

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 writ of Certiorari in terms of
the provisions of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

Rupahinge Gunaratne, Mihirigaldola,
Pahala Karawita.

Petitioner

Vs.

1. Madara Swarnamalee Wijewardena
Thennakoon, Ransinawatte
Walawwa,
Uda Karawita.
2. National Gem and Jewellery
Authority
No.25, Galle Face Terrace,
Colombo 3.
3. Prasad Galhena,
The Chairman,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.

CA (Writ Application No.330/12)

4. N.P. Samaratunga
Senior Regional Manager, National
Gem And Jewellery Authority,
Regional Office,
Ratnapura.

Respondents

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

COUNSEL : Gamini Marapane P.C with Navin Marapane,
for the Petitioner.
R.M.D. Bandara with Dinush Liyanage and Lalith de Silva
for the 1st Respondent,
Chaya Sri Namuni SC
2nd to 4th Respondent.

Argued on : 25.06.2013

Decided on : 12.07.2013

S.Sriskandarajah,J

The 1st Respondent applied for a gemming licence on the 30th of April 2011 in relation to the land called and known as "Peelikumbura". She with her application submitted the following documents to the 2nd Respondent:

- a) A copy of Final Village Supplementary Tenement List V.P39 Lot 1087, to show Douglas Tennekoon the father of the 1st Respondent was the claimant of "Peelikumbura".

- b) A copy of the gazette dated 18.08.1980 whereby the Land Reform Commission had given the said land to the 1st Respondent's father by way of statutory determination.
- c) A copy of the pedigree certified by a notary as required by the Regulation of the Gem and Jewellery Authority,
- d) The birth certificate of the 1st Respondent,
- e) The death certificate of her father Douglas Tennakoon,
- f) An affidavit affirming the manner in which she is entitled to the said land.
- g) Letter from the Agrarian Services Department giving permission in terms of the provisions of the Agrarian Development Act.

After the receipt of the application with the necessary documents a public notice was issued by the 2nd Respondent informing the issue of the licence and called for objections. As no objection was received, the 2nd Respondent after considering the application and documents issued a licence to the 1st Respondent on 12.05.2011.

The Petitioner made a complaint to the 2nd Respondent on 26.05.2011 and objected to the issuance of a gemming licence to the 1st Respondent. He claimed that he had obtained title from Douglas Tennakoon to the said land "Peelikumbura" by deed of transfer No 3648 dated 6th December 1979 of an undivided 13/32 share of Lot 2 of Plan No1163 of licensed surveyor S.Ramakrishna and had claimed that by the said deed the Petitioner has more than 2/3rd share in the said land and, therefore, a licence cannot be issued to the 1st Respondent. After this objection the parties were summoned for an inquiry and, after obtaining written submissions from both parties, the inquiring officer considered the title of the 1st Respondent derived from statutory determination, and the Petitioner's title that was claimed under the deed bearing No.3648 dated 6th December 1979, read with the doctrine *exceptio rei venditae et traditae*, the inquiry officer decided to

recommend the issue of licence to the 1st Respondent and rejected the objection of the petitioner with reasons this decision was communicated to all the parties by letter dated 6.12.2011. On 7.12.2011 the 1st Respondent on the request of the 2nd Respondent entered into a bond to deposit 5/24 of the sale of gems from the said land in favour of the Petitioner and on this condition licence No 6448 was issued to the 1st Respondent.

The licence of the 1st Respondent was to expire on 11.05.2012, the 1st Respondent, by letter dated 01.04.2012 sought to extend the said licence and it was approved and a new licence No 8529 was issued on 2.05.2012 valid until 22.04.2013. The Petitioner challenged the issuance of this licence by letter dated 10.09.2012 and requested for an inquiry and in the mean time to suspend the license. The licence was suspended temporarily in order to give a hearing to the objection. After a due inquiry and after considering the facts and the documents submitted, the 2nd Respondent decided to remove the temporary suspension of the licence of the 1st Respondent. This decision was communicated by letter dated 19.10.2012.

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 in the land called and known as "Peelikumbura". The Petitioner has also sought a writ of certiorari to quash the decision contained in letter dated 19/10/1912, to revalidate the said licence issued to the 1st Respondent.

The Petitioner submitted that he is the owner of an undivided of 36/59 shares in the land called and known as Peelikumbura and an action to partition the said land called Peelikumbura had been filed in the District Court of Ratnapura bearing No.12375/P. The said action had been instituted in the year 1994, and it is pending in that court. The 1st Respondent also claims title to an undivided share of 19/24 in the said land. According to the Petitioner, Douglas Tennekoon was the sole owner of the said land and he had declared the said land to the Land Reform Commission as a land

in excess of 50 acres, and at the time of selling the said land to the Petitioner, he was only a statutory lessee. The Petitioner also admitted that at the time of the execution of the deed No.3648 dated 6/12/1979, Douglas Tennekoon, the Vendor does not have title to the said property as it was vested with the Land Reform Commission. The position of the Petitioner is that subsequently the Vendor, Douglas Tennekoon, has got a statutory determination in relation to the said land and in view of that fact, applying the doctrine *exceptio rei venditae et traditae*, the Petitioner has got title to the said land based on the earlier transfer deed bearing No.3648 dated 6/12/1979.

The 1st Respondent has claimed an undivided 19/24 shares of the said land in the Statement of Claim filed in the partition action instituted to partition the said land. The 3rd Respondent submitted that a licence to gem in the 1st Respondent's land was issued to the 1st Respondent after a due inquiry, and after satisfying that the 1st Respondent had 2/3 share of the land, based on a statutory determination made by the Land Reform Commission in terms of the Land Reform Law in favour of Douglas Tennekoon in the year 1980 and the 1st Respondent has inherited the title so obtained by the said Douglas Tennekoon.

The Petitioner and the 1st Respondent had made conflicting claims to the ownership of the said land before the 2nd Respondent. When these claims were put before the 2nd Respondent, the 2nd Respondent has called for objections and written submissions from both parties and had given due consideration to the documents placed before him. The Petitioner has not got a declaration from a competent civil Court that the doctrine *exceptio rei venditae et traditae*, applies to him in the given circumstances and thereby the said deed bearing No.3648 dated 6/12/1979 has got revalidated or valid. When the 2nd Respondent was considering the claim of the Petitioner the Petitioner was having only the said deed and claiming his title before the 2nd Respondent based on the said doctrine. It is common ground that the said doctrine does not apply to cases of similar nature in all circumstances. For example the plea of

exceptio rei venditae et traditae is not available when there is a settlement order under the Land Settlement Ordinance; *Periacaruppen Chettiar, v Messers. Proprietors and Agents, Ltd.*, 47 NLR 121.

The said doctrine is applicable only in circumstances where a property was sold by a person who had no title subsequently acquires title. The application of this doctrine has to be considered in the light of the intervention of the Land Reform Law this can only be done by a competent civil court and not by an administrator performing function under a statute. The Petitioner has not got an order of Court declaring that the Petitioner is entitled to get the benefit of the said doctrine and thereby the original transfer by the said Deed No 3648 dated 6/12/1977 is validated. In these circumstances the 2nd Respondent, as it is not a competent Court to decide legal issues, has to rely on documents that were placed before it and has to interpret the documents as they were, and for the 2nd Respondent, the said deed bearing No.3648 dated 6/12/1979 was executed by Douglas Tennekoon as a statutory Lessee, and a Statutory Lessee has no right to transfer a property under the Land Reform Law and, therefore, the 2nd Respondent has correctly come to the conclusion, that the Petitioner has no title to rely upon under the said deed. The 1st Respondent's claim was that he has got title as an heir of Douglas Tennekoon and that the said land was given to Douglas Tennekoon after a statutory determination.

The 2nd Respondent is a statutory authority to determine the issuance of licence for gemming, it is not a competent body to decide on questions of law, but on the face of the documents submitted to the 2nd Respondent, the 2nd Respondent has come to a finding that the 1st Respondent's title could be accepted on the face of it, and the Petitioner's title on the deed bearing No.3648 dated 6th December 1979, cannot be accepted. One cannot expect a statutory body which determines the issuance of licence to interpret documents applying doctrines and legal principles, but it has to rely on the face of the documents when acting on it, and any party claiming a title which is not

apparent on the face of it, has to get a declaration from a competent Court to satisfy the authority that acts on documentary evidence. In the given circumstances the 2nd Respondent has acted within its powers and has rejected the submissions made by the Petitioner and issued licence to the 1st Respondent. The 2nd Respondent after taking into consideration of the claim of the 1st Respondent that he is entitled only 19/24 share of the land, it has directed the 1st Respondent to enter into a bond to deposit 5/24 of the sale of gems from the said land in favour of the Petitioner, and the licence was issued to the 1st Respondent.

As the Petitioner has not established her title to the satisfaction of the 2nd Respondent, whereas the 1st Respondent has established his title to the satisfaction of the 2nd Respondent, the 2nd Respondent is entitled to act on the 1st Respondent's documents and issue the licence. In these circumstances this court cannot hold that the 2nd Respondent has acted illegally or irrationally and at the same time the 2nd Respondent has acted fairly by giving a fair hearing to both parties and, therefore, the decision of the 2nd respondent to issue licence to the 1st Respondent and to renew the same thereafter cannot be challenged by a writ of certiorari.

The Petitioner also has raised an objection on the issue of licence on the ground that the internal circular issued by the 2nd Respondent has specifically stated that when a partition action is pending and a *lis pendens* is produced, the 2nd Respondent cannot entertain an application for gemming in the said land. In this case there was a partition action pending when the 1st Respondent made an application for gemming licence and, therefore, the Petitioner contended that the 2nd Respondent should not have issued a licence to the 1st Respondent.

The 2nd Respondent contended that the circular relied upon by the Petitioner is an internal circular which is issued for the guidance of the Inquiring Officer to arrive at a findings to issue licence. It is not a rule or regulation that will have a binding effect

or, it is not having a statutory flavour or statutory under pinning. Therefore, a violation of this internal circular will not give rise to an act of illegality for a court to quash the said violation but, in any event, the 2nd Respondent submitted that the 2nd Respondent has not violated the said internal circular as it was not brought to the notice of the 2nd Respondent that a *lis pendens* was filed in relation to the said land.

For the above reasons the 2nd Respondent has neither acted illegally nor irrationally and, as the 2nd Respondent has acted fairly in the given circumstances, a writ of certiorari will not lie to quash the licence issued to the 1st Respondent by the 2nd Respondent. For the above reasons this Court dismisses this application without costs.

President of the Court of Appeal

Malinie Gunaratne, J,

I agree,

Judge of the Court of Appeal