

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

In the matter of an application for a mandate in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution.

CA/WRIT APPLICATION NO: 527/2021

1. R. M. P. Surekha Indumathi
Kokeliya, Vavuniya.
2. Ganeshalingam Sukidarana Kaththarsinnakulam
No.2nd Mail Post,
Mamduwa Road, Vavuniya.
3. L. A. Hemathilaka
Kaththarsinnakulam,
Mamduwa Road, Vavuniya.
4. Damith Nuwan Wickrmapala
Nedunkulam, Mamaduwa Road,
Vavuniya.
5. C. P. Wimalsena
LB Janpadaya,
Periyaulukkulama, Vavuniya.
6. M. S. Meera Umma
Suduventapulavu, Vavuniya.
7. T. Thineshkar
No. 57, Madaiwaithakulam,
Vavuniya.

8. D. D. C. Jagath Kumara
Mahasiyabalagaskada,
Vavuniya.
9. S. Mohanadan
Kaththarsinnakulam,
Vavuniya.
10. B. M. T. B. Herath
Rabakulama,
Medawachchiya.
11. A. M. Thilakarathna
Nawanagaraya,
Padaviya.
12. M. Jayathissa
No. 12, Elakolaniya,
Rambewa.
13. O. Suminda Senadreera
Maradankulama,
Mihinthale.
14. M. K. C. Vijitha Mawella
Hinna Kanda, Kanadara Mahadiuwawa,
Medawachchiya.
15. P. A. Pushpakumara
No.51, Nuwarapara,
Medawachchiya.
16. G. Sunil Rajapaksha
Lidawawa,
Medawachchiya.

- 17.R. G. Karunathilaka
Kawarakkulama,
Galakulama.
- 18.S. R. Sandakalum
Unagaswawa,
Kirigalwawa.
- 19.K. I. D. Anil
Nawapuththalampara,
Pothanegama.
- 20.O. Sumith Senadheera
Maradankulama,
Mihinthale.
- 21.B. M. W. Abeywardena
No. 122, Athumalpitiya,
Thirappane.
- 22.S. M. Karunawathi
Galmaduwigama,
Galkulama.
- 23.C. P. Liyanage
Jayabima, Pawakkulama,
Hidogama.
- 24.S. P. Krutos
Palagaspegama, Mahahenyaya,
Saliyawewa Junction.
- 25.K. P. Vipulasena
Puleliya,
Medawachchiya.

26.C. A. H. N. C. Chandrasekara
No. 06, 02 Kotasa, Degasmawatha,
Isurupura, Anuradhapura.

27.A. A. S. V. Abeysinghe
Galawaduagama,
Galakulama.

28.K. G. Sunil Kulathilaka
Karabagala,
Maradankadawala.

29.W. M. Suravira
Ginikatuiwawa,
Rambewa.

30.Iddamalgodage Ranjith Perera
Sandamalgama,
Rambawa.

31.W. S. M. Pramasiri
Agunochchiya,
Medawachchiya.

32.S. J. Wijesiri
Ehalathanmennawa,
Medawachchiya.

33.D. P. S. Dissanayake
Ihala Halmillewa,
Eppawala.

34.K. Wickramasinghe
Bellankadawala,
Eppawala,
Rambakulam,

Medawachchiya.

35.B. A. N. R. Thennakon
Opposite Navy Camp,
Punnawa,
Madawachchiya.

36.A. K. Ariyaratna
Sudharshana Mawatha,
Savithripura.

37.D. B. Padmalatha
Thalpanawa,
Kirigalwewa,
Madawachchiya.

Petitioners

-Vs-

1. S. M. Chandrasena
Minister of Lands,
Ministry of Lands,
“Mihikatha Medura”, Land Secretariat
No.1200/6, Rajamalwatta Avenue,
Battaramulla.
2. R. A. K. K. Ranawaka,
Secretary – Ministry of Lands,
“Mihikatha Medura”, Land Secretariat
No.1200/6, Rajamalwatta Avenue,
Battaramulla.
3. G. D. Keerthi Gamage
Commissioner General of Land,
Land Commissioner General’s Department,
“Mihikatha Medura”, Land Secretariat

No.1200/6, Rajamalwatta Avenue,
Battaramulla.

4. D. Sajjana De Silva
Director General- Geological Survey and Mines
Bureau,
No. 569, Epitamulla Road, Pitakotte.
5. Wimalaweera Dissanayake
State Minister of Wildlife Protection,
Ministry of Wildlife and Forest Conservation,
No.1090, Sri Jayawardhenapura Mawatha,
Rajagiriya.
6. C. B. Ratnayake
Minister of Wildlife and Forest Conservation,
Ministry of Wildlife and Forest Conservation,
No.1090, Sri Jayawardhenapura Mawatha,
Rajagiriya.
7. Somapala Vidanapathirana
Secretary - Ministry of Wildlife and Forest
Conservation,
No.1090, Sri Jayawardhenapura Mawatha,
Rajagiriya.
8. K. M. A. Bandara
Conservator General of Forests,
Department of Forest Conservation,
Sampathpaya,
No.82, Rajamalwatta Road,
Battaramulla.
9. P. G. Gunapala
Deputy Director General (Technical Services)
Mahaweli Authority of Sri Lanka,
No.300, T.B. Jaya Mawatha,

Colombo 10.

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Saliya Pieris, PC with Varuna de Seram for the
Petitioners.
Navodi De Zoysa, SC for the Respondents.

Written Submission : Petitioners : 25.11.2022
Tendered On Respondents : 06.12.2022

Decided On : 22.02.2023

Dhammika Ganepola,

The Petitioners in the instant application engage in the exploration and mining of rocks in state lands under and in terms of renewable industrial mining licenses issued by the Geological Survey and Mines Bureau (GSMB) in terms of the Mines and Minerals Act No. 33 of 1992. In terms of Section 44(b) of the Mines and Minerals Act, the GSMB shall have the power to demand, receive and recover all fees, rents, royalties and other payments due to the bureau under any provision of the said Act.

Further in terms of Section 20(1)(h) of the Forest Ordinance No.16 of 1907, any forest officer could impose, subject to the sanction of the Minister, the fees, royalties, or other payments for such timber or other forest produce, and the manner in which such fees, royalties, or other payments shall be levied whether in transit, or partly in transit, or otherwise. Said Section 20(1)(h) is as follows.

“20(1) No person shall clear, set fire to, or break up the soil of, or make use of the pasturage or of the forest produce of, any forest not included in a reserved or village forest, except in accordance with rules to be made by the Minister. Such rules may, with respect to such forests or with respect to any particular forest-

(h) prescribe, or authorize any forest officer to prescribe, subject to the sanction of the Minister, the fees, royalties, or other payments for such timber or other forest produce, and the manner in which such fees, royalties, or other payments shall be levied whether in transit, or partly in transit, or otherwise.”

Accordingly, Rule 20 of the Forest Regulations published in the Gazette Extraordinary bearing No. 1600/18 dated 06.05.2009 marked P-6B issued by the Minister under Section 20(1) of the Forest Ordinance is as follows.

“20. The conservator general of forest may, with the sanction of the Minister, determine the rates specified in the schedule hereto, to be the fees payable in respect of the collection of forest produce and timber.”

Said Section 20 of the Forest Ordinance (principal enactment) was repealed by Section 13 of the Forest (Amendment) Act No.65 of 2009. The Petitioners state that even though Section 20 of the Forest Ordinance (including Sub Section 20(1)(h)) was repealed, a similar provision to Section 20(1)(h) has not been introduced by the said Forest (Amendment) Act. However, as pleaded in the petition, the Petitioners have continued to pay the relevant fees imposed by the Conservator General of Forest in addition to the Royalties charged by the GSMB in terms of the Mines and Minerals Act to avoid any conflict with the authorities.

