

**JAYASINGHE****v****SECRETARY, SEETHAWAKA URBAN COUNCIL AND OTHERS**

COURT OF APPEAL

SRIPAVAN. J.

CA 1636/2001

February 20, 2003

March 17, 2003

April 8, 2003

May 7, 2003

*Writ of Certiorari - Urban Councils Ordinance Section 84 (1) - Removal of unauthorized structures - Urban Development Authority Law No. 41 of 1978 as amended - Section 3, Section 8J, Section 23 (2), Section 29 - Development area - Development activity commenced in area - Who should take action? - Is it the Urban Development Authority (UDA) or the Local Council? - Powers that can be delegated to the Local Authority by the U.D.A.*

*The petitioner complains that he received a notice from the Local Council requesting him to remove the alleged unauthorised structures. The petitioner contends that any development activity commenced without a permit from the 3rd respondent U.D.A. in a development area, action has to be taken only by the U.D.A. in terms of Section 28A of the UDA Law and not by the Local Council, and challenged the notice issued under Section 84 (1) of the Urban Councils Ordinance.*

- Held:** (1) One of the powers and functions of the 3rd respondent UDA (Section 8 (p) UDA Law) is to approve, co-ordinate, regulate, any development activity in a development area. No Development activity could be carried out except with a permit issued by the UDA in that behalf.
- (2) If any development activity continues without a permit issued by the UDA action has to be taken by the UDA to whom the power is committed in terms of Section 28A of UDA Law.

**Held further**

- (3) What can be delegated under Section 23 (5) of the UDA Law are only the powers duties, and functions relating to planning. Matters relating to development activities are not capable of being delegated. Delegation does not empower the 1st respondent to

issue a notice under Section 84 (1) of the Urban Councils Ordinance. Section 84(1) has no application in respect of any development activity carried out in an area declared by the Minister as a development area under Section 3 of the UDA Law.

**APPLICATION** for a Writ of *Certiorari*.

*Douglas Premaratne* PC with *Ms. P. Dias* for petitioner.

*Mohan Peiris* for 1st and 2nd respondents.

*Ms. B. Tilakaratne* DSG for 3rd respondent.

*Cur.adv.vult.*

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 03rd October 2001, the petitioner received a notice maked P1 purporting to be under Section 84 (1) of the Urban Councils Ordinance requesting the petitioner to remove the unauthorised 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 (Sethawakapura) 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 Section 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”.

Section 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 operation on .....

Hence Counsel contended that any unauthorised structures put up by the petitioner falls within the definition of “development activity” as provided in Section 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 Section 28A of the UDA law and not by the second respondent acting under Section 84 (1) of the Urban Councils Ordinance. 30

One of the powers and functions of the third respondent as stated in Section 8 (p) of the UDA law is to approve, co-ordinate, regulate 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 second respondents submitted that acting under Section 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 interms of Section 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 Section 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 40 50 60

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 Section 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 Section 3 of the UDA law. 70

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

"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 Section 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." 80

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 Section 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. 90

I make no order as to costs.

*Application allowed.*