

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

In the matter of an application for Writs in
the nature of Certiorari, Mandamus and
Prohibition under Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

CA (Writ) Application No. 284/2013

W. Samararatne,
Kanaththegedara, Halpawala,
Panawenna, Kahawatta

Petitioner

Vs.

1. M.A.S. Weerasinghe,
Commissioner General,
Department of Agrarian Development,
No. 42, Sir Marcus Fernando Mawatha,
P.O. Box 537, Colombo 7.
2. J.D. Niranja S. Jayakody
Assistant Commissioner,
Agrarian Development - Ratnapura,.
- 2A. Mrs. Kumari Gamaathige,
Assistant Commissioner,
Agrarian Development - Ratnapura,
Both of Agrarian Development Office,
Ratnapura.
3. H.L.I. Wijewantha,
Agrarian Development Officer-Pelmadulla.

3A. D.R.L. Priyangika Sirisoma,
Agrarian Development Officer-Pelmadulla,
Both of Agrarian Development Office,
Ganegama, Pelmadulla.

4. National Gem & Jewellery Authority,
No. 25, Galle Face Terrace, Colombo 3.

5. R.N. Werulape,
Halpawala, Kahawatta.

Respondents

Before: Arjuna Obeyesekere, J

Counsel: J.C.Weliamuna, P.C with Pasindu Silva for the Petitioner

Ms. Chaya Sri Nammuni, Senior State Counsel for the 1st, 2nd, 2A, 3rd,
3A and 4th Respondents

Sandaruwan Senanayake with Sachintha Ratnayake the 5th
Respondent

Written Submissions: Tendered on behalf of the Petitioner on 11th September
2018

Tendered on behalf of the 1st – 4th Respondents on 11th
September 2018

Tendered on behalf of the 5th Respondent on 7th
September 2018

Decided on: 21st March 2019

Arjuna Obeyesekere, J

This application was taken up for argument on 4th July 2018, together with CA (Writ) Application No. 197/2012. The learned Counsel appearing for all parties moved that this Court pronounce its judgment in CA (Writ) 197/2012 on the written submissions that would be tendered by the parties in that application and that the parties in this application would be bound by the judgment that would be delivered by this Court in CA (Writ) Application No. 197/2012. Thereafter, when this matter came up for judgment on 7th December 2018 together with CA (Writ) Application No. 197/2012, this Court requested the parties to provide clarification on two matters arising in CA (Writ) Application No. 197/2012, which was duly provided on 29th January 2019. Having considered the material in each case and the written submissions filed in the said application, this Court is of the view that a separate judgment should be delivered in this application, even though some of the parties in the two applications are identical and the facts are connected in most respects, for the reason that this application involves the interpretation of Sections 34 and 36 of the Agrarian Development Act No. 46 of 2000, as amended.

The Petitioner states that he is a co-owner of the land called 'Udakumbura' situated in Halpawala, Panawenna in the District of Ratnapura. The Petitioner claims that he is entitled to an undivided 1/3rd share of the said land together with 29/240 shares of gem mining rights in the said land. Although the Petitioner has not expressly stated that the said land is a paddy land, there is no dispute between the parties that the land in question is a paddy land and that the

provisions of the Agrarian Development Act No. 46 of 2000, as amended (the Act) applies to the said land.

The Petitioner states that in February 2012, he found out that the 5th Respondent had commenced gem mining on the said land. He states that upon further inquiry, he was informed that the 1st Respondent, the Commissioner General of Agrarian Development had granted approval in terms of Sections 34 and 36 of the Agrarian Development Act permitting gem mining to be carried out on 20 perches of the said land.¹

The Petitioner had initially complained to the 4th Respondent, the National Gem and Jewellery Authority that its decision to grant the 5th Respondent a gemming license is bad in law, as the 5th Respondent was only a lessee and did not own any part of the land in respect of which the gemming license had been issued. The fact that the only claim that the 5th Respondent has to the said land is a lease agreement that the 5th Respondent has entered into with persons who claim to co-own the said land is borne out by the application submitted by the 5th Respondent for a gemming license in November 2010.² The only 'deed' that the 5th Respondent had annexed to his application was a 'deed' bearing No. 26959 dated 2nd November 2010 which is in fact only a lease agreement.³

The argument of the Petitioner that the 5th Respondent does not have any ownership to the said land and therefore is not entitled to be issued a gemming

¹ The approval granted by the 1st Respondent has been produced by the 4th Respondent, marked '4R9'.

² A copy of the said application has been submitted by the 4th Respondent marked '4R7A'.

³ A copy of the lease agreement has been produced by the 2nd Respondent, marked '2R5b'.

license was considered by this Court in CA (Writ) Application No. 197/2012, where it was held as follows:

"Issuing of licences to carry out mining for gems (gemming licenses) is governed by the State Gem Corporation By-laws No.1 of 1971, made by the State Gem Corporation under Section 21(1) of the State Gem Corporation Act No. 13 of 1971. The said by-laws, which have been published in the Ceylon Government Gazette No. 14989/8 dated 23rd December 1971, have been annexed to the petition marked 'P3'. It is admitted between the parties that the said by-laws are valid and followed by the National Gem and Jewellery Authority when issuing gemming licenses. This Court has examined 'P3' and observes that detailed provisions setting out the procedure that should be followed when issuing licenses are contained in by-laws 2 - 10 thereof.

By-law No. 8(2) of 'P3' is relevant to the issue before this Court and reads as follows:

"No license shall be granted to any person, unless –

- (a) he himself owns the land; or
- (b) he has obtained the consent of so many of the other owners as to ensure that the applicant and such other consenting owners together

own at least two thirds of the land in respect of which the application has been made.”

The effect of by-law No. 8 (2) in ‘P3’ is that the applicant for a gemming license must either own the land in its entirety or in the case of co-owned land, the applicant must be a co-owner himself and obtain the consent of those persons who co-own the land so that the applicant together with the consenting co-owners will own at least two thirds of the land on which the gemming is to take place. The by-laws ‘P3’ clearly does not provide for a license to be issued to a person who is not an owner but only a lessee.”

Accordingly, this Court had issued a Writ of Prohibition prohibiting the 4th Respondent from issuing the 5th Respondent a gemming license in respect of the land pertaining to this application, unless and until the 5th Respondent satisfied the ownership criteria laid down in the by-laws referred to in the said judgment.

The Petitioner, having complained to the 4th Respondent, had also complained to the 1st – 3rd Respondents. What followed was a series of complaints and counter complaints and inquiries, which culminated in the 1st Respondent issuing the letter dated 21st June 2013 annexed to the petition marked ‘P31’ which reads as follows:

“මැණික් සංස්ථාව (රත්නපුර ප්‍රාදේශීය කර්මාලය) විසින් සිදුකරන ලද පරීක්ෂණයට අනුව බලපත්‍රලාභී අර්. වෙරලප්⁴ යන අයට මෙම ඉඩමෙන් තුනෙන් දෙකක අයිතියක් ඇති බව තහවුරු වී ඇත.

ඉතිරි තුනෙන් එකෙහි අයිතියට අදාළව පී. ඒ. වීර සමරරත්න යන අය විසින් දිසා අධිකරණයේ පනවා ඇති බෙදුම් නඩුවෙන් තීරණයක් ලැබෙන තෙක්, එම තුනෙන් එකෙහි අයිතියට අදාළ බිම් පංගු මුදල් පසුව ගෙවීමේ පදනම මත අධිකාරියේ තැම්පත් කිරීම සඳහා බලපත්‍රධාරී පොරොන්දු ගිවිසුමකට ඇතුළත්කර මැණික් සංස්ථාවේ විධි විධානයන්ට යටත්ව බලපත්‍රය සඳහා නිර්දේශ ලබාදීමට තීරණය කර ඇතිබව කාරුණිකව දන්වා සිටිමි.”

As already held by this Court in CA (Writ) Application No. 197/2012, and as borne out by '4R7A' itself, the above position is factually wrong. This Court observes that 'P31' is based on a letter dated 2nd April 2013 marked '4R32' sent by the Regional Manager (Ratnapura) of the 4th Respondent to the 3rd Respondent and that the 1st Respondent, clearly influenced by the decision of the 4th Respondent and its officials that the 5th Respondent is a co-owner of the land in question, essentially re-produced the contents of '4R32' in 'P31'.

'P31' was followed by another letter sent by the 1st Respondent annexed to the petition marked 'P34',⁵ by which the 1st Respondent restored the approval previously granted, once again on the strength of the finding of the 4th Respondent that the 5th Respondent owns 2/3 of the said land.

⁴ The 5th Respondent.

⁵ 'P34' is dated 12th July 2013 and has been issued by the 2nd Respondent to the District Manager of the 4th Respondent, the National Gem and Jewellery Authority and reads as follows: “ගොවිපන සංචර්ධන කොමසාරිස් ජනරාල්ගේ නිර්දේශය අනුව පී. එම්. (G.M) අංක 475 දරණ බලපත්‍රය පවත්වාගෙන යාම පිළිබඳව මාගේ විරෝධතාවයක් නොමැති බව කාරුණිකව දන්වා සිටිමි.”

The Petitioner thereafter filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the recommendation of the 1st Respondent as reflected in 'P31' and 'P34';
- b) A Writ of Prohibition prohibiting the 1st Respondent from making any orders under Section 36 of the Agrarian Development Act No. 46 of 2000, as amended.

The basis on which the Petitioner is seeking the said Writs of Certiorari is that the 1st Respondent did not give him a hearing, a claim which has been denied by the 1st – 3rd Respondents, and on the basis that the 5th Respondent is not entitled to be issued a gemming license as he is not the owner of the land.

There are two sections of the Agrarian Development Act which are relevant when deciding this application. The first is Section 34 (1) of the Act which provides as follows:

“No person shall use an extent of paddy land for any purpose other than for agricultural cultivation except with the written permission of the Commissioner-General.”

The next is Section 36 (1) of the Act, which reads as follows:

“Where the tenant cultivator of any extent of paddy land refuses to give his consent to the owner of such extent of paddy land to extract any mineral resources from that extent of paddy land, the Commissioner-General may permit the owner of such extent of paddy land to use an extent not exceeding twenty perches of that extent of paddy land for the purpose of extracting such mineral resources during a specified period of time. The permission granted under this section is permission granted for the use of such extent of paddy land and shall not be construed as a license permitting the extraction of such mineral resources.”

Thus, it is clear that an owner of a paddy land who wishes to extract minerals from a paddy land must, in addition to approval under Sections 34 and 36 of the Act, obtain a gemming license from the 4th Respondent.

One of the important elements in Section 36(1) of the Act is that it must be the owner who should seek permission from the 1st Respondent to extract minerals from a paddy land. This Court is of the view that an application made under Section 34 seeking approval to use a paddy land for a purpose other than an agricultural purpose, namely to extract minerals from such paddy land would have to be considered in conjunction with the provisions of Section 36(1) of the Act. Accordingly, the 1st Respondent cannot entertain an application to extract minerals from a paddy land unless the applicant is the owner of the land. In determining who the owner is, the 1st Respondent may seek a direction from the 4th Respondent who in turn would be bound by its by-laws. The requirement in Section 36(1) with regard to the steps that must be taken when a tenant

cultivator does not give his consent needs to be considered only if the ownership requirement has been satisfied.

In the above circumstances, this Court holds that in terms of the provisions contained in Sections 34 and 36 of the Act, the 1st Respondent cannot grant permission and / or a recommendation to any person permitting the use of a paddy land for the extraction of minerals unless that person is the owner of the said paddy land or that person has satisfied the ownership criteria stipulated by the 4th Respondent for the issuance of a gemming license. This Court accordingly issues the Writs of Prohibition prayed for in paragraphs (e) and (f) of the prayer to the petition, prohibiting the 1st Respondent and those acting under him, from granting approval to the 5th Respondent to extract minerals from the land pertaining to this application or to use the said land for any purpose other agricultural purposes, unless and until the 5th Respondent satisfies the ownership criteria laid down by the 4th Respondent. This Court makes no order with regard to costs.

Judge of the Court of Appeal