under Section 8J (1) of the UDA Act. In consequence, the construction had been treated as an unauthorised development, for which the demolition order had been sought.

The Appellant, in response to the above application by the Respondent, had duly filed Objections dated 18.01.2018 in the Magistrate Court of Galle, and the Respondent’s Counter-Objections, dated 08.03.2018, were tendered thereafter. After both parties had filed their respective Written Submissions, the matter had been fixed for Order.

On 21.06.2018, the learned Additional Magistrate delivered an order in favour of the Respondent, granting the demolition relief. The Magistrate found, inter alia:

- The Appellant had not obtained development approval under the UDA Law,
- Merely submitting an application for approval does not amount to obtaining a permit, and
- The Appellant’s explanation (“show cause”) cannot be accepted.

Dissatisfied by the order of the learned Magistrate, the Appellant invoked the revisionary jurisdiction of the Provincial High Court of the Southern Province holden in Galle by Petition and Affidavit dated 16.07.2018 under Case No. Rev 313/18, alleging substantive and procedural irregularities.

The learned Judge of the High Court, after hearing oral submissions of the Counsel for the Appellant in support of the application and submissions of the Counsel for the

Respondent had, delivered an order on 25.07.2018, refusing to issue notice and dismissing the revision application. The High Court had held that:

- The Appellant had not produced a valid development permit, and
- The learned Magistrate had adequately considered the relevant legal and factual issues.
- The Petitioner (the Appellant in the instant case) has failed to submit sufficient reasons for the court to issue formal notices.

Being aggrieved by the order of the High Court, the Appellant had lodged an Appeal before this Court, challenging both the Magistrate's Order dated 21.06.2018 and the High Court Order dated 25.07.2018.

The grounds urged by the Appellant in the petition of appeal are;

- a) The Judge of the High Court failed to consider the irregular nature of the "notice" issued by the UDA.
- b) The institution of proceedings had not been in accordance with the provisions of Section 136 (1) (a) and (b) of the Code of Criminal Procedure.

However, in the written submissions of the Appellant dated 29.06.2021 inter alia the following ground had also been asserted.

- The Municipal Commissioner had no legal power to file the demolition application.
- No evidence had been submitted that the premises were in a declared development area.
- The commissioner is not empowered to certify development areas.

The Appellant's consistent position had been that the Respondent Municipal Commissioner lacked the legal authority to invoke Section 28A(3).

In *Palligoda Withanage Keerthi Wimal Withana v. Muniyandy Paneer Selvam and another*¹, his lordship Sripavan J. has stated that;

"For the reasons set out above, I hold that the provisions contained in Section 28A(3) fall within the scope of the term 'planning' and therefore the powers,

¹SC Appeal 123-09 SCM 18.01.2012

duties and functions referred to therein could be delegated by the UDA to any officer of a local authority.”

As such, the above argument of the Appellant is unattainable and is in conflict with the prevailing, established legal position.

Further, it has been held by a line of authorities from *Urban Development Authority v. S.W. Kulasir*² that in proceedings under Section 28A of the Urban Development Authority Act, the existence of a valid development permit issued under Section 8J is the sole and determinative answer to a demolition application. The burden rests unequivocally upon the person against whom notice is issued under Section 28A(1) to adduce and establish the existence of a valid permit. In the absence of a valid permit, the construction is deemed unauthorised as a matter of law, obligating the Magistrate to order demolition or restoration to original condition. Building plans, applications, or other documents cannot substitute for a permit, and equitable considerations cannot defeat statutory compliance.

In the instant case, the Appellant does not contest the fact that she does not have a valid permit. I am unable to find any merit in the various assertions made by the Appellant. I see no reason to interfere with the order of the learned Magistrate or the learned Judge of the High Court. As such, I dismiss the appeal subject to cost.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal

²CA Revision 2226/2003 CAM 02.11.2003, *F. Najimudeen (Deceased) and another v. Jagath Chamila Hettiarachchi* CA (PHC) 198-2012 CAM 24.07.2019, *Ranjani v. Ananda* CA PHC 85-2015 CAM 23.09.2019,

