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

In the matter of an appeal made in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / APPEAL / 19 / 2014

SC / SPL / LA / 176 / 2013

CA / WRIT / 330 / 2012

Rupahinge Gunarathne,

Mihirigalgoda,

Pahala Karavita.

PETITIONER

SC / APPEAL / 72 / 2013

SC / SPL / LA / 84 / 2013

CA / WRIT / 330 / 2012

-Vs-

1. **Madara Swarnamalee Wijewardena Tennakoon,**
   Ranasinawatte Walawwa,
   Uda Karawita.

2. **National Gem and Jewellery Authority,**
   25, Galle Face Terrace,
   Colombo 03.

3. **Prasad Galhena,**
   The Chairman,
   National Gem and Jewellery Authority,
   25, Galle Face Terrace,
   Colombo 03.

4. **N.P. Samaratunga,**
   Senior Regional Manager,
   National Gem and Jewellery Authority,
   25, Galle Face Terrace,
   Colombo 03.

RESPONDENTS

AND NOW BETWEEN

Rupahinge Gunarathne (Deceased),
Mihirigalgoda,
Pahala Karavita.

PETITIONER – APPELLANT

1. **Rupahinge Nayanananda Indrakumara,**
   Udakarawita,
   Ratnapura.

2. **Rupahinge Sarath Chandrakumara,**
   Gangaaddarahena,
   Udakarawita,
   Ratnapura.

SUBSTITUTED PETITIONER – APPELLANTS

-Vs-

1. **Madara Swarnamalee Wijewardena Tennakoon,**
   Ranasinawatte Walawwa,
   Uda Karawita.

2. **National Gem and Jewellery Authority,**
   25, Galle Face Terrace,
   Colombo 03.

3. **Prasad Galhena,**
   The Chairman,
   National Gem and Jewellery Authority,
   25, Galle Face Terrace,
   Colombo 03.

3(a). Naveen Sooriyarachchi,
The Chairman,

National Gem and Jewellery Authority,

25, Galle Face Terrace,
Colombo 03.

4. **N.P. Samaratunga,**
Senior Regional Manager,

National Gem and Jewellery Authority,

25, Galle Face Terrace,

Colombo 03.

RESPONDENT – RESPONDENTS

Before: A.H.M.D. Nawaz, J.
Janak De Silva, J. &
K. Priyantha Fernando, J.

Counsel: Navin Marapana, PC with Uchitha Wickremesinghe for the Petitioner – Appellants in SC / APPEAL / 72 / 2013 and SC / APPEAL / 19 / 2014.

R.M.D. Bandara for the 1st Respondent – Respondent in SC / APPEAL / 72 / 2013.

Faisz Musthapha, PC with Keerthi Tillekeratne for the 1st Respondent – Respondent in SC / APPEAL / 19 / 2014.

Chaya Sri Nammuni, DSG for the 2nd, 3rd and 4th Respondent – Respondents.

Argued on: 28.03.2025

Decided on: 06.05.2026

A.H.M.D. Nawaz, J.

1. The applicability of the Roman-Dutch Law doctrine of *exceptio rei venditae et traditae* arises for consideration in this appeal, where the provisions of the Land Reform Law (No. 1 of 1972) have been engaged. When a statutory declarant to the Land Reform Commission (hereinafter "the LRC") sells part of his property vested in the LRC to a vendee at a time when he is only a statutory lessee, the question arises whether the subsequent acquisition of title by the statutory lessee will inure to the benefit of the vendee.

2. Let this Court give a synoptic view of the Land Reform Law, which is trite in this country. As the clock struck on 26 August 1972, this heralded the commencement of this law by operation of which certain consequences eventuated.

3. The pith and substance of the Land Reform Law is that the maximum extent of agricultural land which may be owned by any person on that day or afterwards shall be 25 acres if such land consists exclusively of paddy land, or 50 acres if such land does not consist exclusively of paddy land. The Land Reform Law referred to this cap on the maximum holding as the "ceiling" and any agricultural land owned by any person in excess of the ceiling vested in the LRC. Once the land had vested in the LRC, the law deemed the previous owner to hold such land on a statutory lease. The LRC then gave back to the statutory lessee the extent of 50 acres in the case of agricultural land or 25 acres in the case of paddy land, and the statutory lessee became the owner of the land given back to him by way of a statutory determination made under Section 19 of the Land Reform Law. Section 19(1)(b) of the Land Reform Law states;

> *(a) "The Commission shall publish the statutory determination in the Gazette and shall also send a copy thereof to such lessee by registered letter through the post. Such determination shall be*

final and conclusive, and shall not be called in question in any court, whether by way of writ or otherwise."

