

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

In the matter of an application for Writ of *Certiorari* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/WRIT/301/2024

S. A Harriett Chandrika
Mudunkotuwa West,
Kiriella

PETITIONERS

Vs.

1. K. S. Abenayaka,
Deputy Director,
National Gem and Jewellery Authority,
Regional Office,
Eheliyagoda
2. Viraj De Silva
Chairman and Chief Executive Officer,
National Gem and Jewellery Authority,
No.12 Macksons Tower,
Alfred House Garden,
Colombo 03.
- 2A. Naveen Sooriyarachchi
Chairman and Chief Executive Officer,
National Gem and Jewellery Authority,
No.12 Macksons Tower,
Alfred House Garden,
Colombo 03.
3. National Gem and Jewellery Authority,
No.12 Macksons Tower,
Alfred House Garden,
Colombo 03.

4. P.D.S. Madushanka
Assistant Divisional Secretary
Divisional Secretariat
Kiriella
5. B.M.B.M. E. Batugedera
Former Divisional Secretary
Kiriella
6. Divisional Secretary,
Divisional Secretariat,
Kiriella

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Dr. Sunil Coorey with Dulanjaya Gamage instructed by Nadeesha Fernando for the Petitioner.
S. Dunuwille, S.C., for the 1st to 5th Respondents.

Argued on: 09.02.2026.

Written Submissions: For the Petitioner on 24.03.2026.
For the 1st to 5th Respondents on 26.06.2026.

Decided on: 31.08.2026.

Mayadunne Corea J

The facts of the case briefly are as follows. The Petitioner is alleged to have obtained a mining license for mechanical gem mining. The Petitioner submits that the land in dispute is state land which has been granted to one Mahgam ethi Ralalge Somadasa and upon his death the Petitioner as the spouse has succeeded to possession (P1). It is submitted that the Petitioner has applied and obtained a license valid till 10.09.2024. While the mining operations were being carried out the Petitioner alleges that the Respondents have carried out an investigation on the adjoining land which is the Kuruganga reservation, a state reservation, and has suspended her mining license and has published a notice to auction the gem gravel. Hence this Writ application.

The Petitioner has sought for the following reliefs *inter alia* from this Court;

- “b) to issue a Writ of certiorari quashing the said decision or the observation of the Respondent envisaged in the said documents marked "P7" that the Petitioner has mined within the Kuruganga reservation;
- c) to issue a Writ of certiorari quashing the said decision of the 5th Respondent envisaged in the said documents marked "P8" to sell by public auction the gem gravel mined by the Petitioner and piled in the subject matter;
- d) to issue a Writ of certiorari quashing the decision of the 1st and/or the 2nd and/or the 3rd Respondent envisaged in the said document marked "P11" to suspend the said license marked "P3" and/or "P4"
- e) to issue a writ of certiorari quashing the decision of the 2nd Respondent envisaged in the advertisement marked "P12" to sell by auction the gem gravel mined by the Petitioner and piled in the subject matter”

The Petitioner’s grounds for a Writ

The Petitioner’s grounds for a Writ are as follows:

- The 3rd Respondent has violated section 50(5)(1)(a)–(c) by deciding, as reflected in P11, to sell the gem gravel at a public auction without informing the Petitioner.
- The 4th Respondent acted ultra vires, arbitrarily and in violation of natural justice, as reflected in P7, by determining that the Petitioner had mined within the Kuruganga reservation without giving her an opportunity to make representations.

- The 5th Respondent acted ultra vires, arbitrarily and in violation of natural justice, as reflected in P8, by deciding to auction the gem gravel on the basis that it had been mined from the river reservation.
- The 1st, 2nd and/or 3rd Respondents acted ultra vires, arbitrarily and in violation of natural justice, as reflected in P11, by suspending the Petitioner's licence marked P3 and/or P4.
- The 2nd Respondent acted ultra vires, arbitrarily and in violation of natural justice, as reflected in P12, by deciding to auction the gem gravel mined by the Petitioner.

The Respondent's objections

Several dates were taken by the Respondents to file objections. However, even as at the date this matter was taken up for argument, the State Counsel has failed to file objections.

Though the Respondents did not file objections, the State Counsel made legal submissions and also filed an inquiry report, the Court has requested, which had been conducted with the participation of all parties. However, legal objections were made on the basis that the Petitioner has violated the conditions of the permit granted and instead of mining in the land that has been authorized for her to mine, she had encroached and mined on a state reservation which amounts to an illegal mining on a state reservation. Hence, it was argued that the impugned decisions had been taken strictly in compliance with the provisions of the National Gem and Jewellery Authority Act.

