

JAYASINGHE
v
SEETHAWAKAPURA URBAN COUNCIL
AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
C.A. NO. 1636/2001
FEBRUARY 20, 2003
MARCH 17, 2003
APRIL 8, 2003
MAY 7, 2003

Urban Councils Ordinance – Section 84 (1) – Urban Development Authority Law 41 of 1978 – Sections 3, 8(J), 23(3), 28A and 29 – Development Activity – Delegation ? – Unauthorised structure.

The Petitioner was asked to remove the unauthorised structure within seven days by the 1st respondent. The area has been declared as a Development Area in terms of the Urban Development Authority Law.

Held :

1. Once an area has been declared as a "development area" no person could carry out or engage in any development activity in any such part without a permit issued by the Urban Development Authority (UDA).
2. If any development activity is commenced, continued, resumed or completed without a permit issued by the Urban Development Authority – 3rd respondent, in a development area, action has to be taken only by the 3rd respondent (UDA).
3. Provisions of the Urban Councils Ordinance has no application in respect of any development activity carried out or engaged in an area declared as a development area.
4. What can be delegated are only the powers, duties, and functions relating to planning. Matters relating to development activities are not capable of being delegated.

APPLICATION for a writ of certiorari

Douglas Premaratne P.C. with Ms. P. Dias for the petitioner.

Mohan Peiris for the first and second respondents.

Mrs. B. Thilakaratne D.S.G, for the third respondent.

June 9, 2003

SRIPAVAN, J.

The petitioner has been carrying on the business of "Vajira Cool Spot", "Vajira Tailors" and "Vajira Saloon" since 1994 on the land belonging to the second respondent. Somewhere around 3rd October 2001, the petitioner received a notice marked P1 purporting to be under sec. 84(1) of the Urban Councils Ordinance requesting the petitioner to remove the unauthorized structures within seven days from the date of the said notice. The petitioner seeks a *writ of certiorari* to have the said notice P1 quashed on the basis that the second respondent acted completely outside his jurisdiction, without any power or authority and as such the said notice was illegal and void.

It is common ground that Avissawella (Seethawakapura) Urban Council area has been declared as an "Urban Development Area" (hereinafter referred to as a development area) in 1980 by the Minister in terms of section 3 of the Urban Development Authority Law No 41 of 1978 (hereinafter referred to as the UDA law) as amended. Once an area has been declared as a "development area", in terms of Sec 8J of the UDA law, no person shall carry out or engage in any "development activity" in any such area or part thereof without a permit issued by the third respondent, notwithstanding the provisions contained in any other law. Thus, the learned President's Counsel submitted that the UDA law alone can apply in respect of any "development activity" carried out in a "development area".

Sec 29 of the UDA law defines "development activity" as follows:

"Development activity" means the parcelling or subdivision 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....

Hence, Counsel contended that any unauthorized structures put up by the petitioner falls within the definition of "development activity" as provided in sec 29. It is on this basis Counsel urged that when any "development activity" is commenced, continued,

resumed or completed without a permit issued by the third respondent in a "development area", action has to be taken only by the third respondent in terms of sec 28A of the UDA law and not by the second respondent acting under sec 84(1) of the a Urban Councils Ordinance.

One of the powers and functions of the third respondent as stated in sec 8(p) of the UDA law is to approve, co-ordinate, regulate... 40
any development activity in a "development area". The ambit and scope of the UDA law clearly shows the intention of the legislature, namely, that no "development activity" shall be carried out except with a permit issued by the third respondent in that behalf. The learned Counsel for the first and the second respondents submitted that acting under sec 84(1) of the Urban Councils Ordinance the first / second respondent has the authority to order the removal of any obstruction and encroachment. I am unable to agree with this submission in situations where a "development activity" is carried out in an area declared as a "development area" by the Minister under the UDA law. The object of an order in terms of sec 3 of the UDA law necessarily involves certain built-in assumptions. One such assumption is that the power to issue permits for the purposes of carrying out any development activity in any "development area" vests in the third respondent. Similarly, if any "development activity" continues without a permit issued by the third respondent, I agree with the learned President's Counsel that action has to be taken by the third respondent to whom the power is committed in terms of sec 28A of the UDA law. The said provision specifically provides for the procedure to be followed in such a situation. It is imperative that the procedure laid down in the relevant statute should be properly observed and it is well settled that statutory powers can only be exercised by public bodies invested with such powers and not by others. Hence, I hold that sec 84(1) of the Urban Councils Ordinance has no application in respect of any "development activity" carried out or engaged in an area declared by the Minister as a "development area" under sec 3 of the UDA law. 50 60

Learned Deputy Solicitor General urged that the third respondent has delegated its powers to the Chairman of the second respondent under sec 23(5) of the UDA law which reads thus : 70

"The Authority may delegate to any officer of the 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 sec 3, and any such officer shall exercise, perform or discharge any such power, duty or function so delegated, under the direction, supervision and control of the Authority."

Accordingly, what can be delegated are only the powers, duties and functions relating to planning. Matters relating to development activities are not capable of being delegated under the said provision. Hence, the delegation relied on by the learned Deputy Solicitor General does not empower the first respondent to issue a notice under sec 84(1) of the Urban Councils Ordinance. In the result, I issue an order in the nature of a writ of certiorari quashing the notice dated 03.10.2001 marked P1 issued by the first respondent. 80

I make no order as to costs.

Application allowed