4. Section 20 provides that the Commission shall have no *right*, *title* or *interest* in the land from the date of such publication. Thus, there is no avenue for any party to challenge the determination on the merits before any Court. However, even though Section 19(1)(b) enacts an ouster clause which specifically renders any challenge by writ or otherwise beyond the powers of the Courts, it is axiomatic that judicial review remains available to impugn the legality of the decision-making process - see ***Peter Attapattu v. People's Bank***[1]; ***Moosajees Ltd. v. Arthur***[2]**.**

5. In this particular instance, one Douglas Tennakoon, the owner of the sprawling expanse of lands in question, made the statutory declaration but sold an extent of land to the Appellant at a time when he was only a statutory lessee. He did not have title at the time of sale in 1979 but the following year he acquired title when the LRC made its statutory determination in his favour in 1980, as recorded in Gazette bearing No. 102/2 dated 18.08.1980.

6. To whom does this title inure? Is it to the vendee (the Appellant) or to the daughter (the 1st Respondent) who claimed to be the heir of Douglas Tennakoon before the National Gem and Jewellery Authority (the 2nd Respondent)? This is the crucial question that arises in this case. When the daughter, Madara Swarnamalee Wijewardena Tennakoon (the 1st Respondent), claimed a licence to prospect for gems on the gem-rich land known as "Peelikumbura", it was on the basis that she had become the owner of the land solely by inheritance from her father Douglas Tennakoon.

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[1] (1997) 1 Sri.L.R 208
[2] (2004) 1 A.L.R 01

7. The Appellant opposed the application of the 1st Respondent before the 2nd Respondent on the basis, *inter alia*, that there was pending in the District Court of Ratnapura a partition action bearing No. 12375/P in respect of the said land. The partition action had been instituted in the year 1994 and the land in suit was surveyed for the purposes of the action in the year 1997. It is pertinent to pinpoint that the 1st Respondent, who now claims to be the heir to her father's land, never staked a claim in respect of the said land before the surveyor at the time of the survey nor did she seek to intervene in the said action until the year 2010. She was added as a party to the partition action only on 17 March 2010. The plaint in the partition action bears the date 17 December 1994. It is thus clear that it was more than 13 years after the institution of the action and nearly 9 years after the trial in the action had commenced, the 1st Respondent sought to intervene. The tardiness with which the 1st Respondent moved to assert her alleged inheritance is a circumstance that the Court cannot ignore.

8. It is also salient to observe that in her application before the 2nd Respondent, the 1st Respondent represented that there was no case pending in respect of this land. This was a false representation and a deliberate concealment from the 2nd Respondent of the existence of partition action No. 12375/P and the fact that the *lis pendens* in that action had been registered long before her application dated 30 April 2011.

9. The 1st Respondent made her application for a gemming licence to the 2nd Respondent on 30 April 2011. In proof of title, she relied upon the statutory determination made by the LRC in favour of her father, Douglas Tennakoon, who had declared "Peelikumbura" as land in excess of the ceiling of 50 acres imposed by the Land Reform Law (vide Gazette No. 102/2 dated 18.08.1980). Her position was that upon the death of Douglas Tennakoon on 31 August 1989 she became the owner of the land by inheritance as his sole heir. A public notice calling for objections was issued by the 2nd Respondent. The Appellant thereupon objected, relying on deed No. 3648 dated 6 December 1979 by which Douglas Tennakoon

had sold and conveyed to the Appellant an undivided 13/32 share of the land when he was only a statutory lessee. The Appellant's primary contention was that by virtue of the Roman-Dutch law doctrine of *exceptio rei venditae et traditae*, the title subsequently acquired by Douglas Tennakoon by the statutory determination inured to the benefit of the Appellant under the earlier deed of sale. After a full inquiry, the Inquiring Officer recommended the grant of the licence to the 1st Respondent and rejected the Appellant's objection. The 2nd Respondent then issued licence No. 6448 to the 1st Respondent on 7 December 2011 and thereafter renewed the same as licence No. 8529 on 2 May 2012. The Appellant challenged the issuance of this licence by petition to the Court of Appeal dated 25 October 2012, seeking a writ of *certiorari*. The Court of Appeal by its judgment dated 12 July 2013 dismissed the application, holding inter alia that the doctrine of *exceptio rei venditae et traditae* did not apply on the facts and that a party relying on the doctrine must first obtain a declaration from a competent civil Court. It is against this judgment that the present appeal is brought.

10. This Court granted special leave to appeal on the following questions of law:

(i) *Have Their Lordships of the Court of Appeal erred in law by dismissing the application of the Petitioner seeking a writ of certiorari as prayed for in the petition to the Court of Appeal without considering the legal issues involved?*

(ii) *Have Their Lordships of the Court of Appeal erred in law by failing to consider that there was an abundance of evidence against granting a licence to the 1st Respondent and that grave and irremediable loss will occur to the Petitioner if such a licence is not revoked?*

(iii) *Have Their Lordships of the Court of Appeal erred in law by failing to correctly apply the Roman-Dutch Law doctrine of exceptio rei venditae et traditae to the facts of this case?*

(iv) *Have Their Lordships of the Court of Appeal erred in law by stating that the Petitioner was required to obtain a declaration from a competent Civil Court that the doctrine exceptio rei venditae et traditae applies to the facts of this case, when on the facts of the case it was clear that there was already a partition action pending in the District Court?*

11. Two further questions were formulated on behalf of the 1*st* Respondent:

(v) *Is the Appellant guilty of laches and therefore not entitled to the reliefs prayed for?*

(vi) *In any event is the application futile inasmuch as the licences sought to be impugned expired on 22 April 2013?*

The Doctrine of Exceptio Rei Venditae et Traditae in Sri Lankan Law

12. This Court will first examine the doctrine of *exceptio rei venditae et traditae* and trace its application in the jurisprudence of Sri Lanka. The doctrine is a doctrine of Roman-Dutch Law and its meaning, as far as the law of Sri Lanka is concerned, was definitively settled by their Lordships Viscount Haldane, Lord Atkinson and Lord Phillimore of the Privy Council in ***Gunatillake v. Fernando***[3] (Privy Council). Their Lordships held that;

> *"Under this exception the purchaser who had got possession from a vendor, who at the time had no title, could rely upon a title subsequently acquired by the vendor, not only against the vendor, but against anyone claiming under the vendor; and though delivery (traditio) was, as the title shows, a part of the defence, if the purchaser had acquired possession without force*

[3] 22 N.L.R 385

or fraud, and had since lost possession, he could recover it by the Publician action, using the exception as a replication to any defence set up by the vendor or those claiming title under him. The principle does not rest upon estoppel by recital, and is broader in its effect than the English rule."

13. Their Lordships went further to hold, with reference to the law in Ceylon, that *traditio*, whether actual or symbolic, is no longer necessary for the consummation of a sale of immovable property, and has been replaced by the delivery of the deed. In the words of Lord Phillimore J;

"The same protection, therefore, which the Roman law gave to a person who had completed his title by possession, our own law will give to a person who has completed his title by securing the delivery of a deed."

14. The doctrine has been consistently recognised as part of Sri Lankan law in a series of authoritative decisions. In ***Gunatillake v. Fernando***[4] the doctrine was analysed at the highest level. In ***Perera v. Perera***[5] Gratiaen J. affirmed its operation. In ***Beatrice v. Perera***[6] (Privy Council) per L.M.D. de Silva L.J, the doctrine was again confirmed. In ***Perera v. Kiri Honda***[7] Sansoni J (as he then was) applied the doctrine. The doctrine thus forms an integral part of the received Roman-Dutch law in Sri Lanka.

15. The doctrine may be stated simply: where a vendor sells land at a time when he has no title, but subsequently acquires title, that subsequently acquired title

[4] 21 N.L.R 257
[5] 57 N.L.R 440,
[6] 62 N.L.R 5
[7] 58 N.L.R 545

enures by operation of law to the benefit of the vendee under the earlier invalid deed of sale, and not to the vendor or any person claiming under the vendor by succession or otherwise. The rationale of the doctrine is the protection of *bona fide* purchasers for value. A vendor who has accepted the consideration for a sale cannot be heard to resile from his bargain by later acquiring the very title he purported to sell.

Application of the Doctrine to a Statutory Determination under the Land Reform Law

16. The applicability of the doctrine of *exceptio rei venditae et traditae* to a subsequent title obtained through a statutory determination under the Land Reform Law was directly addressed by the Supreme Court in ***Ganegoda Appuhamilage Don Edmund Ananda Seneviratne and Another v. Rohan Tissa Anthony Weeratunga and Another***[8]. In that case, Bandaranayake CJ carefully considered the application of the doctrine in Sri Lankan law and held that the doctrine is indeed a part of our law. Her Ladyship held however that on the specific facts of that case, since the earlier conveyance by the person who later obtained the statutory determination in his favour was not a sale but a gift, and since the doctrine does not apply in respect of previous gifts, the doctrine had no application to that case.

17. The following *legal propositions* emerge clearly from that decision*:*

(a) The doctrine of exceptio rei venditae et traditae is a part of the law of Sri Lanka.

(b) It applies only in cases where the previous alienation by the person who later acquires title under a statutory determination was by a deed of sale and not by a deed of gift.

[8] SC / Appeal / 18 /2010 (Decided on 15 March 2012)

(c) Where a person sells a property to another at a time when he had no title, but subsequently acquires title by means of a statutory determination under the Land Reform Law, the earlier invalid deed of sale is, by operation of the doctrine, validated and the title acquired under the statutory determination automatically passes to the vendee under the earlier deed.

18. In the present case, the earlier alienation by Douglas Tennakoon to the Appellant was unequivocally by a deed of sale, namely deed No. 3648 dated 6 December 1979. The ratio of ***Seneviratne v. Weeratunga***[9] therefore applies squarely and conclusively to the facts before this Court.

Application of the Doctrine to the Facts

19. It is not in dispute that Douglas Tennakoon, at the time of the execution of deed No. 3648 on 6 December 1979, was only a statutory lessee and did not have title to the land. This is common ground between both parties. Nor is there any dispute that the statutory determination in favour of Douglas Tennakoon was published in Gazette No. 102/2 dated 18 August 1980, and that by virtue of Section 19(1)(b) and Section 20 of the Land Reform Law, the statutory determination vested the title to the land in Douglas Tennakoon from the date of publication of that determination.

20. It is further not in dispute that both the Appellant and the 1st Respondent derive their claimed title from the same source, namely the statutory determination made in favour of Douglas Tennakoon in 1980. The Appellant relies on that determination as clothing his earlier deed of sale with retrospective validity by operation of the doctrine of *exceptio rei venditae et traditae*. The 1st Respondent

[9] (2012) 2 Sri.L.R 2013

relies on that determination as the source of her inheritance upon the death of Douglas Tennakoon in 1989. The question therefore is one of priority between these two competing claims.

21. The answer is clear. The doctrine of *exceptio rei venditae et traditae* operated at the very moment the statutory determination was published in the Gazette on 18 August 1980. At that instant, by operation of law, the title acquired by Douglas Tennakoon enured to the benefit of the Appellant under deed No. 3648. The title vested immediately in the Appellant and did not pass through Douglas Tennakoon at all. Douglas Tennakoon therefore held no title to the land sold to the Appellant from the moment of publication of the statutory determination. There was accordingly nothing left in Douglas Tennakoon's estate in relation to that land that could pass to the 1st Respondent by succession.

22. Even if one were to take the most favourable view of the succession argument advanced by the 1st Respondent, Douglas Tennakoon passed away only on 31 August 1989. Any succession could have supervened only at that point in time. But as of 18 August 1980, the Appellant had already become the owner of the land transferred to him by deed No. 3648 by force of the doctrine of *exceptio rei venditae et traditae*. Douglas Tennakoon therefore had no residual title in that land to transmit to any heir. The 1st Respondent's claim by inheritance is thus defeated at its root.

Section 64 of the Land Reform Law and the Argument Based on *Jinawathie v. Emalin Perera*

23. Learned President's Counsel for the 1st Respondent invoked Section 64 of the Land Reform Law and the decision in ***Jinawathie and Others v. Emalin Perera***[10] for the proposition that the Land Reform Law overrides any other law, custom or

[10] (1986) 2 Sri.L.R 121

usage, including the unwritten Roman-Dutch Law doctrine of *exceptio rei venditae et traditae*. Section 64 reads as follows;

> *"The provisions of this Law shall have effect notwithstanding anything to the contrary in the Tea and Rubber Estates (Control of Fragmentation) Act, the Estates (Control of Transfer and Acquisition) Act, No. 2 of 1972, or in any other law, custom or usage."*

24. This argument, when examined carefully, does not commend itself to Court. The purpose of Section 64 and the effect of the statutory determination are to protect and give full force to the acquisition of title by the statutory lessee under the determination. The determination does precisely that. But it does not follow that the mode by which that title thereafter travels and enures to the benefit of third parties is governed exclusively by the Land Reform Law. The Roman-Dutch Law doctrine of *exceptio rei venditae et traditae* is not a provision that nullifies or diminishes the statutory determination. On the contrary, it presupposes the validity and efficacy of the statutory determination as conferring good title on Douglas Tennakoon. It then operates to direct to whom that title flows by virtue of the pre-existing deed of sale. Section 64 protects the statutory determination from being undermined by any other law. It does not prevent the application of a legal doctrine that takes the determination as its very starting point.

25. Furthermore, as Bandaranayake C.J., held in ***Seneviratne v. Weeratunga***[11], when a statutory determination is made and the Gazette notification is published, the person in whose favour the said determination was made becomes the owner of the land stipulated in the determination. Section 64 operates to protect this ownership. Moreover, there is no independent title that the 1st Respondent can claim adversely to her father. Her interest, being derived from and through her father, cannot be adverse to him. The moment the doctrine of *exceptio rei venditae*

[11] (2012) 2 Sri.L.R 2013

et traditae operates to vest the title in the Appellant upon the publication of the Gazette in 1980, there is nothing left in Douglas Tennakoon's estate for the 1st Respondent to inherit. Section 64 does not and cannot confer upon the 1st Respondent a title that Douglas Tennakoon no longer possessed.

26. The 1st Respondent also relied on ***Periacaruppen Chettiar v. Messrs. Proprietors and Agents Ltd.***[12] and ***Mudalihamy v. Dingiri Menike***[13] for the proposition that the doctrine does not apply where the subsequent title is obtained by the original vendor through a statutory process, and that it is limited to cases where title is acquired by the usual means of purchase, gift or inheritance. This argument is misplaced. The cases cited concerned the specific and fundamentally distinct statutory regimes of the Land Settlement Ordinance and the Partition Law. Both those statutes contain elaborate provisions for the prior examination and verification of title. The Land Settlement Ordinance requires Gazette publication of settlement notices, public postings, and the production of evidence by claimants before a settlement officer. The Partition Law mandates the joinder of all interested parties, registration of a *lis pendens*, survey, public notice, and a careful judicial examination of the title of all parties by the presiding Judge. A settlement order and a Partition Decree are therefore determinations of title made after a thorough and adversarial scrutiny of competing claims. They create new title binding in *rem*.

27. A statutory determination under the Land Reform Law is fundamentally different in character. It is based wholly and solely upon the unilateral declaration of the declarant, who claims to be the owner. There is no investigation by the LRC of the truth of the declaration, no publication of the declaration to the public, no mechanism for competing claimants to come forward, no examination of the title of the declarant, and no judicial scrutiny whatsoever. The Land Reform Law itself provides no mechanism by which the LRC could ascertain the truth of what is

[12] 47 N.L.R 121
[13] 28 N.L.R 412

stated in any declaration made to it. The finality clause in Section 19(1)(b) cannot be equated to the finality of a settlement order or a partition decree because the processes that precede these three outcomes are radically different. To treat a statutory determination as creating a new title of the same absolute quality as a partition decree or a settlement order, so as to extinguish the doctrine of *exceptio rei venditae et traditae*, would be to compare two incomparables.

Acquiescence, Estoppel and the Conduct of Douglas Tennakoon and the 1st Respondent

28. There are additional factors that compel this Court to conclude that neither Douglas Tennakoon nor the 1st Respondent ever seriously considered that the land sold to the Appellant by deed No. 3648 continued to belong to Douglas Tennakoon or his estate. These factors go to the conduct of Douglas Tennakoon and the 1st Respondent and operate cumulatively to raise an *estoppel* against the 1st Respondent.

29. First, Douglas Tennakoon himself executed a last will bearing No. 7940. In that last will, he included other lands which he had obtained under the very same statutory determination. He did not include the land in dispute, namely "Peelikumbura". The omission of the land in dispute from his last will is a powerful indicator that Douglas Tennakoon himself recognised that the said land did not belong to him but had, by the sale to the Appellant, passed out of his ownership.

30. Second, a testamentary case was filed in the District Court of Ratnapura in June 1992 by the widow of Douglas Tennakoon. The 1st Respondent was the only respondent in that testamentary case. The inventory filed in that testamentary case did not include the land in dispute. Neither the widow of Douglas Tennakoon nor the 1st Respondent took any steps in those testamentary proceedings to stake a claim to the land in dispute. If the 1st Respondent genuinely believed that she had inherited this land from her father, one would expect that claim to have been

pressed in the testamentary proceedings. The failure to do so is entirely inconsistent with any genuine claim of inheritance over the land in dispute.

31. Third, the 1st Respondent did not intervene in the partition action No. 12375/P, which had been instituted in the District Court of Ratnapura in December 1994 in respect of this very land and in which the land had been surveyed in 1997. She did not make any claim before the surveyor at the time of the survey. She did not seek to intervene until 17 March 2010, which is more than 13 years after the institution of the action and nearly 9 years after the trial commenced. This gross tardiness in asserting her alleged right of inheritance is wholly at odds with a genuine and sincere claim to ownership.

32. Taken together, these three factors demonstrate an unambiguous course of acquiescence on the part of Douglas Tennakoon, his widow and the 1st Respondent in the transfer of the land to the Appellant. The 1st Respondent is in the circumstances estopped from now asserting a claim to the land sold to and owned by the Appellant.

The Internal Circular of the 2nd Respondent and the Doctrine of Legitimate Expectation

33. There is a further and independent ground on which the decision of the 2nd Respondent to issue the licence must be impugned. The 2nd Respondent had issued an internal circular dated 29 June 2007, which specifically prohibited the issuance of any gemming licence in respect of any land which was the subject matter of a partition action instituted prior to the date of the application for such licence, provided the *lis pendens* of such action had also been registered prior to the date of the application for the licence.

34. In the present case, the partition action No. 12375/P was instituted in December 1994. The trial in that action commenced on 23 May 2001. By virtue of Section 6 of the Partition Law, an application for the registration of a *lis pendens* is required to be tendered to Court along with the plaint, and the Court thereafter follows the procedure for transmission to the relevant Land Registry mandated by Sections 7, 8 and 9 of that Law. Since all judicial and official acts are presumed to be regularly performed, as provided in Section 114(d) of the Evidence Ordinance, it is to be presumed that the *lis pendens* in partition action No. 12375/P was duly registered prior to the date on which the trial commenced, namely 23 May 2001. The 1st Respondent's application for a licence was made on 30 April 2011, which is a date long after the registration of the *lis pendens*. Both conditions stipulated by the 2nd Respondent's own circular were therefore satisfied: the partition action was instituted prior to the application for the licence, and the *lis pendens* was registered prior to the date of the application.

35. The 1st Respondent falsely represented in her application that there was no case pending in respect of this land. The enforcement officer who conducted the very first inquiry on 1 June 2011 did not recommend the issuance of a licence to the 1st Respondent, precisely on the basis of this circular, because both parties had admitted the existence of the pending partition action. The non-compliance with the 2nd Respondent's own published criteria created a legitimate expectation in the Appellant that no licence would be issued in contravention of the circular. The issuance of the licence in disregard of its own circular and in reliance upon the 1st Respondent's false assertion constitutes a further ground upon which the decision is vitiated.

The Errors of the Court of Appeal

36. The Court of Appeal dismissed the application on the basis that the 2nd Respondent was not a competent body to decide questions of law and that a party wishing to rely on the doctrine of *exceptio rei venditae et traditae* must first obtain a

declaration from a competent civil Court that the doctrine applies. This Court is unable to accept that reasoning.

37. The 2nd Respondent, as the statutory authority charged with determining the issuance of gemming licences, was required to make a determination of title as part of its inquiry. The doctrine of *exceptio rei venditae et traditae* was squarely placed before the 2nd Respondent in the written submissions of the Appellant dated 21 November 2011. The 2nd Respondent had the benefit of detailed legal submissions from both parties including reference to the applicable case law. When the 2nd Respondent decided the question of title incorrectly by failing to apply the doctrine, it committed an error of law on the face of the record. That error went to the root of its decision.

38. As this Court has consistently recognised, following the landmark decision of the House of Lords in ***Anisminic Ltd. v. The Foreign Compensation Commission***[14], any error of law made by a statutory tribunal in the course of reaching its decision renders that decision *ultra vires* and a nullity amenable to correction by *certiorari*. As Lord Diplock affirmed in ***In Re A Company***[15], the ***Anisminic*** decision abolished the old distinction between errors of law going to jurisdiction and errors of law that did not.[16] Any error of law that causes the tribunal to ask itself the wrong question results in a decision that is a nullity. This principle was further elaborated in ***O'Reilly v. Mackman***[17], ***R v. Hull University Visitor ex parte Page***[18], and ***Boddington v. British Transport Police***[19], where Lord Irvine LC described the ***Anisminic*** decision as having made obsolete the historic distinction between error of law on the face of the record and

[14] [1969] 2 AC 147
[15] (1981) AC 374
[16] Craig on Administrative Law (7th Edition) at paras 16-014
[17] [1983] 2 AC 237
[18] [1993] AC 682
[19] [1999] 2 AC 143

other errors of law by extending the doctrine of *ultra vires* so that any misdirection in law renders the decision a nullity.

39. The failure of the 2nd Respondent to take into account and correctly apply the doctrine of *exceptio rei venditae et traditae*, which was the most germane legal principle to its decision, is a patent error of law on the face of the record. The 2nd Respondent thereby asked itself the wrong question. It asked whether the 1st Respondent had established her title as heir of Douglas Tennakoon, without first asking whether the title that Douglas Tennakoon derived from the statutory determination had already passed to the Appellant by force of the doctrine. This is the error that the Court of Appeal failed to identify and correct.

40. The Court of Appeal itself compounded this error by holding that the doctrine could only be invoked after a declaration from a civil Court. There is no authority for such a proposition. The doctrine of *exceptio rei venditae et traditae* is a rule of property law that operates automatically upon the establishment of the relevant facts. It is not a cause of action that requires a separate declaration proceeding. It may be raised as a defence or as the foundation of a claim in any proceedings where title is in issue, including before an administrative tribunal conducting a title inquiry. The partition action in the District Court of Ratnapura, in which the rights of the parties would ultimately be determined, was already pending. The Appellant was not required to obtain a separate declaration before relying on the doctrine before the 2nd Respondent.

Laches and Futility

41. The 1st Respondent submits that the Appellant is guilty of laches and that the application has become futile because the licence sought to be impugned has expired. These contentions do not assist the 1st Respondent. The Appellant became aware of the impugned decision only through the notice communicated to him, and thereafter moved the Court of Appeal on 25 October 2012. The errors of law on the

face of the record are clear and go to the validity of the licence itself. A subsequent renewal of a licence that is ab initio a nullity cannot itself be valid. As the Appellant correctly submits, once the original licence was issued in error, any purported subsequent extension or renewal of that invalid licence partakes of the same nullity.

Post scriptum to paragraphs 38 and 41 – A clarification on voidness and voidability of administrative action

42. After I circulated my draft judgment to my learned brothers Justice Janak De Silva and Justice Priyantha Fernando, my learned brother Justice Janak De Silva sought a clarification from me whether by virtue of paragraphs 38 and 41 of this judgement, a decision which is *ultra vires* would become a nullity without the need of a formal declaration by a Court of law. I dealt with this question in a previous judgment of the Court of Appeal and as I have responded to both my brothers on the question posed to me, I would set down my stance henceforth, as it would settle the universal position.

43. In this appeal this Court is confronted with a determination and decision of the 2nd Respondent which was not quashed by *certiorari* by the Court of Appeal. By a process of the aforesaid reasoning which I have employed, I demonstrate in this judgement that the decision made by the 2nd Respondent is tainted with errors of law. The Court of Appeal failed to quash that decision though the determination of the 2nd Respondent was teeming with illegality. It has been my consistent view, as is that of the regime of administrative law, that a formal declaration of invalidity or nullity has to be made by Court. I articulated this general proposition in the case of ***Halkandaliya Lekamalage Premalal Jayasekara v. Thushara Upuldeniya and 2 Others***[20]. I had occasion to cite in that case a well-known

[20] CA (Writ) Application No. 295 / 2020 (CA minutes of 07.09.2020)

passage of Lord Radcliffe in the case of ***Smith v. East Elloe Rural District Council***[21] which go as follows;

> *"An order, even if not made in good faith,* is still *an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law* to *establish the cause of invalidity and* to *get* it *quashed* or *otherwise upset,* it *will remain as effective for* its *ostensible purpose, as the most impeccable of orders."*

44. Wade & Forsyth's Admnistrative Law[22] makes this proposition quite clear as daylight;

> *".....Lord Diplock had added that there might be no one entitled to sue, for example if a statutory time limit had expired. In that case the order would have to stand. Cooke J. expressed the same idea in a New Zealand case:'Except perhaps in comparatively rare cases of flagrant invalidity, the decision in question is recognised as operative unless set aside.*
>
> *Yet even in the case of flagrant invalidity it remains necessary for the court to pronounce. It cannot be right to say, as Lord Denning MR once did of a defective rating list, that 'there is no need for an order to quash it. It is automatically null and void without more ado".*[23]

45. Thus, there is a presumption of validity as far as decisions of administrative bodies are concerned and it is acknowledged that a decision would stand valid until it is set aside by a competent Court.

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[21] [1956] AC 736 769
[22] 12th Edition (2023) at p 230
[23] ***AJ Burr Ltd v. Blenheim Borough*** [1980 2 NZLR 1 at 4]

46. Michael Fordham in his monumental work *"Judicial Review Handbook"*[24] characterizes this as the old presumption of regularity as regards decision making. ***R. v. Inland Revenue Commissioners, ex p Rossminster***[25] ("Where Parliament has designated a public officer as decision-maker for a particular class of decisions the High Court... must proceed on the presumption [of regularity] until that presumption can be displaced by the [claimant]"); ***R v. Inland Revenue Commissioners, ex p T.C.Coombs & Co***[26] ("where acts are of an official nature, or require the concurrence of official persons, presumption arises in favour of their due execution"); ***A v. B Bank (Governor and Company of the Bank of England Intervening***[27] (Bank of England's actions attracting presumption of regularity). This line of cases emphasizes a presumption of regularity which holds good. These authorities unite in holding that there is no automatic nullity even if grounds for judicial review exist and a declaration of nullity by Court is remedial in nature and this Court would now proceed to pronounce the declaration.

47. For the reasons set out above, this Court is satisfied that the doctrine of *exceptio rei venditae et traditae* applies to the facts of this case. When Douglas Tennakoon sold to the Appellant, by deed No. 3648 dated 6 December 1979, an undivided share of the land known as "Peelikumbura" at a time when he was only a statutory lessee, and when Douglas Tennakoon subsequently acquired title to that land by virtue of the statutory determination published in Gazette No. 102/2 dated 18 August 1980, that title enured automatically by operation of the doctrine of *exceptio rei venditae et traditae* to the benefit of the Appellant. Douglas Tennakoon had at that moment no title left in the land to transmit to any successor. The 1st Respondent's claim by inheritance accordingly fails.

48. The 2nd Respondent committed an error of law within the rubric of ***Anisminic***, failing to apply the doctrine of *exceptio rei venditae et traditae* which had been

[24] 8th Edition (2025) at p 484
[25] [1980]AC 952, 1013F-H
[26] [199112 AC 283, 299H
[27] [19931 QB 311, 326D-327G

squarely placed before it. The Court of Appeal erred in law by failing to identify and correct that error and by imposing an additional requirement that the Appellant first obtain a declaration from a competent civil Court before relying on the doctrine. The Judgment of the Court of Appeal dated 12 July 2013 in CA Writ Application No. 330/12 is accordingly set aside.

49. The questions of law on which leave was granted are answered in favour of the Appellant. The decision of the 2nd to 4th Respondents to issue licence No. 8529 and to renew the same as communicated by letter dated 19 October 2012 is quashed by way of writ of *certiorari* as being ultra vires and a nullity. The 1st Respondent is prohibited from gemming in the land known as "Peelikumbura" on the strength of any licence issued in pursuance of her application dated 30 April 2011. The appeal is allowed with costs.

Judge of the Supreme Court

K. Priyantha Fernando, J. **Judge of the Supreme Court**

I agree.

Janak De Silva, J.

I had the benefit of reading in draft the judgment proposed to be delivered by my learned brother, Nawaz, J.

I wish to add my views on the contents of paragraphs 38 and 41 therein.

According to the 'presumption of validity', administrative action is presumed to be valid unless or until it is set aside by a court **[*Hoffmann-La Roche and Co. v. Secretary of State for Trade & Industry* (1975) A.C. 295]**.

This 'presumption of validity' exists pending a final decision by Court [Lord Hoffmann in ***R v. Wicks* (1998) A.C. 92 at 115**, Lords Irvine LC and Steyn in ***Boddington v. British Transport Police* (1999) 2 A.C. 143 at 156 and 161, and 173-4**].

In ***Smith v. East Elloe Rural District Council* [(1956) A.C. 736, 769-770]** Radcliffe L.J. held:

> *"An order, even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

Denning L.J. took a different view in ***Mcfoy v. United Africa Co. Ltd.* [(1961) 3 All E.R. 1169 at 1172]** in holding that *"You cannot put something on nothing and expect it to stay there, it will collapse"*.

However, Wade and Forsyth (*Administrative Law*, 9th Ed., Indian Edition, 305), states that the statement of Denning L.J. in ***Mcfoy* (supra)** is not the correct position in law. I had occasion to examine this issue in greater detail in ***McCallum Brewing Company (Private) Limited v. Commissioner General of Excise and Another* [C.A. Writ 469/2008, C.A.M. 18.12.2019]**, ***Weerasooriya v. Wijeweera, Director General of Customs and Others* [C.A. (Writ) 259/2014, C.A.M. 22.06.2020]** and ***Hettiarachchi and Another v. Pearl Weerasinghe, The Commissioner General of Labour and Others* [S.C. Appeal 37/2018, S.C.M. 18.07.2025]** and adopted the view taken in ***Smith* (supra)**.

I see no reason to change my views on this issue [See ***Durayappah v. Fernando*** **(1967) 2 AC 337;** ***Hoffman-La Roche*** **(supra. at pages 365-6) per Lord Diplock;** ***Forbes v. New South Wales Trotting Club*** **(1979) 25 ALR 1, 30 per Aickin J;** ***London and Clydeside Estates Ltd v. Aberdeen District Council*** **(1980) 1 WLR 182, 189-190 per Lord Hailsham;** ***Calvin v. Carr*** **(1980) AC 574, 589-90 ;** ***R v. Panel on Take-Overs and Mergers; Ex Parte Datafin plc*** **(1987) QB 815, 840 per Lord Donaldson MR;** ***Wattmaster Alco Pty Ltd v. Button*** **(1986) 76 ALR 256, 263-4 (FC);** ***Martin v. Ryan*** **(1990) 2 NZLR 209, 235-41 (Ryan, J.)**].

Lewis [Clive Lewis, *Judicial Remedies in Public Law*, 5th ed., South Asia Edition (2017)] in discussing the meaning of null and void in administrative law states (at page 185) that:

> *"The concept of nullity has been used to solve other problem arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects.* ***Once its illegality is established, and if the courts are prepared to grant a remedy****, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as ever incapable of ever producing legal effects."* (emphasis added)

Thus, even where an act of a public authority is ultra vires and a nullity, for remedial purposes the illegality must be established before a Court.
As Wade and Forsyth (supra. at 281) states;

> *"…the court will treat an administrative act or order invalid only if the right remedy is sought by the right person in the right proceedings"*

Wade and Forsyth (supra. at page 304) goes on to state as follows:

> *"This must be equally true even where the 'brand of invalidity' is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the court.* ***The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects.*** *Lord Diplock spoke still more clearly [Hoffmann-La Roche & Co. v. Secretary of State for Trade & Industry (1975) A.C. 295 at 366], saying that* ***it leads to confusion to use such terms as 'voidable', 'voidable ab initio', 'void' or 'a nullity' as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction****."* (emphasis added)

Moreover, a divisional bench of five (5) judges of this Court in the **Colombo Port City Economic Commission Determination [S.C.S.D. Nos. 04/2021, 05/2021, 07/2021 to 23/2021, at pages 17-19]** adopted this position. This determination is binding on this bench as in ***Bandaranaike v. Attorney General*** **[(1982) 2 Sri.L.R. 786 at 792]** it was held that the descriptions 'determination' 'judgment', 'opinion' 'decision', 'conclusion' are different labels for the same concept.

Subject to the above views, I am in agreement with the other reasons and conclusions of my learned brother, Nawaz, J.

Judge of the Supreme Court