

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

*In the matter of an application for
revision in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka*

The Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant

**CA (PHC) APN
NO. 154/2017
HC Colombo
Case No
4027/2007**

Vs.

1. Agampodi Gnanasiri De Soysa
Jayathilaka
2. Ananda Wickramasinghe
Ambepitiya
3. Rasheed Mohamed Murshid
4. Barkir Mohamed Refas alias Riyas
5. Mohamed Subair Fauzul Awami
6. Mohamed Maujul Ameer Irshad
alias Mohamed Naseer Carder
7. Nargur Adumei Mohamed Nasmi
alias Abdul Ibrahim
8. Mohamed Kameel Kuthubdeen
9. Abdul Wadood Mohamed Safialias
Mira Saibu Liyakath Ali
10. Sinnaiah Subramanium
11. Salawudeen Momomad Ashrof
12. Mohamed Casim Mohamed Safeek
13. Mohamed Ismail Mohamed Riswin
14. Sahabdeen Abdulla

Accused

AND NOW

Don Ranjan Ponnampuruma
No.3A, Pelawatta Road
Nugegoda

Petitioner

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12

Complainant-Respondent

1. Agampodi Gnanasiri De Soysa
Jayathilaka
2. Ananda Wickramasinghe
Ambepitiya
3. Rasheed Mohamed Murshid
4. Barkir Mohamed Refas alias Riyas
5. Mohamed Subair Fauzul Awami
6. Mohamed Maujul Ameer Irshad
alias Mohamed Naseer Carder
7. Nargur Adumei Mohamed Nasmi
alias Abdul Ibrahim
8. Mohamed Kameel Kuthubdeen
9. Abdul Wadood Mohamed Safialias
Mira Saibu Liyakath Ali
10. Sinnaiah Subramaniam
11. Salawudeen Momomad Ashrof
12. Mohamed Casim Mohamed Safeek
13. Mohamed Ismail Mohamed Riswin
14. Sahabdeen Abdulla

Accused Respondents

AND NOW BETWEEN

Don Ranjan Ponnampuruma
No.3A, Pelawatta Road
Nugegoda.

Presently at,
No.219,
Stanly Thilakaratne Mawatha
Nugegoda.

Petitioner Petitioner

Vs.

Hon. Attorney General

Attorney General's Department
Colombo 12.

Complainant Respondent
Respondent

Agampodi Gnanasiri De Soysa
Jayathilaka,
No.43/26, Godigamuwa,
Piliyandala Road,
Maharagama.

1st Accused Respondent Respondent

BEFORE

: Menaka Wijesundera J.

Neil Iddawala J.

COUNSEL

: Anil Silva PC with Isuru Jayawardena
for the Petitioner.

SDSG Shanaka Wijesinghe for the
Attorney General

**Written
Submissions
tendered on**

: Petitioner Petitioner – 22.10.2018
1st Accused Respondent- Respondent -
07.11.2018
Complainant Respondent Respondent -
15.11.2018

Argued on

: 18.02.2021

Decided on

: 10.03.2021

Iddawala J. –

The petitioner-petitioner (hereinafter referred as the petitioner) had invoked revisionary jurisdiction of this Court conferred under Article 138 of the Constitution seeking to set aside an Order of the High Court of Colombo in 4027/2007 pertaining to the confiscation of the property claimed by him.

Attorney General filed an indictment in the High Court of Colombo on 18.09.2007 against the 1st accused respondent (hereinafter referred as the 1st accused respondent) and 13 others under Offences Against Public Property Act, No. 12 of 1982. There were 34 counts against the 1st accused respondent and he pleaded guilty for all counts. On 08.05.2014 he was sentenced for 3 years for each count, and the sentences to run concurrently. In addition, a fine of Rupees 11,988,024,454.00 which is equivalent to the three times value of the amount referred to in the indictment was imposed on the 1st accused respondent. He was given time till 06.06.2014 to pay that fine. The learned High Court Judge ordered that if the fine was not paid the Court would consider forfeiting the properties belonging to the 1st accused respondent to the State and the value so imposed would be recovered in terms of Section 6 of the Offences Against Public Property Act. On 06.06.2014, the 1st accused respondent informed the Court that he is not in a position to pay the fine so imposed. Then the Court made an Order to forfeit the properties in the name of 1st accused respondent and the properties purchased by him in the names of his relatives. The Attorney General submitted a list of assets belonging to the 1st accused respondent and purchased by him or purchased in the names of his relatives. In this list, the land and the building at No.130, Stanley Thilakaratne Mawatha, Nugegoda claimed by the petitioner was included as the 4th item. This is marked as P^{1C}.

The petitioner claimed that he purchased this property on 01.12.2005 by Deed No. 3125 attested by Dammika D. Yapa, Notary Public for a valuable consideration of Rupees 13 million. The petitioner stated that he became aware of the forfeiture of his land which he purchased *bona fide* and for valuable consideration, pursuant to an Order made in the High Court of Colombo Case No. 4027/2007 after seeing a notice published in the newspapers. The petitioner stated that the said Order had been made without any intimation to him, or the petitioner being given an opportunity to show cause why the said property should not be forfeited. Thereafter he filed an application in the High Court on 06.08.2014 and brought to the notice of the learned High Court Judge that the said Order pertaining to the confiscation of the property is *per incuriam* and pleaded that the said Order be set aside and an opportunity to be given to him to prove his claim. The learned High Court Judge dismissed the petitioner's application by his Order dated 25.08.2017. Aggrieved by the said Order the petitioner filed this application by way of a revision in this Court.

In the written submissions filed by the Counsel on behalf of the Attorney General acceded the relief (f) prayed by the petitioner in his present application, i.e. – for the High Court Judge to hold an inquiry as to whether the property belonging to the petitioner should be forfeited.

Petitioner claimed that he purchased this subject property on 01.12.2005 from one Nigamuni Dayawathie Mendis Abysekera (mother-in-law of the 1st accused-respondent), whereas the indictment of the original case was served on 18.09.2007.

Section 6 of the Offences against Public Property Act, No. 12 of 1982 states:

*“Where any fine imposed on any person under sections 2,3,4,5, or 10 is in default the court may order all such property of the defaulter, movable or immovable, as it considers equivalent in value to the amount of such fine to be **forfeited** to the Republic, and any sum realized on the sale of such property which is in excess of the amount of such fine shall be refunded to such person.”*

It is clear in this Section that it does not prescribe for an inquiry or for any special proceedings to be taken by the trial judge before ordering the confiscation of the property.

In the case of **Rasiah vs. Thambiraj (1951) 53 N.L.R 574**, Nagalingam J held that:

“it is one of the fundamentals of the administration of justice that a person should not be deprived either of his liberty or his property without an opportunity being given to him to show cause against such an order being made”.

In the Maxwell’s **Interpretation of Statutes** 11th Ed P. 358, the presumption of fair procedure in connection with the exercise of judicial powers is underlined:

“In giving judicial powers to affect pre judicially the right of persons or property a statute is understood as silently implying when it does not expressly provide the condition or qualification that the power is to be exercised in accordance with the fundamental rules of the judicial procedure such for instance as that which requires that

before its exercise the person sought to be pre judicially affected shall have an opportunity of defending himself”.

Section 40 of the Forest Ordinance as amended by Forests (Amendment) Act, No. 13 of 1982 has introduced a similar provision on forfeiture. In **Manawadu vs. Attorney General** (1987) 2 S.L.R 30, Sharvananda CJ held that:

“The word ‘forfeited’ must be given the meaning ‘liable to be forfeited’ so as to avoid the injustice that would flow on the construction that forfeiture of the vehicle is automatic on the conviction of the accused. The amended section 40 does not exclude by necessary implication the rule of audi alteram partem. The owner of the lorry not a party to the case is entitled to be heard on the question of forfeiture of the lorry. If he satisfied the court that the accused committed the offence without his knowledge or participation his lorry will not be liable to forfeiture”.

The House of Lords **in re Hamilton** 1981 AC 1038 has stressed that:

“One of the principles of natural justice is that a person is entitled to adequate notice and opportunity to be heard before any judicial order is pronounced against him, so that he or someone acting on behalf may make such representations if any, as he seems fit. This is the rule of audi alteram partem which applies to all judicial proceedings unless its application to a particular class of proceedings has been excluded by Parliament expressly or by necessary implication”.

Though the Section 6 of the Offences Against Public Property Act does not contain a procedure to be taken by the Court before ordering confiscation of the property, the principles of natural justice should be adhered while discharging judicial functions at all stages, unless it is clearly precluded by Parliament, expressly or by necessary implication.

In **Wiseman V. Borneman** (1969) 3 All ER 275 @ p 279, the House of Lords emphasized the inherence of rules of natural justice in the process of administration of justice:

"It is reasonably clear from the authorities that where a statutory tribunal had been set up to decide the final question affecting party's rights and duties, if the statute is silent on the question, the court will imply into the statutory provisions a rule that the principles of the natural justice should be applied. This implication will be made on the basis that the Parliament is not to be presumed to take away parties' rights without giving them an opportunity of being heard in their interests. In other words, the Parliament is not to be presumed to act unfairly".

In light of the above contention, it is in my opinion that the principles of natural justice should be adhered to and an opportunity be given for the petitioner to be heard on his claim. In confiscating a property for an offence under the Offences Against Public Property Act, No.12 of 1982, the law makers may not have intended that the rights of an innocent third party or a *bona fide* purchaser be deprived of. It is presumed that parliament does not intend its legislations to produce highly inequitable results. Any realistic application submitted by an innocent third party or a person claimed to be a *bona fide* purchaser of the property so surrendered under Section 6 of the Offences Against

Public Property Act, No. 12 of 1982, has to be considered in the same Court where the original order for confiscation was made.

Therefore, I direct the High Court Judge of Colombo to hold a limited inquiry only on the claim of the petitioner as to why the property claimed by him should not be forfeited.

I make no order as to costs.

Judge of the Court of Appeal

Menaka Wijesundera J.

I agree.

Judge of the Court of Appeal