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

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

CA (Writ) Application No. 47/2017

Udagamkanda Pathirennehelage Jayaratne,
Pohorabawa, Parakaduwa.

Petitioner

Vs.

1. National Gem & Jewellery Authority of Sri Lanka,
   25, Galle Face Terrace, Colombo 3.

2. Gamini Neil Abeywardena.

3. Dona Kusumawathie Abeywardena.

4. Dona Amarawathie Abeywardena.

5. Dona Chandrawathie Abeywardena,
   2nd – 5th Respondents are at Pohorabawa, Parakaduwa.

6. Nandika Bandara Abeywardena,
   Pahala Walawwa.
   Pohorabawa, Parakaduwa.

Respondents

Before: **Arjuna Obeyesekere, J**

Counsel: Thishya Weragoda with Pratheep Welikumbura and Chinthaka Sugathapala for the Petitioner

Suranga Wimalasena, Senior State Counsel for the 1st Respondent

R.M.D.Bandara for the 6th Respondent

Written Submissions: Tendered on behalf of the Petitioner on 4th January 2019

Tendered on behalf of the 1st Respondent on 13th May 2019

Tendered on behalf of the 6th Respondent on 11th December 2018 and 22nd January 2019

Decided on: 8th June 2020

Arjuna Obeyesekere, J

The issue that arises in this application is whether the decision of the 1st Respondent, the National Gem and Jewellery Authority of Sri Lanka (the NGJA), to release to the 6th Respondent, 75% of the ground share revenue deposited with the NGJA in terms of a gemming license issued by it to Nihal Senanayake, is illegal, irrational or arbitrary.

The facts of this matter very briefly are as follows.

The Petitioner states that the 2nd Respondent obtained a loan from him on or around 5th February 2002, and that as security for the said loan, the 2nd Respondent transferred to the Petitioner, his undivided 1/3 share in a land

known as '*Ma Wee Kumbura*' by Deed of Transfer No. 12696. A copy of the said deed has been annexed to the petition marked '**A1a**'. The Petitioner admits that the above transfer was conditional in that the 2nd Respondent was required to pay the said sum, with interest, within a period of one year. If such sum was paid as agreed, the Petitioner admits that he was then required to execute a deed of transfer in favour of the 2nd Respondent. This Court must observe that the Petitioner and the 2nd Respondent had entered into similar arrangements in the past as well, in respect of the same land, with the 2nd Respondent settling the sums of money borrowed from the Petitioner on each occasion.[1] The Petitioner states that in this instance, the 2nd Respondent failed to repay the said loan with interest, and by virtue of such failure, he is the present owner of the property referred to in '**A1a**'.

The 2nd Respondent denies the claim of the Petitioner that he failed to pay the sum of money that was borrowed. The 2nd Respondent states that he filed Case No. 27320/MB in the District Court of Ratnapura in July 2012 (which is over 10 years after the execution of '**A1a**') seeking an order of Court to (a) release the mortgage on the payment of a sum of Rs. 90,185/ and (b) re-transfer the said property.[2] However, the said action had been withdrawn in December 2014.[3] The 2nd Respondent had thereafter filed an application with the Debt Conciliation Board in 2016, which application is said to be pending.[4]

According to the NGJA, in June 2011, a person named Nihal Senanayake had made an application to it for a gemming license in respect of the entire land

[1] Vide Deed No. 11969 dated 5th November 2000, and Deed No. 12663 dated 19th January 2002, marked '6R2' and '6R3', respectively.
[2] Vide plaint marked 'A4a'.
[3] Vide proceedings of 18th December 2014, annexed to 'A4a'.
[4] Vide application made to the Debt Conciliation Board marked 'A4b'.

known as '*Ma Wee Kumbura'*, including the 1/3 that was the subject matter of the Deed of Transfer '**A1a**'.

Issuing of licences to carry out mining for gems (commonly known as 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.[5] In terms of the said By-laws, no license shall be granted to any person, unless such person himself owns the land, or 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 said By-laws requires the licensee to pay to the NGJA, out of the sale proceeds of the gems that are extracted, a sum of money equivalent to the share of the land owned by those co-owners and other persons who, having an interest in the land, have withheld their consent at the time of granting the license, to enable the NGJA to pay such money to the said persons.

While the said Nihal Senanayake owned 1/18th of the said land, he had produced the written consent of the other owners of the land, including that of the 2nd Respondent, in order to satisfy the minimum ownership requirement specified in the said By-Laws. However, the 2nd Respondent had by then transferred to the Petitioner his rights to the land by '**A1a**', and therefore, the 2nd Respondent could not have consented to the issuing of such license to

[5] The said by-laws have been published in the Ceylon Government Gazette No. 14989/8 dated 23rd December 1971. Although the State Gem Corporation Act has been repealed – vide Section 54(1) of the National Gem and Jewellery Authority Act No. 50 of 1993 (NGJA Act), in terms of Section 54(2)(h) of the NGJA Act, every by-law made under the State Gem Corporation Act, and in force on the day immediately preceding the date on which the NGJA Act came into operation and which are not inconsistent with the provisions of the NGJA Act, shall be deemed to be rules and by-laws made under the NGJA Act.

Nihal Senanayake. The NGJA, probably being unaware of '**A1a**' had issued a gemming license in respect of the said land, valid until 11th July 2012, to the said Nihal Senanayke.

In September 2011, the Petitioner had informed the NGJA that he was objecting to the issuing of the said license to Nihal Senanayake, on the basis that the Petitioner is the owner of 1/3rd of the said land.[6] The NGJA, having summoned the Petitioner and the 2nd Respondent for an inquiry, had accepted the fact that 1/3rd of the land had been transferred to the Petitioner, but having obtained the consent of the Petitioner,[7] had continued to issue the gemming license to Nihal Senanayake. The NGJA had accordingly directed that 1/3rd of the proceeds of the gems derived by the license holder from the gemming activity carried out on the said land be deposited with the NGJA, until the issue of entitlement to the said 1/3rd revenue share was resolved.

Having conducted several inquiries over the years, the NGJA had held a fresh inquiry on 15th September 2016, with the participation of the Petitioner and the 2nd Respondent, in order to determine the entitlement to the 1/3rd share of the revenue. The position taken up by the 2nd Respondent at this inquiry was two-fold.

Firstly, he submitted that while Deed No. 4432 dated 24th October 1984, annexed to the petition marked '**A3**' conferred on him ownership to 1/3rd of the land, he claimed that the subterranean rights, which include the right to carry out gemming, were divided among himself and the 3rd – 5th Respondents.

[6] Vide letter dated 16th September 2011 marked 'R3'.
[7] Vide letter of consent marked 'R6'.

In support of his position that '**A3**' draws a distinction between the superterranean and subterranean rights, the 2nd Respondent relied on the final paragraph of the schedule to '**A3**', which reads as follows:

> "උතුරට පුස්සැල්ලේ කුඹුරද, නැගෙණහිරට මහ ඇලද, දකුණට බටදොඩගහලියද්ද, බස්නාහිරට රක්කෙට්ටගේ ගොඩැල්ලද, මායිම් වූ වී දෙපැල්ලක් පමණ වපසරිය කුඹුරෙන් නොබෙදූ, (1/2) දෙකෙන් එක පංගුවද, යන මෙකී කුඹුරු පංගු සහ ඒවාට අයිති සියලුම දේත් වේ.
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> තවද, ඉහත කී කුඹුරු වල පොලව යට අයිතිවාසිකම් පමණක් මෙහි ගැනුම්කරු වන ගාමිණී නිල් අබේවර්ධනටද, දෝන කුසුමාවති අබේවර්ධන විවාහයට පසු කුසුමා ගුණරත්න ද, දෝන අමරාවති අබේවර්ධන විවාහයට පසු අමරා නානායක්කාර ද, දෝන චන්ද්‍රාවති විවාහයට පසු චන්ද්‍රා තෙන්නකෝන් ද, යන හතර දෙනාටම සමසේ අයිති වන ලෙසටද, වේ."

Thus, according to the 2nd Respondent, by '**A3**' he had acquired 1/3rd of the superterranean rights to the land, and 1/12th of the subterranean rights.

The second aspect of the 2nd Respondent's position before the Inquiry Officer was that he has only transferred to the Petitioner the superterranean rights he has to the said land, and that he has not transferred the subterranean rights to the Petitioner. The schedule in '**A1a**' reads as follows:

> " ඉහත කී විකුණුම්කාර මට කැන්දන්ගමුවේ පදිංචි ඩබ්ලිව්.ඒ.ඩී.එන්.වික්‍රමසිංහ ප්‍රසිද්ධ නොතාරිස්තැන විසින් වර්ෂ 2002 ක්වූ ජනවාරි මස 19 වෙනි දින සහතික කරනලද, අංක 12663 දරණ සින්නක්කරය පිට අයිතිව නිරවුල්ව බුක්ති විඳගෙන එන සබරගමු පළාතේ/ සබරගමු පළාතේ රත්නපුර දිස්ත්‍රික්කයේ කුරුවිට කෝරළේ උතුරු උඩපත්තුවේ ඉහළ පොහොරබාවේ පිහිට මාවී කුඹුර නමැති උතුරට පංකඳලුවද, නැගෙනහිරට ගම්සභාපාර සහ රත්තරන්හාමිගේ වත්තද, දකුණට කන්නන්ගරයා කුඹුරද, බස්නාහිරට දොඩංගහපේලිය සහ දෙපාවේල්ලද, මායිම් වූ වී තුන්පැල පල්ලහක් පමණ වපසරිය ඇති කුඹුරෙන් **සහ ඊට අයිති සියලු දෙයිනුත්** නොබෙදූ, (1/3) තුනෙන් එක පංගුව වේ."

Therefore, it was the submission of the 2nd Respondent that the Petitioner is not entitled to the aforementioned 1/3rd revenue share deposited with the NGJA, as he, together with the 3rd – 5th Respondents own the subterranean rights.

The 2nd, 3rd, and 4th Respondents are thereafter said to have transferred their subterranean rights to the 6th Respondent by Deed of Transfer No. 7406 dated 18th June 2016, while the 5th Respondent, by an affidavit dated 25th November 2016 had stated that she intends to transfer to the 6th Respondent her 1/4th share to the subterranean rights. Hence, as at present, the claim for 3/4th of the said 1/3rd revenue share is between the Petitioner and the 6th Respondent.

After the said inquiry, the NGJA, by its letter dated 11th January 2017, annexed to the petition marked '**A7**' had informed the 2nd Respondent, with copy to the Petitioner, as follows:

> "ඉහත ඉඩම සඳහා නිහාල් සේනානායක යන අයට නිකුත් කරන ලද, මැණික් ගැරීමේ බලපත්‍ර අංක 24752 ට අදාළව පොරොන්දු, ගිවිසුමකට යටත්ව අධිකාරියේ රඳවා තබා ගත් නොබෙදූ, 1/3 ක බිම් පංගු සම්බන්ධයෙන් ඔබ විසින් ඉදිරිපත් කළ විරෝධතාවන්ට අදාළව පැවති පරීක්ෂනය හා බැඳේ.
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> එකී පරීක්ෂණයට අදාළව පාර්ශවයන් විසින් ඉදිරිපත් කරන ලද සියලු කරුණු හා ලිඛිත දේශණ සලකා බැලීමේදී,
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> 1. අංක 12696 සහ 2002.02.05 දිනැති ඔප්පුවෙන් උගස් කර ඇත්තේ **පොළව උඩ කොටස පමණක් බව** නිරීක්ෂණය වන බැවින්, අංක 4432 සහ 1994.10.24 දිනැති ඔප්පුවෙන් ඔබට හිමි වූ නොබෙදූ, 1/12 ක පොළව යට කොටස සඳහා ඩබ්.පී. ජයරත්න යන අයට බිම් පංගු මුදල් හිමි බවට අයිතිවාසිකම් ඉදිරිපත් කළ නොහැකි බව පෙනී යන බැවින්ද,

2. පොළව යට කොටස (ඛනිජ අයිතිය) සඳහා අයිතිය ප්‍රකාශ කර සිටින ඔබ ඇතුළු දෝන කුසුමාවති අබේවර්ධන, දෝන අමරාවති අබේවර්ධන, දෝන චන්ද්‍රාවති අබේවර්ධන යන සිව් දෙනාගෙන් දෝන චන්ද්‍රාවති අබේවර්ධන හැර ඉතිරි තිදෙනා ප්‍රසිද්ධ නොතාරිස් අනුර මනම්පේරි යන අය විසින් ලියා සහතික කරන ලද අංක 7406 සහ 2016.06.18 දිනැති ඔප්පුව මගින් තමන් සතු පොළව යට වස්තුවෙන් 3/12 ක කොටස (1/12 + 1/12 + 1/12 = 3/12 - නොබෙදූ 1/4 වශයෙන් ඔප්පුවේ දක්වා ඇත) නන්දික බණ්ඩාර යන අයට විකුණා ඇති බැවින් ද.

3. පොලව යට කොටසින් (ඛනිජ අයිතිය) ඉතිරි නොබෙදූ 1/12 ක කොටස හිමි දෝන චන්ද්‍රාවති අබේවර්ධන යන අය 2016.11.25 දිනැති දිවුරුම් ප්‍රකාශයක් මගින් සිය කොටස නන්දික බණ්ඩාර යන අයට පවරන බවට දන්වා සිටිය ද, ඇය විසින් වලංගු සාධන පත්‍රයක් මගින් සිය අයිතිය බැහැර කර නොමැති බැවින් ද,

එකී කොටස නන්දික බණ්ඩාර යන අයට පවරන බව දෝන චන්ද්‍රාවති අබේවර්ධන යන අය වලංගු සාධන පත්‍රයක් මගින් සනාථ කරන්නේ නම් එකී සාධන පත්‍රය පරීක්ෂාවෙන් අනතුරුව ඉතිරි නොබෙදූ 1/12 ක කොටසට හිමි බිම් පංගු මුදල් ප්‍රමාණය නන්දික බණ්ඩාර යන අයට මුදා හැරීමට යටත්ව මේ දක්වා අධිකාරියේ තැන්පත් කර ඇති නොබෙදූ 1/3 ක කොටස හිමි බිම් පංගු මුදලින් නොබෙදූ 3/12 කොටසක් (නොබෙදූ 1/4) නන්දික බණ්ඩාර යන අයට නිදහස් කිරීමටත්, දෝන චන්ද්‍රාවති අබේවර්ධන යන අයට හිමි ඉතිරි නොබෙදූ 1/12ක කොටස සඳහා හිමි බිම් පංගු මුදල් තවදුරටත් අධිකාරියේ තැන්පත් කර ගැනීමටත් තීරණය කල බව කාරුණිකව දන්වම්."

Aggrieved by the aforesaid decision, the Petitioner filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the decision contained in '**A7**';[8]

b) A Writ of Prohibition preventing the 1st Respondent from recognizing any claim of the 2nd – 6th Respondents in respect of the said 1/3rd share, until the determination of a Court of competent jurisdiction;[9]

[8] Vide paragraph (b) of the prayer to the petition.
[9] Vide paragraph (c) of the prayer to the petition.

c) A Writ of Mandamus to compel the 1st Respondent to recognize the Petitioner as the owner of the said 1/3rd share, until the determination of a Court of competent jurisdiction;

d) A Writ of Mandamus compelling the 1st Respondent to release the 1/3rd of the revenue share deposited with the 1st Respondent to the Petitioner.

It is in these circumstances that this Court must consider whether the above decision of the NGJA is illegal, irrational or arbitrary.

The learned Counsel for the Petitioner has challenged '**A7**' on the following three grounds:

(a) Subterranean rights cannot be transferred separately;

(b) The NGJA erred when it referred to '**A1a**' as a mortgage;

(c) The NGJA has no power to determine ownership disputes.

This Court shall now consider each of the above three grounds.

The first argument of the learned Counsel for the Petitioner is that subterranean rights cannot be transferred separately, and that the transfer of such rights by '**A3**' to the 3rd – 5th Respondents is bad in law. He stated further that when the 2nd Respondent transferred the 1/3rd undivided share to the Petitioner by '**A1a**', he transferred the entire land, including the subterranean rights. '**A1a**' cannot be read in isolation, as the 2nd Respondent can only transfer what he has received by '**A3**'. In support of his argument, the learned Counsel for the Petitioner cited the maxim, "*cujus est solum ejus usque ad*

caelum et infernos", which means, "*the rights of the surface owner extend upwards to the heavens and downward toward the center of the earth*".

The learned Counsel for the 6th Respondent has drawn the attention of this Court to the judgment in **Jayasundera vs Wijetilake and Others**.[10] In that case, the respondent had instituted action seeking a declaration of title to the corpus and an injunction restraining the appellant from gemming in the land. The position of the appellant was that his predecessor in title, Punchi Mahattaya had executed a deed of transfer in favour of the plaintiff, but with the following reservation: "**මැණික් ගරා ගැනීමේ බලය මට ඉතිරි කරගෙන**". The learned District Judge, whilst recognizing the division of ownership rights, had come to a finding that the rights reserved by Punchi Mahaththaya does not devolve on his heirs and are extinguished on his death.

This Court, having considered whether a reservation such as the above clause can be inserted by a transferor, held as follows:

> *"It is to be seen that minerals form part of the land and in a normal transfer of a land it conveys title to the minerals as well. Thus if the title to the minerals were to be reserved in the transfer it must be stated so in the instrument of transfer.*
>
> *In the deed in question marked P4 the vendor has specifically excepted the minerals in the operative part of the deed. Thus it is very clear that he has not sold the mineral rights. In the habendum it is stated:*

[10] (2006) 3 Sri LR 401.

ඉහත කී ඉඩම් කොට්ඨාසය සහ පළතුරු ගැන මින් මතුවත් මගේ උරුමක්කාර ..... කිසිම ආරවුලක් කරන්න බැර හැටියටද, ... හිදැල්ලෙක පුංචි මහත්මයා ගන් ආරච්චි එක්කො ඔහුගේ උරුමක්කාර ..... ඉහත කී ඉඩම් කොට්ඨාසය සහ පළතුරු නිරවුල්ව බුක්ති විඳින්ඩ.

Habendum is the part of a deed that defines the extent of the interest or rights being granted and any condition affecting the grant. So that Punchi Mahaththaya's intention to convey only the land, fruits and trees without minerals is evident without any ambiguity for he has excepted rights or interest to minerals in the operative part. When the operative part of the deed and the Habendum is read together it is very clear that the vendor on deed marked P4 the aforesaid Punchi Mahaththaya had no intention to sell the minerals to the vendee."

This Court had thereafter cited the following passages from **Wille's Principles of South African Law** which confirms that mineral rights can be alienated separately*:*

"Subject to the provisions of mining legislation, a right to prospect for and take minerals from the land of another may be constituted for a fixed period of time or in perpetuity and registered against the title-deeds of the land. Such a right to minerals is alienable and passes on the death of the holder to his successors. It should therefore be classified as a real right sui generis rather than as a quasi-servitude".[11]

[11] Ibid; page 257.

"A right to minerals becomes separated from the ownership of land when the landowner transfers the land to another person but reserves the mineral rights.

Although it has been held that mineral rights may be reserved and registered for the lifetime only of a person it is trite law that mineral rights are freely transferable and transmissible."[12]

Thus, the first argument of the learned Counsel for the Petitioner is contrary to the principle set out in **Jayasundera vs Wijetilake and Others**, even though the said judgment is only an authority for the proposition that a seller can reserve mineral rights for himself. As noted earlier, in the present application, the seller in Deed No. 4432 marked '**A3**' did not reserve for herself the mineral rights. Instead, what the seller has done is to bifurcate the ownership rights, and give the 2nd Respondent the ownership to the superterranean rights in the land, and give the 2nd – 5th Respondents the rights to the minerals, in equal share. While it is not the function of this Court to determine the legality of such an arrangement, it is the view of this Court that the first argument of the learned Counsel for the Petitioner that subterranean rights cannot be transferred separately is without merit.

The second argument of the learned Counsel for the Petitioner is that the NGJA erred when it referred to '**A1a**' as a Deed of Mortgage when it was in fact a transfer. While the reference in '**A7**' that '**A1a**' is a Deed of Mortgage is only an observation, the said observation is not entirely correct especially since it is admitted that '**A1a**' was a conditional transfer at the time of its execution.

[12] Ibid; page 277.

However, the said error is insignificant and does not affect the validity of the decision in '**A7**'. Hence, this Court does not see any merit in the second argument of the learned Counsel for the Petitioner.

The final argument of the learned Counsel for the Petitioner was that in deciding whether to grant a license or when deciding on the entitlement to the ground share, the NGJA does not have the power to make determinations on the ownership or the title of the parties. This Court has already referred to the By-laws that govern the issuance of gemming licenses, which require the NGJA to be satisfied that the applicant, either by himself or together with others, own at least 2/3 of the land. The issuing of the gemming license to such an applicant would therefore be dependent on the NGJA being satisfied of the ownership of the applicant and other consenting co-owners, to the land in which the mining is to take place. Similarly, the entitlement to 1/3rd of the ground share revenue too would be dependent on the NGJA being satisfied of the ownership of the persons who have not consented to the issuing of the license.

It was the position of the learned Counsel for the Petitioner (a) that the NGJA can only determine on a prima facie basis if an applicant has satisfied the required ownership for the issuance of a gemming license, (b) that the NGJA has no judicial power to determine the question whether the subterranean rights claimed by the 6th Respondent are valid in law, and (c) that such a question can only be determined by a Court of competent jurisdiction.

The extent to which the NGJA can determinine disputed questions relating to the ownership of an applicant for a license was considered In **Weerasinghe v.**

Podimahatmaya.[13] In that case, the petitioner had made an application for a gemming license in respect of a land to which he had acquired leasehold rights. The 1st and 2nd respondents opposed the said application on the basis that they have acquired prescriptive title to the said land. The question whether the decision of the NGJA that a gemming license to a land could not be granted until there is a determination of the ownership by a Court of competent jurisdiction, was answered by this Court in the following manner:

> *"It is undoubtedly correct that the burden of proving ouster among co-owners rests on the party claiming such ouster in a duly constituted action. But the question before the 3rd Respondent at the inquiry was to decide on the issue of a gemming license in accordance with the regulations. Regulation 8 made under the Act provides that the Corporation may, if it is satisfied that the applicant for a license has obtained the consent of the owners of more than 2/3 share of co-owned land issue such a license. It appears that this is a discretionary power vested in the Corporation. The question before this court, therefore, is whether this power has been exercised within justifiable limits.*
>
> *Learned President's Counsel who appeared for the petitioner contended that if the corporation was permitted to refuse licenses on such grounds, the door would be open for any person who wished to obstruct the grant of a license to merely put forward an alleged prescriptive right to an appropriate share of the land to attain the object he sought. He further argued that the 3rd Respondent should have, on the admission of the respondents of the paper title in the petitioner, allowed the grant of the*

[13] [1994] 3 Sri LR 230.

permit to both lots and left the respondents to vindicate their alleged titled if they so desired. ***The discretion vested in the Corporation to reject an entirely frivolous claim and an objection based thereon may no doubt be deemed to exist****, as otherwise the grant of licenses may be seriously impeded. But on the facts of the instant case, as the respondents were themselves co-owners who claimed ouster of the other co-owners who had granted their consent and also be in possession of lot 2, it cannot be said that the 3rd respondent has exercised its discretion wrongly.* ***The adjudication of disputed title is not within its purview*** *and a title could be acquired by prescription as by any other means.*"

The above judgment has been followed by this Court in **Ranabahuge Chithrasiri and another v. National Gem and Jewellery Authority**.[14]

This Court is of the view that the principle laid down in **Weerasinghe** would apply to situations such as what has arisen in this application, namely where the NGJA has to determine entitlement to the revenue share deposited with it, as in both situations, the issue is dependent on a determination of the ownership of the land. This Court is also of the view that the NGJA can examine the documents presented to it in order to satisfy itself, on a prima facie basis, if the applicant for the revenue share can claim ownership to the land in issue and thereby an entitlement to such revenue share. However, where there are competing claims, it is neither the function nor the task of the NGJA to determine either the ownership of the parties, or ownership disputes among the parties.

[14] CA (Writ) 38/2016; CA Minutes of 31st May 2018.

This Court shall now consider whether the NGJA exceeded its jurisdiction and made either of the above determinations. In doing so, this Court shall bear in mind the statement of Lord Diplock in **Council of Civil Service Unions v. Minister for the Civil Service**[15], where, having classified the three grounds upon which administrative action is subject to judicial review, namely 'illegality', 'irrationality' and 'procedural impropriety', he proceeded to state that *"by 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it*."

This Court has examined the report of the Inquiry Officer marked '**R22**', which forms the basis for the decision conveyed to the parties by '**A7**'. The Inquiry Officer, having exhaustively dealt with the relevant facts, has identified the issue before her, in the following manner:

> " මූලිකව විසඳිය යුතු ප්‍රශ්නය (Crux of the matter)
>
> අංක 12696 සහ 2002.02.05 දිනැති ඔප්පුවෙන් ඩබ්.පී.පයරත්න යන අයට උගස් කර ඇත්තේ පොළව උඩ කොටස පමණක්ද, යන වග"

It is not in dispute that Deed No. 12696, marked '**A1a**', has been executed by the 2nd Respondent, and that it continues to be valid. Thus, until such time that a decision is taken by the Debt Conciliation Board, the Petitioner has an entitlement to at least the superterranean rights of the land. The Petitioner, relying on the following words in '**A3**', "**වී තුන්පැල පල්ලහක් පමණ වපසටිය ඇති කුඹුරෙන් සහ ඊට අයිති සියලු දෙයිනුත්** නොබෙදූ (1/3) තුනෙන් එක පංගුවද" and "**වී දේපැලක් පමණ වපසටිය ඇති කුඹුරෙන් නොබෙදූ (1/2) දෙකෙන් එක පංගුවද, යන මෙකී**

[15] [1985] 1 AC 374.

කුඹුරු පංගු සහ ඒවාට අයිති සියලු දේත් වේ" has taken up the position that '**A3**' does not draw a distinction between superterranean and subterranean rights. On the face of it, this position is correct, but is an issue that was disputed by the 2nd and/or 6th Respondent. It is the view of this Court that the Inquiry Officer could not have proceeded any further the moment the Petitioner took up the position that he owned the subterranean rights as well, as that would require the NGJA to make a determination on ownership.

The position of the Petitioner cannot be said to be frivolous, for two other reasons. The first is that '**A3**' has only one vendee – i.e. the 2nd Respondent. Although subterranean rights are said to have been conferred on the 3rd – 5th Respondents, these Respondents are not vendees, nor has any consideration passed between the vendor and the 3rd – 5th Respondents. The second is that the position that the vendor in '**A3**' had transferred to the 2nd Respondent only the superterranean rights had been taken up for the first time in the inquiry that commenced in 2016, even though several inquiries had been held since 2011. This Court has examined the letters written on behalf of the 2nd Respondent by his Attorney-at-Law in 2013 and 2015,[16] as well as the letters written by the 2nd Respondent in 2011,[17] and observes that the position that the subterranean rights had not been transferred had not been raised in the said letters. Thus, the issue identified by the Inquiry Officer was not capable of being given an answer by the NGJA. By doing so, as is evident from paragraph 1 of '**A7**', it is the view of this Court that the NGJA has exceeded its jurisdiction, and '**A7**' is therefore illegal, and liable to be quashed by a Writ of Certiorari.

[16] Vide letters marked 'R9' and 'R12'.
[17] Vide letters marked 'R7' and 'R8'.

In the above circumstances, this Court issues the Writ of Certiorari prayed for in paragraph (b) of the prayer, and the Writ of Prohibition prayed for in paragraph (c) of the prayer. This Court is of the view that the prayer for the aforementioned Writs of Mandamus are misconceived in law, as it requires a determination to be made by this Court on the ownership rights of the Petitioner, which is not the function of this Court. This Court directs the NGJA to deposit the aforementioned revenue share in a special account, and to disburse it, once a Court of competent jurisdiction determines the entitlement of the parties to the subterranean rights. This Court makes no order with regard to costs.

Judge of the Court of Appeal