

**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 Prohibition under Article
140 of the Constitution.**

Meegasthennalage Rupa Jayanthi
No. 161, Karavita,
Uda karavita.

CA (writ) Application No. 342/2015

Petitioner

Vs.

1. National Gem and Jewellery Authority,
No. 25, Galle Face Terrace,
Colombo -03.
2. Aruna Gunawasrdena
The Chairman / Chief Executive,
No. 25, Galle Face Terrace,
Colombo -03.
3. Tilak Kulananda
Director (National Enforcement & Regional
Development)
No. 25, Galle Face Terrace,
Colombo 03.
4. H.P. Karunathilake,
Deputy Director (Lands & Regional
Development),
National Gem and Jewellery Authority,
Regional Headquarters, Rathnapura.

5. Migara Jayasundera, Jayasundera Walawwa,
Uda Karavita, Nivitigala.
6. J. Gnanka Wasantha Jayanetti.
Uda Karavita, Nivitigala.
7. Madara Sawarnamalee Wijewardena.
Tennakoon Batahena Watte Walawwa,
Uda Karavita.
8. J.M. Dudley Jayasundera.
Uda Karavita, Nivitigala.

Respondents

Before : **Vijith K. Malalgoda PC J (P/CA)**
&
H C J Madawala J

Counsel : **H. Withanachchi for Petitioner**
R.H.D. Bandara with Lilanthi de Silva for 5th Respondent
Chaya Sri Nammuni, SC for 1st to 4th Respondent

Mention on : 08-10-2015

Order on : 20-11-2015

Order

H C J Madawala J

The petitioner has filed this application to seek mandate in the nature of writ certiorari quashing the license No. 26467 issued to the 5th respondent in respect of the land called Nagahapanawe

watte at Uda Karavita. She has also sought an interim order as prayed for in para (d) of the prayer of the petition namely,

(d) “to make an interim Order, suspending the Licence No. 26467 issued to the 5th Respondent and /or restraining the 5th Respondent, his agents, servants from carrying out mining, extracting gravel and washing such gravel in the land ‘Nagahapanawe Watte’ at Uda Karavita, until the final determination of this application; ”

Having considered the submissions of both parties we find that the title of the petitioner is in dispute. The petitioner has claimed 2/3rd share of the land in dispute and 1/3rd share of mineral rights of the land called ‘Nagapanawa Watte’ which she has become entitled to as legal heir of the deceased Meegasthennalage Saraneris and his wife. The 5th respondent contesting the title of Saraneris had stated that Saraneris was not entitled to any share of the land in dispute at the time of his death and hence the petitioner has not inherited any rights or title from her father.

The 5th respondent had claimed lease hold rights by virtue of indenture of lease No 9605 dated 5-11-2014 from persons known as Dougla Thennakoon Bandara, Wilmot Jayasundara and Meegasthennalage Saraneris who owned 1/3rd share each of the land in dispute. He has made an application for a license which the petitioner had objected to on the ground that the pedigree set out by the 5th respondent was false and fictitious. Further the 5th respondent has taken up the position that the petitioner has filed the present action on 25-08-2015 that is more than four and half month after the decision of the license was communicated to her and thereby is guilty of laches. The 5th respondent also submitted that the petitioner claimed to be a person governed by the Kandyan Law. The petitioner’s father was living in Kuruwita in a Sabaragamuwa Province within the Kandyan Province. The petitioner has not expressly refuted the contention of the 5th respondent. It was submitted that the diga married daughter will not inherit paternal property even if she is the only child. She will inherit paternal property only if her marriage is binna marriage. If she is married under the General Marriage Ordinance, then in terms of section 3(2) of the Marriage and Divorce(Kandyan Law) No. 41 of 1975 her right to the paternal property is governed by the Kandyan Law. Marriage contracted between kandyan and under General Law is presumed to be a diga marriage. The petitioner has to prove that she acquired binna rights. Accordingly we find that the locus standi of the petitioner is also in dispute.

The petitioner however had stated that she had instituted partition case no 29940 /P in the District Court of Rathnapura on 20- 2 -2015 in order to vindicate her rights and partition of the land among the Co-Owners. It was submitted by the petitioner that the 5th respondent publicly claimed that a license has been issued to him and was making preparation to do mining operations in the land. The petitioner having complained to the relevant Authorities the said license has been suspended until the conclusion of the pending inquiry. The respondent however by letter dated 10-8-2015 has informed that the mine of gravel in mine No. 1 would be carried out from the 10th of August 2015. The 4th respondent has taken step to revoke the letter X 14 and the police has requested the 5th respondent to desist from any mining duties. However the petitioner has received another letter dated 19-8-2015 issued by the 4th respondent stating that the suspension imposed on the license No 26467 by letter dated 5-8-2015 would be revoked with effect from 19-8-2015 consequent for the approval given by the 2nd respondent after an inquiry conducted by him but proceedings of such inquiry is not before us. The 5th respondent submitted that the petitioner had not explained the delay in making this application. As such the petitioner who has absolutely no right to the land, denial of interim relief will not likely to cause any injustice to the petitioner.

The fact that the petitioner appealed to the 1st respondent against the decision clearly shows that she was aware of the determination made to issue a license. The 5th respondent also has submitted that he has invested on water pumps, timber, implements such as mammoties necessary for mining and building of huts for the workers and also have employed 30 people for the Gemming operation. That if court issued an interim order it will cause much prejudice and hardship to the 5th respondent, but we observe that the 5th respondent had carried out operation on the license issued even during the period it was under suspension and therefore we cannot agree with the above submission.

We are of the view that as there is a partition case pending that if the 5th respondent is allowed to clear the land and involved in gemming operation that grave and irremediable damage and injustice would occur to the petitioner and the Co-Owners of the land in dispute.

According to regulation 8(2) of the Regulations made under the National Gems and Jewellery Authority Act read as fallows,

“No license 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 application and such other consenting owners together own at least two thirds of the land in respect of which the application has been made”

The position taken up by the petitioners on this issue was that the 5th respondent is not a soil owner and therefore, in law he could not have been issued a license to gem in the land in question. When considering the arguments placed by both parties before us, the court is of the view that both these positions placed by the two parties will have a significant bearing on the final outcome of this case. We further observe that a decision has reached around 10-4-2014 (X13) to grant a license but between April and June series of events have taken place with or without authority by the 1st respondent. What took place during this period is also important since the license had been finally issued only on 25-6-2015 but what exactly took place during this period is not properly placed by the respondent before this court.

When considering material placed by both parties before this court, in order to avoid any injustice to either party it is necessary to grant an interim order as prayed for in paragraph (d) of the prayer of the petition.

We allow and grant interim relief as prayed for in paragraph (d) of the prayer to the petition.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL