

Ujitha B. Dissanayake v Divisional Secretariat, Thimbirigasyaya

RTIC Appeal (In – person)/348/2018 (*Order adopted as part of a formal meeting of the Commission on 11.09.2018*)

Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mahinda Gammampila

Commission Members: S.G. Punchihewa

Dr. Selvy Thiruchandran

Director-General: Piyathissa Ranasinghe

Appellant: Ujitha B. Dissanayake

Notice issued to: Priyantha Dissanayake, Designated Officer (DO), Divisional Secretary, Divisional Secretariat Thimbirigasyaya

Appearance/ Represented by:

Appellant - Ujitha B. Dissanayake, President, Harischandara Mawatha Residents Association
M.Y. Hussain

Aril Rodrigo (illegible), Treasurer, Harischandara Mawatha Residents Association

PA - H. A.V. K, Palansuriya, Assistant Divisional Secretary Thimbirigasyaya

K.M.P Perera, Development Officer

Sudath Samanpriya G/S Administrator

RTI Request filed on:	23.01.2018
IO responded on:	No response
First Appeal to DO filed on:	12.02.2018
DO responded on:	28.03.2018
Appeal to RTIC filed on:	10.04.2018

Brief Factual Background:

The Appellant had by request dated 23.01.2018 requested following,

- A certified copy of the 'Residency Certificate' issued to Chamila Nilmini and Wasantha Sampson Rodrigo by the Grama Niladari .
- And to verify the use of fabricated assessment no. 539 A in Havelock Road/Sri Sambuddhatwa Jayanthi Mawatha, Colombo 06, by Chamila Nilmini and Sampson Rodrigo.

As the Information Officer (IO) failed to respond within the time frame stipulated under the RTI Act, the Appellant lodged an appeal with the DO on 12.02.2018

It was noted that subsequent to the Appeal to the DO, the IO by letter dated 21.02.2018 had informed the Appellant the following,

- The Electoral List concerning Assessment No. 539 A could be obtained from the Elections Commission,
- It was also informed that verification with respect to the building bearing Assessment Number 539 A which appears to have been built on the Harischandra Mawatha can be sought from the Colombo Municipal Council.

- c) With regard to the certified copy of the 'Residents Certificate' issued to Chamila Nilmini and Wasantha Sampson Rodrigo by Grama Niladari, '188 Pamankeda East, an extension of 21 days in addition 14 days as stipulated under the RTI Act was required in order to seek the permission from the said Chamila Nilmini and Wasantha Sampson Rodrigo

The DO by letter dated 28.03.2018 informed the Appellant the following,

- a) That permission was sought, under and in terms of Section 29 (2) of the Right to Information Act No. 12 of 2016, from the said Chamila Nilmini and Sampson Rodrigo since the information requested concerned the said parties.
- b) This consent was sought through letter dated 12.03.2018 to which the relevant third parties had responded refusing to consent to the provision of access to the information requested by the Appellant.
- c) Accordingly the PA was unable to release the information requested under and in terms of Section 5 (1) (a) of the RTI Act.

Dissatisfied with this response, the Appellant preferred an appeal to the Commission on 10.04.2018.

Matters Arising During the Hearing

At the time of the hearing, the Appellant had filed written submissions dated 18.09.2018

Reiterating the contents of the written submissions, the Appellant submitted as follows;

1. This appeal relates to a request made by a member of the Harischandra Mawatha Residents Association (the Appellant) on a 'Residency Certificate' issued by the Grama Niladari 188 Pamankeda East through 'Divisional Secretary Thimbirigasyaya' of a third party whom the Appellant alleged had constructed 'an unauthorized structure' without approval of the relevant authorities i.e. the Colombo Municipal Council (CMC) or the Urban Development Authority (UDA). However, he submitted that the unauthorized structure is currently under investigation by the UDA which was initiated in order to remedy the negative and harmful impact faced by the residents of Harischandra Mawatha.
2. The CMC has confirmed the third parties' failure to obtain an approved building plan and any such assessment number 539A which neither exists in Harischandra Mawatha nor Havelock Road/Sri Sambuddhatwa Jayanthi Mawatha as claimed by the third parties in their confession made to Wellawatte Police on October 09, 2017.
3. As a result, all residents of Harischandra Mawatha are aggrieved by the actions of the said third party.
4. The Appellant drew the Commission's attention to Section 5 (4) of the RTI Act which states that,
'Notwithstanding the provisions of subsection (1), a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure.'
5. Further the Appellant drew the attention of the Commission to the proviso to Section 29 (2) (c) which states that
the Commission may on the application made in that behalf by the citizen making the request, direct the disclosure of the information in question notwithstanding any objections raised by such third party against its disclosure, where the release of the information concerned demonstrably outweighs the private interest in non-disclosure,
and that on the facts of the case the unauthorized structure being a matter of grave concern to the 43 residents of Harischandara Mawatha, the interest in the release of the information concerned demonstrably outweighs the private interest in non-disclosure.

The PA responded stating that it was the duty of the Grama Niladhari of a particular area to issue a 'Residency certificate' for any occupant of a particular residential area on the basis that his or her name has been included in the Electoral list for a period of time. For that reason, it was the PA's contention that it was only under the obligation to issue a Residency Certificate for any occupant and not to ascertain whether the residence of a particular occupant was unauthorized or not.

In response the Appellant submitted that based on the confession made to the Wellawatte Police on October 09 2017, the alleged misuse of Assessment Number 539 A on Harischandra Mawatha and Havelock Road by the third party has been confirmed. Therefore, it was the Appellant's contention that it is the Grama Niladhari of the area who initially confirms the resident status of any occupant and includes him in the electoral register and makes other suitable recommendations on the eligibility of a resident, including the third party in this instance to obtain public utilities such as water and electricity.

Order

The function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, subsequent to a consideration of whether the information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act and further, and in the event that the information does fall within the purview of an exemption is Section 5 (1) based on whether the public override in Section 5 (4) is found to apply. In this instance the PA has sought the consent of the third party on the basis that the provision of the information would affect the privacy of the said third party as envisaged by Section 5 (1) (a) which reads as follows;

the information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure

The PA is directed to produce the 'Residency Certificate' issued to Chamila Nilmini and Wasantha Sampson Rodrigo by Grama Niladari, 188 Pamankeda East for the Commission's perusal on 08.10.2018 in order to better assess whether the information falls with Section 5 (1) (a) as contended by the PA.

Order is directed to be conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).

The Appeal is adjourned

Next Hearing Date: 08.10.2018
