

**IN THE SUPREME COURT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Appeal

1. Samsudeen Sithy Fareeda
2. Fathima Jiffriya Shafi  
Both of 7A, Tharalanda Road,  
Matale.

**Plaintiffs**

SC Appeal 65/2014  
SC/HC(CA)/LA No. 452/2013  
CP/HCCA/KAN/120/2009 (FA)  
DC Matale Case No. L 5568

Vs

1. The Municipal Council  
Matale
2. The Mayor,  
The Municipal Council  
Matale.
3. The Municipal Commissioner  
The Municipal Council  
Matale

**Defendants**

**AND BETWEEN**

1. Samsudeen Sithy Fareeda

2. Fathima Jiffriya Shafi  
Both of 7A, Tharalanda Road,  
Matale.

**Plaintiff-Appellants**

Vs

1. The Municipal Council  
Matale.
2. The Mayor,  
The Municipal Council  
Matale.
3. The Municipal Commissioner,  
The Municipal Council  
Matale.

**Defendant-Respondents**

**AND NOW BETWEEN**

1. The Municipal Council  
Matale.
2. The Mayor,  
The Municipal Council  
Matale.
3. The Municipal Commissioner,  
The Municipal Council  
Matale.

**Defendant-Respondent-Appellants**

Vs

1. Samsudeen Sithy Fareeda
2. Fathima Jiffriya Shafi

Both of 7A, Tharalanda Road, Matale

**Plaintiff-Appellant-Respondents**

Before: Sisira J. de Abrew J  
Vijith Malalgoda PC J &  
Gamini Amarasekara J

Counsel: Kushan de Alwis President's Counsel with Kanchana Ratwatte and  
Amali Tennakoon for the Defendant-Respondent-Appellants.  
W. Dayaratne President's Counsel with R. Jayawaedene for the  
Plaintiff-Appellant-Respondents.

Written submission

tendered on : 7.7.2014 by the Defendant-Respondent-Appellants  
6.5.2015 by the Plaintiff-Appellant-Respondents

Argued on : 17.1.2020

Decided on: 3.3.2020

Sisira J. de Abrew, J  
Plaintiff-Appellant-Respondents (hereinafter referred to as the Plaintiff-Respondents) filed this action against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Respondent-Appellants (hereinafter referred to as the Defendant-Appellants) seeking a permanent injunction preventing the Defendant-Appellants from demolishing the boundary wall constructed on the boundary of the land described in the schedule to the plaint. The learned District Judge, by his judgment dated 24.7.2009, dismissed the action of the Plaintiff-Respondents. Being aggrieved by the said judgment of the learned District Judge, the Plaintiff-Respondents appealed to the Civil Appellate High Court of Kandy in the Central Province (hereinafter referred to as the Civil Appellate High Court). The learned Judges of the Civil Appellate High

Court, by their judgment dated 25.9.2013, set aside the said judgment of the learned District Judge granting permanent injunction against the Defendant-Appellants preventing them from demolishing the said boundary wall. Being aggrieved by the said judgment of the Civil Appellate High Court, the Defendant-Appellants have appealed to this court. This court, by its order dated 12.5.2014, granted leave to appeal on questions of law set out in paragraphs 10(a),(b),(c) and (d) of the petition of Appeal dated 4.11.2013 which are reproduced below.

1. Did the High Court of Civil Appeal err in holding that a cause of action had arisen due to the order of a learned Magistrate for the demolition of an unauthorized structure in a designated Urban Development area?
2. Did the High Court of Civil Appeal fail to take into consideration the effect of Section 42A(2) of the Municipal Council Ordinance which empowers a Municipal Council to demolish all and any unauthorized building situated within the administrative limits of the Municipal Council and erected on any land belonging or vested in the State?
3. Did the High Court of Civil Appeal fail to take into consideration the effect of authority granted by Section 23(5) of the Urban Development Authority Act No.41 of 1978 as amended for the delegation of authority of the Urban Development Authority to the Matale Municipal Council?
4. Did the High Court of Civil Appeal misinterpret and/or misconstrue the provisions of Section 5 of the Civil Procedure Code taking into consideration the facts and circumstances of the above-styled action?

It is undisputed that the land in question has been acquired by the Government by an order dated 6.9.1973 published in the Government Gazette marked V4 for the road widening. The Plaintiff-Respondents have, after the said acquisition order,

constructed a wall on the old boundary line of the land. Therefore, it is clear that the boundary wall had been constructed on a portion of the land acquired by the Government. The said acquisition order (V4) was not set aside by any court of law. Therefore, the said acquisition order stands valid. This wall was, however, constructed on a permit issued by the Defendant-Appellants. Though a permit was issued, on an application filed by the Defendant-Appellants in the Magistrate's Court, the learned Magistrate, Matale by order dated 5.2.1997 issued an order to demolish the said boundary wall as it had been constructed in breach of the conditions of the permit. This order of the learned Magistrate has been produced at the trial as V6. The said order of the learned Magistrate has, so far, not been set aside by any Appellate Court.

The learned Judges of the Civil Appellate High Court decided the case mainly on the basis that the Urban Development Authority (UDA) has not given power of delegation to the Defendant-Appellants to demolish unauthorized constructions. Therefore, the most important question that must be decided in this case is whether the UDA has delegated its power to the Defendant-Appellants to demolish unauthorized constructions. I now advert to this question. In considering this question, I would like to consider whether the UDA has power to delegate its powers and functions to the Defendant-Appellants. Section 23(5) of the UDA Act No.41 of 1978 states as follows.

*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.*

Section 28A (1) of the UDA Act No.41 of 1978 reads as follows.

*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.*

Section 28A (3) of the UDA Act No.41 of 1978 reads as follows.

*(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.";*

In the case of Palligoda Vithanage Keerthi Wimal Withana Vs Muniyandy Paneer Selvam SC Appeal 123/2019 decided on 18.1.2012 this court held as follows (by Sripavan J).

*“Every subsection under 28A of the Act must be considered as a whole and self-contained. It is not permissible to omit any part of it and must therefore be read as part of an integral whole throwing light on the rest so that harmonious construction be placed on them for the purpose of giving effect to the legislative intent and object. Thus, one could see that Section 28A(1) (a) to (c) provides that the UDA, in order to ensure compliance with the permit could request the person to whom such permit was issued to cease such development activity, to restore the land to its original condition and for the purposes of doing so discontinue the use of any land or building or demolish or alter any*

*building or work. None of the subsections of Section 28A imposes a penalty or punishment on the permit holder.”*

His Lordship Justice Sripavan in the above case further held as follows.

*“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.”*

His Lordship Justice Sripavan in the above case considered the judicial decision in the case of Jayasinghe Vs Seethawakapura Urban Council (2003) 3 SLR 40 but did not follow it. After considering the above legal literature, I hold that the UDA, in terms of Section 23(5) of the UDA Act, has the power to delegate its powers to the Defendant-Appellants. Has the UDA delegated its powers to the Defendant-Appellants? In this connection it is relevant to consider documents marked V44 and V44(a) (pages 601 and 602 of the brief). The UDA by the said documents has delegated its powers to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Appellants and in terms of the said delegation of powers, the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendant-Appellants have the power to issue demolition orders. The 2<sup>nd</sup> Defendant-Appellant by his letter dated 29.9.1995 marked V10 (page 506 of the brief), has issued a demolition order to the 2<sup>nd</sup> Plaintiff-Respondent. After considering the above legal literature and the documents, I hold that the said order is a legally valid order. As I pointed out earlier, the boundary wall stands on a portion of the land acquired by the State for the road widening. Even the learned Judges of the Civil Appellate High Court have made this observation. I have earlier held that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-Appellants have the power to issue demolition orders. If the boundary wall stands on a portion of the land acquired by the State for the road widening and the 2<sup>nd</sup> and 3<sup>rd</sup>

Defendant-Appellants have the power to issue demolition orders, how can an injunction be issued preventing the demolition of the said boundary wall? The learned Judges of the Civil Appellate High Court by allowing the appeal of the Plaintiff-Appellant-Respondents have granted an injunction preventing the demolition of the said boundary wall. When I consider all the above matters, the said judgment of the Civil Appellate High Court is clearly wrong. The learned Judges of the Civil Appellate High Court have failed to consider the aforementioned matters in the judgment dated 25.9.2013. In my view, they were wrong when they set aside the judgment of the learned District Judge dated 24.7.2009. Therefore, the above judgment cannot be permitted to stand. For the above reasons, I answer the 3<sup>rd</sup> question of law stated above in the affirmative. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> questions of law do not arise for consideration.

For the above reasons, I set aside the judgment of the Civil Appellate High Court dated 25.9.2013 and affirm the judgment of the learned District Judge dated 24.7.2009.

Judge of the Supreme Court.

Vijith. K. Malalgoda PC J

I agree.

Judge of the Supreme Court.

Gamini Amarasekara J

I agree.

Judge of the Supreme Court.

