

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

*In the matter of an application for the
issue of a writ of prohibition under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

Sevanagala Sugar Industries Limited
of No:362, Colombo Road,
Pepiliyana,
Boralesgamuwa.

Petitioner

**C.A. Writ Application
No: 643/11**

-Vs-

1. Prime Minister, D.M. Jayaratne,
Minister of Buddha Sasana and
Religious Affairs, No. 115,
Wijerama
Mawatha, Colombo 07.
2. Nimal Siripala De Silva,
Minister of Irrigation and Water
Resources Management, No. 500,
T.B. Jayah Mawatha, Colombo 10.
3. Maithripala Sirisena,
Minister of Health,
No. 385, Suwasiripaya, Ven.
Baddegama Wimalasena Thero
Mawatha, Colombo 10.
4. Susil Premajayantha,
Minister of Petroleum Industries,
No. 80, Sir Ernest De Silva
Mawatha, Colombo 07.
5. Arumugam Thondaman,
Minister of Livestock and Rural
Community Development,
No. 45, St. Michael's Road,
Colombo 03.

6. Dinesh Gunawardane,
Minister of Water Supply and
Drainage,
No. 34, Narahenpita Road,
Nawala.
7. Douglas Devananda,
Minister of Traditional Industries
and Small Enterprises
Development,
No. 780, Maradana Road,
Colombo 10.
8. A.L.M. Athaulla,
Minister of Local Government and
Provincial Councils,
No. 330, Union Place, Colombo
02.
9. Richard Bathiudeen,
Minister of Industry and
Commerce,
No. 73/1, Galle Road, Colombo
03.
10. Patalee Champika Ranawaka,
Minister of Power and Energy,
No. 72, Ananda Coomaraswamy
Mawatha, Colombo 07.
11. Wimal Weerawansa,
Minister of Construction,
Engineering Services,
Housing and Common Amenities
2nd Floor, Sethsiripaya,
Battaramulla.
12. Rauf Hakeem,
Minister of Justice,
Superior Courts complex,
Colombo 02.
13. Basil Rajapaksa
Minister of Economic
Development,
No. 464A, T.B. Jayah Mawatha,

Colombo 10.

14. Vasudeva Nanayakkara
Minister of National Languages
and Social Integration, No. 40,
Buthgamuwa Rd, Rajagiriya.
15. S.B. Dissanayake,
Minister of Higher Education,
No. 18, Ward Place, Colombo 07.
16. Prof. G.L. Peiris,
Minister of External Affairs,
Republic Building, Colombo 07.
17. W.D.J. Seneviratne,
Minister of Public Administration
and Home Affairs,
Independence Square, Colombo
07.
18. Sumedha Jayasena,
Minister of Parliamentary Affairs,
No. 464 B, Pannipitiya Road,
Pelawatta, Battaramulla.
19. Jeewan Kumaranatunga,
Minister of Postal Services,
07th Floor, Postal Headquarters,
310, D.R. Wijewardane Mawatha,
Colombo 10.
20. Pavithra Wanniarachchi,
Minister of Technology and
Research
08th Floor, Sethsiripaya,
Battaramulla.
21. Anura Priyadarshana Yapa,
Minister of Environment
No. 82, Sampathpaya,
Rajamalwatta
Road, Battaramulla.
22. Tissa Karaliyadda,

Minister of Child Development
and Women Affairs,
No. 175A, Nawala Road,
Nugegoda.

23. Gamini Lokuge,
Minister of Labour and Labour
Relations,
2nd Floor, Labour Secretariat,
Narahenpita, Colombo 05.
24. Bandula Gunawardane,
Minister of Education,
Isurupaya, Pelawatta,
Battaramulla.
25. Mahinda Samarasinghe,
Minister of Plantation Industries,
No. 55/75, Vauxhall Lane,
Colombo 02.
26. Rajitha Senaratne,
Minister of Fisheries and Aquatic
Resources Development,
New Secretariat, Maligawatta,
Colombo 10.
27. Janaka Bandara Tennakoon,
Minister of Lands and Land
Development,
No. 80/5, Govijana Mandiraya,
Battaramulla.
28. Felix Perera,
Minister of Social Services,
5th Floor, Sethsiripaya,
Battaramulla.
29. C.B. Ratnayake,
Minister of Private Transport
Services,
No. 7A, Ried Avenue, Colombo
07.
30. Mahinda Yapa Abeywardane,
Minister of Agriculture,

Govijanan Mandiraya, No. 80/5,
Rajamalwatta Lane, Battaramulla.

31. Keheliya Rambukwella,
Minister of Mass Media and
Information
No. 163, Kirulapone Mawatha,
Polhengoda, Colombo 05.
32. Kumara Welgama,
Minister of Transport,
No. 1, D.R. Wijewardena
Mawatha,
Colombo 10.
33. Dullus Alahapperuma,
Minister of Youth Affairs and
Skills Development,
"Nipunatha Piyasa", 354/2,
Elvitigala Mawatha, Narahenpita,
Colombo 05.
34. Johnston Fernando,
Minister of Co-operatives and
Internal Trade,
No. 27, CWE Secretariat Building,
Vauxhall Street, Colombo 02.
35. Chandrasiri Gajadeera,
Minister of Rehabilitation and
Prison Reforms,
35A, Dr. N.M. Perera Mawatha,
Colombo 08.
36. Salinda Dissanayake,
Minister of Indigenous Medicine,
Old Kottawa Road, Navinna,
Maharagama.
37. Reginold Cooray,
Minister of Minor Export Crop
Promotion, No: 80/5, Govijana
Mandiraya, Rajamalwatta Ave,
Battaramulla.

38. Dilan Perera,
Minister of Foreign Employment
and Welfare, Tower 5, 12th Floor,
Central Bank Building, No. 30,
Janadhipathi Mawatha, Colombo
01.
39. Jagath Pushpakumara,
Minister of Coconut
Development and Janata Estate
Development, 493/1, T.B. Jayah
Mawatha,
Colombo 10.
40. T.B. Ekanayake,
Minister of Culture and the Arts,
8th Floor, Sethsiripaya,
Battaramulla.
41. Mahinda Amaraweera,
Minister of Disaster Management
No. 383, Bauddhaloka Mawatha,
Colombo 07.
42. S.M. Chandrasena,
Minister of Agrarian Services and
Wildlife, Govijana Mandiraya,
80/5, Rajamalwatta Ave,
Battaramulla.
43. Gunaratne Weerakoon,
Minister of Resettlement,
No. 146, Galle Road, Colombo 03.
44. Mervyn Silva,
Minister of Public Relations and
Public Affairs, 115, Anagarika
Dharmapala Mawatha, Colombo
07.
45. Mahindananda Aluthgamage,
Minister of Sports, 7A, Reid
Avenue,
Colombo 07.

46. Dayashritha Tissera
Minister of State Resources and
Enterprise Development
No.561/3, Elvitigala Mawatha,
Colombo -05.
47. Ranjith Siyambalapitiya
Minister of Telecommunication
and Information Technology .
79/1, 5th Lane,
Colombo 03.
48. Dr. Jagath Balasuriya,
Minister of National Heritage.
8th Floor, Sethsiripaya,
Battaramulla.
49. Lakshman Seneviratna,
Minister of Productivity
Promotion 249, Stanley
Thilakaratne Mawatha,
Nugegoda.
50. Naveen Dissanayake,
Minister of Public Management
Reforms.
No.29/2, D.P. Wijesinghe
Mawatha,
Pelawatta, Battaramulla.
51. Priyankara Jayaratna, Minister of
Aviation. No.19, Chethiya Road,
Colombo 01.
- 52.
- (a) Hon Ratnasiri Wickramanayake
Minister of Good Governance &
Infrastructure Facilities
- (b) Hon. D.E. W. Gunasekera.
Minister
of Human Resources
- (c) Hon. Athuda Seneviratne
Minister
of Rural Affairs
- (d) Hon. P. Dayaratne. Food &
Nutrition

- (e) Hon. A.H.M Fowzie,
Minister of Urban Affairs
- (f) Hon. S.B. Navinne. Minister of
Consumer Welfare
- (g) Hon. Piyasena Gamage . Minister

of

- National Assets
- (h) Hon. (Prof) Tissa Vitharana-
Minister
of Scientific Affair
- (i) Hon. (Dr.) Sarath Amunugama -
International Monetary
Cooperation

All of 221 Carwil Place,
Colombo 03.

Respondents

- Before** : Ranjith Silva, J. Acting (P/CA) and
A.W.A. Salam, J.
- Counsel** : Romesh de Silva, P.C. with Nihal Fernando, P.C., Sugath
Caldera,
Rohan Dunuwila and Eraj de Silva for the Petitioner.
Shavindra Fernando, D.S.G. with Sanjaya Rajaratnam D.S.G.
and Nerin Pulle S.S.C. for the Respondents.
- Argued on** : 18.11.2011 & 21.11.2011
- Decided on** : 22.11.2011
* * * * *

W L R Silva J

**Order on the application for issuance of notice and
interim relief.**

This is an application for the issue of mandates in the nature of writs of prohibition in terms of article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka, prohibiting the respondents

from appointing a competent authority in terms of section 3 of the Revival of Underperforming Enterprises and Underutilized Assets Act (hereinafter referred to as the "Act") to take over the assets set out in the schedule to the petition until a proper determination is made, according to the due process of law, that the said assets are having an adverse impact on the national economy and is against public interest.

By way of interim relief the petitioner has sought interim orders;

(1) Preventing the respondents from appointing a competent authority in respect of the assets described in the schedule to the Act

(2) Preventing them and any other persons acting under them from taking possession of the said assets and

(3) Preventing them in the same manner from taking any of the assets belonging to the petitioner presently on the land set out in the schedule to the petition and taking over the shares or any movable assets belonging to the petitioner.

Admittedly, land comprising of "Sevanagala Sugar Industries Ltd" has been listed under item No 5 in schedule II to the Act as underutilized land in terms of section 2 of the Act.

It is quite significant to note that Section 4 of the Act has already laid down that the land of the petitioner company to be prejudicial to the national economy and public interest. However, the learned

President Counsel in his attempt to distinguish the phraseology "**prejudicial to the National economy and public interest**" from "**are having an adverse impact on the national economy**" contended what in reality has been decided by parliament is only the "prejudicial effect" as contemplated by Section 9 and not the "adverse impact on the national economy" as referred to in Section 2(1) of the Act. Nevertheless, a careful reading of the relevant sections indicates that "having adverse impact on the national economy" necessarily concerns the public interest. The relevant part of section 2 reads "are having an adverse impact on the national economy and thereby on the public interest".

On the other hand section 9 of the Act which inter alia defines the term "Underutilized Asset" refers to both circumstances namely, the assets being prejudicial to the national economy but also prejudicial to the public interest. In this respect emphasis should be made that even under section 2 the end result expected is the protection of public interest when the assets are having an adverse impact on the national economy. Thus the legislature in its own wisdom has decided that all what has been listed under schedule 2 including that of the assets comprising of the petitioner company are prejudicial to the national economy and the public interest thereby leaving no room for a further decision to be made by any other body or

persons. This is precisely the reason behind the legislature not having decided on any other authority to go into the question as to the existence of "adverse impact on the national economy" resulting in "adverse impact on public interest".

No doubt, the legislation in question has been rushed through and drafted in a slipshod and callous manner. However, the Provisions of section 2 (1) creates no ambiguity in a judicially trained mind as to the spirit, intention and the purport of the provisions of the Law.

On the other hand the legislature has never intended further decision to be taken with regard to the vesting of the assets in the Secretary to the Treasury. If that be the case undoubtedly the law should contain provisions for the appointment of such person or authority to determine the issue relating to adverse impact on the national economy and public interest. It is to be observed that section 2 does not provide expressly or by way of necessary implication for an administrative decision let alone a judicial inquiry.

We are fortified in our view by the preamble to the Act both in the Sinhala as well as English versions. In the English version identifying underperforming enterprises and underutilized assets and vesting the same in the State have been done in consideration of the "national interest". For ready reference the relevant passage from the preamble is reproduced below.

"And whereas it has become necessary to vest In the State, certain identified underperforming enterprises and underutilized assets....."

The Act in its preface gives an indication as to the purport and purpose of the Law. It reads thus.....

"An Act to provide for the effective management, administration or revival of identified underperforming enterprises or underutilized assets vested in the State

Thus, what is contemplated is to provide for the management and administration of already identified and vested underutilized assets. It was never the intention of the Parliament to provide for the acquisition of underutilized assets. On the contrary it speaks of management and administration of assets already vested upon identification. Even the Sinhala version is not different in this regard.

Learned President's counsel in support of his argument adverted to the decision in **J B Textiles Industries Ltd vs Minister of Finance and Planning reported in 1981 2 SLR 328**. The judgment cited has no relevance or bearing to the facts and circumstances relevant to a decision in this case.

As far as the applications for notice and interim relief are concerned, admittedly what is crucial at this stage is to decide whether the assets in question are already vested in the Secretary to the Treasury on behalf of the State. If so, then a

further vesting is not necessary and what have been listed under schedule 2 are already vested as contemplated in section 9 of the Act. In the result, it is my considered view that the petitioner is not entitled to notice and the issue relating to the interim relief therefore does not arise.

For the foregoing reasons this application stands dismissed without costs.

JUDGE OF THE COURT OF APPEAL

A.W.A.Salam, J.
I agree,

JUDGE OF THE COURT OF APPEAL

NT/-