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

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

**CA (Writ) Application No: 207/2012**

J.T.D.Danawansha,
No. 137, Jayawardenapura,
Ampara.

**PETITIONER**

Vs.

1. N. Pathmanathan,
   Former Secretary, Ministry of Environment.

1A. J.R.B.Dissanayake,
   Former Secretary, Ministry of Environment.

2. Secretary,
   Ministry of Environment.

3. Hon. Anura Priyadharshana Yapa,
   Minister of Environment.

   1st, 1A, 2nd and 3rd Respondents at 'Sampathpaya',
   Rajamalwatte Road,
   Battaramulla.

4. Land Commissioner,
   Land Commissioner General's Department,
   Colombo 7.

5. District Secretary,
   District Secretariat,
   Ampara.

6. Divisional Secretary,
Divisional Secretariat,
Irakkamam.

7. H.M.Hitisekara,
Conservator General of Forests,
Department of Forest Conservation,
Battaramulla.

8. Divisional Forest Officer,
Ampara.

9. Range Forest Officer,
Ampara.

10. Geological Survey and Mines Bureau,
569, Epitamulla Road,
Pitakotte.

11. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

**RESPONDENTS**

**Before:** **A.H.M.D.Nawaz, J / President of the Court of Appeal**
**Arjuna Obeyesekere, J**

**Counsel:** M. Nizam Kariapper, P.C., with M.I.M. Iynullah for the Petitioner

Ms. Yuresha Fernando, Senior State Counsel for the Respondents

**Written Submissions:** Tendered on behalf of the Petitioner on 23rd November 2018

Tendered on behalf of the Respondents on 2nd July 2019

**Decided on:** 30th November 2020

**Arjuna Obeyesekere, J**

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

a) A Writ of Certiorari quashing the Circular annexed to the petition marked '**P8**' by which the 1st Respondent, the Secretary, Ministry of Environment has vested *residue forests* in the 7th Respondent, the Conservator General of Forests;

b) A Writ of Prohibition preventing the 7th Respondent and those acting under him from interfering with the issuance of a mining license to the Petitioner.

The facts of this matter very briefly are as follows.

The Petitioner states that a Mining License to operate a quarry is issued by the 10th Respondent, the Geological Survey and Mines Bureau on the recommendation of the Divisional Secretary of the area within which the quarry is situated. The Petitioner has stated further that in addition to the said recommendation, an applicant must obtain an Environmental Protection License issued by the Central Environmental Authority and a Trade License issued by the Pradeshiya Sabha of the relevant area in order to obtain the license from the 10th Respondent. An applicant is thereafter required to obtain an Explosive License from the District Secretary of that area. A pre-condition to obtaining any of the said licenses however is the recommendation of the Divisional Secretary.

The Petitioner states that he made an application in early 1997 to the 6th Respondent, the Divisional Secretary, Irakkamam seeking the recommendation of the 6th Respondent to carry out mining of metal on a State Land. The Petitioner claims that the 6th Respondent, having carried out an investigation of the site and having been satisfied of the suitability of the land to carry out a quarry, had recommended the issuance of a mining license. The 10th Respondent had thereafter issued the Petitioner a mining license in July 1997 valid for a period of one year. The said license had been renewed annually until 29th December 2011. The Petitioner states further that he operated the quarry during this period, after having obtained all other regulatory approvals.

In early December 2011, the Petitioner had made an application to the 6th Respondent, seeking his recommendation to renew the mining license for a further period of one year. The 6th Respondent had however refused to act on the said application and had informed the Petitioner that the relevant State land has been vested in the Department of Forest Conservation and that the 6th Respondent no longer has the jurisdiction to recommend his application. The 6th Respondent had accordingly advised the Petitioner to submit his application to the Department of Forest Conservation.

The Petitioner had thereafter made inquiries with regard to the change of procedure and found that the 1st Respondent, the then Secretary, Ministry of Forests and Environment had issued Circular No. 5/2001 dated 10th August 2001, annexed to the petition marked '**P8**, which reads as follows:

