

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

Court of Appeal Case No.
CA/PHC/157/2022

High Court Anuradhapura Case No.
HCR/14/2019

Magistrate's Court Anuradhapura
Case No. 11015

In the matter of an Appeal under and in terms of Article 154(P)(6) and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Court of Appeal rules of 1988 Rules of appeal procedure from High Court of the Provinces established under Article 154(P) of Constitution to the Court of Appeal.

Executive Engineer,
Executive Engineer's Office,
Road Development Authority,
Anuradhapura.

Plaintiff

Vs.

Ajith Edirisinghe,
Kandy – Jaffna Road,
Illuppukanniya,
Mihinthale.

Respondent

And between

Ajith Edirisinghe,
Kandy – Jaffna Road,
Illuppukanniya,
Mihinthale.

Respondent – Petitioner

Vs.

Executive Engineer,
Executive Engineer's Office,
Road Development Authority,
Anuradhapura.

Plaintiff- Respondent

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

Respondent

And now between

Ajith Edirisinghe,
Kandy – Jaffna Road,
Illuppukanniya,
Mihinthale.

Respondent – Petitioner- Appellant

Vs.

Executive Engineer,
Executive Engineer's Office,
Road Development Authority,
Anuradhapura.

Plaintiff – Respondent- Respondent

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

Respondent- Respondent

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

Counsels: Lakshika Weerawardhana instructed by Nadeesha Wijerathne for the Respondent – Petitioner – Appellant.

K. D. Sampath, SC for the Applicant – Respondent – Respondent.

Argued: 14.07.2026

Written submissions 17.12.2025 by Applicant – Respondent-Respondent.
tendered on: 29.09.2025 by Respondent – Petitioner – Appellant.

Judgment 13.10.2026
Delivered:

Thotawatte, J.

Introduction

This is an appeal against the order of the learned Judge of the Provincial High Court of the North Central Province holden in Anuradhapura dated 26.07.2022 in Revision Application No. 14/2019. By that order, the learned High Court Judge dismissed, with costs fixed at Rs. 25,000/-, the application of the Respondent-Petitioner-Appellant (hereinafter referred to as "the Appellant") seeking to revise and set aside the order of the learned Additional Magistrate of Anuradhapura dated 24.05.2019 in Case No. 11015.

By the said order of 24.05.2019, the learned Additional Magistrate allowed the application made by the Applicant-Respondent-Respondent, the Executive Engineer of the Road Development Authority, Anuradhapura (hereinafter referred to as "the Respondent"), under section 45(3) of the National Thoroughfares Act No. 40 of 2008 (hereinafter referred to as "the Act"), and made an order authorising the demolition and removal of a two-storey building erected by the Appellant alongside the Kandy–Jaffna National Highway at Iluppukanniya, Mihintale.

The Appellant, by his Petition of Appeal dated 12.08.2022, prays, *inter alia*, that this Court set aside the order of the learned High Court Judge dated 26.07.2022, grant the reliefs prayed for in the Petition of Revision dated 07.06.2019, set aside the order of the learned Magistrate dated 24.05.2019, and dismiss the application of the Executive Engineer, dated 03.08.2018.

Factual Matrix

The Kandy–Jaffna Road was declared a National Highway by Gazette (Extraordinary) No. 561/5 dated 06.06.1989, produced before the Magistrate's Court marked "E01" and before the High Court marked "R02". The Act was brought into operation with effect from 01.08.2009 by an Order of the Minister published in Gazette (Extraordinary) No. 1612/18 dated 30.07.2009, produced before the High Court marked "R01".

It is common ground that the Minister has not specified a building limit for the Kandy–Jaffna National Highway by an Order published in the Gazette under section 42(1) of the Act. The Respondent accordingly contends that, by operation of section 42(2)(a), the applicable building limit is fifteen meters from the center of the carriageway.

The subject matter of the application is a two-storey building situated between the 129th and 130th kilometer posts, between culverts Nos. 130/1 and 130/2, on the left-hand side of the highway towards Jaffna, at Iluppukanniya, Mihintale. According to the schedule to the Executive Engineer's application, the building stands at a distance of approximately 39 feet 4 inches (11.9888 meters) from the center of the carriageway and therefore falls within the statutory building limit of fifteen meters.

