

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

C A. PHC 54/09

PHC CIVIL HC 18/2008

HC ANURADAPURA 29/2007

Densil Wimalasiri,
President, Welfare Society,
Sri Dharmasoka Resting Hall,
No 35, Tissa Mawatha,
Old Twn,
Anuradapura

PETITIONER-APPELLANTS

Divisional Secretary
Nuwara Gam Palatha- Central,
Pandulagama,
Anuradapura

RESPONDENT-RESPONDENTS

BEFORE: A.W.A.SALAM, J (P/CA) & SUNIL RAJAPAKSHA, J

COUNSEL: Sanath Jayathilaka for the petitioner-appellant
and Janak de Silva Deputy Solicitor General for
the Defendant-Resondent.

ARGUED ON: 06.09.2013

DECIDED ON: 23.07.2014

A W A Salam, J (P/CA)

The petitioner-appellants (hereinafter referred to as the "appellants") have preferred this appeal to have the order of the learned High Court Judge dated 13 May 2009 set aside. By the said order the learned High Court Judge dismissed the case, upholding the preliminary objection

that the Provincial High Court lacks jurisdiction to entertain a writ application and hear the same involving a State land. The learned High Court Judge dismissed the writ application on the premise that the subject “State land” falls outside the purview of the Provincial Council list and also that of the jurisdiction of the Provincial High Court established under article 154 P (4) (b) of the Constitution of the Republic of Sri Lanka as amended by the 13th amendment.

When the appeal came up for argument, the learned Counsel for the appellants raised a question of Law that the High Court Judge had acted in excess of his jurisdiction by delivering an order involving the interpretation of the Provisions of the Constitution. It was contended that the jurisdiction to interpret the Constitutional Provisions is within the sole and exclusive domain of the Supreme Court in terms of Article 125 of the Constitution and therefore the High Court had erred in delivering the impugned judgment which involves the jurisdiction to interpret the Constitution.

Originally, the appellants sought the relief to have the impugned judgment set aside, but later by way of a motion wanted a directive to be issued forthwith on the Provincial High Court Judge to refer the question to the Supreme

Court for a determination under and in terms of Article 125 of the Constitution.

Article 125 of the Constitution confers exclusive jurisdiction on the Supreme Court to hear and determine any question relating to the interpretation of the Constitution. Therefore, whenever any question arises in the course of any proceedings in any court or tribunal or institution (other than the Supreme Court) which are empowered to administer justice or to exercise judicial or quasi-judicial functions, such questions shall be referred to the Supreme Court for determination. In other words, the argument of the learned Counsel for the appellant is that the learned High Court Judge ought not to have pronounced the order but should have sought the interpretation of the Supreme Court. The Counsel contended that the High Court Judge by not referring it to the Supreme Court had exceeded its jurisdiction. The leading case on this subject is *Billimoria vs Minister of Lands and Land Development and Mahavalley Development Board and 2 others* 1978-79-80 1 SLR 10. In that case the Supreme Court analysing the Article, held inter alia that what is contemplated in article 125 is any question relating to the interpretation of the Constitution arising in the course of legal proceedings. This presupposes that in the determination of a real issue or

controversy between the parties, in any adversary proceedings, there must arise the need for an interpretation of the Provisions of the Constitution. The mere reliance on a Constitutional Provision by a party need not necessarily involve the question of interpretation of the Constitution. There must be a dispute on interpretation between the contending parties. It would appear that Article 125 is so circumscribed that it must be construed as dealing only with cases where the interpretation of the Constitution is drawn into the actual dispute and such a question is raised directly as an issue between the parties or impinges on an issue and forms part of the case of one party, opposed by the other, and which the court must of necessity decide in resolving the dispute the issue.

In the case of Premachandra Vs Major Montego Jayawickrama and another 1994 2 SLR page 90 the Supreme Court stated that a reference can be made under Article 125 only of a question of constitutional interpretation; the court making the reference retains jurisdiction in respect of the case and would ultimately decide the case applying the interpretation given by the Supreme Court.

The question as to whether the subject of "State land" falls

within the ambit of the jurisdiction of the High Court in relation to the issuance of writ was decided recently in the case of Solai Muttu Rasu Vs The Superintendent of Stafford Estate Ragala and 2 others SC appeal 21/2013. According to the findings of the Supreme Court, as regards the subject touching upon "State Land" the Provincial High Court has no jurisdiction.

Applying the *ratio* in the above case, even if the High Court Judge had referred the matter to the Supreme Court for an interpretation, the opinion of the Supreme Court would have been same as in the case of Solaimuththu Vs the Superintendent of Stafford Estate. As was submitted by the learned Deputy Solicitor General no failure of justice had occurred in this case to prejudice the substantial rights of the parties particularly the appellants and therefore this appeal cannot succeed.

Hence, this appeal is dismissed without costs.

President/ Court of Appeal

Sunil Rajapaksha, J

I agree

Judge of the Court of Appeal.