

**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 writs of certiorari and mandamus under and in terms of Article 140 of the Constitution.

Maheepala Mudiyanseelage  
Lalitha Sirimathie Kumarihamy,  
No. 162/B, Nedurana Road,  
Eheliyagoda.

**PETITIONER**

C. A. 303/2013 (Writ)

Vs.

1. National Gem and Jewellery Authority,  
No. 25, Galle Face Terrace, Colombo-03.
2. The Chairman,  
National Gem and Jewellery Authority,  
No. 25, Galle Face Terrace, Colombo-03.
3. The Commissioner of Buddhist Affairs,

135, Anagarika Dharmapala  
Mawatha,  
Colombo-07.

4. Hon Attorney-General,  
Attorney-General's Department,  
Colombo-12.

### **RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne, J.

**COUNSEL:** Kamal Dissanayake with Atheek Inam for the Petitioner  
Ashan Fernando SC for the Attorney-General

**ARGUED ON:** 12.11.2013

**DECIDED ON:** 19.11.2013

### **GOONERATNE J.**

This is an application for writs of certiorari and mandamus mainly sought to quash the decision of the suspension of the license as stated in

document P16. Formal notice was issued by this Court on the respondents on the date the application was supported ( 29.10.2013) The inquiry into the question of granting interim relief was adjourned for the 12<sup>th</sup> of November 2013.

It was the position of the learned counsel for the petitioner at the above inquiry that the land in question was co-owned land and a partition suit had been filed in the District Court of Avissawella. The learned District Judge delivered judgment in the partition action, allotting shares to the petitioner, her husband and 1<sup>st</sup> and 2<sup>nd</sup> defendants (P3). However having submitted to this Court the matters stated in paras 11 to 15 of the petition it was submitted that co-owners consented to a grant of a 'mining and gemming' license in favour of the petitioner. The 1<sup>st</sup> respondent having considered the position of the petitioner on the basis of the petition ( as in para 17 of the petition) depositing owners share ( බිම් පංශුව ) with the 1<sup>st</sup> respondent a license for gemming and mining had been issued to the petitioner after having obtained the necessary authority and certain agreements with necessary parties. License P11 was issued for a period of 1 year from 05.02.2013 to 04.02.2014. During the pendency of the license based on the objections of the 9<sup>th</sup> defendant-respondent in the case referred to in para 32 of the petition, the 1<sup>st</sup> respondent summoned the petitioner for an

inquiry on 03.05.2013. Learned counsel emphasized that the said inquiry is still pending and the 1<sup>st</sup> respondent had by letter of 24.07.2013 marked P16 suspended the license issued by document P11.

It was strenuously argued on behalf of the petitioner, by learned counsel that in terms of sec. 15(7) of the Gem and Jewellery Authority Act the 1<sup>st</sup> respondent is not vested with a power to suspend a license but he could only revoke it.

It appears to this Court that pending an inquiry before a statutory authority, it would be unjust to suspend a license already issued, which is in operation till 04.02.2014. P16 had been issued on the basis, "subject to the decision of the inquiry", the license suspended. It would not be in order to do so, and until all relevant facts are gathered and inquired by the 1<sup>st</sup> respondent and a decision given at the conclusion of the inquiry to revoke or not to revoke the license, already in operation. Sec 15(7) of the above act reads thus:-

The Authority may at any time revoke any license issued under subsection (2), in the event of any default in the payment of any money payable there under or on the failure of the license to comply with any of the terms and conditions of the license.

Learned State Counsel objected to granting interim relief to the petitioner and referred to the condition in license P11 and sought to justify his position that the decision in P16 is correct. In this regard and in the context of this case I would prefer to be guided by the dictum in the following cases.

We must bear in mind that a stay order is an incidental order made in the exercise of inherent or implied power of Court. Without such power the Courts final orders in most cases would if the petitioner is successful be rendered nugatory and the aggrieved party will be left holding an empty Decree, worthless for all purposes." Samarakoon C.J in Billimoria Vs Minister of Lands and Land Development and Mahaweli Development 1978/79 (1) SLR 10,13 cited and followed by O.S.M. Seneviratne, J in Duwerarachchi Vs Vincent Perera 1984 (2) SLR 94, 103-104.

Where a substantial question of law arises for decisions of " the question of granting interim relief has to be considered, and " the Court will be guided inter alia by the following principles

- a) Will the final order be rendered nugatory if the petitioner is successful ?
- b) Where does the balance of convenience lie ? Mahindasoma Vs Maithripala Senanayake 1996(1) SLR 364,366.

In the above facts and circumstances we are of the view that this is a fit case to grant an interim order to stay the operation of the suspension of the license P11. This Court allow the application for interim relief as per sub para 'b' of the prayer to the petition.

JUDGE OF THE COURT OF APPEAL

**Malinie Gunaratne, J**

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-