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

In the matter of an Application under and in terms of Articles 17 and 126 of the Constitution of the Republic.

1. Edirisinghe Muhandiram Appuhamilage Uresh Tharanga,
   No. 527, Thambakanda, Sandakalawa.

2. Rambukanna Liyanage Ranjith Premalal,
   Savandana, Sandalankawa.

Supreme Court Application No:
S.C. (F/R) 413/21 **PETITIONERS**

Vs.

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

1A. Sajjana De Silva
Director General,
Geological Survey and Mines Bureau,
569, Epitamulla Road, Pitakotte.

2. Central Environmental Authority,
   No. 104, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

2A. P.B. Hemantha Jayasinghe
Director General
Central Environmental Authority
No. 104, Denzil Kobbekaduwa Mawatha,
Battaramulla.

3. S.K.Lenaduwa,

Director,
Provincial Environmental Authority
North Western provincial Office,
Dambulla Road, Kurunegala

4. Hon. Mahinda Amaraweera,
   Minister of Environment,
   Ministry of Environment, “Sobadam Piyasa”, 416/C/1, Robert Gunawardana Mawatha, Battaramulla.

5. C.D. Wickramaratne,
   Inspector General of Police,
   Police Headquarters, Colombo 01.

6. Upul Ariyaratne,
   Officer In Charge,
   Pannala Police Station,
   Pannala.

7. Keerthi Sri Weerasinghe,
   Chairman,
   Coconut Department Authority,
   45 B507, Colombo 05.

8. Medical Officer of Health,
   Office of the Medical Officer of Health,
   Elabadagama,
   Pannala.

9. Water Resources Board,
   Hector Kobbakaduwa Avenue,
   Colombo 07.

10. R.M.S.W Bandara,
    Divisional Secretary,
    Divisional Secretariat,
    Pannala.

11. Ranjith Lansakara,

Chairman,
Urban Council,
Pannala.

12. A.N.S.K. Fernando,
St. Mary's Road,
Haldaduwana,
Dankotuwa.

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

RESPONDENTS

BEFORE : **VIJITH K.MALALGODA, PC., J.**
KUMUDINI WICKREMASINGHE, J.
JANAK DE SILVA, J.

COUNSEL : Dr. Ravindranath Dabare PC with S. D. Ponnamperuma and Ms. Hansanie Imalka instructed by Arunditha Divisekara for the Petitioners.
Parinda Ranasinghe, PC, ASG with Nayomi Kahawita for the 1st, 1A, 2A, 3rd - 10th and 13th Respondents
Rasika Dissayanake with Chandrasiri Wanigapura for the 11th Respondent
Suraj Rajapakshe for the 12th Respondent

ARGUED ON : 19.10.2022

WRITTEN SUBMISSION : Petitioners on 18.11.2022
As per Journal Entry dated 03.04.2024 Respondents have not submitted written submissions up to date

DECIDED ON : 05.04.2024

K. KUMUDINI WICKREMASINGHE, J.

This is a Fundamental Rights Application filed under Article 126 (1) of the Constitution by the Petitioners seeking, inter alia, a declaration that their fundamental rights to equality before the law and equal protection of the law guaranteed under Article 12 (1), 14 (1) (g) and 14 (1) (h) of the Constitution of Sri Lanka have been violated and/or are in imminent danger of being infringed and/or are being continuously violated due to the actions, omission, and/or failure to act/or neglect to perform the duty of/by the 1st to 11th Respondents.

On 24.03.2022, having heard the Learned Counsel in support of this application and the Learned Additional Solicitor General, for the Respondents, this court granted leave to proceed for the alleged violation of rights guaranteed under Article 12 (1) of the Constitution.

Brief Facts of the Case

The Petitioners claim that for several months, gravel mining has been taking place in the Savandawatha and Thambakanda Grama Niladari Divisions of the District Secretariat Division of Pannala, Sandalankawa in Kurunegala District, endangering the environment, water resources, soil resources, and destroying the mountain water catchment areas, as well as the lives and livelihoods of the local communities, which comprise of about two thousand and five hundred families. Presently, these areas are highly exposed to mass destruction, thereby continuing the heavy exploitation conducted by the minors in the said areas.

The Petitioners claim that numerous conditions issued by the Provincial Environmental Authority's North Western Provincial Office have been severely affected. Numerous mining sites that are still in use have significantly deteriorated as a result of heavy exploitation that violates the terms of the permits that have already been granted. Therefore, the Petitioners state that 1st to 4th Respondents above have failed to take cognisance of the said illegal actions of the miners and to perform their statutory duties imposed upon them under the terms of the National Environmental Act No. 47 of 1980 and Mines and Minerals Act No. 33 of 1992 as amended.

The said conditions issued by the North Western Provincial Office of the Provincial Environmental Authority have been annexed as "**P2**".

The petitioners claim that the illegal actions have caused the groundwater in wells, water streams, springs, and reservoirs to dry up, depriving them of their right to access clean water because the parties who have obtained mining licences are acting in violation of the conditions stated in the said licence. Additionally, the removal of trees from these areas has caused landslides that have destroyed their properties, including human habitats. The plantations have been destroyed as a result, and the fertile soil needed for cultivation is now sterile. The Petitioners claim that as a result, they believe that their fundamental rights, including the right to choose their place of residence in Sri Lanka, are in imminent danger of being restricted and/or violated continuously.

Photographic evidence explaining the above situations have been marked as "**P3**"

In addition, due to the excessive movement of trucks loaded with gravel mining, the Petitioners claim that the infrastructure of the main roads are being compromised. As a result of this unstable and dilapidated condition, the Petitioners claim that it denies their freedom of movement as it is difficult for vehicles and persons travelling for their daily activities. Therefore, the Petitioners believe that there is an imminent infringement and/or continuous violation and/or violation of their Fundamental rights to move freely in the said area specially, for those who are living in the said area.

Photographic evidence explaining the above situations has been marked as "**P4**."

The Petitioners claim that the licence holders have failed to comply with the manner prescribed by either the National Environmental Act No.47 of 1980 or Mines and Minerals Act No 33 of 1992 as amended because they have failed to restore and rehabilitate and/or re-level the topsoil in the land on which exploration or mining has been carried out. Hence, the petitioners further state that 1st and 1A Respondents are required to provide their supervision and perform their statutory

duties regarding such restoration, rehabilitation, and/or level of the land on which exploration or mining had been carried out.

The Petitioners assert that they frequently use well water for agriculture and drinking and that this situation has posed a serious threat to the ongoing water distribution project, resulting in a shortage of drinking water, water for daily use, and water for agriculture. Additionally, pollution raises the cost to consumers because it necessitates more water treatment to make contaminated water safe for use in agriculture and human consumption. Furthermore, the Petitioners claim that the 9th to 11th Respondents have failed in their responsibilities by failing to take appropriate action to address the problems faced by the neighbourhood, and by failing to stop the groundwater pollution in the affected area.

The Petitioners assert that another problematic issue for the community as a result of excessive mining is that the renowned Ma Oya is seriously in danger and is more likely to dry up if the excessive mining continues without appropriate action being taken. Ma Oya is the stream that supplies water to local communities in Sandalankawa, Thambakanda, and the nearby local communities for drinking and agricultural needs. The majority of the local communities in Ma Oya have made a living by cultivating crops, so the water in Ma Oya is primarily used for paddy fields and plantations. Therefore, it appears to the Petitioners that their fundamental rights to engage in agriculture, their profession, and their right to live in a safe and secure place as their human habitation is imminently infringed upon, continuously violated, and/or violated.

The Petitioners also claim that numerous coconut groves have been destroyed by miners during extensive mining, which has negatively impacted many related industries as well as coconut farming. The soil fertility for coconut plantations has also been impacted by soil erosion brought on by heavy exploitation. The annual decline in the coconut harvest and the rise in the market price of coconuts are thus the results of these irresponsible behaviours. The petitioners further assert that extensive mining has resulted in the destruction of numerous coconut groves, which has had a detrimental effect on many related industries as well as coconut farming. The Petitioners also claim that the 7th Respondent has not taken any

action to stop these miners' illegal activities or to stop them from continuing in the future.

The Petitioners argued that the fertile soil should not be permitted to shift and that once the gravel excavation is finished, it should be levelled again appropriately. However, the Petitioners claim that the License holders have not performed the restoration, rehabilitation, or topsoil levelling expected in this specific circumstance. As a result, the fertile soil needed for cultivation has been destroyed, which has caused great distress among the locals who were depending on agriculture for their livelihood.

The Petitioners state that the state must consult the public before approving development projects. Although the Petitioners and the other inhabitants have raised their voices against the aforementioned extensive gravel mining, and organised a few protests emphasising the destructive effects on the water resources, agriculture, livelihoods of the inhabitants and the environment, no relevant action has ever been taken up to date. Most importantly, the Petitioners have informed the relevant governmental authorities, including the police department, who are duty bound under S63A of the Mines and Minerals Act.

Evidence of a copy of the letters sent by the Petitioners and the local community to the Inspector General of Police and Divisional Secretary is marked "**P5 (a)** to **P5 (c)**", respectively.
Evidence of a copy of the Affidavit given by some of the inhabitants living in and around Sandakalawa, Thambakanda are marked "**P6 (a)**" to "**P6 (e)**."

Petitioners claim that severe environmental harm occurred during the mining period as a result of excessive exploitation in the mining locations. One of the most serious environmental issues that residents face is the loss of biodiversity. Because mining is frequently a significant industrial operation including road construction and the use of heavy equipment, wildlife has been relocated and habitats have been harmed or destroyed.

Petitioners claim that intensive exploitation has compelled them to leave their homes because the accumulation of dust and rubbish in the vicinity has worsened

environmental deterioration. Over-exploitation by miners has also harmed the local community's health. The petitioners go on to say that they are entitled to 'access to clean water,' which is required for an appropriate level of living, but that the miners' harsh exploitation violated the circumstances required for an adequate standard of living.

In light of the facts, the Petitioners assert that there is an imminent infringement and/or continuous violation and/or violation of their fundamental rights, such as the right to engage in agriculture, their profession, the right to live in a safe and secure place as their human habitation, and the right to move freely within the country for those who are lawfully residing within the country.

Hence, the Petitioners state that their fundamental rights guaranteed under Article 12 (1), 14 (1) (g) and 14 (1) (h) of the Constitution have been violated and/or are in imminent danger of being infringed and/or are being continuously violated due to the said action, omission, and/or failure to act and/or neglect to perform the duty of/or by 1st to 11th Respondent. Since leave to proceed has been granted on the alleged violation of Article 12(1) of the constitution, only Article 12(1) has been considered by this court.

The Petitioners claimed that since heavy exploitation has caused the contamination of water, it has infringed their right to ‘access to clean water.’ The Petitioners stated that according to Article 27 (2) (c), 1st to 11th Respondents as state officials, have a public duty to ensure to all citizens ‘an adequate standard of living.’ Since the Petitioners have been deprived of accessing clean water, the Petitioners claim that the 1st to 11th Respondents have failed to take full realisation of the said Article 27 (2) (c).

Furthermore, according to the Petitioners, extensive mining will result in significant environmental harm for the duration of the mining period if appropriate steps are not taken to stop it. As per Article 27 (14) of the Constitution, there is a public duty imposed upon 1st to 11th Respondents to protect and preserve the environmentally sensitive ecological areas and a fundamental duty cast on every person including all the Respondents under Article 28 (f) of the Constitution, to protect nature and to conserve its riches. Therefore, the Petitioners state it is the

duty of the 1st to 11th Respondents to take necessary steps under the law to protect environmentally sensitive areas and to prevent violations of the law otherwise, it will amount to continuous violation of the said Directive Principles of State Policy and Fundamental Duties enunciated in the Constitution.

As a result, Petitioners contend that the aforementioned failures, omissions, and inaction on the part of one or more or all of the Respondents are arbitrary and unreasonable, as well as a violation of the public trust placed in them.

Before moving on to determine the Application of the Petitioners on its merits, I have to first consider the actions and/or omissions of the Respondents. According to the written submissions submitted by the Petitioners, the 1st and 1A Respondents have granted seven licences, notwithstanding the fact that a fundamental rights application has been filed in this regard.

Section 35 (4) (a) of the Mines and Mineral Act, No. 33 of 1992 as amended by the Mines and Minerals (Amendment) Act, No. 66 of 2009 reads as follows;

"That the exploitation, mining, processing, trading in and export of minerals authorised by the licence shall not be conducted in a fraudulent, reckless, grossly negligent or wilfully improper manner…"

Further, as per Section 63 (1) (a);

"Any person who explores for, or mines, processes, transports, trades in or exports any mineral without a licence in that behalf issued under this Act shall be guilty of an offence under this Act and shall on the conviction after the summary trial before the Magistrate be liable to a fine not exceeding five hundred thousand rupees and in the case of a second or subsequent offence, to a fine not exceeding one million rupees or to imprisonment for a term not exceeding one year or to both such and imprisonment."

The effect of Section 35 (4) (a) and Section 63 (1) (a) as stipulated above is that the individuals granting a licence for mining must carry out a thorough inspection prior

to granting the licence and any person who mines any minerals without a licence shall be guilty of an offence, respectively.

Accordingly, the Petitioners contend in their written submissions that the 1st and 1A Respondents have failed to carry out a thorough inspection before granting the licence. In light of the expiry dates mentioned in the written submissions, it is evident that the 1st and 1A Respondents have failed in their responsibilities as per Section 35 (4) (a).

Referring to the circumstances set out above, the facts clearly illustrate the extent and seriousness of the damage caused to the environment due to the acts that have been committed.

These acts can be directly linked with the applicability of the public trust doctrine, the importance of which has been highlighted in many cases recently.

In the case of **Environmental Foundation Limited and others Vs Mahaweli Authority of Sri Lanka and others SC 459/2008 (F/R), SC Minutes of 17.06.2010** it was held that *"The origins of Public Trust doctrine can be traced to Justinien's Institutes where it recognizes three things common to mankind i.e. air, running water and sea, (including the shores of the sea). These common property resources were held by the rulers in trusteeship for the free and unimpeded use of the general public.*

Under Chapter VI of the Constitution which deals with Directive principles of State Policy and fundamental duties in Article 27(14) it is stated that "The State shall protect, preserve and improve the environment for the benefit of the community". Although it is expressly declared in the Constitution that the Directive principles and fundamental duties 'do not confer or impose legal rights or obligations and are not enforceable in any Court or Tribunal' Courts have linked the Directive principles to the public trust doctrine and have stated that these principles should guide state functionaries in the excise of their powers."

In the case of **Bulankulama and Others Vs Secretary, Ministry of Industrial Development and Others (Eppawela Case) [2000] 3 SLR 243**, Amerasinghe, J observed that;

"In my view, the human development paradigm needs to be placed within the context of our finite environment to ensure the future sustainability of the mineral resources and of the water and soil conservation ecosystems of the Eppawela region, and of the North Central Province and Sri Lanka in General ...the cost of the environmental damage should, in my view, be borne by the party that causes such harm, rather than being allowed to fall on the general community to be paid through reduced environmental quality or increased taxation in order to mitigate the environmentally degrading effects of a project. This is a matter the Central Environmental Authority must take into account in evaluating the proposed project and in prescribing terms and conditions."

In **Illinois Central R. Co. v. Illinois, [1892]**, **146 U.S. 387,** it was held that;

"The public being interested in the use of such waters, the possession by private individuals of lands under them could not be permitted except by licence of the Crown, which could alone exercise such dominion over the waters as would insure freedom in their use so far as consistent with the public interest. The doctrine is founded upon the necessity of preserving to the public the use of navigable waters from private interruption and encroachment -- a reason as applicable to navigable fresh waters as to waters moved by the tide."

Furthermore, the Supreme Court of India in **M.C. Mehta v. Kamal Nath [1977]** 1 **S.C.C. 388**, accepted the stand of the State of Illinois's in the aforementioned case and held that;

"It was a title held in trust - for the people of the State that they may enjoy the navigation of the water, carry on commerce over them, and have liberty of fishing their in free from obstruction or interference of private parties."

In **Gould v Greylock Reservation Commission [1966] 350 Mass 410** , the Supreme Judicial Court of Massachusetts took the first major step in developing

the doctrine applicable to changes in the use of lands dedicated to the public interest. As per the judgment;

"...In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit."

Based on the facts and the evidence mentioned above it highlights that the Petitioners, as inhabitants of Sandakalawa, Thambakanda, have a right to access clean water for consumption and agricultural purposes. However, due to the licences granted by the 1st and 1A Respondents permitting extensive mining, the water bodies, particularly Ma Oya, have been contaminated, making them unsuitable for the said purposes. It is the duty of the 1st and 1A respondents to ensure that thorough inspections and checks have been carried out. Nevertheless, by extending the licences without carrying out any standard inspections, the 1st and 1A Respondents have failed in their responsibilities.

Further, according to Section 23H (1) of the National Environmental Act No. 47 of 1980 as amended by the National Environmental (Amendment) Act, No. 56 of 1988;

"No person shall pollute any inland waters of Sri Lanka or cause or permit to cause pollution in the inland waters of Sri Lanka so that the physical, chemical or biological condition of the waters is so changed as to make or reasonably expected to make those waters or any part of those waters unclean, noxious, poisonous, impure, detrimental to the health, welfare, safety or property of human beings, poisonous or harmful to animals, birds, wildlife, fish, plants or other forms of life or detrimental to any beneficial use made of those waters."

Section 23H (3) of the aforementioned Act states as follows;

"Every person who contravenes the provisions of subsection (1) shall be guilty of an offence…"

Further, Section 23N (1) and (4) of the Act reads as follows;

"No person shall pollute or cause or permit to be polluted any soil or the surface of any land so that the physical, chemical or biological condition of the soil or surface is so changed as to make or be reasonably be expected to make the soil or the produce of the soil poisonous or impure, harmful or potentially harmful to the health or welfare of human beings, poisonous or harmful to animals, birds, wildlife, plants or all other forms of life or obnoxious or, unduly offensive to the senses of human beings or so as to detrimental to any beneficial use of the land. (4) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

Also, under Section 10 of the National Environmental Act No.47 of 1980, the Authority is duty bound to protect the destruction caused to the soil, inland water and air that ultimately led to protecting the quality of the environment.

However, the Petitioners contend that the current state of the mining areas in Sandakalawa and Thambankanda (as depicted in the photographic evidence as P3 and P4) indicates that the licence holders, through excessive gravel mining, have caused an environmental crisis that has resulted in the destruction of ecological quality, endangering the inhabitants' living habitations as well as their agriculture.

Therefore the Petitioners claim that since Sandakalawa and Thambakanda are ecologically sensitive areas, the Central Environmental Authority has taken no action or made any decisions to prevent the aforementioned environmental pollution. As a result, the Respondents have failed to comply with Section 24B of the National Environmental Act which reads as follows;

(1) " The Authority shall have the power to issue directives to any person engaged in or about to engage in any development project or scheme which is causing or is likely to cause, damage, or detriment to the environment, regarding the measures to be taken in order to prevent or abate such damage or detriment, and it shall be the duty of such person to comply with such directive."

(2) "Where a person fails to comply with any directives issued under subsection (1), the Magistrate may, on an application made by the Authority, order the

temporary suspension of such project or scheme until such person takes the measures specified in such directive."

In the given circumstance, the Petitioners have identified that the Central Environmental Authority, the 2nd and 2A Respondents are bound by the aforementioned duties. However, the Petitioners claim that the aforesaid Respondents have failed to comply with the above sections and have also failed to punish the wrongdoers, specifically, the licence holders who could not comply with the provisions of the National Environmental Act.

As per Amerasinghe, J in **Bulankulama and Others Vs Secretary, Ministry of Industrial Development and Others (Eppawela Case) [2000] 3 SLR 243;**

"The cost of the environmental damage should, in my view, be borne by the party that causes such harm, rather than being allowed to fall on the general community to be paid through reduced environmental quality or increased taxation in order to mitigate the environmentally degrading effects of a project. This is a matter the Central Environmental Authority must take into account in evaluating the proposed project and in prescribing terms and conditions."

According to the case of **Ravindra Gunewardena Kariyawasam Vs. Central Environmental Authority and Others SC FR Application No. 141/2015**, **decided on 4th April 2019,** it was held,

"WIJEBANDA vs. CONSERVATOR GENERAL OF FOREST [at p.356] Tilakawardane J. stated "The constitution in Article 27 (14) of the directive principles of state policy enjoins the state to protect, preserve and improve the environment. Article 28 refers to the fundamental duty upon every person in Sri Lanka to protect nature and conserve its riches." In ENVIRONMENTAL FOUNDATION LTD vs. MAHAWELI AUTHORITY OF SRI LANKA [2010 1 SLR 1 at p.19], Ratnayake J observed "Although it is expressly declared in the Constitution that the Directive principles and fundamental duties 'do not confer or impose legal rights or obligations and are not enforceable in any Court of Tribunal' Courts have linked the Directive principles to the public trust doctrine and have stated that these principles should guide state functionaries in the excide of their powers."

Additionally, the Petitioners submitted that the National Environmental Authority, together with the Minister, the 4th Respondent, has failed to declare Sandakalawa, Thambakanda to be mentioned as ecologically sensitive areas under Section 24C of the National Environmental Act and take more steps to prevent further destruction to the biological system of the named areas. Section 24C (1) states as follows;

"The Minister may by Order published in the Gazette declare any area to be an environmental protection area…"

Moreover, as per Section 24D (2);

"So long as an Order under subsection (1) is in force, the Authority shall be responsible for physical planning of such area in accordance with the provisions of this Act."

It is important to note that the areas concerned were declared as ecologically sensitive areas which placed an obligation on the Respondents to physically plan such areas declared as environmental protection areas. The aim of the government in declaring such areas as environmental protection areas is to take further steps to prevent destruction to the biological systems of such areas which places a higher standard of responsibility on the Respondents. However, the Respondents by granting licences without proper inspection and carrying out standard surveys, have failed on such duty owed.

According to Section 31 (1) of the North Western Province Environmental Statute No.22 of 1990;

"No person shall pollute or cause or permit to be polluted or the surface of any land…"

Further, Section 31 (4) states as follows;

"Any person who contravenes any of the provisions of this section shall be guilty of an offence."

The aforementioned provisions highlight that any person who pollutes or permits the surface of any land to be polluted shall be guilty of an offence. The Petitioners

in their written submission claim that the 3rd Respondent, namely the Provincial Environmental Authority as per Section 31 is under a duty to prevent the destruction caused to the soil and to declare anyone guilty of an offence who contravenes any of the provisions of this section. Nevertheless, the Petitioners state that the Provincial Environmental Authority has not taken action in relation to the soil erosion that occurred in Sandalankawa, Thambakanda areas due to excessive gravel mining. Therefore, the Petitioners claim that the 3rd Respondent's negligence has caused irreparable loss to the environment.

In the case of **Dissayanake and Others [Uva Magnettetle] v Geological Survey and Mines Bureau and Others [2011] 2 SRI L.R. at 361,** Rohini Marasinghe J. observed that;

"The functions of the National Environmental Act are carried out by the "Authority" called the Central Environmental Authority (CEA). The powers and duties of the Authority are contained in Part II of the Act. According to section 26 (1) the Authority may delegate any of its' powers, duties and functions under the Act to any Government Department subject to the provisions contained in section 26."

Further, section 23 (a) of the North Western Province Environmental Statute No.22 of 1990 states as follows;

"Where a licence has been issued to any person under Section 21 and such person acts in violation of any of the terms, standards and conditions of the licence or where since the issue of licence, the Provincial Authority considers the receiving environment no longer suitable for the continued discharge, deposit, or emission of waste or where it is not considered beneficial the Authority may suspend or cancel such licence."

The aforementioned provision depicts that the Provincial Environmental Authority issues a licence and considers that the environment is no longer suitable for continued mining and if the continuity of such mining is detrimental to the environment, the Authority has the discretion to suspend or cancel such licence.

It was held in the case of **Jayawardena Vs Akmeemana Pradeshiya Sabha and Others [1998] 1 Sri L.R. at page 317** that "*The emission of dust and noise from*

the mental crushing operation was licensed. A licence was issued to the petitioner but it was subject to specified conditions. A person who does not comply with the conditions of a licence, acts as if he had no licence. Therefore the petitioner's occupation, business or enterprise was unlawful in terms of Section 23A read with Section 23B of the National Environment Act."

The facts of the above mentioned case are similar to the crux of the matter of this case. Based on the above, it is the accepted position in law that even though a licence had been granted, the violation of the special conditions specified in that licence is unlawful. Based on the evidence that has been provided by the Petitioners it is clear that the acts of the Respondents clearly violate the specific conditions set out in the licence which had been granted to them and as a result deeming such acts unlawful.

The Petitioners in their written submission state that "despite the massive environmental degradation, including soil and inland water pollution, no official attached to the Provincial Authority has taken steps to intervene in preventing illegal activities and punishing the relevant parties under the provisions." According to the document submitted "P2" the 12th Respondent has been issued certain conditions to be followed by the Provincial Environmental Authority when conducting mining activities.

Nonetheless, it is clear that the 12th Respondent violated these conditions, but members of the Provincial Environmental Authority failed to ensure that the specified conditions were met. Therefore, the Petitioners allege that the Provincial Environmental Authority has failed to implement any of the provisions of the North Western Province Environmental Statute No.12 of 1990.

The 13th Respondent has submitted a report provided by the Inspector General of Police where the Assistant Superintendent of Police of the Kuliyapitiya Division reports to the IGP about 6 arrests made in the Pannala area by the Pannala Police. The 06 arrests made are all drivers and heavy equipment operators who are employees/agents under the control of the 12th Respondent. They were arrested for transporting gravel in violation of conditions issued in the licence granted to the 12th Respondent. The 13th Respondent contended that these arrests amount to action the state has taken against the 12th Respondent. The arrest of drivers and

heavy equipment operators who were mere agents under the control of the 12th Respondent, is not the action that ought to have been taken in view of the damage caused to an entire village due to the violation of the conditions of the licences. A harsher action ought to have been taken against the 12th Respondent for the violation of the conditions specified in the licences issued to him. Further, following the 06 arrests being made no update in relation to the same has been provided to this court up to date.

The Petitioners in their written submission have explained that Sandalankawa and Thambakanda are mountainous areas and due to excessive gravel mining, several trees have been cleared out. As a result, topsoil has been rapidly eroded, resulting in soil being washed into Ma Oya along with other agrochemicals used by farmers in agricultural operations. As a result, Ma Oya's situation level has worsened, resulting in a decrease in capacity and, eventually, a severe environmental crisis.

The Petitioners claim that excessive mining activities have contaminated groundwater levels in wells, water streams, springs, and reservoirs. As a result, the Petitioners claim that the 9th and 11th Respondents have failed to perform their duties by failing to take relevant actions in issues confronting the local community and to prevent pollution caused to the groundwater in the said areas.

In addition, the Petitioners also have referred to international conventions and declarations in which the Concepts and Principles of Environmental Law are enshrined, particularly, the Concepts of Sustainable Development, Inter-Generational Equity, Principle of Precautionary Action, Public Trust Doctrine and Polluter Pays Principle.

Under the concept of Sustainable Development, the Petitioners in their written submission have correctly referred to Principle 4 of the Rio Declaration which states as follows;

"In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

Moreover, the Petitioners have correctly referred to the judgment in **Watte Gedera Wijebanda v Conservator General of Forests and Others [2007] SLR 337, Vol**

1 of 2009, where the courts emphasised the principles in Rio Declaration and how the Rio Declaration constitutes as soft law. The judgment states as follows;

"Under the 'public trust doctrine' as adopted in Sri Lanka, the State is enjoined to consider contemporaneously, the demands of sustainable development through the

efficient management of resources for the benefit of all the protection and regeneration of our environment and its resources."

Per Shiranee Thilakawardena, J.

"Human kind of one generation holds the guardianship and conservation of the natural resources in trust for future generations, a sacred duty to be carried out with the highest level of accountability."

"Although the international instruments and constitutional provisions cited above are not legally binding upon governments, they constitute an important part of our environmental protection regime. As evidenced by the decision of this court in Bulankulama v. Secretary, Ministry of Industrial Development, (6) they constitute a form of soft law, the importance and relevance of which must be recognized when reviewing executive action vis-a.-vis the environment, In this case the Supreme Court adverted to principle 1 of the Rio declaration that "Human beings are the center of concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature."

Further, in relation to the Polluter Pay Principle, the Petitioners have correctly referred to the judgment of **Ravindra Gunewardena Kariyawasam Vs. Central Environmental Authority and Others SC FR Application No. 141/2015**, **decided on 4th April 2019** which was held;

"It is an oft-cited and applied principle of environmental law that the "Polluter Pays". This is reflected in Principle 16 of the Rio Declaration, which states "National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."

Therefore, it is in my opinion based on the above mentioned evidence that it is correctly argued by the Petitioners that their fundamental rights guaranteed under Article 12 (1) of the Constitution of Sri Lanka which includes their right to live in a safe and secure place as their human habitation have been violated due to the recklessness and gross negligence of the Respondents.

In light of the above, it is in my opinion that the Respondents have failed to comply with the said duties provided in the National Environmental Act. This is because they have failed to issue directives and punish the wrongdoers who did not comply with the provisions of the National Environmental Act. Moreover, they have not prevented the deterioration of the soil, inland water, and air, which inevitably leads to the protection of environmental quality.

Based on the foregoing reasons, I hold that the 12th Respondent by his actions has violated the Petitioner's fundamental rights guaranteed under 12 (1) of the Constitution.

I direct the 12th Respondent to pay costs to the Petitioners.

Application allowed with costs.

Judge of the Supreme Court.

Vijith K. Malalgoda, PC., J.
I agree.

Judge of the Supreme Court.

Janak De Silva, J.
I agree.

Judge of the Supreme Court.