The Appellant does not contend that he obtained a building license from the Executive Engineer under section 42(3) of the Act. He relies instead on a letter dated 19.04.2013 issued by the Chairman of the Mihintale Pradeshiya Sabha (marked before the Magistrate's Court as "D.01"), conveying building approval granted on 16.04.2013 on behalf of the Urban Development Authority subject to four conditions. The fourth condition required that the boundary wall be erected at a distance of 50 feet from the center of the road.

The Appellant states in his Petition of Appeal that he holds the land under a grant and commenced construction of the building in 2006, completing the upper floor in 2010. He further states that he began operating a food and lodging business in the building in 2015.

By notice dated 06.10.2017 issued under section 45(1) of the Act and sent by registered post, the Respondent required the Appellant to demolish or remove the said construction. The Appellant did not comply with the notice. The Executive Engineer thereafter filed an application dated 03.08.2018, supported by an affidavit, in the Magistrate's Court of Anuradhapura under section 45(3) of the Act, seeking a mandatory order authorising him to cause the construction described in the schedule to be demolished or removed.

Progression of the Litigation

Upon the application being filed, the learned Magistrate issued notice on the Appellant. The Appellant filed a statement of objections dated 01.03.2019, together with the letter marked " 01". The Executive Engineer thereafter filed counter-objections. Having considered the application, affidavit, the documents and the objections, the learned Additional Magistrate, by order dated 24.05.2019, allowed the application and issued a mandatory order under section 45(3) of the Act authorising the demolition and removal of the unauthorised construction described in the schedule.

The Appellant invoked the revisionary jurisdiction of the Provincial High Court of Anuradhapura by Petition dated 07.06.2019. The Respondent filed a statement of objections, raising a preliminary objection that the Appellant had failed to disclose exceptional circumstances warranting the exercise of revisionary jurisdiction. The Appellant filed counter-objections on 24.08.2020. The matter was thereafter disposed of by way of written submissions.

By order dated 26.07.2022, the learned High Court Judge upheld the preliminary objection, holding that revisionary relief is discretionary and that the Appellant had established neither a serious error of law nor exceptional circumstances warranting the exercise of revisionary jurisdiction. In reaching that conclusion, the learned High Court Judge also examined each of the Appellant's complaints on its merits before dismissing the application. Being aggrieved by that order, the Appellant has preferred the present appeal.

Grounds of Appeal

It is observed that the grounds of appeal set out in the Petition of Appeal do not wholly correspond with those urged in the written submissions filed on behalf of the Appellant. The ground relating to the alleged defect in the Gazette notification is framed differently in each, with reliance placed on different statutory provisions. Certain grounds urged in

the Petition of Appeal have not been pursued in the written submissions, while others appear for the first time in the written submissions. Several grounds overlap with, or are subsumed under, the contention that exceptional circumstances exist, and factual averments are intermingled with questions of law. In the circumstances, this Court has found it difficult to formulate a consolidated statement of the grounds of appeal, and has therefore considered the grounds as urged in both the Petition of Appeal and the written submissions, insofar as they are capable of being so considered.

- a) **Exceptional circumstances wrongly rejected.** The Appellant contends that the alleged illegality, disproportionality, irreparable loss and selective enforcement constitute exceptional circumstances warranting revisionary relief. The Appellant further submits that the omission of the phrase “exceptional circumstances” is not fatal to the application.
- b) **Defective institution of Proceedings.** The application seeking a mandatory order did not plead the Gazette notification by which the National Thoroughfares Act, No. 40 of 2008, was brought into operation, or the date on which that notification was published. Accordingly, the proceedings instituted under section 45 of the Act are void *ab initio*.
- c) **Disproportionate order.** Although only a portion of approximately 10 feet 6 inches of the building encroaches upon the road reservation, the learned Magistrate ordered the demolition of the entire building. The application did not identify the unlawful construction sought to be removed.
- d) **Less drastic alternative not considered.** The Road Development Authority failed to consider less drastic alternatives. These included granting a license under Section 42(3) upon the execution of a bond, issuing a temporary permit, or seeking partial compliance.
- e) **Selective and mala fide enforcement.** Proceedings were instituted against the Appellant alone, although other buildings in the vicinity also lie within the prescribed limit. Such selective enforcement is contrary to the principle of equal protection of the law.
- f) **Equitable considerations.** The building, the Appellant’s sole residence and business premises valued at Rs. 11 million, was constructed in good faith with Pradeshiya Sabha approval.

The Statutory Scheme

Before considering the grounds of appeal, it is useful to outline the statutory scheme. Section 01 of the Act provides that the National Thoroughfares Act No. 40 of 2008 shall come into operation on such date as the Minister may appoint by Order published in the Gazette (“the appointed date”). Under section 42(1), the Minister may, by Order published in the Gazette, specify the building limit alongside a road. In the absence of such an Order, section 42(2)(a) fixes the building limit of a national highway at fifteen meters from the center of the carriageway.

Section 42(3) provides that, after the appointed date, no person shall erect, re-erect or make any addition to any building or other structure within the building limit (15-meter buffer zone from the center of the carriageway) except under a license granted by the Executive Engineer. Under section 42(4)(a), no such license may be granted within ten meters of the center of the carriageway of a national highway within a town limit, or within 7.5 meters outside a town limit. Between those limits and the building limit, a license may be granted only where the Executive Engineer is satisfied that the prohibition would cause serious hardship to the owner and when the written consent of the Provincial Director is received. Section 43 further prohibits any other agency or authority from approving the erection of a structure within the building limit unless a license has been granted by the Executive Engineer.

Where any person erects a structure or makes an addition in contravention of section 42, section 45(1) requires the Executive Engineer, by written notice, to require that person to demolish or remove it on or before a date not earlier than seven days from the date of the notice. Under section 45(2), the person served with the notice is required to comply within the specified period or within such extended period as the Executive Engineer may grant upon application. Upon non-compliance, the Executive Engineer may apply to the Magistrate under section 45(3)(a) for a mandatory order authorising him to cause the structure to be demolished or removed. Under section 45(3)(b), the Magistrate may, if satisfied as to the existence of the facts, issue notice on the person in default and thereafter make order accordingly. Where that person undertakes to demolish or remove the structure, the Magistrate may, under section 45(3)(c), postpone the operation of the order for a period not exceeding sixty days.

Analysis

(a) The nature of the Jurisdiction Invoked and the Requirement of Exceptional Circumstances

Revision is a discretionary remedy and cannot be claimed as of right. In ***Attorney General v. Gunawardena***¹, the Supreme Court explained that revision, though directed towards the correction of errors, “*is supervisory in nature and its object is the due administration of justice and not, primarily or solely, the relieving of grievances of a party*”. The Court further emphasised that a mere error would not justify intervention and that its revisionary powers in respect of High Court proceedings would be exercised only in very exceptional circumstances.

In ***Rustom v. Hapangama & Co.***², the Court explained that what constitutes “exceptional circumstances” depends on the facts and circumstances of each case and cannot be exhaustively defined or governed by rigid rules. In ***Dharmaratne and another v. Palm Paradise Cabanas Ltd. and others***³, the Court explained:

“Thus, the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given a right of appeal.”

The Appellant concedes that his petition for revision did not expressly refer to “exceptional circumstances”, but submits that the facts pleaded disclose such circumstances. The omission of those words is not, by itself, fatal. What matters is whether the facts pleaded, if established, amount to exceptional circumstances warranting revisionary intervention. In ***Hotel Galaxy (Pvt) Ltd. and Others v. Mercantile Hotels Management Ltd.***⁴, it is stated that the applicant must demonstrate circumstances justifying the exercise of revisionary jurisdiction. The decision does not, however, establish that an application must fail solely because the petition omits the expression “exceptional circumstances”.

¹ [1996] 2 Sri L.R. 149 at 156

² [1978–79] 2 Sri L.R. 225 at 229

³ [2003] 3 Sri L.R. 24 at 30

⁴ [1987] 1 Sri L.R. 5, at pages 30–32

This distinction is reflected in *Officer in Charge, Sri Lanka Police, Aluthgama v. Ahmed Bawa Mohamed Asham*⁵, where Dr. Ruwan Fernando J. quoted with approval the observation of Salam J. in *Welikakala Withanage Shantha Sri Jayalal and Another v. Kusumawathie Pigera and Others*⁶:

"It does not mean that the Petitioner who invokes the revisionary powers of the court should in his petition state in so many words that 'exceptional grounds exist' to invoke the revisionary jurisdiction in addition to pleading the grounds on which the revision is sought... It is actually for the court to find out whether the circumstances enumerated in the petition constitute exceptional circumstances."

Thus, the supporting circumstances must be pleaded, but the petition need not label them using that particular expression. Further, the exceptional circumstances warranting revision must be disclosed in the petition. Written submissions may explain the pleaded facts, but cannot cure the omission of facts that establish those circumstances. No particular formula is required if the petition's averments disclose them⁷.

