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

In the matter of an Appeal under and in terms of Section 15 (11) of the National Gem and Jewellery Authority Act, No. 50 of 1993.

1. K. G. Keerthi Karangoda
   Amuthagoda, Panukerapitiya,
   Hidellana, Ratnapura.

2. K. Sarath Gamini
   No. 79, Thembili Kadey Junction,
   Kandangoda, Higgashena,
   Kuruwita.

S.C. (Misc.) No. 02/2016
Appeal No. 02/08/මැණික්/05/2015

Appellants

Vs.

1. National Gem and Jewellery Authority,
   No. 25, Galle Face Terrace,
   Colombo 03.

2. Udaya R. Seneviratne,
   Secretary,
   Ministry of Mahaweli Development and Environment,
   'Sampathpaya'
   No. 82, Rajamalwatta Road,
   Battaramulla.

2A. Anura Dissanayake,
   Secretary,
   Ministry of Mahaweli Development and Environment,
   'Sampathpaya'
   No. 82, Rajamalwatta Road,
   Battaramulla.

2B. J. A. Ranjith
Ministry of Industries and Supply Chain Management,
No. 73/1, Galle Road,
Colombo 03.

2C. S. M. Piyatissa,
Secretary,
State Ministry of Gem and Jewellery Related Industries,
No. 561/3, Elvitigala Mawatha,
Narahenpita, Colombo 05.

3. Lumbini Kiriella
Legal Officer,
Ministry of Mahaweli Development and Environment,
'Sampathpaya'
No. 82, Rajamalwatta Road,
Battaramulla.

4. Asanka Sanjeewa Welagedara,
Chairman and Chief Executive Officer,
No. 25, National Gem and Jewellery Authority,
Galle Face Terrace,
Colombo 03.

4A. Reginald Cooray,
Chairman and Chief Executive Officer,
No. 25, National Gem and Jewellery Authority,
Galle Face Terrace,
Colombo 03.

4B. Amitha Gamage,
Chairman and Chief Executive Officer
No. 25, National Gem and Jewellery Authority,
Galle Face Terrace, Colombo 03.

4C. Thilak Weerasinghe,
Chairman,
National Gem and Jewellery Authority,
Galle Face Terrace,
Colombo 03.

5. M. P. N. M. Wickramasinghe,
Director General,
No. 25, National Gem and Jewellery Authority,
Galle Face Terrace,
Colombo 03.

5A. H. P. Sumanasekara,
Director General,
No. 25, National Gem and Jewellery Authority,
Galle Face Terrace,
Colombo 03.

5B. P. U. K. Thenuwara,
Director General,
National Gem and Jewellery Authority,
Macksons Tower, Alfred House Gardens,
Colombo 03.

6. Priyanthi Jayasinghe,
Assistant Director Legal,
No. 25, National Gem and Jewellery Authority,
Galle Face Terrace,
Colombo 03.

7. K. S. Abeynayake,
Assistant Director Enforcement and Regional Development,
National Gem and Jewellery Authority,
Regional Office,
Ratnapura.

7A. H. P. Karunathilake,
Deputy Director Enforcement and
Regional Development,
National Gem and Jewellery Authority,
Regional Office,
Ratnapura.

8. M. B. N. S. Munamalpe,
Assistant Director Enforcement and
Regional Development,
National Gem and Jewellery Authority,
Regional Office,
Ratnapura.

8A. M. P. I. C. Manchanayake,
Assistant Director Enforcement and
Regional Development,
National Gem and Jewellery Authority,
Regional Office,
Ratnapura.

9. J. M. Jayathilake Bandara,
No. 29, Mihindu Place,
Hidellana, Ratnapura.

Respondents

Before: **Hon. Vijith K. Malalgoda, P.C., J.**

Hon. Janak De Silva, J.

Hon. Mahinda Samayawardhena, J.

Counsel: Anuruddha Dharmaratne for the Appellants

Rajitha Perera, D.S.G. for the 1st and 2(C) Respondents

Vidura Gunaratne for the 9th Respondent

Written Submissions:

11.09.2019 by the 9th Respondent

Argued on: 21.11.2022

Decided on: 26.07.2024

Janak De Silva, J.

The dispute is on the issue of a gem mining licence to the 9th Respondent in respect of the land called 'Hiran Kumbura Owita' situated in 'Amuthagoda' in the Ratnapura district. He has been issued an annual gem mining licence for the corpus from 2006 to 2013.

In 2014, the 1st and 2nd Appellants also applied for a gem mining license. The 1st Respondent after due inquiry held that the 9th Respondent has been issued with a licence to carry out gem mining on the corpus for years without any objection by the Appellants and that the Appellants have failed to prove that the original owners of the corpus were entitled to an equal undivided 1/6 share. Accordingly, the application of the Appellants was rejected.

The Appellants appealed to the 2nd Respondent in terms of Section 15 (8) of the National Gem and Jewellery Authority Act No, 50 of 1993 ("Act"). The 2nd Respondent dismissed the appeal. He held that the 9th Respondent had established his right to a 2/3 share of the corpus and thus entitled to a gem mining licence. It was further held that the Appellants have failed to establish their entitlement to a gem mining licence and also that the corpus differs from the land described in the deeds relied upon by the Appellants.

Right to a Gem Mining License

The 1st Respondent has been empowered by Section 15 of the Act to issue gem mining licences. These licences can be issued in conformity with the State Gem Corporation By-laws, No. 1 of 1971 which have been kept alive by Section 54 (2)(h) of the Act.

According to By-Law 8 (2), no licence shall be granted to any person unless (a) he himself owns the land or (b) he has obtained the consent of so many of the other owners as to ensure that the applicant and such other consenting owners together own at least two-thirds of the land in respect of which the application has been made.

Neither the Appellants nor the 9th Respondent claim to be the absolute owners of the corpus. Both rely on the second limb, namely that the applicant and such other consenting owners together own at least two-thirds of the land in respect of which the application has been made.

Both the claims of the Appellants and the 9th Respondent flow from rights of *paraveni nilakarayas* to the corpus. Hence, it is necessary to examine the nature of *paraveni* or *praveni* rights which formed part of the system of land tenure under the Kandyan Kings in order to decide whether either party has satisfied the required criteria.

Service Tenures during Kandyan Kingdom

The use of the word *tenure* rather than *ownership*, appears to indicate the existence of a distinction between them.

According to Liyanapatabandi and Dharmasiri [L. N. D. Liyanapatabandi and L. M. Dharmasiri, *Evolution of Land Tenure and Land Ownership: Land Possession of*

Temples and Shrines in Sri Lanka, Research Reinforcement, Vol. 10: Issue 1 (May-October, 2022), page 20]:

> *"**Land ownership** may be defined as a bundle of rights. The rights are associated with ownership of land, such as rights to use, rent and sell it, use of any types of resources, make buildings, extracting minerals, and so on. However, the rights are limited by laws and regulations. However, Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. **Land tenure** is an institution, i.e., rules invented by societies to regulate behavior. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions (FAO, 2002)."* (emphasis added)

Codrington [H. W. Codrington, *Ancient Land Tenure and Revenue in Ceylon*, (Ceylon Government Press, July 1938), page 11] explains the classification by the right enjoyed by a possessor in ancient Ceylon as follows:

> *"By paraveniya, in Sanskrit guise paravēniya, is denoted that which has come down from one's ancestors; the Ceylon Tamil form is paravani. The Sanskrit word praveni has the meaning of "a braid of hair"; the Pali paveni in addition has that of "series, succession, line; tradition, custom, usage" […] Such land nowadays often is considered as absolute property. […]*
>
> *Opposed to paraveni is māruvena, "changing". This is often defined as tenure at will, but incorrectly as the tenant cannot be removed until the end of the cultivation year or season. In practice the māruvena tenant often remains without interference for many generations. This leads to*

claim that the land held is paraveni and but for the evidence of the Service Tenures Register such a claim would difficult to rebut. This development of māruvena tenure into paraveni doubtless has been going on through the centuries"

In ***Herath v. Attorney General*** **[60 N.L.R.193 at 205-206]**, Basnayake C.J. succinctly explained the service tenures in existence during the times of the Kandyan Kings. They are:

1. A village or gama in respect of which services (rajakariya) were performed were of four kinds, viz., *gabadagama, nindagama, viharagama*, and *dewalagama*.
2. *Gabadagama* is a royal village which was the exclusive property of the Sovereign. The Royal Store or Treasury was supplied from the *gabadagama*, which the tenants had to cultivate gratuitously in consideration of being holders of *praveni panguwas*.
3. *Nindagama* is a village granted by the Sovereign to a chief or noble or another person on a *sannasa* or grant. According to Codrington [supra., page 8], *Ninda* in Sanskirt means "one's own". The Tamil word was "nintam" which meant "one's own peculiar right, exemption from claim by others, immunity".
4. *Viharagama* is a village granted by the Sovereign to a *vihare***.**
5. *Dewalagama* is a village granted by the Sovereign to a *dewale*.
6. *Each gama or village consisted of a* number of holdings or minor villages. Each such holding or minor village was known as a *panguwa*. Each *panguwa* consisted of a number of fields and gardens.
7. *Panguwas* were of two kinds, viz., *praveni* or *paraveni panguwa* and *māruvena panguwa*.

8. A *praveni panguwa* is a hereditary holding and a *maruwena panguwa* is a holding given out to a tenant for each cultivation year or for a period of years.

   According to Wijayatunga [Harischandra Wijayatunga, *Legal Philosophy in Medieval Siṅhalē*, First Ed., 1989, pages 198-201], in practice there came into existence different terms to denote various types of *paraveni panguwas*. *Aňda paravēni* was Crown land given to a person as a heritable possession on condition that half of the produce be given to the State. However, according to Codrington [supra., pages 11-12] this was land which was originally the property of Government cleared and cultivated by individuals without permission. The cultivators or the persons who converted them into fields are entitled to one-half of the soil which they may either sell or mortgage and which is heritable.

   Kaṇu-is paravēni is agricultural high land cultivated once every seven to eight years and given to cultivator on condition that one fifth produce be given to the owner. According to Codrington [supra. 8] these were originally forests or jungles of large extent cut down and cleared by individuals, which were sown once every seven or eight years. In other words, they were chenas.

   Karudena paravēni is heritable agricultural land given to a cultivator on condition that one fifth of the produce be given to the owner.

   Otu paravēni is land given as a heritable possession for which a tithe of one tenth of the produce be paid to the owner. According to Codrington [supra., page 12) this type of interest was alienable.

9. The holder of a *panguwa* was known as a *nilakaraya*. They were of two kinds, *praveni* or *paraveni nilakarayas* and *maruwena nilakarayas*.

10. Historically *paraveni nilakarayas* were originally hereditary holders under the King before the grant of the royal village to the *ninda* lord. Basnayake C.J., for the purpose of convenience denoted the term '*ninda* lord' for the grantee of gama, irrespective if it was a nindagama, viharagama or dewalagama [supra., 205].
11. However, the *ninda* lord is not free to change them. They were free to transmit their lands to their male heirs but were not free to sell or mortgage their rights. They were obliged to perform services in respect of their *panguwas*. The services varied accordingly as the *ninda* lord was an individual, a *vihare* or a *dewale*. In the case of *vihares* or *dewales*, personal services were such as keeping the buildings in repair, cultivating the fields of the temple, preparing the daily *dana*, participating in the annual procession, and performing services at the daily pooja of the *vihare* or *dewale*. In the scheme of land tenure, the *panguwa* though consisting of extensive lands is indivisible and the *nilakarayas* are jointly and severally liable to render services or pay dues. Though the *panguwa* was indivisible, especially after a *praveni nilakaraya's* right to sell, gift, devise, and mortgage his *panguwa* came to be recognised, the practice came into existence of different persons who obtained rights from a *nilakaraya* occupying separate allotments of land for convenience of possession.
12. *The māruvena nilakaraya* though known as a tenant-at-will held on a tenancy which lasted at least for one cultivation year at a time. Unlike the *praveni nilakaraya* he could be changed by the *ninda* lord; but it was seldom done. He went on year after year but was not entitled to transmit his rights to his heirs. On the death of a *māruvena* tenant, his heirs are entitled to continue only if they receive the tenancy.

> According to the notes of John D'Oyley, *paraveni* tenants are those who held their lands before the *nindagama* or the temple village was granted to the proprietor, and *māruvena* tenants are those who receive their *panguwas* from the proprietor subsequent to the grant. This is confirmed by the Service Tenures Commissioners, who in their report stated that the only *paraveni* tenants were those who were on the land prior to the grant of the village to the *ninda* lord or *vihare* or *dewale*.

Māruvena panguwa was also known as *Bandara* land or *muttetu* **[*Banda v. Soysa* (1998) 1 Sri.L.R. 255 at 257]**.

Developments under the British

The *Rajakariya*, services rendered by the people directly to the King, was abolished by the British Government by an Order-in-Council dated 12th April 1832. Nevertheless, the service tenures system in relation to *nindagama*, *viharagama* and *devalagama* continued. In fact, the Order-in-Council dated 12th April 1832 specifically stated that such abolition should not be construed to affect the services performed by *nilakarayas* to any temples, *dewalayas* and to other owners or proprietors of such services.

The Service Tenures Ordinance No. 4 of 1870 ("Service Tenures Ordinance") was enacted to define the services due by the *"praveni"* tenant of "*wiharagama*", "*dewalagama*" and "*nindagama*" lands, and to provide for the commutation of those services. Hence any customary meaning ascribed to these terms were replaced by statutory definitions to the extent of any inconsistency.

The Service Tenures Ordinance provided statutory definitions to the following terms:

"*Māruvena nilakaraya*" shall mean the tenant at will of a *maruwena pangu*. "*Maruwena pangu*" shall mean an allotment or share of land in a temple or nindagama village held by one or more tenants at will.

"*Nindagama proprietor*" shall mean any proprietor of nindagama entitled to demand services from any *praveni nilakaraya* or *maruwena nilakaraya*, for and in respect of a *praveni pangu* or *maruwena pangu* held by him.

"*Praveni nilakaraya*" shall mean the holder of a *praveni* pangu in perpetuity, subject to the performance of certain services to the temple or *nindagama* proprietor.

"*Praveni pangu*" shall mean an allotment or share of land in a temple or *nindagama* village held in perpetuity by one or more holders, subject to the performance of certain services to the temple or *nindagama* proprietor.

"*Wiharagama proprietor*" or "*dewalagama proprietor*" shall include the officer of any *wihara* or *dewala* respectively entitled to demand services from any *praveni nilakaraya* or *maruwena nilakaraya*, for and in respect of a *praveni pangu* or *maruwena pangu* held by him.

Bandara land in a *nindagama* was construed as the absolute property of the *ninda* lord (the grantee of the gama) and did not come within the scope of the Service Tenure Ordinance.

Several decisions which followed the enactment of the Service Tenures Ordinance held that the *paraveni nilakaraya* was only the tenant and not owner **[*Jotihamy v. Dingirihamy* (1906) 3 Bal. Reports 67; *Kaluwa v. Rankira* (1907) 3 Bal. Reports 264]**. However, in ***Appuhamy v. Menike* [19 N.L.R. 361]**, Ennis, J.

and De Sampayo, J. (with Shaw, J. dissenting) held that *paraveni nilakarayas* are the owners of the land although the nature of ownership was not sufficient to maintain a partition action.

In ***Herath*** **[supra.]** Court was required to examine the nature of the rights held by a *parveni nilakaraya*. Basnayake CJ went on to hold that a *paraveni nilakaraya* is not the owner of the lands comprised in his share of the *paraveni panguwa* within the meaning of the expression "owner" in Section 3 (1)(b) of the Land Redemption Ordinance, No. 61 of 1942. According to him (at page 207), the *ninda* lord, be it a *nindagama*, *viharagama* or *dewalagama* was the owner and the nilakarayas continue as the tenants of the grantee.

However, in ***Attorney-General v. Herath*** **[62 N.L.R. 145]** the Privy Council dissented from the view taken by Basnayake, C.J. in ***Herath*** **[supra.]**. The Privy Council held that the word "owner" in Section 3 (1)(b) of the Land Redemption Ordinance means a person possessing the attributes of ownership under the general law and that a *paraveni nilakaraya* is an "owner" within the meaning of that term.

This decision clearly established that a *paraveni nilakaraya* is the owner of the land in issue.

The status of a *paraveni nilakaraya* and *maruwena nilakaraya* was put beyond debate by the Nindagama Lands Act No. 30 of 1968 ("Nindagama Lands Act"). Its preamble states that it is an Act to abolish the services due from the tenants and holders of *nindagama* lands to the proprietors thereof, to make such tenants and holders the absolute owners of such lands and to provide for the registration of such tenants and holders as absolute owners thereof. Section 3 declared that every *tenant* or *holder* of any *nindagama land* is thereby declared to be the owner thereof.

According to Section 31 (1) of the Nindagama Lands Act, *Tenant*, in relation to any *nindagama* land, means a person who was, prior to the date of the commencement of that Act, a *maruwena nilakaraya* of a *maruwena pangu* of that land within the meaning of the Ordinance.

Holder in relation to any *nindagama land* was defined by Section 31 (1) of the Nindagama Lands Act to mean a person who, was, prior to the date of the commencement of that Act, a *praveni nilakaraya* of any *praveni pangu* of that land within the meaning of the Nindagama Lands Act.

Therefore, the Nindagama Lands Act while clearing any lingering doubts of the ownership of a *praveni nilakaraya* in a *praveni pangu* of a *nindagama*, also declared that a *maruwena nilakaraya* is to be the owner of the *maruwena* pangu. Section 29 of the Nindagama Lands Act stated that the Service Tenures Ordinance shall cease to apply to any *nindagama* land.

Both disputing parties agree that the corpus is part of the *paraveni panguwa* of the Sabaragamuwa Saman Dewalaya. Hence the ownership of the corpus will be with the relevant *paraveni nilakaraya* and the parties are in a position to establish their entitlement to a gem mining licence only upon proof that the applicant and such other consenting owners together own at least two-thirds of the land in respect of which the application has been made.

Title of the Parties

The dispute between the parties can be narrowed down to the starting point of the two pedigrees presented by them.

According to the Appellants, the original owners were Henaka Arachchilage Hamy Vidane, Henaka Arachchilage Mohotihamy, Madewatte Punchirala,

Henaka Arachchilage Lamaethana, Henaka Arachchilage Mohottala and Henaka Arachchilage Awusadahamy who held an undivided 1/6 share.

According to the 9th Respondent, the original owners were Henaka Arachchilage Hamy Vidane who held an undivided 5/12 share, Henaka Arachchilage Mohotihamy who held an undivided 5/12 share, Henaka Arachchilage Danthahamy who held an undivided 1/12 share and Madamemawatta Punchirala who held an undivided 1/12 share.

The claim of the Appellants that Henaka Arachchilage Hamy Vidane, Henaka Arachchilage Mohottihamy, Madamewatte Punchirala, Henaka Arachchilage Lamaethana, Henaka Arachchilage Mohottala and Henaka Arachchilage Awusadahamy held an undivided 1/6 share of the corpus each is based upon the register maintained in terms of the Service Tenures Ordinance.

The material before Court reflects that the relevant register has an entry for Henaka Archchilage *panguwa*. As explained above, each *gama* or village in the service tenure system consisted of a number of holdings or minor villages. Each such holding or minor village was known as a *panguwa*. Each *panguwa* consisted of a number of fields and gardens. According to the register, one of the fields or gardens falling within Henaka Archchilage *panguwa* is Hiran Kumbura.

However, the said register identifies Henaka Arachchilage Hamy, Henaka Arachchilage Mohottihamy, Madamewatte Punchirala, Madamewatte Danthahamy, Kuruwita Lokuhamy, Mudanthaka Mohottala and Henaka Arachchilage Awusadahamy as the *paraveni nilakarays* of the Henaka Archchilage *panguwa* which is more than one *paraveni nilakaraya*, relied on by the Appellants and three relied on by the 9th Respondent.

According to Section 9 of the Service Tenures Ordinance, the Commissioners appointed in terms of the said Ordinance shall after due inquiry determine:

(a) the tenure of each *pangu* subject to service in the village, whether it be *praveni* or *maruwena*;

(b) the names, so far as the same can be ascertained, of the proprietors and holders of each *praveni pangu*;

(c) the nature and extent of the services due for each *praveni pangu*;

(d) the annual amount of money payment for which such services may be fairly commuted at the time the registries are made.

Their determination was made final and conclusive as to the tenure of the *pangus* in such village, whether it be *praveni* or *maruwena*, the nature of the service due for and in respect of each *praveni pangu*, and the annual amount of money payment for which the services due for each *praveni pangu* may be fairly commuted at the time those registries are made.

Accordingly, it was contended on behalf of the 9th Respondent that the entry in the register does not provide conclusive evidence as to the identity of *paraveni nilakarayas*.

In ***Samarasinghe v. Weerapulla*** **[(1882) 5 S.C.C. 40]** Clarence A.C.J. held that the entry in the service tenures commutation register, though conclusive against the tenants on the question of tenure, is not conclusive against anybody on the question – Who is the owner of the nindagama?

In ***Bogolle Punchirala and Another v. Kadapatawehera Ding and Others*** **[(1884) 6 S.C.C. 157]**, Burnside C.J. (at page 158) held that a District Judge was not bound by the finding of the Commissioners that a person was a *ninda* proprietor of the village in question. Clarence, J. (at page 159) was of the view that the Service

Tenure Ordinance proceeds on the assumption that the inquiry by the Commissioners concerns a *panguwa* which is subject to service and if the Commissioners were mistaken, such act is not made conclusive.

In ***Hevawitarane v. Dangan Rubber Co. Ltd.*** **[17 N.L.R. 49 at 52]**, Wood Renton A.C.J. took the view that the entry of any land in the register prepared under the Service Tenure Ordinance as a *paraveni* land belonging to a specified tenant is conclusive evidence as to the nature of the tenure and relevant, but not conclusive evidence as to the identity of the tenant. Pereira, J. (at page 54) appears to take a different view.

Our attention was also drawn to the decision in ***Wanduragala v. Somananda*** **[26 N.L.R. 417 at 420]** where it was held that the Service Tenure Ordinance makes the register final and conclusive as to the tenure of the *pangu,* whether it be *paraveni* or *maruwena,* the nature of the service due for each *paraveni pangu* and the annual amount of money payment for which the services may be fairly commuted. It nowhere makes the registration of lands as a *nindagama* conclusive proof of the existence of it as a *nindagama*.

I am of the view that the correct approach is not to accept the details registered in a register maintained in terms of the Service Tenure Ordinance as *final and conclusive evidence* as to the identity of the tenant as the legislative intent is clear. Only the tenure of the *pangus* in such village, whether it be *praveni* or *māruvena*, the nature of the service due for and in respect of each *praveni pangu*, and the annual amount of money payment for which the services due for each *praveni pangu* may be fairly commuted at the time those registries are made are made final and conclusive.

Nevertheless, details of the names of the proprietors and holders of each *praveni pangu* contained in such registers are relevant in terms of the Evidence Ordinance and can, in conjunction with other evidence, assist in proving the identity of the *paraveni nilakarayas*.

As adumbrated above, the details of the register pertaining to the corpus does not greatly assist either the Appellants or the 9th Respondent in establishing the requirements to obtain a gem mining licence since the number of *paraveni nilakarayas* relied on both parties vary with the number of *paraveni nilakarayas* for the corpus in the register.

However, there is a crucial weakness in the case presented by the Appellants. According to them, Henaka Arachchilage Mohottihamy, held an undivided 1/6 share of the corpus as a *paraveni nilakaraya*. However, in the pedigree they have presented, the rights of Henaka Arachchilage Mohottihamy has been transferred upon deed Nos. 335 dated 12.02.1932, 8121 dated 08.07.1955, 2994 dated 01.09.1961 and 10499 dated 23.02.1968 on the basis that he held 5/12 share of the corpus as claimed by the 9th Respondent and not 1/6 share as claimed by the Appellants.

Moreover, according to ancient measures of capacity and surface, 10 Lahas is equal to 1 Pela and 4 Pelas is equal to 1 Amunum **[**See **(2002) 1 Sri.L.R. 73]**. The corpus is 12 paddy lahas sowing in extent whereas the deeds on which the Appellants rely on refer to a land 40 paddy amunu in extent which shows a great disparity with the extent of the corpus.

Furthermore, the 9th Respondent in obtaining the gem mining licences for the previous years obtained the written consent of the Appellants. This is an acknowledgement of the pedigree relied upon by the 9th Respondent and thus the Appellants are estopped from contending otherwise.

Finally, in terms of Section 15 (13) of the Act, this Court can, in an appeal made under Section 15 (11), either allow such appeal and direct the 1st Respondent to issue or renew the licence which is the subject of that appeal or disallow such appeal.

The learned DSG submitted that the Appellants have only prayed for the grant and/or issue an interim order immediately suspending the gem mining licence issued to the 9th Respondent in respect of the land called 'Hiran Kumbura Owita' situated in 'Amuthugoda' and refrain the 9th Respondent from carrying out any gem mining operations on the said land until the final determination of this appeal and for costs and such other relief as to Court shall seem meet. It was submitted that the licence in issue has now lapsed and the question of setting aside the licence does not arise. There is merit in this submission.

For all the foregoing reasons, the appeal is dismissed. Parties shall bear their costs.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

Samayawardhena, J.

I had the advantage of reading in draft the judgment of my brother, Justice De Silva.

I agree with the conclusion that this appeal should be dismissed, primarily because it now holds only academic interest. The appeal pertains to an

application for a gem mining licence made in 2014 for one year. However, I would like to express my opinion on some aspects because the authorities will take those matters into consideration in future applications.

There is no dispute that this land is subject to *Rajakariya*. The history and ambit of the *Rajakariya* system and the Service Tenures Ordinance were also discussed in my judgment in ***Sirisena and Others v. Matheshamy and Others* (SC/APPEAL/82/2010, SC Minutes of 13.11.2023)**. Section 9 of the Service Tenures Ordinance is not conclusive on the question of who the owners of the *paraveni pangu* were at the time the Register was made because, according to Section 9(b), the determination of the names of the proprietors and holders of each *paraveni pangu* should be made "so far as the same can be ascertained". However, the names of the proprietors and holders of each *paraveni pangu* in the Commissioners' determination present *prima facie* evidence until disproved by the opposing party.

It seems that according to the Commissioners' determination, as entered in the Register, there are nine original owners. However, according to the 9th respondent, only four of them are original owners. I am not satisfied that the 9th respondent has disproved the inclusion of the other five as original owners in the Register.

The 9th respondent seems to have asserted that Henaka Arachchilage Mohottihamy, who is one of the original owners, had 1/6 share is not acceptable since Mohottihamy had later transferred his rights on the basis that he held 5/12 share of the corpus, not 2/12 share. This argument does not suggest that Mohottihamy did not have 2/12 (=1/6 share). It only suggests that he did not have 5/12 share. In any event, it affects only that 1/6 share. The 5/6 share of other five original owners remains unaffected. What the appellants need to

establish is that they have received the consent of more than 2/3 of the owners of the land.

It seems that the extent of land for which the appellants have sought a gem mining license is 12 paddy lahas, whereas the deeds of the appellants refer to a much larger extent of 40 paddy amunus. The greater includes the less. Therefore the disparity cannot be held against the appellants.

The failure of the appellants to object to the issuance of gem mining licences in favour of the 9th respondent previously cannot be regarded as "written consent" on the part of the appellants.

Judge of the Supreme Court