

**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 Democratic Socialist
Republic of Sri Lanka.

Ajith P. Dharmasuriya,
No. 1, New Town,
Aluthwatta Road,
Rajawella.

Petitioner

SC FR Application No. 330/2015

Vs.

1. Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10..
2. Director General,
Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10..
3. Resident Project Director –
Victoria Project,
Mahaweli Authority of Sri Lanka,
Victoria Resident Project
Manager's Office,
Digana,
Nilangama, Rajawella.
4. Secretary, Ministry of Mahaweli
Development and Environment,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
5. Divisional Secretary, Divisional
Secretariat of Mede-Dumbara,
Theldeniya.
6. Meda-Dumbara Pradeshiya Sabha,
Theldeiya.
7. Kundasale Pradeshiya Sabha,
Menikhinna.
8. Central Environment Authority,
"Parisara Piyasa",
No. 104,

Robert Gunawardene Mawatha,
Battaramulla.

9. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
10. E.M.M.W.D. Bandaranayake,
No. 77/2A, Kanda,
Karalliyadda, Theldeniya.
11. E.M. Wijeratne,
No. 250/06, Kandy Road,
Karaliyadda,
Theldeniya.
12. R.K. Abeykoon,
No. 6, Kolongahawatta,
Kengalle.
13. J.M.R. Bandara Jayasundara,
C/o. Mahaweli Authority of Sri Lanka,
Victoria Resident Project Manager's
Office, Nilangama, Rajawella.
14. W.M.M. Costa,
Rathmaloya Road,
Balagolla.
15. J.M.U.W. Barnes Rambukwelle,
Opposite Theldeniya
Magistrate's Court/District Court,
Theldeniya.

Respondents

BEFORE : K. Sripavan, C.J.
Nalin Perera, J.

COUNSEL Nilshantha Sirimanna for the Petitioner.
Rajitha Perera, Senior State Counsel for the 1st –
4th, 5th and 6th Respondents.
P. Ekanayake for the 6th Respondent.
Manohara de Silva, P.C. for the 10th, 11th,
12th, 13th, 14th and 15th Respondents.

ARGUED ON : 23.09.2016

**WRITTEN SUBMISSIONS
FILED ON** : 11.03.2016 by the Petitioner
12.10.2016 by the 1st to 4th Respondents.

12.02.2016 by the 10th to 15th Respondents.

DECIDED ON : 09.01.2017

K. SRIPAVAN, C.J.,

When this Application was taken up for support, Learned the President's Counsel appearing for the 10th, 11th, 12th, 14th and 15th Respondents raised the following two Preliminary Objections to the maintainability of this Application.

- (i) The Petitioner's Application and/or the reliefs sought are out of time in terms of Article 126 of the Constitution; and
- (ii) The Petitioner has failed to comply with Rule 44(1)(b) of Part IV of the Supreme Court Rules of 1990.

The Petitioner by his Petition dated 16.08.2015 instituted this Application in the best interests of the public, having regard, inter alia, to Article 28(f) of the Constitution and in order to benefit the public and most significantly, **the environment**. (emphasis added). At paragraph 35 of the Petition, the Petitioner states as follows:-

"The Petitioner was most shocked and surprised when he became aware on 17.07.2015 that the 1st Respondent had purportedly decided on or about 28.05.2015, to, inter alia,

- (a) issue annual permits to the **10th to 15th Respondents in respect of Victoria Reservoir reservation lands**; (emphasis added)
- (b) introduce additional conditions in such permits issued to the 10th to 15th Respondents with regard to the effecting of additional constructions on the said lands;
- (c) take action against all other persons who had effected constructions within the said 100 Metre reservation of the Victoria Reservoir,
- (d) take action to cancel annual permits issued to 127 other persons who had (allegedly) not effected any constructions on the said reservation lands, and provide them with alternate Mahaweli lands"

At Paragraph 36 of the Petition, the Petitioner claims that no lawful basis, grounds or reasons are contained in the said purported "Memo" in order for the Respondent Board to justify the alienation of such reservation lands to the 10th to 15th Respondents on permits. The Petitioner further alleges that the said six parcels of the land alienated to the 10th to 15th Respondents admittedly located within 100 Metres from the full supply level of the Victoria Reservoir.

The Directive Principles of State Policy emphasize the dignity of the individual and the worth of the human person by obliging the State to take various measures for the purpose of securing and protecting the environment. Preservation of the environment and keeping the ecological balance unaffected is a task which is not only an obligation of the successive Governments but also every citizen must undertake as a social obligation. The word "environment" is of broad spectrum which brings within its ambit " a hygienic atmosphere and ecological balance". It is therefore not only the duty of the State but also the duty of every citizen to maintain hygienic environment. Hygienic environment is an integral facet of a right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Therefore, there is a constitutional imperative on the State and its agencies not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the natural environment.

I would like to emphasize the following observations made by Sathasivam, J. in *U.P. Pollution Control Board Vs. Bhupendra Kumar Mody* (2009) 2 SCC 147 -

*" Courts cannot afford to deal lightly with cases involving pollution of air and water. The message must go to all concerned persons whether small or big that the Courts will share the Parliamentary concern and legislative interest of the Act to check the escalating pollution level and restore the balance of our environment. Those who discharge noxious polluting effluents into streams, rivers or any other water bodies which inflicts detriment on the public health at large should be dealt with strictly **de hors to** the technical objections."*

The Fundamental Rights referred to in Chapter III of our Constitution should be interpreted in the light of the Directive Principles of State Policy and the fundamental duties referred to in Article 28. By defining the constitutional goals, the Directive Principles and fundamental duties set forth the standards or norms of reasonableness which must guide and animate governmental action.

If no one can maintain an action for redress of a public wrong or public injury, it would be disastrous to the rule of law for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The strict rule of standing which insists that only a person who had suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule evolved which gives standing to any member of the public who is not a mere busy body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or its agencies by any citizen will induce the State or its agencies to act with greater responsibility and care thereby improving the administration of justice. In any event, the Court observes that the Petitioner has filed this application on 17.08.2015 which is within one month of his becoming aware of the document marked **P7** only on 17.07.2015 as averred in paragraph 35 of the Petition. Hence, the Court cannot conclude that this Petition has been filed outside the time limit prescribed by Article 126(2) of the Constitution.

Learned President's Counsel of the Petitioner strongly contended that the Petitioners own document marked **X**, namely, the case record in S.C. F.R. 495 /2008 shows that the annual permits marked **P22(a) and P22(b)** were issued on 08.11.2005, and the Petitioner instituted S.C. F.R. Application 495/2008 on 24.10.2008. Thus, at least, as at 24.10.2008 that the Petitioner was aware of the said permits that were issued to the 10th to 15th Respondents. Ratnayake, J. in the course of the judgment in S.C. F.R. 495/2008 (2010) 1 S.L.R. 1 at page 21 noted as follows:

".....it is clear that the alienation of the lands and the granting of permission to construct houses in the lands which are the subject matter of this

application have been done in violation of the applicable laws and regulations in an arbitrary manner by the 1st Respondent Authority thereby violating Article 12(1) of the Constitution.

Due to the above reasons, I hold the 1st Respondent Authority has violated Article 12(1) of the Constitution by (i) alienation and (ii) granting of permission to construct houses in respect of the lands which are the subject matter of this application.”

The Judges of the apex Court cannot shut their eyes to injustice, otherwise, the apex Courts would not be able to perform the high and noble role which it was intended to perform according to the faith of the Constitution. The Court cannot permit a repetition of a wrong action by the 1st Respondent Authority after the judgment was delivered in 2010. For the reasons set forth above, I overrule the first Preliminary Objection.

The Second Preliminary Objection of the Learned President’s Counsel for the 10th, 11th, 12, 13th, 14th and 15th Respondents was that the Petitioner has failed to comply with Rule 44(1)(b) of the Supreme Court Rules of 1990 as the Petitioner has failed to name the Respondents in compliance with the Rules.

Rule 44(1)(b) of the Supreme Court Rules of 1990 provides as follows :-

“Where any person applies to the Supreme Court by a Petition in writing, under and in terms of Article 126(2) of the Constitution, for relief and redress in respect of an infringement or imminent infringement, of any fundamental right or language right by executive or administrative action he shall :

(b) name as respondents the Attorney General and the person or persons who have infringed or are about to infringe, such right;

It must be noted that in terms of Article 126(4) of the Constitution, the Supreme Court has the power to grant such relief or make such directions as it may deemed just and equitable in respect of any Petition. This Court in *Jayanetti Vs. Land Reform*

Commission (1984) 2 S.L.R. 172 at 179 noted that “Any procedural rules must be considered secondary to the constitutional guarantees” and observed as follows:-

“This is an extensive jurisdiction and it carries with it all implied powers that are necessary to give effect and expression to our jurisdiction. We would include within our jurisdiction, inter alia, the power to make interim orders and to add persons without whose presence questions in issue cannot be completely and effectually decided. In fact, our present decision is in no way widens the ambit of Article 126 but seeks to articulate its real scope and make the remedy more effective.”

Thus , the Court cannot dismiss the application merely because the Petitioner has failed to name the Respondents. The Court directs the Petitioner to include the names of the Officers who hold the Offices of the Second, Third, Fourth and Fifth Respondents within a period of two weeks from today in order to consider the application further.

The Registrar is directed to fix a date in consultation with all Counsel for consideration of Leave to Proceed, once the caption is amended as aforesaid.

CHIEF JUSTICE

NALIN PERERA, J.

I agree.

JUDGE OF THE SUPREME COURT