

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

In the matter of an application for a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Jayasinghage Benedict Nimal Perera
No. 51, Tudella East, Ja-Ela.
2. Galgamuge Michael Christy Silva
No. 49/8, Tudella East, Ja-Ela.
3. Jayasinghage Patrick Joseph Perera
No. 51, Tudella East, Ja-Ela.
4. Dilon Rizvi Ahamed
No. 51, Tudella East, Ja-Ela.
5. Jayasinghage Lewis Perera
No. 60/B, Tudella East, Ja-Ela.
6. Gratian Hubert
No. 40, Tudella East, Ja-Ela.
7. Jayasinghage Riyanzy Carlo Ranjith Perera
Tudella East, Ja-Ela.
8. Biyanwilage Ethal Mary Lalitha Daraju
No. 48 C, Tudella East, Ja-Ela.
9. Kamala Kanthi Perera
No. 47 G, Tudella East, Ja-Ela.
10. Jayasinghage Ayesha Dilani Perera
No. 61 A, Tudella East, Ja-Ela.
11. Thalanga Arachchige Nuwan Jeewantha
No. 51/2, Tudella East, Ja-Ela.

Case No. C. A. (Writ) Application 30/2009

12. Meegahagedara Karunathilaka
No. 51, Tudella East, Ja-Ela.

Petitioners

Vs.

1. E. M. Shantha Bandara Jayasundara
Divisional Secretary,
Divisional Secretariat, Ja-Ela.
2. Chief Engineer (Provincial Construction)
Western Province – North,
Ceylon Electricity Board,
No. 52, 2nd Floor, Kandy Road, Kiribathgoda.
3. Chief Engineer (Commercial)
Western Province – North,
Deputy General Manager's Office (NWP),
No. 280, Kandy Road, P. O. Box 28,
Kiribathgoda, Kelaniya.
4. Chief Engineer (Supply)
Western Province – North,
Deputy General Manager's Office (NWP),
No. 280, Kandy Road, P. O. Box 28,
Kiribathgoda, Kelaniya.
5. Electrical Engineer
Ceylon Electricity Board,
No. 280, Kandy Road, P. O. Box 28,
Kiribathgoda, Kelaniya.
6. Ceylon Electricity Board
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

7. Ceylon Fresh Sea Food Company Limited
Tudella, Ja-Ela.
8. Chief Engineer (Provincial Excavations)
Ceylon Electricity Board,
No. 52, 2nd Floor, Kandy Road, Kiribathgoda.

Respondents

Before: Janak De Silva J.

Counsel:

Uditha Egalahewa P.C. with Gamini Hettiarachchi for the Petitioners

Kanishka De Silva SSC for the 1st to 6th Respondents

Faiz Musthapha P.C. with Shantha Jayawardena and Hiranga Damunupola for the 7th Respondent

Written Submissions tendered on:

Petitioners on 05.02.2019

2nd to 6th Respondents on 05.02.2019

7th Respondent on 05.02.2019

Argued on: 18.01.2019

Decided on: 19.07.2019

Janak De Silva J.

This order is on whether the amended petition dated 17.07.2018 should be accepted by Court. Parties on 18.01.2019 agreed that this matter can be disposed by way of written submissions.

The main dispute arises from attempts to draw electricity lines to the factory of the 7th Respondent along the Tudella East-Kudahakapola Road which was opposed by some villagers. The Petitioners by petition dated 18.01.2009 sought, inter alia, the following relief:

- (a) A writ of certiorari quashing the decisions made by the 1st Respondent by P7 and P16;

- (b) A writ of certiorari quashing the decisions made by the 2nd Respondent by P1 and P18,
- (c) A writ of mandamus directing the 1st to 6th and 8th Respondents to adhere to the decision of the Human Rights Commission marked P13;
- (d) A writ of mandamus directing the 1st to 6th and 8th Respondents to take all necessary steps to draw the proposed 33,000 volt high tension electricity line to the 7th Respondent along the alternate road suggested by the Petitioners and the Human Rights Commission and also a direction on the 1st to 6th and 8th Respondents, not to draw the proposed high tension electricity line along the Tudella East-Kudahakapola Road.

After pleadings were completed and when the matter was taken up for argument on 18.10.2011, the Court directed to hold a fresh inquiry by a Divisional Secretary other than the Divisional Secretary who made the original decision and further directed that the decision be made within 3 months from the appointment which was done and the inquiry report is dated 23.02.2012 which has been issued by the Divisional Secretary of Gampaha.

The Petitioners after more than 3 ½ years from the date of that report tendered an amended petition dated 11.11.2015. The 1st to 6th as well as the 7th Respondent objected to it and this Court by order dated 01.03.2017 rejected the application of the Petitioners to amend the petition.

