
**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 “Registration of Documents (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 CHIEF JUSTICE AND OTHER HONOURABLE 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 Petitioner states that this application is made in his personal interest and also in the wider public interest.
4. The Bill titled “*Registration of Documents (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.

5. 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.
6. The long title of the said Bill describes it as a Bill “*to amend the Registration of Documents Ordinance (Chapter 117)*”.

CLAUSE 1 OF THE BILL

7. 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 Registration of Documents (Amendment) Act, No. _____ of 2013 and shall be deemed for all purposes to have come into operation on January 1, 2013.*

8. 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.

9. 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

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

Section 13 of the Registration of Documents Ordinance (Chapter 117) (hereinafter referred to as the "principal enactment") is hereby amended in subsection (6) of that section by the substitution for the words 'a fee of five rupees shall be' of the words 'a fee of five rupees or such other amount as may be prescribed by the Minister, shall be'

11. The Petitioner states that Section 13 of the Registration of Documents Ordinance (hereinafter sometimes referred to as 'the principal enactment') states that:

(1) Every instrument (except a will) presented for registration shall contain embodied therein, or in a schedule annexed thereto, an accurate and clear

description of the land affected thereby, its boundaries, extent, and situation specifying the district and the village, pattu, korale, or other division of the district in which the land is situated; and in case the land is situated in any town, the name, if any, of the street in which it is situated.

(2) If the land consists of a divided portion of a land or allotment, such portion shall be clearly and accurately defined by its particular boundaries and extent.

(3) If the land consists of an undivided share in a land, the proportion which the share bears to the entire land shall be stated, and a description of the entire land shall be given as required by subsection (1).

(4) A person desiring to register a will shall give to the Registrar a written description of the land affected thereby which shall comply with the provisions of subsections (1) to (3) of this section.

(5) Every Registrar shall refuse to register an instrument, other than a will, which does not state the particulars required by the foregoing provisions of this section.

(5A) Any person aggrieved by the decision of the Registrar under subsection (5) may, within thirty days of such decision being communicated to him, appeal to the Registrar-General who may vary or reverse such decision if it is shown to his satisfaction-

(a) that the description is sufficient to enable the land to be identified with reasonable certainty; or

(b) that it was impracticable to insert the required particulars in the instrument.

(5B) Any person aggrieved by a decision of the Registrar-General under subsection (5A) may, within thirty days from the date of such decision being communicated to him, institute in any District Court having jurisdiction a suit

against the Registrar-General praying for the variation or reversal of such decision.

- (6) *Where the description of the land affected by an instrument executed or made after the commencement of this Ordinance is not contained in a schedule to the instrument, **a fee of ten rupees shall be** payable for the registration in addition to any other fee which may be payable:*

Provided that nothing in this subsection shall be construed so as to apply or affect any grant or lease of State land made or executed after the commencement of this Ordinance.

...

(Emphasis added)

12. 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.
13. 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 3 OF THE BILL

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

Section 22 of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words 'a fee of five rupees shall be payable for the registration' of the words 'a fee of five rupees or such other amount as may be prescribed by the Minister, shall be payable for the registration.'

15. The Petitioner states that Section 22 of the principal enactment states that:
(1) Every pledge, mortgage or bill of sale and transfer or assignment of a pledge, mortgage or bill of sale shall contain embodied therein or in a schedule annexed thereto as clear and accurate description of the movable property affected thereby as circumstances permit.

(2) Where the description of the movable property affected by a pledge, mortgage or bill of sale executed or made after the commencement of this Ordinance is not contained in a schedule annexed thereto, a fee of five rupees shall be payable for the registration in addition to any other fee which may be payable.

...

(Emphasis added)

16. 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.

17. 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

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

Section 48 of the principal enactment is hereby repealed and the following section substituted therefor:

48. The fees specified in the First Schedule as may be prescribed by the Minister from time to time, shall be payable for the matters to which they relate.

19. The Petitioner states that Section 48 of the principal enactment states that:

The fees specified in the First Schedule shall be payable for the matters to which they relate.

20. The Petitioner thus respectfully states that as the impugned clause 4 of the Bill purports to have retrospective effect, it thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.

21. 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 5 OF THE BILL

22. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 5 of the aforesaid Bill:

The first schedule of the principal enactment is hereby amended as follows:

...

23. The Petitioner states that the first schedule of the principal enactment sets out the fees payable for the registration of various instruments.

24. The Petitioner thus respectfully states that as the impugned clause 5 of the Bill purports to have retrospective effect, it thus violates Article 12(1) of the Constitution which guarantees equal protection of the law.

25. 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 6 OF THE BILL

26. The Petitioner respectfully draws Your Lordships' attention to the provisions of Clause 6 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.

...

27. The Petitioner respectfully states that the impugned clause 6 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.
28. The Petitioner respectfully states that the impugned clause 6 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.
29. 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.
30. 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.

31. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
32. 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.
33. 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, 4, 5 and 6 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