Analysis

While the Petitioner claims that the gem gravel to be auctioned is from the pits in the land that she possessed a license, the Respondents have contended that the said gravel is from the adjoining land which is a state reservation. As no objections were filed the State Counsel based her arguments on the documents filed by the Petitioner herself and the inquiry report marked as "X".

It is common ground that the Petitioner has got a permit for mining, as per P2 the extent of the land is 1 acre. It is also common ground that the Petitioner has obtained a permit marked and tendered as P3 for a portion of 1 acre from lot 378 of plan no. FVP no.322. It is pertinent to note that the said permit issued by the National Gem and Jewellery

Authority is conditional and especially stipulates that there should be reservation kept around the for boundaries of the land. As per clause 4, the authority has the power to cancel or suspend the permit. Clause 4 reads as follows;

“4. බලපත්‍රධාරියාට හෝ ඔහුගේ නියෝජිතයාට හෝ සේවකයාට හෝ ලියවිල්ලකින් දැනුම් දීමෙන් පමණක් මෙම බලපත්‍රය අධිකාරියේ පරම අභිමතය පරිදි අවලංගු කිරීමට හෝ අත්හිටු වීමට හැකි අතර, එම බලය ක්‍රියාවට නැංවීම කවර හෝ උසාවියකදීවත් ප්‍රශ්න කළ නොහැකි විය යුතුය.”

Further, under special conditions, it is stated that if conditions of the authority are violated, the authority has the right to cancel the permit. Parties are not at dispute that by P4 which is subsequent to the permit P3, the Petitioner has been given permission to carry out mechanical gem mining. However, as per P4, permission for mechanical gem mining has been granted only for a 3-month period which is valid from 11.12.2023 up to 11.03.2024 and is limited to a surface square area of 3000ft in a pit. Further, under clause 3 of the said letter permitting mechanical gem mining, the Petitioner is required to strictly maintain the reservation areas that are mentioned thereon. Upon P3, the Petitioner concedes that he has commenced the gem mining. The Petitioner has annexed a copy of FVP 322 demonstrating lot 378. However, this Court observes that the Petitioner is not entitled for lot 378 in its entirety but is entitled only for one acre of the said lot. In the plan marked as P5, the Petitioner has failed to clearly draw the attention of this Court to the 1 acre area which she says she is in possession of and has a permit. The Petitioner contends that while the mining was going on, the 4th Respondent with several officials had visited the adjoining land and had inquired about the license the Petitioner possessed to mine. It is the Petitioner's contention that the Petitioner thereafter had come and inspected her land and concedes that there is illegal gem mining on Kuruganga reservation which the officers had alleged that the Petitioner had committed. Accordingly, an inquiry had commenced which resulted in the Petitioner been informed that her license is suspended. At this stage, it would be prudent to consider the chronology of events that had occurred.

Chronology of events

The 4th Respondent and officers had visited and inspected the Kuruganga reservation on a complaint of illegal gem mining on 09.04.2024. It is alleged that the Petitioner who resides in close proximity had visited the scene (paragraph10 of the petition). Upon the Petitioner being present, they had informed the Petitioner to come for an inquiry on 10.04.2024 at the land (P7). Subsequent to the inquiry, it is alleged that the Petitioner's permit had been cancelled by letter dated 22.04.2024 (P11) which prompted the Petitioner to file this Writ application dated 14.05.2024.

Subsequent to the filing of this Writ application, the Respondents had moved on several dates to file their objection. However, this Court observes that no objection had been filed. On 04.07.2024, the learned State Counsel had undertaken to inform the 1st to 3rd Respondents to conduct an inquiry and submit the report to the Court.

It is also pertinent to note that, as per the journal entry 29.07.2024, it has been brought to the attention of this Court that, the Petitioner has failed to participate as agreed on 04.07.2024. Accordingly, the inquiry had been fixed for 02.08.2024. It was specifically stated that the said inquiry is to ascertain whether the Petitioner is mining within the reservation of Kuruganga or in the land that she has been given the permit.

Accordingly, formal notice had been issued by the Court on the Respondents. It appears on 27.08.2024 the Counsel had reported that the inquiry had been concluded and the learned State Counsel had undertaken to file the report at the registry. As per the Journal Entry 02.09.2024 order on interim relief had been delivered whereby, interim relief had been refused, interim order as per prayer (g) had been refused but, an order has been made to prevent the 1st to 6th Respondents from taking steps to sell the gem gravel piled on the land until the hearing of the application.

It is pertinent to note when this interim order was made, the Court had considered the inquiry report and the Court had taken cognizance of the existence of the said report. Against this order, the Petitioner had gone by way of special leave to appeal to the Supreme Court in case no. SC/SPL/LA/257/2024 and in the said case too the Court had requested the State Counsel to file the inquiry report in the Court of Appeal record and also to give a copy to the Petitioner. In view of the above, the learned State Counsel by way of motion dated 10.02.2026 had filed the report and the inquiry proceedings marked as "X." Coming back to the main issue, let me now consider the Petitioner's grounds seeking a Writ in the instant application before this Court.

The land the Petitioner is mining on

As per the submissions the Petitioner alleges that she is mining within the boundaries of her land, namely within the boundaries of P3. This contention was vehemently denied by the Respondents who contended that the gravel found and the mining pit was found within the Kuruganga reservation, which is outside the perimeter of the Petitioner's land. Hence, where the mining is done and where the gravel to be auctioned is becomes a disputed fact. It is trite law that such a contention has to be proved through evidence and this is not the forum for the said purpose. It is also pertinent to note that

when the material facts are in dispute the Writ Court will be reluctant to exercise its prerogative powers conferred pursuant to article 140 of the Constitution.

The Petitioner's main contentions are that the Petitioner is mining the gems upon a valid permit P3 within her land; she had been given permission to do mechanical gem mining and the permission is valid for a period of three months which has to be renewed every three months and the said permission under P4 gives certain reservations that should be kept on the mining area. The Petitioner alleges that the Respondents who had inspected the adjoining land and the gem gravel that had been piled up and issued an order to sell the said gravel by way of a public auction. Further, the Petitioner alleges that she had been informed that the said illegal gem mining in the reservation had been carried out by her and the Respondents had suspended her permit with effect from 22.04.2024 by P11 pursuant to sections 48(1)(b), 49(1)(a) and (b) of the National Gem and Jewellery Act.

The Petitioner alleges that this suspension is *ultra vires*. The Petitioner's main ground is that, before the suspension, she had not been heard, hence, there is a violation of natural justice. the Petitioner also holds that pursuant to section 48 and 49, even if there is illegal gem mining there is no provision to suspend her license and therefore, suspension by P11 is *ultra vires*. It is also contended that the second Respondent had taken a decision to auction the gravel mined by the Petitioner by P12 which is *ultra vires* the power of the 2nd Respondent. This contention clearly demonstrate that the petitioner is staking a claim for the gravel which the petitioner says was mined from her pit. However, it is not disputed that the gravel is not within the Petitioner's land but on the Kuruganga reservation. Let me now consider these grounds.

Was there illegal mining on Kuruganga reservation?

The Petitioner herself concedes that on 09.-04.2024, certain officers had come and inspected her adjoining land to consider if there was mining on the reservation. The attention of this Court is drawn to document P7 whereby the Divisional Secretary has informed the Director of National Gem and Jewellery that upon a complaint he received he has done a site inspection and found that the Petitioner was mining illegally in the reservation and is causing severe damage to the Kuruganga reservation. Therefore, had requested the director of the Gem and Jewellery Authority to conduct an inquiry. This letter has been copied to the Petitioner, the officer in charge of the police and the gramasevaka. Subsequent to the said inquiry, document marked P8 had been issued. The said document too is addressed to the Director of the Gem and Jewellery Authority and copied to the Petitioner. As per the said document, it appears that the inquiry had

been conducted with the officers of the Gem and Jewelry Authority and as per the second paragraph of the letter, it is requested to take steps to auction the gem gravel that is piled up on the Kuruganga reservation. The said paragraph reads as follows;

“ඒ අනුව මුද්‍රාණකොටුව ග්‍රාම නිලධාරී වසමෙහි කුරුගහ හා කුරු ගහ රක්ෂිතයට (එස්.ඒ.හැරියට් වන්දිකා යන අයට අයත් රන්/ප්‍ර/30092 දීමනා පත්‍ර ඉඩමට අසන්නව) අනවසරයෙන් ඇතුළු වී රජයේ දේපළ වලට හානිකර, අනවසර පතල් කැනීම් වලින් ගොඩ දමා ඇති ඉල්ලුම් ප්‍රසිද්ධ වෙන්දේසියේ විකිණීම සඳහා අවශ්‍ය කටයුතු සිදු කරන ලෙස කාරුණිකව දන්වමි.”

It appears that what the Divisional Secretary sought from the Director was to auction, by way of public auction, the gem gravel that had been piled up within the Kuruganga Reservation, which is State land that has neither been alienated nor in respect of which a license for gemming has been issued. The letter does not refer to any gem gravel located on the Petitioner's land. Rather, it refers to gravel situated in close proximity to the Petitioner's land. However, as submitted, it also appears from the contents of the letter that the Petitioner had illegally entered the Kuruganga Reservation and engaged in gem mining without lawful authority, as expressly reflected in the letter.

Subsequently, the 3rd Respondent had taken steps to auction the gravel detected in the reservation and had advertised the gravel to be auctioned. As per P12 the premises of the auction is the Kuruganga reservation. Hence, as per these documents, what is apparent to this Court is that steps have been taken to auction the gem gravel in the Kuruganga reservation state land and not gem gravel in the Petitioner's land. This is elaborated further in the notice of auction. It is also pertinent to observe that there is material submitted to this Court to demonstrate that the Petitioner at this stage had claimed the said gravel from the illegal mining. The relevant portion of P12 appears as follows:

Yet at the argument stage, the Petitioner contends that the auction is for the gem gravel in her land that has been mined by her. The Petitioner has not offered any explanation as to how the gem gravel that has been taken from the pit in the land, she has a permit to be in the Kuruganga reservation for it to be auctioned from the Kuruganga reservation.

She alleges that the 4th and 5th Respondents have no authority to inspect gem lands and the mining activities. I cannot agree with these contentions as submitted by the Learned State Counsel which was not challenged by the Petitioners that no permits have been issued to any person to mine the Kuruganga reservation. If no permits have been issued to mine the reservation how were the mining activities going on the reservation and the gem gravel found on the reservation? If so on what basis the Petitioner claims the said gravel and obtained an interim order to prevent the auction on the basis that it is gem gravel mined by her?

However, the Petitioner has failed to explain how the gem gravel found within the Kuruganga Reservation could be claimed by her. She has not pleaded that she had used any part of the said Reservation to store or keep the gem gravel. If, in fact, she had done so, such conduct would amount to a violation of the conditions of her permit. In any event, the Petitioner's failure to explain the basis upon which she claims the gem gravel situated within the Kuruganga Reservation demonstrates that she has failed to invoke the jurisdiction of this Court with clean hands. Accordingly, in my view, the Petitioner fails to satisfy the requirement of *uberrima fides*.

Hence, the Petitioner's contention that the 4th and 5th Respondents were attempting to auction the gem gravel taken from her land which she had mined with a legal permit, cannot be sustained. In my view, as both parties concede that no permit has been issued to mine gems in the Kurugama reservation it is not disputed that the reservation belongs to the state.

The Divisional Secretary of the area has all the right to protect the state land within his area. Once a complaint has been received as reflected in P7, the divisional secretary has done a sight inspection. Yet, he has not taken any action before informing the Director of the 1st Respondent under whose purview comes the issuance of license for gem mining. Thereafter, the 4th Respondent quite correctly had informed the 1st Respondent his observation that there is gem mining in the reservation and as a result severe damage has been caused to the Kuruganga reservation and has called for a joint inquiry with the police and the Gem and Jewellery Authority. I cannot find any illegality in the Divisional Secretary's action where he is attempting to protect a state reservation. It was also alleged in the submissions that the 4th Respondent had malice towards the

Petitioner and was attempting to illegally obtain the gem gravel in her land. I cannot agree with this contention for the reason if the 4th Respondent was acting illegally or with malice, he would not have informed the 1st Respondent and the officer in charge of the Police station, the Grama Niladri of the division and the Petitioner to be present for the site inspection which too is to be carried out by the 1st Respondent.

I also observe by P7 the 4th Respondent had not attempted to carry out an inquiry but by the said letter he had only requested the 1st Respondent to conduct an inquiry. In view of the observation of the damage that has been caused to the State reservation. I cannot find any fault with the course of action taken by the 4th Respondent. It is also observed the inquiry held on 10.04.2024 it had not been the 4th Respondent who had taken part at the inquiry but it was the 5th Respondent the Divisional Secretary himself who had taken part in the inquiry.

At the argument stage, the Petitioner alleged that the 5th Respondent had taken a decision to auction the gem gravel that had been found in the state reservation. To substantiate this the Petitioner has annexed P8 and has alleged, that by P8 the 5th Respondent had taken over the powers of the Gem and Jewelry authority to auction the gem gravel. This contention too has to fail on the plain reading of the document P8 itself. By P8 the 5th Respondent had not taken any steps to auction the gem gravel but had requested the proper authority the 1st Respondent to take steps to auction the gem gravel that has been taken out from illegal gem mines and kept within the Kuruganga reservation. He has further made a request for the 1st Respondent to take steps to provide security to protect the said gravel. The said request as in P8 is reproduced here for clarity.

“02. ඒ අනුව මුදුන්කොටුව ග්‍රාම නිලධාරී වසමෙහි කුරුගහ හා කුරුගහ රක්ෂිතයට (එස්. ඒ. හැරියට වන්දිකා යන අයට අයත් රන්/ප්‍ර/30092 දීමනා පත්‍ර ඉඩමට ආසන්නව) අනවසරයෙන් ඇතුළු වී රජයේ දේපළ වලට හානිකර, අනවසර පනල් කැනීම් වලින් ගොඩ දමා ඇති ඉල්ලම් ප්‍රසිද්ධ වෙන්දේසියේ විකිණීම සඳහා අවශ්‍ය කටයුතු සිදු කරන ලෙස කාරුණිකව දන්වමි.

03. එමෙන්ම ප්‍රසිද්ධ වෙන්දේසියේ කටයුතු අවසන් වන තෙක් ඉල්ලම් වල ආරක්ෂාව සඳහා නිශ්චිත නිලධාරියෙකු යොදවා විධිමත් වැඩපිළිවෙලක් සකස් කරන ලෙස ද එම ක්‍රියාමාර්ග පිළිබඳව ලිඛිතව මා දැනුවත් කරන ලෙස ද වැඩි දුරටත් කාරුණිකව දන්වමි.”

This does not disclose that the 5th Respondent has taken a decision to auction the gem gravel. If it is so he would have taken steps to auction than seeking the intervention of the 3rd Respondent to auction the gem gravel found in the state reservation.

Most importantly, the wording of this letter clearly establishes that what is requested to be auctioned is gem gravel obtained from illegal mining pits in the Kuruganga reservation and not of the land the Petitioner possesses. This letter has been copied to the Petitioner herself and to the Government Agent among others. In front of the reference to the Petitioner there is a request made which reads as follows:

“කරු. අනවසර ක්‍රියා වහාම නැවත්වීමට හා අදාළ ඉල්ලීම් ආරක්ෂා කිරීමට කටයුතු කිරීම සඳහා”.

As per the wording of this request the Petitioner is requested to immediately stop the illegal gem mining and to take steps to protect the gravel. The Petitioner has acknowledged this letter by P10(a). In the 3rd paragraph, the Petitioner has acknowledged and specifically stated that she will honor the legal steps taken by the Divisional Secretary. The last paragraph of her letter reads as follows.

“එබැවින් ඔබ විසින් ගන්නා ලද නීතිමය කටයුත්තට අප අවනත වන බවත් ඔබගේ කටයුත්තට අදාළ සියලුම ලිපි ලේඛණ වල සහතික පිටපත් මෙහි ඉදිරි කටයුතු සඳහා මාගේ ඉහත ලිපිනයට යොමු කරන ලෙසත් ඉහත පනත ප්‍රකාරව දින 14 ක් තුළ එම ලේඛණ ලබා දෙන ලෙසත් එම කාලය තුළ ලේඛණ ලබා දීමට ඔබ අපොහොසත් වුවහොත් ඔබ සතුව එම ලේඛණ නොමැති බවට නිගමනය කර ඉදිරි කටයුතු කරගෙන යන බවත් වැඩිදුරටත් දන්වමි.”

Interestingly in this letter she has never refuted the allegation of illegal gem mining in the Kuruganga reservation nor has she taken the position that she is mining in the land that she possesses through a permit. This itself in my view, is an admission by her of the allegations made in paragraph 2 of P8.

The Petitioner contended that the document P10(a) is a request to obtain information and further contended that the Respondents had refrained from giving any information to this request by their letter dated 18-04-2024 marked as P10(b).

I cannot agree with this contention too as the reply sent to the Petitioner in P10(b) is self-explanatory. By the said letter, which was written promptly upon receipt of P10(a), the Respondents clearly informed the Petitioner that she was required to provide particulars of the information sought. In particular, she was requested to specify the exact documents she was seeking. It is evident from the last paragraph of P10(a), reproduced above, that the Petitioner failed to expressly identify the specific letters or documents she sought, either by their dates or by identifying their authors.

This alone is sufficient to establish that the Petitioner had been in fact mining in the Kuruganga reservation without a valid gem license.

Inspection of the site and the inquiry

However, subsequent to filing of this case, on the agreement of both parties in Court, a joint inspection had been carried out and the said report marked as X had been tendered by the State Counsel. The said report clearly establishes that the Petitioner is illegally mining in the Kuruganga reservation. It appears that the Petitioner had been reluctant at first to give a statement but however, had given a statement. It is observed that even at the time the inspection was carried on, illegal mining had been carried on. Further, the Petitioner has given a written statement which is signed by her on 10-04-2024. In this statement she has admitted the gravel to be in the state-owned Kuruganga reservation and she has admitted of mining the said reservation. She further submits that the mining operations are conducted by another person as she does not have sufficient funds to conduct gem mining. She further in a typed Written statement has admitted that when the officers had visited the adjoining land on 09-04-2024 she had gone to the site. It is pertinent to note that the Petitioner has failed to disclose giving this statement or even of signing a statement in her petition. However, at the argument stage the Petitioner's signature was never challenged. As contended by the State Counsel this is a serious suppression of a material fact. Hence, the Petitioner's contention that no hearing was given has to fail as the Petitioner has been given a hearing and afforded an opportunity even to produce the gem mining license which she has failed to produce, once at the inquiry at the site and thereafter, as demonstrated in the report marked as "X".

Let me now consider the grounds the Petitioner has pleaded in her petition.

The Petitioner's allegations

The Petitioner alleged that by the document P3, she had been given a permit for gem mining. It is her contention that by P11 the Petitioner's permit had been suspended. The said suspension is therefore illegal. However, the attention of this Court was drawn by the learned State Counsel to clause 4 of the permit which is under the heading of conditions of the permit in P3. The said clause reads as follows.

“4. බලපත්‍රධාරියාට හෝ ඔහුගේ නියෝජිතයාට හෝ සේවකයාට හෝ ලියවිල්ලකින් දැනුම් දීමෙන් පමණක් මෙම බලපත්‍රය අධිකාරියේ පරම අභිමතය පරිදි අවලංගු කිරීමට

හෝ අත්හිටු වීමට හැකි අතර, එම බලය ක්‍රියාවට නැංවීම කවර හෝ උසාවියකදීවත් ප්‍රශ්න කළ නොහැකි විය යුතුය” (emphasis added).

Hence, by the permit itself a condition is imposed which enables the issuing authority to suspend a permit. Further in condition 6 it is specifically stated that the gem gravel should not be removed from the land from which the permit is given. Therefore, if the gem gravel was found in the Kuruganga reservation and even if this Court is to consider it to be the gravel excavated from the land for which the permit was granted, then it is a breach of the conditions of the permit. As I have observed above, the Petitioner has not given an explanation for finding of gem gravel in the state reservation. Nor has she pleaded that the her gem gravel was kept in the state reservation in violation of the conditions of the permit. However, with this condition the Petitioner’s contention that there is no legal provision to suspend a gem mining license fails.

Further, in my view, there is overwhelming material tendered to this Court by the Petitioner herself and in the report marked as “X” to demonstrate that the Petitioner has violated the conditions of the permit P3.

The second contention of the Petitioner is that the 3rd Respondent had decided to sell the gem gravel at a public auction on 29.04.2024 (paragraph 24 of the Petition). It is alleged that it is a violation of section 50(5)(1)(a)-(c) of Act No. 50 of 1993.

In this context it is also pertinent to note that the gem gravel is not situated in the Petitioner’s land which she has a gemming license, it is found in the Kuruganga reservation and it is auctioned at the said reservation.

The reliefs prayed by the Petitioner

Prayer (b)

The Petitioner is seeking to quash the document P7. This Court already has made its observation to the effect that the P7 document is not *ultra vires* the powers of the 3rd Respondent. However, it is also pertinent to note that in P7 there is no final decision made. The said document only contains an observation and a request. In the absence of a final decision in my view P7 is not amenable to the Writ jurisdiction as there is no decision to quash.

The case of ***Nanayakkara v. The Institute of Chartered Accountants of Sri Lanka and others*** 1981 (2) SLR 52 concerned a Petitioner seeking, inter alia, a Writ of Certiorari to quash proceedings of a disciplinary inquiry held against him by the Respondents who had submitted a report thereon to the 2nd Respondent, and the Court held as follows:

“Both learned Counsel for the 1st as well as 2nd to the 4th respondents contend that no final order has yet been made by the 2nd respondent, on the basis of the said report, affecting the rights of the petitioner. The 2nd respondent, would in due course decide what action is to be taken against the petitioner on the basis of the said report. The petitioner may be exonerated or found guilty and dismissed, or otherwise punished. The application for an order of certiorari is premature, they submitted.

It would seem that the disciplinary proceedings taken against the petitioner are at an intermediate stage and have not been finalised. The 3rd and 4th respondents have concluded their inquiry into the charges sent the evidence recorded, oral and documentary, and their report to the 2nd respondent, who will in due course make the final order. The final order may or may not affect the rights of the petitioner. In disciplinary proceedings, it is not desirable that the Courts should interfere before the proceedings have terminated. If interference were made by Courts at intermediary stages, it would result in unnecessary delay.”

Hence, the said prayer (b) in the case before us has to fail.

Prayer (c)

The Petitioner is impugning the decision contained in the document P8. I have explained above in this judgement that the gem gravel is not in the Petitioner’s land but in the Kuruganga reservation hence, the Petitioner has no legal status to impugn the document P8. Further P8 is once again is a request to facilitate the auction. The auction per se is not done by the 5th Respondent. Further I have stated above in this judgement the reply sent by the Petitioner to the letter P8 which is marked as P10a. In the said letter Petitioner has not challenged the vires of the contents in P8 but contrary to what was submitted to this Court the Petitioner has subjected herself to the legal steps to be taken namely the request to auction. It appears that subsequently the Petitioner has had second thoughts and decided to change the mind and chalnge the contents of the document P8 which amounts to the Petitioner blowing hot and cold on the issue. It is trite law that a party cannot approbate and reprobate a fact at the same time and it is not allowed by the Courts.

In the case of *Ceylon Plywoods Corporation v. Samastha Lanka G.N.S.M. & Rajya Sanstha Sevaka Sangamaya* (1992) 1 SLR 157 the Court held:

“The doctrine of approbate and reprobate (quod approbo non reprobo) is based on the principle that no person can accept and reject the same instrument.”

Further, in the case of *Ranasinghe v. Premadharm* (1985) 1 SLR 63, the Court held:

“In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides.”

Hence, the said prayer (c) of the Petitioner has to fail.

Prayer (d)

The Petitioner is seeking a to quash the decision to suspend her license by P11. It is pertinent to note that the document P11 clearly gives the reasons for the suspension and in any event the permit P3 itself provides for the Respondents to suspend the permit. In my view, the Petitioner has been afforded an inquiry and as submitted at the argument even at the site inspection the Petitioner has participated. As per the document tendered “X” there is material to state that the Petitioner when asked to show the permit to the illegal gem pits had failed to produce a permit. Hence, I cannot find any illegality in the suspension.

I also find the Petitioner in the given circumstances and as observed by this Court has failed to demonstrate any illegality in the notice of auction marked P12.

Suppression of facts and lack of *uberrima fides*

It is the view of this Court that as per the material submitted to this Court and of the documents as well as the inquiry report Marked X the Petitioner has been mining in the Kuruganga reservation. The Petitioner herself admits that the initial inspection done by

the 4th Respondent and the state officers were conducted not in her land but in the adjoining Kuruganga reservation. The findings of the illegal gem pits and the gem gravel found had been within the Kuruganga reservation. This fact is exacerbated by the fact that the auction advertised is to be held on the land where the gem gravel is found and that is not the Petitioners land but the state reservation. It is also pertinent to note that if the Petitioner is denying the gem mining in the reservation, then she cannot stake a claim for the gem gravel found in the reservation. At the inquiry the Petitioner has given a statement which she has not disclosed to this Court by the petition. In the view of this Court this amounts to a serious suppression of material facts and demonstrates that the Petitioner has failed to invoke the jurisdiction of this Court with clean hands. This Court has constantly held a Petitioner who does not come with clean hands disentitle him or herself from the reliefs claimed.

In the case of ***K.G.D. Walter Abeyesundara and others vs. Dr. S.H. Munasinghe and others*** CA Writ 518/2021, CA Minutes 31.05.2022, the Court held as follows:

“I take the view that a party claiming relief against an irregularity of another stakeholder, in a judicial review application, should come to Court with clean hands without having a record of committing a similar irregularity within the same impugned process. I have approached the said opinion as I strongly take the view that a person who applies for judicial review should come to Court with clean mind & clean heart expressing the true conscience on the objective which are, in my view, part and parcel of the doctrine of clean hands. My said findings cannot be considered as imaginary as the policy of ‘good governance’ is well embodied in the objectives of the said Procurement Guidelines. There cannot be effective ‘good governance’ without good conscience, transparency & accountability within the relevant government authorities and even within all the stakeholders. The theory of good governance cannot be confined only towards the decision maker but it is an essential element on the part of all the relevant stakeholders. By perusing legal literature and the Superior Court’s judgements, it emanates that, the doctrine of clean hands is also an important limb of the principle of uberrimae fidei.”

Hence in my view, the Petitioner has not invoked the jurisdiction of this Court with clean hands and thereby disentitled herself from obtaining the reliefs prayed.

It is also pertinent to note that the Petitioner has failed to plead that even the permission she has obtained to do mechanical gem mining, the license is valid only for a three-month period (P4). In the said document the Petitioner is ordered to observe strict distance reservations from her boundary. The Petitioner nowhere in her pleadings have

pleaded that her gem mining has been conducted within the permit land observing the said reservations. The Petitioner has failed to plead material demonstrating the boundaries that the gem gravel found is within her land after the reservations /restricted area is excluded. In my view, the Petitioner has failed to establish that the mining had been done strictly within her land and in accordance with the conditions stipulated in the permit whereby she got the right to mine. Further she has failed to demonstrate that the gem gravel is within her land and within the area she is permitted to mine. The burden of proof in a Writ application strictly lies with the Petitioner.

In the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** SC Appeal 10/2009 decided on 15.12.2014, at page 5, it was provided that, *“The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies”*.

In ***Handapangoda Mudalige Mahendra Gunasekara, and another v. Ms. W.A.S. Chandrasekara, Commissioner General of Inland Revenue and 5 others*** CA/WRIT/313/24 decided on 29/08/2024, it was stated;

*“Further, it is observed that though the Petitioners contend that they were not the directors as per the evidence submitted through their own pleadings, it is clear that this business entity had been in operation since 2006. It is also clear that the entity had been submitting its returns to the IRD which means it had been operating. Then there should have been a workforce under the entity and their salaries and statutory dues would have been paid. The profits of the entity would have been collected and some person would have been responsible for the losses if any. None of these facts were addressed by the Petitioners though **the burden of proof in a writ application lies with the Petitioners** (emphasis added).*

In this instance it appears the Petitioner has failed to discharge the said burden. By the documents P9 to P9(c), the Petitioner attempted to demonstrate her gem mining pit and the illegal pit and the gem gravel, but by this document the Petitioner also has proved that adjoining her gem pit there is another illegal gem mining pit and the gem gravel. The learned State Counsel submitted that this is the gravel that is intended to be auctioned however as per the report marked X and the documents marked P7 and P8 there are no other pensions carrying on gem mining other than the Petitioners. Further by staking claim for the said gem gravel the Petitioner has conceded that the said mining and the gravel that is taken as a result of the mining is done by her. It is also pertinent to note that the Petitioner has failed to give an explanation as to how the gem gravel that is to be auctioned in the state reservation belongs to her gem pit as according to her

conditions in the license it is prohibited to stack gem gravel outside the perimeters of the permit land.

In any event as the respondents in the submissions has strenuously argued that the gem gravel found is within the state reservation and the petitioner arguing that it is hers even if this court is to determination as to where the gravel is this court cannot come to such a conclusion on the documents tendered as it has become a disputed fact which has to be proved by evidence to which this court is not the proper forum. It is trite law that when material facts are in dispute the writ court will be reluctant to exercise its prerogative powers under article 140 of the Constitution

Conclusion

I have considered the material submitted the submissions made and in my view the Petitioner has failed to establish any ground for this Court to grant the reliefs prayed for. Further, by her conduct she has disentitled herself from obtaining the reliefs prayed for. Accordingly, for the above-stated reasons I refuse to grant the reliefs prayed for and proceed to dismiss this application subject to the payment of a cost of Rs 50,000 by the Petitioner to the 3rd Respondent. In parting with this judgement, I wish to observe that the officers of the 3rd Respondent should be more vigilant to prevent state reservations being damaged in this nature which would result in serious consequences to the natural eco-system and the environment.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal