

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

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

1. **P.L. Dumindarathna**
No. 50, Balangoda Road,
Pelmadulla.

2. **P.L. Nishapathi Jayawardena**
Dharmapala Mawatha,
Pelmadulla.

3. **Amarasiri Pathirana**
Dharmapala Mawatha,
Pelmadulla.

Applicant - Appellants

Vs.

SC Appeal (Miscellaneous) No. 04/2012
Appeal No. 04/07/01/Gem 06/2012
National Gem and Jewellery Authority
File No. NGJA9/17.2-1/P/78012

1. **Ven. Bengamuwe Dhammadinna Thero**
Chief Incumbent of Sri Padasthanaya,
Rajamaha Viharaya,
Pelmadulla.

2. **National Gem and Jewellery Authority**
No. 25, Galle Face Terrace,
Colombo 3.

Respondents

And now between

- 1. P.L. Dumindarathna**
No. 50, Balangoda Road,
Pelmadulla.
- 2. P.L. Nishapathi Jayawardena**
Dharmapala Mawatha,
Pelmadulla.
- 3. Amarasiri Pathirana**
Dharmapala Mawatha,
Pelmadulla.

Applicant - Appellant - Appellants

Vs.

- 1. Ven. Bengamuwe Dhammadinna Thero**
Chief Incumbent of Sri Padasthanaya,
Rajamaha Viharaya,
Pelmadulla.
- 2. National Gem and Jewellery Authority**
No. 25, Galle Face Terrace,
Colombo 3.
- 3. Prasad Galhena**
Chairman,
National Gem and Jewellery Authority,
No. 25, Galle Face Terrace,
Colombo 3.

4. B.M.U.D. Basnayake

The Secretary,
Ministry of Mahaweli Development
and Environment,
'Sampathpaya',
No. 82, Rajamalwatta Road,
Battaramulla.

4A. Udaya Seneviratne

The Secretary,
Ministry of Environment,
'Sampathpaya',
No. 82, Rajamalwatte Road,
Battaramulla.

5. P.A.K. Gunawardene

Chairman,
National Gem and Jewellery
Authority,
No. 25, Galle Face Terrace,
Colombo 3.

6. Nihal Rupasinghe

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

7. Thilak Weerasinghe

Chairman,
National Gem and Jewellery
Authority,
No. 25, Galle Face Terrace,
Colombo 3.

8. **S.M. Piyatissa**
Secretary,
Ministry of Mahaweli Development
and Environment,
'Sampathpaya',
No. 82, Rajamalwatta Road,
Battaramulla.

Respondents

Before: **Hon. P. Padman Surasena, J.**
Hon. E.A.G.R. Amarasekara, J. and
Hon. Yasantha Kodagoda, PC, J.

Counsel: Hemasiri Withanachchi for the Applicant - Appellant - Appellants.
Rasika Dissanayake with Rajitha Hathurusinghe for the 1st Respondent - Respondent.
Anusha Jayatilake, Senior State Counsel for the 2nd to 4th Respondents.

Written Submissions: For the Appellants filed on 16th March 2021.
For the 2nd to 4A Respondents filed on 29th September 2016.

Argued on: 9th February, 2021

Decided on: 11th July, 2024

Yasantha Kodagoda, PC, J.

Introduction

1. This judgment relates to an Appeal to the Supreme Court presented under section 15(11) of the National Gem and Jewellery Authority Act, No. 50 of 1993 (hereinafter sometimes referred to as 'the Act' or as 'this Act'), against an order made by the 4th Respondent - Secretary to the Ministry of Environment under section 15(9)(b) of the said Act, by which the 4th Respondent had disallowed an Appeal made to him by the Appellants against an order made by the 2nd

Respondent – Gem and Jewellery Authority under section 15(7) of the said Act, revoking a licence which had been previously issued by it to the Appellants under section 15(1) of the Act.

Following the conclusion of the hearing of this Appeal, based on what transpired in Court, on 9th February 2021, the following was recorded:

“Court heard the submissions of all the Counsel appearing for all the parties.

Argument is concluded.

Learned Counsel for all the parties agree that this Court would not be in a position to decide the title of the land in respect of which the Gem Mining Licence had initially been granted. Therefore, this Court would not in the course of the judgment endeavor to make a finding as to the title. In view of the above, learned Counsel for all the parties agree that only remaining issue to be adjudicated by this Court is whether the 3rd and 4th Respondents had the legal authority to revoke the licence already granted in view of the provision in section 15(8) of the National Gem and Jewellery Authority Act.”

Case for the Appellants

2. Sequel to an Application presented to the 2nd Respondent – Gem and Jewellery Authority by the Appellants seeking a licence to mine for gems on a land called “Thumbaliyadde” situated in Kuttapitiya, Ratnapura, on 29th June 2011 the 2nd Respondent issued a Gem Mining Licence bearing No. 3720 (“X3”). This licence conferred on the Appellants legal authority to mine for gems in the land “Thumbaliyadde”. On or about 6th and 23rd January 2012 the 1st Respondent – the Chief Incumbent of the Sri Padasthanaya presented to the 2nd Respondent, letters (“X5a” and “X5b”) stating that he was the Viharadhipathi of the Sri Padasthanaya and objecting to the issue of the afore-stated licence to the three Appellants on the footing that the land “Thumbaliyadde” was a property of the Sri Padasthanaya. In the circumstances, the 2nd Respondent conducted an inquiry into the matter. Following the conduct of the inquiry, the 2nd Respondent decided to revoke the licence previously issued to the Appellants. The decision of the 2nd Respondent was conveyed to the Appellants by the 3rd Respondent – Chairman of the Gem and Jewellery Authority by letter dated 27th February 2012 (“X8”). The premise upon which the 2nd Respondent took the decision to revoke the licence was that the title to the land “Thumbaliyadde” was vested with the Sri Padasthanaya and not with the Appellants. Therefore, it was the view of the 2nd Respondent that the Appellants did not have a legal entitlement to obtain a licence to mine for gems on the land “Thumbaliyadde”.

3. Aggrieved by the decision of the 2nd Respondent, the Appellants presented an Appeal to the 4th Respondent – Secretary to the Ministry of Environment dated 1st March 2012. (“X9”) Following an inquiry, by decision dated 16th October 2012, the 4th Respondent decided to disallow the Appeal. (“X11”) The Appeal to this Court is against the afore-stated decision of the 4th Respondent dated 16th October 2012.

Consideration of the submissions of learned counsel and Analysis

4. In this Appeal, the Appellants have urged two (2) main grounds of appeal. They are as follows:
 - i. When there was neither a default on the part of the Appellants in the payment of any money payable to the 2nd Respondent in respect of the issue of the licence or a failure on the part of the Appellants to comply with any of the terms and conditions set out in the licence, the 3rd Respondent did not have jurisdiction to revoke a licence.
 - ii. Grounds of Appeal (ii) to (ix) relate to the finding arrived at by the 2nd Respondent pertaining to the Sri Padasthanaya having title to the land “Thumbaliyadde” as opposed to the Appellants having title.
5. The Appellants have in their Appeal to this Court urged that the decision of the 4th Respondent (“X11”) be set-aside and the Appellants be re-issued with a licence.
6. In view of the decision of this Court taken with the concurrence of learned Counsel for all parties regarding the scope of the adjudication of the Appeal, that this Court would not be in a position to decide on the title of the land “Thumbaliyadde” in respect of which the gem mining licence had been initially granted by the 2nd Respondent, this judgment will relate only to the adjudication of the afore-stated first ground of Appeal. Therefore, this judgment will be confined to the determination of whether the 2nd Respondent had legal authority to act on the complaint of the 1st Respondent and revoke the licence it had previously issued to the Appellants on the footing that the Appellants did not have title to the land “Thumbaliyadde”.
7. The contention of the learned counsel for the Appellants was that in terms of section 15(7) of the Act, the 2nd Respondent could revoke a licence it had issued under section 15(1) for prospecting for gems (gem mining) only upon the satisfaction by it of one out of the following two grounds:

- i. A default in the payment of any money payable to the 2nd Respondent by the licence holder.
- ii. A failure on the part of the licence holder to comply with any of the terms and conditions set out in the licence.

8. Learned counsel for the Appellants submitted that as neither of the afore-stated grounds were applicable to the Appellants, the 2nd Respondent did not have jurisdiction (legal authority) to revoke the licence it had previously issued. Learned counsel for the Appellant submitted further that, according to "X8", the ground based upon which the licence had been revoked was clear, that being, "Thumbaliyadde" was the property of the Sri Padasthanaya Viharaya. Ancillary to that ground was that, purported document produced by the Appellants ("L9") in support of ownership of the land, was one that had been fraudulently altered. He submitted that neither of these grounds came within the scope of section 15(7), and thus the revocation of the licence was *ultra vires* and *ex-facie* without jurisdiction. He submitted that the 2nd Respondent had suffered from a patent lack of jurisdiction.

9. Learned counsel for the Appellants also submitted that the power conferred on the Secretary to the Minister in terms of section 15(8) and 15(9) was confined to determining whether the revocation of the licence under section 15(7) was within the purview and scope of the two grounds stipulated in section 15(7).

10. Learned Senior State Counsel for the 2nd to 4A Respondents responded to the Appeal of the Appellants on three (3) grounds. They are, that (i) the instant Appeal is futile and is only of academic value, (ii) the 3rd Respondent possessed jurisdiction to cancel the licence issued to the Appellants, and (iii) the Appellants have failed to establish title to the property "Thumbaliyadde".

11. Learned Senior State Counsel submitted that licence No. 3720 ("X3") issued on 29th June 2011 was valid only for a limited period as specified in the licence itself, therefore would in any event have remained valid only till 21st June 2012. The instant Appeal had been filed on 16th November 2012, after what learned counsel referred to as the 'natural lapse of the licence'. In these circumstances, learned Senior State Counsel submitted that the determination of the instant Appeal would be futile, as the period in respect of which the licence had been originally granted is past. She further stated that the re-issuance of a licence for the remaining

period of "X3" would not be practical. However, she did submit that the 2nd Respondent 'would not stand in the way of entertaining a fresh gemming licence, provided a licence would be issued only upon the applicants satisfying the requisite criteria for issuance of a licence'.

12. As regards the ground of Appeal of the Appellants that the 2nd Respondent did not possess any jurisdiction (legal authority) to revoke the licence ("X3") issued to the Appellants on the ground it did, learned Senior State Counsel pointed out the following: As per section 54(2)(h) of the Act, every rule and every by-law made under the State Gem Corporation Act, No. 13 of 1971 (repealed) in force on the day immediately preceding the date on which the Act came into operation and not inconsistent with the provisions of this Act shall be deemed to be rules and by-laws made under this Act. State Gem Corporation By-laws No. 1 of 1971, a copy of which was presented to this Court by learned Senior State Counsel ("4R2") in its Second Schedule, provides the format of a 'Gemming Licence'. These by-laws also contain conditions of such a licence. The fourth (4th) of these conditions provides as follows:

"This Licence is revocable and liable for suspension at any time at the absolute discretion of the State Gem Corporation provided only that notice in writing is given to the licensee or his agent or servant and the exercise of this power shall not be questioned in any Court."

13. Item 9 of the afore-stated By-laws provides that every Gemming Licence shall be substantially in the form set-out in the Second Schedule of the By-laws. In these circumstances, she submitted that 'the validity of condition item 4 cannot be challenged'. Learned Senior State Counsel submitted that the 4th condition of licence No. 3720 ("X3") corresponds to the 4th condition state above. Learned Senior State Counsel also submitted that section 15(4)(b) of the Act provides that every licence shall be in the prescribed form and subject to such terms and conditions as may be prescribed. She also submitted that section 15(7) of the Act must be read with section 15(4)(b)(ii) of the Act, which allows for the 2nd Respondent to revoke a licence issued by it at its discretion. In the circumstances, learned Senior State Counsel submitted that the 2nd Respondent had legal authority to review the licence it had previously issued to the Appellants, and as the evidence in support of the Appellants' claim of title to the land in issue ("Thumbaliyadde") was very weak and doubtful, to cancel the licence. She submitted that the facts of this case disclose the position that the Appellants had not been entitled to a licence in the first place.

Question of law -

In the circumstances of this case, did the 2nd Respondent - National Gem and Jewellery Authority have jurisdiction (legal authority) to cancel Gem Mining Licence No. 3720 ("X3") it had previously issued to the Appellants?

14. For the purpose of answering this question, it is necessary to first consider the conferment of legal authority on the 2nd Respondent to grant a licence for gem mining (which is also referred to as 'prospecting for gems') and related provisions of the Act. Section 15(1) of the National Gem and Jewellery Authority Act, No. 50 of 1993 provides that the National Gem and Jewellery Authority (hereinafter sometimes referred to as 'the Authority') shall be the sole authority responsible for the issuance of licences to carry on the gem industry in or over any state or private land. In terms of the interpretation provided for the term 'gem industry' found in section 55 of the Act, mining for gems or gemming is a form of the gem industry. Section 15(2) provides that no person shall carry on the gem industry except under the authority of a licence issued by the Authority. For the purpose of obtaining a licence to be issued under section 15(2), section 15(3) provides that an Application in the prescribed form shall be made to the Authority. In terms of section 15(4)(b), every licence shall be in the prescribed form, be subject to such terms and conditions as may be prescribed, and unless cancelled earlier, it shall be in force for a period of twelve months from the date of its issuance.
15. According to section 15(7), the Authority may at any time revoke any licence issued under section 15(2), (i) in the event of any default in the payment of any money payable thereunder, or (ii) on the failure of the licensee to comply with any of the terms and conditions of the licence.
16. It would thus be seen *inter-alia* that, the Act requires (i) the Application seeking a licence, (ii) the licence, and (iii) conditions of the licence to be in the 'prescribed form'. Section 53 of the Act empowers the Minister to make regulations in respect of any matter required by the Act to be prescribed or in respect of which regulations are authorised by the Act to be made. During the hearing, this Court was informed by learned counsel that acting in terms of section 53 of the Act, the Minister has not made any regulations prescribing the form of the Application to be presented under section 15(3), the format of the licence to be issued under section 15(2), and the conditions to be attached thereto.
17. By section 54(1) of the Act, the State Gem Corporation Act, No. 13 of 1971 has been repealed. However, section 54(2)(h) of the National Gem and Jewellery Authority

Act provides that, notwithstanding the repeal of the State Gem Corporation Act, every rule and every by-law made under the State Gem Corporation Act, and in force on the day immediately preceding the appointed date and which are not inconsistent with the provisions of this Act shall be deemed to be rules and by-laws made under this Act. It is relying on the transitional provision contained in section 54(2)(h) of the Act, that learned Senior State Counsel brought the by-laws contained in "4R2" to the attention of this Court. Learned Senior State Counsel submitted that these by-laws which had been made under section 21(1) of the State Gem Corporation Act, had been published in *The Ceylon Government Gazette Extraordinary*, No. 14,989/8 dated 23rd December 1971, and are titled 'State Gem Corporation By-laws, No. 1 of 1971'. She submitted that these by-laws were in operation on the date immediately preceding the appointed date of Act No. 50 of 1993. She further submitted that, in so far as the issuance and revocation of licences are concerned, the Minister had not made any regulations in terms of section 53 of the Act. (Section 53 of Act No. 50 of 1993 empowers the Minister to make regulations in respect of any matter required by the Act to be prescribed or in respect of which regulations are authorised by the Act to be made.) This aspect of learned Senior State Counsel's submissions were not contested by the learned counsel for the Appellants.

18. In view of the foregoing, learned Senior State Counsel submitted that the by-laws contained in "4R2" comes within the scope of section 54(2)(h) of the Act and are relevant to the matter being adjudicated in this Appeal. In the circumstances, learned Senior State Counsel invited this Court to apply the by-laws contained in "4R2" to the determination of this Appeal.
19. Item No. 2(2) of the afore-stated By-laws provides that every Application for a Gemming Licence shall be substantially in the form set out in the First Schedule of the By-laws. According to the First Schedule, an applicant for a Gemming Licence shall provide *inter-alia* the following information: (i) the name of the applicant, (ii) the name of the land in respect of which the licence is being sought, (iii) the boundaries of the land, (iv) nature of the title or claim to the land or proportion of the land claimed, (v) details of co-owners, if any, and (vi) if the applicant is not the sole owner of the land, details of consent having been received from the other co-owners.

20. Item Nos. 3 to 8 of the afore-stated By-laws prescribe the procedure to be followed by the Authority when an Application is received for a Gemming Licence. Item No. 8(2) provides that no licence shall be granted to any person, unless – (a) he himself owns the land; or (b) has obtained the consent of so many of the 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.

21. Item No. 9 provides that every Gemming Licence shall be substantially in the form set out in the Second Schedule. It would be noted that section 15(4)(b)(i) provides that every licence shall be in the prescribed form. In fact, a perusal of "X3" reveals that it has been prepared in accordance with the Second Schedule of the afore-stated by-laws. The format of the Gemming Licence contains conditions to be attached to the licence. It would once again be noted that section 15(4)(b)(ii) provides that every licence shall be subject to such terms and conditions as may be prescribed. "X3" contains these conditions attached to the licence as contained in the Second Schedule. The 4th such condition states as follows:

"This licence is revocable and liable to suspension at any time at the absolute discretion of the State Gem Corporation provided only that notice in writing is given to the licensee or his agent or servant and the exercise of this power shall not be questioned in any Court."

22. A perusal of "X3" reveals that the afore-stated 4th condition appears as condition No. 4 of the licence.

23. The prescribed form of the licence (as contained in the Second Schedule of the By-laws) contains the following, which is a declaration which the licensee upon the licence being granted to him is required to make. It is as follows:

"I, hereby declare that all the statements and representations made by me and by my agent are correct and I further declare that I shall observe all the terms and conditions upon which this licence has been issued. I agree that this licence may be cancelled if any of the statements and representations made by me or my agent are untrue or, if in the opinion of the General Manager of the State Gem Corporation, I have failed to observe any of the terms and conditions, upon which the licence has been issued."

Date:

.....
Signature of the Licencee"

24. Neither the Petition of Appeal tendered to this Court nor the submissions of learned counsel for the Appellants make any reference to the fact that, the above declaration was not made by the Appellants. According to this declaration, once the licensee places his signature thereunder, he agrees that the licence may also be cancelled (i) if any of the statements and representations made by him or his agent are found to be untrue and/or (ii) if in the opinion of the General Manager of the State Gem Corporation, he has failed to observe any of the terms and conditions upon which the licence has been issued. Therefore, apart from the two requirements in section 15(7), provision of untrue statements or making false representations may also be a ground for revocation of a Gemming licence.

25. At this stage, it would be pertinent to refer to the facts of this case. Following an Application tendered by the Appellants, the National Gem and Jewellery Authority had on 29th June 2011, issued a licence to prospect for gems on a land called 'Thumbaliyadde' situated within the Kuttapitiya village, in Pelmadulla of the Ratnapura district. On 6th January 2012, the 1st Respondent – Ven. Bengamuwe Sri Dhammadinna, the Chief incumbent of the Sri Padasthanaya complained to the 2nd Respondent that the afore-stated land belonged to the Sri Padasthanaya. ("X5a"). Another letter dated 23rd January 2012 ("X5b") were also submitted by the 1st Respondent to the 2nd Respondent. Consequent thereto, the 2nd Respondent has conducted an inquiry, and had decided to cancel the licence ("X3"). That decision has been conveyed to the Appellants by letter dated 27th February 2012 ("X8"). In the said letter, the 3rd Respondent writing on behalf of the 2nd Respondent has stated that, an examination of the material submitted by the 1st Respondent and the Appellants, submissions made on their behalf and documentation called for from the National Archives examined by the inquiring officer had revealed that, the land 'Thumbaliyadde' belonged to the Sri Padasthanaya. Furthermore, inquiries had revealed that this land had been vested in the Sri Padasthanaya by a *Sannasa*, and that document marked 'L.9' tendered by the Appellants in supposed proof of their ownership, had in it a forgery. It is sequel to the conveying of this decision, that the Appellants had appealed to the 4th Respondent – Secretary to the Ministry of Environment and thereafter to this Court.

26. In *Regina v Metropolitan Police Commissioner, Ex parte Parker* [1953] 1 WLR 1150], Lord Goddard, CJ has expressed the following view:

“... Indeed, leaving out of account such very exceptional things as irrevocable licences granted under seal and possibly licences coupled with an interest, the very fact that a licence is granted to a person would seem to imply that the person granting the licence can also revoke it. The licence is nothing but a permission, and if one gives a man permission to do something, it is natural that the person who gives the permission will be able to withdraw the permission...”

27. In this regard, Michael Akehurst in an article titled 'Revocation of Administrative Decisions' [(1982) PL 613], states the following:

“The general rule, that a decision affecting the rights of an individual cannot be revoked without his consent, is obviously in the interests of the individual. But there can be situations in which the administration has a legitimate interest in revoking such a decision. For instance, the administration may discover that its original decision was illegal or based on incorrect facts. Again, if subsequently the facts change or the administration changes its policy, it may have strong reasons for wanting to revoke a decision which it regards as incompatible with the new facts or the new policy. ... When an administrative body is empowered to determine whether an individual has a pre-existing legal right, it is performing the same type of function as a court performs. ...

But different considerations apply when an administrative body is empowered to confer on an individual a benefit which he would not otherwise have possessed. Here, the administrative body is exercising a discretionary power. There is a presumption of statutory interpretation that 'a discretionary power may be exercised from time to time unless a contrary intention appears' and it would seem to follow that the administrative body therefore has the power of 'reviewing its decisions from time to time'. An administrative body cannot fetter the future exercise of its discretionary power by making an administrative decision, just as it cannot fetter the future exercise of its discretionary powers by making a contract.

The fact that an administrative body has implied power to revoke certain types of decision does not mean that it has an unlimited power to revoke such decisions. An implied power to revoke is normally a discretionary power, and it is settled law that a decision taken under a discretionary power will be invalid if the decision-maker disregarded relevant considerations. In deciding whether to revoke its previous decision, a public authority should always take into account the interests of the

beneficiary of the original decision, who may suffer hardship if he loses the benefit conferred on him by the original decision; if the public authority considers only the various public interests which may point in favour of revocation, and disregards the interests of the beneficiary of the original decision, its decision to revoke should be quashed for disregarding a relevant consideration. The public interests in favour of revocation must be weighed against the private interests of the beneficiary, and revocation outweigh the private interests of the beneficiary. ...

The balance between public interests and private interests will vary so much from case to case that it is impossible to give an exhaustive list of the circumstances in which an implied power to revoke can be exercised. Suffice it to say that the most obvious factors which are likely to justify revocation are misconduct by the beneficiary of the original decision and a major change in circumstances..."

28. Thus, it would be seen that the common law recognises the principle that a statutory authority which is empowered by law to issue a licence authorising the conduct of any matter which comes within the purview of such licensing authority's mandate, is possessed with inherent power to withdraw or cancel such licence (following its issuance) for valid reasons, including in particular, upon satisfaction after inquiry, that (i) it (the statutory authority) had been misled by the applicant to believe that the applicant was entitled to the licence applied for, (ii) the applicant had acted fraudulently in obtaining the licence, or (iii) the applicant had acted in breach of the terms and conditions of such licence. However, an enabling statute can negative such inherent power, through specific provision. It is necessary to emphasise that such inherent power is not unlimited, should be exercised in good faith, with due diligence, for good reasons, and above all in compliance with the rules of natural justice.
29. In addition thereto, section 15(4)(b)(ii) read together with the conditions attached to the licence ("X3"), in particular condition No. 4, and the afore-stated declaration made by the licencees (Appellants), empower the National Gem and Jewellery Authority to cancel a licence it has issued under section 15(2) of the Act, provided it has, prior to arriving at such decision, complied with the common law requirement of adhering to the rules of natural justice. In the circumstances, I hold that, section 15(7) of the Act, which provides that, "*the Authority may at any time revoke any licence issued under subsection (2), in the event of any default in the payment of any money payable thereunder or on the failure of the licensee to comply with any of the terms and conditions of the licence*", is one of the provisions, which also authorises

the Authority to revoke a licence due to either of the circumstances stated in that sub-section. Sub-section 15(7) does not exhaustively contain grounds on which a licence issued under section 15(2) may be revoked. Holding that sub-section 15(7) provides exhaustively grounds on which a licence may be revoked, would cause considerable mischief, as, if that was to be the law, a person who has initially successfully hoodwinked the Authority by obtaining a licence under section 15(2) to mine a land for gems, would be entitled to continue to prospect for gems for a period of twelve months (statutorily prescribed duration of a licence), even if it can be established that he had tendered a forged set of documents to establish title to the land in issue. Such an interpretation would leave the actual owner / owners of the land in respect of which the licence has been fraudulently obtained, deprived of an opportunity of having their entitlement to prospect for gems beneath the land they own, vindicated on time. Furthermore, such an interpretation would leave the National Gem and Jewellery Authority functus, in light of the licensee having engaged in fraudulent activity for the purpose of obtaining a licence.

30. Further, the significance of the by-laws should not be disregarded. ***In Thajudeen and Another v Gunasekera* [76 NLR 133]**, Justice Pathirana described what a by-law is, in the following manner:

"A by-law affects the public or some portion of the public and is imposed by some authority clothed with statutory powers for something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. Further, it involves a consequence, that, if validly made, it has the force of law within the sphere of its legitimate operation."

31. Section 17 of the Interpretation Ordinance, No. 21 of 1901 (as amended) provides that where any enactment confers power on any authority to make rules, such power shall include the power to make rules for regulation, supervision, protection or control including *inter alia*, for the issue, cancellation and refusal of licences in case of non-compliance. Further, section 20 provides that by virtue of the powers conferred by any enactment, acts done under any rule, order or by-law or regulation shall be deemed to be acts done under such enactment. Therefore, it follows that in view of section 54(2)(h) of Act No. 13 of 1971, any act which is done in terms of By-Laws No. 1 of 1971 needs to be considered as an act done under Act No. 13 of 1971.

32. In *Thajudeen and Another v Gunasekera* (cited above), Justice Pathirana observed that for a by-law to be valid, it must, *inter alia*, not be repugnant to the general law (statute law). His Lordship has expressed the view that a by-law is not repugnant to the general law merely because it deals with something that is not dealt with by the general law. Similarly, in this instance, the fact that section 15(7) contains two instances in which a licence granted under section 15(2) may be revoked, cannot be interpreted to mean that those are the only instances where a licence may be revoked. It is necessary that the terms and conditions attached to the licence, by virtue of the By-Laws No. 1 of 1971 be also taken into account, when determining the power of the Authority to revoke the Appellants' licence.

Conclusion

33. In view of the foregoing, I find myself in agreement with the submission made on behalf of the Respondents by the learned Senior State Counsel, that, the decision of the 2nd Respondent – National Gem and Jewellery Authority had not suffered from a patent lack of jurisdiction when it entertained the complaint from the 1st Respondent, conducted an inquiry and decided to revoke the licence granted to the Appellants ("X3") to prospect for gems on the land 'Thumbaliyadde'. Conversely, I hold that in arriving at the finding contained in letter dated 27th February 2012, the 2nd Respondent – National Gem and Jewellery Authority had acted *intra-vires* the powers vested in it by the National Gem and Jewellery Act, No. 50 of 1993.

34. I have also considered the first ground urged by the learned Senior State Counsel, as the time period for "X3" had lapsed by several years, it would now be futile to determine this Appeal, and even if the Appellants are successful, this Court would not be in a position to grant any relief to the Appellants. That would in fact be correct. However, I observed that the question of law raised on behalf of the Appellants as regards the jurisdiction of the 2nd Respondent is a matter of fundamental importance, which has a significant impact on the functioning of the 2nd Respondent – National Gem and Jewellery Authority. Therefore, exercising the inherent discretionary authority of this Court, I have formed the view that considering and answering the question of law raised on behalf of the Appellants was necessary.

35. As observed earlier, the agreed scope of the adjudication of this Appeal would not necessitate this Court to arrive at a finding on the ownership of the land

'Thumbaliyadde'. That is a matter a court vested with jurisdiction to determine that matter, would have to determine following trial. In the circumstances, arriving at a finding on the 2nd to 9th grounds of appeal raised on behalf of the Appellants and the 3rd submission made by the learned Senior State Counsel would not be necessary.

In view of the foregoing, I dismiss this Appeal.

In the circumstances of this matter, no order is made with regard to costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.

I agree.

Judge of the Supreme Court