

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 Writs of *certiorari* and/ or
Mandamus and/ or *prohibition*.

C.A. Writ Application No:

CA 299/2017

1. Aswatte Mangalatissa Thero,
No. 554, Aswatte North,
Puwakpitiya.
Presently of
No. 197,
Wijayagunaratne Bikku Asramaya,
Siridhamma Mawatha,
Colombo 10.
(Appearing by his duly appointed Power of
Attorney holder Balasingha Senerath
Dissanayakage Ranjith Dassanayeke)
2. Kudageyalage Ratna Kumara Jayathillaka.
(Appearing by his duly appointed Power of
Attorney holder Balasingha Senerath
Dissanayakage Ranjith Dassanayeke)
3. Kudagalage Jayathilaka.
4. Kande Wahumpurage Hemawathi alias
Pemawathi.

All of
No. 554, Aswatte North,
Puwakpitiya.

Petitioners

Vs.

1. A.G.S.S. Edirisuriya,
The Divisional Secretary,
Seethawaka Divisional Secretariat Office,
Seethawaka, Hanwella.
2. Ceylon Electricity Board,
No. 50,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
3. Mr. W.B. Ganegala,
Chairman,
Ceylon Electricity Board,
No. 50,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
4. A.K. Samarasinghe,
General Manager,
Ceylon Electricity Board,
No. 50,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.
5. H.A.D.A. Peiris,
Project Manager,
Clean Energy & Network Efficiency
Improvement Project – 3rd Package,
Ceylon Electricity Board,
No. 437/1C, Kotte Road,
Rajagiriya.
6. Public Utilities Commission,
6th Floor, BOC Merchant Tower,
St. Michael's Road, Colombo 03.
7. Saliya Mathew,
Chairman,
Public Utilities Commission,

6th Floor, BOC Merchant Tower,
St. Michael's Road, Colombo 03.

8. Ranjith Siyambalapitiya,
Minister of Power and Renewable Energy,
Minister of Power and Renewable Energy,
No. 72, Ananda Coomaraswamy Mawatha,
Colombo 07.
9. B.M.S. Batagoda,
Secretary,
Minister of Power and Renewable Energy,
No. 72, Ananda Coomaraswamy Mawatha,
Colombo 07.
10. Geological Survey and Mines Bureau,
No. 569, Epitamulla Road,
Pitakotte.
11. Mr. Nimal Bopage,
Chairman,
Geological Survey and Mines Bureau,
No. 569, Epitamulla Road,
Pitakotte.
12. Hon. President Maithreepala Sirisena,
Minister of Mahaweli Development and
Environment,
Minister of Mahaweli Development and
Environment,
No. 82, Rajamalwatte Road,
Battaramulla.
13. Mr. Anura Dissanayake,
Secretary,
Minister of Mahaweli Development and
Environment,
No. 82, Rajamalwatte Road,
Battaramulla.

14. Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatham,
Battaramulla.

15. The Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : A.L. Shiran Gooneratne J.

Counsel : Nisasiri Dayaratne with Aruna Jayathilake for the Petitioner.
Manohara Jayasinghe, SC for Hon. Attorney General.

Supported on : 09/01/2018 and 01/02/2018

Decided on : 20/02/2018

Order

A.L. Shiran Gooneratne J.

Parties have agreed that the order will be delivered by Hon. A.L. Shiran Gooneratne, J.

The Petitioners are seeking notice on the Respondents and an interim order as prayed for in paragraphs (a) and (e) to the Petition, to restrain the 1st to 5th Respondents from cutting down trees to construct a Proposed High-Voltage

(220KVA) Electricity Line, within 100 meters from the houses belonging to the Petitioners.

Heard, Counsel for the Petitioners and the State Counsel for the Respondents.

In paragraph 16, the Petitioners state that, due to the cutting down of trees for the proposed project, the land cultivated by the Petitioners are drying up and the destruction to water resources and the environment would affect their existing livelihood. The Petitioners also state that if the said electricity project proceeds as contemplated, the electro magnetic fields (EMF's) generated by the radio signals emanating from the electricity lines would have a possible adverse effect to their health and their livelihood and could cause various health hazards. By document marked 'P18', the Petitioners have submitted an alternate route for the power lines to be drawn which the Petitioners state would cause minimum damage to them.

State Counsel submits that the Central Electricity Board (CEB), after notice to the Petitioners, have been summoned by the Divisional Secretary for an inquiry. At the inquiry the Divisional Secretary has proposed a diversion of the electricity line by 30 meters and on this recommendation, the CEB has pushed back 27 meters from the original route. However the Petitioners are seeking a pushback of 100 meters, which the Respondents state, is not feasible.

It is noted that the diversion of the electricity line suggested by the Petitioners would affect a greater number of houses than in the present route. Furthermore the diversion of 100 meters would also give rise to additional costs in connecting wires from tower to tower. The re-location of such connecting towers, presently, is not feasible, due to the non-availability of flat land in the area. Furthermore considering the number of people that would be affected due to the proposed pushback and the re-routing suggested by the Petitioners, necessarily have consequences to a larger number of people, than at present, who are not before Court.

It is also noted that if the proposed pushback of 100 meters if implemented, the towers connecting the electricity lines would need re-location to a suitable terrain, and the cost entailed by such diversion would render the whole project infeasible. The diversion would also affect many more residence than presently affected.

As such, the court must take into account the wider public interest in deciding whether to grant interim relief. Taking into consideration the facts before Court, I am of the view, that the additional costs to the Respondent Authority to re locate the power lines and implementing government policy in the wider public interest, outweigh the interests of the Petitioners.

In the circumstances the balance of convenience does not favour the Petitioners. The Petitioners have failed to establish a case against the Respondent

Authority, that it is acting unlawfully by implementing the said project and has also failed to convince Court that the Petitioners would be successful in obtaining the final relief prayed for.

Therefore notice on the Respondents and interim relief as prayed for is refused.

Petition is dismissed, without costs.

JUDGE OF THE COURT OF APPEAL