

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

C.A (Writ) Application No. 744/09

1. Udagangoda Kudaakara Ralalage Nimal Boralugoda,
Keenagaha Ella Road,
Amupitiya, Imbulpe.

2. Heenmahaththaya Liyanage,
No. 41, Vidyala Mawatha, Pelmadulla

Petitioners

Vs.

1. National Gem and Jewellery
Authority, No. 25, Galle Face Terrace,
Colombo 3.

2. Hasitha Thilakaratne,
Former Chairman,
National Gem and Jewellery Authority,
No. 25,
Galle Face Terrace, Colombo 3.

2A. Anil .Koswatta
Former Chairman,
National Gem and Jewellery Authority,
No. 25,
Galle Face Terrace, Colombo 3.

2B. General Rohan Daluwatta,
Chairman,
National Gem and Jewellery
Authority,
No. 25,
Galle Face Terrace,
Colombo 3.

3. D.H.M. Rathnasiri,
Former Secretary,
Ministry of Enterprise Development
and Investment Promotion,
No. 46/56, Lanlib Building,
Nawam Mawatha,
Colombo 2.

3A. Dr. R.H.S. Samaratunga,
Secretary,
Ministry of Enterprise Development
and Investment Promotion,
No. 46/56, Lanlib Building,
Nawam Mawatha,
Colombo 2.

4. Wimalaratne Muthugala,
Senior Provincial Manager,
National Gem and Jewellery
Authority - Provincial Headquarters,
Ratnapura.

5. R.M.M.B. Kumari,
Legal Officer,
Ministry of Enterprise Development and Investment
Promotion,
No. 46/56, Lanlib Building,
Nawam Mawatha,
Colombo 2.

6. Indika Chaminda Kariyawasam,

7. Sameera Chathuranga Kariyawasam,
Both of 'JayasewanCi', Naluwewa,
Balangoda.

Respondents

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition.

C.A. (Writ) Application No. 744/09

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Manohara De Silva PC with

Pubuduni Wickramaratne for the
Petitioners.

Janak De Silva D.S.G. for the 1st
to 5th Respondents.

Wijedasa Rajapakshe PC with
Rasika Dissanayake for the 6th
and 7th Respondents.

ARGUED ON

: 13th November, 2013.

DECIDED ON

: 24th February, 2014

Deepali Wijesundera J.

This application relates to a granting of a Gemming licence to a land called Raththanaketiya Kumbura. The petitioners have filed this application against the respondents for a writ of certiorari to quash the decision of the 1st, 2nd, 3rd and 5th respondents to revoke the cancellation of the Gemming Licence issued to the 6th and 7th respondents by **P27** and the decision to grant the licence to 6th and 7th respondents by **P23A**. And for a writ of mandamus against the 1st and 2nd respondents to issue a Gemming Licence to the 2nd petitioner and to implement the decisions in **P26**. Also a writ of Prohibition against the 1st to 5th respondents to prohibit the 6th and 7th respondents from gemming on Raththanaketiya Kumbura.

The learned Deputy Solicitor General appearing for the 1st to 5th respondents informed court that they have not filed objections to the petitioner's application and that they will abide by any order given by this court.

A Gemming Licence was granted to the land called Raththanaketiya Kumbura for the year 2004 bearing No. 33037 to Dingiri Mahathaya who is the father of 6th and 7th respondents. The 1st petitioner objected to this licence on the basis that Dingiri Mahathaya is entitled only to undivided 1/3 share of the said land. Thereafter this permit was suspended (**P11A**) and an inquiry was held for which the petitioners have failed to attend and the suspension was withdrawn (**P12**). His licence was extended in 2005 to which the 1st petitioner has objected and appealed to 1st respondent and the license was suspended (**P13**). An inquiry was held and on the grounds of not having ownership to 2/3 share of the land his licence was cancelled. Dingiri Mhathaya has filed a writ application in the Court of Appeal which was later withdrawn. Thereafter another licence was issued to Dingiri Mahathaya for the year 2006/2007 against which the 1st petitioner filed a writ application in the Court of Appeal.

The 1st respondent has informed court that he is willing to hold a fresh inquiry and the proceedings were terminated (**P18**).

An inquiry was held at the Ratnapura Provincial office as agreed, and decided that the 2nd petitioner should be given a licence for Gemming since he owned 2/3 of the said land (**P21**). The 2nd petitioner

on lease agreement 21375 obtaining the rights of 2/3 share of the land has applied for a Gemming License.

Dingiri Mahathaya has complained to the Human Rights Commission against the findings of these inquiries, and the Human Rights Commission has recommended a Gemming Licence for the 6th and 7th respondents and it was granted (**P23A**). The petitioners have complained against this order and again an inquiry was held and the licence was granted to the 2nd petitioner against which 6th and 7th respondents find CA 597/09 in the Court of Appeal to quash the decision of the statutory inquiry which the petitioners states is wrong and under *Sec.15(1) of the National Gem and Jewellery Authority Act* they should file action in the Supreme Courts.

The learned Presidents Counsel for the petitioners stated that under the said act a Gemming Licence should be given to a person who owns the land or 2/3 of the land on consent of the owners, whereas the 2nd petitioner has obtained the consent of the owners of the land, he should be granted the licence. Marking documents **P11, P2A, P2B, P3** and **P4** the petitioner stated the petitioners got title from Mohottihamy. He submitted that the father of the 6th and 7th respondents Dingiri Mahathaya who got title from Kiri Appuhamy (**P7**) inherited only 1/3

share of the land from Mohottihamy who had 3 sons, on the face of these documents.

The 6th and 7th respondents claimed the entire land stating Kiri Appuhamy's title which was transferred by *Deed No. 409 (P7 and 6R1)* to Dingiri Mahathaya father of the 6th and 7th respondents. The 6th and 7th respondents learned counsel stated that in 2004 a Gemming Licences were issued to Dingiri Mahathaya which is marked as **6R6 (a) to (d)** to which the petitioners objected and it was cancelled on the basis that he did not own 2/3 share of the said land. The 6th and 7th respondents after going before the Ombudsman and the Human Rights Commission have got the licence. They have also filed a writ application *CA 597/2009* against the respondents which was later terminated after the 1st, 2nd, 3rd and 5th respondents gave an undertaking to take steps according to law. The argument of the 6th and 7th respondents is that the petitioner did not acted under Sec.15 of the said act and applied for a licence and that without a proper application they cannot appeal. They argued that without an application a writ does not lie.

Documents marked and produced as **P11** which is a lease agreement given to the 2nd petitioner shows that 2/3 share of the said land has been given to him which are the shares of 2 sons of

Mohottihamy. **P2A, P2B, P3 and P4** shows that Mohottihamy whos title is claimed by the 6th and 7th respondents had more than one son namely Kiri Appuhamy therefore the 6th and 7th respondent's claim of the entire land is not correct. Kiri Appuhamy inherited only 1/3 share of the land from his father Mohottihamy.

The 6th and 7th respondents stated that there was no valid application under *Sec.15 of the National Gem and Jewellery Authority Act* but document marked as **P19** shows that the 2nd petitioner has in fact made an application after he received **P11**. The 6th and 7th respondent's argument on this issue is not correct.

The 6th and 7th respondents argued that the Human Rights Commission and the Ombudsman directed the respondents to issue a Gemming License to them.

Sec.15 (8) of the said Act reads thus;

(8) Where the Authority:-

(a) Refuses an application for a licence made under subsection (3);

(b) Revokes a licence under subsection (7),

The applicant or the licensee may before the expiry of a period of thirty days from the date of such refusal or revocation, as the case may be, appeal to the Secretary to the Ministry of the Minister (hereinafter referred to as the "Society")

Sec.15(11) reads thus;

(11) An applicant of licensee dissatisfied with a decision of the Secretary disallowing, under subsection (9), an appeal made to such Secretary under subsection (8), may appeal from such decision of the Secretary, to the Supreme Court within thirty days of the date on which such decision is communicated to him.

It is quite clear that the 6th and 7th respondents have not acted accordingly to the said act. Their contention of Court of Appeal directing the 1st respondent to issue a licence is not correct. They have not acted under Se.15(8) (b), when the licence was cancelled they have gone to the Human Rights Commission and the Ombudsman which is contrary to the said act. The Human Rights Commission does not have jurisdiction to sit in appeal. The licence issued on their directions cannot

stand under this Act. Findings of statutory inquiry held under the National Gem and Jewellery Authority Act cannot be revoked by the respondents without the intervention of court, this decision has been taken unlawfully and is arbitrary and done without jurisdiction.

The application of the petitioner is allowed on the afore stated reasons. Prayers (c) (d) (e) (f) and (g) of the petition are granted.

JUDGE OF THE COURT OF APPEAL