> "රජයේ අවශේෂ කැලෑ කලමනාකරණය යන මැයෙන් යුතු මගේ අංක 02/02/03/3011 හා 1998/07/01 දිනැති අංක 05/98 දරණ චක්‍රලේඛය මෙයින් අවලංගු කරන අතර වහාම ක්‍රියාත්මක වන පරිදි මෙම චක්‍රලේඛය නිකුත් කරනු ලැබේ.
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> 02) දැනට ශ්‍රී ලංකාවේ තිබෙන ස්වාභාවික කැලෑ ප්‍රධාන වශයෙන් ආයතන තුනක් මගින් පාලනය කෙරේ. එනම් වන සංරක්ෂණ දෙපාර්තමේන්තුව, වන පීවී සංරක්ෂණ දෙපාර්තමේන්තුව සහ ප්‍රාදේශිය ලේකම් කාර්යාල වේ. රක්ෂිත වනාන්තර, යෝපිත රක්ෂිත වනාන්තර හා ඇතැම් අවශේෂ කැලෑ වන සංරක්ෂණ දෙපාර්තමේන්තුව මගින් පාලනය කරනු ලබන අතර, දැඩි ස්වාභාවික රක්ෂිත, වන උද්‍යාන, වනමං, අභයභූම් සහ ස්වාභාවික රක්ෂිත, වන පීවී සංරක්ෂණ දෙපාර්තමේන්තුව මගින් පාලනය කෙරේ. වන සංරක්ෂණ දෙපාර්තමේන්තුව හෝ වන පීවී සංරක්ෂණ දෙපාර්තමේන්තුව මගින් පාලනය නොකරනු ලබන කැලෑ රජයේ අවශේෂ කැලෑ වශයෙන් ප්‍රාදේශිය ලේකම් වරුන් යටතේ පාලනය වේ.
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> 03) දැනට දිස්ත්‍රික් ලේකම්/ප්‍රාදේශිය ලේකම් යටතේ පාලනය වන සියලුම අවශේෂ කැලෑ පාතික වන ප්‍රතිපත්තියට අදාලව කළමනාකරණය කිරීම, වැඩි දියුණු කිරීම හා ආරක්ෂා කිරීම සඳහා වන සංරක්ෂණ දෙපාර්තමේන්තුවට පවරනු ලැබේ. (එසේ වුවද අවශ්‍ය අවස්ථාවලදී දිස්ත්‍රික් ලේකම් වරුන්ට/දිසාපති වරුන්ට හා ප්‍රාදේශිය ලේකම් වරුන්ට මෙම කැලෑවල ආරක්ෂාව සඳහා වන ආඥා පනත යටතේ පවරාදී ඇති බලතල ක්‍රියාත්මක කිරීමට මින් බාධාවක් නොවේ.)
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> 04) රජයේ අවශේෂ කැලෑ කිසියම් වෙනත් පරිහරණ කටයුත්තක් සඳහා යොදා ගැනීමට අවශ්‍ය වන්නේ නම් ඒ සම්බන්ධ ව්‍යාපෘති යෝජනාව වන සම්පත් හා පරිසර අමාත්‍යාංශයේ ලේකම්ගේ ප්‍රධානත්වයෙන් යුත් අන්තර් අමාත්‍යාංශ කමිටුවට ඉදිරිපත් කර අනුමැතිය ලබාගත් යුතු වේ. මෙම අන්තර් අමාත්‍යාංශ කමිටුව වන සම්පත්, ඉඩම් හා වන පීවී යන විෂයය ක්ෂේත්‍රයන්ට අදාල අමාත්‍යාංශ වල නියෝජනයින්ගෙන් සමන්විත වේ. ඉඩම් ලබා ගැනීම සම්බන්ධයෙන් වූ

**ව්‍යාපෘති යෝජනාව පළමුව දිස්ත්‍රික්ක ඉඩම් පරිහරණ කමිටුවට ඉදිරිපත් කර, ඉන් පසු එම නිර්දේශය වන සංරක්ෂක මගින් ඔහුගේ නිර්දේශ සහිතව අන්තර් අමාත්‍යාංශ කමිටුව වෙත යොමු කළයුතුය. මෙම කමිටුව මගින් අධ්‍යයනය කරනු ලබන එම යෝජනාව අනුමත කරන්නේ නම් පමණක් පාතික පාරිසරික පනත යටතේ පරිසර ඇගයීමකට ලක් කිරීම සඳහා එම යෝජනාව යෝජකයා වෙත නැවත යොමු කරනු ඇත. පරිසර ඇගයීමක් අවශ්‍ය වන අවස්ථාවලදී එම පරිසර ඇගයීම් සහතිකය යෝජකයා විසින් ලබා ගෙන මා වෙත ඉදිරිපත් කළ යුතු වේ. අදාල නිර්දේශ අනුව ඉඩම් ලබාදීම පිළිබඳව අනුමැතිය මා විසින් දෙනු ලබන අතර, ඉන් අනතුරුව අවස්ථාවට උචිත පරිදි අදාල පාර්ශවයට සුදුසු කොන්දේසි මත ඉඩම් ලබාදීම සඳහා යෝජිත ඉඩම ඉඩම් කොමසාරිස් වෙත නිදහස් කරනු ලැබේ.**"

The said Circular had subsequently been amended by Circular No. 2/2006 dated 17th May 2006, annexed to the petition marked '**P10**'.

The Petitioner's complaint to this Court is twofold. The first is that the 1st Respondent, by virtue of being the Secretary of the Ministry under which the Department of Forest Conservation has been placed, does not have the power to issue the Circular '**P8**'. The second is that the land on which the quarry is situated is not within a Reserve Forest and therefore the 7th Respondent cannot exercise any jurisdiction over the said land.

