

IN THE COURT OF APEAL 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 under and
in Terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

01. Thappasara Muhandiramalage
Karunaratne
Egodawatte,
Ma-Nana,
Kalawana.
02. Thappassara Muhandiramalage Ratnapala
Pallehawatte,
Ma-Nana,
Kalawana.
03. Seelawansa Hitahamillage
Lokumahathmaya
Thappassarakanda,
Kalawana.
04. Nayingala Vidanalage Gunawardena,
Ma-Nana,
Kalawana.

PETITIONERS

Case No.CA/WRIT 155/2012

Vs.

01. National Gem And Jewellery
Authority,
21, Galle Face Terrace,
Colombo 01.
02. Wimalaratne Muthugala,
Regional Manager,
National Gem And Jewellery
Authority
Ratnapura.
03. Senior Legal Officer,
National Gem And Jewellery
Authority,
21, Galle Face Terrace,
Colomb 01.
04. Kannangara Koralalage Kulasiri,
Kannangara,
Koswatta,
Kalawana.
05. Thappassara Muhandiramlage
Samaranayake
Ma-Nana,
Kalawana.
06. Thappassara Muhandiramlage
Gnadasa
Koswatta,
Kalawana.
07. Thappassaa Muhamdiramlage
Jeewananda
Shantha Kumara Dissanayake,

Koswatta,
 Kalawana.
 08. Thappasara Muhandiramlage
 Podimahaththaya,
 Ma-Nana,
 Kalawana.

RESPONDENTS

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : R.M.D.Bandara with L.L.D.Silva,
 for the Petitioner.

M.U.M.Ali Sabry PC

For the 4th Respondent

Argued on : 11.03.2013

Written Submission on : 18.03.2013 (Petitioner & 4th Respondent)

Decided on : 06.06.2013

S.Sriskandarajah,J

The Petitioners claim that they are the owners of undivided 3/5th shares of the land called Indura Kumbura situated in the village Thappassara in Kalawana, in the district of Ratnapura, containing in extent of about 1 Acre 0 Rood 20 Perches. The Petitioners submitted that in relation to this land, the 4th Respondent has obtained a gemming licence bearing No.RT72055A from the National Gem & Jewellery Authority. The Petitioners in this Application have challenged the issuance of the said licence to

the 4th Respondent and have sought a Writ of Certiorari to quash the decision of the Gem & Jewellery Authority to issue the said licence to the 4th Respondent. The Petitioners challenge the said decision on the basis that the 4th Respondent has not established that he owns 2/3rd share of the land or he has obtained consent of so many of the other owners as to ensure that he and such other consenting owners together owned at least 2/3rd of the land. The Petitioners submitted that in terms of Rule 8(2) of the said Gem Corporation by-laws published in the Ceylon Government Gazette (Extraordinary) dated 9/03/1971, no licence shall be granted to any person unless:

- (a) He himself owns the land;

- (b) He has obtained the consent of so many of the other owners as to ensure that the Applicant and such other consenting owners together own at least 2/3rd of the land in respect of which the application has been made.

The Gem & Jewellery Authority has wide powers to determine the rights of parties in relation to a land in which a gemming licence is sought and in arriving at a decision, the authority is bound to give a hearing to the parties and to arrive at a decision according to the provisions laid down by law and the rules framed there under. It is the contention of the Petitioner that the 4th Respondent has not established the 2/3rd rights on the land in dispute and, as such, the Authority has no legal right to issue a licence to the 4th Respondent.

The 4th Respondent submitted that the only document submitted by the Petitioners to prove their right to the land in dispute is deed bearing No.6292 marked 4R1, and the 4th Respondent submitted that the said deed does not bear any reference to the land in dispute and, at the same time, the 4th Respondent submitted that, in addition to the ownership of a portion of the land, he has also produced a Lease Agreement marked P3, and in terms of which, some of the co-owners had permitted the 4th Respondent to carry on gem mining in the said land. He also submitted that in respect

of the remaining shares, the other co-owners of the said land in dispute had submitted their concurrence letters to the 2nd Respondent Authority prior to renewal of licence in question. It is the submission of the 4th Respondent that he has established his right to gem in the whole land in dispute.

On the request of the Gem & Jewellery Authority, the 4th Responent entered into an agreement with the Gem & Jewellery Authority on 15/03/2012, wherein the 4th Respondent agreed to deposit the ground share proceeds from the proceeds of the sale of gems in respect of the 3/5th share in the Authority, and on this condition the licence was issued to the 4th Respondent. The Gem & Jewellery Authority is empowered under Act No.50 of 1993, to issue a licence subject to such terms and conditions as may be prescribed.

This application is a judicial review application and this Court cannot go into the facts of the case, and the procedure before this Court is not equipped to call for evidence to ascertain the correctness of the position taken by the Petitioner and the Respondents in relation to their shares in respect of the land in question. The Gem & Jewellery Authority is empowered under the National Gem & Jewellery Authority Act to inquire into and to issue licence to carry on the gem industry that is proposed to be carried on in a private land. The Applicant, for the said licence, according to the rules of the said Authority should, at least the owner of 2/3rd share of the said land, in the instant case, the 4th Respondent, has submitted that he is not only owing a substantial portion of the said land, but has also obtained the consent of the other co-owners of the said land. In addition, the 4th Respondent has also agreed to deposit the ground share from the proceeds of sale of 3/5 with the Gem & Jewellery Authority, which portion is claimed by the Petitioner. The ground share of 3/5 from the proceeds of sale was to be deposited with the Authority. The pedigree, the ownership and the shares of the Petitioner and the 4th Respondent has to be determined by a competent civil court, for the parties to claim their respective rights before the Authority for the purpose of gemming. But as the National Gem & Jewellery Authority has given power for the

Authority to issue licence in relation to gemming industry on private land, the Authority has rightly conducted an inquiry, after giving a hearing to the parties concerned, had arrived at a conclusion that the 4th Respondent is entitled for the licence to gem in the said land. The Authority also has protected the interests of the Petitioner by directing the 4th Respondent to deposit ground share from the proceeds of sale in the Gem & Jewellery Authority. As such, the 4th Respondent's failure to establish his rights in a competent court on the said land, will not be adversely affect the rights of the Petitioner. In the given circumstances the issuance of the licence to the 4th Respondent cannot be reviewed as illegal or unreasonable and, therefore, the Petitioner's application for a Writ of Certiorari to quash the said licence has no valid basis and, therefore, this Court dismisses this application without cost.

President of the Court of Appeal