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

In the matter of the ordinary exercise of jurisdiction of the Supreme Court under Article 121 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Rule 63 of the Supreme Court Rules of 1978 in respect of the Bill titled "Ruhunu Economic Development Corporation of Sri Lanka".

S.C. S.D. 11/2019	Petitioner:	**BANDULA CHANDRASIRI GUNAWARDANE** No. 142, Jambugasmulla Road, Nugegoda.
	Counsel:	Manohara de Silva, PC with Canishka Witharana, Imalka Abeysinghe and Chandana Boteju.
S.C. S.D. 12/2019	Petitioner:	**PREMNATH CHAMINDA DOLAWATTE,** No. 50, Ihala Bomiriya, Kaduwela.
	Counsel:	Canishka Witharana
	Respondent	**HON. ATTORNEY GENERAL**
	Counsel:	Sanjay Rajaratnam, PC, Senior Additional Solicitor General with Mahen Gopallawa, Deputy Solicitor General.

BEFORE: Prasanna Jayawardena, PC, J.
Murdu Fernando, PC, J.
P.Padman Surasena J.

The Court assembled for hearing at 10.00 a.m. on 30th August 2019.

A Bill titled "Ruhunu Economic Development Corporation of Sri Lanka" was published in the Government Gazette on 05th August 2019 and placed on the Order Paper of Parliament on 21st August 2019.

The two petitioners referred to above, have challenged the constitutionality of the said Bill by petitions presented to this Court on 27th August 2019 in terms of Article 121 (1) of the Constitution.

Both petitions were taken up together. Learned Counsel for the Petitioners and the learned Senior Additional Solicitor General for the Respondent made oral submissions, which were supplemented by written submissions.

It would be useful to first set out a broad overview of what the proposed Act seeks to do and also the scheme that has been set out in the Bill with a view to achieving those objectives.

The Bill, according to its Long Title, is *"AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE RUHUNU ECONOMIC DEVELOPMENT CORPORATION OF SRI LANKA FOR THE PURPOSE OF IDENTIFYING, FORMULATING AND CO-ORDINATING THE IMPLEMENTATION OF ECONOMIC DEVELOPMENT PROJECTS, PLANS, PROGRAMMES OR SCHEMES WITHIN THE RUHUNU DEVELOPMENT AREA AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO."*.

The Preamble to the Bill states *"WHEREAS it has become necessary to lay down the National Policy on Ruhunu Economic Development to encourage rapid economic development specifically trade, exports, technology, tourism and modern agriculture employment opportunities to secure a sustainable economic development in Sri Lanka. AND WHEREAS it has become a matter of national importance to establish a corporation for the purpose of fostering the economic development."*.

Clause 16 (1) of the Bill provides that the Administrative Districts of Hambantota, Matara, Galle and Moneragala shall constitute the *"Ruhunu Economic Development Area"* for the purposes of the proposed Act. These four Districts, the first three of which are in the Southern Province and the other in the Uva Province, are referred to as *"the Area"* in the Bill. Next, Clause 16 (2), *inter alia*, empowers the Minister to publish a Notice specifying the metes and bounds of *"any land area within the Area"* and establishing and designating that *"land area within the Area"* to be an *"Economic Development Zone"* for the purposes of the proposed Act. Clause 16 (2) goes on to state that, upon the Minister doing so, *"Such land area shall stand vested in the Corporation."*. Thereafter, Clause 16 (6) states that such Economic Development Zones may be designated as *"single sector"* Zones *or "multiple sector"* Zones which may include *"(a) industries; (b) parks; (c) information communication technology enterprises; (d) science and technology enterprises; (e) high technology agricultural enterprises; (f) tourist and recreational enterprises; (g) business service enterprises; or (h) livestock enterprises."*.

Clause 15 of the Bill states that the National Policy on Ruhunu Economic Development within the aforesaid Area *"shall strengthen the national economic base of Sri Lanka by among other things -*

> *(a) developing an international air sea logistic hub in Hambantota;*

(b) *promoting globally competitive economic activities within the area;*
(c) *increasing the backward linkage of the industries and services within Sri Lanka;*
(d) *establishing and designating economic development zones as a catalyst for economic growth;*
(e) *creating employment; and*
(f) *developing a skilled workforce.".*

Thereafter, Clause 18 (1) of the Bill deals with giving effect to the aforesaid National Policy on Ruhunu Economic Development and states that the Minister *"shall cause to formulate economic development projects, plans, programmes or schemes necessary to give effect to the National Policy on Ruhunu Economic Development.".*

In this background and as envisaged in the Long Title, Clause 2 of the Bill provides for the establishment of a body corporate called and known as the *"Ruhunu Economic Development Corporation of Sri Lanka"* [hereinafter referred to as "the Corporation"]. Thereafter, Clause 3 makes it clear that the overall duty of the Corporation shall be to: promote rapid and internationally focused and also sustainable economic development within the Area by designating and establishing Economic Development Zones and by implementing, within those Zones, the aforesaid economic development projects, plans, programmes or schemes formulated by the Minister under Clause 18; to develop a strategic logistics hub with a port and airport; and to promote local and foreign investments in the Economic Development Zones. Thus, Clause 3 states that the Objects of the Corporation shall be to:

(a) *promote internationally focused competitive market driven and rapid sustainable economic development within the Area by implementing the economic development projects, plans, programmes or schemes formulated under section 18;*
(b) *develop a strategic logistic hub with a port and an airport;*
(c) *establish and designate economic development zones; and*
(d) *promote local and foreign investments in the designated economic development zones.*

Clause 4 (*a*) to Clause 4 (*y*) of the Bill list the *"powers, functions and duties"* vested in the Corporation for the purpose of achieving the aforesaid Objects. These provisions, *inter alia*, state that the powers, functions and duties of the Corporation include: formulating a mechanism to stimulate, expand, develop and strengthen the economic base of Sri Lanka by giving effect to economic development projects, plans, programmes or schemes formulated by the Minister under the aforesaid Clause 18 [Clause 4 (*a*)]; providing infrastructure facilities and amenities, including roads, water supply and housing, for designated Economic Development Zones as may be required by economic development projects, plans, programmes or schemes formulated under Clause 18 [Clause 4 (*b*)]; carrying out detailed studies of such economic development projects, plans, programmes or schemes and identifying those which should be given priority in the overall development plan [Clause 4 (*c*)]; implementing economic development projects, plans, programmes or schemes within designated Economic Development Zones [Clause 4 (*f*)]; administering the designated Economic Development Zones [Clause 4 (*h*]; maintaining offices or stores outside the designated Economic Development Zones and executing such work as may be necessary outside such Zones [Clause 4 (*i*)]; communicating the activities undertaken by the Corporation to the public [Clause 4 (*j*)]; requesting any Ministry, Department, Provincial Council, Provincial Ministry, Provincial Department, Local Authority or other persons and body of persons, with the concurrence of the Minister, to take over, maintain and operate any economic development projects, plans, programmes or schemes [Clause 4 (*m*)]; carrying out research relating to the economic and social development of the Area [Clause 4 (*o*)]; causing the preparation of Environmental Impact Assessment Reports in respect of any economic development projects, plans, programmes or schemes within the Area [Clause 4 (*p*)]; providing assistance to facilitate developers and enterprises within designated Economic Development Zones by establishing a one stop unit to channel all their applications for permits, approvals, licenses and facilities for clearances required for the establishment and operation of their projects within such Zones and coordinating with Government and private entities as may be necessary [Clause 4 (*q*)]; making recommendations to the Minister on policy matters on all aspects of designation, approval, establishment, operation and regulation of designated Economic Development Zones and individual enterprises within the Area [Clause 4 (*r*)]; and promoting local and foreign investment thereby enhancing the employment opportunities with the designated Economic Development Zones [Clause 4 (*s*)],

Other provisions of Clause 4 (*a*) to (*y*) grant the Corporation a wide range of powers to carry out the aforesaid functions and duties. These powers include: accepting grants, gifts or donations from persons or bodies of person in or outside Sri Lanka [Clause 4 (*d*)]; establishing and enhancing co-operation between inter-agencies of every Ministry, Department, Provincial Council, Provincial Ministry, Provincial Department, Local Authority and other persons and body of persons in carrying out studies and the implementation of economic development projects, plans, programmes or schemes [Clause 4 (*e*)]; securing and obtaining technical and financial assistance [Clause 4 (*k*)]; securing local and foreign collaboration for carrying out studies and the implementation of economic development projects, plans, programmes or schemes [Clause 4 (*l*)]; holding shares in a public-private partnership entity established for the purposes of developing and managing the designated Economic Development Zones or any other purpose approved by the Cabinet of Ministers [Clause 4 (*t*)]; imposing or levying a charge for the services rendered by the Corporation within designated Economic Development Zones [Clause 4 (*u*)]; and acquiring and holding immovable property and hiring, leasing, pledging, mortgaging or selling and disposing of such immovable property [Clause 4 (*x*)].

Part II of the Bill [Clauses 5 to 14] contains provisions relating to the *"ADMINSTRATION AND MANAGEMENT OF THE AFFAIRS OF THE CORPORATION"*. These provisions, *inter alia*, state that the administration of the Corporation shall vest in a Board of Management which consists of four *ex-officio* members [the Secretary to the Ministry of Finance, the Secretary to the Ministry assigned the subject of Southern Development, the Chairman of the Sri Lanka Ports Authority and the Chairman of the Board of Investment of Sri Lanka] and four other *"appointed members"* who possess suitable academic or professional qualifications and experience and are to be appointed by the Minister.

Part III of the Bill [Clauses 15 to 18] contains provisions relating to the *"RUHUNU DEVELOPMENT AREA"*. As mentioned earlier, Clause 15 sets out the National Policy on Ruhunu Economic Development within the Area while Clause 16 (1), Clause 16 (2) and Clause 16 (6): define the geographical limits of the Area; empower the Minister to designate as Economic Development Zones *"any land area within the Area"* and also provide that such land areas *"shall stand vested in the Corporation.""*; and describe the activities to be carried out within such Economic Development Zones, respectively. Further, Clause 16 (3) stipulates that the Corporation shall be responsible for the establishment and supervision of such designated Economic Development Zones. Thereafter, Clause 16 (4) empowers the alienation or leasing of any land within a designated Economic Development Zone to any person or body corporate *"for the purpose of achieving the objects of the Corporation and in accordance with any economic development projects, plans, programmes or schemes made under section 18 of this Act"*. Lastly, Clause 16 (7) provides that, subject to the provisions of the Constitution and any written law, the Minister may declare and designate *"any State land"* as a designated Economic Development Zone and goes on to stipulate that any State Land within a designated Economic Development Zone shall not be alienated for private use except to the developers, operators or enterprises or any body of persons established within that designated Economic Development Zone.

Clause 17 states that, subject to the provisions of any other written law, no person shall carry on business as an Economic Development Zone Developer, Operator or Enterprise or provide or maintain activities or facilities within an Economic Development Zone except under the authority of a License issued by the Corporation.

As mentioned earlier, Clause 18 (1) requires the Minister to cause the formulation of economic development projects, plans, programmes or schemes necessary to give effect to the National Policy on Ruhunu Economic Development. Clause 18 (2) provides that the Minister may forward such economic development projects, plans, programmes or schemes for the approval of the Cabinet of Ministers.

Part IV of the Act [Clauses 19 to 22] contains provisions relating to the *"CHIEF EXECUTIVE OFFICER AND THE STAFF OF THE CORPORATION"*. These provisions, *inter alia*, require the Board of Management, in consultation with the Minister, to appoint a Chief Executive Officer who will be charged with the administration of the Corporation and the execution of the decisions of the Board of Management.

Part V of the Act [Clauses 23 and 24] contains provisions relating to the *"FUND"* of the Corporation. These provisions, *inter alia*, establish this Fund and state that the Fund shall be credited with sums voted by Parliament for the use of the Corporation and other sums which may be received by the Corporation by way of loans, donations, gifts or grants from any sources whatsoever whether in Sri Lanka or abroad and sums received in payment for services rendered by the Corporation. The expenditure incurred by the Corporation in the exercise and performance of its powers, functions and duties under the proposed Act, is to be charged to this Fund. It is specified that the provisions of Article 154 of the Constitution shall apply to the Corporation, thus making it mandatory that the Corporation and its Accounts are audited by the Auditor General.

Part VI of the Act [Clauses 26 to 42] contains a slew of *"GENERAL"* provisions. Among them, Clause 26 provides that where *"any land or any interest in any land within the Area is required by the Corporation for any of its purposes"* the Minister is empowered to take action for the acquisition of such land under the provisions of the Land Acquisition Act No. 09 of 1950, as amended, on the basis that such land *"shall be deemed to be required for a public purpose"*. Clause 27 states that lands within the Area which are presently vested in the Board of Investment of Sri Lanka shall stand vested in the Corporation. Clause 30 provides that the Minister may, with the concurrence of the Minister assigned the subject of Finance, prescribe financial incentives and other exemptions available to any category of investor in accordance with the written law, and the manner of application and granting of such incentives. Clause 33 empowers the Corporation, where the Corporation considers it necessary for the purposes of the Act and with the approval of the Minister, to give *"special or general directions"* to any Department or Public Corporation requiring that Department or Public Corporation to perform or discharge its functions or duties relating to economic development projects, plans, programmes or schemes within designated Economic Development Zones and places a duty on Departments or Public Corporation to comply with such directions. Finally, Clause 39 authorises the Minister, in consultation with the Corporation, to make Regulations in respect of matters to be prescribed or for the purposes of carrying out or giving effect to the principles and provisions of the Act. Any such Regulation will come into operation only upon publication in the Gazette and must be brought before Parliament for approval.

Mr. Manohara De Silva, PC who appears for the petitioner in SC SD 11/2019 and Mr. Canishka Witharana who appears for the petitioner in SC SD 12/2019 have both placed at the forefront of their cases, the submission that *"numerous clauses in the Bill fall within the subjects enumerated in the Provincial Council list"*. They go on to submit that, despite this position, the Bill has been placed on the Order Paper of

Parliament without first complying with the procedure stipulated in Article 154G (3) of the Constitution.

Article 154G (3) stipulates:

> *"No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed on the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and -*
>
> *(a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or*
>
> *(b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82:*
>
> *Provided that where on such reference, some but not all the Provincial Councils agree to the passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting.".*

It is common ground that the Bill was not referred to the Provincial Councils before it was placed on the Order Paper of Parliament on 21st August 2019. Both learned counsel for the petitioners submit that *"Therefore the Bill cannot be proceeded with and is incapable of passing into law through the process of the legislature."*.

Learned counsel for the petitioners flesh out their aforesaid contention by submitting that *"numerous"* Clauses of the Bill are in respect of matters set out in Items 2, 9, 10, 18, 19, 20, 21 and 34 of the Provincial Council List of the Ninth Schedule to the Constitution [*ie:* List I].

In reply, learned Senior Additional Solicitor General submits that the Bill is a *"clear and effective articulation of the National Policy on Ruhunu Economic Development"*. In support of this position, he cites the aforesaid Preamble to the Bill and submits the Preamble makes it clear that the Bill lays down the National Policy on the subject of Ruhunu Economic Development which is aimed at encouraging rapid economic development in trade, exports, technology and modern agriculture and generating employment opportunities which are necessary to secure sustainable economic development in Sri Lanka. He further submits that Clause 15 details the parameters of this National Policy while Clause 18 sets out the manner in which such National Policy is to be given effect and Clause 3 specifies the Objects of the Corporation and makes it clear that the Corporation is to be established to further the aforesaid National Policy.

Thereafter, learned Senior Additional Solicitor General submits that *"the formulation of National Policy on all Subjects and Functions is exclusively within the competence* *of Parliament and is the first item listed in List II (Reserved List) of the Ninth Schedule to the Constitution."* His contention is that the Bill deals with matters falling within the Reserved List and not in respect of any matter set out in the Provincial Council List. On that basis, he submits that Article 154G (3) of the Constitution will not apply and that there is no requirement that the Bill should have been referred to the Provincial Councils in terms of the procedure set out in Article 154G (3) before the Bill was placed on the Order Paper of Parliament.

We should mention here that, although neither petition makes a reference to Article 154G (2) of the Constitution, both learned counsel for the petitioners have made a passing reference in their written submissions to Article 154G (2) of the Constitution, in addition to making lengthy submissions with regard to alleged non-compliance with the provisions of Article 154G (3). However, it appears to us that this reference to Article 154G (2) is misplaced since that Article applies to Bills *"for the amendment or repeal"* of provisions of Chapter XVII A of the Constitution [which deals with Provincial Councils] or the provisions of the Ninth Schedule to the Constitution [which sets out the Provincial Council List, the Reserved List and the Concurrent List - *ie:* List I, List II and List III, respectively]. It is *ex facie* apparent that neither the Bill as a whole, nor any of its Clauses, hold out or have the effect of amending or repealing the provisions of Chapter XVII A of the Constitution or the provisions of the Ninth Schedule to the Constitution.

We should also mention here that neither petition nor the written submissions tendered by counsel for the petitioners have made any reference to the Concurrent List. Nevertheless, both learned counsel for the petitioners have referred to Order 51 of the Standing Orders of Parliament which specifically refers to Bills in respect of matters set out in the Concurrent List. Since the petitioners have not suggested that any of the matters set out in the Bill under review are in respect of matters set out in the Concurrent List, Order 51 does not need to be considered.

Therefore, with regard to the aforesaid main thrust of the petitioners' submissions, we are called upon only to determine the petitioners' submission that Clauses of the Bill are in respect of matters set out in the Provincial Council List.

Accordingly, we have to first determine whether the Bill as a whole or individual Clauses of the Bill are in respect of matters set out in the Provincial Council List. It hardly needs to be said that an affirmative answer to that question will make compliance with the provisions of Article 154G (3) mandatory, prior to the Bill being placed on the Order Paper of Parliament. For the sake of accuracy, we should mention here that the exception set out in Article 154G (11) is inapplicable since this is not a case of implementing a treaty, agreement or convention with any other country or implementing a decision made at an international conference or international association or other similar body.

In this regard, it is necessary to keep in mind that the 13th Amendment to the Constitution [ie: Chapter XVII A of the Constitution and the three Lists in the Ninth

Schedule to the Constitution] were introduced in a bid to devolve a degree of legislative, executive and administrative authority to the Provincial Councils which were created by this constitutional exercise. The ambit and extent of the intended devolution is specified in Chapter XVII A of the Constitution and the three Lists in the Ninth Schedule to the Constitution. The devolution of legislative and executive power to the Provincial Councils is limited to that specified extent. Thus, Article 154G (1) and Article 154G (5) make it clear that the legislative authority devolved to the Provincial Councils is limited to making statues in respect of matters set out in the Provincial Council List and to making statutes, after consultation with Parliament, in respect of matters set out in the Concurrent List. The supervening legislative power of Parliament on all matters remains untouched, the only restriction being that, in the case of Bills for the amendment or repeal of the provisions of Chapter XVII A of the Constitution and the Ninth Schedule to the Constitution or Bills in respect of matters set out in the Provincial Council List or Bills in respect of matters set out in the Concurrent List, Parliament must follow the procedure specified in Article 154G (2) or Article 154G (3) or Article 154G (5), as would be relevant. Next, as made clear by Article 154C, executive power is devolved to the Provincial Councils only to the extent of the matters in respect to which a Provincial Council has the legislative power to make statutes, as described earlier.

Thus, in the Determination by this Court on the 13th Amendment to the Constitution Bill and the Provincial Councils Bill [SC No. 7/87 reported in SD Reports Vol. III 21 at p.30-31], Sharvananda CJ with Colin-Thome J, Atukorale J and Tambiah J agreeing, stated *"In regard to legislative power, although there is a sphere of competence defined by the two Bills both in respect of matters set out in in the provincial list and in respect of matters set out in the concurrent list within which a Provincial Council can enact statute, this legislative competence is not exclusive in character and is subordinate to that of central Parliament which in terms of Article 154G (2) and 154G (3) can, by following the procedure set out therein, over-ride the Provincial Councils. Article 154G conserves the sovereignty of Parliament in the legislative field. Parliament can amend or repeal, the provisions in the Bill relating to the legislative authority of the Provincial Councils. The Provincial Council is dependent for its continued existence and validity and for its legislative competence in respect of matters in the Provincial List and in the Concurrent List on Parliament. It was submitted by the petitioners that Articles 154G (2) and (3) restrict the legislative powers of Parliament, in respect of matters in the Provincial Council List and the Concurrent List. In our view Articles 154G (2) and (3) do not limit the sovereign power of Parliament. They only impose procedural restraints. ..... No abridgement of legislative sovereignty is involved when rules prescribe as to how legislative authority can be exercised. Article 154G (2) and (3) merely set out the manner and form for the exercise of its legislative power by Parliament to repeal or amend the provisions of Chap. XVIIA and the Ninth Schedule or to legislate in respect of any matter included in the Provincial Council List."* Ranasinghe J, as he then was, stated [at p.78] *"..... the supremacy of the Parliament is retained - in that it has the power to* *legislate, even though in a special manner and form, not only to render ineffective any statute passed by a Provincial Council in respect of even a subject set out in the Provincial Council List, but also to repeal the provisions of Chapter XVII A itself in its entirety."*

With regard to the executive power devolved on Provincial Councils by the provisions of Article XVII A of the Constitution, the learned judges observed [at p. 31] *"With respect to executive powers an examination of the relevant provisions of the Bill underscores the fact that in exercising their executive power, the Provincial Councils are subject to the control of the centre and are not sovereign bodies."*.

Sharvananda CJ, with Colin-Thome J, Atukorale J and Tambiah J agreeing, [at p. 35-36] went on to observe, *"The concept of devolution is used to mean the delegation of central government powers without the relinquishment of supremacy. Devolution may be legislative or administrative or both ...... The 13th Amendment Bill defines those areas of activity where decisions affect primarily persons living in the province. It does not devolve powers over activities which affect people elsewhere or the well-being of Sri Lanka generally. The powers that are conferred on the Provincial Councils are not at the expense of the benefits which flow from political and economic unity of Sri Lanka. Political unity means that Parliament, representing all the people must remain sovereign over their affairs, and that the government of the day must bear the main responsibility to Parliament for protecting and furthering the interests of all. Economic unity means that the Government must manage the nation's external economic relations with other countries. The Government must be able to control national taxation, total public expenditure and the supply of money and credit and the Government must also keep the task of devising national policies to benefit particular parts of the country and of distributing resources among them according to relative need. Resources are distributed not according to where they come from but according to where they are needed. This applies between geographical areas just as much as between individuals.":*. The learned judges also stated [at p. 36] *"The general effect of the new arrangement will be to place under provincial democratic supervision a wide range of services run in the respective provinces for the said provinces, without affecting the sovereign powers of Parliament and the Central Executive."*.

When seeking to determine the aforesaid question of whether the Bill as a whole or individual Clauses of the Bill are in respect of matters set out in the Provincial Council List, it will be useful to examine previous Determinations by this Court which considered the manner in which this Court, when examining a Bill in the exercise of its jurisdiction under Articles 121 and 123 of the Constitution, should determine the appropriate List in the Ninth Schedule to the Constitution which encompasses the Bill as a whole or specific Clauses in that Bill.

In the Determination by this Court [Fernando J, Amerasinghe J and Wadugodapitiya J] on the Agrarian Services (Amendment) Bill [SC SD 02/1991 and SC SD 04/1991 reported in SD Reports Vol. VII p.11], the parties were at divergence with regard to whether specific Clauses of the Agrarian Services Amendment Bill were in respect of matters set out in the Provincial Council List or the Reserved List or the Concurrent List. The observations made by the Court [at p.18] when it proceeded to determine these questions, are of much value and are reproduced *in extenso*:

"In this situation, it becomes incumbent on us to examine these Lists, as a whole, and to see to what extent they can be interpreted consistently, and without creating gaps, anomalies or contradictions.

*A comparison of the Reserved List [`List II'] with the other two Lists reveals that the headings in that List are significantly different. In List II, the headings are followed by the phrase `This would **include**'; what is reserved is the subject set out in the heading; if a heading is followed by a description or an elaboration, this is not for the purpose of defining or restricting the ambit of the subject reserved, but only for the purpose of specifying some of the matters "included". The sole exception is the first item, `National Policy on **all** Subjects and Functions', and this is because `all' needs no further clarification as to what it includes. It is also important that List II includes `All Subjects and Functions not specified in List I or List III' as this indicates that what is devolved is only what is expressly specified in List I or List III.*

The headings in List I and List III are quite different. In a few instances, they refer to a subject or function, with no elaboration of any kind (e.g. List I, item 10 `Rural Development' also List I, items 15, 16 and 31, and List III items 6, 18 and 24); the entire subject is thus devolved. Apart from these, the headings, are not comprehensive or all-inclusive, and the descriptions which follow do not purport to be inclusive definitions of the headings. In some instances, this is expressly stated: thus in List I, item 1 and 3, we find the expression `to the extent set out in Appendix .....'; clearly the entire subject is not devolved, but only what is specified in the Appendix. Similarly, there are exclusions occurring in the detailed descriptions which again indicate that the headings are not comprehensive - e.g. List I, item 5.1, `Other than National Housing Development Authority Projects'; item 11.1 `Other than teaching hospitals .....'; 25.2 `Other than those ..... of national importance'; also List III, item 34. It is also clear that List I has necessarily to be compared with and correlated to List III, thus comparing List I, item 3, with List III, items 2 and 3, Education to the extent set out in Appendix III is a List I subject, and all other aspects of Education come within List III; similarly, some aspects of Planning are within List I, other within List III.

We are therefore of the opinion that it is not possible to determine whether a matter is a List I or a List III subject by merely looking at the heading in those Lists. Nor can it be assumed that the title of an enactment conclusively establishes that its subject matter falls within an item, bearing a similar heading, in one of the Lists.".

In the subsequent Determination on the Greater Colombo Economic Commission (Amendment) Bill [SC SD 01/1992 reported in Vol. VII p. 39 at p. 43], the Court stated, on similar lines, *"The petitioner relies on the heading Local Government' in*

Item 4 as proof of devolution of that entire subject on the Provincial Councils. However the `headings' in the three Lists are of different kinds, as this Court pointed out in the matter of the Agrarian Services (Amendment) Bill ….. In Lists I and III it is only where there is a `heading' with no description that the entire subject can be regarded as devolved; in other cases, the `heading' merely serves to identify the subject, but not to define it. Thus, several items in Lists I and III have the same `heading'. But different descriptions, and obviously the content of the devolved subject has to be determined from those descriptions. `Local Government' is not devolved in its entirety. Item 4.3 indicates that the powers of local authorities are derived from Acts of Parliament, and may not be reduced or taken away by a Provincial Council statute. If Parliament were to take away a power conferred by an Act of Parliament upon a local authority, there would be no infringement of or encroachment into the lawful sphere of authority of Provincial Councils; a fortiori. If Parliament merely authorises the Board to exercise such a power concurrently, without taking away the power of the local authority, the position must be the same.".

In the Determination on the Welfare Relief Benefits Bill [SC SD 07/2002 reported in SD Reports Vol. VII p. 281], the petitioner submitted that the Bill provided for the payment of "Welfare Benefits" and that this was a matter coming within Item 7 of the Provincial Council List which reads *"Social Services and Rehabilitation - 7:1 Probation and Child Care Services; 7:2 The Rehabilitation of destitute persons and families; 7:3 Rehabilitation and welfare of physically, mentally and socially handicapped persons; 7:4 Relief of the disabled and unemployable.".* The Court [at p. 282-283] was of the view that Item 7 in the Provincial Council List envisages the specific services and processes referred to therein and held *"There is no specific item in any of the lists in the Ninth Schedule which relates to a welfare benefit payment. In the circumstances it would come within List II (Reserved List) as a subject or function not specified in any of the lists and it is within the legislative competence of Parliament to provide by law for welfare benefit payments that would be generally applied throughout the country. It is indeed the duty of the State to assist persons who lack resources, to sustain themselves. This has been done in the past by giving a rice ration, food stamps, Janasaviya payments, Samurdhi payments and the like. This reinforces the view we take that it is within the competence of Parliament to enact a law to provide for a generally applicable scheme of welfare benefit payments.".*

In the Determination on the Sri Lanka Disaster Counter Measures Bill [SC SD 01/2003 reported in SD Reports Vol. VII p. 359], the object of the Bill was to deal, from a national perspective, with the threat and danger to human life, property and the environment resulting from natural disasters, to prepare a national policy and plan for that purpose and to appoint central co-ordinated committees and institutions to give effect to such policies and plans. The petitioner contended that the provision of relief for disaster due to flood, draught and the like is a subject falling within the Item 7:2 of the Concurrent List. The Court held [at p.360] *"The provision of relief in respect of any distress as provided for item 7:2 referred to above and the objective of* *the Bill are not of the same nature. The objective of the Bill as noted above, is to address the matter of natural disasters from a national perspective and to lay down provisions for the formulation of a national policy and plan so that immediate counter measures may be taken. Thus it would come within list II being the reserved list which includes the formulation of national policy on all subjects and functions.".*

In the Determination on the Water Services Reform Bill [SC SD 024/2003 and SC SD 25/2003 reported in SD Reports Vol. VII p. 441], the Court recognised [at p. 442-445] that the Preamble of the Bill contained a statement *"which would tend to indicate that the Bill is being enacted as a formulation of national policy on the subject of `water services'"* and that none of the Lists in the Ninth Schedule to the Constitution mentioned *"water services".* However, the Court went on to observe that provisions in existing legislation such as the Urban Councils Ordinance No.61 of 1939, as amended, Town Councils Ordinance No. 03 if 1946, as amended and Pradeshiya Sabhas Act No. 15 of 1987, as amended, made it clear that the supply of pipe-borne water to consumers in any area has been a function vested in the respective Local Authorities. Thereafter, the Court noted that Item 4 in the Provincial Council List specifies that Local Government is a subject within the List and that Item 4:3 states that *"Local Authorities will have the powers vested in them under existing law ......".* On that basis, the Court held [at p.443-444] *"It is seen from the preceding analysis that under existing law the supply of pipe borne water is a function vested in the respective local authorities. Therefore it is a subject in List I within the legislative competence of Provincial Councils .... On the whole the Bill is pervasive in its content in eroding the functions of local authorities in providing water services to consumers in each area. It seeks to give legislative recognition to local authorities in abdicating their duty to provide an essential public utility service to residents in its area. The provisions of the Bill are functional in nature with specific application to the matters contained in the Bill. Therefore, the Bill cannot be considered as laying down national policy so as to come within the List II (Reserved List).".*

In the subsequent Determination on the Town and Country Planning (Amendment) Bill [SC SD 03/2011 reported in SD Reports Vol. X p. 55], the Court stated [at p. 57-58] *"The contention of the learned Deputy Solicitor General for the Respondent was that the Reserved List of the Ninth Schedule to the Constitution refers to National Policy and such reference clearly states that the said National Policy is on all subjects and functions. The contention therefore is that the National Policy on any subject or function would come within the ambit of the Reserved List in the Ninth Schedule. Accordingly it was submitted that the National Policy on all subjects and functions are within the framework of the Reserved List, and since it has an extremely wide ambit that it should not be interpreted narrowly. It was not disputed that the Bill has used the terms `National Physical Planning Policy' and `National and physical Planning' on its long title as well as in other clauses. It was also not disputed that the said phrases has not been used in any one of the three lists contained in the Ninth Schedule to the Constitution. In such circumstances, the question arises as to how the determination should be made as to whether the* *subject in question would be placed within the ambit of `National Policy' of the relevant subject. Learned Counsel for the Petitioners submitted that the test that should be used for such determination should be a functional test whereas the Learned Deputy Solicitor General for the Respondent submitted that regard should be given to the purpose and object of the Bill as a whole and not to particular words that are used in a clause of the Bill. The functional test which was referred to in the matter concerning the Water Services Reform Bill .... It is to be noted that in the said Determination although the functional test was used, to arrive at the conclusion, the contents of the Bill had been examined and as correctly stated by the Learned Deputy Solicitor General, such examination would have to be based on the purpose and object of the Bill as a whole..... In determining the question as to whether a subject matter is dealing with the National Policy or not, it would therefore be necessary to consider the nature of the provisions contained in the Bill, its purpose and object in the light of the provisions contained in the Thirteenth Amendment to the Constitution and the three Lists enumerated in the Ninth Schedule to the Constitution.".*

In the more recent Determination on the Divineguma Bill [SC SD 01/2012 and others reported in SD Reports Vol. X 69], the Court observed [at p.80] *"The main purpose of the 13th Amendment to the Constitution was to introduce Provincial Councils in the country. Article 154A (1) of the Constitution has made provision for a Provincial Council to be established for every province. The purpose of the introduction of Provincial Councils in 1987, was to devolve power which was hitherto vested in the Central Government to Provincial Councils. As referred to in the determination in Town and Country Planning (Amendment) Bill ...., in the Supreme Court determination in In Re Thirteenth Amendment to the Constitution Bill and the Provincial Councils Bill...., it was clearly stated that the introduction of the Provincial Councils was for the purpose of devolution of authority, which included, inter alia, legislative devolution. This position was emphasized by the Supreme Court in Madduma Bandara V Assistant Commissioner of Agrarian Services ...... where it was stated thus: `The 13th Amendment to the Constitution, which came into effect in November 1987, was chiefly introduced for the purpose of devolving power from the Central Government to the Provincial Councils.'".*

Considering the question of whether Divineguma Bill was one dealing with National Policy, the Court observed [at p. 82] that *"It is not disputed that national policy on all subjects and functions is a matter within the scope of the Central Government and the Provincial Councils have no power* [to] *legislate on national policy nor is there a requirement for the Central Government to consult the Provincial Councils if the Centre has decided to legislate on a matter based on national policy. However, the national policy within a country cannot be equated to the directive principles of the state policy, as it would vary from one subject area to another. It is not feasible to categorise a subject or subject areas as dealing with national policy merely because it has been referred to in Chapter VI of the Constitution.".*

