

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for mandates  
in the nature of Writ of Certiorari and Writ  
of Mandamus in terms of the Constitution.

W.M. Navarathna Bandara

Ratna Mahal

Marapona,

Rathnapura.

**Petitioner**

**C.A. (Writ) Application No. 279/2011**

1. Ravindra Hewawitharana Commissioner  
General of Agrarian Dvelopment,  
Department of Agrarian Development  
No.42, Sir Marcus Fernando Mw,  
Colombo 07.
2. Awanthi Senarathne  
Assistant Commissioner of Agrarian  
Development  
Department of Agrarian Development  
(Regional Office)  
Moragahayata, Rathnapura.
3. National Gem and Jewelry Authority  
No.25, Galle Face Terrace,  
Colombo 03.
4. Ravindra Seevali Wickramasingha  
Pansalwatta, Marapona South,  
Rathnapura.

5. P.G. Senerath Bandara Alvitigala,  
Marapona, Rathnapura.
6. Palitha Weerasingha *alias* Pabilis  
Ganegama,  
Helayangoda, Marapona, Rathnapura.
7. Chamila Widyalkara,  
No.119, Marapona, Rathnapura.

**Respondents**

**BEFORE**

: S.Sriskandarajah J. (P/CA)

Deepali Wijesundera J.

**COUNSEL**

: M.V.M. Alizabry with Kusan  
Premaratne for the Petitioner.

: Yuresha Fernando SC for 1<sup>st</sup> and  
2<sup>nd</sup> Respondents.

: S.N. Wijithsinghe for the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>  
and 7<sup>th</sup> Respondents.

**ARGUED ON**

: 07<sup>th</sup> December, 2012

**WRITTEN SUBMISSION ON**

: 22<sup>nd</sup> January, 2013

**DECIDED ON**

: 22<sup>nd</sup> February, 2013

**Deepali Wijesundera J.**

The petitioner has filed this application against the respondents praying for a writ of certiorari to quash the decision made by the 1<sup>st</sup> respondent on 30/09/2010 marked P17 and also for a writ of mandamus against the 1<sup>st</sup> and 2<sup>nd</sup> respondents to compel them to issue a letter of clearance in terms of Sec.34 and 36 of the Agrarian Development Act No.46 of 2000 to permit him to engage in gem mining in the land called Iriyagahavila Kumbura.

The petitioner has made an application to the National Gem and Jewelry Authority for a license to engage in gem mining in the said land which was refused. He appealed against this refusal to the Secretary of the relevant Ministry and it was allowed on 26/10/2005 (marked as P6). Since the land in question is a paddy land the petitioner applied for permission in terms of Sec.34 and 36 of the Agrarian Development Authority Act No.46 of 2000. Permission was granted on the condition that he had to deposit 1/3 of the proceeds of the sale of minerals with the 3<sup>rd</sup> respondent to be given to the parties who claimed rights to the said land.

The 7<sup>th</sup> respondent has made a complaint to the 2<sup>nd</sup> respondent that her rights are affected and the 2<sup>nd</sup> respondent has called the petitioner for an inquiry. After the inquiry the 1<sup>st</sup> respondent by P17 dated 30/10/2010 has made order that 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents be put back to possession in the said land. According to these findings of

the inquiry the 3<sup>rd</sup> respondent has suspended the petitioner's mining license. The petitioner is seeking to quash this document marked P17.

The counsel for the petitioner stated that he owned 2/3 of the said land and that the 1<sup>st</sup> respondent has no right to determine the ownership of the petitioner and that he cannot review his own order. He also submitted that the 1<sup>st</sup> respondent has exceeded his jurisdiction in entertaining and proceeding with the inquiry against the petitioner.

The petitioner stated that 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents being co-owners whose rights were sold to one Kasturiarachchi, cannot be both tenant cultivators and co-owners. He has cited the case of **A.M.P. Adikaram Vs. D.A.D.R. Somaweera and Another BASL news 1/5-6/90 CA 99/75** where Justice Gunawardena states.

*".....where there is an owner cultivator to a certain field there is no possibility of there being an ande cultivator"*

The petitioner submitted that since the said land is a paddy land an application was made under Sec.34 and the license was issued under Sec.34 and 36 of the Agrarian Development Act No.46 of 2000. He further submitted that the 1<sup>st</sup> respondent had no jurisdiction to act on the 7<sup>th</sup> respondent's complaint and decide on her rights which has to be decided by a court of law.

The petitioner citing several cases stated that he did not get an opportunity to defend himself and state facts at the inquiry and that it amounts to a blatant violation of rules of natural justice.

The respondent's argument was that the petitioner's application should be dismissed. The respondents denied the fact that the petitioner was not given a hearing at the inquiry stated that he was duly informed of the same marking document **2R1**.

The respondents also stated that the petitioner has withheld or misrepresented material facts which is necessary when seeking prerogative relief.

The respondents have marked the findings of the inquiry held by the Commissioner General of Agrarian Service date 30/09/2010 marked R6 and stated that 4<sup>th</sup> to 7<sup>th</sup> respondents and the petitioner were present at the inquiry and that the petitioner cannot say he was not given a proper hearing.

Respondents producing documents **P15** and **P16** stated that 4<sup>th</sup> and 5<sup>th</sup> respondents have transferred their title and not the "ande" rights to Kasturiarachchi. They further submitted that the petitioner is guilty of laches and his application should be dismissed with costs.

The license issued by the 3<sup>rd</sup> respondent and the clearance letter issued by the 1<sup>st</sup> respondent to the petitioner had lapsed at the time of filing this application.

The 4<sup>th</sup> and 5<sup>th</sup> respondents are tenant cultivators and the 6<sup>th</sup> respondent is a land owner cultivator. The 7<sup>th</sup> respondent is a co-owner; title deeds of the 6<sup>th</sup> and 7<sup>th</sup> respondents are marked as R1 and R2. The findings of the Agrarian Services Commission after an inquiring dated 07/07/2010 are marked as R4. Apart from these respondents there is a major shareholder of the said land according to the petitioner and also the respondents who is one Kasturiarachchi. He has not been made a party to this action.

According to R9 dated 29/10/2008 inquiry held under the Agrarian Development Act it was decided that the petitioner did not have any rights to this land. Report of the Commissioner of Agrarian Services which was produced with a motion states that the petitioner has violated the rights of the cultivators and has forcibly evicted them and that it is an offence under Sec.90 of the Agrarian Development Act No.46 of 2000.

Section 34(1) of the Agrarian Development Act reads;

***“No person shall use an extent of paddy land for any purpose other than for agricultural cultivation except with the written permission of the Commissioner-General”.***

Section 36(1) of the Agrarian Development Act reads;

***“Where the tenant cultivator of any extent of paddy land refuses to give his consent to the owner of such extent of paddy land to extract any mineral resources from that extent of paddy land, the Commissioner-General may permit the owner of such extent of paddy land to use an extent not exceeding twenty perches of that extent of paddy land for the purpose of extracting such mineral resources during a specified period of time. The permission granted under this section is permission granted for the use of such extent of paddy land and shall not be construed as a license permitting the extraction of such mineral resources”.***

The petitioner argument that when there is an owner cultivator to the land there is no possibility of there being an ande cultivator is a futile argument in this application and the judgment cited in this regard does not apply to this case since there are so many other co-owners and one who has not even been made a party to this action.

On perusal of all the documents marked and produced by both parties and for the afore stated reasons I decide to refuse the application of the petitioner with costs fixed as Rs. 50,000/=.

**JUDGE OF THE COURT OF APPEAL.**

**S. Sriskandarajah J. (P/CA)**

I agree.

**PRESIDENT OF THE COURT OF APPEAL**