

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

C.A(writ) Application No. 294/2012

A.V. Marambe Bandara,  
Deiyagala Walawwa, Getahetta,  
and 2 others

Petitioners

Vs

1. National Gem & Jewellery Authority
2. Prasad Gunatilake, Chairman
3. W.H.M.Nimal Bandara  
All of National Gem & Jewellery  
Authority, No. 25 Galle Face Terrace,  
Colombo 3
4. H.P. Karunatilake, Regional Manager  
National Gem & Jewellery Authority,  
Eheliyagoda
5. Secretary, Ministry of Environment
6. D.M.Manjula Bandara, Getahetta
7. A.N.Dharmasena, Getahetta

Respondents

BEFORE : Deepali Wijesundera J.,

M. M. A. Gaffoor J

COUNSEL : H. Withanachchi with S. Karunadhara for the Petitioners

Ravindranath Dabare for the 1st to 4<sup>th</sup> Respondents

Gamini Marapana, P.C., with Ms. Nishanthi Mendis for the 6<sup>th</sup>  
Respondent

ARGUED ON : 04.05.2016

DECIDED ON : 03.08.2016

M.M.A. Gaffoor J.,

The Petitioners in this case filed their application on 27'07.2012 against the Respondents seeking inter alia a Mandate in the nature of Writ of Certiorari quashing the license issued to the 6<sup>th</sup> Respondent by the 1<sup>st</sup> Respondent Authority to carry out mining operations for gems in the land called "Palle Elhena Kumbura" and also the decision of the said Respondent Authority to extend the period of License issued to the 6<sup>th</sup> Respondent.

It is common ground that the 1<sup>st</sup> Respondent is the National Gem & Jewellery Authority, established in terms of Section 2(1) of the National Gem & Jewellery Authority Act No. 50 of 1993, the 2nd Respondent is its Chairman, the 3<sup>rd</sup> Respondent is its Director General, the 4<sup>th</sup> Respondent is the Regional Manager for the Eheliyagoda Regional Office, and the 5<sup>th</sup> Respondent is the Secretary to the Ministry of Environment.

It is a requirement of the law that the applicant by himself owns the land or holds together with the consenting co-owners  $2/3$  share of the land in respect of which the license is applied for. If the applicant satisfies the Authority that he owns or together with the consenting co-owners  $2/3^{\text{rd}}$  share of the land, then the applicant is entitled to obtain the license for gemming in that land.

The real dispute is about the ownership of the land called "Palle Elhena Kumbura" between the  $6^{\text{th}}$  and the  $7^{\text{th}}$  Respondents. In this case it is very clear that the license has been finally issued to the  $6^{\text{th}}$  Respondent after several inquiries, and therefore the judgment of Rodrigo J., in this unreported case No. 316/81 is not applicable to this case, as in that case no proper inquiry was held before the issue of the license.

It is not disputed that the  $6^{\text{th}}$  Respondent had been earlier issued with license for the same land called "Palle Yalhena kumbura" for the period from 02.02.2011 to 01.07.2011 and from 14.10.2011 to 07.07.2012 without any objection from the Petitioners. This fact and the other relevant facts the Petitioners have suppressed in this case.

The present dispute has arisen only when the  $6^{\text{th}}$  Respondent and the  $7^{\text{th}}$  Respondent have made separate applications to carry out mining for gems in the same land. Upon receiving these applications the authority had directed its officers in Ratnapura to hold an inquiry and examine their rights to the land, and to find out whether the respective parties have  $2/3^{\text{rd}}$  share or more in the ownership of the land. For this purpose, the  $6^{\text{th}}$  and  $7^{\text{th}}$  Respondents were granted several opportunities to establish their rights to the land, but the  $7^{\text{th}}$

Respondent had failed to appear on all the dates granted for inquiry. As such the Authority had decided to issue the license to the 6<sup>th</sup> Respondent.

The Petitioners state that subsequently the 7<sup>th</sup> Respondent complained to the 2<sup>nd</sup> Respondent against the decision to issue the license to the 6<sup>th</sup> Respondent. On this complaint the 7<sup>th</sup> Respondent was noticed to appear for an inquiry and after an inquiry the 7<sup>th</sup> Respondent was considered to be issued with the license but subject to certain conditions.

Later it appears that the 6<sup>th</sup> Respondent had appealed to the 5<sup>th</sup> Respondent and subsequent to this appeal, the 7<sup>th</sup> Respondent by his letter dated 29.12.2010 informed the authorities that he was willing to withdraw his application and consented to the issuance of the license to the 6<sup>th</sup> Respondent. Accordingly, the license was issued to the 6<sup>th</sup> Respondent.

As far as the rights of the 6<sup>th</sup> Respondent to the land, he has submitted the relevant deeds and the pedigree and the authorities had been satisfied with them before issuing the license. The 6<sup>th</sup> Respondent has also submitted the consent of all the parties on whom the rights of the previous owners, now devolved and he has established that he has 2/3<sup>rd</sup> share in the land.

I am therefore of the view that the authorities concerned have issued the license to the 6<sup>th</sup> Respondent after having been satisfied with the requirements of the law and other connected matters for the issuance of the licence.

Considering the above reasons, I am of the view that the licence had been issued to the 6<sup>th</sup> Respondent after proper inquiry and his ownership to the land being satisfactorily established, as such the relief prayed for in paragraphs (b),

(c) and (d) of the petition cannot be granted and the petition of the Petitioners is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL