

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

1. Siddharupage Piyaseeli,
No.33/1A, Uyankele,
Panadura.
 2. Siddharupage Bandumathie,
“Ramya Niwasa”, Aluthnuwara,
Imbulpe,
Balangoda.
 3. Siddharupage Premawathie,
Udathula, Medapara,
Pelmadulla.
 4. Siddharupage Kusumwathie,
Kandegedarawatta, Udathula,
Pelmadulla.
- Petitioners

CASE NO: CA/WRIT/299/2014

Vs.

1. National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.

2. Amith Gamage,
Chairman and Chief Executive
Officer,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.
- 2A. Vajira Narampanawa,
Chairman,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.
- 2B. Aruna Gunawardane,
Chairman and Chief Executive
Officer,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.
- 2C. Asanka Welagedera,
Chairman and Chief Executive
Officer,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.
- 2D. Dr. Kitsiri Dissanayake,
Chairman and Chief Executive
Officer,

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

2E. Peshala Jayarathne Bandara,
Chairman and Chief Executive
Officer,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.

2F. Reginald Cooray,
Chairman and Chief Executive
Officer,
National Gem and Jewellery
Authority,
No.25, Galle Face Terrace,
Colombo 3.

3. N.P. Samaratunga,
Senior Regional Manager,
Regional Office of the Gem and
Jewellery Authority,
Ratnapura.

3A. D.T. Kulananda,
Senior Regional Manager,
Regional Office of the Gem and
Jewellery Authority,
Ratnapura.

3B. Kanishka Abeynayake,
Senior Regional Manager,

Regional Office of the Gem and
Jewellery Authority,
Ratnapura.

4. Jinadasa Guruge,
Vidyala Mawatha,
Kahawatta.

5. D.A. Harrison,
Vidyala Mawatha,
Pelmadulla.

Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Ashan Nanayakkara for the Petitioners.
Sumathi Dharmawardena, P.C., A.S.G., for
the 1st-3rd Respondents.
Hemasiri Withanachchi with Shantha
Karunadhara for the 4th-5th Respondents.

Decided on: 16.11.2020

Mahinda Samayawardhena, J.

The Petitioners filed this application against the 1st Respondent National Gem and Jewellery Authority and the 4th and 5th Respondents, seeking to quash by a writ of certiorari the decision marked P22 whereby the Chairman of the said Authority cancelled the previous decision of the Director General of the Authority marked P14 and made a fresh decision.

The pivotal argument of the Petitioners is that the decision P22 is *ultra vires* on the ground that according to the provisions of the Gem and Jewellery Act, a dissatisfied party can prefer an appeal against a decision of the Authority to the Secretary to the Ministry and, from there, to the Supreme Court; but the Authority has no power to review its own decisions, as has been done in this case.

This argument is legally correct but factually incorrect in the circumstances of this case. Let me explain.

The 4th and 5th Respondents applied for a gem-mining licence in respect of the subject land. The 3rd and 4th Petitioners made a claim upon their undivided shares in the land. After an inquiry, the 1st Respondent Authority issued P14 whereby the 3rd and 4th Petitioners were informed that pursuant to an inquiry held by the Legal Branch of the Authority, the 3rd and 4th Petitioners were each entitled to an undivided 1/20th share of the land, and unless the 3rd and 4th Petitioners consented, the Authority would allow the 4th and 5th Respondents to carry on with gem-mining on the land conditionally.

I shall pause for a while to highlight that the aforesaid inquiry was conducted by the Legal Branch of the Authority. The said order is not a final order but a provisional one, as I will explain below.

As the 3rd and 4th Petitioners did not consent, a conditional Agreement marked P17(b) was executed between the Authority on the one hand and the 4th and 5th Respondents on the other, and a copy was sent to the 3rd and 4th Petitioners.

The fact that the decision P14 is provisional is amply clear by a glance at the first paragraph of the said Agreement, which says the 4th and 5th Respondents shall deposit the ground share for the undivided 2/20th share in the name of the 3rd and 4th Petitioners *“until a decision is taken after an inquiry”*. It is significant to note that the printed portion of text which refers to a court case being filed for vindication of rights in this regard has been struck off, both in the said paragraph and in paragraph 8 of the Agreement. This goes to show that P14 was provisional pending a final order. I need not labour the point because the Petitioners themselves admit so in paragraph 12 of their written submissions dated 13.01.2020 when they say *“Merely because P14 is not a final order, shall not help the 2nd Respondent inasmuch as P14 was entered into after conducting a proper inquiry.”*

P14 was not made after a formal inquiry. It appears to have been made by the Legal Branch on *prima facie* facts pending a final order by the Authority.

After the order P14, the inquiry continued with the participation of the 3rd and 4th Petitioners.

It is thereafter the final order marked P22 was made. The final decision is primarily that the 3rd and 4th Petitioners failed to establish the rights they claim and hence should institute action in an appropriate court to establish their rights within three months of the decision.

The Petitioners rely on a District Court Judgment marked P11 to make their claim to undivided rights. However, the 4th and 5th Respondents have produced the documents marked X1 and X2

to show that the said District Court Judgment was set aside on appeal and a retrial was ordered, and at the retrial the case was settled, in that, out of the 1/4th share belonging to Sinduwa (i.e. the predecessor in title of the Petitioners), only a 1/8th share was to go to the heirs of Sinduwa. The Petitioners' claim to undivided rights is based on the said District Court Judgment. The Petitioners have not disclosed the appeal decision and the settlement arrived at thereafter. Nor do they dispute the above facts before this Court.

The Petitioners challenge P22 not on the merits but on the legal ground that the Authority cannot reverse or review its own decision. This argument of the Petitioners is unsustainable in the facts of this case as set out above. A court or tribunal can be said to be *functus officio* only after the final order is made. Interim or provisional orders made pending final determination of the matter do not bring about the same result.

The Supreme Court Judgment marked P13 which the Petitioners refer to is not relevant. That Judgment is with regard to a dispute between the 4th and 5th Respondents on an earlier application for a gem-mining licence, to which the Petitioners were not parties. The present joint application for a gem-mining licence made to the Authority by the 4th and 5th Respondents is completely different, although the land appears to be the same.

The Petitioners are not entitled to the relief prayed for. The application of the Petitioners is dismissed but without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal