

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

Court of Appeal Case No.
CA/PHC/61/2022

High Court of the Western Province
holden at Panadura Case No:
HCWA 03/2020

In the matter of an application for writ of certiorari in terms of Article 154 (P)(4) of the Constitution read together with provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Manthree Witharanage Nandasiri Silva,
No. 183/1, Edmon Mawatha,
Eluwila, Panadura.

Petitioner

Vs.

1. Panadura Pradeshiya Sabha,
Sub Office, Thanthirimulla.
2. Chairman,
Pananura Pradeshiya Sabha,
Sub Office, Thanthirimulla.

Respondents

AND NOW BETWEEN

In the matter of an appeal in terms of Article 154 (P)(6) read with Article 138 of the Constitution.

Manthree Witharanage Nandasiri Silva,
No. 183/1, Edmon Mawatha,
Eluwila, Panadura.

Petitioner-Appellant

Vs.

1. Panadura Pradeshiya Sabha,

Sub Office, Thanthirimulla.

2. Chairman,
Panadura Pradeshiya Sabha,
Sub Office, Thanthirimulla.

Respondents-Respondents

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

Counsels: Udith Malalasekara instructed by Amila Nawalage for the
 Petitioner- Appellant.

 Nilanga Perera instructed by Hashani Gunathilaka for the
 Respondents-Respondents.

Argued: 05.03.2026

Written submissions 16.04.2026 by Petitioner- Appellant.
tendered on: 17.06.2026 by Respondents-Respondents.

Judgement Delivered: 03.07.2026

Thotawatte, J.

Introduction

The present appeal has been preferred by the Petitioner-Appellant (hereinafter sometimes referred to as the "Appellant") against the judgment dated 09.12.2021 of the learned High Court Judge of the High Court of the Western Province holden at Panadura in Case No. HCWA 03/2020, whereby the learned High Court Judge dismissed the Appellant's

application for a writ of *certiorari* seeking to quash the decision of the Respondents, cancelling the building approval bearing reference No. BA/184/T/2019.

The impugned administrative decision is contained in the letter (marked 06) dated 17.01.2020, whereby the Respondents cancelled the building approval granted to the Appellant on 13.01.2020 (marked 05).

The Appellant contends that the cancellation was effected without affording him an opportunity of being heard and therefore violated the principles of natural justice. It is further contended that the decision was arbitrary, procedurally and substantively *ultra vires*, irrational, and contrary to the doctrine of legitimate expectation. The Respondents, on the other hand, maintain that the approval was granted subject to conditions imposed pursuant to the recommendations of the National Building Research Organization (hereinafter sometimes referred to as the "NBRO") and that the cancellation was justified having regard to those conditions and the surrounding circumstances.

Factual Matrix

The Appellant, with a view to constructing a building to be used as a pre-school on a land situated at Eluwila, Panadura, applied to the 1st Respondent-Respondent, Panadura Pradeshiya Sabha (hereinafter sometimes referred to as the "1st Respondent") for development approval in respect of the proposed building.

The Appellant's written submissions state that development approval was initially granted by the 1st Respondent on 27.12.2019 (marked 04), subject to the conditions contained in the National Building Research Organization letter dated 09.12.2019 (marked 01). According to the said letter, the proposed development was subject to conditions relating to the construction of a retaining wall.

It appears that the NBRO has re-evaluated the construction of the retaining wall after a site visit on 30.12.2019, at the request of the Appellant (as accepted by the counsel for the Appellant during oral submissions) and had dispatched letter dated 31.12.2019 (marked 13) to the chairman of the planning committee of the 1st Respondent, informing that the construction of the pre-school building can commence under certain given conditions including that of the retaining wall being completed within a year.

The grant of approval by the 1st Respondent for the Appellant's proposed construction is only evidenced by the fact that there is a notation made on the proposed building plan bearing reference No. BA/184/T/2019 (marked 05) stating that the building should be constructed according to the recommendations of the NBRO in its letter dated 31.12.2019.

It appears that, by document marked 05, the earlier requirement that the retaining wall be constructed before the commencement of the pre-school building was modified, permitting the retaining wall to be completed within one year from the commencement of the construction of the pre-school building.

However, thereafter, by letter dated 17.01.2020 (marked 06), the Respondents had cancelled the said approval stating that the building plan bearing reference No. BA/184/T/2019 approved by the 1st Respondent on 13.01.2020 has been canceled due to public protest.

The Appellant further alleges that on the same date another communication, identified as document "2(i)", was purportedly issued by the 1st Respondent. It is the Appellant's position that this document was never served upon him at the material time and first came to his knowledge only after it was annexed to the Respondents' statement of objections before the High Court. According to the Appellant, while 06 refers to a "public objection", document 2(i) refers instead to a single complaint and imposes additional conditions regarding the construction of the retaining wall and the obtaining of a certificate of conformity before commencing construction. It is contended that the two documents are mutually inconsistent.

The Appellant contends that, even assuming such complaint as described by the Respondents existed, elementary fairness required that the Appellant be afforded an opportunity to answer it before any adverse decision was taken. The Appellant accordingly maintains that the cancellation was reached in violation of the principles of *audi alteram partem*.

Proceedings before the High Court

Aggrieved by the cancellation of the building approval, the Appellant invoked the writ jurisdiction of the Provincial High Court of the Western Province holden at Panadura by petition dated 01.12.2020 seeking a writ of *certiorari* to quash the decision contained in the letter dated 17.01.2020. The principal grievance of the application had been that the

Respondents had cancelled the building permit without affording the Appellant an opportunity of being heard.

Thereafter, by judgment dated 09.12.2021, the learned High Court Judge dismissed the application and refused to issue the writ of *certiorari*. The present appeal has been preferred challenging the correctness of that judgment.

Grounds of Appeal

The Petition of Appeal and the written submissions disclose that the Appellant seeks to challenge the judgment of the learned High Court Judge principally upon the following grounds:

1. That the learned High Court Judge failed to appreciate that the Respondents cancelled the building approval without holding any inquiry or affording the Appellant an opportunity of being heard.
2. That the learned High Court Judge erred in placing reliance upon documents, particularly document @ 2(i), which the Appellant maintains had never been communicated to him prior to the institution of proceedings.
3. That the learned High Court Judge failed to appreciate that the NBRO recommendations afforded the Appellant a period of one year within which to construct the retaining wall and did not require the retaining wall to be completed before commencement of the building.
4. That the learned High Court Judge failed to appreciate that the impugned decision was arbitrary, procedurally and substantively *ultra vires*, irrational and contrary to the principles of natural justice and legitimate expectation.
5. The learned Counsel has further submitted that once the building approval had been granted upon consideration of the NBRO recommendations, the Appellant acquired a legitimate expectation that the approval would remain operative unless lawfully revoked.

Scope of Appellate Review

The present appeal arises from the judgment of the Provincial High Court delivered in the exercise of its writ jurisdiction under Article 154 P (4) of the Constitution. The issue before this Court is therefore not whether the impugned administrative decision was correct on its merits, but whether the learned High Court Judge erred in refusing to exercise the writ jurisdiction vested in that Court by declining to issue a writ of *certiorari*.

It is well settled that judicial review is concerned with the legality of the decision-making process and not with the correctness of the administrative decision itself. Accordingly, where an application is founded upon allegations of illegality, irrationality, procedural impropriety or violation of the principles of natural justice, the Court must examine whether the impugned decision is vitiated by any recognized public law ground warranting the intervention of the writ jurisdiction.

The Appellant principally relies upon procedural impropriety, alleging that the cancellation of the building approval was effected without affording him an opportunity of being heard. The Appellant has further invoked the doctrine of *ultra vires*, irrationality and legitimate expectation.

Whether the Principles of Natural Justice Were Violated

The principal complaint advanced by the Appellant is that the Respondents revoked the building approval only a few days after granting it, without notifying him of the allegations or complaints said to have prompted that decision or affording him an opportunity to be heard beforehand.

It is well settled that where a public authority proposes to make an administrative decision adversely affecting an existing benefit or approval already granted, the person affected must ordinarily be given notice of the case against him and a reasonable opportunity of making representations before the decision is taken, unless such requirement is excluded expressly or by necessary implication by the governing statutory framework.

The Respondents, however, dispute the factual premise upon which the Appellant's complaint is founded. They maintain that the impugned decision did not result merely from an isolated objection raised by an adjoining landowner, but was taken against the backdrop of a wider factual situation comprising the recommendations of the National Building

Research Organization (NBRO), concerns regarding the stability of the adjoining land, inspections conducted by officers of the Pradeshiya Sabha, and complaints made to the Police.

Those competing factual narratives are not, in themselves, determinative of the present application. The function of this Court in the exercise of judicial review is not to determine whether the Respondents reached the correct factual conclusion, but to examine whether the decision-making process was lawful and whether the requirements of procedural fairness were observed before the impugned decision was made.

