

TRUSTEES OF THE SIR MOHAMED MACAN MARKAR TRUST
v
FERNANDO AND ANOTHER

COURT OF APPEAL
NANAYAKKARA, J.
ABEYRATNE, J.
C.A.(PHC) 2/97
CA (APN) 10/97
M.C. FORT 26206
NOVEMBER 25, 2003
MARCH 30, 2004

*Urban Development Authority Act, 17 of 1979 – Section 8, section 28A(1)
– Notice – Imperative and should be in unambiguous terms – Delegation
of power – Regularity of performance of official acts.*

The High Court set aside the Order of the Magistrates Court on the basis that the Notice under section 28 (A) 1 was ambiguous and the authority had not been properly delegated to institute action. The demolition order issued by the Magistrate's Court was reversed by the High Court.

Held:

- i) The Notice under section 28(A) 1 stating that at a place bearing assessment No. 25 an unauthorised structure has been put up is not ambiguous.
- ii) There is a presumption in law as to the regularity of the performance of official acts.

APPLICATION by way of Revision/an appeal from the Order of the High Court of Colombo.

Lakshman de Alwis with Ms Nilanthi Perera for Interveniend respondent-petitioner.

Channa Nilanduwa for applicant-respondents

Ramani Livera for 1st respondent

M. Silva for 2nd respondent

Cur. adv. vult.

July 29, 2004

GAMINI ABEYRATNE, J.

The subject matter of both cases bearing numbers CA Revision Application 02.97 and CA/PHC/10/97 being identical has been amalgamated by order of this Court by virtue of which fact the order in CA/PHC/10/97 is applicable and binding on all parties connected with CA Revision Application bearing No. 02/97.

An examination of the case record reveals that the institution of this case is traceable to the year 1997 and unless the Court divest itself to technicalities and proceeds to forthwith determine this matter. It will well nigh proceed Ad infinitum.

These applications stem from an order pronounced by the learned High Court Judge of Colombo in November 1996.

For purpose of brevity a skeletal outline of the relevant factual background is set out below. Originating from an action instituted in the Magistrate's Court of Fort instituted by the applicant who is the 2nd respondent in this action against the 1st respondent for demolition of an unauthorised structure erected by the 1st respondent in the Arcade of a large building which unauthorised structure had been occupied for a long period of time. The 2nd respondent purported to act under section 28A (1) of the Urban Development Authority Act No. 17 of 1979 and was in fact the prosecuting officer for the Colombo Municipal Council delegated the power of appearing as authorised officer of the Urban Development Authority. At the end of the trial, the Learned Magistrate was of the opinion that the prosecution should succeed in its endeavours and accordingly issued a demolition order of the unauthorised structure.

An appeal was lodged in the Provincial High Court of Colombo and the learned trial Judge on the 18th day of November 1996 reversed the order of the learned Magistrate on the objections taken by the 1st respondent that the notice issued under section 28A(1) was ambiguous and therefore did not describe accurately the unauthorised structure. The second objection was that there was no reflection of delegation of Authority by the Urban Development Authority to the 2nd respondent to institute this action

for demolition of the unauthorised structure on behalf of the Urban Development Authority as in fact he was the prosecuting Officer of the Municipal Council.

It is against this order of the Learned High Court Judge that this appeal and revision application has been preferred to this Court. It is also a matter of observation that there is an Intervenant-petitioner, the owner of the building in question who had been permitted to Intervene in this matter when the case was pending before the Magistrate's Court of Fort.

It was agreed upon between the parties that as the facts of both applications are inextricably interwoven and comprised of the same factual background one order by this Court would suffice for purposes of both applications.

At this juncture, suffice it to state that this Court will be winnowing the wheat from the chaff and confining the Judicial review strictly to matters germane to the issues involved.

It is an undisputed fact that the notice that is issued under section 28A(1) of the Urban Development Authority is an imperative requirement, it should also be in clear unambiguous terms so as to reflect the identity of the unauthorised structure that has to be demolished. Examining the notice one finds it difficult to believe that the learned High Court Judge could not possess clarity of thought with regard to the structure described quite apart from the sketch attached to the notice 'Y' clearly displaying the unauthorised structure on the authorised premises the notice has stated thus:

ඉහත සඳහන් පනතේ 8 (එ)(C) 8 (J) (1) වගන්තිය යටතේ නියමිත බලපත්‍රයකින් ලබා ගත් අවසරයක් නොමැතිව 8 එ (1) වගන්තිය යටතේ නිකුත් කළ බලපත්‍රය කට පටිකැනී ලෙස මඛ විසින් කොළඹ 1 මුදලිගේ මාවත, වර්පනම් අංක 25 දරන ජ්‍යොතයේ සංවර්ධන කටයුත්තක් එනම් අනවසර ගොඩනැගිල්ලක් කර ඇති බව මා වෙත වාර්තා වී ඇත

The notice accordingly states that at a place bearing assessment No. 25 "an unauthorised structure has been put up". It does not require a fertile imagination to construe that in place bearing No. 25 an unauthorised structure has been set up – is clearly descriptive of another structure put up on "අංක 25 දරණ ජ්‍යොතයේ" the word "ජ්‍යොතය" qualifies the place on which the

unauthorised structure is put up attached to the notice is a sketch P1 which clearly describes the location of the unauthorised structure and states that No. 25 is the existing building and 25A as the new building in the arcade of the premises bearing No. 25. Furthermore, to enable more clarity of thought on the matter. The 1st respondent has clearly accepted the fact that:

ප්‍ර නඩුවට අදාළ 25/A මුදලියේ මාවත යන ස්ථානය සම්බන්ධයෙන් අනුමත සැලැස්මක් නැහැ, අනුකූලතාව සහතිකයක් නැහැ?

උ ඔව්

ප්‍ර ඒ ස්ථානය සම්බන්ධයෙන් තමා ලඟ නැහැ අනුකූලතාව සැලැස්මක් අනුකූලතාව සහතිකයක් නැහැ

උ ඔව් මා ලඟ ගොඩනැගිලි සැලැස්මක් නැත. අනුකූලතා සහතිකයක් ද මා ලඟ නැත

This Court does not see any further necessity to consider this objection any longer as it would be tantamount to procrastinating further on the matter.

Accordingly, this Court is inclined to overrule the finding of the learned High Court Judge on this point and hold that the notice is clear and unambiguous and descriptive of the unauthorised building to be demolished even to the most mentally negligible.

Subjecting the 2nd objection to judicial consideration, that the power of authority is not properly delegated to the 2nd respondent. It is worthwhile to address one's attention to document 'Y' marked in the Magistrate's Court proceedings along with the application made by the 2nd respondent clearly stating that he is the

“නාගරික සංවර්ධන අධිකාරී පනත යටතේ බලය ලත් තැනු පැවරීමේ නිලධාරී

There is a presumption in Law as to the regularity of the performance of official Acts. Furthermore, it is puerile to split hairs on mere technicalities, prevaricate to defeat the ends of Justice and take refuge in infantile assertions and persist in litigation *Ad nauseam*. When the intention of the legislature is crystal clear and manifestly apparent that due compliance with the imperative provisions of the law has been acquiesced with.

In conclusion it must be observed that it is regrettable that

when even the legal representatives of litigants attempt to take advantage of typing errors in a document to conjure imaginary objections with a view to prolonging the duration of a case, this Court cannot take cognizance of trivialities and cooperate in the attainment of this objective.

Accordingly, the second objection upheld by the learned High Court Judge of Colombo is also overruled and this Court therefore vacates and sets aside the Order of the learned High Court Judge delivered on the 18th of November 1996 and furthermore permit and order hereby the demolishing of the unauthorised structure 25/A, Mudalige Mawatha erected on the premises bearing No. 25, Mudalige Mawatha.

NANAYAKKARA, J. – I agree.

Application allowed.

Order of the Magistrate restored.