

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

In the matter of an Application for orders
in the nature of a writ of Certiorari and
Mandamus under and in terms of the
provisions of Article 140 of the
Constitution.

Centre for Environmental Justice
(Guarantee) Limited,
20A, Kuruppu Road,
Colombo- 08.

Petitioner

Court of Appeal case

No. CA 112/2015 Writ

Vs.

1. Sri Lanka Ports Authority,
No.19, Church Street,
Colombo-01.

and 05 others.

Respondents

Before : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : Ravindranath Dabare instructed by Nimal Wickremasinghe for the Petitioner.

Asanga Gunawansa with Dilshan Jayasooriya & Hiran Jayasooriya instructed by Dinusha Mirihana for the 5th Respondent.

Supported on : 09/10/2017

Decided on : 30/10/2017

Order

A.L. Shiran Gooneratne J.

When this Petition was taken up for support on 2nd June 2017, Senior DSG raised three preliminary objections with regard to the maintainability of this Petition, that the;

- a) Petitioner is guilty of lashes.
- b) Necessary parties are not before Court.
- c) Availability of an alternative remedy.

When this case came up for support on 8th August 2017, a further preliminary objection was raised, that the relief prayed for is futile.

On 11th December 2015, the Senior DSG informed Court that a Supplementary Environmental Impact Assessment (SEIA) Report for the Colombo Port City Project (hereinafter sometimes referred to as the “project”) is filed of

record and a copy was made available to the Petitioner. Counsel further submitted that the Petitioner has thirty (30) working days from 1st December 2015, to submit objections if any. Accordingly, on 25th January 2016, the Court was informed that the Petitioner has submitted observations regarding the SEIA report.

Thereafter the Petition was re-fixed for support on 25th May 2016, and the Counsel for the Petitioner informed Court that he intends to support an amended Petition. The amended Petition was filed by motion dated 4th November 2016, and was listed for support on 19th January 2017, with notice to the 2nd, 3rd and 4th Respondents. According to the proceedings dated 19th January 2017, the Court was of the view that it is advisable to have the assistance of the Hon. Attorney General, at the time this Petition is supported.

It was on 11th December 2015, the Court became aware of the SEIA report which was tendered by the Senior DSG with notice to the Petitioner. Thereafter the Petitioner moved for time to study the said report.

The Counsel appearing for the 6th Respondent submits that since December 2015, the Petitioner was aware of the said SEIA report and therefore the delay in filing the Amended Petition challenging the said SEIA report, at this stage amounts to an undue delay and therefore the Court should not exercise its discretionary judicial remedy as prayed for.

When the original Petition was taken up for support on 18th March 2015, the Court having noted the extraordinary nature of the project, sought the

assistance of the Hon. Attorney General. Thereafter when the case was mentioned on several subsequent dates, the Senior DSG informed Court of the meetings, additional documents and further reports on the progress of the project. It was also made clear to Court that the SEIA Report was in respect of an additional 33 hectares to be filed. Accordingly the Court was aware of the magnitude and the extensiveness of the said project and had sought the assistance of the Hon. Attorney General with the objective of arriving at a possible settlement. This is reflected in proceedings dated 19th January 2017.

The National Environmental Act No. 47 of 1980 (as amended), defines an EIA report. The EIA not only provides for measures to ensure any potentially negative environmental impacts, but also provides for management and investigation of such environmental impacts. As pleaded, the Petitioner has commented on the SEIA report. When the approving agency scrutinizes such comments an opportunity is given, where appropriate, to the party to be heard and to present any supporting material. Accordingly, if any alterations are made, a fresh approval needs to be obtained.

The SEIA report was submitted to Court after the original Petition was filed. Therefore the Petitioner should be given adequate time and opportunity to pursue the project proposal in a reasonable and sensitive manner to consider not only the likely adverse environmental impacts of the project, but also for the management and investigation of such environmental impacts. Any substantial

hardship or prejudice caused to the Respondents due to any delay, if any, could be determined at the full inquiry.

EIA reports are necessary for projects coming under the Coast Conservation Act No. 57/1981 (as amended). Accordingly the Petitioner has made the Director General of the Coast Conservation and Coastal Resource Management Department, as a party to this action. As such whether proper parties are before Court under the Coast Conservation Act could be decided at the full hearing. It is also observed that with the available material, the Court at this stage cannot come to a clear finding, whether the Petitioner's application is futile.

The Petitioner supports this application only for notice. In the circumstances we see no reason to refuse formal notice on the Respondents.

Accordingly issue notice on the Respondents.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL