

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

**S.C. (Spl) LA No.49/2010
CA (Writ) No.277/2008**

Batugahage Don Udaya Shantha,
No.122/A/4/B, Kothalawala,
Kaduwela.

Petitioner-Petitioner

Vs.

1. Jeevan Kumaranatunga,
The Minister of Lands and Land Development,
Govijana Mandiraya,
Rajamalwatta Road,
Battaramulla.
- 1A. Hon. Janaka Bandara Thennakoon,
Hon.The Minister of Lands and Land
Development,
Govijana Mandiraya,
Rajamalwatta Road,
Battaramulla.
2. Dinesh Gunawardena,
Minister of Urban Development and
Sacred Area Development,
3rd Floor, Sethsiripaya,
Battaramulla.
- 2A. Hon.The Attorney General,
Attorney General's Department,
Colombo 12.

3. P. Ramanujam,
The Secretary,
The Ministry of Urban Development and
Sacred Area Development,
3rd Floor,
Sethsiripaya,
Battaramulla.
- 3A. Mr. Gotabaya Rajapaksha,
The Secretary,
The Ministry of Defence,
No.5/15,
Baladhaksha Mawatha,
Colombo 03.
4. Manel Jayasena,
The Divisional Secretary,
The Divisional Secretariat,
Sri Jayawardenapura Kotte,
No.341/2,
Kotte Road,
Rajagiriya.
- 4A. Mr. Amal J.S.S. Edirisooriya,
The Divisional Secretary,
The Divisional Secretariat,
Sri Jayawardenapura Kotte,
No.341/2, Kotte Road,
Rajagiriya.
5. Sri Lanka Land Reclamation & Development
Corporation, No.03,
Sri Jayawardenapura Mawatha,
Welikada.
6. Karunasena Hettiarachchi,
The Chairman,
Sri Lanka Land Reclamation & Development
Corporation, No.03,
Sri Jayawardenapura Mawatha,
Welikada.

- 6A. Mr. Harshana De Silva,
The Chairman,
Sri Lanka Land Reclamation & Development
Corporation, No.03,
Sri Jayawardenapura Mawatha,
Welikada.
7. G. Alawattegama,
General Manager,
Sri Lanka Land Reclamation & Development
Corporation, No.03,
Sri Jayawardenapura Mawatha,
Welikada.
- 7A. Mrs. Sama Gunawardhana,
The General Manager,
Sri Lanka Land Reclamation & Development
Corporation, No.03,
Sri Jayawardenapura Mawatha,
Welikada.
8. C. Ranasinghe,
Land Acquiring Officer,
Greater Colombo Flood Control Project,
No.3,
Sri Jayawardenapura Mawatha,
Welikada.

Respondents-Respondents

- BEFORE** : Dr. Shirani A. Bandaranayake, CJ.
K. Sripavan, J.
Priyasath Dep, PC., J.
- COUNSEL** : Manohara de Silva, PC., with
Arienda Wijesurendra for the Petitioner-
Petitioner
- N. Pulle, SSC., with N. Wigneswaran, SC.,
for the 2A and 5th Respondents-Respondents

ARGUED ON : 22-08-2011.

WRITTNE SUBMISSIONS

TENDERED ON : Petitioner-Petitioner : 24-10-2011
Respondents-Respondents : 30-09-2011 and
04-11-2011

DECIDED ON : 29.03.2012.

Dr. Shirani A. Bandaranayake, CJ.

This is an application for Special Leave to Appeal from the judgment of the Court of Appeal dated 10-02-2010. By that judgment the Court of Appeal dismissed the petitioner-petitioner's (hereinafter referred to as the petitioner) application for Writs of Certiorari and Mandamus to quash the order made in Gazette Notification dated 23-10-1991 and an order directing the 1st respondent to divest the petitioner's land.

Being aggrieved by the said judgment the petitioner came before this Court, by way of a Special Leave to Appeal Application.

The petitioner had filed his application for Special Leave to Appeal on 22.03.2010 and thereafter had made an application to file amended caption by his motion dated 21-09-2010, which had been allowed and the Special Leave to Appeal application was fixed for support on 06-12-2010. The respondents-respondents (hereinafter referred to as the respondents) by their motion dated 10-10-2010,

had moved this Court that the petitioner had failed to tender notice of this application on the respondents along with the petition filed before this Court by the petitioner, which was in contravention of Rule 8(3) of the Supreme Court Rules, 1990 and that the petitioner had failed to prosecute his application with due diligence and therefore the said Special Leave to Appeal application should be dismissed *in limine*.

The judgment of the Court of Appeal was delivered on 10-02-2010 and the petitioner had filed the petition, affidavit and other documents in the Supreme Court for Special Leave to Appeal on 22-03-2010. According to the Original Record of the Supreme Court no steps had been taken thereafter until September 2010 and on 21-09-2010 the petitioner had filed a motion stating that he is filing documents marked as A, X, Y1, Y2, Y3 and Z. The petitioner had also moved this Court to grant permission to amend the caption as 1st-4th and 6th – 7th respondents had ceased to hold office and therefore to add the New Ministers and the Secretaries. The said motion was submitted to a single Judge sitting in Chambers on which permission had been granted on 01-10-2010.

Learned President's Counsel for the petitioner submitted that after the judgment was delivered on 10-02-2010 that he became aware that the General Elections were to be held on 08-04-2010. The petitioner was also aware that subsequent to the General Elections in April 2010, the Ministers, Secretaries to the Ministries and Chairmen of Corporations would cease to hold office. Accordingly, learned President's Counsel for the petitioner submitted that together with the petition dated 22-03-2010, a motion was filed seeking permission from the Supreme Court to tender annexures and Respondents' notices subsequently in terms of Rule 40 of the Supreme Court Rules, 1990. Learned President's Counsel for the petitioner further submitted that the Registrar of the Supreme Court had failed to

submit the said application which sought an extension of time in terms of Rule 40 of the Supreme Court Rules of 1990, to a single Judge sitting in Chambers.

Learned President's Counsel for the petitioner relied on the decision in **A.H.M. Fowzie and two others v Vehicles Lanka (Pvt) Ltd.** ((2008) B.L.R. 127) where considering the applicability of Rule 40, this Court had stated that,

“ It is in order to follow the said procedure that it is imperative for a petitioner to comply with Rule 8 of the Supreme Court Rules 1990 and in the event there is a need for a variation or an extension of time, the petitioner could make an application in terms of Rule 40 of the Supreme Court Rules of 1990.”

Accordingly learned President's Counsel for the petitioner contended that the requirements in Rule 8(3) of the Supreme Court Rules, 1990 are subject to the provisions made in Rule 40 and therefore non-compliance with Rule 8(3) *Per se* is not fatal to this application as the petitioner had moved for an extension of time in terms of Rule 40 of the Supreme Court Rules, 1990.

Learned President's Counsel for the petitioner also submitted that the petitioner had sought permission to amend the caption and to tender the respondents' notices, along with the amended caption and the said motion was considered by a single Judge sitting in Chambers on 01-10-2010 and order had been made stating that “permission granted.”

The contention of the learned President's Counsel for the petitioner is mainly based on the grounds that, the petitioner had submitted a motion at the very outset moving for an extension of time in terms of Rule 40 of the Supreme Court

Rules, 1990 and that thereafter permission was granted by a single Judge sitting in Chambers to issue notice on the respondents.

The petitioner had filed the application for Special Leave to Appeal on 22-03-2010. According to the Minute of the Registrar of the Supreme Court made on 22-03-2010, only the petition, affidavit and the documents had been filed and no notices were tendered for the purpose of serving same on the respondents. Thereafter on 21-09-2010, the petitioner had filed a motion for the purpose of tendering documents marked as A, X, Y1, Y2, Y3 and Z. At the same time the petitioner had moved to obtain permission for the petitioner to file amended caption as 1st to 4th and 6th and 7th respondents had ceased to hold office and therefore to add the new Ministers and Secretaries as parties to the Special Leave to Appeal application.

In the said notice the petitioner had also stated thus;

“ I also seek Your Lordships’ Court permission to file the respondents’ notices along with the amended caption.”

This motion was submitted to a single Judge sitting in Chambers on 30-09-2010 where the permission had been granted. Thereafter on 14-10-2010, the petitioner had filed another motion with the amended caption and sought a date to support the application. Again this motion was submitted to a single Judge sitting in Chambers and a date was given to support this application with notice to the added respondents.

On 25-10-2010, notices were sent to the respondents. According to the entries made in the Original Record, that was the first time notices were served on the respondents after the application was filed on 22-03-2010. Soon after, on 10-11-

2010, the respondents had filed a motion stating that the petitioner had tendered notices of the Special Leave to Appeal application only after six (6) months of the filing of this application and therefore the petitioner had not complied with Rule 8(3) of the Supreme Court Rules, 1990 and that this application should be dismissed *in limine*.

This motion was also submitted to a single Judge sitting in Chambers on which it was directed that to let the Counsel support the motion in open Court on the date it was fixed for support.

When this matter was taken up for support it was decided to first consider the preliminary objection raised by the respondents.

It is therefore abundantly clear that the petition was filed on 22-03-2010 and the notices were issued only on 25-10-2010. It is also evident that after filing petition, affidavit and the documents on 22-03-2010, a motion was filed to tender additional documents to amend the caption and issue notices on the respondents stated in the amended caption which was filed only on 21-09-2010. Accordingly after filing papers, for a period of six (6) months the petitioner had not taken any steps in prosecuting this application.

The objection raised by the learned Counsel for the respondents is that the petitioner had not filed his notices in accordance with the Supreme Court Rules of 1990.

Supreme Court Rules have been made in terms of Article 136 of the Constitution, for the purpose of regulating generally the practice and procedure of the relevant Courts.

It is common ground that the petitioner had filed the Special Leave to Appeal application from the judgment of the Court of Appeal to the Supreme Court. The Rules pertaining to such applications are dealt with in Part I A of the said Rules. Rule 8 of the said Rules deals with the issuance of notice and Rule 8(1) specifically states that when an application for Special Leave to Appeal is lodged in the Registry of the Supreme Court, the Registrar should forthwith give notice by registered post of such an application to each of the respondents. For this purpose it would be necessary for the said notices to be tendered to the Registrar of the Supreme Court by the petitioner. This is clearly stipulated in Rule 8(3) of the Supreme Court Rules, which reads as follows:

“ The petitioner shall tender with his application such number of notices as is required for service on the respondents and himself together with such number of copies of the documents referred to in sub-rule (1) of this rule as is required for service on the respondents. The petitioner shall enter in such notices the names and addresses of the parties, and the name, address for service and telephone number of his instructing Attorney-at-law, if any, and the name, address and telephone number, if any, of the Attorney-at-law, if any, who has been retained to appear for him at the hearing of the application, and shall tender the required number of stamped addressed envelopes for the service of notice on the respondents by registered post. The petitioner shall forthwith notify the Registrar of any change in such particulars.”

Rule 8(3) clearly states that notices should be tendered along with the application for Special Leave to Appeal. As stated earlier the petitioner had not filed notices along with his petition, which was filed on 22-03-2010. Learned President's Counsel for the petitioner contended that he had moved for an extension of time to tender notices in terms of Rule 40 of the Supreme Court Rules as the respondents would cease to hold office after the General Election, which was held on 08-04-2010. Learned President's Counsel for the petitioner further submitted that this motion of 22-03-2010 had not been submitted by the Registrar of the Supreme Court to a single Judge in Chambers.

As stated earlier, after filing the petition, affidavit and the documents on 22-03-2010 the petitioner had filed a motion only on 21-09-2010, which sought permission for amending the caption, to accept the additional documents and the notices along with amended caption. It is not correct to state that the said motion had not been submitted to a single Judge in Chambers. In fact the Registrar of the Supreme Court had tendered it to a single Judge sitting in Chambers on 30-09-2010 for consideration and permission was granted on 01-10-2010. However no notices were despatched and again another motion was filed on 14-10-2010 along with an amended caption and seeking dates to support the application. This was allowed and the application was fixed for support, subject to the condition that notices should be served on the added respondents. Thereafter, notices were sent on 25-10-2010.

It is therefore clear that at the time the Special Leave to Appeal application was filed on 22-03-2010 neither the notices were tendered nor a motion was filed in terms of Rule 40 of the Supreme Court Rules, 1990, moving for an extension of time to tender notices.

Rule 8(3) referred to earlier states that the notices that have to be sent to the respondents should be tendered along with the application filed in the Supreme Court. Accordingly, the petitioner should have tendered his notices on 22-03-2010.

Learned President's Counsel for the petitioner took up the position that he had moved this Court by way of a motion for an extension of time to issue notices and that had been tendered as stated earlier on 21-09-2010. Rule 40 provides for an extension of time in tendering notices as required by Rule 8(3), which should be considered by a single Judge in his Chambers.

The question that arises at this juncture is that whether an extension of time to issue notice could be obtained under and in terms of Rule 40 of the Supreme Court Rules, 1990 after a lapse of six (6) months from the date of filing of the application for Special Leave to Appeal.

The answer to this question could be found in Rule 8(5). After the petitioner files notices in the Registry along with his application in terms of Rule 8(3) it is necessary that he attends at the Registry of the Supreme Court after two weeks of the filing of the application and before three weeks of such filing, to verify that such notices have not been returned undelivered. In the event, if there are notices which have been returned undelivered, the petitioner should take steps to furnish the correct addresses for the purpose of serving notices on such respondents.

The objection of Rule 8(5) is too fold. Firstly it makes provision to ascertain as to whether the notices have been tendered to the respondents. Secondly it also provides in a situation where notices have been returned, for the re-issuance of the notices on the respondents. By this process it is ensured that not only the respondents are notified that there is a Special Leave to Appeal application filed

by the petitioner against the decision of the lower Court, but also that they are so notified immediately after the petitioner had filed such an application in the Supreme Court. This is for the purpose of giving adequate time for the respondents to be prepared to object to the application made by the petitioner.

It is in this background that the time period for an extension of time to issue notices on the respondents in terms of Rule 40 should be ascertained.

As stated earlier, it is necessary to file notices along with the petition and affidavit and in terms of Rule 8(5) the petitioner should ascertain as to whether the notices have been served on the respondents within a period not less than two (2) weeks and not more than three (3) weeks after the lodging of the application. Rule 8(3) read with Rule 8(5), clearly indicates that an extension of time would be required either at the very outset of the filing of the application in terms of Rule 8(3) or at a time the notices had been returned due to a defect in the given addresses as stated in Rule 8(5). It would therefore be necessary for the petitioner in both such instances to tender notices forthwith for the Registrar to issue them on the respondents.

Supreme Court Rules, in its totality, has made provision to ensure that all parties are properly notified without any undue delay in order to give a hearing for all parties so concerned. Therefore if a petitioner needs to move for an extension of time in terms of Rule 40, such a motion should be filed either at the time the application is filed in the Supreme Court or else after attending at the Registry between the period of 2-3 weeks after lodging the application in the Registry in terms of Rule 8(5).

It is therefore quite evident that a petitioner who had not complied with the provisions stated in Rule 8(3) cannot seek for an extension of time in terms of Rule 40, after a long period of time of the filing of the application. If a petitioner

is seeking to obtain further time to comply with Rule 8(3) by making an application under and in terms of Rule 40, such an application should be made immediately after filing an application or else after complying with the provisions laid down in Rule 8(5) of the Supreme Court Rules.

It is not disputed that the petitioner had not taken any steps to issue notices on the respondents at the time of the filing of this application for Special Leave to Appeal on 22-03-2010. Moreover he had not taken steps to issue notices until 21-09-2010. Therefore it is clearly evident that the petitioner had not complied with Rule 8(3) of the Supreme Court Rules, 1990.

In **Samantha Niroshana v Senarath Abeyruwan** (S.C. (Spl) LA. 145/2006 – S.C. Minutes of 02-08-2007) and **A.H.M. Fowzei v Vehicles Lanka (Pvt) Ltd.** (S.C. (Spl) LA.286/2007 – S.C. Minutes of 27-02-2008) I had categorically stated that I am mindful of the fact that mere technicalities should not be thrown in the way of the administration of justice. I am still in respectful agreement with the observations made by Bonser, C J., in **Wickramatillake v Marikar** ((1895) 2 N.L.R. 9) referring to Jessel M.R. in **Re Chenwell** (8 Ch. D. 506) that,

“ It is not the duty of a Judge to throw technical difficulties in the way of the administration of justice, but when he sees that he is prevented receiving material or available evidence merely by reason of a technical objection, he ought to remove the technical objection out of the way upon proper terms as to costs and otherwise.”

As stated earlier, it is necessary to consider the objective of Rule 8 of the Supreme Court Rules, 1990, when considering the preliminary objections on the

basis of non-compliance with the said Rule. Rule 8 has carefully laid down the procedure that should be followed in filing a Special Leave to Appeal application in this Court. In doing so, strong emphasis has been placed on the urgent need to give notice to the respondents, for the purpose of providing them with an opportunity for them to participate in the appeal. When time limits are clearly prescribed in the relevant Rules it is necessary for the petitioner to comply with such restrictions.

As I had stated in **Annamalai Chettiar v Mangala Karunasinghe** (S.C. (Application) 69/2003 - S.C. Minutes of 06-06-2005), **Samantha Niroshana v Senarath Abeyruwan** (Supra) and **A.H.M. Fowzie v Vehicles Lanka (Pvt) Ltd.** (Supra) an objection raised on the basis of non-compliance with a mandatory Rule, such as Rule 8 of the Supreme Court Rules of 1990, cannot be considered as a mere technical objection.

Accordingly, as stated in **A.H.M. Fowzie** (Supra) where there has been non-compliance with a mandatory Rule such as Rule 8(3), serious consideration should be given for such non-compliance as that kind of non-compliance by a party would lead to serious erosion of well established Court procedures in our Courts, maintained throughout several decades.

It should be borne in mind that the procedure that should be followed when filing applications before the Supreme Court cannot be easily disregarded as that is administered on the basis of the Rules that are made under the provisions stipulated in the Constitution. The said Rules, which have been made for the purpose of assisting the administration of the Court procedures should be followed and when they are not complied with, it cannot be said that objections raised on the basis of such non-compliance are mere technical objections.

The present Supreme Court Rules, which came into being in 1990 has clearly set out the procedure applicable in filing applications before this Court. If a party neglects or ignores to comply with such Rules, and if the other party takes an objection on that basis, such an objection cannot be ignored on the basis of categorising it as a technical objection as the fault lies with the party who had been reckless and negligent so as to ignore the written procedures laid down under the Supreme Court Rules.

The question that arises at this point would be as to whether the non-compliance with Rule 8(3) would result in the dismissal of the application. This question had been considered in a long line of cases decided by this Court where it had been held that non-compliance with Rule 8(3) would result in the dismissal of the application (**K. Reindran v K. Velusomasunderan** (S.C. (Spl) LA. Application No.298/99 – S.C. Minutes of 07-02-2000), **N.A. Premadasa v The People’s Bank** (S.C. (Spl) LA. Application No.212/99 – S.C. Minutes of 24-02-2000, **Hameed v Majibdeen and Others** (S.C. (Spl) LA. Application No.38/2001 – S.C. Minutes of 23-07-2001) **K.M. Samarasinghe v R.M.D. Ratnayake and Others** (S.C. (Spl) LA. Application No.51/2001- S.C. Minutes of 27-07-2001) **Soong Che Foo v Harosha K. De Silva and Others** (S.C. (Spl) LA. Application No.184/2003 – S.C. Minutes of 25-11-2003), **C.A. Haroon v S.K. Muzoor and Others** (S.C. (Spl) LA. Application No.158/2006 – S.C. Minutes of 24-11-2006), **Samantha Niroshana v Senarath Abeyruwan** (Supra) **A.H.M. Fowzie and two others v Vehicles Lanka (Pvt) Ltd.** (Supra) and **Woodman Exports (Pvt) Ltd. v Commissioner General of Labour** (S.C.(Spl) LA. Application No.335/2008–S.C. Minutes of 13-12-2010), **Tissa Attanayake v Commissioner General of Election** (S.C. (Spl) LA. Application No.55/2011 – S.C. Minutes of 21-07-2011).

For the reasons aforesaid, I uphold the preliminary objection raised by learned Senior State Counsel for the respondents and dismiss the petitioner's application for Special Leave to Appeal for non-compliance with Rule 8(3) of the Supreme Court Rules, 1990.

I make no order as to costs.

Chief Justice

K. Sripavan, J.

I agree.

Judge of the Supreme Court

Priyasath Dep, PC., J.

I agree.

Judge of the Supreme Court