

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

In the matter of an appeal from
the Judgment of a Provincial
High Court exercising writ
jurisdiction, in terms of Article
154(P) of the Constitution as
amended by the 13th
Amendment, and the High
Court of the Provinces (Special
Provisions) Act No. 19 of 1990.

Lanka Salt Limited,
(formerly of)
Nirmana Mawatha,
Nawala,
Nugegoda.

C.A.(PHC) 161/2009

High Court of the Southern Province

Holden in Hambanthota (Presently of)

H.C.A. 117/2005 Mahalewaya,
Hambanthota.

Petitioner – Appellant.

Indrani Seneviratne,
Provincial Commissioner of

Revenue,
Provincial Revenue
Department,
30, Wakwella Road,
Galle.

And another.

Respondents –
Respondents.

Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J

Counsel : Dulindra Weerasooriya PC for the Petitioner –
Appellant.
: Manohara de Silva, PC for the 2nd Respondent –
Respondent.
: Manohara Jayasinghe, SC for 1st Respondent.

Argued on : 12.10.2015

Decided on: 29.01.2016

CASE-NO-CA(PHC)- 161/2009- JUDGMENT- 29.01.2016

P.R.Walgama, J

The instant appeal directs against the order of the
Learned High Court Judge dated 27th of October

2009, in the Provincial High Court holden at Hambantota.

By the aforementioned order the Learned High Court Judge has dismissed the application of the Petitioner-Appellant, for a mandate in the nature of Certiorari to quash the orders marked P5 to P10 made by the 1st Respondent and for the issuance a writ in the nature of Prohibition preventing the 1st Respondent from making any further orders in the direction of levying a Mineral Tax in respect of salt manufacture of the Petitioner -Appellant.

The Petitioner- Appellant by his application to the High Court had stated the following;

That the Petitioner- Appellant was in the business of manufacturing salt and the process of manufacturing salt does not fall in to the category of mining.

The 1st Respondent by his letter dated 15th November 2000 has informed the Petitioner – Appellant that mineral tax of Rs.200 per metric ton will be imposed, on the manufacture of salt by the Petitioner – Appellant.

Nevertheless the Petitioner- Appellant has refused to pay the same. The said letter is marked as P1. Further it said that the 1st Respondent by the gazette notification of 7th June 2002 amended the said rate and sought recover 5% of the gross turn

over value of the production of the Petitioner-Appellant.

But it is salient to note that the Petitioner - Appellant has paid few payments as mineral tax , but nevertheless had refused to pay the same, and informed the 1st Respondent by the letter marked P2 denying its liability to pay the said mineral tax.

The pith and substance of the case of the Petitioner -Appellant is that, its not liable to pay the said tax as he is not in the business of mining operation in terms of Section 67 of the Mines and Minerals Act.

It is further stated that no legal action has been instituted by the Respondents against the Petitioner - Appellant to recover the above tax.

The Learned High Court in the said impugned judgment has also dealt with issues raised by the Respondents. It is contended by the Respondents, that the Petitioner -Appellant has not made certain parties as Respondents in this action.

In that it is stated that above stated documents were not signed by one party. In addition to the afore said the Learned High Court Judge has in his order specifically referred to the Documents marked 1V3,1V4 and 1V5 and had mentioned the fact that the Petitioner- Appellant has not disclosed

the existence of the said documents and there by had suppressed the material facts relevant to this case. By the afore said Letters the Petitioner-Appellant has agreed by 1V3 to pay the afore said tax in the due course , and by the letter marked as 1V4 the Petitioner- Appellant had undertaken to pay a sum of Rs.200,000/ as the above tax. To cap it up all by the letter marked 1V5 the Petitioner – Appellant has moved for scheme of payment by instalments. The Respondents alleged that the said request is a clear admission of liability on the part of the Petitioner – Appellant to pay the said tax imposed by the Respondents.

When encapsulating the contents contained therein is abundantly clear that the Petitioner – Appellant has admitted the liability to pay the above tax. In the above circumstances the Petitioner- Appellant is estopped from denying the liability to pay the afore said tax.

Further the Learned High Court Judge has also stated the fact that the Petitioner's application for the above relief has not been made with an undue delay. Therefore the Learned High Court Judge was of the view that on said basis alone the Petitioner's application should be dismissed.

In essence it is worthy to note that the issuing of the writ is a discretionary remedy and same could

be obtained only if the court is satisfied that a serious miscarriage of justice has been caused by a public body. Therefore it is salient to note that the Petitioner – Appellant cannot claim for a writ as a right.

The bone of contention of the Petitioner-Appellant is that the tax in terms of the Mines and Minerals Act only in respect of Minerals and not in respect of salt as the same do not fall in to the category of 'MINERALS'.

The term 'MINERALS' is defined in Section 70 of the above Act, thus;

“ a naturally occurring substance that can be mined, whether in solid, liquid or gaseous form, in or below the surface of the soil, any ores containing such mineral and any product of such minerals derived by Processing and include peat and salt but does not include hydro – carbons”

It is contended by the Counsel for the Respondent that the salt is a naturally occurring substance and it is not been produced through a mechanical process.

This Court is mindful, at this juncture that no scientific pronouncement should be made regarding how 'SALT' come to being. It is to be noted that the Southern Provincial Council has decided that the

substance of salt is a mineral. Therefore this Court cannot give any other interpretation contrary to the afore said interpretation.

It is the categorical position of the Respondent that:

Salt is a mineral in terms of Section 70 Act (as it is a naturally occurring substance which can be mined)

Section 28(1) of the Mines and Minerals Act provides thus;

“No person shall explore for, mine, transport, process, trade in or export any minerals except under the authority of, or otherwise than in accordance with, a licence issued in that behalf under the provisions of this Act and the regulations made there under.

It is the position of the Petitioner – Appellant that the Southern Provincial Council has not issued a licence to carry out the said manufacturing of salt as the same does not come under the said category as stated above.

further as per Section 67 of the above Act a tax can be imposed by a Provincial Council on the right to mine for minerals within the Province.

Therefore it is abundantly clear that the substance SALT is categorised as a mineral and the Petitioner-Appellant will be liable to pay the purported tax.

In the wake of the determination made herein above, I am of the unhesitant opinion that the challenge laid in the instant appeal lacks in merit.

Thus the appeal therefore cannot succeed.

Accordingly the appeal is dismissed subject to a cost of Rs. 10,000/

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL