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

In the matter of an application in terms of Article 121 read with Article 120 of the Constitution to determine whether the Bill titled "Powers of Attorney (Amendment)" or any part thereof is inconsistent with the Constitution.

Mahajuwana Kankanamalage Hemapala
59/C, Veera Mawatha
Kalalgoda
Pannipitiya

Petitioner

SC (SD) No: /2013

- v -

The Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

On this 13th day of March 2013

**TO: THE HONOURABLE CHIEF JUSTICE AND OTHER JUDGES OF THE
SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI
LANKA**

The ***Petition*** of the Petitioner above named appearing by Lilanthi de Silva his Registered Attorney-at-Law states as follows:

1. The Petitioner is a citizen of Sri Lanka and is entitled to make this application in terms of Article 121(1) of the Constitution.
2. The Attorney General is made a Respondent under and in terms of the requirements of Article 134(1) of the Constitution.
3. The Bill titled “*Powers of Attorney (Amendment)*” (hereinafter referred to as “the Bill”) was published in the Gazette of the Democratic Socialist Republic of Sri Lanka Part II of February 22, 2013 issued on 26th February 2013 on the order of the Minister of Finance and Planning and placed on the Order Paper of Parliament on 8th March 2013.

True copies of the said Bill (in Sinhala, Tamil and English) are annexed hereto compendiously marked ‘**P1a**’, ‘**P1b**’, ‘**P1c**’ and pleaded as part and parcel hereof.

4. The Bill was among a total of 21 Bills placed on the Order Paper of 8th March 2013, and must also be viewed in the context of the ‘objectives’ of the other Bills, and what is sought to be achieved collectively by such Bills.
5. The long title of the said Bill describes it as a Bill “*to amend the Powers of Attorney Ordinance (Chapter 122)*”.

CLAUSE 1 OF THE BILL

6. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 1 of the aforesaid Bill:

1. (1) *This Act may be cited as the Powers of Attorney (Amendment) Act, No. _____ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*

7. The Petitioner respectfully states that the impugned clause of the Bill thus purports to have retrospective effect, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.

8. The Petitioner respectfully states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute a violation of Article 12(1) of the Constitution.

CLAUSE 2 OF THE BILL

9. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 2 of the aforesaid Bill:

Section 9 of the Powers of Attorney Ordinance (Chapter 122), (hereinafter referred to as the "principal enactment") is hereby amended by the repeal of that section and the substitution therefore of the following:

9. The following fees or such other amount as may be prescribed by the Minister from time to time shall be payable to the Registrar-General under the Ordinance:

...

10. The Petitioner states that Section 9 of the Powers of Attorney Ordinance states that:

The following fees shall be payable to the Registrar-General under this Ordinance, and shall be paid in stamps, to be affixed, in the case of the registration of any power of attorney or of any notification of cancellation or revocation of any power of attorney, to the copy of the power of attorney or the notification respectively filed by the Registrar-General, and in all other cases to the document in respect of which they are payable...

11. The Petitioner thus respectfully states that as the impugned clause 2 of the Bill purports to have retrospective effect, it thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
12. The Petitioner respectfully thus states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute a violation of Article 12(1) of the Constitution.

CLAUSE 3 OF THE BILL

13. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 3 of the aforesaid Bill:

The following new section is hereby added immediately after section 9 of principal enactment and shall have effect as section 10 of that enactment.

- (1) *The Minister may from time to time make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act and in particular in respect of any matter required under this Act to be prescribed*
- (2) *Without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of any or all of the following matters:*

(a) The fees payable in respect of any matter under this Act;

(b) The forms to be used for an purpose under this Act;

...

14. The Petitioner thus respectfully states that as the impugned clause 3 of the Bill purports to have retrospective effect, it thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.

15. The Petitioner respectfully states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute a violation of Article 12(1) of the Constitution.

CLAUSE 4 OF THE BILL

16. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 4 of the aforesaid Bill:

Any fees charged or collected by or on behalf of the Registrar-General or any person authorized under this Act, for any purpose authorized by this Act to charge or collect from January 1, 2013 and ending March 31, 2013, shall be deemed to have been validly charged or collected by the Registrar-General or by any such person authorized under this Act.

...

17. The Petitioner respectfully states that the impugned clause 4 of the Bill thus purports to retrospectively grant powers to and / or sanctions the acts of the Registrar General and/or others on his behalf and/or otherwise to charge or collect fees, prior to the legislature having authorised the collection of same.

18. The Petitioner respectfully states that the impugned clause 4 of the Bill thus purports to have retrospective effect and / or retrospectively sanction actions taken unlawfully and / or without lawful authority, and thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.
19. The Petitioner states that he is reliably aware that various arbitrary and unlawful payments have been required at land registries by state actors and that enactment of the said Bill would have the effect of legitimizing these arbitrary and unlawful payments

A true copy of a notice of the Land Registry of Panadura marked 'P2' is annexed hereto and is pleaded as part and parcel hereof.

20. The Petitioner respectfully states that any attempt to make the Bill have retrospective effect (i.e. come into effect prior to its enactment) would constitute a violation of Article 12(1) of the Constitution.
21. The Petitioner respectfully urges that Your Lordships be pleased to consider the need to address and redress the matters and concerns urged through this application, given the reality that the Sovereignty of the People, the Rule of Law and the Supremacy of the Constitution would be imperiled through the provisions of the said Bill that are inconsistent with and / or in contravention of the provisions of the Constitution, and thus ought not be permitted to pass validly into law through a simple majority in Parliament alone.
22. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
23. The Petitioner respectfully reserves the right to furnish such further facts and documents in support of the matters set out herein at the Hearing should the Petitioner become possessed of any such material.

24. An affidavit of the Petitioner is appended hereto in support of the averments contained herein.

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- (a)** Determine that the provisions of Clauses 1, 2, 3 and 4 of the said Bill are inconsistent with and / or in contravention of the provisions of Articles 12(1) of the Constitution and cannot be enacted into law except if approved by a two-thirds vote of the whole number of the members of Parliament in favour as required by the Constitution;
- (b)** Grant costs; and
- (c)** Grant such further and other reliefs as to Your Lordships' Court shall seem meet.

Registered Attorney at Law for the Petitioner