

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 of Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. (Writ) Application
No: 0083/2017**

1. R.W.H. Karunaratne Bandara
Hinguruwelpitiya,
Dambuluwelpitiya,
Kekirawa.
2. H.E.W.M.R. Daya Bandara
Rambukwella,
Hinguruwelpitiya,
Dambuluwelpitiya,
Kekirawa.

Petitioners

- Vs -

1. Geological Survey and Mines Bureau,
569, Epitamulla Road, Pita Kotte.
2. Central Environmental Authority
“Parisara Piyasa”,
104 Denzil Kobbekaduwa Mawatha,
Battaramulla.
3. The Conservator General,
Department of Wildlife,
811/A, Jayanthipura Road,
Battaramulla.
4. Mahaweli Authority of Sri Lanka
500, T.B. Jaya Mawatha
Colombo 10

5. P.M.N.K. Weerasekera,
Hinguruwelpitiya,
Dambuluhalmillewa Road,
Kekirawa.
6. H.B. Ratnayake,
Hinguruwelpitiya,
Dambuluhalmillewa Road,
Kekirawa.
7. M.S.M. Sannan,
Hinguruwelpitiya,
Dambuluhalmillewa Road,
Kekirawa.
8. L.M. Wijewardena,
Hinguruwelpitiya,
Dambuluhalmillewa Road,
Kekirawa.
9. A.W.P. Dissanayake,
Hinguruwelpitiya,
Dambuluhalmillewa Road,
Kekirawa.

Respondents

Before : P. Kirtisinghe J
&

R. Gurusinghe J

Counsel : Thishya Weragoda with Thamali Rajapaksa
Instructed by Niluka Dissanayake

For the Petitioners

Chaya Sri Nammuni, DSG

For the 1st – 4th Respondents

Upul Kumarapperuma with Duvini Godagama,

Leshaini Ranaweera and Tereesha Wedaarachchi

For the 5th Respondent

Shamal A. Collure with A.P. Jayaweera

For the 6th – 9th Respondents

Argued on : 05.09.2023

Decided on : 04.10.2023

R. Gurusinghe J

Two petitioners in this application state that the issues to be determined in this application are of public importance.

The facts of this case, as stated in the petition, are briefly as follows;

The Minister of Lands and Land Development of Mahaweli, by proclamation in terms of Section 3(1) of Mahaweli Authority Act No.29 of 1979, declared a large area within the North-Western Province, North-Central Province, and Central Province as a special area by the Gazette notification dated 25th June 1979. “Hinguruwelpitiya Reserve” is a land set apart as a reservation and falling within the ambit of the aforesaid order.

4th respondent had granted permission to the 5th - 9th respondents to fall trees and clear land for the purpose of operating several metal quarries within the aforesaid “Hinguruwelpitiya Reserve”. The 1st respondent has granted mining permission to the 5th - 9th respondents for the purpose of operating several metal quarries within the aforesaid “Hinguruwelpitiya Reserve”. The petitioners continuously opposed to such blatant destruction of the aforesaid “Hinguruwelpitiya Reserve”, which is adjacent to “Ranawa wewa” and in close proximity to the elephant corridor bordering Jathika Namal Uyana. The petitioners wrote to the relevant officials complaining of atrocities caused by the metal quarrying in the “Hinguruwelpitiya Reserve”. As the relevant officials did not take meaningful steps, the petitioners wrote

to His Excellency the President requesting the intervention in the matter. Thereafter, the 2nd and 3rd respondents conducted field inspections and found that the quarries had been operated in violation of the boundaries of the lands that the 4th respondents had allocated to the 5th - 9th respondents. 5th - 9th respondents have also violated the Environmental Protection License (EPL) issued by the 2nd respondent and the mining license issued by the 1st respondent. No Environmental Impact Assessment (EIA) had been carried out prior to the issuance of EPL.

The petitioners did not participate in the meeting on 8th December 2016 since the conduct of the inspection was partisan towards the 5th - 9th respondents. A test explosion was requested by the 1st respondent, and the said test was conducted on 30th January 2017. The petitioners opposed such steps in view of the partisan manner in which the affairs at the said joint inspections were conducted. The petitioners believe that the 4th respondent followed due process in terms of the State Lands Ordinance in granting long-term leases to the 5th - 9th respondents.

The conduct of 1st, 2nd and 4th respondents has been to condone the illegal and wrongful actions of 5th - 9th respondents in the destruction of "Hinguruwelpitiya Reserve". The aforesaid 1st, 2nd and 4th respondents have been privy to said blatant violations of the aforesaid Mines and Minerals Act, National Environmental Act, Mahaweli Authority Act, Forest Ordinance and State Lands Ordinance. The issuance of EPL to 5th - 9th respondents by the 2nd respondents without calling EIA is ex facie illegal, unlawful, null and void.

The petitioners are seeking, among other reliefs, to grant a mandate in the nature of a writ of prohibition against the 1st respondent prohibiting from issuing a license under the Mines and Minerals Act in respect of any part of "Hinguruwelpitiya Reserve". The petitioners are also seeking for a writ of prohibition against the 2nd respondent from issuing any EPL in respect of any part of "Hinguruwelpitiya Reserve" and a Writ of prohibition against the 4th respondent from alienating any manner under the provisions of the State Lands Ordinance or any other law within the ambit of Schedule B of the Mahaweli Authority Act in respect of any part of "Hinguruwelpitiya Reserve". The petitioners are also seeking a mandate in the nature of the writ of certiorari quashing the alienations and dispossessions documents in favour of the 5th - 9th respondents made by the 4th respondent and quashing the license issued by the 1st respondent in favour of 5th - 9th respondents permitting the operation of metal quarries within any part of "Hinguruwelpitiya Reserve".

Respondents position

All the respondents have filed objections to the petitioners' applications.

The 1st respondent denies the fact that the said area is categorised or identified as "a reserve or a reservation" in any manner and that this area is not in any way a forest reserve or forest area declared under the Flora and Fauna Act or controlled by the Department of Wildlife or forest department.

The 1st respondent states that the licence was given to quarry and crushing of rocks. The said land is not forest land, and it is a vast area of land consisting mainly of huge rock boulders and low shrubs. By virtue of the gazette extraordinary dated 13.7.1979 bearing No. 45, the area, including the "Hinguruwelpitiya Area" within which all these quarries are situated, is declared a "special area" under the provisions of section 3 (1) of the Mahaweli Authority of Sri Lanka Act No. 23 of 1979 and the supervision and control of such a 'Special Area' vest with 4th respondent. A meeting was held on 8.12.2016, and the minutes of the meeting marked A7 (a). The respondent further states that;

- i. At the meeting held, it was revealed that the licence was given with the consent and authority of the 4th respondent, Mahaweli Authority and the 2nd respondent, Central Environmental Authority (CEA), Geological Survey and Mines Bureau, the 1st respondent and that the licence was given with due authority.
- ii. Three persons, including the 6th and 9th respondents, were reported to have exceeded the extent authorised for them for quarrying, and at the time in question, their licence had been temporarily suspended.
- iii. The Department of Archaeology has confirmed that there are no artefacts in the area.

The respondent states that approval is given to 5th to 9th respondents not upon long-term leases under the provisions of the State Lands Ordinance but upon an area of rock identified and demarcated for the purpose of quarrying. Therefore, there is no transfer of title or lease, but only approval by 4th respondent. The respondent further states that the petitioners' use of the term "Hinguruwelpitiya Reserve" is misleading and that it is not a forest reserve but a Mahaweli Area consisting mainly of rock and shrubs. Therefore, the authorities are entitled to give licence to quarry these huge boulders in the area and such activity is not destruction of the area and certainly not of any "reserve." The 1st respondent has produced documents 1R1 to 1R27.

The 2nd respondent also filed objections denying the allegations in the petition. Objections of the 2nd respondent are basically similar to the objections of the 1st respondent. 2nd respondent has produced documents 2R1 to 2R38. 4th respondent also filed objections denying the allegation in the petition. 4th respondent tendered documents 4R1 to 4R25(a). The 5th to 9th respondents also filed objections along with documents marked R1 to R42.

The 5th respondent stated that he had been issued the relevant licence required for the operation of the metal quarry in 2008, and operations of the quarry had begun in the same year.

5th respondent has tendered documents marked 5R1(a) to 5R9. By document 5R1(a) dated 13.12.2007, the 4th respondent has recommended to the 1st respondent for the issuance of the licence to the quarry to the 5th respondent and one other person at the rock area near “Ranawa Wewa” in division 1 village in Galkiriyagama. The Archaeological Department issued this assessment report on 12.07.2010, stating there are no artefacts at/or around the proposed place to be quarried. The Environmental protection licence issued to the 5th respondent by the 2nd respondent dated 22.02.2010 was produced marked 5R2(c). The 5th respondent has also produced several mining licences and transport passes for the transport of explosives that have been issued long before the petitioner’s application.

The two petitioners state that they are representing an environmental society and are concerned about the environmental impact of the quarrying done by the 5th to 9th respondents. However, the petitioners have not tendered any documents to show that there is an environmental group by the name of ‘Hinguruwelpitiya Forest Reserve and Natural Resources Protection Association’.

The respondents have denied the fact that there is an association by that name. The petitioners have not indicated that there are members or office bearers of such association. No affidavit is filed by any member or office bearer of such association. The petitioners have annexed no proof to say that the public is affected. The petitioners’ claim is not substantiated by any evidence.

The respondents submitted that a test blast was done on a joint inspection carried out in this matter on 30.01.2017. The petitioners were invited to participate in that test blast. However, the petitioners did not participate in that test, and the meeting was held on 5.12.2016. In the petition, the petitioners state they did not participate in the said meeting and the conduct of such inspection on 23.11.2015 and test explosion on 30.01.2017 because they are of the view that those meetings, inspection and test

explosions would be done in a partisan manner. If the petitioner had participated in the said events, they could have witnessed whether the officials were really partisan towards the quarry owners, and if so, they could have raised their objections.

Throughout their petition, the petitioner referred to the relevant area as “Hinguruwelpitiya Reserve”. However, the petitioners have not submitted any document or Gazette notification to support this claim. All the respondents have denied the fact that there is a reserve or reservation in the area where this quarry is situated. The Petitioners’ use of this term is clearly misleading and a misrepresentation. The whole basis of the petitioners' application is that the questioned quarries are situated in a ‘reserve’. Since the petitioners have failed to substantiate this claim, the application should be dismissed.

The petitioners have failed to make full and truthful disclosure of all material facts to the Court by stating that the questioned quarries are situated in a ‘reserve’ or a reservation.

In the case of W. S. Alphonso Appuhamy v L Hettiarachchi 77 NLR 131, Pathirana J stated as follows;

"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of the King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns. Although this case deals with a writ of prohibition, the principles enunciated are applicable to all cases of writs or injunctions. In this case, a Divisional Court, without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore, it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application but will dismiss it without further examination".

In the case of *Dhanayake and others vs Sri Lanka Insurance Corporation* [2005] 1 Sri LR 67 Saleem Marsoof J quoted the above passage with approval.

The respondents have pointed out that there is no reserve or reservations by the name of “Hinguruwelpitiya Reserve.” No long-term lease, permit or grant has been issued to 5th – 9th respondents. They have been permitted to be quarried as per the plans approved by the 4th respondent. The petitioners have not produced copies of such permission or grants. Therefore, the allegation of the petitioners that the respondents had violated the provisions of the State Land Ordinance or the Land Development Ordinance is not correct.

The Department of Archaeology has verified that there are no artefacts of archaeological value, and therefore, they have made no objection to the issuance of the licence to the quarry. The position of the petitioners that the respondents are destroying the valuable artefacts is also not correct.

The respondents obtained the Environmental Impact Assessment (EIA) report from the CEA before the issuance of the licence. After the 5th – 9th respondents and some other persons had submitted the applications to quarry upon the said land, the respondents made an inspection, and the area of rock was demarcated on a plan made by the 4th respondent. Copies of the initial plan for the 5th – 9th respondents are marked 4R10 – 4R14, and the maps demarcating where the quarrying takes place with regard to each respondent are marked 4RX1 – 4RX5. The allegation that the 5th to 9th respondents were granted permission to quarry without an EIA is factually incorrect.

As the title to the land is not divested or alienated, there is no breach of any provisions of the State Land Ordinance or the Land Development Ordinance.

The petitioners sought to prohibit issuing licences under the Mines and Minerals Act. No licence is required for metal crushing.

Though the petitioners were invited to participate in the meeting that happened among all the respondents and other stakeholders, the petitioners of their own volition refrained from participating in the meeting. The petitioners were also invited to participate in the inspection and test explosion. However, of their own choice, they did not participate in the said meeting and test explosion. The respondents have clearly demonstrated that there were no issues from any residents in that area with regard to the blasts.

The 1st – 4th respondents have produced documents to show that licences were given to the 5th – 9th respondents with due authority.

In view of the above facts, ex-facie, there are no illegal acts committed by 1st to 4th respondents.

The 5th respondent has been operating his quarry since 2008. Therefore, there is an inordinate delay in filling the petitioners' application. The facts stated in the petition are not substantiated by document evidence. The application is replete with factually incorrect materials. In these circumstances, the application of the petitioners is dismissed.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.