

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

In the matter of an application for Writs of
Certiorari and Mandamus made under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

CA Writ Application No. 45/2020

T. Withanachchi Gunawardana
No. 499/7,
Hiribura Road,
Galle.

Petitioner

Vs.

1. H.L. Pathmasiri de Silva
Sandarawala,
Baddegama.

2. Piyasena Hirimuthugodage
The Chairman
Rent Board of Galle.

3. Wasanthie Jayasingharachchi
Member
Rent Board of Galle.

4. Nandani Arumahandi
Member, Rent Board of Galle
(Ceased to hold office)

5. Nandasiri Weligamge
Member, Rent Board of Galle
(Ceased to hold office)

6. A.A.P.D. Gunasekera
The Valuer
Rent Board of Galle

7. Rent Board Galle
43, 1st Floor,
Sri Devamitta Mawatha,
Galle

Respondents

NOW BETWEEN

T. Withanachci Gunawardhena
No. 499/7,
Hirimbura Road,
Galle

Petitioner-Petitioner

Vs.

1. H.L. Pathmasiri de Silva
Sandarawala
Baddegama.
2. Piyasena Hirimuthugodage
The Chairman
Rent Board of Galle.
3. Wasanthie Jayasingharachchi
Member
Rent Board of Galle.
4. Nandani Arumahandi
Member, Rend Board of Galle

(Ceased to hold office)

5. Nandasiri Weligamge
Member, Rent Board of Galle
(Ceased to hold office)

6. A.A.P.D. Gunasekera
The Valuer
Rent Board of Galle
2nd to 6th Respondents are of:
Rent Board of Galle
43, 1st Floor,
Sri Devamitta Mawatha,
Galle

7. Rent Board Galle
43, 1st Floor,
Sri Devamitta Mawatha,
Galle

Respondents – Respondents

1. M.P. Liyanage
Member, Rent Board of Galle
No.43, 1st Floor,
Sri Devamitta Mawatha,
Galle
2. G.P. Piyasena
Member, Rent Board of Galle
No.43, 1st Floor,
Sri Devamitta Mawatha,
Galle
(Seeking to be substituted as the
substituted 4A and 5A Respondents)

Respondents

Before : **D.N. Samarakoon, J.**
B. Sasi Mahendran, J.

Counsel : Ashoka Fernando for the Petitioner
Mahinda Nanayakkara with Aruna Jayathilake and K.S.K. Mendis for the 2nd
-7th Respondents

Written 25.04.2022 (by the Petitioner)

Submissions: 25.04.2022 (by the 2nd to 7th Respondents)

On

Argued on: 11.03.2022

Decided On: 26.05.2022

B. Sasi Mahendran, J.

The Petitioner, by way of an application under Article 140 of the Constitution, seeks to invoke the writ jurisdiction of this Court to obtain, inter alia, a Writ of Certiorari to quash the determination of the Rent Board of Galle and a Writ of Mandamus to compel the 2nd Respondent to forward the petition of appeal preferred by the Petitioner to the Rent Board of Review.

When this matter was supported on 11.03.2022, Counsel for the 2nd to 7th Respondents raised a preliminary objection orally relating to the jurisdiction of this Court to entertain this application. It was contended that as the instant application concerned a matter listed in the Provincial Council list, by virtue of Article 154P (4) (b) of the Constitution this Court has no jurisdiction to entertain the application when the jurisdiction to hear and determine it is exclusively vested with the Provincial High Court, established under the 13th Amendment to the Constitution. It was argued that this Court has no concurrent jurisdiction to try this matter either. The parties were directed to address this point.

It is trite law that the writ jurisdiction conferred on the Court of Appeal in terms of Article 140 of the Constitution is entrenched and cannot be ousted by ordinary legislation. This Article reads as follows:

Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution, and grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the judge of any Court of First instance or tribunal or other institution or any other person.

Article 141 thereafter, empowers the Court of Appeal to grant and issue orders in the nature of writs of habeas corpus.

Article 154P (4) of the Constitution provides that,

Every such High Court shall have jurisdiction to issue, according to law-

- a. orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and*
- b. order in the nature of writs of certiorari, prohibition, mandamus and quo warranto against any person exercising within the province any power under-*
 - i. any law, or*
 - ii. any statutes made by the Provincial Council Established for that province,*

in respect of any matter set out in the Provincial Council List.

The effect of this provision on Article 140 of the Constitution was discussed by their Lordships of the Supreme Court in Weragama v. Eksath Lanka Wathu Kamkaru Samithiya & Others 1994 (1) SLR 293. His Lordship Fernando, J. delivering the judgment held,

“Article 154P (4) conferred writ jurisdiction over any person exercising, within the Province, any power under any law or statute specified therein; this was not stated to be “exclusive”, or “notwithstanding anything in Articles 140 and 141”, and hence the High Courts had concurrent jurisdiction with the Court of Appeal.

As to the intention of Parliament in adopting the Thirteenth Amendment, this Court cannot attribute an intention except that which appears from the words used by Parliament.....As for the Determination of this Court regarding the Thirteenth Amendment, the majority held that it did not effect any change in the structure of the Courts or the judicial power of the People; that vesting additional jurisdiction in the High Courts only brought justice nearer home to the citizen, reducing delay and expense; and that the Provincial Council had no control over the judiciary functioning in the Province

(per Sharvananda, C.J. at R. 323). Of the three dissenting judgments.....it did not find in the Bill, or even in its legislative and executive history, any intention of devolution in regard to the judiciary - and it went no further than observations that the conferment of concurrent writ jurisdiction on the High Court was interference with, and devaluation of, the writ jurisdiction of the Court of Appeal (per Wanasundera, J., at p. 380). None of the five judgments support the Respondent's contention that there was in the Thirteenth Amendment an intention to devolve judicial power. There was nothing more than a re-arrangement of the jurisdictions of the judiciary. To accede to Counsel's invitation to adopt a liberal interpretation would be, in this instance, a clear trespass into the legislative domain.

..... I must mention that there is no doubt whatever that Parliament did not even attempt to affect the writ jurisdiction of the Court of Appeal. Section 3 of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, conferred on the High Court appellate and revisionary jurisdiction in respect of Labour Tribunals; the phrase "appellate and revisionary jurisdiction" has been used in Article 154P (3) in contradistinction to the writ jurisdiction, and hence the same phrase in Section 3 cannot be interpreted to include the writ jurisdiction. None of the other provisions relied on by the Respondent purport to confer jurisdiction." [emphasis added]

This issue was revisited in the case of Nilwala Vidulibala Company v. Kotapola Pradeshiya Saba 2005 1 SLR 296. His Lordship Sriskandarajah J. held,

"...writ jurisdiction conferred on the Provincial High Courts is concurrent with the jurisdiction of the Court of Appeal under Article 140 and that the latter has not been diminished by the 13th Amendment to the Constitution."

A similar conclusion was arrived at in the case of Kalu Arachchige Allen Nona v. Sunil Weerasinghe & Others C.A.Writ 23/2013, decided on 10.06.2016. His Lordship Malalgoda J. held,

"Under these circumstances it is understood that with regard to the applications come within Article 154(P) of the Constitution, Provincial High Courts are conferred with concurrent jurisdiction with the Court of Appeal".

Even if it is presumed that the establishment of the High Court has taken away the writ jurisdiction of the Court of Appeal with regard to matters listed in the Provincial Council List, then provisions such as Section 12 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 would be futile. This Section reads as follows:

(a) Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers expedient to do so, direct such High Court to hear and determine such appeal or application

Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be transferred to such High Court and such High Court shall hear and determine such appeal or application.

We are of the view that this Court has concurrent writ jurisdiction in respect of matters referred in the Provincial Council list along with the Provincial High Court. Accordingly, we overrule the preliminary objection and in the circumstances of this case, we order no costs.

JUDGE OF THE COURT OF APPEAL

D.N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL