

SIVAPRAGASAM AND OTHERS
v
PERIMPANAYAGAM

COURT OF APPEAL
RAJA FERNANDO, J.
AMARATUNGA, J.
CA (PHC) 2/97
PHC BATTICALOA 231/96
MC BATTICALOA 27555/LG/96
JANUARY 10, 2001
JUNE 13, 2001

Urban Development Authority Act, No. 41 of 1978 – Delegation of authority to Mayor/Municipal Commissioner to attend to all matters pertaining to planning – Does this extend to demolition of unauthorised structures – Could the Mayor make an application for a demolition order? – Occupation of an unauthorised structure as a tenant – Is he a protected tenant under the Rent Act?

The Mayor of Batticaloa instituted proceedings under Section 29A of the UDA Act and sought an order for the demolition of the premises in question on the basis that the premises were unauthorised premises against the owner of the premises. The Magistrate's Court made order to demolish the premises. The petitioners claiming to be tenants filed papers in the Magistrate's Court which were rejected by the Magistrate. The revision application filed in the High Court was dismissed.

It was contended that, the Mayor did not have any lawful authority to make an application for the demolition under the UDA Act, as delegating of functions relating to planning activities did not extend to the demolition of unauthorised structures and accordingly the Mayor did not have the authority to make an application for a mandatory demolition order. It was further contended that, the petitioner is a tenant, and is protected by the provisions of the Rent Act.

Held:

- (1) Functions of planning would include the taking of steps to enforce planning procedure.
- (2) Occupation of the premises by the appellants being unlawful and illegal, Rent Act cannot be used to cover up or rectify such illegality.

APPEAL from an order of the Provincial High Court of Batticaloa..

Cases referred to :

- (1) *Piyasena v Wijesooriya* CA 119/90 CAM 4.11. 1994.
- (2) *Malwattage v Dharmawardhane* 1991 2 Sri LR 141.

S. Mahenthiran PC with Pushpha Narendra for appellant.

S. Sivarasa PC with S. Mandeleswaran for respondent.

May 16, 2003

GAMINI AMARATUNGA, J.

This is an appeal from an order made by the learned High Court Judge of Batticaloa in the exercise of the revisionary jurisdiction of the Provincial High Court under Article 154 P (3)(b) of the Constitution. The revision application to the High Court was against an order made by the Magistrate's Court of Batticaloa in an application filed under the provisions of the Urban Development Authority Act No. 41 of 1978 as amended.

The original respondent to this appeal, the Mayor of Batticaloa instituted proceeding under Section 29(a) of the Urban Development Authority Act No. 41 of 1978 as amended by Act No. 4 of 1982 in the Magistrate's Court of Batticaloa against one Mrs. Navaratnarajah, the owner of premises No. 69, 73 and 74A, Main Street, Batticaloa for an order for the demolition of the said premises on the basis that the said premises were unauthorised structures. When the case was called on 31.5.1996, the said Ms. Navaratnarajah appeared in the Magistrate's Court and undertook to demolish the said premises and accordingly the learned Magistrate made order directing her to demolish the said premises within one month.

Thereafter the present appellants, claiming to be the lawful tenants of the said premises filed papers in the Magistrate's Court to have an inquiry regarding the Mayor's application. However, the learned Magistrate rejected the applications of the present appellants. They thereafter filed a revision application in the High Court of Batticaloa and the learned High Court Judge after hearing the revision application made order dismissing the revision application. This appeal is against the order of the learned High Court Judge.

In deciding the revision application the learned High Court Judge has addressed his mind to two main questions. The first question was whether the premises in question were unauthorised structures and if so whether the present appellants have any legal right to claim tenancy rights in respect of such premises and the protection afforded to tenants under the provisions of the Rent Act and the Protection of Tenants (Special Provisions) Act. The second question was whether the respondent Mayor had any lawful authority to make an application for a demolition order under the provisions of the Urban Development Authority Act No. 41 of

1978 as amended. If the answer to the second question is in the negative, the 1st question does not arise at all. The matter ends there. It is therefore necessary to consider the 2nd question first.

The letter delegating the authority to the Mayor/Municipal Commissioner to attend to all matters pertaining to planning and development regulation functions of the Urban Development Authority and all incidental matters thereto has been submitted to Court by the respondent marked R1. The argument adduced on behalf of the present appellants was that the delegation of functions relating to planning activities did not extend to the demolition of authorised structures and accordingly the Mayor did not have the authority to make an application for a mandatory demolition order. The learned High Court Judge has held that the delegation of the functions of planning would include the taking of steps to enforce planning procedure and accordingly the Mayor had the authority to institute proceedings against an owner of an unauthorised building for an order to demolish such building. The learned High Court Judge's conclusion finds support from the decision of this Court in *Piyasena v Wijesooriya*⁽¹⁾, where it was held that functions of planning would include the taking of steps to enforce planning procedure.

The next question is whether the applicants are lawful tenants of the premises in question entitled to the protections provided by the Rent Act. The learned High Court Judge has carefully considered the legal status of a person who is in occupation of an unauthorised structure as 'tenant'. In this case the owner of premises Mrs. Navaratnarajah has admitted that the premises in question was an unauthorised structure. No evidence to the contrary was placed before Court by the Appellants. The learned High Court Judge has followed the decision of the Supreme Court in *Malwattage v Dharmawardana*⁽²⁾ where it was held that an illegality cannot give rise to any right capable of being protected under the Rent Act. The learned High Court Judge has come to the finding that the occupation of the premises by the appellants being unlawful and illegal, the Rent Act cannot be used to cover up or rectify such illegality. Accordingly the learned Judge has decided that the order made by the learned Magistrate was correct and that the revision application should be dismissed. There is nothing wrong in this order and the appellants appeal is without merit. Accordingly I affirm the orders of the High Court and the Magistrate's Court and dismiss this appeal with costs fixed at Rs. 7500/-.

RAJA FERNANDO, J. – I agree.

Appeal dismissed.