The Forest Ordinance introduced in 1907 is the cornerstone of the present law relating to forests. The Ordinance was substantially amended by the Forest (Amendment) Act No. 65 of 2009, which re-named the Ordinance as the Forest Conservation Ordinance. The long title of the Act specifies that it is a law relating to the conservation, protection and sustainable management of the forest resources and utilisation of forest produce.

Section 78 of the Act defines a 'Forest' to mean '*all land at the disposal of the State*'. The phrase, '*all land at the disposal of the State*' has been defined in Section 78 of the Act to include the following:

> "*(a) all forest, waste, chena, uncultivated, or unoccupied land, unless proof is adduced to the satisfaction of the Court that some person:*
>
> *(i) has acquired, by some lawful means, a valid title thereto, or*

*(ii) has acquired a right thereto as against the State by the issue to him of any certificate of no claim by the State under the State Lands Encroachments Ordinance or the Definition of Boundaries Ordinance, or*

*(iii) is entitled to possess the same under a written grant or lease made by or on behalf of the British, Dutch, or Sri Lankan Governments, and duly registered in accordance with law.*

*(b) all lands resumed by the State under the provisions of the Land Resumption Ordinance, and all lands which have been declared to be the property of the State by any order passed under "The Waste Lands Ordinances, 1897 to 1903", the Land Settlement Ordinance, or to which the State is otherwise lawfully entitled*;

Thus, any land which does not fall within (i) - (iii) above, would be forest land.

The Petitioner does not dispute the fact that the land on which the quarry is situated is State land. Applying the above definition, the land on which the quarry is situated would therefore fall under the definition of a forest.

Section 3 of the Act contains provision to declare as a 'Reserve Forest' the lands that are referred to in that section. Section 3A empowers the Minister to declare any specified area of State land or the whole or any specified part of any Reserve Forest as a 'Conservation Forest'. Furthermore, the Minister may, in terms of Section 12 of the Act, by Order published in the Gazette, constitute any portion of forest a 'village forest' for the benefit of any village community or group of village communities. The learned Senior State Counsel has stated that any other forest land, which has not been declared either as a Reserve Forest, Conservation Forest or a Village Forest is referred to as 'residue State forests'. The fact that there can be forest land other than the three categories referred to above is recognized by the amendment made to Section 20 of the Act by the Forest (Amendment) Act No. 65 of 2009.[1]

[1] In terms of Section 20(1)(d) of the Act, quarrying stone within a residue forest land is an offence punishable by imprisonment or fine or both.

The learned Senior State Counsel has submitted that irrespective of the classification, the control, management and regulation of forest land as defined in Section 78 is with the Conservator of Forests. He submitted that while the power to manage forests is with the Department of Forest Conservation, the Act contained provisions which empowered the Divisional Secretaries to take steps to safeguard forest land. The learned Senior State Counsel submitted further that the administrative power to manage residue forest land had been vested in Divisional Secretaries by a circular issued in 1998 and that all what the Circular '**P8**' has done was to cancel that circular and re-vest all residue forest land in the Conservator General of Forests.

In support of his submission, the learned Senior State Counsel drew the attention of this Court to two Circulars. The first is Circular No. 49 dated 16th January 1980, titled, '**වන සම්පත් පාලනය කිරීම**' issued by the Secretary, Ministry of Lands and Land Development. By this Circular, which has been annexed to the Statement of Objections marked '**R2**', the power to regulate the felling of trees was vested with the State Timber Corporation.

The second is Circular No. 5/98 dated 1st July 1998, marked '**R3**', issued by the Secretary, Ministry of Forests and Environment. The learned Senior State Counsel submitted that the power to administer residue forest land had been conferred on Divisional Secretaries by '**R3**', as borne out by the following portions of '**R3**' which reads as follows:

> **"රක්ෂිත වනාන්තර සහ යෝපිත රක්ෂිත වනාන්තර වන සංරක්ෂණ දෙපාර්තමෙන්තුව මගින් පාලනය කරනු ලබන අතර, දැඩි ස්වාභාවික රක්ෂිත, වන උද්‍යාන, අභයභූම් සහ ස්වාභාවික රක්ෂිත, වන ජීව් සංරක්ෂණ දෙපාර්තමෙන්තුව මගින් පාලනය කෙරේ. මෙම වර්ගයන්ට අයත් නොවන ස්වාභාවික කැලෑ රජයේ අවශේෂ කැලෑ වශයෙන් හැඳින්වේ**
>
> **රජයේ අවශේෂ කැලෑ පාලනය කිරීමේ වගකීම පැවරී ඇත්තේ වන සංරක්ෂක සහ ප්‍රාදේශිය ලේකම් වරුන්ටය තෙත් කලාපයේ පිහිටි හෙ. 20 ට වඩා වැඩි සහ වියලි කලාපයේ පිහිටි හෙ. 200 ට වඩා වැඩි වපසරියකින් යුතු රජයේ අවශේෂ කැලෑ වන සංරක්ෂණ දෙපාර්තමෙන්තුව විසින් පාලනය කරනු ලබන අතර, එම ප්‍රමානයට අඩු වනාන්තර ප්‍රදේශිය ලේකම් වරුන්ගේ පාලනයට යටතේ වේ. කෙසේ වෙතත් මෙම වනාන්තර වල කළමනාකරිත්වය විශේෂිත නීතිමය පසුබිමක් නොමැති නිසා සහ කැලෑ ඉඩම් හුදෙක් රජයේ ඉඩම් ලෙස සලකා රජයේ ඉඩම් හා සම්බන්ධ වෙනත් ආඥා පනත් යටතේ කටයුතු කිරීම හේතුවෙන් රජයේ අවශේෂ කැලෑ විශාල වශයෙන් වෙනත් කටයුතු සඳහා යොදා ගනිමින් පවති. මින් ඉදිරියට රජයේ අවශේෂ කැලෑ කළමනාකරනය පහත සඳහන් අයුරු සිදුවිය යුතු බවට මෙයින් අවධාරනය කරනු ලැබේ.**

**තෙත් කලාපයේ පිහිට හෙ. 8 කට වඩා වැඩි සහ වියලි කලාපයේ පිහිට හෙ. 80 ට වඩා වැඩි ස්වාභාවික කැලෑ වන සංරක්ෂක විසින් පාලනය කල යුතු අතර ඊට අඩු ප්‍රමාණයේ කැලෑ පමනක් ප්‍රදේශිය ලේකම් වරුන් විසින් පාලනය කල යුතු වේ. කෙසේ වෙතත් සියලුම අවශේෂ කැලෑ පාතික වන ප්‍රතිපත්තියට අනුකූලව මූලිකව සංරක්ෂණ කටයුතු සදහාද, දෙවනුව බහුවිධ කළමනාකරන කටයුතු සදහාත් යොදා ගත යුතුය.**"

It was the submission of the learned Senior State Counsel that a decision was taken to re-vest in the Department of Forest Conservation all such forest land over which the Divisional Secretaries had been conferred power in terms of '**R3**'. That is a policy decision that the Government is entitled to arrive at, taking into consideration *inter alia* its policy objectives and the development needs of the Country at any given time. The policy that prevailed in 1998 is reflected by '**R3**' while the change in policy is reflected in the Circular '**P8**'.

The learned Senior State Counsel drew the attention of this Court to the judgment of the Supreme Court in **Ranjanee Pathirana vs Secretary, Ministry of Environment and Natural Resources and Others**.[2] In that case, the appellant was occupying a forest land on an annual permit issued by the Divisional Secretary. After hearing all parties, the Court of Appeal had issued a Writ of Mandamus directing the Secretary, Ministry of Environment and Natural Resources and the Conservator of Forest to take appropriate steps to protect the forest described in the permit issued to the appellant. On appeal, the Supreme Court held as follows:

> "*All natural forests are vested with the Department of Forest Conservation. The forests which are not controlled by the Department of Wildlife and Department of Forest Conservation were vested with the Divisional Secretaries. However, with the introduction of Circular No. 5/2001 the aforementioned Government forests which were earlier vested with the Divisional Secretaries had been vested with the Department of Forest Conservation on 10th August 2001. .... The Conservator of Forests has a legal duty and authority to protect the forest. In the field of public law the writ of mandamus is a powerful weapon the Courts use freely to prevent breach of duty and injustice. When mismanagement is obvious it is the duty of Court to be vigilant and remedy the situation.*"

[2] SC Appeal No. 78/2006; SC Minutes of 5th March 2000.

Taking into consideration the totality of the above, and especially the judgment of the Supreme Court, this Court is in agreement with the submission of the learned Senior State Counsel that all what '**P8**' has done is to restore in the Conservator General of Forests, the administrative power to manage residue forest land which had been given to Divisional Secretaries by '**R3**'. This Court is therefore of the view that the provisions of Circular '**P8**' are neither arbitrary nor *ultra vires* the powers of the 1st Respondent, who is the Secretary of the Ministry entrusted with the subject of forests,[3] and that the 7th Respondent can exercise powers conferred on him by the Act over all forest land. The necessity to consider the prayer for the Writ of Prohibition therefore does not arise.

In the above circumstances, this Court does not see any legal basis to grant the relief prayed for by the Petitioner. This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**

**A.H.M.D.Nawaz, J,**
**President of the Court of Appeal**

I agree

**President of the Court of Appeal**

[3] Vide paragraph 3 of the petition.