

Legal Aspects Concerning Sustainable Buildings and Cities Relating to the Urban Development in Sri Lanka

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ABSTRACT

Sustainable buildings are energy and environmentally efficient, providing economic, environmental and social benefits over the whole built environment, while protecting and improving the needs of future generation. Sustainable construction also should be environmentally efficient and economically viable. "Green Buildings" are an evolving term in Sri Lanka that encompasses both the general concept of environmentally conscious development and construction, as well as multiple formal rating systems for measuring the environmental impact of projects. A Sustainable City is a city where achievements in social, economic, and physical development are made to last. It is now widely recognized that cities make an important contribution to social and economic development at national and local levels. Cities are important engines of economic growth. Cities absorb two-thirds of the population growth in developing countries as well as it offer significant economies of scale in the provision of jobs, housing and services. Also cities are important centre of productivity and social advancement.

Laws governing protection of environment in Sri Lanka are largely based on legislative enactments. The objectives of this legislation are to promote planning of economic, social and physical development aspects and its implementation in the urban areas. This paper presents existing and new environmental and planning law and legal aspects to be considered in sustainable buildings, cities and urban development in Sri Lankan construction industry.

Key Words: Legislation, Green Building, Cities, Urban development, Sustainable development

1. INTRODUCTION

Sustainable building is energy and environmentally efficient, providing economic, environmental and social benefits over the whole building environment, while protecting and improving the needs of future generation. Sustainable construction also should be environmentally efficient and economically, therefore the Sri Lanka's legislation implements most law about these areas. "Green Buildings" are an evolving term that encompasses both the general concept of environmentally conscious development and construction, as well as multiple formal rating systems for measuring the environmental impact of individual projects.

The Sri Lankan legislation has given the responsibility to the local government bodies and Urban Development authority, thereby when making the building and construction in there are areas all urban councils are considering and controlling that. Otherwise, the people will make, as they want. After the "Tsunami", the Sri Lankan legislation created more laws about the building and construction, because more non-government organizations came to the Sri Lanka. In that time Sri Lankan government, emphasize the green building projects.

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2. SUSTAINABLE CITY

Is a city where achievements in social, economic, and physical development are made to last. A Sustainable City has a lasting supply of the natural resources on which its development depends (using them only at a level of sustainable yield). A Sustainable City maintains a lasting security from environmental hazards, which may threaten development achievements (allowing only for acceptable risk). It is now widely recognized that cities make an important contribution to social and economic development at national and local levels. Cities are important engines of economic growth and Cities are important centre of productivity and social advancement. Full realization of cities' potential contribution to development is often obstructed by severe environmental degradation in and around rapidly growing urban cities. Environmental and physical Planning Law always control and regulate sustainable cities and buildings through legislation provisions and case law.

3. BASIC LEGAL PROVISIONS RELATING TO BUILDINGS AND CITIES

Sri Lanka's Constitution adopted in 1978 specially refers (Article 27) to the preservation of the environment. The laws governing the protection of environment and conservation in Sri Lanka are largely based on legislative enactments. Sri Lanka Parliament enacted National Environmental Act No. 47 of 1980 to the establishment of the Central Environmental Authority (CEA) in 1981 as the state agency responsible for the formulation and implementation of policies and strategies for the protection and management of environment. Also our Parliament enacted various legislation for protection of environment such as Fauna & Flora Protection Ordinance - No. 02 of 1931, Forest Ordinance - No 16 of 1901, Soil conservation Act -No 02 of 1951, National Heritage Act No 03 of 1988, Coast Conservation Act - No 51 of 1981 etc. for controlling environmental matters. These laws are directly applicable to the construction matters.

3.1. PHYSICAL PLANNING LAW IN SRI LANKA FOR SUSTAINABLE BUILDINGS

There are number of physical planning legislation in Sri Lanka such as Housing and Town Improvement Ordinance No. 19 of 1915, Urban Development Authority (UDA) Law No 41 of 1978, Town and Country Planning Ordinance No. 16 of 1946, Municipal Council Ordinance and Urban Council Ordinance, Pradeshiya Sabahas Act etc. One such early legislation is Housing and Town Improvement Ordinance No. 19 of 1915 for control of physical planning matters to protection of environment. The objective of this Ordinance is to deal with the problem of in sanitary conditions of urban overcrowding as well as to prevent such situation. Towards this end, this Ordinance has introduced sanitary and environmental standards in urban areas and to improve the quality of the housing stock. Accordingly a set of building regulations are set out in the Schedule to the Ordinance. These regulations relate to controlling height, light, ventilation and accessibility. In addition, the Ordinance provides for the introduction of town improvement schemes, slum clearance schemes and street line schemes. This is a basic law relating to sustainable buildings. However this law is not properly implementing by relevant regulatory bodies.

3.2. PHYSICAL PANNING LEGISLATION AND ITS PRACTICE

Housing and Town Improvement Ordinance No. 19 of 1915 is to deal with the problem of in sanitary conditions of urban overcrowding as well as to prevent such situation. Towards this end, this Ordinance has introduced sanitary and environmental standards in urban areas and to improve the quality of the housing stock. Accordingly a set of building regulations are set out in the Schedule to the Ordinance. These regulations relate to controlling height, light, ventilation and accessibility. In addition, the Ordinance provides for the introduction of town improvement schemes, slum clearance schemes and street line schemes. The development control powers are vested with the Mayor or chairman of the local authority under the Ordinance. Until the introduction of the Urban Development

Authority Law (UDA) Law in 1978, this Ordinance together with Town and Country Planning Ordinance of 1946 were the main legal instruments with regulated the physical planning and development of urban areas in Sri Lanka. Today these two Ordinances are operation in areas which have not been declared under the UDA Law.

Urban Development Authority Law No. 41 of 1978 (UDA Law) marks a new era in the physical planning exercise in Sri Lanka. This law was in acted in 1978 due to inadequacies found in both Housing and Town Improvement Ordinance No. 19 of 1915 and Town and Country Planning Ordinance No. 16 of 1946 to deal with physical planning problems of the urban areas of Sri Lanka. According to the preamble to the UDA law, the objective of the law is to promote planning of economic, social and physical development and its implementation in the urban areas declared under this law and control of environment. In order to realize these objectives, clearance of slums and shanties, coordination and control of development projects carried out by other governmental agencies, exercising of development controls to ensure conformity to development plans and planning regulations. UDA has introduced a new set of development regulations in areas under replacing the provisions of housing and Town Improvement Ordinance. Also Jayasinghe vs. Stheethawaka Urban Council held that UDA has wide powers for controlling building matters than local government authorities in their region.

3.3. URBAN DEVELOPMENT AUTHORITY (UDA) REGULATIONS

Regulations may be made by the Minister of Construction and Urban Development for the purpose of carrying out or giving effect to the principles and provisions of the UDA Law No. 41 of 1978 as amended by Act No. 4 of 1982 for regulate any physical planning projects or schemes prepared by any Government Agency or other persons in such areas (Section 8 (r) of UDA Law), regulating the use of land and buildings in different zones, and imposition of conditions and restrictions in regard to several factors of building development. In addition, regulations may also be made on several matters on which they are required to be prescribed. One of the latter is on "the levy of fees and service charges in respect of different categories of developments". However, all of the above matters should relate to a Development Plan prepared and sanctioned for the development of the corresponding UDA declared area. On the other hand, since there were no Development plans prepared for the UDA declared areas in the immediate period after the establishment of the principal enactment (No. 41 of 1978), and of its amendment (No. 4 of 1982) The Minister at that time, acting under the generality of the powers conferred by Section 21, has published the, "UDA Planning and Building Regulations 1986" in Gazette NO.392/9 of 1986.03.10. It specifically stated that the provisions of these regulations shall be applicable to every area for the time being declared by the Minister as a UDA Area. These regulations were approved by Parliament as required by Section 21 (3) of the law.

4. DISASTER MANAGEMENT LAW AND SUSTAINABLE CITIES

On the other hand Sri Lanka is one of the countries that were hardest hit by the tsunami tidal waves that ravaged severed countries in the Indian Ocean rim on December 26, 2004. The tsunami caused extensive damage and disruption to human life, livelihood, public and private property, economic infrastructure, buildings in Sri Lanka. The main objectives of the new planning laws in the tsunami affected areas are to provide immediate to communities and local government authorities to speedy restart functions and construct buildings through protection of environment. The Sri Lanka Parliament has enacted special two Acts namely Tsunami (Special Provisions) Act No.16 of 2005 and Disaster Management Act No. 13 of 2005 for path of rehabilitation. These two Acts specially mentioned planning and recovery techniques of disaster management of Sri Lanka. In the post tsunami reconstruction work, the government has given high priority to rebuild human settlement and shelters.

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relating to the Tsunami Reconstruction are re-construction of infrastructure facilities in cities in Sri Lanka under the new planning law and re-settlement of displaced families outside buffer zone with property law rights.

5. ENVIRONMENTAL PROTECTION AND LEGAL PROCEDURE FOR SUSTAINABILITY

The functions of the CEA as provided for in part II of the Act as to administer the provisions the Act and its regulations, to conduct, promote and coordinate research relating to aspects of environmental degradation or prevention, to specify standards norms and criteria for the protection of the environment, to regulate, maintain and control activities relating to aspects of environment and to undertake investigations to ensure compliance with the Act. Recognizing that the CEA lacked regulatory powers to act on environmental pollution, the National Environmental Act was amended in 1988. The amendment requires all project approving agencies to obtain an Environmental Impact Assessment (EIA) from the developer proposing a development activity. The EIA process is a useful tool in assessing the impact of development projects and activities.

Environmental Impact Assessment (EIA) is a term used to define a document which assesses the environmental effects for proposed development projects or policies and evaluates alternatives to that project/ policy that might be environmentally better. The procedure established provides for the submission of EIA's in respect of projects that are generally determined by the Minister of Environment. Once an EIA is submitted, the Act provides for a public inspection period with a mandatory 30 days period for the receipt of public comments. A public hearing may be held where the public interest so demands and a decision to proceed with a project with or without conditions have to be arrived at thereafter. Therefore EIA process is a useful tool in assessing the impact of development projects and activities. However project approving agencies ignore this procedure. It was held by Colombo - Katunayake Express way case.

Further Antiquities Ordinance has been amended by Act No. 24 of 1998 to obtain an approval from the Department of Archeology before any major project is launched by any developer. This process is known as *Archaeological Impact Assessment (AIA) Survey for maintain sustainability of cultural matters*. Coast Conservation Act No. 57 of 1981 and the Board of Investment (BOI) No. 04 of 1978 are another two statutes with provisions for physical planning matters for development of economic infrastructure facilities in coastal belt and free trade zones.

6. NUISANCE LAW AND SUSTAINABILITY

Nuisance action is a common law action which is based on the premise. This action was one to use for the purposes of environmental protection. There are three types of nuisance actions, namely private nuisance, public nuisance and statutory nuisance. A person is said to commit the tort private nuisance when he is held to be responsible for an act causing physical damage to land or substantially interfering with the use or enjoyment of land or of an interest in land. Thus nuisance which is unreasonable covers interference with use and enjoyment of land by water, fire, smoke, smell, fumes, gas, noise, heat, decrease or any other like thing which may cause such an inconvenience. Public nuisance is a crime rather than a tort and an action for public nuisance will be instituted by the state. It is therefore, an act or omission which affects the reasonable comfort or convenience of members of the public. It is not necessary to prove that every member of the public has been so affected. A representative group is sufficient. In that matter, nuisance law can protect sustainability.

As far as environmental related actions in nuisance are concerned, the most common actions would be related to noise, pollution of the air and water ways, disposal of garbage, etc. As regards statutory nuisance, the *Nuisance Ordinance No. 15 of 1862* provides that whatsoever shall commit any of the offences specified in that Ordinance, shall be guilty of an offence. Apart from this Ordinance,

Municipal Councils, Urban Council Ordinance and Pradeshiya Sabhas Act also provide for the prevention of nuisance and protect sustainability concept.

7. CASE LAW RELATING TO SUSTAINABLE CONCEPT

In the *Keangnam Enterprises Ltd vs. Abeysinghe and Others* case, Sri Lanka Supreme Courts developed the Environmental Law and sustainability. In this case the Petitioner-Company had established a metal quarry, a metal crusher and a premix plant at a site taken on lease for developing and rehabilitating the Ambepussa - Dambulla - Anuradhapura road: The Respondents complained of a public nuisance created by the Petitioner-Company. The Magistrate Courts granted an injunction restraining the operation of the quarry under section 104(1) of the Code and also entered a conditional order under Section 98(1) of the Code for the removal of the public nuisance caused by the quarry. In this case Supreme Courts observed any one can enter in to courts for protection of environment and sustainability.

The Supreme Court of Sri Lanka clearly emphasized in the *Eppawala phosphate case*. This case can be mentioned as *Bulankulama Vs Secretary, Ministry of Industries* and Supreme Courts stated that environmental protection and environmental sustainability should constitute an integral part of the economic development process in order to achieve sustainable development and courts further explained that as a member of the United Nations could hardly ignore the environmental requirements, norms and standards laid down in the Stolkholm and Rio Declarations.

In the *De Silva vs. Minister of Forestry and Environment* case is on Pollution Control and - Air Quality Regulation case. Petitioner complained that the Air Quality standards were not being maintained in some parts of Colombo Metropolitan area. And the petitioner sought a direction of Court to the Minister to make and gazette regulations specifying: Mobile Air Emission Standards, Fuel Standards and Vehicle Specification Standards. Court decided that the respondent, the minister will make and gazette regulations specifying those three standards. As a result of this case the National Environmental (Air Emission, Fuel and Vehicle Importation Standards) Regulation No.1 of 2000 was gazette intended to come into effect on 1st Jan 2003 for protection of sustainability concept in cities.

In *M.M. Khalid and Three Others vs. Chairman, Sri Jayawardenepura-Kotte Municipal Council* case is on Public Nuisance, plaintiffs who were residents of Senanayake Avenue, which is a residential area and causing a public nuisance to the residents in that it was attracting crows and other animals, was causing diseases. Court decided that the respondent, the municipal Council, garbage must be disposed of in a manner which does not cause a nuisance.

In the *Environmental Foundation Ltd vs. Geological Survey and Mines Bureau & Seven Others* case is on conservation of Biological Diversity matter. The petitioners claimed to prevent unsustainable sand mining in river beds in Maha-Oya. Operations under licenses are not monitored and causing severe environmental damage. As a result of unchecked mining, more sand is being removed from river beds. The petitioner pointed out that adverse environmental impacts of these activities include costal erosion, erosion of river banks, salt water intrusion, lowering of the water table, ecological imbalance and habitat loss. The petitioner requested court to carryout EIAs, to monitor the mining activities and to prevent the over exploitation of the resources. This case was developed new legal concepts than provisions of legislation.

In the *S.C. Amarasinghe and Three Others vs. the Attorney General and Three Others* (The case is on Land Acquisition and Environmental Case) Lands belonging to the petitioners were to be acquired under the Urban Development Project Act No. 2 of 1980 for the Colombo Katunayake Expressway. The petitioners filed action challenging the order. The petitioners claimed that in forming an opinion that the expressway would meet the just requirements of the general welfare of the people. The petitioners also claimed that approval for the project must be obtained under the National

Environmental Act and can not be in respect of the expressway before an EIA has been prepared. The court states, it is not for this court to determine whether, upon a consideration of all these factors, the disadvantages outweigh the advantages of the expressway or whether in its view the expressway meets the just requirements in the general welfare of the people. The court was therefore unwilling to consider environmental issues at this stage and in relation to the issue of land acquisition.

In *Jayasinghe vs. Seethawakapura Urban Council and Others* case is on unauthorized constructions matter and Courts developed new concepts. Petitioner was asked to remove the unauthorized structure within seven days by the 1st respondent. The area has been declared as a Development Area in terms of the Urban Development Authority Law. The petitioner seeks an injunction of the UDA notice as that notice was illegal and void. The court states, once an area has been declared as a "development area" no person could carry out or engage in any development activity in any such part without a permit issued by the UDA. And if any development activity is commenced, continued, resumed or completed without a permit issued by the UDA, in a development area, action has to be taken only by the UDA. Towards the protection of environment, aspects of physical planning and built environment in the country have a considerable role to play for sustainability. In this regard an account of some important statutes seeking to regulate physical planning matters in the country is useful.

8. NEW NATIONAL POLICY ON SAND AS A RESOURCE FOR THE CONSTRUCTION INDUSTRY

Sand is a mineral as defined in the Mines and Minerals Act No. 33 of (1992), and is the property of the State. The estimated annual national demand for sand for the construction industry is approximately 7 million cubic metres. Almost all of this is manually or mechanically harvested from river beds, carved from river sides, or mined from sand deposits on previous riverbeds. Unrestricted harvesting of sand is resulting in heavy rates of soil erosion, land degradation, increased river-water turbidity, lowered water tables and salinity intrusion in the lower reaches of rivers. Mechanised sand mining has caused irreparable damage to the ecology of the affected areas. It is recognized that the sound management of sand, e.g. so as to minimize flooding, is also necessary for sustainable cities situated in river basins. Because much of the human population too, lives close to and depends on major rivers, this has in turn led to severe water stress, especially for the poor in the western and south-western coastal areas, necessitating costly salt water extrusion schemes. Many rivers in the densely-populated western part of the island are already experiencing the risk of suffering serious habitat alteration and water quality loss and immediate remedial measures are therefore needed. Article 28(f) of the Constitution makes it the duty of every person in Sri Lanka to protect nature and conserve its riches. Sri Lanka has also committed to the principle of sustainable development and to the sustainable use of its natural resources by subscribing to United Nations Conference on Environment and Development and its Agendas. This sand policy statement should reflect Sri Lanka's constitutional, international and national obligations, including the Mines and Minerals Act No. 33 of 1992, the National Environmental Act of 1980, the Coast Conservation Act of 1981 and other relevant legislation, regulations and policy statements. It should be viewed within the evolving policy framework for sustainable development of country including cities and urban development. It defines the commitment of Government, in partnership with the people, to effectively manage the construction-sand resource for the benefit of present and future generations and establish sustainability for environment.

9. HOUSING AND THE ENVIRONMENT POLICIES AND GREEN BUILDINGS

Housing is a crucial factor in the changing from of town. The planning system including the land legislation are closely connected with the provision and availability of land for housing development, and there is an interaction between the planning system and housing policy, which influences the amount of new land required. Many strands of policy come together in the consideration of the future of inner urban areas. Urban areas are not alone in having bad housing condition but the some urban

areas are often associated with other severe social problems, especially poverty and unemployment. There has been wholesale demolition of order housing, accompanied by the disruption of existing communities and loss of jobs. An effective housing policy can play a central part in regenerating sustainable areas. Housing policies, which too often change direction, are harmful to the efficiency of the construction industry and its supplier's. It is important to secure for new and improved green housing so that the industry does not suffer from periodic damaging under utilization of its resources.

10. CONCLUSIONS

The Sri Lankan legal system has sufficient provisions to protect the environment as well as good system procedure for physical planning. The enforcement of National Environmental Act No. 47 of 1980 and Urban Development Authority Law No. 41 of 1978, mark a new era of Environmental and Planning areas of the country. The court of first instance has the powers to act in the environmental planning matters. The Court of Appeal and the Supreme Court has the appellate authority of environmental and planning law matters for develop the sustainable buildings and cities.

It can be concluded that the legal system of Sri Lanka is structured with legislation for environmental protection and planning issues. And also the regulatory powers are well granted for relevant authorities and a structured court system is available to go through environmental matters. However still the environmental and planning issues continuing to exist despite the legal detailed legal system. Every professional should observe loopholes lies in the resource capacity of the relevant authorities to effectively enforce law in environmental and planning law issues and the effectiveness of jurisdiction for certain acts of wrong doing.

Also Locus Standi and Public Interest Litigation has recognized by several cases that held by the court regarding the environmental issues. This Public Interest Litigation has given authority on interested parties to file cases on environmental issues behalf of aggrieved parties. Bulankulama and Others vs. Secretary, Ministry of Industrial Development and Others (Eppawela Phosphate Case) was one famous case that held in Supreme Court under Public Interest Litigation rule.

Hence different branches and divisions of law for green buildings and sustainability in Sri Lanka are categorized as follows. It is stated in Figure 1.

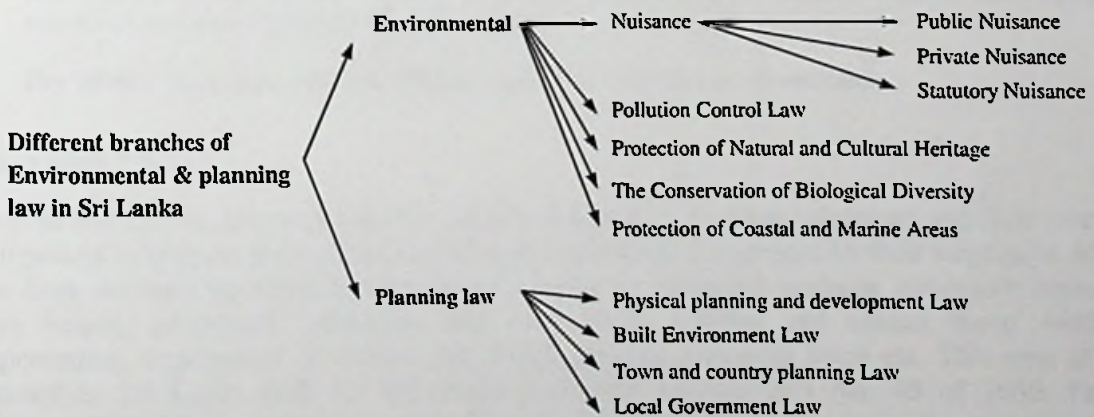


Figure 1 -Different branches of Environmental & Planning Law in Sri Lanka related to sustainability

11. RECOMMENDATIONS

The growth of the construction industry is considered as an indicator of the level of development. Being a developing country Sri Lanka also having a higher growth in construction industry. Environmental and planning law is a tool introduced to regulate natural resources in the ambition of

the protection and improvement of the environment. The understanding of environmental and planning law together with the functions and powers vested to court system in Sri Lanka would be beneficial in the future carrier as professional quantity surveyors ,architects, town planners and engineers.

It should be noted however as lawful citizens of a country and professionals should be aware of these laws and regulations to ensure. Every professional in the construction industry including the quantity surveyors, architects, town planners, engineers should be well aware of the environmental and planning law and abide by them in order to better protect the environment by the impact of construction project as well as create a country with better living conditions in future.

Therefore, the government of Sri Lanka and other developing counties in Asia should introduce new sustainability policies relating to housing and introduce new provisions of the green building law especially to the urban sector. Also Environmental law related to construction matters should amended by Parliament for protect rights of future generations. Ministry of justice should establish new Environment courts for the industrial I sector for proper administration of justice in the country.

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