

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

In the matter of an Application for
Special Leave to Appeal against
Judgment of Court of Appeal dated
08.08.12 in Case No. CA(PHC) Appeal
37/2001 and in the High Court (Kandy)
of the Central Province Case No. Certi
42/97.

Solaimuthu Rasu,
Dickson Corner Colony,
Stafford Estate,
Ragala,
Halgranaoya.

Petitioner-Appellant

Vs.

S.C. Appeal No. 21/13
S.C.Spl. LA 203/12
CA/PHC/Appeal No. 37/2001
HC/CP Certi. 42/97

1. The Superintendent
Stafford Estate,
Ragala,
Halgranaoya.
2. S.C.K. De Alwis
Consultant/ Plantation Expert,
Plantation Reform Project,
Ministry of Plantation Industries,
Colombo 04.
3. The Attorney-General,
Attorney-General's Department,
Colombo 12.

Respondent-Respondents

AND NOW BETWEEN

1. The Superintendent
Stafford Estate,
Ragala,
Halgranaoya.
2. S.C.K. De Alwis
Consultant/ Plantation Expert,
Plantation Reform Project,
Ministry of Plantation Industries,
Colombo 04.
3. The Attorney-General,
Attorney-General's Department,
Colombo 12.

Respondents-Respondents- Petitioners

Vs.

Solaimuthu Rasu,
Dickson Corner Colony,
Stafford Estate,
Ragala,
Halgranaoya.

Petitioner-Appellant-Respondent

BEFORE : Mohan Pieris, P.C.,C.J.,
Sripavan, J.
Wanasundera, P.C.,J.

COUNSEL : Manohara de Silva, P.C. with Palitha Gamage
for the 1st Respondent-Respondent-
Petitioner.

Gomin Dayasiri with Palitha Gamage and Ms. Manoli Jinadasa for the 2nd Respondent-Respondent-Petitioner.

Y.J.W. Wijayatillake, P.C., Solicitor General with Vikum de Abrew, S.S.C. And Yuresha Fernando, S.C. For the 3rd Respondent-Respondent-Petitioner.

M.A.Sumanthiran with Ganesharajah and Rajitha Abeysinghe for the Petitioner-Appellant-Respondent.

ARGUED ON : 11th July 2013
17th July 2013

WRITTEN SUBMISSIONS

FILED : By the 2nd Respondent-Respondent-Petitioner
on :- 24th July 2013 & 23rd August 2013
By the 3rd Respondent-Respondent-
Petitioner
on :- 13th March 2013 & 25th July 2013.

DECIDED ON : 26th September 2013

SRIPAVAN, J.

The Respondent-Respondent-Petitioners(hereinafter called and referred to as the “Petitioners”) sought, special leave to appeal against the judgment of the Court of Appeal dated 08-08-12 whereby the Court of Appeal set aside the judgment of the Provincial High Court dated 25-10-2000, holden at Kandy.

On 31.01.13 this Court granted Special Leave to Appeal on the following two questions :-

- (i) Did the Court of Appeal err by deciding that the Provincial High Court has jurisdiction to hear cases where dispossession or encroachment or alienation of State Lands is/are in issue?
- (ii) Did the Court of Appeal err by failing to consider whether there is a right of appeal against the order of the High Court dismissing the application in limine for want of jurisdiction?

However, at the hearing before us on 17.07.13, all Counsel agreed to confine their submissions only on the first question referred to above; thus, this Court did not consider the second question in this judgment.

The facts in this application were not disputed by Counsel. It would appear that the Petitioner-Appellant-Respondent (hereinafter called and referred to as the “Respondent”) instituted an action in the Provincial High Court of Kandy seeking, inter-alia -

- (a) A Writ of Certiorari to quash a quit notice issued on him by the second Petitioner in terms of the State Lands (Recovery of Possession) Act No.7 of 1979 as amended ,
- (b) A Writ of Prohibition, prohibiting the first and the second Petitioners from proceeding any further with the Writ of Execution evicting him from the land morefully described

in the schedule to the petition; and

- (c) A Writ of Mandamus directing the First and the Second Petitioners not to interfere with his lawful possession of the said land.

The Petitioners filed their Statement of Objections on 27.02.96 and took up the position that :-

- (a) the land in question is “State Land”;
- (b) the “quit notice” dated 07.10.97 was issued by the designated Competent Authority in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended;
- (c) the Respondent has no legal basis to invoke the writ jurisdiction of the Provincial High Court in view of the facts of the case; and
- (d) in any event, the High Court of the Province lacks jurisdiction to hear and determine the matter as it relates to a “State Land”.

The jurisdictional issue with regard to the powers of a Provincial High Court to grant a Writ of Certiorari to quash the quit notice issued under the provisions of the State Lands (Recovery of Possession) Act was taken up as a preliminary matter. The Provincial High Court after hearing oral and written submissions of the parties, by its order dated

25.10.2000 held that the Provincial High Court had no jurisdiction to entertain the said application and dismissed the same. The Respondent thereafter on 22.11.2000 preferred an appeal to the Court of Appeal on the basis that the Provincial High Court had misdirected itself by holding that the Court lacks jurisdiction to inquire into and to make a determination relating to notices filed under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended. The Court of Appeal delivered its judgment on 08.08.12 holding, inter-alia, as follows :-

- (i) that the subject of “State Land” is included in Appendix II of the “Provincial Council List” (List 1) to the 9th Schedule to the 13th Amendment to the Constitution.
- (ii) that therefore “State Land” becomes a subject of the Provincial Council List even though State Land continue to vest in the Republic.
- (iii) that therefore, the High Court of the Provinces have jurisdiction to hear and determine Writ Applications filed to quash the quit notice issued under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended.

It must be noted that the demarcation between the Centre and the Provinces with regard to “State Land” must be clearly identified.

As observed by Fernando, J. in the Determination of the Agrarian Services .(Amendment) Bill [S.C. Special Determination 2/91 and 4/91], it is not possible to decide whether a matter is a List 1 or List 111

subject by merely looking at the headings in those lists. The headings may not be comprehensive and the descriptions which follow do not purport to be all inclusive definitions of the headings. Exclusions may be set out in the detailed descriptions which again may indicate that the headings are not comprehensive. As far as possible, an attempt must be made to reconcile entries in Lists I ,II and III of the Constitution and the Court must avoid attributing any conflict between the powers of the Centre and the Provinces.

Therefore it becomes necessary to examine and scrutinize the relevant Articles contained in the Constitution in relation to “Land” and “State Land” . Article 154(G)(1) grants power to every Provincial Council to make statutes applicable to the Province for which it is established with regard to any matter set out in List 1 of the Ninth Schedule (hereinafter referred to as the “Provincial Council List”). On an examination of the Provincial Council List, it would appear at item 18 as follows :

“Land- Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II”

Appendix II sets out as follows:

Land and Land Settlement

“State Land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d) and written law governing this matter.

Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions:-

1. State land -

- 1.1 State Land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilized by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilization of such land in respect of such subject.
- 1.2 Government shall make available to every Provincial Council State land within the Province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilize such State land, in accordance with the laws and statutes governing the matter.
- 1.3 Alienation or disposition of the State Land within a Province to any citizen or to any organization shall be by the President on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.” (emphasis added)

Thus, it is important to bear in mind that “land” is a Provincial Council subject only to the extent set out in Appendix 1I. This Appendix imposes the restriction on the land powers given to Provincial Councils. The Constitutional limitations imposed by the legislature shows that in the exercise of its legislative powers, no exclusive power is vested in the Provincial Councils with regard to the subject of “land”. The

restrictions and/or limitations in respect of the utilization of “State Land” as stated in Appendix II may be summarized as follows:-

1. In terms of 1.1 above, the Government of Sri Lanka can utilize State Land “in respect of a reserved or concurrent subject.” However, this could only be done in compliance with the laws passed by Parliament and in consultation with the relevant Provincial Council, so that the Government and the Provincial Council reach consensus with regard to the use of such “State Land”.
2. According to 1.2 above, it is important to note that a Provincial Council can utilize “State Land” only upon it being made available to it by the Government. It therefore implies that a Provincial Council cannot appropriate to itself without the government making “State Land” available to such Council. Such “State Land” can be made available by the Government only in respect of a Provincial Council subject. The only power casts upon the Provincial Council is to administer, control and utilize such ”State Land” in accordance with the laws passed by Parliament and the statutes made by the Provincial Council.(emphasis added)
3. Paragraph 1.3 above, deals with alienation or disposition of “State Land” within a province upon an advice made by

such Provincial Council. It cannot be construed that the advice tendered by the Provincial Council binds the President. However it must be emphasized that if the President after an opinion or advice given, decides to dispose of the State Land, such disposal has to be in compliance with the laws enacted by Parliament.

Thus, with regard to the administration, control and utilization of “State Land”, the legislative power of a Provincial Council is confined and restricted to the extent set out in paragraph 2 above. The Provincial Councils do not therefore exercise sovereign legislative powers and are only subsidiary bodies, exercising limited legislative powers subordinate to that of Parliament.

At this stage, it may be relevant to quote the observation made by Sharvananda C.J. *Re The Thirteenth Amendment to the Constitution* [(1987) 2 S.L.R. 312 at 320].

“The question that arises is whether the 13th Amendment Bill under consideration creates institutions of government which are supreme, independent and not subordinate within their defined spheres. Application of this test demonstrates that both in respect of the exercise of its legislative powers and in respect of exercise of executive powers no exclusive or independent power is vested in the Provincial Councils. The Parliament and President have ultimate control over them and remain

supreme.”

Shirani A. Bandaranayake, J. too in the Determination of the Bill titled “Land Ownership” [S.D. No. 26/2003 – 36/2003 Determination dated 10th December 2003] noted as follows:-

“With the passing of the Thirteenth Amendment to the Constitution, such Constitutional power vested with the President was qualified by virtue of paragraph 1:3 of Appendix II to the Ninth Schedule to the Constitution. By such provision the authority for alienation or disposition of the State land within a province to any citizen or to any organization was yet vested with the President..... In effect, even after the establishment of Provincial Councils in 1987, State land continued to be vested in the Republic and disposition could be carried out only in accordance with Article 33(d) of the Constitution read with 1:3 of Appendix II to the Ninth Schedule to the Constitution.”

Learned President's Counsel for the First Petitioner drew the attention of Court to item 9:1 of the Provincial Council list under the heading of “Agriculture and Agrarian Services” which reads thus:-

Agriculture, including agricultural extension, promotion and education for provincial purposes (other than inter-provincial irrigation and land settlement schemes, State Land and plantation agriculture)

Here again, the subject relating to “State Land and plantation agriculture” is excluded from the legislative competence of Provincial

Councils.

Article 154 (G)(7) further provides that a Provincial Council has no power to make statutes on any matter set out in List II of the Ninth Schedule (hereinafter referred to as the “Reserved List”). One of the matters referred to in the Reserved List is “State Lands and Foreshore, except to the extent specified in Item 18 of List I”. Thus, it is competent for the Centre to enact laws in respect of “State Lands” avoiding the powers given to the Provincial Councils as specified in item 18 of the Provincial Council List, on the basis that the subjects and functions not specified in List I (Provincial Council List) and List III fall within the ambit of the Reserved List.

In view of the foregoing analysis, and considering the true nature and character of the legislative powers given to Provincial Councils one could safely conclude that “Provincial Councils can only make statutes to administer, control and utilize State Land, if such State Land is made available to the Provincial Council by the Government for a Provincial Council subject.

It must be emphasized that Appendix II in item 3:4 provides that the powers of the Provincial Councils shall be exercised having due regard to the national policy formulated by The National Land Commission. The National Land Commission which includes representatives of all Provincial Councils would be responsible for the formulation of the National Policy with regard to the use of State Lands.

There is nothing to indicate that “State Land” which is the subject matter of this application and in respect of which a quit notice was issued by the second petitioner was a land, made available to the relevant Provincial Council by the Government for a Provincial Council subject. Hence, the said land is not under the administration and control of the relevant Provincial Council and no statute could have possibly been passed by the said Provincial Council with regard to the utilization of such Land. Therefore, this land does not fall within the ambit of any matters set out in the Provincial Council list.

Even if the Government makes available State Land to a Provincial Council, the title to the land still vests with the State. In such a situation, one has to consider whether recovery of possession of State Land is a Provincial Council subject.

The jurisdiction conferred upon on Provincial High Court with regard to the issue of writs is contained in Article 154P 4(b) of the Constitution. According to the said Article, a Provincial High Court shall have jurisdiction to issue, according to law:-

Order in the nature of Writs of Certiorari, prohibition, procedendo, mandamus and quo-warranto against any persons exercising, within the Province, any power under:-

(I) any law; or

(II) any statute made by the Provincial Council established for that Province;

in respect of any matter set out in the Provincial Council List
(emphasis added)

There is much significance in the use of the words “any matter set out in the Provincial Council List.” The fundamental principle of constitutional construction is to give effect to the intent of the framers and of the people adopting it. Therefore, it is the paramount duty of this Court to apply the words as used in the Constitution and construe them within its four corners.

In *Weragama Vs. Eksath Lanka Wathu Kamkaru Samithiya & Others* (1994) 1 S.L.R. 293, this Court opined that a Provincial High Court could in fact entertain matters that are strictly within the purview of the devolution of powers with regard to the subject matter as set out in the Provincial Council List.

Fernando, J. at page 298 said “*As to the intention of Parliament in adopting the Thirteenth Amendment, this Court cannot attribute an intention except that which appears from the words used by Parliament. I find nothing suggesting a general intention of devolving power to the Provinces; insofar as the three Lists are concerned, only what was specifically mentioned was devolved, and “all subjects and functions not specified in List I or List II” were reserved – thus contradicting any such general intentions.... There was nothing more than a re-arrangement of the jurisdictions of the judiciary.*” If powers relating to Recovery/dispossession of State Lands, encroachment or alienation of State Lands are not in the Provincial Council List, matters

relating to them cannot be gone into by a High Court of the Province.

Accordingly, I hold that the Court of Appeal erred in holding that the Provincial High Court of Kandy had jurisdiction to issue a Writ of Certiorari, in respect of a quit notice issued under the State Lands (Recovery of Possession) Act. The order made by the Court of Appeal dated 08.08.12 is set aside and the order of the Provincial High Court of Kandy dated 25.10.2000 is affirmed.

The question of law, considered by this Court is thus answered in the affirmative.

JUDGE OF THE SUPREME COURT