

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

CPA 148/2022

CA (PHC) APN/ 148/2022

HCMCA/184/202

MC Nugegoda Case No: 26395

In the matter of an application for Revision under and in terms of Article 138 of the Constitution read with Article 154 P (6) of the Constitution and Section 11 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990.

Urban Development Authority,
No. 27, D.R. Wijewardena Mawatha,
Colombo 10.

Now at,
6th & 7th Floors,
“Sethsiripaya”
Battaramulla.

Petitioner

Vs.

Badugama Hewage Somasiri,
No. 170, Pragathi Mawatha, Pannipitiya.

Respondent

And between

Badugama Hewage Somasiri,
No. 170, Pragathi Mawatha, Pannipitiya.

Respondent- Appellant

Vs.

Urban Development Authority,
No. 27, D.R. Wijewardena Mawatha,
Colombo 10.

Now at,

6th & 7th Floors,
“Sethsiripaya”
Battaramulla.

Petitioner- Respondent

And now between

Badugama Hewage Somasiri,
No. 170, Pragathi Mawatha, Pannipitiya.

Respondent- Appellant- Petitioner

Vs.

Urban Development Authority,
No. 27, D.R. Wijewardena Mawatha,
Colombo 10.

Now at,
6th & 7th Floors,
“Sethsiripaya”
Battaramulla.

Petitioner- Respondent- Respondent

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

Counsels: Sandamal Rajapaksha for the Petitioner.
 Rifana Mukthar, S.C. for the Petitioner – Respondent – Respondent.

Argued: 12.03.2026

Written submissions
tendered on: 07.07.2026 by the Respondent- Appellant- Petitioner

Judgement Delivered: 10.07.2026

Thotawatte, J.

This is an application invoking the revisionary jurisdiction of this Court under Article 138 of the Constitution. The Respondent-Appellant-Petitioner, Badugama Hewage Somasiri, (hereinafter sometimes referred to as the “Petitioner”) seeks to revise and set aside the order dated 22.01.2020 made by the learned Magistrate of Nugegoda in case No. 26395 and the judgment dated 28.10.2022 delivered by the learned High Court Judge of Colombo in HCMCA/184/2020. The proceedings originated from an application instituted by the Urban Development Authority before the Magistrate’s Court, alleging that the Petitioner had effected an unauthorized construction at No. 170, Pragathi Mawatha, Pannipitiya, in violation of Section 8J (1) of the Urban Development Authority Law No. 41 of 1978, and had failed to comply with the notice dated 24.10.2017 issued under Section 28A of the said Law. The relief sought before the learned Magistrate was an order authorizing demolition of the impugned construction.

The learned Magistrate, after inquiry, granted the reliefs sought by the Urban Development Authority. Being aggrieved, the present Petitioner appealed to the Provincial High Court of the Western Province holden in Colombo. That appeal was dismissed by judgment dated 28.10.2022, affirming the order of the learned Magistrate.

Being aggrieved by the judgment dated 28.10.2022 of the learned Judge of the High Court of Colombo the Petitioner has invoked the revisionary jurisdiction of this Court by this instant application.

The petitioner has by this instant application *inter alia* prayed for the following reliefs

- a) Set aside and/or revise the order of the learned Magistrate dated 22.01.2020 in MC Nugegoda Case No. 26395.
- b) Set aside and/or revise the Judgment dated 28.10.2022 of the learned High Court Judge of Colombo in HCMCA No. 184/2020.

The learned High Court Judge had first addressed the maintainability of the proceedings before him. The jurisdiction of an appellate court is wholly statutory. It is well settled that no right of appeal exists unless expressly conferred by the legislature, and a court cannot assume appellate jurisdiction in the absence of such statutory authority. The Urban Development Authority Law, No. 41 of 1978 (as amended), does not provide a right of appeal against an order made by a Magistrate under section 28A (3) authorizing the demolition or alteration of an unauthorized construction. Accordingly, such an order

cannot be brought before the High Court by way of appeal under the provisions of that Law, and any proceedings instituted in that form are misconceived in law. The learned High Court Judge in his judgment has expressly recognized that the proceedings ought to have been instituted by way of an application in revision rather than by way of an appeal.

The relevant extract from the judgment of the learned High Court Judge, reflecting the above position, is reproduced below.

“මෙහි පළමුවන කාරණය වන්නේ මෙම නියෝගයට එරෙහිව අභියාචනයක් නොව ඉදිරිපත් කළයුතු වන්නේ ප්‍රතිශෝධන ඉල්ලුම්පත්‍රයක් බවයි. එය නීතිමය වශයෙන් දෝෂ සහගත වුවද, එය හුදු තාක්ෂණික දෝෂයක් ලෙස සලකා අභියාචනයෙන් දක්වා ඇති කරුණු කෙරෙහි මෙම අධිකරණයේ ප්‍රතිශෝධන බලය ක්‍රියාත්මක කළහැකි ද යන්න සලකා බලමි...”

Having reached that conclusion, the learned High Court Judge did not dismiss the proceedings immediately. Instead, the judgment indicates that the Appellant invited the High Court to consider whether the matter could nevertheless be entertained in the exercise of its **revisionary jurisdiction**. The learned High Court Judge therefore proceeded to examine whether the application, notwithstanding its form as an appeal, could properly be treated as an application in revision.

The judgment further demonstrates that, after expressing his intention to consider the matter from the standpoint of revision, the learned High Court Judge proceeded to examine the substantive grounds advanced by the Appellant. Those grounds were analyzed individually and rejected upon their merits. In doing so, the learned High Court Judge considered the relevant statutory provisions, the factual findings of the learned Magistrate and the authorities relied upon by the parties before determining that none of the grounds disclosed any error warranting intervention.

Upon completing that analysis, the learned High Court Judge reached two distinct conclusions. First, he held that the grounds advanced by the Appellant disclosed no error, either in fact or in law, warranting the setting aside of the order of the learned Magistrate and, accordingly, that the appeal was devoid of merit.

Secondly, and independently of that conclusion, the learned High Court Judge considered whether the proceedings could nevertheless be entertained in the exercise of the High Court's revisionary jurisdiction. In that regard, he adverted to the settled principles governing the exercise of revisionary jurisdiction. Relying on *Bank of Ceylon v. Kaleel and*

*Others*¹, the learned High Court Judge has considered that a court will not exercise its revisionary powers simply because the lower court may have made a mistake. The mistake must be a very serious one. It must have resulted in real unfairness or a miscarriage of justice, and the error must be so obvious and fundamental that it goes far beyond an ordinary legal or procedural mistake. It must be the kind of decision that would immediately appear plainly wrong and unjust, such that it would shock the conscience of the Court.

He has further referred to *Kulatilake v. Attorney General*², wherein it was held that the revisionary jurisdiction of the Court is an extraordinary power, exercisable only where exceptional circumstances exist, particularly to prevent a miscarriage of justice or to secure the due administration of justice. Applying those principles to the facts before him, the learned High Court Judge concluded that the Appellant had failed to disclose any exceptional circumstance warranting the invocation of the High Court's revisionary jurisdiction. Accordingly, he held that there existed no basis upon which the appeal could be treated as an application in revision or for interfering with the order of the learned Magistrate.

It is of considerable significance that, despite observing that no statutory appeal lay under the Urban Development Authority Law and thereafter embarking upon a discussion concerning the exercise of the High Court's revisionary jurisdiction, the learned High Court Judge ultimately concluded the judgment dated 28.10.2022 by dismissing the **"Appeal."** The operative order is therefore inconsistent with the preceding reasoning and leaves the jurisdiction actually exercised by the High Court uncertain. Such uncertainty is particularly unsatisfactory where the nature of the jurisdiction invoked determines both the scope of the inquiry and the availability of a further appellate remedy.

The uncertainty thereby created is not a mere matter of form. The jurisdiction exercised by a Court defines the nature and extent of its powers, the principles governing the inquiry and the permissible scope of judicial intervention. It follows that a superior Court reviewing the correctness of that decision must first be able to ascertain with certainty the jurisdiction under which the Court below acted. In the absence of such clarity, the appellate review itself is rendered unnecessarily problematic. It was therefore incumbent upon the learned High Court Judge to identify, at the outset, the jurisdiction under which the

¹ (2004) 1 Sri L.R. 284

² (2010) 1 SLR 212

proceedings were being entertained before proceeding to determine the substantive issues raised by the parties.

Having correctly concluded that no statutory appeal lay under the Urban Development Authority Law, the learned High Court Judge was required either to decline appellate jurisdiction or, if so minded, to invoke the Court's revisionary jurisdiction expressly and determine the matter solely upon the principles governing revision. The judgment adopted neither course. Instead, it proceeded upon an amalgamation of appellate and revisionary jurisdiction, ultimately dismissing the matter both as an appeal and, alternatively, as an application in revision. In so doing, the learned High Court Judge failed to identify the juridical basis upon which the matter was determined. Such uncertainty is not merely procedural. It goes to the legality of the jurisdiction purportedly exercised by the learned High Court Judge and, in the circumstances, renders the resulting judgment incapable of being sustained.

For the reasons set out above, the judgment of the learned High Court Judge dated 28.10.2022 is set aside. The setting aside that judgment dated 28.10.2022 does not disturb or otherwise affect the order of the learned Magistrate dated 22.01.2020. The order of the learned Magistrate dated 22.01.2020 remains in force and effect as it has not been displaced by any valid order of a superior Court.

In the circumstances, the Petitioner has failed to obtain the substantive relief sought in these proceedings. Accordingly, this application stands dismissed and I direct the Petitioner to pay costs to the Court, which I fix at Rs. 50,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal