

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

CA (PHC) No. 189/2020

HC Embilipitiya No. HCE RA
36/2018

MC Embilipitiya No. 55167/18

In the matter of an Appeal under and in terms of Article 154P(6) of the Constitution and the Court of Appeal (Procedure for appeals from High Courts established by Article 154P of the Constitution) Rules, 1988.

Sampath Sumedha Pujitha Rathnayake,
Director General,
Urban Development Authority,
Sethsiripaya, Sri jayawardenapura Kotte,
Battaramulla.

Petitioner

Vs.

Samara Arachchige Dona Rupalatha,
Madhumini Pharmacy,
No. 17/A, Diwurumpola,
Godakawela.

Respondent

AND BETWEEN

Samara Arachchige Dona Rupalatha,
Madhumini Pharmacy,
No. 17/A, Diwurumpola,
Godakawela.

Respondent- Petitioner

Vs.

Sampath Sumedha Pujitha Rathnayake,
Director General,
Urban Development Authority,
Sethsiripaya, Sri jayawardenapura Kotte,
Battaramulla.

Petitioner- Respondent

AND NOW BETWEEN

Samara Arachchige Dona Rupalatha,
Madhumini Pharmacy,
No. 17/A, Diwurumpola,
Godakawela.

Respondent- Petitioner-Appellant

Vs.

Sampath Sumedha Pujitha Rathnayake,
Director General,
Urban Development Authority,
Sethsiripaya, Sri jayawardenapura Kotte,
Battaramulla.

Petitioner- Respondent-Respondent

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

Counsels: Lahiru Welgama for the Respondent – Petitioner – Appellant
instructed by Jagath Bandara.

Asela Wijesinghe, S.C., for the Petitioner – Respondent-
Respondent instructed by Dr. R. Firdous, A.S.A.

Argued: 27.11.2025

Written submissions
tendered on: 24.11.2025 by Petitioner – Respondent- Respondent.
26.08.2025 by Respondent – Petitioner – Appellant.

Judgment Delivered: 28.04.2026

Thotawatte, J.

This is an appeal preferred by the Respondent-Petitioner-Appellant (hereinafter sometimes referred to as the Appellant) seeking to set aside the judgment of the learned High Court Judge of Provincial High Court of the Sabaragamuwa Province Holden at Embilipitiya dated 25.11.2020, delivered in the exercise of revisionary jurisdiction, whereby the learned High Court Judge declined to interfere with an order made by the learned Magistrate under the provisions of under Section 28A(3) of the Urban Development Authority Law, No. 41 of 1978 as amended (hereinafter sometimes referred to as the UDA Act) authorizing the demolition of the impugned construction in consideration alleged to be unauthorized, upon an application made by the Petitioner-Respondent-Respondent (hereinafter sometimes referred to as the Respondent).

The jurisdiction exercised by the Magistrate in matters of this nature is statutory in character and arises pursuant to the provisions of Section 28A (3) of the Urban Development Authority Law No. 41 of 1978 (as amended), whereby, upon failure to comply with a written notice issued under Section 28A(1), the Authority may invoke the jurisdiction of the Magistrate by petition and affidavit to obtain an order authorizing the discontinuance, alteration, or demolition of unauthorized constructions.

In the case of *Urban Development Authority v H.W. Kulasiri*¹ His Lordship, Amaratunga J. observed as follows:

“In a situation where an application under section 28(A)(3) of the UDA Law has been made, the relevant question is whether the structure in question has been erected upon a valid permit. The existence of a permit is the only valid answer to an application under section 28(A)(3). The burden of establishing that the construction had been carried out on a valid permit rests on the person noticed.”

The above judgment was followed in *M.D. Premaleela v Shantha Priyanthy Liyanage (Officer under the Urban Development Authority Act)*² Therefore, where an application under section 28(A)(3) of the Urban Development Authority Act is made to the Magistrate’s Court, the primary question for determination is whether the structure in question was

¹ CA Revision 2226/2003, Decided on 02.11.2003

² CA (PHC) 159/2011, Decided on 16.10.2019.

constructed upon a valid permit. In such circumstances, the existence of a valid permit represents the only legally sustainable response.

In *Taj Divisional Development Co-operative Society v Secretary, Haputale Pradeshiya Sabha*³, the Court rejected the contention that a building plan signed by the Chairman constituted valid approval, holding that an approval granted by the Chairman alone does not amount to a lawful decision of the Pradeshiya Sabha unless it is shown to have been made in conformity with the statutory procedure governing the decision-making authority of the Sabha. As such, it is clear that any purported approval issued otherwise than in accordance with such statutory requirements does not constitute lawful authority for construction.

It has been consistently held in a series of authorities dealing with demolition orders under the said Law that where the statutory procedure contemplated by Section 28A has been followed and the learned Magistrate has arrived at a determination upon conducting the inquiry required by law, the Provincial High Court will exercise its revisionary jurisdiction only in the presence of exceptional circumstances demonstrating illegality, impropriety, irregularity, or a miscarriage of justice.

In *M.R.L. de Costa v Urban Development Authority*⁴, the Court affirmed that revisionary jurisdiction, though wide, must be exercised only in exceptional circumstances, and in the absence of such circumstances, appellate interference with the orders of the Magistrate and the High Court is unwarranted.

Although this Court exercises appellate jurisdiction in the present matter, as the appeal being directed against a revisionary determination of the Provincial High Court, this Court is not required to undertake a fresh examination of the factual findings of the learned Magistrate, but rather to determine whether the learned High Court Judge properly exercised revisionary jurisdiction in accordance with settled legal principles.

It is against this statutory and judicial background that the present appeal needs to be considered.

³ C.A. (PHC) Appeal No. 01/2014 Decided on 01.03.2019

⁴ CA PHC 238/15, Decided on 30.05.2023

Factual Background

The material placed before this Court reveals that the relevant authority, initiated proceedings before the Magistrate's Court seeking an order for the demolition of structures situated at No. 17/A, Diwurumopola, Godakawela, alleged to have been erected without lawful authority within a declared development area and without compliance with the requirements imposed under the Urban Development Authority Law and the applicable planning regulations.

Upon consideration of the application under Section 28A (3) of the UDA Act, the learned Magistrate conducted an inquiry into the matters placed before the Court and thereafter made an order authorizing the removal and demolition of the said structures.

Being dissatisfied with the said order, the Appellant invoked the revisionary jurisdiction of the Provincial High Court seeking to have the order of the learned Magistrate set aside.

The learned Provincial High Court Judge, having considered the submissions made and having examined the proceedings before the Magistrate's Court, concluded that no exceptional circumstances had been established warranting interference and accordingly dismissed the revision application. It is against that judgment that the present appeal has been preferred.

Grounds of Appeal and Reliefs Sought

When this appeal was taken up for hearing, learned Counsel appearing for the Appellant advanced several grounds challenging the correctness of the impugned judgment.

The principal grounds urged were:

1. That the learned Magistrate erred in concluding that the structures constituted unauthorized constructions within the meaning of the applicable statutory provisions.
2. That the learned Provincial High Court Judge failed to properly consider the matters urged in revision and thereby misdirected himself in dismissing the application.
3. That the conclusions reached by the Courts below were contrary to the material placed before the Court.

Based on these grounds, the Appellant sought relief from this Court to:

- set aside the judgment of the learned Provincial High Court Judge,
- vacate the order made by the learned Magistrate.

The failure to produce a valid development permit

The record further reveals that upon service of summons, the Appellant had appeared before the learned Magistrate on 14.09.2018, and upon the Appellant's application, time was granted to submit the relevant permits said to be in possession of the Appellant authorizing the relevant construction. When the matter was thereafter called on 05.10.2018, the Appellant failed to produce a development permit issued by the Urban Development Authority and had instead, tendered to the Court a document issued by the Road Development Authority, dated 28.02.2018, which the Appellant relied upon as evidence of authorization. The learned Magistrate, having considered the said document, correctly concluded that it did not constitute a valid development permit within the meaning of the governing statutory framework, on the basis that a development permit issued by the Urban Development Authority is the statutory authorization required for development within a declared urban development area.

It is well settled that the burden of establishing the existence of a valid development permit rests squarely upon the person who undertakes development activity, and that the absence of proof of such authorization renders the construction unlawful within the meaning of the governing statute. In the present case, the learned Magistrate, having afforded the Appellant a reasonable opportunity to produce the requisite development permit, accordingly proceeded on the basis that no lawful authorization had been established before the Court.

Admissibility of Fresh Documents in Revision

A principal contention advanced on behalf of the Appellant relates to the refusal of the learned Provincial High Court Judge to consider documents marked X7–X13 and X15, which were sought to be produced for the first time at the stage of revision, notwithstanding that such documents had not been tendered before the learned Magistrate at the stage of the original inquiry. It is well settled that the revisionary jurisdiction of the High Court is supervisory in character and is not intended to function as a mechanism for reconstructing

the evidentiary record or for introducing material which a party, despite having had opportunity, failed to place before the Court of first instance. To permit the introduction of such fresh material at the revision stage would have the effect of converting revision into an appellate rehearing, undermining procedural discipline, and defeating the principle of finality in litigation. In the present case, the Respondent correctly contended that the Appellant had been afforded ample opportunity before the learned Magistrate to produce the relevant documents, and that the failure to do so could not be retrospectively cured in revision proceedings. In those circumstances, the learned High Court Judge acted in accordance with settled legal principles in declining to entertain documents marked X7–X13 and X15, observing that revisionary jurisdiction does not extend to the reception of fresh evidence not tendered at the stage of the original inquiry, and correctly proceeded to determine the revision application on the basis of the material that had been placed before the learned Magistrate.

Whether Document X9 Constituted a Valid Permit

A central issue urged on behalf of the Appellant concerns document marked X9, which was relied upon as representing a form of provisional building permission authorizing the construction in question. A careful examination of the material on record reveals that document X9 consisted of a communication transmitted through the Pradeshiya Sabha, and did not constitute a development permit issued under the statutory authority of the Urban Development Authority, nor did it satisfy the legal requirements governing development within a designated Urban Development Area. It is well recognized in law that administrative correspondence or provisional communications cannot be treated as a substitute for a statutory development permit issued under lawful authority. In the absence of such valid authorization, the statutory requirements governing development remain unsatisfied.

Whether Exceptional Circumstances Exist

The decisive issue that arises for determination is whether exceptional circumstances have been established warranting interference with the order of the learned Magistrate. The Appellant contends that such exceptional circumstances existed warranting the exercise of revisionary jurisdiction. However, the complaints advanced on behalf of the Appellant relate primarily to the appreciation of facts and the evaluation of the material placed before the Court. It is well settled that mere disagreement with factual findings, without

more, does not constitute exceptional circumstances justifying interference. The material on record discloses no miscarriage of justice, jurisdictional defect, or illegality of such gravity as to warrant intervention with the order of the learned Magistrate. It is trite law that revisionary jurisdiction is not invoked merely on the basis of dissatisfaction with a judicial determination, nor to remedy a party's omission to produce documents in a timely manner, or to reconstruct a defence that has failed before the Court of first instance.

In *M.R.L. de Costa v Urban Development Authority*⁵, his lordship C. P. Kirtisinghe J. citing *Rasheed Ali Vs. Mohamed Ali and others*⁶ has stated that revisionary jurisdiction, of this court though wide, must be exercised only in exceptional circumstances, and in the absence of such circumstances appellate interference is unwarranted.

In the present case, the learned Magistrate exercised jurisdiction conferred by statute, the learned Provincial High Court Judge duly considered the grounds urged in revision, no procedural irregularity has been established, and no miscarriage of justice has been demonstrated. In those circumstances, the learned Provincial High Court Judge cannot be faulted for concluding that no exceptional circumstances had been established to warrant the exercise of revisionary powers. Accordingly, this Court is unable to identify any exceptional circumstance warranting intervention with the judgment under appeal.

Having carefully considered the submissions of learned Counsels before this Court, the judgment of the learned Provincial High Court Judge, and the applicable statutory provisions governing unauthorized constructions under the Urban Development Authority Law No. 41 of 1978 (as amended), this Court is of the considered view that the Appellant has failed to establish any legal basis warranting interference with the judgment under appeal. The statutory mechanism governing the removal and demolition of unauthorized constructions is intended to safeguard the orderly development of declared urban areas and to ensure compliance with planning regulations. Where such statutory powers have been exercised in accordance with law, and where the Courts below have duly considered the material placed before them, appellate intervention must necessarily be exercised with restraint. In the present case, no circumstances have been demonstrated so as to justify interference with the judgment under appeal.

⁵supra

⁶ 1981 (1) SLR 262

Conclusion

For the foregoing reasons, I hold that the appeal preferred by the Appellant is devoid of merit and accordingly dismiss the appeal subject to costs fixed at Rs. 30,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal