

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

In the matter of an Application for
Revision under and in terms of Article 138
of the constitution of the Democratic
Socialist Republic of Sri Lanka.

**CA (PHC) APN 144/2016
H.C. Colombo Case No-
HC(Rev) 76/2016
Chief Magistrate's Court of
Colombo Case No-B 23073/2015**

1. Officer-In-Charge,
Special Investigation Unit 01,
Criminal Investigation Department,
Colombo 01.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Petitioners

Vs.

1. Wijyanthi Perera
Ratiyala, Govina,
Horana
2. Ven. Dharanaagama Kusala Dhamma,
Sambodhi Viharaya,
Colombo 07.
(Elephants relating to License No-148,347,348)
3. Suneth Chathuranga Weerasinghe
Monroviya Gardens, C Section,
Colombo Road, Alauwa.
(Elephants relating to License No-206)
4. W.P.M. Deepthi Kumara
No. 199/2,
Biyagama.
(Elephants relating to License No-227)
5. P.S. Meeyanapalana
Nikapitiya, Ussapitiya,
Mawanella.
(Elephants relating to License No-230)
6. P.W.S. Hapuarachchi
"Indrani"

- Weediyagoda
Bandaragama.
(Elephants relating to License No-346)
7. Ajith Gallage
62/2, Ramanayaka Road,
Hokandara.
(Elephants relating to License No-331)
8. Bharatha Amaratunga
No. 563, Old Road,
Meegoda.
(Elephants relating to License No-226)
9. Buddhika Deshapriya Niriella
Pallewatta, Mawela,
Hingula.
(Elephants relating to License No-335)
10. Waruna Lanka Wijesinghe Kannangara
Kannawila
Kahatapitiya, Horana.
(Elephants relating to License No-203)
11. W.L.D.S.U. Wijemanne
No. 72/1/A Gangabadawatta,
Amithirigala,
Medagoda,
(Elephants relating to License No-332 and 184)
12. J.P.P. Kamal Kithsiri
No. 655, Athurugiriya Road,
Kottawa.
(Elephants relating to License No-228)
13. W.S.K. Pathirana
Director General
Wildlife Protection Authority,
No. 811/A, Jayanthipura Road,
Battaramulla.

Respondents

And Now Between

1. Sujeewa Jaasinghe
 2. Sudharshani Fernando
- Both of
Centre for Eco-Cultural Studies
Diyakapilla,
Sigiriya.

And

P.O. Box No. 03
Diyakapilla,
Sigiriya.

Intervenient-Petitioners

Vs.

1. Officer-In-Charge,
Special Investigation Unit 01,
Criminal Investigation Department,
Colombo 01.
2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Petitioner-Respondents

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Director General
Wildlife Protection Authority,
No. 811/A, Jayanthipura Road,
Battaramulla.

Respondent-Respondents

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : *Hemantha Kulasooriya with U. K. Aruna Laksiri for the
Petitioners**

- *Shyamal A Collure with Priyadarshani Watagoda for the 14th Respondent-Respondent
- *Asthika Devendra with Kaneel Maddumage for the 5th, 6th, 7th, 8th, 12th and 13th Respondents-Respondents
- *R. Arasakularathne PC for the 3rd Respondent
- *Varunika Hettige DSG for the AG
- *H. Hettiarachchi for the 9th and 10th Respondents
- *Chamara Wanigasekara for the 4th Respondent

Argued On : 06 /02 /2017

Written Submissions On : 06/02/2017 , 20/02/2017

Decided on : 09 / 03 /2017

H. C. J. Madawala , J

This Revision Application is preferred to this court by the Interventient-Petitioners of Sujeewa Jasinghe and Sudarshani Fernando for an interim order staying an inquiry to be conducted in terms of Section 431 of the Criminal Procedure Act as per order dated 22/7/2016 in HC/RA76/2016 and to set aside or vary or quash the order dated 22/7/2016 in HC/RA76/2016 exercise the revisionary jurisdiction of this court and to issue notice on the Respondents and as prayed for in para A,B,D of the prayer of the petition.

When this matter came up for support the 3rd, 4th, 5th, 6th, 7th, 8th, 12th, 13th and the 10th Respondents and the 14th, 1st and 2nd Respondents raised a preliminary objection as to the maintainability of this revision application. The intervenient-Petitioners filed this revision application to amend or quash the order of the Learned High Court Judge of Colombo dated 22/7/2016 in case No. HC(Rev)76/16 wherein the Learned High Court Judge ordered the Learned Chief Magistrate of Colombo to hold an inquiry under section 431 of the Code of Criminal Procedure in respect of each and every elephant in question in the case No. B 23073/15.

Written submissions of all parties has been tendered to court and has been filed of record. We have considered same. First and foremost the Respondents has objected that the Intervenient-Petitioners has no Locus Standi to make this application as they were not parties to the revision application in the High Court of Colombo and were not parties to the action in the Magistrate Court.

When considering the Locus standi of the Intervenient-Petitioners the Respondents had submitted that the Intervenient-Petitioners are not parties in the case before the Chief Magistrate's Court of Colombo in case No. B23073/15. This case has been instituted by the 1st

Respondent regarding the alleged illegal registration of elephants in the Department of Wild Life Conservation. These elephants has been taken in to the custody of the 15th Respondent by the order dated 18/05/2016 made by the Learned Chief Magistrate on a bond of Rupees Ten Million (10,000,000/-) in terms of section 431 of the Code of Criminal Procedure until 30/08/2016 in order to allow the elephants owners to participate upcoming traditional perahera ceremonies by order dated 18/05/2016 the Learned Chief Magistrate of Colombo affirmed the said order and proceeded to release the elephants until 30/08/2016 to the respective elephant owners.

The Learned Chief Magistrate raised the bond to Rupees Thirty Million (30,000,000/-) in view of the value of an elephant. On the said date a counsel appearing for center of Eco-cultural Studies made submissions objecting to the releasing of elephants on 20/05/2016. It was submitted that the above submissions had been made without any standing as they were neither parties nor any party affected by the matter in dispute.

The Learned Chief Magistrate of Colombo in his order dated 20/05/2016, openly allowed any party who has an interest with regard to the rights of animals to appear and make submissions in the case No. B23073/15. The Chief Magistrate did not make any party or a body, a party to the aforesaid case. It was submitted that the counsel who appeared on 20/05/2016 made submission on behalf of the Center for Eco-cultural Studies and not on behalf of the Intervenant-Petitioners namely, Sujeewa Jasinghe and Sudarshani Fernando. Further the said directors aforesaid for Center for Eco-cultural Studies and claimed that they operate the said center which is a company limited by guarantee in terms of the certificate of Incorporation marked as “C-1” to the revision application of the Intervenant-Petitioners. However it was submitted that the Intervenant-Petitioners have not provided any proof/document/evidence to show that they are in fact directors of the said Center for Eco-cultural Studies. It was submitted that the counsel, who appear on 20/05/2016, appeared on behalf of the Center for Eco-cultural Studies and not on behalf of the Intervenant-Petitioners. It was submitted that the principle of corporate legal personality, the company and its shareholders / directors are two separate entities and therefore,

it is the Center for Eco-cultural Studies which was represented on 20/05/2016 and not the Interventient-Petitioners.

The present application has been filed by the Interventient-Petitioners and not by the Center for Eco-cultural Studies. It was submitted that at no point at the Chief Magistrate Court of Colombo, the Interventient-Petitioners had been represented by a counsel and that the contention in the paragraph 21 of the revision application in which the Interventient-Petitioners state that they have intervened in the case before the Chief Magistrate's Court of Colombo is false and misleading. As such the Interventient-Petitioners have neither standing before the Magistrate's Court nor were they ever a party before the court. Accordingly, there is no specific order from the Learned Chief magistrate of Colombo allowing the Interventient-Petitioners to make representations in the Chief Magistrate's Court of Colombo. Accordingly, it was submitted that the Interventient-Petitioners are not parties to the case No B23073/15 in the Chief Magistrate's Court of Colombo. On 26/05/2016 after having heard the submissions of the respective parties, the Learned Judge of the High Court decided to issue notice to the Respondents and further granted a stay order staying

the operation of orders of the Learned Chief Magistrate of Colombo dated 18/05/2016 and 20/05/2016.

The Learned High Court Judge of Colombo delivered his judgment on 22/07/2016 directing the Learned Chief Magistrate of Colombo to hold an inquiry in respect of each and every elephant in question under section 431 of the Code of Criminal Procedure.

It was admitted by the aforesaid Interventient-Petitioners themselves that they were not privy to the said revision application. Accordingly, it was submitted that the Interventient-Petitioners have no Locus Standi to make a revision application to revise the order dated 22/07/2016 of the Learned High Court Judge of Colombo in case No. HC(Rev) 76/16.

The Interventient-Petitioners must show that they have a sufficient interest in the matters to which the revision application relates to. It is respectfully submitted that in the first place, the Interventient-Petitioners must show that they have locus standi to make this revision application to this court with regard to the issue of locus standi.

In the case of **Sonali Fernando Vs. AG CA(PHC) APN 144/07**, His Lordship **A.W.A. Salam J**, held as follows;

“In law, locus standi is generally understood to be right to bring an action, to be heard in court, or to address the court on a matter before it”

In the case of **E.G. Roshan Fernando V. AG CA(PHC) APN 101/13** His Lordship **Dehideniya J**, in answering the question of who has the right to bring an action held as follows;

“Who has this right to bring an action or who has the right to address the court? The answer is the person who was harmed or aggrieved by the decision of the court”

In the above case, His Lordship Dehideniya J, discussed the dictum of Lord Denning in R.V. Paddington Valuation Office (1996) 1 QB 380 at 401 on locus standi which was cited in A.R.Perera and Others V. Central Freight Bureau of Sri Lanka and another(2006) 1 SLR 83 which reads as follows;

“The Court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done”

Further it was submitted that the Interventient-Petitioners are not aggrieved party by the order dated 22/07/2016 of the Learned High Court Judge of Colombo. The Interventient-Petitioners in the instant revision application are trying to challenge an order given by the Learned High Court Judge of Colombo in respect of criminal matter. They were not privy to the High Court case and hence, the Interventient-Petitioners are not entitled to intervene and challenge an order given in a revision application which is a criminal action in nature. It was further submitted that only an aggrieved party can make a revision application this position was affirmed in CA (PHC) APN 101/13 which a revision application is stemming from an order of the Learned High Court Judge of Panadura regarding a bail application. The case of CA(PHC)APN 101/13 his Lordship Dehideniya J, stated as follows,

“Article 138(1) of the Constitution confer jurisdiction to act in revision. The Court of Appeal Appellate Procedure Rules specify the procedure of tendering a revision application. The Learned Counsel for the Petitioner submitted that the rules do not specify the person who is entitle to institute a revision application. Therefore, he argued that any person can institute a revision application. That cannot be so, because the relief can be granted only to a person entitled to it. The person who is

entitled to bring a revision application is a “person aggrieved” only”

In the present case the Hon Attorney General or/ and OIC of Special Investigation Division of CID (Petitioner-Respondents) or/and the respective elephant owners (Respondent-Respondents) are entitled to make such an application as they can be regarded as aggrieved parties of the order of the Learned High Court Judge of Colombo.

It was submitted that the Intervenient-Petitioners cannot rely on the doctrine of public interest litigation as the instant application is a revision application filed by the Intervenient-Petitioners against the order dated 22/07/2016 of the Learned High Court Judge of Colombo and not a fundamental rights application filed in the Hon. Supreme Court under Article 17 and 126 of the Constitution or a Writ Application filed under Article 140 of the Constitution.

We are of the view that the aggrieved party can only make a revision application against the order of the lower court. The Intervenient-Petitioners cannot rely on the doctrine of public interest litigation in the instant application, as the revision application is a discretionary

remedy and not remedy available to the Interventient-Petitioners as of a right. Accordingly the Interventient-Petitioners have fail to establish that they have locus standi to maintain this revision application. Further Interventient-Petitioners in their petition has failed to plead exceptional circumstances which is a pre-condition in a revision application and in the absence of such exceptional circumstances, the revision application should fail.

Vide Dharmarathne and Another V. Palm Paradise Cabanas Ltd and Others (2003)3 SLR 24, the court held as follows;

1. *Legal submissions in the petition do not indicate reasons why the Court of Appeal should exercise revisionary powers.*

Per Amaratunga J,

Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given a right of appeal.”

2. *The practice of court is to insist in the exercise of exceptional circumstances for the exercise of revisionary powers has taken deep*

root in our law and has got hardened in to a rule which should not be lightly disturbed.

3. *The petitioner has not pleaded or established exceptional circumstances warranting the exercise of revisionary powers.*

In **Seelawathie Vs. Agosthinu Appuhamy (2008) SLR 251**, it was held as follows;

- (a) *“In the absence of exceptional circumstances, the mere fact the trial judge’s order is wrong is not a ground for the exercise of the revisionary powers of this court.*
- (b) *When the law has granted a remedy to an aggrieved party and if he failed to resort to the remedy given by the law, the Court of Appeal would not entertain a revision application, unless there are exceptional circumstances for the Court of Appeal to invoke the revisionary jurisdiction.”*

In **Caderamanpulle V. Ceylon Paper sacks Ltd (2001) 3 SLR 112**, it was held as follows;

“The existence of exceptional circumstances is a precondition for the exercise of the powers of revision and the absence of exceptional circumstances in any given situation results in refusal of remedies.”

On a perusal of the record we find that this application had been filed by the Intervenant-Appellants who were not parties to the High Court case and is not an aggrieved party. As such we are of the view that the Intervenant-Appellants do not have any locus standi to make this application before this court. Further there is no exceptional circumstances pleaded in this application of the Intervenant-Petitioners. As such we see no reason to interfere with the Judgement of the learned High Court Judge. Hence we dismiss this Revision Application with costs of Rs.25,000/-.

Judge of the Court of Appeal

L.T.B.Dehiddeniya, J

I agree.

Judge of the Court of Appeal