In that regard, it is equally well established that the duty to act fairly is not absolute or uniform in every case. Although an administrative decision affecting a person's rights, interests or legitimate expectations may attract the requirements of natural justice, the content of that duty is variable and depends upon the nature of the decision, the statutory framework within which it is made, and the circumstances of the particular case. Consequently, procedural fairness does not invariably require that an affected person be afforded an oral hearing. What is required is such degree of fairness as the circumstances of the particular decision demand.

Viewed in that context, the impugned decision cannot be regarded as one which finally deprived the Appellant of the right to construct upon the land. The material before Court indicates that the Respondents did not reject the proposed development outright. Rather, letter 2(i) demonstrates that the Appellant was required to complete the retaining wall in accordance with the prescribed specifications before proceeding with the remainder of the construction. It follows that the decision was essentially regulatory in nature and directed towards ensuring compliance with the conditions considered necessary for the safe continuation of the development.

Having regard to the nature of the decision, the surrounding circumstances in which it was made, and the fact that the Appellant remained at liberty to resubmit the building plan and proceed with the proposed construction upon satisfying those requirements, I find no material capable of establishing that the learned High Court Judge erred in concluding that the impugned decision was not vitiated by a breach of the principles of natural justice. Accordingly, I am unable to hold that the Appellant has established any procedural impropriety warranting the intervention of this Court.

The Alleged Contradiction between 06 and Document 2(i)

The Appellant contends that document 2(i) was never communicated to him and came to light only when it was annexed to the Respondents' objections before the learned High Court Judge. It is further submitted that whereas letter 06 attributes the cancellation of the building approval to a "public objection", document 2(i) refers instead to an individual complaint and imposes conditions which are materially different from those contained in the original approval. On that basis, the Appellant invites this Court to infer that document 2(i) was subsequently introduced in an attempt to retrospectively justify the impugned decision.

The Respondents reject that characterization. Their position is that the Appellant has failed to place before Court the complete factual background leading to the impugned decision. According to the Respondents, the involvement of the National Building Research Organization (NBRO) became necessary because there had long existed a dispute between the Appellant and the adjoining landowner concerning the stability of the common boundary. It is stated that the adjoining property lay at a substantially higher elevation, giving rise to concerns that excavation by the Appellant would jeopardise the stability of the neighbouring land. The Respondents accordingly maintain that the NBRO recommendations, the Planning Committee's approval and the subsequent correspondence formed part of one continuous administrative process directed towards ensuring the stability and safety of the adjoining properties.

Against that background, it becomes necessary to examine whether the documentary material relied upon by the Appellant is, in fact, capable of supporting the inference sought to be drawn. Even apart from the Respondents' explanation of the surrounding circumstances, the documentary record itself demonstrates that the requirement to construct a retaining wall did not originate with document 2(i). The original approval dated 27.12.2019 (marked 04) was granted subject to the conditions stipulated in the NBRO letter dated 09.12.2019 (marked 01), which expressly emphasized the necessity of constructing such a retaining wall.

Viewed in that light, I am unable, at least on the material presently before Court, to accept the Appellant's contention that document 2(i) is materially inconsistent with letter 06. Rather, document 2(i) appears to constitute a further clarification of the position already communicated by letter 06, whilst reaffirming the requirement that the retaining wall be constructed in accordance with the NBRO recommendations. Indeed, it

appears to restore the position contemplated by the original approval granted under document ୦୫ 04.

That leaves the Appellant's contention that document ୨ 2(i) was never served upon him and was subsequently created or relied upon to justify the impugned decision. Whether document ୨ 2(i) was in fact communicated to the Appellant, whether it differed materially from letter ୦୫ 06, and whether any adverse inference ought to be drawn from those circumstances are all matters giving rise to disputed questions of fact.

Judicial review is not ordinarily the appropriate forum for resolving such factual controversies upon affidavit evidence alone. In the absence of a complete factual record capable of resolving those disputes, I am unable to conclude that the learned High Court Judge erred in declining to draw the inferences urged by the Appellant.

Whether the Respondents Acted Ultra Vires

The Appellant contends that the Respondents acted both substantively and procedurally *ultra vires* in revoking the building approval. It is submitted that, having granted approval subject to the conditions contained in the recommendations of the National Building Research Organization (NBRO), the Respondents lacked authority to cancel that approval before the expiry of the period allegedly afforded to the Appellant for compliance.

