

**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.

SC. Appeal 21/2013
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

SC. Appeal 21/2013

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.

Respondent-Respondents-Petitioners

Vs.

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

Petitioner-Appellant-Respondent

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SC. Appeal 21/2013

Before : **Mohan Pieris, P.C. C.J.,
Sripavan, J
Wanasundera, PC,J.**

Counsel : Manohara de Silva, PC. with Palitha Gamage for the 1st Respondent.

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

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

M.A. Sumanthiran with Ganesharajah and Rakitha 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 & 23rd August 2013.

: By the 3rd Respondent-Respondent-Petitioner
on: 13th March 2013 & 25th July 2013

Decided On : 26th September 2013

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Wanasundera, PC.J.

An application was filed for special leave to appeal from the impugned judgment of the Court of Appeal dated 08-08.12 wherein the Court of Appeal set aside the judgment dated 25th October 2000 of the Provincial High Court. I have had the benefit of reading

in draft the erudite judgments of my brothers, His Lordship the Chief Justice and His Lordship Justice Sripavan with both of which I agree. I would also, however, set down in brief my own views on the single important question of law which this Court decided and that is whether the Court of Appeal erred in deciding that the Provincial High Court had jurisdiction to hear cases where disposition or encroachment or alienations of state lands is/are in issue or where there is a challenge to a quit notice issued in respect of a State Land.

At this point may I quote Lord Denning in *Magor and St. Nallons RDC. Vs. Newport Corporation* (1950) 2 AER 1226, 1236 CA with regard to the onus of a Judge, "We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis." As such, I am strongly of the view that the interpretation and analysis the provisions in the Thirteenth Amendment to the Constitution should never pave way to destruction of any sort.

I would refrain from going into the facts in the case as they have been dealt with exhaustively in the judgments of my brothers. It is abundantly clear that land in item 18 cannot include the dominium over State Land except the powers given over State Land in terms of the Constitution and any other powers given by virtue of any enactment. The devolution of State Land to the Provinces undoubtedly is subject to state land continuing to be vested in the Republic. There is no doubt that the President's power to make

grants and dispositions according to existing law remains unfettered. The interpretation in my view to be given to all the provisions governing this matter as set out in the judgments of my brothers is that the exercise of existing rights of ownership of state lands is unaffected but restricted to the limits of the powers given to Provincial Councils which must be exercised having regard to the national policy, that is, to be formulated by the National Land Commission.

This Court's determination in the Land Ownership Bill (S.D. No. 26/2003 – 36/2003) ignores everything else in the 9th schedule and errs in its interpretation of Appendix II 1.2. The resultant position is that the centre would cede its seisin over state lands to the Provincial Councils except in some limited circumstances as set out in the judgments of my brothers. It is observed that the draftsmen of our Constitution have given List II primacy leaving state lands in the safe dominium of the Republic and only delivered a specified segments of state lands in well delineated situations namely - "rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and land improvement" and this is what is described as land in list I. As His Lordship the Chief Justice has adumbrated in his judgment, item 18 of List I is itself qualified by paragraph 1.2 of Appendix II namely 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.**

This limited cession of state lands which must be for purposes of **administration, control and utilization of State lands made available by the government to a provincial council subject** must be understood in the context of the two important features of a unitary state when examining the matters in issue.

His Lordship Chief Justice Sharvananda in *The Thirteenth Amendment to the Constitution* (1987) 2 Sri. LR 312 went on to explain the term unitary in contrast with the term Federal. His Lordship went on to identify the supremacy of Central Parliament and the absence of subsidiary sovereign bodies as two essential qualities in a unitary state and that subsidiary bodies should never be equated or treated as being subsidiary sovereign bodies and that it finally means that there was no possibility of a conflict arising between the Centre and other authorities under a unitary Constitution. The Federal bodies are co-ordinate and independent of each other. In other words, a federal body can exercise its own powers within its jurisdiction without control from the other. In a Unitary state sovereignty of legislative power rests only with the centre.

I am also mindful of Mark Fernando J's observations in *Weragama vs Eksath Lanka Wathu Kamkaru Samitiya and others* (1994) 4 Sri.LR 293 when he went on to observe that as to the intention of Parliament in adopting the 13th Amendment, the Court cannot attribute the intention except that which appears from the words used by Parliament and that all subjects and functions not specified in list 1 or list II were reserved thereby contradicting any such general intention to do otherwise. It is also my view that if powers relating to recovery/disposition of state lands, encroachment or

alienation of state lands are not in the Provincial Council list, any review pertaining to such matters cannot be gone into by the Provincial High Court.

Eva Wanasundera PC
Judge of the Supreme Court