

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

In the matter of an Appeal under Section 15 (8)
of the National Gem and Jewellery Authority
Act No. 50 of 1993.

1. W. Sudarman Gunarathna
No. 490/1, Huladduwa, Gatahatta.

2. K.A. Ranaweera
Near the Police Station of Avissawella,
Avissawella.

Appellants

SC Miscellaneous No: 01 /2016

V.

1. National Gem and Jewellery Authority,
No. 25, Galleface Terrace,
Colombo 3.

- (Not in office) 2. Anura Dissanayake,
Secretary,
Ministry of Mahaweli Development and
Environment,
“Sampathpaya”
No. 82, Rajamalwatta Road,

Battaramulla.

2. R. A. Dharmarathna
Uduwaka, Galahatta
3. R.A. Kumarasiri,
“Nimali”, Thorangoda,
Ehaliyagoda.

Respondents

NOW

1. W. Sudarman Gunarathna
No. 490/1, Huladduwa, Gatahatta.
2. K.A. Ranaweera
Near the Police Station of Avissawella,
Avissawella.

Appellants

V.

1. National Gem and Jewellery Authority,
No. 25, Galleface Terrace,
Colombo 3.
2. S.M. Piyathissa,
Secretary,
State Ministry of Gem and Jewellery,
Related Industries,
No. 561/3, Elvitigala Mawatha,

Colombo 05.

4. R. A. Dharmarathna
Uduwaka, Galahatta

5. R.A. Kumarasiri,
“Nimali”, Thorangoda,
Ehaliyagoda.

Before : **Mahinda Samayawardhena, J.**
K. Priyantha Fernando, J.
Sampath B. Abayakoon, J.

Counsel : Manohara De Silva, PC with Pasan Gunasena and
Dilmini De Silva instructed by Ravinda Jayasinghe
for the Appellant.

Yuresha De Silva, DSG instructed by Rizni Firdous,
SSA for the 1st and 2nd Respondents.

Anurudda Dharmaratne with Hasitha Ratnayake
instructed by Vidushan Manamperi instructed by
G.S. Kumudini for the 4th Respondent.

Argued on : 25.11.2025

Decided on : 04.03.2026

K. PRIYANTHA FERNANDO, J.

The Facts

1. The Appellants are gem miners, while the 1st and 2nd Respondents are the Gem and Jewelry Authority and the Secretary to the Ministry of Mahaweli Development and Environment respectively. The 3rd and 4th Respondents are private parties who are also engaged in gem mining.
2. The Appellants have submitted the Application bearing No. EH/02/11440 for a license to mine gems in a land called and known as **“Owitewatta”** on 18.03.2015. This has been submitted to Ehaliyagoda Regional Office of the 1st Respondent Authority.
3. It is submitted that 3rd and 4th Respondents have also submitted an application to Ehaliyagoda Regional Office of the 1st Respondent Authority for a license to mine gems in a land called **“Pelawatta”**. This application bears No. EH/02/11273.
4. It is submitted that by its letter of December 2015 dated 09.10.2014, the 1st Respondent Authority has informed the Appellants and the 3rd and 4th Respondents that their applications for licenses were rejected on the ground that the said two lands have not been identified. Aggrieved, the Appellants have submitted the appeal bearing No. 02/08/ඔක්තෝ/19/2015 to the 2nd Respondent Secretary under the section 15(8) of the Gem and Jewelry Authority Act No. 50 of 1993 (The Act). The 3rd and 4th Respondents have also submitted an appeal bearing No. 02/08/ඔක්තෝ/20/2015 to the 2nd Respondent Secretary under the section 15(8) of the Act.
5. It is submitted that in the inquiry in proof of the nature and the required extent of their rights in “Owitewatta” the Appellants produced the Deeds and other relevant documents namely: Deed of Lease No.1082 dated 06.05.2014, attested by P.L. Chamini Gunasekara, Notary Public, Deed of Lease No.1092 dated 29.05.2014, attested by P.L. Chamini Gunasekara,

Notary Public, and documents which express other owners' consent for issuance of a license to the Appellants.

6. It is further submitted by the Appellants that the boundaries of "Owitewatta" are as follows, to the North – Halkoladeniya, to the East – Polwatta, to the South – Maladola, which separates Polwatta, and to the West – Gatahathi Ela.

7. It is submitted by the Appellants that on behalf of the 3rd and 4th Respondents, The Deed of Transfer No.686 dated 11.07.1903 is the oldest Deed produced to show a land called "Pelawatta". In this regard it is submitted by the Appellants that in the said Deed "Pelawatta" was referred to as a separate land.

8. It is submitted further that the 3rd and 4th Respondents have also produced the Deed of Transfer No.245 dated 26.06.1970, attested by Mr. Vajira Munasinghe, Notary Public to show a land called "Pelawatte". However, the Appellants state that there is no reference to a land called "Pelawatte" in the said Deed.

9. In this regard, it is submitted that the given boundaries of "Pelawatta" comprised of the road which separates Halkolawinnawatta claimed by K. John Singho and others to the North, Halkolawinnawatta and Pandithawatta claimed by W. Jayasinghe to the East, Ela to the South and Mahawitawatta and Puhuwalawatta claimed by R.A. William to the West.

10. The Appellants state that following an inquiry into the said two appeals, the 2nd Respondent Secretary made Order dated 02.08.2016. Via the Order, the appeal of the Appellants has been rejected while not mentioning the status of the appeal of the 3rd and 4th Respondents.

11. It is submitted that thereafter the Chairman of the 1st Respondent Authority has sought a clarification of the said Order dated 02.08.2016 from the 2nd Respondent Secretary. Following such, the 2nd Respondent Secretary has made an Order dated 15.08.2016 clarifying and supplementing his previous Order dated 02.08.2016. Through the second Order, the 2nd Respondent Secretary has informed the Chairman of the 1st Respondent Authority that the appeal of the 3rd and 4th Respondents is allowed whereby the said two Respondents were to be granted a license to mine gems in the land called “Pelawatta”.

12. The Appellants further state that their predecessors have previously instituted a partition action bearing No. 18096/P in Avissawella District Court in 1992 which concerned the land relating to the said applications for licenses and appeals.

13. It is submitted that in the schedule of the amended plaint of the said partition action, the land sought to be partitioned was referred to as “Owitewatta alias Pelawatta” (A separate portion out of the amalgamated lands known as Aliyawettunamandiye watta, Polwatta and Halkotuwinnawatta).

14. It is submitted that in the aforementioned partition action, the learned District Judge decided that there is no reference to a land called “Owitewatta alias Pelawatta” in any document produced in the action, that “Owitewatta” is a distinct and separate land, and that “Owitewatta” was not known as “Pelawatta”. In these circumstances the learned District Judge has dismissed the said partition action on the basis of non-identification of a land in the name of “Owitewatta alias Pelawatta”. However, it is submitted by the Appellants that the parties did not appeal against the decision of the partition action.

15. It is submitted by the Appellants that it is quite clear that in the said partition action the District Court has accepted the existence of a separate and distinct land called “Owitewatta”. It is also submitted that in the said partition action all the parties, except the 12th Defendant, admitted the

land described in the schedule to the amended plaint as the land sought to be partitioned.

16. The Appellants state that in the said partition action, the plan No. 4716 dated 22.03.1993, drawn by Mr. S. Ramakrishnan, Licensed Surveyor, was submitted to show the land sought to be partitioned called as “Owitewatta alias Pelawatta”. It is submitted that the 3rd and 4th Respondents’ predecessors have produced the Plan No. 545 dated 12.12.1997, drawn by Mr. J. Somasiri Licensed Surveyor. Whereby, it is submitted that the Appellants and the 3rd and 4th Respondents have pointed out two separate lands called “Owitewatta” and “Pelawatta” by deeds and plans.
17. The Appellants therefore submit that the 2nd Respondent Secretary has reached a factually erroneous decision in accepting the existence of only “Pelawatta” while refusing the existence of “Owitewatta” on the basis of the previous partition Action.
18. It is submitted that in the inquiry into the appeals, the Attorney-At-Law for the Appellants made a request not to consider the District Court decision, but the 2nd Respondent Secretary has not considered that request.
19. Being aggrieved by the said two Orders of the 2nd Respondent Secretary dated 02.08.2016 and 15.08.2016, the Appellants have preferred the instant appeal to this Court and have raised the following questions of law:
 - a) Has the District Court accepted the existence of a land called “Owitewatta”, even though the Court rejected the existence of a land called “Owitewatta alias Pelawatta”?
 - b) Does dismissal of the partition action for non-identification of a land called “Owitewatta alias Pelawatta” operate as a reason for refusing to identify the land called “Owitewatta”, too?
 - c) Have the Appellants and the 3rd and 4th Respondents produced sufficient evidence to identify two separate lands called “Owitewatta” and “Pelawatte”?
 - d) Have the 1st Respondent Authority and the 2nd Respondent Secretary considered the totality of evidence regarding separate existence of a land called “Owitewatta”?

- e) Has the 2nd Respondent Secretary failed to exercise the appellate power vested in him by Section 15 (9) of the Act without depending on or independently of the District Court judgment given in the said dismissed partition action?
- f) Is the 2nd Order of the 2nd Respondent Secretary made supplementing the 1st Order illegal?

20. On 25.10.2016 this Court has issued a stay order restraining the operation of the orders dated 02.08.2016 and 15.08.2016.

The 3rd and 4th Respondents' Version

21. It is the position of the 3rd and 4th Respondents that the Appellants are attempting to obtain a license to mine gems in a land purportedly called "Owitewatta" by describing the boundaries of a land belonging to the 3rd and 4th Respondents.

22. It is contended that no land exists by the name of "Owitewatta" as described in the Appellants' application marked P-1. In support of this contention, it is stated that one Simon Singho and several others, who are alleged to be the Appellants' predecessors in title, instituted the aforesaid partition action in the District Court of Avissawella, bearing Case No. 18096/P, seeking the partition of a purported land said to be situated at Uduwaka and described as "Owitewatta," also referred to as "Pelawatta,"

23. It is submitted that according to the schedule to the Complaint dated 01.09.1992 (P-10) in Case No. 18096/P the boundaries to the said land purportedly called 'Owitewatta' also known as 'Pelawatta' were the following, to the North and East – Halkolavinna kumbura, to the South - Polwatta separated by Madola; and to the West – Getahethi Ela. This land was said to be two acres in extent.

24. In dismissing the action, the learned District Judge has held that "Pelawatta" is a distinct and separate land and that "Owitewatta" is also known as "Puhuwalagawwa Watta". However, it has also been held that the name given to the said land as "Owitewatta alias Pelawatta" is a fictional name and the boundaries given thereto are fictional as well.

25. It is also submitted that the Appellants' predecessors in title have not preferred an appeal against the said Judgment of the District Court of Avissawella whereby it is argued that the Appellants are bound by the said Judgment.

26. It is further submitted that the Appellants by the said application marked P-1 have sought a licence to carry out gem mining on a land called "Owitewatta". It is provided that as per P-1 the borders of "Owitewatta" are the identical boundaries set out in the schedule to the Plaint in Case No.18096/P which was dismissed.
27. It is submitted that 3rd and 4th Respondents applied for a gem mining licence in respect of a land known as "Pelawatta," the boundaries of which, as stated in their submissions, corresponded with the northern, eastern, and southern boundaries of the land described by the Appellants as "Owitewatta,". Whereby it is submitted that the Appellants are now seeking to obtain a gem mining license for a nonexistent and fictional land called "Owitewatte".
28. It is further submitted that the Appellants' application for a gem mining licence (P1) relates to a purported land of two acres in extent, whereas the lease agreements relied upon by them (P-3 and P-4) describe the land as measuring only four seers of kurakkan sowing, equivalent to one acre, whereby arguing that there is a material inconsistency as to the extent of the land claimed.
29. Owing to these reasons, it is submitted that the 2nd Respondent was justified in disallowing the Appeal of the Appellants.
30. It is further submitted that the 3rd and 4th Respondents have held two lease agreements, namely Lease Agreement No. 9851 and Lease Agreement No. 2764, at the time of applying for the gem mining licence and during the pendency of the appeal. Under the said leases, as reflected in the title pedigree, it is submitted that they were entitled to undivided shares of 15/28 and 1/84 respectively in the land known as "Pelawatta."
31. In addition, it is submitted that co-owners holding undivided shares of 5/40, 4/168, and 5/28 have granted written consent for gem mining, which is an accepted practice. The 3rd and 4th Respondents are themselves co-owners of an undivided 2/168 share. When these interests are aggregated, it is submitted that the 3rd and 4th Respondents are entitled to an undivided interest exceeding two-thirds of the land.
32. Accordingly, it is submitted that based on the title pedigree and the valid consent of co-owners, the 3rd and 4th Respondents satisfy the ownership and consent requirements in respect of the land called "Pelawatta".

Futility

33. Prior to engaging with the facts of the case, I must mention that the license has been issued on the 12th of September 2016 to the 3rd and 4th Respondents. On the 25th of October 2025 this Court has issued a stay order for the aforementioned license. In any event, it is apparent that the one year license issued to the 3rd and 4th Respondents have lapsed in time. This renders the current Appeal academic and arguably, futile.
34. However, it was argued by the Learned DSG that as per the ratio of my brother Justice Samayawardhena in SC/ Miscellaneous/ 04/2014 SC Minutes of 07/02/2025, the case ought not to be disregarded merely on that basis. In the aforementioned case, the issue of futility has been discussed extensively, whereby the following has been held:

“It is trite law that the rights of the parties shall be determined as at the time of the institution of the action, not at the time of pronouncing the judgment. When the Petitioner filed this appeal in this Court within the appealable period, it appears that either the gem mining licence had not been issued to the 7th and 8th Respondents or they had not commenced gem mining.

In any event, this Court does not act in vain by formally quashing A27 and A29 to underscore the proper course of action expected of the Respondents in the future. Public authorities entrusted with similar functions are hereby reminded that actions inconsistent with their legal obligations may attract similar judicial consequences. This judgment serves not only to resolve the present matter but also to reaffirm the importance of adhering to the principles of legality and accountability in the discharge of public functions.

In Sundarkaran v. Bharathi [1989] 1 Sri LR 46, the Petitioner-Appellant sought certiorari and mandamus to challenge the refusal of a liquor license for the year 1987. By the time the matter was taken up before the Supreme Court in 1988, the issue had become academic since the year 1987 had already elapsed. Nevertheless, in allowing the appeal, Justice Amarasinghe observed: “The court will not be acting in vain in quashing the determination not to issue the licence for 1987 because the right of the Petitioner to be fully and fairly heard in future applications is being recognised.”

In Nimalasiri v. Divisional Secretary, Galewela [2003] 3 Sri LR 85, Justice Sripavan (as he then was) stated:

Learned State Counsel urged that it is a futile exercise to issue a writ of certiorari because the decision complained of related to the year 2002 which had already expired. However, following the decision in Sudakaran v. Barathi and others [1989] 1 Sri LR 46 this Court issues a writ of certiorari

quashing the decision of the second Respondent contained in the letter dated 27.08.2002 marked (P4). Thus this Court is not acting in vain because the right of the Petitioner to be fully and fairly heard in future application is recognized.

In the present case despite the lapse of the licence granted to the 7th and 8th respondents, it is important to note that the effect of the court's judgement of nullity operates erga omnes, and hence a pronouncement on its invalidity is called for.

Although such a decision is directly binding only as between the parties to the proceedings in which it was made, the application of the doctrine of precedent has the consequence of enabling the benefit of it to accrue to all other persons whose legal rights have been interfered with in reliance on the law which the statutory instrument purported to declare.

35. In these circumstances, I am inclined to hold that the instant Appeal ought not to be dismissed on the basis of futility.

Has the 2nd Respondent not Exercised his Appellate Jurisdiction in Arriving his Decision?

36. Moving to the consideration of the merits of this Appeal, I am of the opinion that all questions of law raised relate to the validity of the orders marked "P - 8" and "P - 9" by the 2nd Respondent.

37. Having read the orders marked "P - 8" and "P - 9" I am of the opinion that the 2nd Respondent has in fact considered certain necessary factors in arriving at his decision. In his orders I observe that he has considered the discrepancies in the boundaries of the two lands in the two appeals. I also observe that the pedigrees of the respective parties have been considered by the 2nd Respondent whereby the 2nd Respondent has taken into account the question of ownership in terms of deeds and consent forms of the respective parties.

38. I further observe that he has taken into consideration previous applications made by the 3rd and 4th Respondents bearing No. EH/02/10996 where the Eheliyagoda Provincial Council has also considered this issue in detail.

39. However, I am not satisfied that the 2nd Respondent had sufficient knowledge as to the identification of the corpus claimed by either party. This is for the following reasons: there is seemingly a clear ambiguity as

to whether there are two separate lands as “Owitewatta” and “Pelawatte and in arriving at his decision as to why the Appellants of the instant Appeal are not entitled to the license and in determining the issue as to the border discrepancies, the 2nd Respondent has relied, for the most part, on the dismissed District Court order bearing No. 18090/ 2019 as apparent in pages 737 and 738 of the brief.

40. Therefore, I am of the opinion that the order of the 2nd Respondent is liable to be set aside. In any event, as priorly discussed, the period pertaining to the license issued to the 3rd and 4th Respondents has expired.

41. In these circumstances I direct the National Gem and Jewellery Authority to consider any application made by the parties to this case relating to the same corpus afresh in the event such applications are made.

The Appeal is Allowed

JUDGE OF THE SUPREME COURT

JUSTICE MAHINDA SAMAYAWARDHENA

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SAMPATH ABAYAKOON

I agree

JUDGE OF THE SUPREME COURT