

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

In the matter of an application for
mandate in the nature of writ of certiorari
under in terms of article 140 of the
constitution of the

Democratic Socialist Republic of Sri Lanka

- 1 Ranabahuge Chithrasiri,
 Ambagahawatta, Kalawana.
- 2 Gamage Don Nandawathie,
 Ambagahawatta, Kalawana.
- 3 Udakanda Kankanamalage
 Karunarathne,
 Ambagahawatta, Kalawana
 Petitioners

Case No. CA/WRIT/266/2014.

Vs.

- 1 National Gem and Jewellery
 Authority,
 No: 25 Galle Face Terrace,
 Colombo 03.

- 2 Amitha Gamage,
Chairman and Chief Executive
Officer,
National Gem and Jewellery
Authority, No: 25 Galle Face
Terrace, Colombo 03.
- 3 R.M. Janaka Udaya Kumara,
Director General,
National Gem and Jewellery
Authority,
No: 25 Galle Face Terrace,
Colombo 03..
- 4 N.P. Samarathunga,
Deputy Director,
(Land and Regional Development)
Regional Office,
National Gem and Jewellery
Authority,
No: 25 Galle Face Terrace,
Colombo 03.
- 5 Priyanthi Jayasinghe
Inquiry Officer,
National Gem and Jewellery
Authority,
No: 25 Galle Face Terrace,
Colombo 03.
- 6 N.V.D. Chaminda Somadasa,
No: 195/2, Ambagahawatta,
Kalawana.

Respondents

C.A. 266/2014 : **An Application for Writ of certiorari**

Before : Vijith K. Malalgoda, P.C.J. (P/CA) &
A.H.M.D. Nawaz, J.

Counsel : Dr. Sunil Cooray with E.M.D. Upali
for the Petitioners
H. Ruwankumara for the 6th
Respondent

Argued &

Decided on : 17.10.2014

A.H.M.D. Nawaz, J.

ORDER ON INTERIM RELIEF

The Petitioners who claim to be the co-owners of a land called "Dodamgahapelessa" situated in Kalawna have sought a mandate in the nature of a writ of certiorari to quash the decision of the 1st Respondent Authority granting the 6th Respondent a licence to prospect for gems on the said land. The decision dated 2nd July 2014 (P-11) has been made after inquiry by the National Gem and Jewellery Authority and this order pertains to a stay order that that the Petitioners have sought staying the operation of the license issued until the final determination of this application.

The law pertaining to the grant of gem mining licences is found in By-Laws promulgated under State Gem Corporation Act No 13 of

1971 and published in the Government Gazette No 14, 989 dated 23.12.1971.

Section 54 (2) (h) of National Gem and Jewellery Authority Act No 50 of 1993 provides

“Every rule and every bylaw made under the State Gem Corporation Act No 13 of 1971, and in force on the day immediately preceding the appointed date and which are not inconsistent with the provisions of this Act shall be deemed to be rules and bylaws made under this Act.”

The pertinent bylaws read as follows;

8(2) no licence shall be granted to any person unless:-

- (a) he himself owns the land; or
- (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 two thirds of the land in respect of which the application has been made.

It is the contention of the Petitioners that the bylaw stipulates that the applicant contemplated in the disjunctive limbs of the bylaw namely 8(2)(a) and 8(2)(b) must be an owner or a co-owner of the land in respect of which the gemming licence is granted.

The Petitioners contend that the 6th Respondent being a lessee of the land cannot become an applicant for a licence even though all the co-owners have joined in the lease bond for the specific purpose of granting mining rights to the 6th Respondent on the said land.

On the other hand the Counsel for the 6th Respondent joins issue with this argument contending among other things that a lessee who has secured the consent of all co-owners steps into the shoes of an owner in order to qualify for a licence in terms of Clause 8(2) of the Regulations.

It is this pivotal and rival contention that would engage the attention of this Court in judicial review of the decision to grant a licence to the 6th Respondent and the Court bears in mind that the investigation into these rival contentions would entail the correct interpretation of Regulation 8(2) as adverted to above. In other words having regard to the criteria spelt out in Regulation 8 and the evidence placed before the 1st Respondent, the question arises whether the 1st Respondent authority has correctly interpreted Regulation 8 to conclude that the 6th Respondent is entitled to the benefit of the license that has been accorded to him.

The Petitioners also contend that there was no proof with evidence that the 6th Respondent had satisfied the 1st Respondent Authority as to the requirements for issuing a gem mining license. But the 6th Respondent contends that he is in fact a co-owner of the land in question-please see paragraph 21 of the written submissions filed on behalf of the 6th Respondent.

It has to be pointed out at this stage that in judicial review this Court is not concerned whether the 1st Respondent Authority reached the correct decision or not. What this Court would be concerned with in this application is whether the decision was reached after following the principles of administrative justice.

In fact this Court recalls the words of Lord Diplock in ***R V Minister for the Civil Service ex parte Council of Civil Service Unions*** (the **GCHQ** case) (1985) that impinge on the two differing interpretations that the parties seek to place on Regulation 8. In the **GCHQ** case. Lord Diplock states in that case

“By illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision-making and must give effect to it.”

This court would be able to arrive at an assessment of the correctness or otherwise of the ground of review that is being agitated in the case only after the Court has had the benefit of having heard the case of the Respondents inclusive of the case of the 1st Respondent authority whose decision is being impugned before us and now that the the licence has been in esse since its grant on 4th of July 2014 and the 6th Respondent has admittedly been on the land qua a licence holder for a while, this Court is disinclined to disturb the status quo and does not think it appropriate that a stay order should be granted at this stage.

There are other principles that militate against the grant of an interim relief at this stage other than the above. Though this Court has not had the benefit of oral submissions for a stay order because this was supported before a different bench of this Court, we have perused the written submissions filed by the parties and we bear in mind the usual indicia that are adopted in the grant of a stay order namely “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 v Maithripla Senanayake (1996) 1 Sri.LR 364 at 366.

In these cases it is usually obligatory that the applicant for the license namely the 6th Respondent, according to the rules of the 1st Respondent authority, agrees to deposit the relevant ground share from the proceeds of sale with the Gem & Jewellery Authority and that is how the interests of the Petitioners are protected. As such the issuance of the license to the 6th Respondent cannot adversely affect the rights of the Petitioners. Thus this Court is of the opinion that the tests for granting a stay order –the tests that we have adumbrated above do not favor the Petitioners. On this ground too we are disinclined to grant stay order that has been prayed for

Accordingly the Court refuses the stay order as prayed for at para (c) of the prayer in the Petition.

Judge of the Court of Appeal

Vijith K. Malalgoda,PC J (P/CA)

I agree

~~President of~~ the Court of Appeal

Na/-