

JAYAWICKREMA

vs.

MAHARAGAMA URBAN COUNCIL AND OTHERS

COURT OF APPEAL.
SRISKANDARAJAH.J.
CA 2192/2004.
MARCH 22, 2006.

Urban Development Authority Law - Amended by Act No. 4 of 1982 section 3, section 8(5), 8 J (3) (a) - (b) - 23 (5) - Area earmarked for development activities - Refusal of authority to approve sub-division - Legality?- Matters to be considered in refusing approval?

The petitioner sought a Writ of Certiorari to quash the decision of the respondents refusing to approve the sub-division of Lot 7 and a Mandamus to approve the plan. The contention of the respondents was that the land in question is a part of a larger area that has already been earmarked for development activities and the land is in the process of being acquired.

HELD:

1. The respondents (if there is a development plan for the area) could refuse an approval for sub-division of a land in that area and if the sub-division is inconsistent with or in contravention of any proposal or provision in such development plan or if the development plan is not prepared then the respondents could refuse an approval of a sub-division of a land in that area, if it is not in conformity with the future development of such area.
2. The respondents have not considered any of the relevant matters provided in section 8 J(3)(a) or (b). If they have considered the said provisions and made an order then the petitioner would have had an opportunity to appeal to the Minister under section 8 J(5).
3. The respondents have a legal duty under section 8J (3) to consider the application for the approval of the sub-division.

Nihal Jayamanne PC with Anandalal Nanayakkara for petitioner.

Gamini Marapana PC with Navin Marapana for respondents.

Cur.adv.vult.

May 24, 2006

SRISKANDARAJAH, J.

The Petitioner in this application is seeking a writ of certiorari to quash the decision of the Respondents contained in P6, namely: the refusal for the approval of sub-division of Lot 7 in Plan No. 2752C prepared by *K.Nadarajah* Licensed Surveyor dated 23.11.1993 (P2A) and for a mandamus to consider and approve the said Plan.

It is an admitted fact that in terms of section 23(5) of the Urban Development Authority Law, the Urban Development Authority has delegated to the 2nd and 3rd Respondent its powers, duties and functions relating to planning within the Maharagama Urban Council Area. In terms of section 8J of the said Law, introduced by the Urban Development (Amendment) Act, No.04 of 1982, once an area has been declared as an Urban Development Area in terms of section 3 of the said Law, any development activity within that area requires approval under the Urban Development Authority Law. The definition of development activity includes the sub-division of land.

The Petitioner submitted an application to the Respondents for the approval of the sub-division of lot 7 of plan P2A, annexing the Plans P2A, P2B, and P2C. The Respondents by letter dated 13.02.2004 (P6) informed the Petitioner that the said land falls within the Kottawa urban development activities, and therefore approval of the sub-division cannot be considered.

The Petitioner contends that there is no provision in Law for the Respondents to refuse to consider the Petitioner's application for sub-division. The reason given in the said letter of refusal P6 is unacceptable and in violation of the Urban Development Authority Law and the Urban Councils Ordinance and therefore the said decision is unlawful and arbitrary.

The position of the Respondents is that the land in question is a part of a larger area that has already been earmarked for development activity by the Urban Development Authority as a part of Maharagama Development Project and that these lands are in the process of being acquired. But the Respondents failed to produce the preliminary notice such as notice under section 2 of the Land Acquisition Act or any other regulation, rule or document that prevents sub-division of lands in this development area.

Section 8J of the Urban Development Authority Law as amended provides that permits are necessary to carry out or engage in development activities in development areas. It provides :

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.

(2) An application, for a permit to carry on or engage in any development activity within a development area or part there of shall be made to the Authority in such form and shall contain such particulars and be accompanied by such fees as may be prescribed by regulations made under this Law.

(3) A permit under sub-section (1) shall be granted by the Authority under that sub-section subject to such terms and conditions as the Authority may consider necessary, if the Authority is satisfied that,

- (a) in any case where the development plan has been submitted to the Minister for approval or the development plan has been approved by the Minister, the development activity proposed to be carried out or engaged in will not be inconsistent with or in contravention of any proposal or provision in such development plan ; and
- (b) in any case where no development plan has been prepared, the purpose for which such permit is required to carry out or engage in such development activity conforms to the future development of such area.

(4) The Authority may take into consideration the recommendation of the Planning Committee, in granting or refusing to issue a permit under this section.

(5) Any person who is aggrieved by the refusal of the Authority to grant a permit under this section may, subject to regulations made under this Law, appeal to the Minister against such refusal and the decision of the Minister upon any such appeal shall be final.

(6) A permit issued under this section shall be valid for a period of one year :

Provided, however, that the Authority may on application extend the validity of a permit for a further period or periods not exceeding two years

if the Authority is satisfied that the development activity referred to in the permit has been commenced but not been completed due to unforeseen circumstances :

Provided further that the expiry of a permit shall not preclude any subsequent application being made for a fresh permit for such purpose.

In view of the above section the Respondents (if there is a development plan for the said area) could refuse an approval for sub-division of a land in that area only if the sub-division is inconsistent with or in contravention of any proposal or provision in such development plan or if the development plan is not prepared then the respondent could refuse an approval of a sub-division of a land in that area if it is not in conformity with the future development of such area. For this matter the Respondents are empowered to take into consideration the recommendation of the planning committee.

In the instant case the Respondents have not considered any of the relevant matters provided in section 8J(3)(a) or (b). If they have considered the said provisions and made an order then the Petitioner would have had an opportunity to appeal to the Minister under section 8J (5).

The Respondents have a legal duty under section 8J (3) to consider the application of the Petitioner for the approval of the sub-division of his land and the Petitioner has a right to make such application under section 8J of the said law. The Respondents have not taken relevant facts into consideration in refusing to consider the said application. In these circumstances the court quashes the order P6 dated 13.02.2004 by a writ of certiorari and issues a mandamus for the Respondents to consider according to law the application made by the Petitioner for sub-division shown in plan No.2752C(P2A). The application of the Petitioner is allowed without costs.

Application allowed.

Writ of Mandamus issued on the respondents to consider according to law the application for sub-division.