The matters advanced by the Appellant as exceptional circumstances are precisely the grounds of appeal set out above. If none of them discloses an illegality or a miscarriage of justice, there are no exceptional circumstances. I shall therefore examine each of them on its merits.

(b) The Alleged Defect in the Gazette and the Plea of Jurisdictional Invalidity

The case presented to this Court on this ground differs from that presented to the High Court. In the High Court, the complaint was that the Executive Engineer's application did not state the date of the Gazette by which the Act was brought into operation, nor whether the construction was affected before or after that date. Before this Court it is contended that "the Gazette Notification" is itself defective for want of a date of publication, that publication is a condition precedent to jurisdiction, and that the entire proceedings are void *ab initio*. A pure question of law going to jurisdiction may be raised for the first time in appeal where all the facts necessary to decide it are on the record. I shall therefore consider it, but on the record as it stands.

⁵ CA (PHC) 167/2013 decided on 30.09.2020

⁶ CA (PHC) APN 69/2009, decided on 23.07.2013

⁷ *Siripala v. Lanerolle and Another*, [2012] 1 Sri L.R. 105, at 110

At page 03 of the Appellant's Written Submissions, it is thus stated:

3. Grounds of Appeal & Legal Arguments

(A) Procedural Impropriety— Defective Gazette Publication

- The Gazette Notification relied upon failed to specify the precise date of publication.
- This omission renders the notice void ab initio, as proper publication is a condition precedent for jurisdiction.
- when statutory preconditions are not satisfied, subsequent actions are ultra vires.
- Thus, the Learned Magistrate acted without lawful authority.

The “publication date” is prominently printed on the top header of every Sri Lankan Extraordinary Gazette. The date printed directly alongside the unique Gazette number serves as the legally binding, official publication date for administrative and judicial purposes.

The written submissions refer to two Gazette notifications. The Appellant does not identify which Gazette notification is alleged to be defective or specify the statutory requirement concerning its date that was breached. Gazette (Extraordinary) No. 1612/18, dated 30 July 2009, appoints 1st August 2009 as the date on which the Act came into operation and both dates appear on the face of the Gazette. Gazette (Extraordinary) No. 561/5, dated 6 June 1989, declared the Kandy–Jaffna Road a National Highway also has the date of publication on its face. Further the validity of the latter has not been challenged before either the learned Magistrate or the learned High Court Judge, and the Appellant's own case proceeds on the basis that the road is the Kandy–Jaffna National Highway.

At page 03 Appellant's written submissions it is stated as follows:

2. Relevant Statutory Framework

1. Section 45(3) of the National Thoroughfares Act No. 40 of 2008 empowers the Executive Engineer to seek an order from Magistrate Court to demolish unauthorized structures within the road reservation.
2. Section 46(1) defines the building limits (generally 50 feet from the center line of the roadway for Class A highways).
3. Section 47(1) obliges that due notice must be given to affected parties and Gazette notifications must be validly published.

4. The Act is a public law instrument, and therefore, its implementation must conform to the principles of natural justice, proportionality, and equality before the law (Article 12(1), 1978 Constitution).

The statutory framework stated in the Appellant's submissions is materially wrong. Section 46(1) does not define building limits, and section 47(1) does not require notice or Gazette publication; those provisions concern compensation and valuation. Building limits are governed by section 42, while notice and the application for a demolition order are addressed in section 45.

At page 06 of the Appellant's written submissions it is further stated that, The Gazette Notification failed to specify publication date - a mandatory requirement under Section 9(1)(a).

The statutory provisions cited in the Appellant's written submissions do not support the propositions advanced. Section 9(1)(a) concerns the Minister's designation of a National Highway as an expressway, by Order published in the Gazette. It does not govern the building limit applicable here. Nor do sections 46(1) and 47(1) define building limits or impose a notice or Gazette-publication requirement; they concern the valuation of structures and the determination of compensation. The applicable building limit is governed by section 42. Where no limit has been specified under section 42(1), section 42(2)(a) prescribes a limit of fifteen meters from the center of the carriageway of a national highway.

The Appellant's reliance on sections 9(1)(a), 46(1) and 47(1) is misplaced. Section 9(1)(a) concerns the designation of a national highway as an expressway; sections 46 and 47 concern compensation and valuation. None defines the applicable building limit or imposes the notice and Gazette-publication requirements attributed to them. Those matters are addressed by sections 42 and 45. By attributing to sections 9(1)(a), 46(1) and 47(1) requirements they do not contain, while failing to identify the Gazette notification allegedly defective. The Appellant has failed to advance a clear contention founded on the applicable provisions of the Act. Instead, reliance on irrelevant provisions and imprecise assertions obscures the issues and appears calculated to secure an advantage through that confusion. Such submissions cannot sustain the challenge, and I reject these contentions.

