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

In the matter of an application for a writ of certiorari made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA WRIT-351/2023

Segu Uduman Jainul Abdeen
No. 80, 1st Cross Street,
Colombo 11.

And also of;
138, New Moor Street,
Colombo 12.

Appearing through his Registered Attorney

Mohamed Thawoos Mohamed Haisam
9, Kensigton Gardens, Colombo 04

Petitioner

V.

1. N.P.K.Ranaweera
   Director General
   Urban Development Authority
   6th, 7th and 9th Floors,
   Sethsiripaya, Battaramulla.

2. The Urban Development Authority
   6th, 7th and 9th Floors,
   Sethsiripaya, Battaramulla

3. Officer in Charge
   Police Station- Pettah
   Keyzer street
   Colombo 01.

4. C.D. Wickramarathne
   Inspector General of Police
   Police Headquarters
   Colombo 01.

5. Mohamed Ali Marikkar Durathul Afrifa
   No. 21, Yoosuf Avenue
   China Fort
   Beruwala.

6. Periasamy Pillai Anandaraja
   No. 9, Skelton Road,
   Colombo 05.

Respondents

Before : **N. Bandula Karunarathna P/CA, J.**
B. Sasi Mahendran, J.

Counsel: Hijazz Hisbullah with Chalana Perera for the Petitioner.
Chaya Sri Nammuni, DSG with M. Kannangara, SC for the 1st to 4th Respondents
Maithri Gunarathna, PC with Chan Godakumbura and Migara Gunarathna for the 6th Respondent

Supported on: 11.03.2024

Written Submissions On: 28.05.2024 (by the Petitioner)

Order On : 14.06.2024

B. Sasi Mahendran, J

The Petitioner instituted this action to obtain a Writ of Certiorari to quash an order which was marked as 'X', issued by the 1st Respondent directing the 6th Respondent to demolish the premises owned by the 6th Respondent, in which the Petitioner was a tenant in possession.

The facts of this matter very briefly are as follows.

The premises in the suit is a 2-story building, comprising several units in the said building. The Petitioner conducted business at the premises at the name of " Telko Lanka". The husband of the 5th Respondent was the original owner of the building and the Petitioner was a tenant and paid the rent to him. Later he came to know that the 5th Respondent intends to sell the property therefore he and other tenants offered to purchase the said premises.

On 20.07.2015 a portion of the roof of the premises collapsed due to the fire. But the Petitioner continued to remain in occupation as a tenant. Although the upper floor remained open the 5th Respondent failed and neglected to repair the said roof. Therefore, he and other tenants made an application to the rent board with regard to repairing the roof of the said building. According to the Petitioner, on the 4th of April 2016, persons claiming to be of the National Building Research Organization (NBRO) entered the premises and informed him that, Mr. Anandaraja (6th Respondent) had requested them to inspect the said premises. But he refused their request to inspect the premises.

According to the 6th Respondent, he purchased the said building and premises from the 5th Respondent in or around March 2016. Due to a fire, the building got damaged it was extent fully destroyed and the walls were weakened. Therefore, the building became unfit for human habitation. Therefore the 6th Respondent has made a request to the National Building Research organization to inspect and issue a report regarding whether the building is suitable to repair. According to the Respondent, the said NBRO informed him that they have done a field test and in their opinion is not fit for human habitation and will be dangerous to the general public.

This fact was admitted by the Petitioner in his Petition. According to the Petitioner, the 6th Respondent has sent a letter to the Petitioner dated 25.05.2017 stating that the said NBRO has recommended that the said building be demolished as it was unfit for inhabitation. Meanwhile, the petitioner has instituted an action in the District Court preventing the 6th Respondent from ousting the Petitioner from the said premises. But the District Court refused the interim injunction application of the Petitioner. Against the said order, the Petitioner has preferred a leave to appeal the application. In the meantime, the 5th Respondent's son Mohamed Masheesh Sinan Ahmed informed the Petitioner that the 1st Respondent has directed the 6th Respondent to demolish the said building based on the NBRO Report within 14 days from the date he received the letter.

According to the Petitioner, the said order marked as 'x' is illegal and ultra vires.

The main argument put forward by the Petitioner is that, the 1st Respondent without any powers has issued the said letter. We are mindful that the 1st Respondent is the Director General of the Urban Development Authority. The position was created by the said statute. Therefore he should exercise any powers conferred by the statute.

The 1st Respondent in his objection has taken the position that, he is empowered to issue directives regarding the buildings according to schedule related to section 29 of the Urban Development Authority Act No. 41 of 1978 as amended which reads as follows.

The requirements for buildings in respect of-

" Regulations in respect of unsafe buildings and prescribing standards of fitness for buildings and other matters incidental to the ensuring of stability, safety and amenity of buildings.

We are mindful of the Dictum of Atkin L J in the case R v Electricity Commissioner 1924 1 KB 171 at 205.

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these Writs."

This dictum was considered in **Jayawardena v. Silva 72 NLR 25 at page 31, H.N.G. Fernando CJ, held;**

"We have had the benefit of full and helpful arguments from both sides upon the question whether a Writ will lie in this case, and Counsel have very properly referred us to numerous decisions, of British, Ceylon and other Courts. But we find after consideration that it will suffice to refer only to some of those decisions which in our opinion help to resolve the problem which we have to decide.

We ask no excuse for citing the celebrated dictum of Atkin L. J. in the case of B. v. Electricity Commissioner [1 (1924) 1 K. B. 171 at 205.]:-

This dictum was amplified in the judgment of Lord Hewart, C.J. in Rex v. Legislative Committee of the Church Assembly [2 (1928) 1 K. B. 411 at 415,] as follows :-

"The question therefore which we have to ask ourselves in this case is whether it is true to say in this matter, either of the Church Assembly as a whole, or of the Legislative Committee of the Church Assembly, that it is a body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially. It is to be observed that in the last sentence of Atkin L .J. the word is not "or ", but "and ". In order that a body may satisfy. the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that- the body has the duty to act judicially. The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present. As these writs in the earlier days were issued only to bodies which without any harshness of construction could be called, and naturally - would be called Courts, so also today these Writs do not issue except to bodies which act or are under the duty to act in a judicial capacity .

Acting upon the dicta which we have just cited, what we have to consider is whether, in making an election under s. 130 of the Customs Ordinance, the Collector firstly has to determine a question affecting the rights of subjects, and secondly has to act judicially in making the election."

The above stated judgement was considered by Justice S. Srikandarajah J and D. S.C Lecamwasam J in **M.V Ranatunga V Kaduwela Pradeshiya Sabawa CA WRIT/ App/ No.** 916/2008 decided on 09.10.2010 at Page 87, 2010 [BLR] held that,

" In the above circumstances, the Petitioners are seeking a writ of certiorari to quash the decision contained in the letters dated 05.09.2008 marked P22(a)- P22 (h). A writ of certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of subjects and at the same time, has the duty to act judicially when he determine such action".

In the instant case, the 1st Respondent has issued the direction in accordance with the advice obtained from independent bodies such as the National Building Research Organization and the Ministry of Disaster Management. We are mindful that the Respondents are bound to follow the said report as reports are based on scientific reasons. What is in 'X'

"උක්ත කරුණ සම්බන්ධයෙන් අංක OIC /PE/OW/1137/23 යටතේ 2023/05/15 දිනැතිව මෙම අධිකාරිය වෙත ස්ථානාධිපති, පිටකොටුව පොලිස් ස්ථානය විසින් එවන ලද වාර්තාව (පිටපත අමුණා ඇත.) ප්‍රකාරව මෙම අධිකාරියේ නිලධාරින් විසින් 2023/05/19 දින ක්ෂේත්‍ර පරීක්ෂණයක් සිදු කරන ලදී. එහිදී නිරීක්ෂණය වී ඇති කරුණු අනුව මෙම ගොඩනැගිල්ල ඉතාමත් අබලන් හා අවධානම් තත්ත්වයේ පවතින අතර යම්කිසි අවස්තාවක මෙම ගොඩනැගිල්ල කඩා වැටුනොත් මහජන ජීවිත වලට හා දේපල වලට විශාල හානියක් සිදුවිය හැකි බව පෙන්වා දී ඇත.

මෙයට පෙරද ඔබ වෙත ජාතික ගොඩනැගිලි පර්යේෂණ ආයතනයේ අංක NBRO/PMO/CR23/2017/2017 දරන වාර්ථාව හා ආපදා කළමනාකරණ මධ්‍යස්ථානයේ අංක DCM/04/Colombo දරණ වාතර්ා මත පදනම්ව 2021.10.07 දිනැති මාගේ සමාංක දරන ලිපිය මගින් මෙම අවදානම් සහගත ගොඩනැගිල්ල කඩා ඉවත් කරන ලෙස දැනුම් දී ඇති අතර, මේ දක්වා ඔබ විසින් එම ලිපියට විධිමත් ප්‍රතිචාරයක් දක්වා නොමැත.

එබැවින් මෙම අවදානම් හා අබලන් ගොඩනැගිල්ල දින 14ක් තුල කඩා ඉවත් කිරීමට ඔබ වෙත දැනුම් දෙන අතර, මෙම ගොඩනැගිල්ල කඩා වැටුනහොත් සිදු විය හැකි මහජන ජීවිත හානිවීම් වලට සහ මහජන දේපල හානිවීම් සම්බන්ධයෙන් වන වගකීම ඔබ විසින් බාර ගත යුතු අතර, සිදුවන හානිවීම් ප්‍රතිපූර්ණය කිරීම හා වන්දි ගෙවීමද ඔබ විසින් කල යුතු බව කාරුණිකව දන්වා සිටිමි.

When we peruse that document, the said decision was based on a scientific investigation conducted by the authority concerned and the report filed by the Pettah Police Station where the residents residing in the neighborhood of the said building. Therefore, he has no duty to act judicially but he has a duty to act fairly.

The Petitioner has stated that the order marked in 'X' is illegal and ultra vires.

The concept of illegality was considered in the book of De Smith's Judicial Review 8th Edition, Page 245 reads as follows,

Illegality

"An Administrative decision or other exercise of a public function is unlawful under the broad chapter head of "legality" if the decision-maker:

(a) misinterprets a legal instrument relevant to the function being performed
(b) has no legal authority to make the decision
(c) fails to fulfil a legal duty
(d) exercises discretionary power for an extraneous purpose
(e) takes into account irrelevant considerations or fails to take account of relevant considerations
(f) improperly delegates decision-making power.

The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The instrument will normally be a statute or delegated legislation, but it may also be an enunciated policy, and sometimes a prerogative or other common law power. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the "four corners" of their powers or duties. They are also acting as guardians of Parliament's will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament's enactments."

Accordingly, the 1st Respondent, has a legal authority under section 29 of the said act. The fact that the said building was damaged due to fire and was situated in a highly populated area. He has considered the relevant reports submitted by the relevant authorities and also he has a duty to protect the public. Therefore, we hold that the decision is legal and he has acted within the four Corners of the powers given by the said act. Hence, the Petitioner is not entitled to writ of certiorari to quash the aforesaid decision.

Therefore for the aforesaid reasons we dismiss this application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.
I AGREE

PRESIDENT OF THE COURT OF APPEAL