

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

**S.C. Reference No.04/2011
NCP/HCCA/ARP Writ No.04/2008**

Rajapakshalage Prema Jayantha,
Yaya 15, Rajanganaya,
Pahala Maragahawewa.

Petitioner

Vs.

Divisional Secretary,
Divisional Secretariat,
Rajanganaya.

Respondent

BEFORE : Dr. Shirani A. Bandaranayake, CJ.
P. A. Ratnayake, PC, J. &
S. Hettige, PC, J.

COUNSEL : Mahinda Ralapanawa with Chandima Gamage,
Ms. C. Herath and Nilupul Kumari Jayasundara
for the Petitioner.

Y.J.W. Wijayathilaka PC, ASG, with Bimba
Thilakarathne, PC, ASG, A. Navaratne, DSG, Sobhitha
Rajakaruna, SSC, Yuresha de Silva, SC and Bhagya
Herath, SC for the Attorney General.

ARGUED ON : 05.10.2011.

WRITTEN SUBMISSIONS

TENDERED ON : Petitioner : 04.11.2011.

Respondent : 01.11.2011.

DECIDED ON : 16.01.2012.

Dr. Shirani A. Bandaranayake, CJ.

Learned Judge of the Civil Appellate High Court of the North Central Province sitting at Anuradhapura acting under Article 125 of the Constitution, sought a clarification on the jurisdiction of the Civil Appellate High Court (hereinafter referred to as the High Court) in terms of Article 154 P (4) (b) and whether the said High Court is competent to grant relief prayed for in the petition to issue a writ of certiorari against the Divisional Secretary.

The petitioner before the High Court is a permit holder, which had been issued in terms of Section 19(2) of the Land Development Ordinance (as amended). The petitioner had stated before the High Court that the Divisional Secretary, who is the respondent in that application, had taken steps to alter the boundaries of the land allocated under the permit. The petitioner therefore claimed that the conduct of the respondent is illegal and is a violation of the Rules of Natural

Justice and therefore the decision of the Divisional Secretary to alter the boundaries of the said land should be quashed by way of a writ of certiorari.

The respondent before the High Court had taken the objection that the subject matter of the application of the petitioner is a State land and therefore the High Court does not have the jurisdiction to hear and determine that application.

Learned Judge of the High Court after hearing the submissions of both learned Counsel had decided to refer the said matter to the Supreme Court in terms of Article 125 of the Constitution in order to obtain an interpretation of Article 154 P of the Constitution.

When this matter was taken for consideration by the Supreme Court, learned Additional Solicitor General for the respondent, took up a preliminary objection stating that this is not a matter that could be referred to the Supreme Court, as it does not come within the ambit of Article 125 of the Constitution.

It was accordingly decided first to consider the said preliminary objection and submissions made by both parties on the preliminary objection were so heard.

Article 125 of the Constitution deals with the Constitutional jurisdiction in the interpretation of the Constitution and Article 125(1) reads as follows:

“The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution, and accordingly, whenever any such question arises in the course of any proceedings in any other Court or tribunal or other institution empowered by law to administer justice or to exercise judicial or quasi –

judicial functions, such question shall forthwith be referred to the Supreme Court for determination. The Supreme Court may direct that further proceedings be stayed pending the determination of such question.”

Article 125 of the Constitution therefore clearly stipulates that whenever there arises a question in the course of any proceeding relating to the interpretation of the Constitution such question shall forthwith be referred to the Supreme Court for interpretation.

For a Court or a tribunal or any other institution empowered by law to administer justice, to refer such a question to the Supreme Court in terms of Article 125 of the Constitution, it is necessary that there should be a question relating to the interpretation of the Constitution. A mere matter dealing with a Constitutional provision would not come within the category referred to in Article 125 of the Constitution and only a question relating to the interpretation of the Constitution would come within the ambit of Article 125 of the Constitution.

This position was considered in **Bilimoria v Minister of Lands and Land Development and Mahaweli Development and 2 Others** ((1978-79-80) 1 Sri LR 10) where Samarakoon, CJ, had clearly stated that, what is contemplated in Article 125 of the Constitution is any question relating to the interpretation of the Constitution arising in the course of legal proceedings. It was clearly stated that,

“Article 125 of the Constitution requires any dispute on the interpretation of the Constitution to be referred to this Court. What is contemplated in Article 125 is “any question relating to the interpretation of the Constitution” arising in the course of legal

proceedings. This presupposes that in the determination of a real issue or controversy between the parties, in any adversary proceedings between them, there must arise the need for an interpretation of the provisions of the Constitution. The mere reliance on a Constitutional provision by a party need not necessarily involve the question of the interpretation of the Constitution. There must be a dispute on interpretation between contending parties.”

It is therefore evident that, although in terms of Article 125 of the Constitution the Supreme Court has the sole and exclusive jurisdiction to hear and determine any question relating to the interpretation of the Constitution, if such a reference is made only on the basis of a mere question of a Constitutional provision, where the interpretation of the Constitution is not in dispute such a question cannot come within the ambit of Article 125 of the Constitution. It is also to be noted that the reliance by one party on a Constitutional provision would not fall into the category of interpretation of the Constitution in terms of the said Article 125 of the Constitution.

The question before the High Court was in relation to a State land where a permit had been issued in terms of the Land Development Ordinance (as amended).

High Courts were established for each province, along with the introduction of the 13th Amendment to the Constitution in terms of Article 154 P of the Constitution. The powers and functions of the High Courts are stipulated in Articles 154 P (3) and 154 P (4). The latter Article states that,

“Every such High Court shall have jurisdiction to issue, according to law –

- a) Orders in the nature of *habeas corpus*, in respect of persons illegally detained within the Province, and
- b) Order in the nature of writs of *certiorari*, prohibition, *procedendo*, *mandamus* and *quo warranto* against any person exercising, within the Province, any power under –
 - i any law; or
 - ii any Statutes made by the Provincial Council established for that Province.

in respect of any matter set out in the Provincial Council List.”

The Provincial Council List, which is also known as List I, deals with the subject of Land. Item 18 of the said List states as follows:

“Land – Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II.”

Appendix II is only on land and land settlement. This refers to State land, inter – provincial irrigation and land development projects and the national land commission. The said provisions dealing with land and land settlement are as follows:

“State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written law governing the matter.

Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special Provisions:-

1. State land –

- 1.1 State land required for the purposes of the Government in a Province, in respect of a reserved or concurrent subject may be utilised by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilisation of such land in respect of such subject.
- 1.2 Government shall make available to every Provincial Council State land within the province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilise such State land, in accordance with the laws and statutes governing the matter.
- 1.3 Alienation or disposition of the State land within a Province to any citizen or to any organisation shall be by the President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.”

List II of the Ninth Schedule to the Constitution, which is commonly known as the Reserved List, also contains an item dealing with State land. This is as follows:

“Rivers and Waterways; Shipping and Navigation; Maritime Zones including Historical Waters, Territorial Waters, Exclusive Economic Zone and Continental Shelf and Internal Waters; State Lands and Foreshore, Except to the Extent Specified in Item 18 of List I.”

All the aforementioned provisions were carefully examined in the Supreme Court Determination on the Bill Titled ‘Land Ownership’ (SC SD 26/2003 of 10.12.2003). On a consideration of the provisions laid down in the Constitution including the three Lists, it was observed in the Determination on Land Ownership (Supra) that,

“This re-affirms the position that State Land shall continue to vest in the Republic while the subject of land being a matter for the Provincial Council.

. . . .

In effect, even after the establishment of Provincial Councils in 1987, State land continued to be vested in the Republic and disposition could be carried out only in accordance with Article 33 (d) of the Constitution read with 1:3 of Appendix II to the Ninth Schedule to the Constitution.”

It is therefore evident that the Constitutional Provisions pertaining to the subject of land are quite clear and had been considered and interpreted earlier by the Supreme Court. When those decisions are examined it is clearly seen that

there cannot be any ambiguity with regard to the provisions in question. As clearly stated earlier, in terms of Article 125 of the Constitution, only a question relating to the interpretation of the Constitution should be directed to the Supreme Court. The question that had been referred to the Supreme Court is not a question which deals with the interpretation of the Constitution, as the said question had been clearly dealt with previously by the Supreme Court and there are no ambiguities pertaining to the relevant Article of the Constitution.

Learned Judge of the High Court therefore should have considered the question before him without referring it to the Supreme Court in terms of Article 125 of the Constitution.

For the reasons aforesaid I hold that there is merit in the preliminary objection raised by the learned Additional Solicitor General for the respondent and I accordingly uphold the said preliminary objection so raised. Since the said question does not warrant an interpretation of any Article of the Constitution, learned Judge of the High Court is directed to consider the matter before him and make an appropriate order according to law.

Chief Justice

P.A. Ratnayake, PC, J.

I agree.

Judge of the Supreme Court

S.Hettige, PC, J.

I agree.

Judge of the Supreme Court