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

In the matter of an Application under and in terms of Article 126 read with Article 17 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Application No. SC/FR/ 329/2017

1. Chandana Suriyarachchi
   No. 55B, Pahala Kosgama,
   Kosgama.

2. G.V. Siripala
   No. 11,
   Salaawa, Kosgama.

3. W.S. Sudath Kumara
   No. 8,
   Salaawa, Kosgama.

4. W. Dharmadasa
   Saraswathie Salon,
   Salaawa, Kosgama.

5. N. Nimalsiri
   Nandana Hotel,
   Salaawa, Kosgama.

6. K.A. Walter
   Kirisena Stores,
   Salaawa, Kosgama.

7. M.D.H. Joseph Perera

Karangoda Tailors,
Salaawa, Kosgama.

8. P.K. Rupasinghe
   No. 317, Boralugoda,
   Kosgama.

9. T.A.D.C. Gunarathna Jayathilake
   No. 67, Vidyala Mawatha,
   Akarawita, Kosgama.

10. W.K. Senarathne
    No. 250,
    Salaawa, Kosgama.

11. W.K.P.D. Senarathna
    No. 15/2/B, Salon Purnima,
    Salaawa, Kosgama.

12. W.M. Kamal Priyantha
    No. 5/A, Upper Floor of Hemantha Hardware,
    Salaawa, Kosgama.

13. H.W. Charith Widuranga
    No. 217, Widuranga Salon,
    Salaawa, Kosgama.

14. N. Ranasinghe
    No. 272, Lenadora Hotel,
    Salaawa, Kosgama.

15. Deraniyagala Janak Priyalal
    No. 30/1/B, High Level Road,
    Salaawa, Kosgama.

16. J.A.S.P.C. Jayasuriya
    Sanjeewa Food Corner,
    No. 30/1/1/A, Salaawa, Kosgama.

17. W.C. Senarath Kumara
    Super Son Institute,
    Upper Floor of Hemas Hardware,
    Salaawa, Kosgama.

18. H.M.N. Bandara
    Sala Factory Hotel,
    Salaawa, Kosgama.

19. D.G.B. Pathma Kumara
    No. 20/8, Akarawita, Kosgama.

20. K.A.D. Priyantha Kumara Thilaka
    No. 256, New Sala Maha Kade,
    Salaawa, Kosgama.

21. S.H. Hemantha Priyankara Rodrigo
    Hemas Hardware,
    Salaawa, Kosgama.

22. P.K.D.K. Perera
    No. 55, Salaawa, Kosgama.

23. R.H. Kamal Surendra
    Kamal Motors, Near the Hospital,
    Salaawa, Kosgama.

24. H.V. Premalalachandra
    No. 25/1, Thalakoratuwa,
    Arapangama, Kosgama.

25. R. Mallika Kariyawasam Perera
    No. 33, Hospital Road,
    Salaawa, Kosgama.

26. M.A. Helan Thushari
    No. 277/01, Salaawa,
    Kosgama.

27. N.W.H.L. Saman Kumara
    No. 9B, Athkam Niwaasa,
    Salaawa, Kosgama.

28. N.A. Hemantha Kumara
    No. 27B, Athkam Niwaasa,
    Salaawa, Kosgama.

29. R.A. Shalika Sandaruwani
    No. 8/1, Athkam Nowaasa,
    Salaawa, Kosgama.

30. W.A. Dhammika Sajee
    No. 22A, Athkam Niwaasa,
    Salaawa, Kosgama.

Petitioners

Vs.

1. Secretary
   Ministry of Defence,
   Baladaksha Mawatha,
   Colombo 3.

2. Secretary
   Ministry of Disaster Management,
   Vidya Mawatha, Colombo 7.

3. Secretary
   Ministry of Finance,
   Colombo 1.

4. District Secretary
   District Secretariat of Colombo,
   Narahenpiya, Colombo 5.

5. Divisional Secretary
   Divisional Secretariat,
   Seethawaka, Hanwella.

6. Commander of the Army
   Army Headquarters,
   Colombo 1.

7. Hon. Anura Priyadharshana Yapa
   Minister of Disaster Management,
   Vidya Mawatha, Colombo 7.

7A. Hon. Chamal Rajapaksa
   Minister of Disaster Management,
   Vidya Mawatha, Colombo 7.

8. Hon. Mangala Samaraweera
   Minister of Finance and Mass Media,
   The Secretariat Building,
   Lotus Road, Colombo 1.

9. Hon. Susil Premajayantha
   Minister of Science, Technology and Research,
   No. 408, Galle Road,
   Colombo 3.

10. National Council for Disaster Management
Ministry of Disaster Management,
Vidya Mawatha, Colombo 7.

11. Chief Valuer
Department of Valuation,
'Valuation House', No. 748,
Maradana Road, Colombo 10.

12. K.C. Niroshan
Additional District Secretary,
District Secretariat of Colombo,
Narahenpiya, Colombo 5.

13. Honourable Attorney-General
Attorney General's Department,
Colombo 12.

Respondents

Before : **Honourable L.T.B. Dehideniya, J**
Honourable E.A.G.R. Amarasekara, J
Honourable Yasantha Kodagoda, PC, J

Appearance: Shantha Jayawardena with Chamara Nanayakkarawasam and Hiranya Damunupola for the Petitioners instructed by Sunil Watagala.
Rajiv Goonethilake, Senior Deputy Solicitor General for the 1st to 6th and 11th Respondents.

Argued on: 5th May, 2022

Written Submissions:
For the Petitioner filed on 15th October 2020 and 26th October 2022
For the Respondents filed on 20th October 2020 and 27th May 2022

Decided on: 12th January, 2023

Yasantha Kodagoda, PC, J

This judgment relates to an Application filed by the Petitioners in terms of Articles 17 and 126 of the Constitution. Following the Application being supported for the grant of leave to proceed, the Supreme Court has granted leave in terms of Article 12(1) of the Constitution.

Case for the Petitioner

All the Petitioners are residents of the Salawa area in Kosgama. At the time of the incident referred to in this judgment, they had engaged in various businesses and vocations, and their business establishments and places of work were also located in the same area.

In 1994, the Sri Lanka Army established an Army camp at the site of the former State Timber Corporation in Salawa, located adjacent the Colombo – Avissawella main road, in Kosgama. Within the army camp was one of the main armories of the Sri Lanka Army. On the night of 5th June 2016, an explosion occurred within the army camp (not suspected of having been intentionally caused), which resulted in the entirety of the armory catching fire and a series of dangerous and huge explosions occurring. Projectiles (some of which were parts of explosives) from within the camp flew out, resulting in a large number of houses and business establishments in the area of Salawa catching fire and getting fully or partly destroyed. The entire armory was destroyed.

The Petitioners and other inhabitants of the area who lived within a 3 km radius were initially evacuated from the area and temporarily located for several weeks. After several weeks, they were permitted to return to their premises. In addition to the Petitioners, approximately 250 other families were also affected by this explosion and the ensuing fires.

Based on the degree of damage caused, those who could not live in their houses, were provided money to rent-out alternate housing. After some time, the police recorded statements of the Petitioners and others whose properties and business were affected.

The Petitioners have presented to this Court details of damage caused to their dwellings, personal belongings, business premises and to their cultivation and livestock.

The Petitioners have stated that the Cabinet of Ministers took certain decisions regarding this matter and thereby authorized the granting of relief to the victims of the explosion and fire, which included the Petitioners. The Cabinet of Ministers had also allocated funds for the payment of compensation. A committee chaired by Dr. S. Amalanadan, an Additional Secretary to the Ministry of Disaster Management had been established to assess and determine compensation payable to the affected persons. The 1st, 19th, 20th and 21st Petitioners were members of the committee.

Meanwhile, as part of the scheme put in place by the government, from about 15th June 2016, officers of the Valuation Department visited the area, inspected affected sites and engaged in a process of assessing the losses and damages suffered by the affected families. Though not the subject matter of this Application, the Petitioners have alleged that the losses suffered by them were not properly assessed by these officials. Officers of the Sri Lanka Army have also engaged in a process of assessing the damage suffered by the residents of the area. Some of the residential properties which had been partially damaged had been repaired by members of the armed forces and returned to their respective former occupants. However, the Petitioners claim that their business premises were not repaired. The Petitioners have also received monetary compensation from the government. However, they allege that in comparison with the loss to their property and businesses, the compensation so received was grossly inadequate. The Petitioners claim that they did not receive any compensation for loss of income from their business activities for the period following the incident. Once again, this aspect is also not the subject matter of this Application.

Meetings of the above-mentioned committee had been held on 15th, 22nd and 29th July 2016. The 12th Respondent – K.C. Niroshan, Additional Divisional Secretary who was also a member of the committee had openly showed his displeasure towards the Chairman of the committee. The Petitioners claim that the 12th Respondent 'scuttled' progress being achieved by this committee, as he disliked being subordinate to the Chairman Dr. Amalanadan. When the Petitioners who were members of the committee requested the 12th Respondent to convene meetings of the committee so that progress could be made with regard to payment of compensation, the 12th Respondent is alleged

to have told them that he cannot work subordinate to Dr. Amalanadan, referring to him in a derogatory term.

Once compensation payable to the affected persons had been computed, those amounts were notified to them and those dissatisfied had presented administrative appeals. Sequel thereto, some amounts had been increased. The Petitioners have presented to this Court details of compensation they received and reasons as to why they claim that the amounts given by the government is insufficient. Further appeals presented by the Petitioners to higher authorities have not yielded a positive outcome.

In view of the foregoing, on or about 6th September 2016 the 1st Petitioner acting on behalf of the Petitioners has presented a complaint in this regard to the Human Rights Commission of Sri Lanka (hereinafter sometimes referred to as 'the HRCSL' and sometimes as 'the Commission') seeking the following reliefs:

(i) Cause a re-assessment of the damages caused to movable properties of those who are disputing the original assessment carried out by government authorities.
(ii) Cause a declaration to be issued disclosing the criteria applied for the assessment of damages to movable and immovable properties.
(iii) Cause a direction that the amount expended by the Army to carryout temporary repairs not be deducted from compensation payable.
(iv) Cause the grant of relief to businessmen and others whose livelihoods have been affected until their businesses / livelihoods are revived.
(v) Cause the grant of compensation for damages and destruction caused to agricultural lands, farms and vehicles.

On 29th December 2016, the HRCSL conducted an inquiry into the complaints. The 1st, 2nd, 3rd, 5th, 6th, and 11th, Respondents were represented at the inquiry. On 23rd January 2017 and 29th March 2007 further sessions of inquiry were held. At the end of the proceedings of 29th March 2017, the Commission observed the need for the following:

(i) A proper assessment of the damage caused to all property, with the participation of officers who have technical expertise;
(ii) Determine the compensation payable for loss of money, jewellery and misplacement of property;

(iii) Provide relief or concessions with regard to inability on the part of the Petitioners to pay for goods purchased and loans obtained;
(iv) Establishment of a fair procedure to consider objections and appeals submitted in respect of assessment of compensation.

On 3rd May 2017, the Commission announced the following 'interim recommendation' ("P19"). The Petitioners state that the 1st to 3rd, 5th, 6th and 11th Respondents expressed agreement with these interim recommendations.

(i) Establishment of an Appeals Committee comprising of the Respondents.
(ii) Preparation of a template to obtain information regarding damages caused to property and distribute such forms.
(iii) Provide fresh opportunity for dissatisfied parties to present appeals.
(iv) Collect information pertaining to damage within 14 days of the distribution of the above-mentioned forms.
(v) Prepare assessments in respect of every application.
(vi) Report to the HRCSL regarding the reason for the staying of the monthly interim payment of Rs. 50,000/=.
(vii) Look into the welfare of children.

In terms of this 'interim recommendation' made by the HRCSL, the Respondents were required to submit a report to the HRCSL before 5th June 2017. They were required to provide information regarding the status of implementation of the recommendations. The Petitioners claim that the Respondents did not take any steps to implement the recommendations of the HRCSL and did not submit a Report to the HRCSL. In the circumstances, by letter dated 30th June 2017, the Commission called upon the Chief Assessor to inform the HRCSL by 14th July 2017 regarding steps taken to implement the recommendations of the HRCSL. Subsequently, the HRCSL called upon both the Petitioners and the Respondents for a further inquiry to be held on 23rd August 2017. On that date, only a nominee of the 2nd Respondent attended the inquiry. He notified the HRCSL that the Ministry of Disaster Management was not prepared to establish the mechanism recommended by the HRCSL. He has further stated that the said Ministry is of the view that reliefs have been adequately provided to the Petitioners.

In view of the foregoing, the Petitioners claim that the Respondents have failed to give effect to the interim recommendations of the HRCSL. The Petitioners further claim

that the Respondents have no valid reason to refuse to comply with the recommendations made by the HRCSL. In the circumstances, the Petitioners claim that the failure and refusal on the part of the Respondents to implement the interim recommendations made by the HRCSL is an infringement of the Fundamental Rights of the Petitioners guaranteed under Article 12(1) of the Constitution.

Case for the Respondents

The case for the Respondents was presented by the 2nd Respondent – Secretary to the Ministry of Disaster Management.

The position of the Respondents is that sequel to the explosion and fire referred to in the Petition, a mechanism was developed to assess the damage caused to residents of the affected area, and in terms of that mechanism, following the police having recorded the statements of those affected, officers of the valuation department visited the area, examined affected premises and engaged in a valuation. As an interim measure, all affected persons were given an interim allowance of Rs. 50,000/= per month for a period of 3 months, for temporary accommodation. An allowance of Rs. 50,000/= per month had been paid due to loss of monthly income and Rs. 10,000/= per month had been paid to workers of damaged business premises and owners of damaged three-wheelers. All the affected houses were repaired by members of the Sri Lanka Army. Thereafter, in terms of certain decisions taken by the Cabinet of Ministers, compensation had been granted to those affected by the incident.

The 2nd Respondent presented to this Court detailed information regarding compensation awarded to the Petitioners. The 2nd Respondent has denied the allegation that the compensation granted was grossly inadequate. His position is that the government made maximum effort to compensate the victims by rebuilding the affected premises and establishing a mechanism for valuation of damages and payment of compensation. Those who were dissatisfied with the award of compensation were provided an opportunity of presenting an appeal.

According to the 2nd Respondent, following the HRCSL having made certain interim recommendations on 3rd May 2017, the then Secretary to the Ministry of Disaster Management had by letter dated 31st August 2017 (R1) written to the HRCSL explaining why in accordance with the interim recommendation made by the HRCSL, a separate

mechanism was not established afresh to consider the grievances of the Petitioners and the others affected by the incident.

The position advanced by the 2nd Respondent is that two opportunities were given to the Petitioners to present appeals against valuation of damage and losses caused and regarding the compensation granted.

The concluding position of the 2nd Respondent is that in view of the mechanism established by the State to assess the damage, and award compensation to affected persons and the award of interim relief and compensation, the interim recommendations made by the HRCSL became redundant.

According to the 2nd Respondent, even as at 16th October 2018, the inquiry regarding this matter before the HRCSL was pending and no final determination had been made by it. Further, no action has been taken by the HRCSL regarding the alleged non-compliance of the interim recommendations made by the HRCSL.

Submissions made on behalf of the Petitioners

The primary submission made by learned counsel for the Petitioners was that there was a failure and refusal on the part of the Respondents to comply with the 'interim recommendation' made by the HRCSL that a mechanism (as recommended by the HRCSL) be put in place and implemented for the purpose of assessing / re-assessing the damage and losses caused to the Petitioners and the other inhabitants of the area and awarding compensation based upon acceptable criteria. It was submitted that such failure and refusal was arbitrary.

Learned counsel drew the attention of this Court to section 10(b) of the Human Rights Commission of Sri Lanka Act (hereinafter sometimes referred to as 'the Act') and submitted that the Commission has been empowered to inquire into and investigate complaints pertaining to infringement of fundamental rights and to provide resolution thereof by conciliation and mediation. He submitted that the interim recommendations which the Commission made were 'with the agreement of the 1st to 9th Respondents'. He submitted that the Act does not state that a recommendation made by the Commission is not binding. Therefore, he submitted that there was an obligation in law for the Respondents to comply with the recommendations made. Citing the case of ***Sri***

Lanka Telecom Ltd. v. Human Rights Commission of Sri Lanka*, [SC Appeal No. 215/12, SC Minutes 1st March 2017]* learned Counsel submitted that the Supreme Court has held that a recommendation made by the HRCSL can be judicially reviewed in the exercise of the writ jurisdiction. Citing an excerpt from the judgment, he submitted that the Supreme Court had rejected the notion that as a decision of the Commission was a mere recommendation which could not be enforced, and that nothing could be done in an instance where a recommendation is not implemented.

Learned counsel for the Petitioners submitted that if officers of the state are permitted not to implement recommendations made by the HRCSL, the entire purpose for which the Commission has been established will be rendered nugatory and futile.

In view of the foregoing, learned counsel for the Petitioners submitted that this Court should determine that the refusal on the part of the Respondents to carry-out the interim recommendations of the Human Rights Commission of Sri Lanka was an infringement of the fundamental rights of the Petitioners.

Learned counsel for the Petitioners further submitted that if a state official does not comply with a recommendation made by the HRCSL, the Commission may acting in terms of section 15(8) of the Act present to the President a full report on the matter to be placed before the Parliament. He stressed that a public authority should not be permitted to arbitrarily refuse to give effect to a recommendation made by the HRCSL, taking up the position that a recommendation of the HRCSL is not binding.

Submissions made on behalf of the Respondents

Learned Senior Deputy Solicitor General submitted that the legal issue presented to this Court was unique, in that there was no judicial precedent on the questions (i) whether the state was legally obliged to give effect to a recommendation made by the Human Rights Commission of Sri Lanka, and (ii) whether non-implementation of a recommendation made by the HRCSL amounted to an infringement of a fundamental right. He submitted that the failure or refusal of the Respondents to implement the 'interim recommendations' made by the HRCSL sequel to a complaint inquired into by the Commission does not give rise to an infringement of a fundamental right of the complainant. He further submitted that the HRCSL Act contains a specific mechanism to deal with a possible failure or refusal to carry-out such recommendation. In terms of

section 15(8) of the HRCSL Act, the HRCSL may prepare and submit a report on the matter to the President who is required to cause such report to be placed before Parliament. Learned Senior DSG submitted that the report of the Commission being submitted to the President and subsequently placing it before the Parliament is to enable policy or administrative action to be taken as regards the impugned conduct and for the head of the Executive (the President) and for the legislature (Parliament) to consider 'a deviation in policy or action being taken, if deemed appropriate'.

Responding to the primary allegation made by the Petitioners against the Respondents, learned Senior Deputy Solicitor General for the Respondents submitted that by letter dated 31st August 2017 ("R1"), the 2nd Respondent had explained to the Commission reasons as to why the interim recommendations of the Commission could not be given effect to. The Commission had thereafter not made any further decisions or recommendations, and thus, the matter complained of remains 'within the jurisdiction of the Commission for a final decision'. Thus, as the matter is still before the HRCSL, the Petitioners cannot complain of an infringement of their fundamental rights. He also submitted that the refusal on the part of the Respondents to implement the interim recommendations of the HRCSL was reasonable and certainly not arbitrary and therefore it cannot be alleged that the Respondents had infringed the fundamental rights of the Petitioners.

Learned Senior DSG further submitted that as revealed in "R1", (i) two rounds of assessments had been carried out by state officials of damaged and destroyed property, (ii) wide publicity had been given to enable dissatisfied persons to present appeals in respect of assessments carried out, (iii) appeals had been accepted even though some appeals had been presented out of time, (iv) Rs. 50,000/= interim allowance had been given to affected persons till such time the Army reconstructed their damaged dwellings and other places affected, (v) the payment of the interim allowance had been terminated only after the affected persons were resettled, and (vi) needs of affected school children were fulfilled. In the circumstances, he submitted that carrying out the interim recommendations made by the HRCSL was made redundant. He pointed out further that, as revealed in "R11" the 30 Petitioners have been adequately compensated, with the highest amount being Rs. 30 million being paid to the 21st Petitioner.

Concluding his submission, learned Senior DSG submitted that it appears that the HRCSL not having taken any action following the receipt of "R1" reveals that the Commission was satisfied with the action taken by the Respondents. He submitted that the Commission had not taken any action under section 15(8) of the HRCSL Act, since it was content that meaningful action had been taken by the Respondents and hence no further action was necessary. In view of the foregoing submissions, learned Senior DSG submitted that the Respondents had not infringed the fundamental rights of the Petitioners and therefore urged that this Application be dismissed.

Consideration of material placed before Court, submissions made by Counsel and conclusions reached

A consideration of the material placed before this Court and the submissions made by learned counsel for the Petitioners and the Respondents reveal clearly that the ground of complaint before this Court is that the Respondents have failed to give effect to and implement certain recommendations made by the Human Rights Commission of Sri Lanka referred to in these proceedings as 'interim recommendations'. The contention of the Petitioners was that the non-implementation of these recommendations was arbitrary and unreasonable, and that such conduct on the part of one or more Respondents amounted to an infringement of the fundamental right to equal protection of the law, guaranteed under Article 12(1) of the Constitution.

For the purpose of clarity, it must be noted that in the present Application, the Petitioners do not allege that their fundamental rights were infringed by the government by non-payment or insufficient payment of compensation. What they allege is that the non-implementation of the interim recommendations made by the Commission by officials of the government, amounts to an infringement of their fundamental right to equal protection of the law guaranteed by Article 12(1) of the Constitution.

In view of the foregoing circumstances, it is necessary to consider whether the Respondents are *'guilty'* of what has been alleged by the Petitioners, namely unreasonable and arbitrary non-implementation of the interim recommendations made by the HRCSL. However, prior to considering that aspect of the case, it is my view that a survey and examination of certain provisions of the HRCSL Act would be useful for the purpose of appreciating the 'determination of the truth' and 'dispute resolution

function' of the HRCSL and the legal significance of 'recommendations' of the Commission connected with these functions.

The centerpiece so to say of the legislative infrastructure and the ensuing system created by the Human Rights Commission of Sri Lanka Act, No. 21 of 1996 (hereinafter referred to as 'the Act') towards the promotion and protection of fundamental rights, is an institution created by the Act called the *"Human Rights Commission of Sri Lanka"* (HRCSL), a body corporate, consisting of five members having knowledge of or practical experience in matters relating to human rights, and appointed by the President on the recommendation of the Constitutional Council. It is evident that the HRCSL Act has been enacted (a) for the promotion and protection of fundamental rights, (b) to advise and assist the government on the manner in which fundamental rights may be promoted and protected by legislative and administrative means, (c) **provide for the ascertainment of truth, and for dispute resolution with regard to alleged infringement or imminent infringement of fundamental rights**, (d) to facilitate compliance with international norms and standards relating to human rights, and (e) to create awareness regarding human rights. The Human Rights Commission of Sri Lanka is a 'national human rights institution' (generally referred to as a "NHRI") and is called upon to perform vital and critically important functions aimed at the promotion and protection of Human Rights.

The creation of an independent, para-judicial or administrative state (nevertheless independent) institution statutorily empowered to engage in investigation and inquiry, ascertainment of the truth, possessing authority to engage in dispute resolution pertaining to infringement of human rights, and for the performance of a multitude of other functions aimed at the promotion and protection of human rights, is a globally recognized, critically important norm. An independent, competent and effective national human rights institution is a cornerstone of a country's mechanism for the promotion and protection of human rights. In Sri Lanka's context, it is aimed at subordinately augmenting the role of the Supreme Court in the area of disputes arising out of alleged infringement / imminent infringement of fundamental rights.

Needless, I assume to emphasize, when a dispute exists pertaining to the infringement or imminent infringement of a fundamental right and a complaint is made to the Commission, engaging in truth-seeking through mechanisms such as investigation and

inquiry, thereby ascertaining the truth, causing the dispute to be resolved, and awarding relief to the affected person, is only one function of the Commission. The investigative, inquisitorial and dispute resolution mechanisms provided for in the Act are subordinate and alternate to the Constitutional mechanism created by Article 17 read with Article 126 of the Constitution for the protection of fundamental rights through judicial adjudication of disputes pertaining to the infringement and imminent infringement of fundamental rights. A careful consideration of the provisions of the Act clearly reveals that the HRCSL has not been created to make inroads towards the jurisdiction of the Supreme Court. Nor has the Commission been established to create a parallel system for judicial or quasi-judicial adjudication of disputes.

Nevertheless, it must be appreciated that the investigational, inquisitorial and dispute resolution mechanisms created by the HRCSL Act is aimed at *inter-alia* providing the public a mechanism to which they may have convenient and expeditious access for the resolution of disputes arising out of the alleged infringement of their fundamental rights and to obtain relief, without having to access the Constitutional mechanism by invoking the jurisdiction of the Supreme Court. In the circumstances, for the purpose of having fundamental rights related disputes resolved and to obtain relief, if they choose to, the public need not go through what is now observable as being a cumbersome, complicated, time-consuming and possibly expensive method of judicial adjudication of disputes.

A consideration of the HRCSL Act amply reveals that the Act had been enacted with the noble objectives of *inter-alia* promoting and protecting fundamental rights and to provide people with an alternate and convenient route to have disputes resolved and to secure relief. I repeat, while emphasizing that the purpose for which the Human Rights Commission of Sri Lanka has been established by the Act is manifold, ascertainment of the truth and dispute resolution pertaining to alleged infringement and imminent infringement of fundamental rights is only one such purpose. I observe that if the system for dispute resolution of the Commission works efficaciously, it will, while providing relief to the public, also serve the invaluable purpose of lessening the burden on the Supreme Court. Such reduction of the inflow of fresh fundamental rights Applications will contribute towards making the justice delivery system more efficient. However, I must state that the efficacy of the system created by the HRCSL Act, is a different matter altogether.

In terms of section 10 of the HRCSL Act, the **functions** of the Commission include – the duty to **inquire into and investigate complaints** regarding infringement or imminent infringement of fundamental rights, and in accordance with the provisions of the Act provide for resolution thereof by **conciliation** and **mediation**. For the purpose of giving effect to the functions of the Commission, section 11 of the HRCSL Act has conferred on the Commission certain **powers**. Those powers include the power to **investigate** any infringement or imminent infringement of fundamental rights in accordance with the provisions of the Act. Section 14 of the Act provides (a) the manner in which the Commission may take cognizance of an alleged infringement or imminent infringement of a fundamental right (on its own motion or on a complaint made to it), (b) who may present a complaint (an aggrieved party, aggrieved group of persons, or a person acting on behalf of an aggrieved person or a group of persons), (c) what type of matter the Commission may investigate into and limitations thereto [allegations of the infringement or imminent infringement of a fundamental right caused (i) by **executive or administrative action** or (ii) as a result of an act which constitutes an action under the Prevention of Terrorism Act committed by **any person**]. Section 18 confers on the Commission powers to enable it to conduct an inquiry, including the power to summon persons to testify, examine witnesses, record their evidence under oath or affirmation, and to procure documents.

According to section 15(2) of the HRCSL Act, where an investigation conducted by the Commission under section 14 discloses the infringement or imminent infringement of a fundamental right, the Commission shall have the **power** to refer the matter, where appropriate, for **mediation** or **conciliation**. Under section 15(3) of the HRCSL Act, in the following situations, namely (i) where it appears to the Commission that it is not appropriate to refer the matter for conciliation or mediation, or (ii) where it appears to the Commission that it is appropriate to refer the matter for conciliation or mediation, or (iii) where it appears to the Commission that it is appropriate to refer the matter for conciliation or mediation, but all of any of the parties object or objects to conciliation or mediation, or (iv) where the attempt at conciliation or mediation is not successful, the Commission may –

(a) **recommend to the appropriate authorities**, that prosecution or other proceedings be instituted against the person or persons infringing such fundamental rights,

(b) **refer the matter to any court having jurisdiction** to hear and determine such matter in accordance with the rules of court as may be prescribed therefor, and within such time as is provided for invoking the jurisdiction of such court by any person, or

(c) **make such recommendations as it may think fit, to the appropriate authority** or person or persons concerned, with a view to preventing or **remedying** such infringement or the continuation of such infringement.

It would thus be seen that upon the receipt of a complaint alleging infringement or imminent infringement of a fundamental right, the Commission **shall** in terms of section 10 paragraph (b) of the Act, investigate and inquire into the incident said to have given rise to the alleged infringement. When one considers section 15(5), it is evident that during the inquiry, the principles of *audi alteram partem* should necessarily be adhered to by the Commission. Where the investigation and inquiry reveal an infringement or imminent infringement of a fundamental right, in terms of sections 14 and 15(3) of the Act, the Commission has been vested with a degree of discretionary authority (following a consideration of the findings of such investigation and inquiry) to refer the matter for mediation or conciliation of the dispute for the purpose of resolution of the dispute.

Notwithstanding the method of dispute resolution resorted to or attempted (may it be mediation or conciliation) the Commission may at its discretion where it deems doing so to be appropriate, make a **recommendation** aimed at the resolution of the dispute. That is primarily for the purpose of affording relief to the person whose fundamental rights have been infringed. The voluntary character of mediation and conciliation as dispute resolution mechanisms has been recognized by the Act, as section 15(3) indicates the possibility of a disputant party to object to participate in mediation or conciliation.

In terms of section 16(5), where mediation or conciliation is successful in resolving the dispute, the mediator or conciliator shall report to the Commission the outcome including the settlement arrived at. Section 16(6) provides that where settlement has been arrived at through mediation or conciliation, the Commission shall make such **directions** (including directions as to the payment of compensation) as may be necessary to give effect to the settlement reached.

Section 15(3) provides that the Commission has been empowered to make a recommendation (i) notwithstanding the outcome of mediation or conciliation, and (ii) even in instances where mediation or conciliation has not taken place either because the Commission has deemed that engaging in such process is inappropriate, or one or both parties have declined to participate in mediation or conciliation, or the attempt at dispute resolution through mediation or conciliation has not been successful. However, it is evident from the scheme of the Act that the Commission may make a recommendation only after conducting an investigation and inquiry. The Act does not specifically provide for the Commission to make an 'interim recommendation'. However, taking into consideration the objects and purposes for which the Parliament has enacted Act No. 21 of 1996 and thereby established the Human Rights Commission of Sri Lanka, I find nothing contrary to law for the Commission in appropriate circumstances (following an investigation and inquiry conducted and a finding being arrived at that a fundamental right has been infringed or is imminently likely that a fundamental right will be infringed), making appropriate 'interim' recommendations.

In the instant case, an examination of the positions taken up by the Petitioners and the Respondents and the material placed before this Court, it is evident that by letter dated 6th September 2016 ("P15") the Petitioners have presented a complaint to the HRCSL regarding the insufficiency of the relief granted by the government in respect of the losses and damage suffered by them arising out of the explosion and fire that occurred at the Salawa Army camp on 05.06.2016. On 29.12.2016, 23.01.2017 and 29.03.2017 an '**inquiry**' into this complaint had been conducted by the HRCSL. That has been with the participation of the related Respondents. One can reasonably assume (and such position was not disputed by the parties) that associated with the inquiry, the Commission would have conducted an '**investigation**' into the complaint, as well.

Following the inquiry, whether the Commission attempted to resolve the dispute between the Petitioners and the Respondents through mediation or conciliation, is not clear. Neither party has taken up a specific position in that regard. However, according to the Petitioners, at the end of the inquiry held on 29.03.2017, the HRCSL made certain interim recommendations (which the Commission was entitled to) and they were read over by the Chairperson of the Commission. ("P19") The Petitioners claim that the 1st, 2nd, 3rd, 5th, 6th and 11th Respondents who were present, 'agreed' with these interim

recommendations. These recommendations were aimed at causing the establishment of a mechanism to provide relief to the Petitioners. An examination of "P19"reveals that agreement was reached between the complainants (Petitioners) and the Respondents regarding the said interim recommendations.

Though the Petitioners claim that the Respondents did not take steps to implement the interim recommendations of the HRCSL and did not submit a Report to the HRCSL, this position is contested by the Respondents. Their position is that in terms of the several Cabinet decisions, government officials continued with the payment of compensation and granting of other relief.

By letter dated 30th June 2017, the Commission has inquired from the Chief Valuer of the government (11th Respondent) regarding steps taken to implement the interim recommendations. Subsequently, on 23rd August 2017, a further session of inquiry had been conducted by the HRCSL. On that date, a nominee of the 2nd Respondent had informed the HRCSL regarding steps taken and details of compensation paid and other reliefs granted to those affected, and in the circumstances had stated that the Ministry of Disaster Management was not prepared to establish a new mechanism as recommended by the HRCSL.

According to the 2nd Respondent, by letter dated 31.08.2017 ("R1") addressed to the Commission, the Respondents have explained in detail action taken for the assessment of the damage and the payment of compensation and had accordingly explained that it would not be necessary to commence a fresh process aimed at re-appraisal of damage and losses and payment of compensation. Basically, the position of the Respondents is that the need to implement the 'interim recommendations' made by the Commission does not arise. That is due to substantial action having been taken by government authorities to provide for an effective mechanism to assess and determine losses and damage caused to the Petitioners, to determine compensation to be awarded and for the payment of compensation and awarding of relief.

The Respondents have also placed before this Court details of compensation and interim relief granted to the Petitioners. An examination of the material placed before this Court by the Respondents reveal that in fact the relevant authorities of the government have discharged their duties towards inhabitants of the area affected by the

explosion and fire by awarding substantial compensation and interim payments. Whether the relief so granted was reasonable and adequate is not the subject matter of this Application.

In view of the foregoing, the allegation made by the Petitioners against the Respondents that they unreasonably and arbitrarily refrained from giving effect to the 'interim recommendations' made by the Commission is in the opinion of this Court, ill-founded. Available material indicates that, as the government on its own volition had provided adequate relief to the Petitioners and others affected by the incident that took place in Salawa on the night of 05.06.2016, the need did not arise from the point of view of the Respondents to give effect to the interim recommendations made by the Commission.

It is also to be noted that upon the receipt of "R1", the Commission does not seem to have resumed its inquiry. In fact, following the receipt of "R1", the Commission seems to have satisfied itself that action taken by the Respondents sufficiently addressed the interim recommendations made by it. The Petitioners have not complained to this Court regarding the non-resumption of the inquiry by the HRCSL. The inference this Court can reasonably reach, is that upon a consideration of "R1", the Commission determined that as the Petitioners have been adequately compensated, no further inquiry was necessary.

In fact, in the instant matter, the Commission does not seem to have made a final recommendation in terms of section 15(3) of the Act. That is of course a matter of concern. The scheme of the HRCSL Act necessitates the Commission to arrive at a finding pertaining to each and every complaint it receives, and to do so within a reasonable period of time. Complaints received by the Commission cannot remain in limbo. However, the Petitioners have not complained to this Court regarding that failure on the part of the Commission to discharge its statutory function, and thus a finding in that regard by this Court is not necessary.

The Petitioners have also not complained to the Commission regarding the alleged non-implementation of the interim recommendations made by the Commission. That is a step that was well within the reach of the Petitioners. The inference to be reached is that the Petitioners themselves at that point of time were satisfied regarding the status of the payment of compensation and other relief granted by the Respondents. In the

circumstances, the Commission has not been called upon to take steps in terms of section 15(8) of the Act to report the matter to the President, who is required to place such report before Parliament.

In view of the foregoing, I am unable to agree with the position advanced on behalf of the Petitioners that the Respondents had arbitrarily and unreasonably failed to give effect to the interim recommendations made by the Commission. I find myself in complete agreement with the submissions made in that regard by learned Senior Deputy Solicitor General.

As the Commission has not made a **recommendation** (final recommendation) under section 15(3) of the Act or any other finding in terms of the HRCSL Act, the question as to whether non-implementation of a recommendation made by the Commission under section 15(3) founded upon unreasonableness or arbitrariness on the part of one or more Respondents, is only a moot point. In any event, as stated above, it is the view of this Court that there is no basis in fact or law to conclude that the Respondents have acted in an unreasonable or arbitrary manner.

However, in my opinion, it is necessary to observe that notwithstanding the fact that what the Commission acting in terms of section 15(3) of the Act is empowered to make *'is only a recommendation'* (terminology used by the learned Senior DSG) as opposed to a *'an order'* or *'a direction'*, it remains incumbent on the government to give effect to such recommendation. They are called upon to do so in the name and style of good governance and in the spirit of its obligations under the Constitution and international law to promote and protect human and fundamental rights. Should the government find itself in any difficulty in giving effect to or implementing the recommendations made by the Commission, as done by the Respondents in this matter, it must communicate its position to the Commission. In any event, section 15(7) read with section 15(8) of the Act gives rise to the requirement that the persons to whom the recommendation has been addressed to, should within the time period specified in the recommendation report back to the Commission on the status of the implementation of the recommendation. Arbitrary or unreasonable failure to comply with a recommendation made by the Commission, will give rise to legal repercussions (particularly from the perspective of Article 12(1) of the Constitution), which in the circumstances of this matter, need not be discussed in this judgment. It would be

pertinent to note that this Court has held in several judgments that arbitrary or unreasonable executive action would under certain circumstances amount to an infringement of Article 12(1).

In view of the foregoing, I hold that the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution have not been infringed by any of the Respondents. Therefore, this Application is dismissed. In the circumstances of this case, no order is made with regard to costs.

As this judgment relates substantially to the functioning of the Human Rights Commission of Sri Lanka and the Commission is not a party to the Application, the Registrar is directed to forward a copy of this judgment to the Chairperson of the Human Rights Commission of Sri Lanka.

Judge of the Supreme Court

L.T.B. Dehideniya, J

I agree.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J

I agree.

Judge of the Supreme Court