

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

**CA Writ 183/2016**

S.J.M.R.P. Samarakoon  
No. 58,  
Egodawela, Badulla

**Petitioner**

**Vs.**

1. Anura Hathurusinghe  
Conservator General of Forests  
Forest Department, "Sampathpaya,  
P.O. Box 3. Battaramulla.

2. D. P, Prasad  
District Forest Officer,  
District Forest Office, Monaragala

3. W.H.M. Vijithsiri Bandara  
Ranger Forest Officer,  
Ranger Forest Office,  
Wellawaya.

4. P.M.U.D. Basnayake  
The Secretary,  
Ministry of Environment andRenewaole Energy,  
No. 82,  
"Samparhpaya, Rajamal Watta Road,  
Battaramulla.

**Respondents**

**CA Writ 183/2016**

BEFORE : Vijith K. Malalgoda, PC, J (P/CA) &

P.Padman Surasena, J.

COUNSEL : Kashyapa Perera for the petitioner.

Wasantha Kahathuduwa for the 6<sup>th</sup> respondent.

DATE : 11.07.2016

Vijith K. Malalgoda, PC, J (P/CA)

Petitioner in the present application has come before this court alleging that the respondents in this case, specially the 1<sup>st</sup> to 3<sup>rd</sup> respondents prevented him from taking the vein quartz from the Kotikambokka forest reserve in Wellawaya. The Petitioner's position before this court was that in 2013 he has made an application to the Forest Department in order to remove vein quarts from Kotikambokka area which is an area covered by Uma Oya Project. When the said application was made the petitioner submits that by P6 he was permitted by the Forest Department to remove the vein quartz for the year 2013. He further submits that the relevant permits such as the permit from the G.S.M.B. The Environment Authority

and the Archeological Department had been obtained by the petitioner after paying their fees in order to excavate the vein quartz. By P6 (a) and P7 (a) he was permitted to remove 50 cubs of vein quartz in the year 2013 and 2014. However, since 2015 Forest Department has stopped issuing permission even though the petitioner was in possession of other permits that from the Environment Authority, GSMB, and the Archeological Department. Petitioner submits that the GSMB on May 2016 has now published an advertisement calling for labour contract to remove the vein quartz from same Kottikambokka area and handed over them to the GSMB Technical Services Private Limited fully owned stated Company. Petitioner's position before this court was that the petitioner has spent a large sum of money in preparing environmental assessment reports and thereafter spent money on constructing roads inside the forest, but however all of sudden the respondents have now decided to stop the petitioner being excavated the vein quartz from Lot 6 of the Kottikambokka area. In response to the above submissions made by learned counsel for the petitioner, learned Senior State Counsel who represented the state has brought to the notice that under the provision of Forest Ordinance the conservator is empowered to issue permits but the petitioners are not entitled as of right to ask for such permits to be issued for them.

He brought to our notice certain documentation as to how the original permit was issued to the petitioner. We are satisfied that no proper bidding

process was followed when the petitioner was permitted to excavate the vein quartz from the Kottikambokka area. As submitted by the learned Senior State Counsel the petitioner has permitted to remove 40 cubs of vein quartz in the year 2013 within the period of 10 days and again to remove 10 cubs of vein quartz in the year 2014. For the year 2015 the conservator has not issued any permit to the petitioner. It is also brought to the notice of court that the state has now decided not to permit the private contractors to remove vein quartz but by a cabinet decision it was decided to take steps to remove vein quartz through a government agency for the government to make profit rather than permitting a private individual to make profit out of it. This is the state policy which is in operation at the moment. It is also brought to the notice of court by the learned Counsel for the 5<sup>th</sup> and 6<sup>th</sup> respondents that the 6<sup>th</sup> respondent is a fully state owned company and they are acting on the directive and the blessing of the government and on this occasion the 6<sup>th</sup> respondent has published the news advertisement on the directive of the cabinet. When considering the submissions made by counsel before us we observed that the petitioner is not entitled as of right to ask for writ of mandamus from this court directing the respondents to permit the petitioner to permit excavation of the vein quartz from Kottikambokka area. We further observe that when the petitioner was prevented in the year 2015 from taking vein quartz, the petitioner had not taken any steps to come before this court in order to obtain relief. Considering the facts placed before us

we are not inclined to issue notices on this matter. We therefore refuse notices in this application. No cost is ordered. Application is refused.

Since the facts in CA Writ 183/2016 are almost similar except the lot number referred to in the said application we make same order dismissing the application since the parties agree to abide by the order in CA 180/2016.

PRESIDENT OF THE COURT OF APPEAL.

P.Padman Surasena, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

NR/-