In the meantime, the Director General of the GSMB has formulated a method of calculating Royalty marked P-8 to be charged by the GSMB which was also agreed by the Petitioner. In this context, the Forest Department also adopted the same formula and commenced calculating the fee for the usage of state lands.

Subsequently, the 5th Respondent has published Forest Regulation No.01 of 2021 by Gazette Extraordinary No.2216/34 dated 25.02.2021 (P-15B) by virtue of the powers vested with him under Section 64(2)(f) of the Forest Conservation Ordinance. By said Regulation item No.10(1) specified in the Schedule (fees) of the alleged Gazette Extraordinary No. 1600/18 dated 06.05.2009 (P-6B) was repealed and amended. Accordingly, the 3rd Respondent by his Circular No.2021/02 dated 30.03.2021 (P16) informed all Divisional Secretaries that the fee prescribed in the Gazette

Extraordinary No.2216/34 dated 25.02.2021 (P-15B) relating to rock mining shall be charged.

It is submitted that under such circumstances the Petitioners have been disadvantaged as a result of the 'double jeopardy' caused by having to pay a fairly large sum of money for the usage of State Lands imposed by the said Gazette P-15B in addition to the Royalties charged under the Mines and Minerals Act. The Petitioner's contention is that since Section 20 of the Forest Ordinance (principal enactment) was repealed, the Gazette Extraordinary No. 1600/18 dated 06.05.2009 (P-6B) is invalid and has no force in law and the Regulations embodied in Gazette Extraordinary No.2216/34 dated 25.02.2021 (P-15B) and Circular No.2021/02 dated 30. 03..2021 marked P16 are liable to be quashed. In the above circumstances, Petitioners seek inter alia in the nature of Writs of Certiorari quashing the regulations embodied in Gazette Extraordinary No.2216/34 dated 25.02.2021 (P-15B) and Circular No.2021/02 dated 30.03.2021 marked P16 and Writs of Prohibition prohibiting Respondents from charging fees relying on Gazette P-15B and Circular P-16.

Both parties have moved for the matter to be dealt with solely based on written submissions and as such the judgment delivered hereinafter was made accordingly.

The Issue of the Validity of the Gazette Notifications marked P-6B, P-15A/B and the Circular marked P-16.

As per the Gazette Extraordinary No.1600/18 dated 06.05.2009 (P-6B) Rules embodied therein had been made by the Minister by virtue of the powers vested with him under paragraph 1 of Section 20 of the Forest Ordinance (principal enactment) as mentioned above. Said Section 20 was repealed by the Forest (Amendment) Act No. 65 of 2009 which came into operation on 16.11.2009. Hence it is important to ascertain whether the said rules made with the power of the said Section 20 is still valid in law. Nevertheless, Section 6(3)(a) of the Interpretation Ordinance stipulates the uninterrupted continuance of the past operation of repealed law in the absence of an express provision to that effect. The aforesaid Section 6(3)(a) is reproduced below.

6.(3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected-

(a) the past operation of or anything duly done or suffered under the repealed written law ;

In **The Public Service United Nurses Union Vs. Montague Jayewicrama, Minister of Public Administration & Others (S.C.Application No. 4/87 decided on 29.04.198)** Wanasundera J. observed that:

“...when existing general rules are sought to be altered, this too must be done in the same manner and following the identical procedures as for their formulation, namely, by enacting an ending rule.”

Referring to the said Supreme Court observation in ***Rathnasiri & others Vs. Ellawala & others [2004] 2 Sri LR 180***, the Court of Appeal decided that without any specific legislation or subordinate legislation which expressly repeal any existing law or regulation the latter cannot be wiped out. Hence the position taken up by the Petitioner that the Gazette Extraordinary No.1600/18 dated 06.05.2009 (PB6) is invalid and has no force in law as Section 20 of the Forest Ordinance was repealed, cannot sustain.

In relation to the Petitioners’ claim regarding the Minister’s power to make Regulations, it is further observed that even though Section 20 of the Forest Ordinance (principal enactment) was repealed and Regulation making power therein was taken out by the Forest (Amendment) Act No. 65 of 2009, such Regulation making power has been conferred with the Minister by Section 64 of the same Amendment.

64(1) The Minister may make regulations in respect of matters required by this Ordinance.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations,

(f) to generally carry out the provisions of this Ordinance, which would include a levy of the fee to be paid for any license or permit issued under this Ordinance or under any regulation made thereunder and the mode and manner of payment or recovery of any such fee;

It is observed that the subsequent publication of the Gazette Extraordinary No.2216/34 dated 25.02.2021 (P-15B) which mentions the repeal and amendment of item No.10(1) referred to in the Gazette Extraordinary No. 1600/18 dated

06.05.2009 (PB-6) has been made by virtue of the powers vested with the Minister under Section 64(2) of the said Ordinance.

Hence the stance taken up by the Petitioners that the regulations embodied in the said Gazette Extraordinary No.2216/34 dated 25.02.2021 (P-15B) are made without any legal basis and thus have no bearing in law. By implication, the directions specified in Circular No.2021/02 dated 30. 03.2021 (P16) relating to rock mining charges have been issued in accordance with the Gazette Extraordinary No.2216/34 dated 25.02.2021 (P-15B) is also valid. Therefore, as claimed by the Petitioners, there is no illegality or irrationality whatsoever.

The Distinction between Royalties and Fees

The Petitioners state that they should not be charged twice under Mines and Minerals Act by GSMB as Royalty and Gazette Extraordinary No.2216/34(P-15B) as fees for usage of state lands. However, 'Royalty' is charged under Mines and Minerals Act and 'fees' for the usage of state lands are charged under Rules regulated by the Forest Ordinance. These are two different levies imposed for disparate purposes.

Royalty is a statutory recovery that could be demanded in terms of Section 44(c) of the Mines and Minerals Act for the exploitation of mineral rights in the property. Said Section 44 (b) is as follows.

*"44. Subject to the provisions of this Act the Bureau shall have the power-
(b) to demand, receive and recover all fees, rents, royalties and other payments, due to the Bureau under any provision of this Act"*

As per the Preamble of the said Act, the Act was passed to, among other things,

"...regulate the exploration for, mining, transportation, processing, trading in or export of, minerals..."

Further, Section 26(1) of the Mines and Minerals Act stipulates that the ownership of the Minerals is vested with the State irrespective of the soil rights. Said Section is reproduced below.

26 (1) Subject as hereinafter provided, and the rights granted by a licence issued under this Act, the ownership of minerals is hereby vested in the Republic, notwithstanding any right of ownership or otherwise which any person may have to the soil on, in or, under which minerals are found or situated.

Accordingly, when Minerals are found or excavated, whether in State Land or private land, Royalty would have to be paid to the state.

However, the fees payable under Gazette Extraordinary No.2216/34(P-15B) are in respect of the collection of forest produce and timber. "Forest produce" includes rocks and minerals also when found in or brought from a forest (See Section 78(d) of the Forest Conservation Ordinance). It is observed from the Preamble that the Forest Ordinance was enacted, inter alia, with the intention of "conservation, protection and sustainable management of the forest resources and utilization of forest produce." Therefore, the said fee is altogether a separate levy charged for the usage of and access to conserved and protected state land.

Accordingly, these different levies; namely the 'Royalty' charged under the Mines and Minerals Act and charging a fee under Gazette Notification marked P-15B are justified against the alleged "double jeopardy" claimed by the Petitioners.

In such circumstances and for the reasons given above I am not inclined to grant any reliefs as prayed for in the Petition of the Petitioners. Accordingly, I proceed to dismiss this application of the Petitioners. I order no cost.

Application is dismissed.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal