

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

In the matter of an application for an order in  
the nature of certiorari and prohibition under  
Article 154 P (4) (B) of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**01.Sivanu Sinnasamy and Puspawathy**  
Sinnasamy

**02.Perumall Subramaniam and Nithiyakalyani**  
Subramaniam

**03.Nesiah Nagendran and Chandrathevi**  
Nagendran

All of Uthayanagar,  
Pannichaiyadi,  
Sathurukondan.

**PETITIONERS**

**Application No**

**CA (PHC) 37/2008**

**HCB/WRIT/512/07**

**Vs.**

**01.Divisional Secretary,**  
Manmunai North,  
Batticaloa.

**02.**Tissa Karaliytha,

Minister of Lands and indigenous Medicine

“Govijana Mandhraya”

Rajamalwattha Road,

Battaramulla.

**03.**Hon Attorney – General

Attorney General’s Department,

Colombo – 12.

### **RESPONDENTS**

#### **Now Between**

**01.**Divisional Secretary,

Manmunai North,

Batticaloa.

**02.**Tissa Karaliytha,

Minister of Lands and indigenous Medicine

“Govijana Mandhraya”

Rajamalwattha Road,

Battaramulla.

**03.**Hon Attorney – General

Attorney General’s Department,

Colombo – 12.

### **RESPONDENTS – APPELLANTS**

**Vs.**

**01.Sivanu Sinnasamy and Puspawathy  
Sinnasamy**

**02.Perumall Subramaniam and Nithiyakalyani  
Subramaniam**

**03.Nesiah Nagendran and Chandrathevi  
Nagendran**

All of Uthayanagar,  
Pannichaiyadi,  
Sathurukondan.

**PETITIONER – RESPONDENTS**

**Before : W.M.M.Malinie Gunarathne, J  
: P.R.Walgama, J**

**Counsel : Yuresha Fernando – SSC for Respondent Appellants.  
: B.W. Thanboo for Petitioner Respondents.**

**Argued on : 03.03.2015**

**Decided on: 14.01.2016**

**CASE- NO- CA-(PHC)- 37/2008- JUDGMENT - 14.01.2016**

**P.R.Walgama, J**

This appeal is arising out of the order dated 9<sup>th</sup> January 2008, for allowing the application of the Petitioner – Respondents, for the

issuance of a Writ of Certiorari and for a Writ of Prohibition against the Respondent – Appellants.

The Petitioner- Respondents made an application for mandate in the nature of Certiorari and Prohibition under Article 154 P (4) (b) of the Constitution.

In the above application the Petitioner- Respondents had urged thus;

For a stay order against the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents for doing any activity in the Petitioners lands till the conclusion of this application.

For a writ of Certiorari quashing the 2<sup>nd</sup> Respondent's order of acquiring the petitioners lands described in the schedule to the petition.

For a writ of Prohibition to stop all further activities which are to be taken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents regarding the lands described in the schedules to the petition.

The facts in appeal as stated in the petition, albeit brief, are as follows;

That the 1<sup>st</sup> and the 2<sup>nd</sup> Petitioner- Respondents are husband and wife and were the owners of the lands described in the schedules to the petition.

The 2<sup>nd</sup> Respondent being the Minister of lands ordered the 1<sup>st</sup> Respondent – Appellant to acquire the lands described in the schedules to the Petition.

That the Petitioner- Respondents became entitled to the afore said lands by virtue of Deeds marked as P1,P2 and P3. Due to the

ethnic conflict prevailed in the North and East the Petitioners were removed to a refugee camp.

In the year 2005 in November on the direction of the 1<sup>st</sup> Respondent some of his agents had entered the disputed land and wanted them to vacate the premises as they were to survey the said property.

It is the position of the Respondent – Appellant that the said plot of land has been acquired by the State by way of a gazette notification. It is been noted that the said gazette was not before this court at the time of the argument. But at a latter stage it was produced by the counsel for the Respondent – Appellant, subject to the objections of the Petitioner- Respondents.

It is pertinent to mention at this juncture that the gazette notification which was produce at a later stage and marked as 1R1 does not refer to the disputed land and as such the said document has to be rejected.

In addition to the afore said it is also noted that the Respondent – Appellant by way of objection have stated that the after acquiring the land in issue the 2<sup>nd</sup> Respondent – Appellant has handed over to the 1<sup>st</sup> Respondent by letter dated 07.11.2001 which is marked as 1R1. But the Respondent – Appellant had failed to produce the said document up to date. Therefore this Court will not be able to decide whether the subject land is vested with the State or not. The burden of proving the land is vested with the State is with the Respondent – Appellant.

In the attended circumstances it is abundantly clear that the Respondent – Appellants had failed to established that the Land in

dispute is a State Land and therefore this Court is compelled to arrive at the irresistible conclusion that the Article 154(p)(4) of the Constitution will be applicable as the subject land is not a State Land.

As a comprehensive response to the said application of the Petitioner – Respondents to the High Court, the Respondent – Appellants filed a statement of objections, and stated thus:

By way of a preliminary objection, the Respondent – Appellants had taken up the position that the High Court of Eastern Province, Holden at Batticalo has no jurisdiction to issue a writ of Certiorari and a Prohibition against the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents – Appellants.

The Respondent – Appellants had recourse to the 13<sup>th</sup> Amendment to the Constitution, Article 154P 4(b)(1)(2), every such High Court shall have jurisdiction to issue according to law, order in the nature of Certiorari, Prohibition, Mandamus and Quo – warranto against any person exercising with any provision any power under;

1. Any law
2. Any statute made by the Provincial Council, established for that province in respect of any matter set out in the Provincial list.

Therefore it is said that the Acquisition of property is excluded from the Provincial Council list. Hence it is trite that the High Court of Province has no jurisdiction to hear and make a determination on any matter where the State Land is in issue.

It is also the position of the Respondent – Appellants that the subject land was acquired for the purpose of building houses for the people who was displaced by Tsunami.

It is alleged by the Respondent – Appellants that the Petitioner- Respondents are guilty of laches, as the Petitioner – Respondent has made the instant application on 24.10.2007, whereas the possession was obtained in 07/11.2005. But as I have mentioned above the Respondent – Appellants have failed to prove the subject land is a State.

The Learned High Court Judge after considering the facts placed before Court, arrived at the conclusion that the High Court of Province is empowered to determine any matter relating to ‘lands’.

It is against the said order the Respondent – Appellants made the instant application to have the said order set aside/ vacate.

It is the categorical position of the Respondent – Appellants that the subject land is a state land and by virtue of the Gazette marked as 1V1 the disputed land has been vested with the State.

But nevertheless as it is stated herein before the Gazette Notification, marked as R1R has no relevance to the Land in issue.

It is pertinent to advert to Item 18 of the Provincial Council’s list(list1- 9<sup>th</sup> schedule)

“LAND – Land, that is to say, right in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in Appendix II”

#### Land and land settlement

“State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) and written law governing the matter.

Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions,

#### State Land

1:1 State Land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilised by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilisation of such land in respect of such subject.

1:2 Government shall make available to every Provincial Council State Land within the province required by such council for a Provincial Council subject. The Provincial Council shall administer, control and utilize such State Land, in accordance with the laws and statutes governing the matter.

1:3 Alienation or disposition of the State Land within a province to any citizen or to any organisation shall be by the



President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.

Therefore it is abundantly clear that the 13<sup>th</sup> Amendment to the Constitution had given a vivid interpretation of the powers of the Provincial Council where the matters relating to the 'State Land' is concerned.

In the case of BULANKULAMA AND OTHERS .VS. SECRETARY OF INDUSTRIAL DEVELOPMENT AND OTHERS (2000) 3 Sri. L.R.-243-, has recognised the concept of disposition or alienation of the State Lands is with the Centre and the Provincial High Court will have no power to determine any matter relevant to the said subject.

As the Respondent – Appellants had mainly relied on the strength of the above stated factual and legal matrix, I am of the view it is apposite to advert to the said legal position too.

In the recent judgment of SOLAIMUTHTHU RASU .VS. SUPRINTENDENT SAMITHIYA & OTHERS - SC APPEAL- 21/2013 has affirmed the above position to wit that the subject of State Land is not a devolved subject, which comes within the ambit of the Provincial Council, but strictly with the Centre.

Therefore in the above context this Court is of the view that there is no proof to the fact that the land in issue is a State Land, and hence the above mentioned legal position will not be applicable, thus it is held that provincial

High Court is empowered to act under Article 154(p)(4) of the Constitution and determine the instant issue

Therefore for the forgoing reasons we dismiss the application subject to a cost of Rs. 10,000/

Application is dismissed accordingly.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**