

Ujitha B. Dissanayake v Anuradhapura Municipal Council

RTIC Appeal (In-Person Hearing)/ [656/2018] - Order adopted as part of the formal meeting of the Commission on [09.11.2018]

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: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
Commission Member: Mr. S.G. Punchihewa
Commission Member: Dr. Selvy Thiruchandran
Commission Member: Justice Rohini Walgama

Appellant: Ujitha B. Dissanayake
Notice issued to: Municipal Commissioner, Anuradhapura Municipal Council

Appearance/ Represented by:

Appellant – Ujitha B. Dissanayake
PA - Ajantha Gunawardhana, Municipal Commissioner, Anuradhapura Municipal Council

RTI Request filed on	23.04.2018
IO responded on	03.05.2018 (Acknowledgement)
First Appeal to DO filed on	21.05.2018
DO responded on	No response
Appeal to RTIC filed on	02.07.2018

Brief Factual Background:

The Appellant had by request dated 23.04.2018 requested the following information,

1. *As per letter dated June 19th, 2013, certified copies of all filed/cite inspection reports of unauthorized officer referred by ‘Planning Committee’ on June 12th, 2013,*
2. *As per letter dated June 19th, 2013, certified copies of the ‘decision reached’ by the ‘Planning Committee’ on June 12th, 2013 which determined an unauthorized construction had been constructed by Mr. Muthalif,*
3. *As stated by letter dated July 24, 2013, certified copies of all documents/reports given by ‘Unauthorized Officer/s’ of Municipal Council, Anuradhapura to support that unauthorized construction done by Muthalif had not been removed as requested by Municipal Council, Anuradhapura on June 19th, 2013,*
4. *As per letter dated January 27th, 2015, certified copies of all all filed/cite inspection reports of unauthorized officer referred by ‘Planning Committee’ on January 21st, 2015,*
5. *As explained by letter dated January 27th, 2015, certified copies of all documents/reports given by ‘Unauthorized Officer/s’ of Municipal Council Anuradhapura to support that unauthorized*

Construction done by Muthalif had not been removed as requested by Municipal Council Anuradhapura on June 19th, 2013.

6. *As said by letter dated February 25,2015, certified copies of all field/site inspection reports of unauthorized officer which bares evidence that 'Central Trading Company' had failed to remove the 'unauthorized wall' as reminded earlier by 'Municipal Council Anuradhapura' on January 27, 2015,*
7. *As stated by letter dated January 25,2016, certified copies of all 'documents of evidence' presented by the owner of property 138 Main Street, Anuradhapura as 'proof of ownership claimed by owner of Central Trading Company' to encroached wall attached as annexure 1 &2,*
8. *As further said by letter dated January 25, 2016, certified copies of the 'decision reached' by Municipal Planning Committee which decided the dispute be settled through a private legal suite,*
9. *As even further stated by letter dated January 25, 2016, instructions were given to 'Manager Central Trading Company' to remove 4.5 inches of asbestos roofing sheet and if such due process was followed to remove 4,5 inches asbestos roofing sheet was pursuant under which law applicable in Sri Lanka?*
10. *Evidence of a 'building plan' approved with respect to 'construction of new building' as stated in letters dated June 19th, 2013 and July 24, 2013 and*
11. *Evidence of any plan approved for encroached wall as depicted in 'annexure 1 & 2'*

As the IO failed to respond within the time period stipulated under the Act the Appellant on 21.05.2018 lodged and appeal with the DO. As the DO too failed to respond with the time period stipulated under the Act the Appellant preferred an appeal to the Commission on 02.07.2018.

Matters Arising During the Course of the Hearing:

At the time of the hearing, the PA provided the information requested by the Appellant was provided to the Appellant except the information requested by item no. 9 and 10.

The PA submitted as follows,

1. In relation to item no.09, the PA submitted that the relevant decision does not contain the law which is applicable. Therefore, it is not in the position to provide such information.
2. In relation to item no.10, the PA submitted that it is not in the position to release the same without the consent of the relevant third-party. Further, submitted that it will release the minute sheet in relation to the approved building plan to the Appellant.

Order:

The Public Authority is directed to produce the above-mentioned building plan for the perusal of the Commission on the next hearing date.

The Appeal is adjourned.

The next hearing date: 09.04.2019

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Matters Arising During the Course of the Hearing:

The Commission queried from the PA as to whether it had submitted the Building plan as directed by Order dated 09.11.2018, for the perusal of the Commission. The PA submitted that it had not brought the same to the hearing. However, the PA submitted that the approved building plan is in the custody of the PA and that it cannot submit this approved building plan without the consent of the third-party as the said information is personal information falling within Section 5 (1) (a) of the RTI Act.

The PA was queried as to whether the Appellant requested the approved building plan or the application for the approval for the building plan. The PA submitted that the above-mentioned building plan has been approved and that the minute approving the said building plan has been provided to the Appellant at the previous hearing on 09.11.2018.

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. Section 5 (1) (a) states 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

Section 5 (4) 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.

The attention of the PA is drawn to the fact that the information falling within Section 5 (1) does not prevent the PA from submitting the information concerned for the perusal of the Commission. Section 15 (c) of the RTI Act which states that

For the purpose of performing its duties and discharging of its functions under this Act, the Commission shall have the power... (c) to inspect any information held by a public authority, including any information denied by a public authority under the provisions of this Act;

Accordingly the PA is directed to produce the 'Building Plan' for the Commission's perusal on 23.07.2019 in order to better assess whether the information falls with Section 5 (1) (a) as contended by the PA.

The Appeal is adjourned.

Next Date of Hearing: 23.07.2019
