

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

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

**S.C. (F/R) Application
No.471/2011**

1. Sevanagala Sugar Industries Limited,
No.362, Colombo Road, Pepiliyana,
Boralasgamuwa.
2. Alankarage Douglas Shanthanayaka,
Wickremarathne,
No.2/74, Jayapala, Udahamulla,
Nugegoda.
3. Kumarasinghage Jayalath
Samanthilaka,
No.299, Mihindu Pura, Sevanagala.
4. Appuwahandi Gayan Dewapriya,
G 02/55, Housing Scheme,
Sevanagala.
5. Wasawita Gamage Sirisena,
No.932, Mayuragama, Habaraluwewa,
Sevanagala.
6. Abeywardena Jayasinhe Arachchilage
Gunaratne Lal Kumara,
No.68, Nawodagama, Sevanagala.

7. Kodikara Kankanamge Ranjith,
No.206, Habaraluwewa, Sevanagala.
8. Ganthota Widanagama Dilanka,
No.11, Sevanagala-North, Sevanagala.
9. Pannila Mohottalalage Suranga,
G/2-1, Housing Scheme, Division 01,
Katupilagama, Sevanagala.
10. Kumarasinhage Vijitha,
No.299, Mihindu Pura, Sevanagala.

Petitioners

Vs.

1. Inspector Abeysekara,
Officer-in-Charge (Acting),
Police Station,
Sevanagala.
2. Police Sergeant 23882 Sepala,
Police Station,
Sevanagala.
3. Police Sergeant 23738 Edirisinghe,
Police Station,
Sevanagala.
4. Police Sergeant 59211 Amarasena,
Police Station,
Sevanagala.
5. Indika 81248, Civil Security Force,
Police Station,
Sevanagala.

6. Nilantha Bandara,
Officer-in-Charge,
Police Station,
Sevanagala.
7. The Inspector General of Police,
Police Headquarters,
Colombo 01.
8. Durage Gnanawathie,
No. 859, Sevanagala Gama,
Sevanagala.
9. The Honourable Attorney-General,
The Attorney-General's Department,
Colombo 12.

Respondents

BEFORE : B.P. Aluwihare, PC, J.
Sisira J. de Abrew, J.
Nalin Perera, J.

COUNSEL : Saliya Pieris with Anjana Ratnasiri for the
1st to 10th Petitioners.

Anoop de Silva SSC for the Respondents.

ARGUED ON : 06.06.2016.

DECIDED ON : 5.10.2016

Sisira J. de Abrew, J.

The petitioners by this petition seek a declaration that their fundamental rights have been violated by the respondents. This Court, by its order dated 03.11.2011, granted leave to proceed for alleged violations of Articles 12 (1) and 13 (1) of the Constitution.

The 1st petitioner, a limited liability company, has been, inter alia, carrying on business of cultivating sugar cane and manufacturing sugar. The 2nd to 10th petitioners are the employees of the 1st petitioner. His Excellency the President of the Democratic Socialist Republic of Sri Lanka, by document marked 'P6' leased out a land the extent of which is about 8.276 hectares to the 1st petitioner. The 8th respondent entered into a contract with the 1st petitioner to cultivate sugar cane on a certain designated portion of the said land from 21.01.2003 to 21.01.2007. According to the said contract the 8th respondent should cultivate sugar cane in the said portion of the land and supply them to the 1st petitioner. Even after the said period the 8th respondent continued to cultivate sugar cane in the said portion of the land and supplied sugar cane to the 1st petitioner until the year 2011. On 11.08.2011 a field officer of the 1st petitioner informed the management of the 1st petitioner that the land allocated to the 8th respondent was being prepared for an unauthorized crop. Thereafter on 15.08.2011 the 8th respondent entered into a

fresh contract marked 'P12' with the 1st petitioner regarding the said land. According to the said contract the 8th respondent should cultivate sugar cane in the said land and the cultivation of any other thing other than sugar cane was prohibited. Both parties agreed that the said land will be prepared for cultivation of sugar cane by the company utilizing its machinery.

On 06.09.2011 the 1st petitioner took steps to prepare the said land for the cultivation of sugar cane. There is no dispute that the 2nd to 10th petitioners cleared the said land allocated to the 8th respondent. According to objection filed by the 1st respondent on 06.09.2011, the 8th respondent complained to the Sevanagala Police that the employees of the 1st petitioner had destroyed her banana plantation that was in the said land. The complaint of the 8th respondent has been produced as 1R1 by the 1st Respondent. Ajith Ratnayake the son of the 8th respondent too had complained to the police that the employees of the 1st petitioner destroyed 150 banana plants value of which was about Rs.107000/-. The petitioners admitted that they cleared the said land and as I pointed out earlier, there is no dispute that the 2nd to 10th petitioners engaged in clearing the said land. It appears that at the time of clearing the land there was a banana plantation in the said land. The petitioners take up the position that they were entitled to clear the land as per the contract marked 'P12'. The allegation of the Petitioners is that their arrest by Sevanagala Police was unjustified. Therefore the most important question

that must be decided is whether there were reasonable grounds for the police to arrest the 2nd to 10th petitioners. I now advert to this question. It appears that the 8th respondent had violated the contract marked 'P12'. If the 8th respondent had violated the contract marked 'P12', what is the remedy available to the 1st petitioner? The 1st petitioner then should file a civil case in the District Court and seek relief. The 1st petitioner and their employees cannot take the law into their hands and destroy the banana plantation in the land

The main complaint of the petitioners to this Court is that their arrest by the Sevanagala Police was unjustified and wrong. In this connection it is relevant to consider Section 32 (1) of the Code of Criminal Procedure Act which reads as follows:

“Any peace officer may without an order from a Magistrate and without a warrant arrest any person.....

- a) who in his presence commits any breach of the peace;
- b) who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;
- c) omitted.
- d) omitted.
- e) omitted.
- f) omitted.
- g) omitted.
- h) omitted.
- i) omitted.”

According to the Police, there was a complaint by the 8th respondent before the police to the effect that her banana plantation had been destroyed by the employees of the 1st petitioner. Police after investigation arrested the 2nd to 10th petitioners. When a police officer decides to arrest a person on a complaint, he is not, at the time of the arrest, required to decide that the alleged offence is proved or can be proved beyond reasonable doubt. What is necessary is that, at the time of the arrest, there were reasonable grounds for him to believe that an offence had been committed or that he had reasonable grounds to act under Section 32 (1) of the Code of Criminal Procedure Act.

In such a situation the police officer cannot be found fault with for arresting the alleged offender. This view is supported by the judgment of Wanasundera, J. in the case of **Joseph alias Brutten Perera v. The Attorney General** [1992] 1 SLR page 99 wherein His Lordship remarked thus;

“The power of arrest does not depend on the requirement that there must be clear and sufficient proof of the commission of the offence alleged. On the other hand for an arrest, a mere reasonable suspicion or a reasonable complaint of the commission of an offence suffices.”

When I consider all these matters, I am of the opinion that, on the complaint made by the 8th respondent, the Police officers attached to Sevanagala Police Station had reasonable grounds to believe that the 2nd to 10th petitioners have committed a criminal offence. Further I am of the opinion that

the Police had reasonable grounds to act under Section 32(1) of the Code of Criminal Procedure Act in respect of the 2nd to 10th petitioners. Police have produced the 2nd to 10th petitioners in the Magistrate's Court alleging that they committed offences under Sections 140, 146, 433 and 410 of the Penal Code.

For the above reasons, I hold that the respondents have not violated the fundamental rights of the petitioners guaranteed by Articles 12 (1) and 13 (1) of the Constitution and dismiss the petition of the petitioners. In all the circumstances of this case I do not make an order for cost.

Petition dismissed.

Judge of the Supreme Court

B.P. Aluwihare, PC, J.

I agree.

Judge of the Supreme Court

Nalin Perera, J.

I agree.

Judge of the Supreme Court