The Appellant in his petition of appeal appear to contend that the application for the mandatory order failed to plead the date of the Gazette by which the National

Thoroughfares Act No. 40 of 2008 was brought into operation under section 1 of the act, or whether the structure was erected before or after that date, and that the application for a mandatory order ought therefore to have been rejected *in limine*.

This contention appears to have been made in line with the Appellant's position that although the upper floor was completed in 2010, he started construction of the building in 2006 before the act became operational. The learned High Court Judge has considered this and had concluded that the Appellant had not submitted any evidence to establish that the construction started in 2006 and further there is no statutory requirement to mention the date that the Act was brought into operation.

(c) Disproportionality, Misdirection and the Demolition of the Entire Building

The Appellant's principal complaint is that only about 10 feet 6 inches of the building lies within the building limit, and that an order for the demolition of the whole building is disproportionate. This ground was raised before the High Court and was rejected.

Section 42(3) prohibits the erection of, or addition to, a structure within a building limit without a licence from the Executive Engineer. Sections 45(1) and 45(3)(a) provide for the removal or demolition of a structure erected in contravention of that prohibition. That framing of section 42(3) suggests that even if a part of the structure is within the building limit the entire structure may be treated as contravening the section.

However, that does not necessarily mean that the entire structure must be removed. If the offending part can be severed, its removal may leave the remainder outside the building limit and lawful. Accordingly, whether an order under section 45 may extend to the entire structure depends on whether the offending part can be removed separately.

The learned High Court Judge found that the subject two-storey building was a single integrated structure and that the unauthorised construction comprised the building as a whole. The schedule to the application described the entire building. I find no material showing that the Appellant challenged that description before the learned Magistrate or produced a plan establishing that the portion within the building limit could be severed from the remainder.

The Act, provides the Appellant with an opportunity to address the encroachment before the matter proceeds to the Magistrate Court. Upon receiving the notice to demolish, he

could have removed the offending portion or applied for an extension of time under section 45(2) to do so. Even before the Magistrate, the Appellant could have undertaken to demolish or remove the structure, in which event the Magistrate could, under section 45(3)(c), have postponed the operation of the order for up to sixty days. The Appellant had not taken those steps; instead, he has opposed demolition of the building as a whole.

In *M.A. Mary Margrate v. Chairman, Road Development Authority and Others*⁸, this Court considered sections 24 and 26 of the Thoroughfares Ordinance (substantially corresponding to sections 42 and 45 of National Thoroughfares Act, No. 40 of 2008), as amended by Act No. 9 of 1988. The Court rejected the contention that only the portion of the building falling within the building limit could be demolished. It observed that section 26(3)(b) affords the person in breach an opportunity to remove the building, and thereby to remove the offending portion himself; but that where the construction has violated section 24, the Magistrate is empowered under section 26(3)(a) to order demolition of the building. The Court considered that requiring the Road Development Authority to demolish only the offending portion would be likely to damage the remainder of the building and expose the Authority, which is maintained by Government funds, to claims for compensation arising from the owner's own unlawful act

The Appellant's contention that the Magistrate was required to limit the order to the portion encroaching into the building limit cannot be sustained. Whatever the scope of proportionality as a ground for reviewing administrative action, it cannot displace the clear statutory scheme, which provides the person concerned with an opportunity to limit the consequences of the contravention.

I find no error of law in the order directing demolition, nor any basis to hold that it was disproportionate so as to warrant this Court's intervention. This ground therefore fails.

(e) Less Drastic Alternative Not Considered

At paragraph 4(j) of the Petition of Appeal the Appellant contends that the Respondent could have granted him a licence under section 42(3) of the National Thoroughfares Act No. 40 of 2008, upon an annual payment, permitting the building to remain until the road is widened. Further that the road works have been completed and the building causes no

⁸ CA (PHC) 68/99, decided on 24.06.2011

obstruction to vehicular or pedestrian traffic and that, had such a licence been granted, the grave prejudice now suffered would have been avoided.

Section 42(3) of the National Thoroughfares Act No. 40 of 2008 prohibits the erection of, or addition to, any structure within the building limit without a licence from the Executive Engineer. It does not empower the regularisation of a structure already erected without such a licence. Nor does it provide for a licence to be granted upon a bond being executed or upon an undertaking to remove the structure upon future necessity. A licence is absolutely barred within the distances specified in section 42(4)(a). Subject to the limit specified in section 42(4)(a), upon proof of serious hardship to the owner of the land where the structure is situated and with the written consent of the Provincial Director the Respondent is permitted under Section 42(4)(c) to grant licence subject to conditions stipulated in section 42(4)(d) and (e). Where a structure has been erected, or an addition made to it, in contravention of section 42 of the Act, the procedure to be followed is that prescribed in section 45. That procedure is directed solely at the demolition or removal of the offending structure and it confers no power on the Respondent, or on the Magistrate, to grant a licence in place of that statutory remedy, or to permit the structure to remain in any other way.

(f) Mala Fides and Articles 12(1) and 14(1)

The Appellant alleges that the Executive Engineer acted *mala fide* by proceeding against him while other structures allegedly remained within the building limit. Such a serious allegation must be specifically pleaded and proved as official acts are presumed to have been regularly performed (section 114, illustration (d), Evidence Ordinance). No particulars or evidence of *mala fides* were presented before the Magistrate. The structures said to be similarly situated had not been identified by location, or the distance from the carriageway. The photographs relied upon by the Appellant were produced only in the High Court. The High Court, when reviewing an order of the Magistrate, must examine the proceedings and material that were before the Magistrate.

In ***Neil Fernando v. Ranjith Cooray and Others***⁹, the Supreme Court held that the High Court, acting in revision, erred in taking into account extraneous matters not supported by the evidence on record. Such consideration was an unwarranted interference with the Magistrate's order. More directly, in ***H.A.L. Perera v. Chairman, Mahara Pradeshiya***

⁹ [1999] 1 Sri L.R. 281

*Sabhawa and Another*¹⁰, this Court declined to consider documents that had not been placed before the Magistrate's Court and were first tendered to the High Court in revision. In *Jamaldeen Abdul Wahideen v. H.J.M.J. Herath, Forest Officer, Anuradhapura and Others*¹¹, this Court upheld the High Court's refusal to consider documents first produced in revision. It accepted that section 6(b) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 permits the reception of fresh evidence in the exercise of appellate, jurisdiction but not revisionary, jurisdiction, and held that the refusal to consider those documents was sound in law. Accordingly, the photographs, having been produced for the first time in the High Court, could not be relied upon in revision as evidence of the disputed facts.

The failure to enforce the law against others, without more, does not relieve the Appellant of the consequences of his own unlawful act. The stated basis for proceeding against him was that his building lay within the statutory limit without a license and that he had failed to comply with the notice under section 45(1). The allegation of discrimination therefore fails.

In his written submissions, the Appellant further claims infringements of Articles 12(1) and 14(1)(h) of the Constitution. Articles 12(1) and 14(1)(h) afford no basis for relief in this appeal. A claim under Article 12(1) lies within the exclusive jurisdiction of the Supreme Court under Article 126(1). Article 14(1)(h) concerns freedom of movement and residence. Even the freedom to engage in a lawful business under Article 14(1)(g) does not extend to a structure erected contrary to law.

(g) Irreparable Loss and the Conclusion on Exceptional Circumstances

I am conscious that the order will cause the Appellant serious loss. The building is said to be his home and his place of business, financed by years of foreign earnings and by a bank loan. But the loss is a consequence of building within the statutory building limit without a license, and of failing to comply with a notice which gave him the opportunity to remove the offending structure himself. Such a loss, however serious, does not by itself constitute an exceptional circumstance warranting interference with an order that is in accordance with the law.

¹⁰ CA (PHC) 174/2013, decided on 07.11.2018

¹¹ CA (PHC) 98/2018, decided on 06.08.2019

Conclusion

Having examined the grounds relied upon by the Appellant, I find that none establishes any illegality in the order of the learned Magistrate or any miscarriage of justice warranting revisionary intervention. The Appellant has failed to establish exceptional circumstances justifying the exercise of revisionary jurisdiction. Accordingly, the learned High Court Judge committed no error in dismissing the application in revision.

The appeal is accordingly dismissed subject to costs fixed at Rs. 75,000/- to be paid by the Appellant to the State. The order of the learned Judge of the Provincial High Court of Anuradhapura dated 26.07.2022 in Revision Application No. 14/2019, and the order of the learned Additional Magistrate of Anuradhapura dated 24.05.2019 in Case No. 11015, are affirmed.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal