

In the Court of Appeal of the Democratic
Socialist Republic of Sri Lanka

C A. PHC APN 36/07

HC Colombo HCRA 85805

MC Gangodawila 4449

1 W. A. Gunawardhana

Officer Under UDA Act

Dehiwela Mt. Lavinia.

Municipal Council

Anagarika Dharmapala Mawatha,

Dehiwela.

APPLICANT

1A K B Vidanalage Dammika Namal
Muthugala,

Officer Under UDA Act

Dehiwela Mt. Lavinia.

Municipal Council

Anagarika Dharmapala Mawatha,

Dehiwela.

SUBSTITUTED APPLICANT

Vs

Deshni Irish Janes,

No 8/2, Sirigal Mawatha,

Kalubowila,

Dehiwala

**RESPONDENT-PETITIONER-
RESPONDENT**

BEFORE: A.W.A.SALAM, J. (P/CA) & Malanie
Gunerathne J.

COUNSEL: W. Dayarathne PC. With Shiroma Pieris
for the Applicant-Repondent-Appellant.

Widura Ranawaka with Chinthaka Kohomban for the
Respondent-Petitioner-Respondent

ARGUED ON: 29.11.2013.

DECIDED ON: 20.06.2014

A.W.A.Salam, J. P/C/A

This appeal has been preferred against the judgment of the learned High Court Judge dated 15.03.2007. By the said judgement the learned High Court Judge set aside the order of the learned Magistrate allowing an application for demolition of the building in question under Section 28(3) of the Urban Development Authority Act.

When the appeal was taken up for argument learned counsel for the Respondent-Petitioner-Respondent raised a preliminary question as to the maintainability of the appeal as the application in the Magistrate Court had been filed without the power having been properly delegated by the Urban Development Authority Act. In support of this argument he relied on the judgment in Jayasinghe vs. Seethawaka Urban Counsel reported in 2003 (3) SLR page 14 and Muniandy vs. Kumarage C.A. PHC. APN. 170/2007 minute dated 29.05.2009.

The judgment in the case of Muniandy vs. Kumarage (Supra) has been over ruled in SC Appeal No. 123/09- SC SPL. LA Application 139/09 SC minute dated 18.01.2012. According to the Judgment in the case of Muniandy the Supreme Court held inter alia that the provisions containing in Section 28A (3) of the UDA Act fall within the scope of the term “planning” and therefore the powers, duties and functions referred to therein could be delegated by the UDA to any officer of the Local Authority and therefore the objection raised by the Respondent-Petitioner-Respondent should fail.

However, the impugned judgment in this case has been entered on the basis that the authority to initiate proceedings has been given to the Mayor of the respective Local Authority and not to the Officer who had filed the application in the Magistrate’s Court.

As such, the Respondent-Petitioner-Respondent is not precluded from raising that objection, if he thinks desirable.

Subject to the above ruling the preliminary objection raised by the Respondent-Petitioner-Respondent is ruled out.

JUDGE OF THE COURT OF APPEAL

I agree

Malanie Gunerathne J.

JUDGE OF THE COURT OF APPEAL

CN/-