

**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 Writ of *Certiorari and Prohibition*
under and in terms of Article 140 of the
Constitution of The Democratic Socialist
Republic of Sri Lanka**

1. Vatapatha Viyannalage Ekman Singho alias
Edmon,
No. 174, Ihalagedara, Halopawela Road,
Panavenna, Kahawatta.
2. Watapatha Viyannalage Alpinona,
No. 174, Ihalagedara, Halopawela Road,
Panavenna, Kahawatta.
3. Watapatha Viyannalage Chandrika
Amarawathie,
No.31, Mulleriyawa, Himbutana, Angoda.

Petitioners

CA/ WRIT/120/2016

Vs,

1. National Gem and Jewellery Authority,
No.25, Galle Face Terrace,
Colombo 03.
2. Asanka Welagedera,
The Chairman, Chief Executive,
No.25, Galle Face Terrace,
Colombo 03.

3. Tilak Kulananda, Director (National Environment and Regional Development),
No.25, Galle Face Terrace,
Colombo 03.
4. Kanishka Abeynayake, Deputy Director,
National Gem and Jewellery Authority,
No.25, Galle Face Terrace,
Colombo 03.
5. Chief Legal Officer,
National Gem and Jewellery Authority,
No.25, Galle Face Terrace,
Colombo 03.
6. Upul Dev Athukorala,
215/90, Pothgul Vihara Road,
Ratnapura.
7. Kapila Nissanka,
Halpawala Para, Panawenna,
Kahawatta.
8. Land Refrom Commission,
C 82, Gregory's Road,
(Now Hector Kobbekaduwa Mw)
Colombo.

Respondents**Before****: Vijith K. Malalgoda PC J (P/CA)****Counsel : R.M.D. Bandara for the Petitioners**Deputy Solicitor General Susantha Balapatabendi for the 1st to 5th RespondentsAnuruddha Dharamratne for the 6th and 7th RespondentsU. Rajapakshe for the 8th Respondent

Supported On: 17.06.2016

Written Submissions On: 14.07.2016

Order On: **09.09.2016**

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioners to the present application have come before this court seeking inter alia,

- c) Issue a mandate in the nature of *Writ of Certiorari* quashing the decision of the 1st Respondent Authority to issue a gemming license to the 6th Respondent in respect of the land described in schedule B
- d) Issue a mandate in the nature of *Writ of Prohibition* to the 1st Respondent Authority, prohibiting from issuing a gemming license to the 6th Respondent if a license has not been issued to the 6th Respondent

Petitioners have further prayed from this court in addition to the notice being issued to the Respondents in the 1st instance,

- b) Issue an Interim Orders'
 - i. Preventing the 6th Respondent from gemming in the land depicted in the schedule A and B to the petition until the final determination of this application.
 - ii. Preventing 6th Respondent his servants and agents from gemming in the lands described in schedule A and/or B until the final determination of the application
 - iii. Directing the 1st Respondent to submit to court, the purported gemming license issued to the 6th Respondent under which authority the 6th Respondent is currently gemming

This matter was supported before me for notices as well as for interim relief as prayed for, by the Learned Counsel for the Petitioner and was objected by the counsel for all the Respondents.

Petitioners have referred to two schedules in the petition before this court marked A and B. Schedule 'A' referred to a land called Minuwanwela Kumbura Ihala Kella and Pahala Kella and the Petitioners have claimed that the three petitioners own $3/4^{\text{th}}$ of the said land. Scheduled B referred to a land called Minuwanwela Deniya alias Minuwanwela Kumbura and the Petitioners admit that they entered in to a settlement and a consent Judgment was entered with regard to the said land on 16.02.1994 which is produced marked P-4. (Case No 7551/L)

As revealed during the submission before me, parties represented by the 6^{th} and 7^{th} Respondents have got $6/8$ shares and the petitioners have got only $2/8$ shares of the said land according to the said consent judgment.

However the Petitioners, who agreed to the said consent judgment being entered in the year 1994 had challenged the said consent judgment before this court, on the basis that $62/112^{\text{th}}$ shares of land 1-b to 1-f and 2^{nd} plaintiffs become entitled upon the consent judgment, was vested in the Land Reform Commission in terms of section 5 of the Land Reform Law and said Petitioners have fraudulently suppressed the said position to the District Court.

As observed by this court the Petitioners have taken up two contradictory positions before this court with regard to the lands referred to above in schedules A and B.

With regard to the land referred to in schedule A, the Petitioners submit that the 1^{st} Petitioner had obtained a gemming license during the period of 1990-1993 for the land called Minuwanwela Kumbura as described in schedule A. In 1994 the same Petitioners have agreed for a consent judgment being entered with regard to the land referred to in scheduled B under which they have become owners of only $2/8$ shares.

The Petition before this court is silent on the question whether the two lands referred to in scheduled A and B are the same or not. As observed by me, this has to be resolved, before any decision is being taken and this court is not competent to resolve this issue since that has to be decided by a competent court after going through a full trial.

As further observed by this court, the petitioners were objecting to the issuance of a gemming license to the 6th Respondent with regard to the land referred to in schedule B since 2011 and after an inquiry conducted, the 1st Respondent has issued the license to the 6th Respondent in the year 2011.

If the Petitioners have taken up the same objection they are now taking before this court at the said inquiry the Petitioners had ample opportunity to inform the Land Reform Commission of this fact and get the Land Reform Commission to submit their objections before the 1st Respondent.

We observe that the Petitioners have not taken any steps since 2011 in challenging the decision of the 1st Respondent. The 1st Petitioner has made an application for a gemming license for the Land referred to in schedule A in the year 2014 and when the said application was submitted to the 1st Respondent, the said Respondent has rejected the 1st Petitioner's application on the ground that a license had already been issued to the 6th Respondent. This had happened in the year 2014.

Therefore it is clear that the Petitioner who objected to a gemming license being issued to the 6th Respondent to the land referred to in schedule B in the year 2011, and having made an application for a gemming license to the land referred to in schedule A in 2014 had not taken any steps to come before this court until 2016 and thereby they are guilty of laches.

Under these circumstances this court is not inclined to issue notices in this application.

Notices are refused.

PRESIDENT OF THE COURT OF APPEL