

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

In the matter of an application for mandates in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution.

CA (Writ) Application No. 540/2021

1. Kumarapeli Arachchige Chithra Anandaseeli
No. 71, Makola (South),
Makola,
Kiribathgoda.
2. Supreme Funeral Directors PVT Ltd
No. 71, Makola South,
Makola.
3. R.M.U.N Karunaratne
No. 70A, Makola South,
Makola.

PETITIONERS

Vs.

1. Colombo Municipal Council
Colombo – 07.
2. Hon. Vraie Cally Balthazar
Mayor of Colombo, Colombo Municipal
Council, Colombo-07.
3. Mr. Palitha Nanayakkara
Municipal Commissioner,
Colombo Municipal Council,
Colombo – 07.
4. Mr. Sarath L. Withanage
Authorized Officer,
City Planning Division,

Municipal Engineer's Department,
Colombo Municipal Council,
Colombo – 07.

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

RESPONDENTS

Before: Mayadunne Corea J.
Mahen Gopallawa J.

Counsel: Janaprith Fernando with D.D.P. Dassanayake and Dilrukshi Perera instructed by Ms. H. P. Samantha Kumary for the Petitioners.

Manohara de Silva, PC with Hirosha Munasinghe for the 1st to 4th Respondents.

Ms. Sachitha Fernando, State Counsel for the 5th Respondent.

Supported on: 06.05.2025

Decided on: 19.06.2025

Mahen Gopallawa J.

Introduction

In the instant application, the Petitioners have impugned the notice dated 26.07.2021 (P29) issued by the 4th Respondent in terms of section 28A read with section 23(5) of the Urban Development Authority Law No. 41 of 1978 (as amended) ("the UDA Law") directing the 3rd Petitioner to demolish the two storied building referred to therein, wherein the Petitioners are carrying on a funeral parlour under the name "Supreme Funeral Directors." It has been stated in the said notice (P29) that the said building is an unauthorized construction which has not been constructed in accordance with regulations issued by the Urban Development Authority ("the UDA").

The substantive reliefs sought by the Petitioners in the petition may be summarized as follows;

- (a) A writ of *Certiorari* quashing the said notice (P29) and the decisions contained therein to demolish the building standing on No. 2/2, Elvitigala Mawatha, Colombo 08; (paragraph “b” of the prayer);
- (b) A writ of *Prohibition* restraining the 1st to 4th Respondents from acting in furtherance of the notice (P29) and from initiating any enforcement action, including instituting any proceedings in the Magistrate’s Court and/or any other Court or forum against the Petitioners in order to demolish the aforementioned building (paragraph “c” of the prayer);
- (c) A writ of *Prohibition* restraining the 1st to 4th Respondents from taking any adverse steps or measures against any one or more of these Petitioners affecting their proprietary interests, in pursuance of the impugned notice (P29) (paragraph “d” of the prayer).

The 1st to 4th Respondents filed limited objections objecting to the issuance of formal notice. When the application was taken up for support, the learned State Counsel for the 5th Respondent also objected to the issuance of notice.

Factual Background

The Petitioner claim that the 1st Petitioner obtained lawful title and ownership to the land on which the building has been constructed by virtue of Deed of Transfer No. 2483 executed on 06.06.1994 (P2) and that the said land is in extent A0-R0-P3.19 and forms a part of Lot No. 2 in the Preliminary Plan No. A 1790 dated 14.11.1944 (P2). However, it is observed that the Petitioner’s Deed of Transfer (P2) refers to a different survey plan bearing No. 610 dated 29.02.1966, which has not been tendered to this Court.

In their limited statement of objections, the 1st to 4th Respondents (hereinafter referred to as “the Colombo Municipal Council” or “the CMC”) has contested the position taken up by the Petitioners and have stated that the Petitioner’s unauthorized building has been constructed on a State land. In proof of such position, they have tendered in the Tenement List (1R4) to the Preliminary Plan No. A 1790 (P2/1R3), wherein “Crown” (State) is indicated as the claimant in respect of Lot 2 thereof. They have further tendered Tracing No. CO/DSO/2014/814 (1R5) in which the land on which the building is situate is depicted as Lot 61. In the extract of the Tenement List (1R5(7)) the following information is recorded in respect of Lot 61; that, it is home garden with a permanent

building; that, it is claimed by the State; that, it is 0.0663 hectares in extent;¹ that, the said land constitutes a part of Lot 2 in P. Plan A 1790; and. that, the official quarters of the cemetery keeper of the Kanatte General Cemetery and Supreme Funeral Parlour, Borella is situated on the said land.

Reference has been made in the petition, *inter alia*, to certain correspondence (P20) wherein the CMC has identified one G.A. Chanaka K. Perera, cemetery keeper, as the occupant of the said Supreme Funeral Parlour and had demanded the settlement of arrears of rent in respect of the said premises. In the petition, it has been stated that the said person was the son of the 1st Petitioner.²

Thus, it is evident from the aforementioned positions taken up by the parties that there is a dispute relating to the title and ownership to the land in which the building in respect of which the demolition notice has been issued is situate. However, considering the scope of this application and the reliefs sought, it is not necessary for this Court to examine or determine such issue of title and ownership.

The Petitioners state, in the year 2008, a building plan was submitted for the approval of the Director, Municipal Engineer's Department of the CMC and a copy of the said building plan has been annexed to the petition as P6.³ They have pleaded that, as per the seals affixed on the building plan (P6), the CMC had accepted the building plan and granted clearance for the water supply and sewage connections, and, that they had a legitimate expectation that the building plan would be duly approved by the CMC.⁴

The CMC has taken up the position that there is no approved building plan in respect of the building that has been constructed and have adverted to the fact that the Petitioners themselves have admitted such fact in the letter addressed by the 3rd Petitioner to the 2nd Respondent (Mayor, CMC) dated 11.08.2021 (P31). It is observed that the said letter (P31) had been written upon receipt of the demolition notice (P29) and the Petitioners have sought a suspension of the decision therein for a period of 06 months. In the interests of clarity, an extract of the text of the said letter relevant to the issue is reproduced below;

¹ Approximately 26.21 perches

² vide paragraph 37 of the petition

³ vide paragraph 15 of the petition

⁴ vide paragraph 16 of the petition

නාගරික ඉංජිනේරු දෙපාර්තමේන්තුව (සැලසුම්) අංශය මගින් 2021/07/26 දින කාර්යාලීය ලිපි අංක ME/PBR/M/69/2011 යටතේ වන ලිපිය මගින් මා වෙත සිදු කරන ලද දැනුම්දීම සම්බන්ධවයි.

නාගරික ඉංජිනේරු දෙපාර්තමේන්තුව (සැලසුම්) අංශය මගින් 2021/07/26 දින කාර්යාලීය ලිපි අංක ME/PBR/M/69/2011_ යටතේ මා හට දැනුම් දෙන ලද්දේ නාගරික සංවර්ධන අධිකාරී පනතේ 8 (ඒ) 1 වගන්තිය ප්‍රකාරව නීත්‍යානුකූල බලපත්‍රයක් ලබා ගැනීමකින් තොරව කොළඹ 08, ඇල්විටිගල මාවත, අංක 2/2 දරණ ස්ථානයේ පිහිටා ඇති අපගේ 'සුප්‍රීම් අවමංගල්‍ය අධ්‍යක්ෂවරු' ව්‍යාපාරය පවත්වාගෙන යන දෙමහල් ගොඩනැගිල්ල ඉදිකර ඇති බවත්, එය අනවසර ඉදිකිරීමක් වන බවත්, නාගරික සංවර්ධන අධිකාරියේ රෙගුලාසි වලට අනනුකූල ලෙස ඉදිකර ඇති බවත්, එබැවින් එම දෙමහල් ගොඩනැගිල්ල 2021/08/13 වන දින හෝ ඊට පෙර කඩා ඉවත් කර පෙර පැවති තත්වයට පත්කිරීමට ක්‍රියා කරන ලෙසත්, එසේ නොමැතිනම් උක්ත පනතේ 28(අ)3 වගන්තිය ප්‍රකාරව එය කඩා දැමීමට පියවර ගන්නා බවත්ය.

ඔබතුමිය වෙත ඉතා ගෞරවයෙන් යුතුව කරුණු දක්වා සිටින්නේ මෙම ස්ථානයේ තිබූ පැරණි ගොඩනැගිල්ල මිනිපෙට්ටි නිෂ්පාදනය කරනු ලබන වඩුමඩුවක් ලෙස ඉදිකරන කරන ලද ස්ථානයක් වන බවත්, අනතුරුව එම ගොඩනැගිල්ල ඉවත් කර නව ගොඩනැගිල්ලක් ඉදිකිරීම සඳහා අවශ්‍ය සැලැස්ම 2007/09/30 දින කොළඹ මහ නගරසභාව වෙත ඉදිරිපත් කර එය අනුමත කරගැනීමට අවශ්‍ය අනෙකුත් ජල නිශ්කාෂණ සහතික පවා ලබාගෙන ඇති බවත්ය. අනතුරුව මෙම ගොඩනැගිල්ලේ සැලැස්ම අනුමතකර ගැනීම සඳහා අවශ්‍ය අයිතිය තහවුරු කරගැනීමේ සහතිකය හා වරිපනම් අංකය ලබාගැනීම සඳහා තක්සේරු දෙපාර්තමේන්තුවට ඉල්ලීමක් ද සිදුකර ඇත. කෙසේවෙතත් අප එම සැලසුම අනුමත කර ගැනීම සඳහා විශාල වෙහෙසක් දැරුවද අද වනතුරු එය සිදුකර ගැනීමට නොහැකි විය. මෙම ස්ථානයේ සමාජීය වශයෙන් අත්‍යාවශ්‍ය සේවාවක් වන අවමංගල්‍ය සේවාවන් ඉටු කරමින් සිටින අප ආයතනය වැඩි පහසුකම් මත උසස් තත්වයකින් එම සේවා පවත්වාගෙන යාමේ අවශ්‍යතාවය හේතුකොටගෙන මෙම දෙමහල් ගොඩනැගිල්ල පසුව ඉදි කරන ලදී. විශේෂයෙන්ම මෙම ගොඩනැගිල්ල ඉදිකරන අවස්ථාවේ කොළඹ මහ නගර සභාව ඇතුළුව වෙනත් කිසිදු පාර්ශවයක් ඒ සඳහා විරුද්ධත්වයක් නොදක්වන ලදී. ඒ අනුව මේ වන විට වසර 10 කට ආසන්න කාලයක සිට අංක, 2/2, ඇල්විටිගල මාවත, කොළඹ 08.ස්ථානයේ මෙම ගොඩනැගිල්ල හා අප ව්‍යාපාරය පවත්වාගෙන යනු ලබයි. (emphasis added)

In their limited objections, the CMC has further disclosed that the 4th Respondent had instituted proceedings in terms of the section 28A (3) of the UDA Law in the Colombo Magistrate's Court under Case No. 56975/5/21 (1R6) against the 3rd Petitioner on 01.10.2021. It has been intimated to this Court on 06.06.2024 that the said proceedings had been withdrawn and fresh proceedings had been instituted against the Petitioners.⁵

It is in such a factual backdrop that the instant application has been filed by the Petitioners.

⁵ vide CA Minutes 06.06.2024

Grounds of Review and Analysis

Two main grounds of review have been presented by the Petitioners in their petition and were urged by learned Counsel for the Petitioner when the application was taken up for support, namely

- (a) that, the 4th Respondent had no power or authority to issue the notice (P29) in terms of section 23(5) read with section 28A of the UDA Law; and
- (b) that, the Petitioners have not been afforded hearing in respect of the notice (P29).

I intend to examine the aforementioned grounds of review with recourse to the positions taken up by the parties and applicable legal provisions.

(a) Authority to Issue the Demolition Notice (P29)

The Petitioners contend that section 23(5) of the UDA Law only permits the UDA to delegate its powers in respect of “planning” to a local authority, and, that, the powers set out in section 28A of the Law do not relate to the exercise of planning powers and cannot therefore be delegated.⁶ In such circumstances, they contend that the 4th Respondent, who is an officer of the CMC, had no power or authority to issue the demolition notice (P29) in terms of section 23(5) read with section 28A of the UDA Law. Both the learned President’s Counsel for the 1st to 4th Respondents and the learned State Counsel for the 5th Respondent contested such position taken up by the Petitioners and submitted that the 4th Respondent had the power and authority to issue the notice (P29).

In order to consider the aforementioned arguments presented by the parties in their proper context, it would be necessary to examine, albeit very briefly, the statutory framework set out in the UDA Law for the regulation of development activities in urban development areas. In the first instance, it is observed that the Colombo Municipal Council area has been declared as an urban development area in terms of section 3 of the UDA Law and a copy of the Extraordinary Gazette Notification No. 4/1 dated 30.09.1978 (1R1) has been submitted in proof of such declaration by the CMC in their limited objections.

Engaging in “development activities” in urban development areas is regulated by section 8J(1) of the UDA Law in the following manner;

⁶ vide paragraphs 63 to 70 of the petition

8J(1) Notwithstanding the provisions of any other law, no Government agency or any other person shall carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Authority.

The expression “development activity” itself is defined in section 29 of the said Law as follows;

"development activity" means the parcelling or sub-division of any land, the erection or re-erection of structures and the construction of works thereon, the carrying out of building, engineering and other operations on, over or under such land and any change in the use for which the land or any structure thereof is used, other than the use of any land for purposes of agriculture, horticulture and the use of any land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of a dwelling house, not involving any building operation that would require the submission of a new building plan;

In the instant case, it is observed that the Petitioners’ building application (P6) refers to “proposed addition and alternation to existing house” and the photographs tendered by the Petitioners with the petition (P19) and the counter-affidavit (CA-1) depict a constructed multi-storey permanent building. Thus, based on the material available to this Court, it is evident that the construction envisaged by the Petitioners constitutes a “development activity” for purposes of the UDA Law, and, as such, requires a permit issued under section 8J(1) thereof.

The UDA Law has also provided for the delegation of the powers vested in the UDA to local authorities in terms of section 23(5) of the UDA Law, which provides as follows;

23(5) The Authority may delegate to any officer of a local authority, in consultation with that local authority, any of its powers, duties and functions relating to planning within any area declared to be a development area under section 3, and such officer shall exercise, perform or discharge any such power, duty or function so delegated, under the direction, supervision and control of the Authority.

The scope of the powers that maybe delegated under section 23(5) has been extensively discussed in our superior courts. The early decisions indicate two lines of reasoning; one line of reasoning reflected in **Jayasinghe v. Seethawakapura Urban Council and others**⁷ is that only powers, duties and functions relating to planning could be delegated and that matters relating to development activities were not capable of being delegated under the said section; the other line of reasoning, as set out in **E. R. M. Piyasena, Chairman Urban Council Bandarawela v. H. M.**

⁷ [2003] 3 Sri LR 40

Wijesooriya,⁸ and **S Sivapragasam and two others v. Robert Jayaseelan Perimpanayagam of Municipal Council Batticaloa and another**,⁹ is that the delegation of powers relating to planning referred to in section 23(5) of the UDA Law would include taking steps to enforce planning procedures.

In this regard the learned State Counsel referred to the decision of the Supreme Court in **Palligoda Withanage Keerthi Wimal Withana, District Inspector, Colombo Municipal Council v. Muniyandy Paneer Selvam**,¹⁰ which was an appeal from the judgment of the Court of Appeal¹¹ that followed the reasoning in the aforementioned **Jayasinghe's case (supra)**. Setting aside the judgment of the Court of Appeal and restoring the mandatory order of the Magistrate authorizing the Colombo Municipal Council to demolish the unauthorized construction, the Supreme Court, *inter alia*, observed as follows (per Sripavan J (as he then was));

*The question therefore to be considered is whether the powers given to the UDA as contained in Section 28A of the UDA Act may be considered as falling within the scope of "Planning" and consequently, whether such powers could validly be delegated in terms of Section 23(5) of the UDA Act.*¹²

.....

*It is therefore abundantly clear that the intention of the legislature by bringing in Section 28A is to ensure the due implementation of the development plan and the permit issued thereunder. Where any person fails to comply with the notice received under Section 28A(1), the UDA may apply to the Magistrate in terms of Subsection 3(a) to obtain a mandatory order authorizing the UDA to give effect to such notice. The mandatory order permits the UDA to demolish a building or alter such building in accordance with the permit.*¹³

.....

The "Planning Procedure" referred to in Part IIA in Section 8B identifies matters pertaining to the (i) preparation; (ii) implementation and (iii) enforcement of a development plan. Hence, implementation of a development plan falls within the broad caption of "Planning

⁸ CA Application No. 119/1990, decided on 04.11.1994

⁹ CA (PHC) Appeal 02/1997, decided on 16.05.2002

¹⁰ SC Appeal No. 123/2009, SC Minutes 18.01.2012

¹¹ **Muniyandy Paneer Selvam v. Kuragamage Harishchandra Perera of the Municipal Engineers' Department (Planning) of Colombo Municipal Council and Hon. Attorney General**, CA (PHC) Application No. 170/2007, decided on 29.05.2009

¹² *Ibid*, p 6

¹³ *Ibid*, p 9

Procedure". While Sections 8A to Section 8H deal with the manner in which a development plan has to be prepared, Section 8J makes it clear that the purpose of issuing a permit is to ensure that all development activities in development areas should conform to the development plan.¹⁴

.....

For the reasons set out above, I hold that the provisions contained in Section 28A(3) fall within the scope of the term "planning" and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of a local authority.¹⁵

The aforementioned authorities were all considered by the Supreme Court in **S. A. Rajalingam v. Dissanayake Mudiyanse Udaya Ranjith, Municipal Engineers Department (Planning), Colombo Municipal Council**,¹⁶ and the Court has further clarified the status of the law on the issue as follows (per Surasena J (as he then was));

Further, it must be borne in mind that section 28 A (3) is also a new section introduced by UDA (Amendment) Act No. 04 of 1982 to lay down the procedure to be followed in respect of certain development activities commenced and continued without a permit or contrary to any term and condition of a permit. Thus, it could be seen that section 28 A (3) has a direct bearing on sections 8 J and 8 K introduced by Act No. 04 of 1982. Therefore, the procedure set out in section 28 A (3) is also indeed a part and parcel of 'Planning Procedure'. Indeed all the above new sections are found under Part II A - 'Planning Procedure' introduced by Act No. 04 of 1982.¹⁷

Therefore, I have no hesitation to concur with the ratio decidendi of the judgment of the Supreme Court in Muniyandy paneer Selvam's case that the provisions contained in section 28 A (3) fall within the scope of the term "planning" and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of a local authority.

.....

Thus, I am of the view that the delegation of authority to the Respondent to institute the case bearing No. 9341/5 in the Magistrate's Court of Colombo has been correctly done in accordance with section 23 (5) of the Urban Development Authority Law No. 41 of 1978 as amended.¹⁸

¹⁴ Ibid, p 10

¹⁵ Ibid, p 11

¹⁶ SC Appeal No. 60/2017, SC Minutes 18.06.2020

¹⁷ Ibid, p 12

¹⁸ Ibid, p 13

I have also considered and given effect to such authorities previously in *Kaluthanthri Arachchige Don Henry Shelton v. W.M Amarasena Wijethunga and others*¹⁹ and *Dulshan Senasinghe and another v. Urban Development Authority and others*,²⁰ wherein demolition notices issued in terms of section 28A read with section 23(5) of the UDA Law were impugned as in the instant case.

The CMC have submitted a copy of a letter dated 16.08.2007 (1R2) with their limited objections, whereby the duties, functions and powers of the UDA have been delegated to the CMC in terms of section 23(5) of the UDA Law. The learned State Counsel for the 5th Respondent too confirmed such delegation.

In view of the foregoing, I hold that the 4th Respondent, exercising delegated power from the UDA on behalf of the UDA, was empowered to issue the demolition notice (P29) in accordance with the law. Further, it is observed that the consequent institution of proceedings in the Magistrate's Court Colombo in terms of section 28 A (3) of the UDA Law, too have been done in accordance with the law.

Whilst this application was being taken up for support, the learned Counsel for the Petitioners in his reply submissions informed Court that he was not pursuing the ground of review that the demolition notice (P29) had been issued by the 4th Respondent without lawful authority. However, I have nevertheless proceeded to examine and determine this issue as it has been specifically pleaded in the petition and since it also has a bearing on the other ground of review relied upon by the Petitioners.

(b) Denial of a Hearing

The learned Counsel for the Petitioners submitted that the Petitioners had not been afforded a hearing prior to the issuance of the demolition notice (P29) in respect of the unauthorized construction. It was his position that the recourse to section 28A of the UDA Law should be had as a matter of last resort and that the Petitioners should have been granted a hearing prior to initiating action thereunder. The learned Counsel for the Respondents submitted that there was no such requirement in terms of the law, and, that, in any event, the Petitioners would have an opportunity of presenting their case before the Magistrate's Court.

¹⁹ CA (Writ) Application No. 378/2021, decided on 21.11.2024

²⁰ CA (Writ) Application No. 729/2024, decided on 30.05.2025

I am of the view that the requirement of a hearing, as contended by the Petitioners, cannot be considered in abstract or in isolation and has to be considered within the statutory framework for the regulation of development activities set out in the UDA Law. It is observed that such statutory framework, as articulated in section 8J of the UDA Law, is founded on the principle or premise that no development activity shall be carried out in an urban development area except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the UDA or an authority to which such power has been delegated.

In the instant case, it is evident that the building sought to be demolished has been constructed without an approved and valid building permit. Such fact has been admitted by the Petitioners themselves in the letter dated 11.08.2021 (P31). A perusal of the building application (P6), which has been submitted in the year 2008, does not indicate that it has been duly approved or that a certificate of conformity has been issued thereon, although the photographs tendered by the Petitioners photographs (P19 and CA-1) depict a constructed and completed multi-storey permanent building.

In this context, I also wish to address the position take up by the Petitioners that they had a legitimate expectation that the building plan (P6) would be approved in view of the fact that clearance for the water supply and sewage connections had been granted. I am unable to agree with such position. The text of section 8J of the UDA Law is clear and unambiguous that the approval for the building application should be obtained and a building permit obtained prior to the commencement of construction. Furthermore, upon completion of construction, section 8K requires that a certificate to be obtained that the construction has been carried out in conformity with the approved building plan (certificate of conformity). As per the material available to this Court, none of such approvals appear to have been obtained by the Petitioners.

In view of the foregoing, I am compelled to arrive at the conclusion that the Petitioners have not complied with the mandatory requirements set out in sections 8J and 8K of the UDA Law.

The next issue that warrants consideration is whether the UDA Law contemplates the conduct of a hearing prior to the issuance of a demolition notice under section 28A(1) thereof. For a better understanding of the statutory position, relevant provisions in sections 28A may be set out as follows;

28A.(1) Where in a development area, any development activity is commenced continued, resumed or completed without permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the Authority may, in addition to any other remedy available to the Authority under this Law, by written notice require the person who is executing or has executed such development activity, or has caused it to be

executed, on or before such day as shall be specified in such notice, not being less than seven days from the date thereof -

(a) to cease such development activity forthwith; or

(b) to restore the land on which such development activity is being executed or has been executed, to its original condition; or

(c) to secure compliance with the permit under the authority of which that development activity is carried out or engaged in, or with any term or condition of such permit, and for the purposes of compliance with the requirements aforesaid –

(i) to discontinue the use of any or building; or

(ii) to demolish or alter any building or work.

(2) It shall be the duty of the person on whom a notice is issued under subsection (1) to comply with any requirement specified in such notice within the time specified in such notice or within, such extended time as may be granted by the Authority on application made in that behalf.

(3)(a) Where any person has failed to comply with any requirement contained in any written notice issued under subsection (1) within the time specified in the notice or within such extended time as may have been granted by the Authority, the Authority may, by way of petition and affidavit, apply to the Magistrate to make an Order authorizing the Authority to-

(a) to discontinue the use of any land or building;

(b) to demolish or alter any building or work;

(c) to do all such other acts as such person was required to do by such notice, as the case may be,

and the Magistrate shall after serving notice on the person who had failed to comply with the requirements of the Authority under subsection (1), if he is satisfied to the same effect, make order accordingly.

(b) If such person undertakes to discontinue the use of the land or building or to demolish or alter the building or work, or to do such other acts as are referred to in paragraph (a) of subsection 3 of section 28A, the Magistrate may, if he thinks fit, postpone the operation of the Order for such time not exceeding two months as he thinks sufficient for the purpose of giving such person an opportunity of complying with such requirement....

Several observations may be made on the aforementioned statutory provisions in section 28A. As observed by the Supreme Court in **Muniyandy Paneer Selvam's case (supra)**, the "intention of the legislature by bringing in Section 28A is to ensure the due implementation of the development plan and the permit issued thereunder." Thus, it is seen that such provisions cast a statutory duty

upon the UDA and local authorities to whom such powers have been delegated to remove unauthorized constructions. To interpret such statutory provisions in any other manner would defeat the intention of the legislature and render the purpose and provisions of section 8J of the UDA Law nugatory and redundant. Secondly, it is observed that the provisions of sub-section (1) does not contemplate any requirement to grant hearing to a party in default prior to the issuance of a demolition notice thereunder. Thirdly, it appears that by the letter (P31) referred to above, the Petitioners “applied” for a suspension of the order for a period of 06 months, as contemplated under sub-section (2), which indicates that the Petitioners were aware of the statutory procedure set out in the UDA and had resorted to same. Finally, when proceedings are instituted in the Magistrate’s Court in terms of sub-section (3), the Magistrate is required to serve notice on the party in default and to satisfy himself/herself of the fact of default of the provisions of sub-section (1). Thus, as submitted by the Respondents, the Petitioners would have an opportunity to presenting their case in the proceedings before the Magistrate.

Hence, I am of the view that the manner in which the rights and interests of a party alleged to have carried out an unauthorized construction should be determined, as intended by the legislature, are clearly set out in section 28A of the UDA Law, and, that this Court is obliged to give effect to the said intention of the legislature.

Conclusion and Orders of Court

For the reasons set out above, I hold that the Petitioners have failed to establish a *prima facie* case for the issuance of notice. Therefore, I decline to issue formal notice and the application is accordingly dismissed. No costs.

Application is dismissed.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal