

SOBHANI
VS
CHAIRMAN, URBAN COUNCIL, CHILAW AND OTHERS

COURT OF APPEAL
IMAM, J. AND
SRISKANDARAJAH, J
CA 1825/2003 (WRIT)
4TH JULY, 2005

Writ of certiorari - Urban Development Authority Act, sections 3, 28A and 3(A)
- Amended by Act, No. 4 of 1982, section 8(J) - Building plan tendered for
approval - Should he be the owner or should he have got permission from the
owner to build ? - Is there a duty to consider title ?

The respondent refused to consider the application of the petitioner for a building permit as the petitioner is not the owner of the land nor has he got permission from the owner.

The petitioner contends that there is no duty cast on the respondent to look into the title and the refusal has no legal or valid basis.

Held :

- (i) The Urban Development Authority (UDA) has considered it necessary to have a *prima facie* documentation to prove the ownership of the land or the consent of the owner of the land to grant building permits to develop a particular land. This requirement is embodied in the building permit application form.

- (ii) It is not an irrelevant or unreasonable requirement in considering development activities in a land. Act, No. 4 of 1982 empowers the UDA to grant a building permit subject to such terms and conditions the Authority may consider necessary.

APPLICATION for a writ of certiorari.

Sunil Cooray with *C. Wijesuriya* for petitioner.

Lakshman Perera for 1st and 2nd respondents.

Yuresha de Silva, State Counsel for 3rd respondent.

04th August, 2005,

SRISKANDARAJAH. J

The Petitioner in this application has sought an order in the nature of writ of certiorari to quash the decision made by the 1st Respondent refusing to consider the building application of the Petitioner and a mandamus to command the 1st Respondent to entertain the application of the Petitioner and proceed according to law.

The Petitioner submitted that she came into occupation of the premises bearing assessment No. 94, Bridge Street, Chilaw in 1990 and carried on her business initially as a "Cool Spot" and later a textile shop after putting up a temporary structure in the said premises. The Petitioner subsequently developed the said premises and constructed the building in the said premises up to the condition, as it stands today. From the year 1999 she said that she had been paying rates to the Urban Council to date and also paying revenue license tax for carrying on a trade at the said premises. The Petitioner further submitted that she received summons on 07.12.2001 for an action filed in terms of section 28A 3(a) of the Urban Development Authority Act as amended. This action was filed by the 1st Respondent on the basis that the building standing on the said premises is an unauthorized building. The Petitioner submitted that pending the afore said action Petitioner has tendered a building plan for approval to the 1st Respondent in respect to the same premises complying with all the requirements. Thereafter the 1st Respondent by his letter dated 29.07.2002 P5 requested the Petitioner to establish title to the said premises and

stated that until she does so, her application for building permit could not be considered. The Petitioner once again on 08.09.2003 submitted an application for a building permit to the same premises to the 1st Respondent through his attorney at law. This application too had been rejected since the title to the said premises had not been confirmed by the Petitioner. The Petitioner submitted that the 1st Respondent the chairman of the 2nd Respondent has a public statutory duty in terms of Housing and Town Improvement Ordinance as amended or Urban Development Authority Law as amended to entertain every application for building permit and further submits that in this application the 1st Respondent has refused to entertain the application of the Petitioner without any legal or valid basis. The Petitioner also submitted that there is no duty whatsoever cast on the 1st Respondent to look into the title of the applicant to the property on which the proposed building construction is to take place for the purpose of entertaining applications for building permit.

The Respondents submitted that in terms of Gazette No. 100/4 of August, 1980 the Minister of Local Government, Housing and Construction has gazetted the Chilaw Urban Council as a Development Area under Section 3 of the Urban Development Authority Act.

The Respondent admitted that the Petitioner has made two building plan approval applications in the prescribed forms one in 2002 and the other in September, 2003. But both these applications are incomplete as the Petitioner has neither declared himself as the owner of the land on which he is seeking to build nor he has not annexed any document to show that he got permission from the owner of the land to construct a building. Respondents submitted that from their records the land in which the Petitioner is seeking permission to construct a building is a state land owned by the Ceylon Government Railway Department.

The Urban Development Authority (Amendment) Act, No. 4 of 1982 in Section 8J provides as follows :

- 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.

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- (2) An application for a permit to carry out or engage in any development activity within a development area or part thereof shall be made to the Authority in such form, shall contain such particulars and be accompanied by such fees as may be prescribed by regulations made under this law.
 - (3) A permit under subsection (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)
 - (b) ...
 - (4) ...
 - (5) ...
 - (6) ...

Under Section 8J(2), an application for a permit to carry out or engage in any development activity within a development area shall be made to the Urban Development Authority (UDA) in such form and shall contain such particulars. One of the particulars that is required by the UDA in the application is to declare the status of the applicant in relation to the land in which he is seeking to develop. If he is the owner he has to support the same with documentation and if he is not the owner then he has to annex a consent letter from the owner. According to the Respondent these requirements are not fulfilled by the Petitioner ; therefore the application of the Petitioner was not entertained. The Petitioner has failed to annex a copy of the completed application which was submitted to the UDA by him to show that he has given all the relevant particulars that were required to be given in the said application. On the other hand the Petitioner's submission that the ownership of a land is an irrelevant consideration when a building permit is sought to build a building in that land cannot be accepted. As the above sections empower the UDA to grant a building permit subject to such terms and conditions the Authority may consider necessary. The UDA has considered it necessary to have a prima-facie documentation to prove the ownership of the land or the consent of the owner of the land to grant building permits to develop a particular land. This requirement is embodied in the Building Permit Application Form

which was submitted to this court by the Respondent on the request of this court. The Court does not think that it is an irrelevant or unreasonable requirement in considering development activities in a land. Therefore the Court rejects the application of the Petitioner to issue a writ of certiorari to quash the decision made by the 01st Respondent refusing to consider the building plan of the Petitioner. For these reasons the application of the Petitioner is dismissed without costs.

IMAM - I agree.

Application dismissed.