The Petitioners filed a special leave to appeal application bearing no. 80/2017 in the Supreme Court against the said order of this Court which the Petitioners later withdrew.

The Petitioners have thereafter tendered an amended petition dated 17.07.2018 seeking to amend the original petition dated 18.01.2009 to which 1st to 6th as well as the 7th Respondents objected.

The Petitioners have claimed that the amended petition dated 17.07.2018 was filed in terms of a settlement arrived at the Supreme Court. This is set out in paragraph 37 of the written submissions of the Petitioners which reads:

“37. Being aggrieved by the said order of your Lordships’ court the Petitioners filed a special leave to appeal application bearing No. 80/2017 to the Supreme Court and at the Supreme Court parties arrived at a settlement and accordingly the Petitioners withdrew the said a (*sic*) special leave to appeal application to file a fresh amended petition.”

The 1st to 6th as well as the 7th Respondents vehemently denied that parties arrived at any settlement in the Supreme Court which allowed the Petitioners to file another amended petition. In fact, the Petitioners did not produce a copy of any proceedings before the Supreme Court. I hold that the Petitioners have not established that a settlement was arrived between the parties in the Supreme Court allowing the Petitioners to file another amended petition.

The question then is whether the amended petition dated 17.07.2018 should be allowed.

In deciding this issue, it is pertinent to consider the nature of the amendments sought to be made by the Petitioners by the amended petition dated 17.07.2018.

The Petitioners are seeking to challenge documents marked P13 and P25 [prayer (b) to the amended petition dated 17.07.2018]. These documents are documents marked P7 and P16 respectively with the original petition dated 18.01.2009. However, these two documents have already been quashed by the order dated 18.10.2011 made by this Court which has been confirmed in the order made by a subsequent bench in this case dated 07.10.2015.

Furthermore, the Petitioners have sought a writ of mandamus directing the 1st Respondent to enforce the decision in P8 which is dated 10.01.2018 but as the Respondents correctly point out P8 is also superseded by the decision made by this Court on 18.10.2011.

This appears to be what this Court states in its order dated 01.03.2017 the relevant part of which reads (page 10):

“It is the view of this court that the decision, the Petitioners seeks to impugn by way of an amended petition filed in these proceedings, is a totally **new decision** which did not form part of the subject matter that was agitated by the Petitioners by his petition in this proceedings...” (emphasis added)

For all the foregoing reasons, I reject the amended petition dated 17.07.2018.

The remaining question is on the costs of this application.

The 1st to 6th as well as the 7th Respondents have sought costs. The 7th Respondent has further submitted that the amended petition dated 17.07.2018 is malicious and based on an ulterior motive amounting to an abuse of process.

Having considered the circumstances of the case I am inclined to agree with the submissions of the 7th Respondent. There is merit in the submission that the purpose of the amended petition is to delay the 7th Respondent commencing the operations in its full capacity after obtaining electricity in terms of the recommendation contained in the report dated 23.02.2012.

There is also the unmeritorious conduct of the Petitioners in trying mislead this Court into believing that the amended petition dated 17.07.2018 is as a result of a settlement in the Supreme Court between parties. Such conduct must be visited with the severest of sanctions.

In these circumstances, an order for high costs is more than justified and Court is fortified by the statement of Tilakawardane J. in *Leon Peris Kumarasinghe v. Samantha Weliveriya* [S.C. (Spl) L.A. No. 37/2012, S.C.M. 12.11.2013] where she held (at page 7):

“The Court notes that the time has come for the Supreme Court to affirmatively determine the utility of punitive costs with the primary view of deterrence. The decision to award punitive damages is consistent with similar decisions in foreign jurisdictions including [but not limited to] the Indian Case of *Reliance Mobile v Hari Chand Gupta* (2006) (CPJ 73 NC), where punitive damages were awarded, for the production of a false

affidavit, with the intention of preventing such actions in the future and *Polye v Papaki and Another* [2001](1 LRC 170), where the Supreme Court of Papua New Guinea determined that the jurisdiction of the Supreme Court was invoked without reasonable cause and amounted to a misconduct on the part of the Appellant which resulted in unnecessary expenditure by the Respondents and granted punitive damages accordingly.

This Court cannot over emphasize the need to appropriately deal with litigants who attempt to abuse the process of Court and thereby cause unnecessary delay and costs to other parties in order to ensure that, in the future, litigants will not be tempted to indulge in such ill-conceived practices.”

The amended petition dated 17.07.2018 is rejected. The Petitioners will pay the 6th and 7th Respondents each Rs. 50,000/= as costs of this application.

Judge of the Court of Appeal