

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an application for a
mandate in the nature of a writ of
certiorari in terms of the provisions of
article 140 of the constitution of the
democratic socialist republic of Sri
Lanka.

Rupahinge Gunaratne
Mihirigaloda, Pahala
Karawita.

CAW Application No.330/2012

Petitioner

Vs.

1. Madara Swarnamalee Wijewardena
Thennakoon, Ransinwatte
Walawwa,
Uda Karawita.
2. National Gem and Jewellery
Authority
Galle Face Court, Colombo 03.
3. Prasad Galhena, The Chairman
National Gem and Jewellery
Authority,
Galle Face Court, Colombo 03.
4. N.P. Samaratunga

Senior Regional Manager, National
Gem And Jewellery Authority,
Regional Office,
Ratnapura.

Respondents

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**
COUNSEL : Gamini Marapana PC with Navin Marapana,
for the Petitioner,
S.M.D.Bandara,
for the Respondents

Supported on : 06.11.2012 and 12.11.2012

Written Submission on : 30.01.2013

Order on : 21.02.2013

S.Sriskandarajah, J,

The learned President's Counsel for the Petitioner supported this application and sought an interim relief staying, the operation and/or suspending the licence bearing No.8529, issued to the 1st Respondent to gem on the land called and known as "Peelikumbura" and preventing the 1st Respondent from gemming on the said land until the final determination of this application. This order relates to the said interim relief sought by the Petitioner.

The Petitioner in this application has sought a writ of certiorari to quash the decision of the 2nd, 3rd and 4th Respondents to issue a licence bearing No.8529 to the 1st Respondent to gem on the said land called as Peelikumbura. It is the position of the Petitioner that the Petitioner is the owner of the undivided 36/59 shares in the said land called

Peelikumbura, and the said shares in the land amount to more than half share of the soil rights of the said land. The Petitioner claimed that in view of the fact that the Petitioner, as well as the 1st Respondent claim title from the common predecessor viz., Douglas Thennakoon, the 1st Respondent had filed a false and erroneous pedigree regarding the devolution of the title to the said land in the pedigree, the 1st Respondent falsely suppressed the rights of the Petitioner by not disclosing that Douglas Thennekoon had in the year 1979.

The Petitioner contended, after an inquiry, the 2nd Respondent decided to issue a licence to the 1st Respondent. The original licence was issued on condition that the 1st Respondent agrees to deposit a 2/54 share of the sale proceeds of all gems found on the land. The said licence was renewed on 19/10/2012. The 1st Respondent contended that the title relied on by the 1st Respondent in her said application to the 2nd Respondent dated 20th April 2011 was based solely on a statutory determination made by the Land Reform Commission in terms of the Land Reform Law, in favour of one Douglas Thennekoon for the year 1980. The 1st Respondent claims to have inherited the title so obtained of the said Douglas Thennekoon. The Petitioner has obtained a licence bearing No.6448 on 7/12/2011. The Petitioner has not challenged the said licence, but thereafter when the said licence period had lapsed and when it was renewed the Petitioner has sought to challenge the said renewal. It is the submission of the 1st Respondent that in terms of sub-section 7 of Section 15 of the National Gem and Jewellery Authority Act, the authority can revoke a licence issued under sub section 2 only in the event of default to pay any money payable there under or on the failure of the licensee to comply with any of the terms and conditions of the licence.

In *Duwaratchi and Another Vs. Vincent and Others* (1984) 2 Sri L.R. page 94, the Court laid down the principles on which an interim order could be issued. It held, an interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied power of the Court. The Court should be guided by the following principles:-

- 1) Will a final order be rendered nugatory if the Petitioner is successful?;
- 2) Where does the balance of convenience lie?
- 3) Will irreparable or irremediable mischief or injury be caused to either party?

In considering the question of interim order the Court must bear in mind that an interim order is made in the exercise of inherent or implied power of court, in circumstances where the final order is, if the Petitioner is successful, be rendered nugatory and the aggrieved party will be left holding a decree worthless for all purpose. In the light of the above principle, if one considers the interim order sought in this application, The Petitioner had made several attempts to establish his title in the Distinct Court and by way of Appeal to the High Court and failed. He cannot get an order in his favour in relation to title in this application. The 1st Respondent was gemming in the said land for over an year therefore the balance of convenience is in his favour. Issuing a stay order would cause irremediable mischief to the 1st Respondent.

For the above reasons and as the Petitioner has made this application belatedly to challenge the renewal of the issuance of the licence and, as he has not challenged the licence when it was originally issued in 2011, the Petitioner is not entitled for an interim relief as prayed for in the petition and, therefore, this court is not inclined to issue an interim order in this application.

President of the Court of Appeal