There can be no dispute as to the governing legal principle. A statutory authority must act within the limits of the powers conferred upon it by law and must exercise those powers in the manner prescribed by the relevant statutory framework. Any administrative decision taken in excess of those powers, or in disregard of mandatory statutory requirements, is liable to be set aside as *ultra vires*.

The question, however, is not whether the Appellant has advanced an arguable interpretation of the relevant documents, but whether the material before Court establishes that the Respondents exceeded the powers vested in them. That issue cannot be determined by examining the letter of cancellation in isolation. It must be considered in the context of the approval originally granted, the conditions attached thereto, the recommendations of the NBRO, and the subsequent administrative steps relied upon by the Respondents.

The Respondents have consistently maintained that the original approval was expressly made subject to the recommendations of the NBRO and that those recommendations recognized the necessity of constructing a retaining wall, having regard to the physical condition of the adjoining land. Their position is that the subsequent communications issued by the Planning Committee merely gave effect to those recommendations and formed part of a continuing administrative process directed towards ensuring the safety and stability of the adjoining properties.

The Appellant advances a different construction of the same material. It is contended that the NBRO recommendations afforded him one year within which to comply with the requirement of constructing the retaining wall and that, until the expiration of that period, the Respondents lacked authority to revoke the building approval. Thus, according to the Appellant, the impugned decision was made in excess of the Respondents' statutory powers.

It is apparent that the dispute turns not upon the existence of the NBRO recommendations but upon the meaning and legal effect to be attributed to them. The Appellant relies upon what is said to be a one-year period for compliance, whereas the Respondents rely upon the mandatory character of the retaining wall requirement, read together with the subsequent directions issued by the Planning Committee. The rival contentions therefore concern the proper construction of the relevant administrative documents and the factual circumstances in which they came to be issued.

In these circumstances, I am unable to conclude that the documentary material admits of only the interpretation advanced by the Appellant or that it establishes, without more, that the Respondents acted outside the limits of their statutory authority. At its highest, the material demonstrates the existence of competing interpretations as to the effect of the NBRO recommendations and the consequent scope of the Respondents' powers.

Judicial review is not concerned with choosing between competing factual or documentary interpretations where the material does not plainly establish illegality. In the absence of clear material demonstrating that the Respondents acted beyond the powers conferred upon them, I am unable to hold that the learned High Court Judge erred in declining to characterize the impugned decision as *ultra vires*. Accordingly, I find no basis for disturbing that conclusion.

Legitimate Expectation

The Appellant has also relied upon the doctrine of legitimate expectation. It was submitted that, upon the grant of the building approval, the Appellant acquired a legitimate expectation that he would be permitted to proceed with the construction in accordance with the terms of that approval. It may readily be accepted that, in an appropriate case, the grant of a building approval is capable of giving rise to such an expectation. However, any legitimate expectation must arise from a clear representation or an established practice and necessarily remains subject to the statutory powers of the public authority and to the conditions upon which the approval itself was granted. A legitimate expectation cannot compel a public authority to act contrary to its statutory duties or the conditions governing the approval.

In the present case, the Respondents' position is that the approval remained conditional throughout and that the impugned decision was taken pursuant to those conditions and the surrounding factual circumstances. Whether that explanation is factually correct is not, in itself, the concern of judicial review. The writ court is concerned with the legality of the decision-making process, not with the merits or wisdom of the administrative decision. As the Appellant has failed to demonstrate that the impugned decision violated any enforceable legitimate expectation recognized in law, this ground of challenge must fail.

Whether the Learned High Court Judge Erred

The burden rested upon the Appellant to demonstrate that the learned High Court Judge erred in the exercise of the writ jurisdiction vested in that Court.

Although the appeal raises arguable issues concerning procedural fairness, the material before Court also reveals competing factual narratives regarding the necessity for the retaining wall, the complaints made by the adjoining landowner, the NBRO recommendations, and the circumstances surrounding the cancellation of the building approval. Those factual disputes were before the learned High Court Judge.

On the material presently available, I find nothing to suggest that the learned High Court Judge misdirected himself in law, overlooked any mandatory statutory requirement, or exercised his discretion upon an erroneous legal basis. Accordingly, I find no basis warranting appellate interference.

Conclusion

For the aforesaid reasons, I hold that the Appellant has failed to establish that the learned High Court Judge erred in refusing to issue the writ of *certiorari*.

Accordingly, the appeal is dismissed

In the circumstances of this case, I make no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal