
JAYANETTI AND OTHERS**Vs.****URBAN DEVELOPMENT AUTHORITY AND OTHERS**

SUPREME COURT
DE ABREW, J.
JAYAWARDENA, J.
DEHIDENIYA, J.
SC/FR/621/2010
JULY 6, 11, 16, 2018

Fundamental rights, Articles 12(1) and 14(1)(h) of the Constitution—Constructions within a Mixed Development Zone—Violation of Regulations—Violation of conditions of Development Permit—illegality—Demolition of unlawful constructions

The petitioners reside in close proximity to Chapel Lane, Nugegoda, where the Royal Institute (the 9th respondent), a private international school, is in operation. The petitioners alleged that the running of such a school in the said location and the construction of another high-rise building are illegal as the same is not in line with the relevant regulations, and as a result, their fundamental rights guaranteed under Articles 12(1) and 14(1)(h) have been violated.

Held:

1. According to section 27(1) of the applicable regulations marked P4, to construct a building consisting of a ground floor plus four upper floors, the minimum extent of the land should be 40 perches but the extent of the relevant land at No. 10, Chapel Lane, Nugegoda is only 38. 6 perches. When the 10th respondent Managing Director of the Royal Institute started constructing this building consisting of a ground floor plus four upper floors, there was already a building consisting of a ground floor plus three upper floors at No. 10, Chapel Lane and a certificate of conformity had already been issued to that building. In view of the extent of land, the second building with a ground floor plus four upper floors for which the development permit had been issued is an illegal building.
2. Although the 2nd respondent Sri Jayawardenepura Kotte Municipal Council issued the development permit 9R9 to construct a building consisting of a ground floor plus four upper floors, when

the building was completed, it had a ground floor plus five upper floors. The 9th and 10th respondents have intentionally violated the conditions of the development permit.

3. According to regulation 27(2), in order to construct a building consisting of a ground floor plus four upper floors the width of the access road cannot be less than 12 meters. The width of the access road (Chapel Lane) to this building is only 6 meters.

4. Even if the second building has only the ground floor plus four upper floors, it is an illegal building and therefore cannot be permitted to stand.

5. The running of the said school in the second building is illegal since a certificate of conformity had not been issued to the said building.

6. Chapel Lane, Nugegoda comes under the Mixed Development Zone in the Sri Jayawardenepura Kotte Municipal Council Area. Schools are not permitted in Mixed Development Zones. The 10th respondent must stop running schools at Chapel Lane, Nugegoda.

7. The 10th respondent has made an application to the Sri Jayawardenepura Kotte Municipal Council to construct a building consisting of a basement, mezzanine floor plus ten upper floors at Nos. 10 and 12, Chapel Lane. The extent of this land is only 64. 6 perches. The development permit issued and extended to construct the said new building violates the above regulations and therefore it is an illegal document.

8. The 1st and the 2nd respondents, the UDA and the Sri Jayawardenepura Municipal Council, have violated the fundamental rights of the petitioners guaranteed by Article 12(1) and 14(1)(h) of the Constitution.

9. The 1st and the 2nd respondents shall demolish all illegal constructions pertaining to the buildings on the premises bearing assessment Nos. 10 and 12, Chapel Lane and cancel all permits granted to the 9th respondent Royal Institute to carry on the business of an international school at Chapel Lane.

APPLICATION under Article 126 of the Constitution for infringement of fundamental rights.

Gamini Marapana, P. C., with Navin Marapana, Mahinda Nanayakkara and U. Wickramasinghe for the Petitioner.

Indika Demuni de Silva, D. S. G., for the 1st, 7th, 8th, 11th and 12th Respondents.

Neville Abeyratne with Kaushalya Abeyratne for the 2nd, 3rd and 5th Respondents.

Faisz Musthapa, P. C., with Manohara de Silva, P. C., for the 9th and 10th Respondents.

cur. adv. vult.

April 3, 2019

DE ABREW, J.

The Petitioners, by this petition, seek a declaration that their fundamental rights guaranteed by Article 12(1) and 14(1)(h) of the Constitution have been violated by the 1st to 8th and 11th Respondents.

This Court by its order dated 13. 12. 2010, granted leave to proceed for the alleged violations of fundamental rights guaranteed by Article 12(1) of the Constitution of the Republic. This Court also granted an interim order as prayed for in paragraph (g) of the prayer to the petition preventing the 9th (Royal Institute) from constructing illegal and unauthorized buildings.

The Petitioners, inter alia, complain the following matters.

1. The Petitioners reside and/or in close proximity to Chapel Lane Nugegoda where the 9th Respondent is presently illegally and/ or wrongfully carrying on a business of an International School in contravention of the Development Plan-Sri Jayawardenepura Kotte Municipal Council Area (Zoning Regulations) 2008- 2020 marked as P1.
2. The Royal Institute International School is now housed in two buildings on premises bearing assessment Nos. 10, 17 and 19/1 Chapel Lane. Apart from the said school, the 9th Respondent is illegally constructing a fourteen storied building on approximately 25 perches of land bearing assessment No. 12 Chapel Lane abutting a twenty feet road. The 10th Respondent who is the Managing Director of Royal Institute (9th Respondent) in paragraph 5(jj) of his objection admits that he has got approval to construct a

building which consists of basement, ground and mezzanine floor plus ten upper floors. Thus it is clear that the 9th Respondent is getting ready to construct or constructing the said building.

3. According to the Development Plan-Sri Jayawardenepura Kotte Municipal Council Area (Zoning Regulations) 2008- 2020 marked P1 (page 3 of P1) the said Chapel Lane is situated in a Mixed Development Zone and educational institutes are not permitted to be established.

4. The 9th Respondent has established an International School in Chapel Lane which has resulted in severe inconvenience being caused to the Petitioners and other residents of Chapel Lane. The school has a student population of 2000 students. The 10th Respondent in paragraph 12 of his affidavit admits that there is a school at Chapel Lane and the student population of this school is 1900. The 10th Respondent in paragraph 5(c) and (d) of his affidavit also admits that in the four schools of the 9th Respondent (Havelock Road, Maya Avenue, Chapel Lane Nugegoda and Maharagama) students are being trained for Cambridge GCE Advanced Level Examination. The 4th Respondent in paragraph 10 of his affidavit too admits that the 9th Respondent is running an International School at Chapel Lane Nugegoda. Thus it is established that the 9th Respondent is running a private International School at Chapel Lane Nugegoda and the student population of the said school is 1900.

5. As a result of the aforementioned actions of the 9th Respondent, the residents are being greatly inconvenienced especially due to traffic congestion which has hampered the daily activities of the residents. The noise caused by the said school of the 9th Respondent and the traffic congestion have made residing and travelling along the said Chapel Lane a near impossibility and have violated the Petitioner's and the other resident's rights including the right of movement [paragraph 8(vi) and 8(vii) of the petition].

6. The 9th Respondent is in the process of constructing a high-rise building on a twenty five (25) perch block abutting 20 feet road at Chapel Lane, Nugegoda. As per Planning & Building Regulations of UDA 2005 marked as P4, it is prohibited to construct high-rise building in excess of five (5) stories including the ground

floor unless the plot of the land is forty (40) perches. Further according to the said Regulations, it is prohibited to construct an aforementioned high-rise building unless the site abuts a street which is no less than twelve meters in width. The above facts have been stated in paragraph 10(i), (iv) and (v) of the petition. [The 10th Respondent however in his affidavit admits that the building at No. 10 and 12 Chapa! Lane Nugegoda will consist of basement, ground floor, mezzanine floor plus ten upper floors.]

The Petitioners state that the site upon which the said high-rise building is being constructed abuts a street (Chapel Lane) of twenty (20) feet wide (approximately 6.1 meters) which is less than what is permitted by P4 [paragraph 10(vi) of the petition]. The 4th Respondent too, in his affidavit, admits that the width of the said road is six meters.

The Petitioners further complain that running of a Private School or International School at Chapel Lane is illegal and constructing the aforementioned high-rise building is also illegal. The Petitioners inter alia move this Court to grant the following reliefs.

1. A declaration declaring that the Petitioners' fundamental rights guaranteed by Article 12(1) and 14(1)(h) of the Constitution have been violated by the 1st to 8th and 11th Respondents.
2. A direction to the 1st to 8th and 11th Respondents to demolish all illegal constructions pertaining to the buildings on premises bearing assessment Nos. 10 and 12 Chapel Lane Nugegoda.
3. An order directing the 2nd and/or 3rd Respondents to cancel all the permits (if any) granted to Royal Institute to carry on the business of International School Chapel Lane, Nugegoda.
4. An order directing the 2nd Respondents and/or 3rd Respondents to take steps to evict Royal Institute from premises situated at Chapel Lane, Nugegoda.

I will now consider whether Chapel Lane Nugegoda falls within a Mixed Development Zone or not. The 4th Respondent (Director General, Urban Development Authority) in his affidavit filed in this Court admits that Chapel Lane Nugegoda falls within a Mixed Development Zone in Sri Jayawardenapura Kotte Municipal Area. The document marked 9R17 was produced by the 10th Respondent with his affidavit. This document

(9R17) is a letter dated 22. 6. 2017 issued by the UDA to the 10th Respondent. The Director (Enforcement) UDA in the said letter admits that the Chapel Lane Nugegoda falls within the Mixed Development Zone in Sri Jayawardenapura Kotte Municipal Area. Considering all the above matters, I hold that the Chapel Lane Nugegoda falls within a Mixed Development Zone in Sri Jayawardenapura Kotte Municipal Area.

Learned President's Counsel for the 9th and 10th Respondents contended that the applicable Regulations are 9R4, 9R5, 9R11 and 9R12. But when the above documents are examined, it is clear that the said Regulations are applicable to the Colombo Municipal Area. I have earlier held that Chapel Lane Nugegoda falls within the Mixed Development Zone in Sri Jayawardenapura Kotte Municipal Area. For the above reasons I hold that the above Regulations (9R4, 9R5, 9R11 and 9R12) are not applicable to Chapel Lane Nugegoda. The 10th Respondent who is the Managing Director of the Royal Institute (9th Respondent) states, in his affidavit filed in this Court, that the 9th Respondent became the owner of the property at No. 10, Chapel Lane, Nugegoda in April 1999. On an application dated 5. 4. 1999, Sri Jayawardenepura Kotte Municipal Council issued a development permit marked 9R9 dated 4. 6. 1999 to construct a building (Teaching Block) consisting of ground floor plus four (4) upper floors. What is the applicable regulation, in the year 1999, to issue the development permit marked 9R9? The Regulations published in Government Gazette No. 392/9 dated 10. 3. 1986 marked P4 were in operation in the year 1999. These Regulations were in operation in Sri Jayawardenepura Kotte Municipal Council area until Regulations marked P1 and P3 came into operation on 21. 4. 2008. Therefore when Sri Jayawardenepura Kotte Municipal Council issued the said development permit marked 9R9 to the 10th Respondent, the applicable Regulations were the Regulations marked P4. The 10th Respondent constructed a building at No. 10, Chapel Lane, Nugegoda and he is now running a school in this building. Therefore the building permitted by the development permit marked 9R9 has now been completed. The 10th Respondent later made another application to build a building consisting of ground floor plus ten upper floors at No. 12 Chapel Lane Nugegoda. Learned President's Counsel appearing for 9th and 10th Respondents contended that Section 6(3)(c) of the Interpretation Ordinance should apply to all applications made by the 9th and 10th Respondents to construct buildings. Section 6(3)(c) of the Interpretation Ordinance reads as follows.

Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected-

(a) omitted

(b) omitted

(c) any action, proceeding, or thing pending or incomplete when the repealing written law comes into operation, but eve, y such action, proceeding, or thing may be carried on and completed as if there had been no such repeal.

The building consisting of ground floor plus four (4) upper floors has now been completed. Construction of an additional building at No. 10 Chapel Lane, Nugegoda has been admitted by the 9th and 10th Respondents in their written submissions dated 19. 9. 2018. The inspection report marked 4R11 establishes the fact that two buildings (ground floor+ three floors and ground floor + four floors) already exist at No. 10 and 12 Chapel Lane Nugegoda. Thus if this building too is also completed there will be three buildings at No. 10 and 12 Chapel Lane, Nugegoda. When I consider all the above matters, I am of the opinion that Section 6(3)(c) of the Interpretation Ordinance does not apply to this building. I have earlier pointed out that when the 9th Respondent purchased the premises at No. 10, Chapel Lane Nugegoda and when the development permit marked 9R9 was issued to the 10th Respondent, the applicable Regulations were the Regulations marked P4. The 9th Respondent made an application to construct a building consisting of ground floor plus four (4) upper floors at No. 10, Chapel Lane Nugegoda and the development permit marked 9R9 was also issued. According to Section 27(1) of the Regulations marked P4, to construct a building consisting of ground floor plus four (4) upper floors, the minimum plot size (the extent of the land) should be 40 perches. But the extent of the land at No. 10, Chapel Lane is only 38. 6 perches. The 10th Respondent in his affidavit [paragraph 5(m)] too admits that the extent of this land is only 38. 6 perches. Therefore according to Section 27(1) of the Regulations marked P4, this building consisting of ground floor plus four (4) upper floors cannot be permitted to be built. Further when the 10th Respondent started constructing this building ground floor plus four (4) upper floors, there was already a building consisting of ground floor plus three (3) upper floors at No. 10, Chapel Lane Nugegoda and a Certificate Of Conformity [COC] marked

9R8 had already been issued to this building. This position has been admitted by the 10th Respondent in his affidavit [paragraphs 5(n) and 5(o) of the affidavit of the 10th Respondent]. Thus building had taken a certain extent of the land of 38. 6 perches. Then how did the UDA issue a permit to construct another building at No. 10, Chapel Lane Nugegoda? How can there be two buildings [one is ground floor plus three (3) upper floors and the other one is ground floor plus four (4) upper floors] on a land extent of which is only 38. 6 perches? On this ground alone the 2nd building [ground floor plus four (4) upper floors] at No. 10, Chapel Lane Nugegoda for which development permit marked 9R9 had been issued can be declared an illegal building. Learned President's Counsel appearing for 9th and 10th Respondents tried to advance an argument that both these buildings could be permitted since the two blocks of land at No. 10 and 12 Chapel Lane have been amalgamated. I now advert to this contention. After the amalgamation what is the extent of the entire land? It is (38. 6+26) 64. 6 perches. To permit two buildings on this amalgamated land, there must be eighty (80) perches according to Section 27 of the Regulations marked P4. When I consider the above matters, I feel that both buildings cannot be permitted. For the above reasons, I reject the above contention of learned President's Counsel for the 9th and 10th Respondents.

Learned President's Counsel for the 9th and 10th Respondents tried to contend that the 2nd building [building consisting ground floor plus four (4) upper floors] at No. 10, Chapel Lane Nugegoda had been regularized. He relied on a document marked 4R11 which is said to be an inspection report. This is a document which has been issued by UDA. When I examine the date on which it has been signed, the said date has been interpolated. It appears that 1. 3. 2008 had been interpolated to read as 1. 3. 2011. At this stage it is interesting to point out a letter signed by the Chairman of UDA marked 9R26 directing the 10th Respondent to demolish both buildings [ground floor+ 3 upper floors and ground floor + 4 upper floors] at No. 10, Chapel Lane. The date of this latter is 8. 11. 2010. The date of the inspection report marked 9R11 had been interpolated to read as 1. 3. 2011 when the original date appears to be 1. 3. 2008. I would like to point out again that the Chairman of the UDA by the said letter marked 9R26 directed the 10th Respondent to demolish both buildings at No. 10 and 12 Chapel Lane, Nugegoda. It has to be noted here that Sri Jayawardenepura Kotte Municipal Council issued development permit marked 9R9 to construct a building consisting of ground floor + 4 upper

floors at No. 10 Chapel Lane, Nugegoda. But when the building was completed surprisingly the building was having ground floor+ 5 upper floors. Learned President's Counsel who appeared for the 9th and 10th Respondents admitted before us that the 2nd building, as at present, was having ground floor+ 5 upper floors. Therefore it has to be noted here that one additional upper floor in this building has come up violating the building permit marked 9R9. Thus 9th and 10th Respondents have intentionally violated the building permit marked 9R9. When I consider all the above matters, I hold that the 2nd building [before construction, ground floor+ four upper floors but after the construction, ground floor + 5 upper floors] is an illegal building and cannot be permitted to stand.

I would like to point out another illegality with regard to the 2nd building [before construction, ground floor + four upper floors but after the construction ground floor + 5 upper floors] No. 10 Chapel Lane, Nugegoda. Regulation, No. 27(2) of P4 reads as follows.

No plan of the site shall be approved for the construction of a highrise building unless-

(1) omitted

(2) the site abuts on a street which is not less than 12 meters in width.

Thus according to the said Regulation, No. 27(2) in order to construct a building consisting of ground floor + 4 upper floors the width of the access road cannot be less than 12 meters. The access road is Chapel Lane. What is the width of the access road? It is only 6 meters wide. The Petitioners state width of Chapel Lane is only 6 meters. The 4th Respondent too in his affidavit admits this position. Therefore the 2nd building [before construction, ground floor + four upper floors but after the construction, ground floor+ 5 upper floors] at No. 10 Chapel Lane, Nugegoda cannot be permitted to stand on the ground. When I consider all the above matters, I hold that the 2nd building even if it has only ground floor+ four upper floors would be an illegal building and therefore cannot be permitted to stand on the ground.

I would like to point out another matter. Learned counsel for the 2nd Respondent (Sri Jayawardenepura Kotte Municipal Council) very honourably admitted before us that no CCC (Certificate of Confirmation) had been issued by the said Municipal Council for the 2nd building [before

construction, ground floor+ four upper floors but after the construction ground floor+ 5 upper floors] at No. 10 Chapel Lane, Nugegoda. Then can anybody occupy this building? The present Regulations applicable to construction in Sri Jayawardenepura Kotte Municipal Council area are marked as P1 and P3 which came into operation on 21. 4. 2008 by Government Gazette No. 1546/3. According to Section 28(1) of the said Regulations, no person is permitted to occupy a building if COC is not issued to the building. The 10th Respondent in his affidavit admits that he is running a school at Chapel Lane, Nugegoda and that the student population is around 1900. The running of the said school in the 2nd building at No. 10 Chapel Lane, Nugegoda is illegal since COC had not been issued to the said building.

I will now consider whether the 9th and the 10th Respondents have got permission to run a school at Chapel Lane, Nugegoda. The 10th Respondent has produced a certificate marked 9R3A which states that Royal Institute at No. 191, Havelock Road, Colombo 5 is registered as an Institute to conduct Courses and Examination in Computer Programming, Secretarial Practice and English Language. But the 9th and the 10th Respondents have not produced any certificate or a document which gives permission to run a school at Chapel Lane Nugegoda. The Regulations relating to construction, business and etc. are found in documents marked P1 and P3 which came into operation on 21. 4. 2008 by Government Gazette No. 1546/3. Since the 9th and the 10th Respondents have not got any approval to run a Private School at Chapel Lane, Nugegoda, whether they can run a Private School at Chapel Lane, Nugegoda has to be considered under the new Regulations marked P1 and P3. I have earlier pointed out that Chapel Lane, Nugegoda comes under Mixed Development Zone in Sri Jayawardenepura Kotte Municipal Council Area. According to page 9 of P1, schools and/or International Schools are not permitted in Mixed Development Zone. Therefore no person is permitted to run schools and/or International Schools at Chapel Lane, Nugegoda. For the above reasons, I hold that running of Private Schools and/or International Schools at Chapel Lane, Nugegoda is illegal and that the 9th and/or the 10th Respondents cannot run any Private Schools and/or International Schools at Chapel Lane, Nugegoda. Since the 10th Respondent has in his affidavit admitted that he runs a school in the name of Royal Institute in both buildings at No. 10 Chapel Lane, Nugegoda, he must stop running of schools at Chapel Lane, Nugegoda.

The 10th Respondent has made an application to Sri Jayawardenepura Kotte Municipal Council to construct a building consisting of basement, mezzanine floor plus ten upper floors at No. 10 and 12 Chapel Lane, Nugegoda. The extent of this land is only 64. 6 perches. The plan for this building has been submitted to Sri Jayawardenepura Kotte Municipal Council on 27. 2. 2008. Thus the applicable Regulations are the Regulations found at document marked P4. The width of the Chapel Lane is only 6 meters. Thus according to Section 27(2) of the said regulations which I have referred to earlier, this building cannot be permitted to be built and if the said building has already been constructed it has to be demolished. When I consider the aforementioned matters, I hold that the development permit issued to construct the above mentioned building marked 9R22 extended by 9R24 has violated the above Regulations and that therefore it becomes an illegal document. However learned President's Counsel (PC) appearing for the 9th and the 10th Respondents admitted at the hearing before us that there is no any building at No. 12, Chapel Lane Nugegoda and that the development permit issued to construct the above mentioned building marked 9R22 extended by 9R24 has now lapsed. However if the building shown in 9R23 has been constructed or part of the said building has been constructed at No. 12, Chapel Lane Nugegoda, the 1st and the 2nd Respondents should take all steps to demolish the said building. I have earlier held that the 2nd building (before construction, ground floor+ four upper floors but after construction, the building was having ground floor+ five upper floors) at No. 10, Chapel Lane, Nugegoda is an illegal building; that running of any Private School and/or International School at Chapel Lane is illegal; and that the Development Permit marked 9R22 extended by 9R24 is illegal. The 1st and the 2nd Respondents have permitted the aforementioned actions. For the above reasons, I hold that the 1st and the 2nd Respondents have violated the fundamental rights of the Petitioners guaranteed by Article 12(1) and 14(1)(h) of the Constitution.

For the aforementioned reasons, I make the following orders.

1. The 1st and the 2nd Respondents are directed to demolish all illegal constructions pertaining to the buildings on premises bearing assessment Nos. 10 and 12, Chapel Lane, Nugegoda.
2. The 2nd Respondent is also directed to cancel all Permits (if any) granted to Royal Institute, the 9th Respondent to carry on the business of an International School at Chapel Lane Nugegoda.

The 1st and 2nd Respondents are given three months' time from the date of this judgment to comply with the directions given in this judgment.

JAYAWARDENA, J. - *I agree.*

DEHIDENIYA, J. - *I agree.*

Application allowed.

Judgment by: Sisira de Abrew, J.

This PDF was produced by paralegal.lk