The Court went on [at p. 82-83] to cite the aforesaid *dicta* in the Determination on the Town and Country Planning (Amendment) Bill and stated *"It would therefore be necessary to consider the purpose and object of the Bill in deciding the question as to whether the Bill deals with the national policy of the relevant subject. The long title of the Bill, stated earlier, refer to the establishment of a Department known as the Department of Divineguma Development. This would be established by the amalgamation of three Authorities which are currently functional. These three Authorities would be the Samurdhi Authority, Southern Development Authority and Udarata Development Authority. The Bill also provides for the establishment of Divineguma Community Based Organizations at rural level with a network at the district level and national level. It is also intended to establish Divineguma Community Based Banks and Divineguma Community Based Banking Societies. In the process, provision is to be made to repeal the Samurdhi Authority, Southern Development Authority and Udarata Development Authority. It was contended that in the Preamble reference has been made to national policy. The Preamble reads as follows 'WHEREAS, in furtherance of the economic development process and in giving effect to the national policy of alleviating poverty and ensuring social equity, it has become necessary to improve the individual, family and group centred livelihood development activities'. This clearly demonstrates that except for the word national policy the rest of the items are functional and include several subject areas which are referred to in the Provincial Council List. For instance, when the long title and the preamble are considered together they refer to the development at grassroot level of the society. This is undoubtedly based on rural development. Item 10 of the List I deals with rural development and the entire subject is therefore devolved. It is also to be noted that in item 21 of List I, the functional aspects of the power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income generating projects within the Province is vested in the Provincial Councils."*.

To now get to the task of determining whether the Bill as a whole or individual Clauses of the Bill are in respect of matters set out in the Provincial Council List, learned Senior Additional Solicitor General has highlighted the fact that the Preamble to the Bill categorically states that the Bill is for the purpose of laying down National Policy on Ruhunu Economic Development so as to encourage and secure rapid and sustainable economic development in Sri Lanka. The Preamble goes on to say that it has become a matter of national importance to establish the Corporation for the purpose of fostering economic development.

Thus, the Preamble to the Bill clearly indicates that the intention of the Bill was to legislate on a Subject and Function of National Policy. In this connection, it is apt to cite Bindra [Interpretation of Statutes 12th ed. at p. 252] who states *"However, eminent lawyers have considered the preamble to be undoubtedly a part of the Act, a key to open the meaning of the makers and mischief it was intended to remedy. The title and preamble whatever their value may be aids to the construction of a statute, undoubtedly throw light on the intent and design of the legislature and* *indicate the scope and purpose of the legislation itself ..... Aid can be taken from the preamble which denotes the policy and object behind the Act .....".* Bindra also cites Maxwell on Interpretation of Statutes [9^{th} ed. at p.46] which observes with regard to the Preamble of an Act that *"..... it usually states or professes to state, the general object and intention of the legislature in passing the enactment .....".*

However, as observed by this Court in previous Determinations on the Water Services Reform Bill and the Town and Country Planning (Amendment) Bill, the fact that the Long Title or Preamble of a Bill refers to *"National Policy"* and indicates that the intention of the Bill was to legislate on a Subject and Function of National Policy, does not, by itself, make that Bill one in respect of National Policy. Instead, it is necessary to examine the Bill as a whole and also the individual provisions of the Bill in order to identify the purpose and object of the Bill and to ascertain whether it is intended to enact National Policy. When doing so, it is necessary to ascertain the true functions of the provisions of the Bill and examine whether they give effect to National Policy or whether they, in fact, are nothing more than functional measures *"in respect of any matter set out in the Provincial Council List".*

When we examine the Bill from the aforesaid perspective, it is apparent that the intention of the Bill as stated in the Preamble - *ie:* to lay down the National Policy on Ruhunu Economic Development - is then manifested in Clause 15 which declares that this National Policy is to strengthen the economic base of the country as a whole by developing an international air sea logistic hub in Hambantota, promoting globally competitive economic activities within the Area, increasing the backward linkage of industries and services throughout Sri Lanka, creating employment and developing a skilled workforce. It is evident that these are matters of national importance which fall squarely within the ambit of National Policy.

Thereafter, Clause 2 and Clause 3 of the Bill read with Clause 18 of the Bill make it clear that the Corporation has been established to give effect to the aforesaid National Policy and with the objects of: promoting internationally focused, competitive, market driven, rapid and sustainable economic development within the area by implementing the economic development projects, plans, programmes and schemes formulated to give effect to the aforesaid National Policy, developing a strategic logistic hub with a port and airport; and promoting local and foreign investment in the designated Economic Development Zones. It is crystal clear that these too are matters of national importance which fall squarely within the ambit of National Policy.

The other Clauses of the Bill deal with the powers, functions and duties of the Corporation in relation to giving effect to the aforesaid National Policy, the Administration and Management of the Corporation and its Staff and its Fund, the geographical limits of the Area and the designation of Economic Development Zones within the Area and other general provisions. It is evident that all these provisions have been included in the Bill for the purpose of giving effect to the National Policy set out in the Bill.

Undoubtedly, the focus of the Bill is the promotion of rapid and sustainable economic development within the Area. But, it is clear from the aforesaid Clauses of the Bill that the purpose of that exercise is for such development within the Area to act as a catalyst for wide-spread development throughout the entire country. The National Policy outlined in Clause 15 is unmistakeably one which envisages that the entirety of Sri Lanka will benefit from the implementation of that National Policy. Thus, for example, the National Policy outlined in Clause 15 includes increasing backward linkage of industries and services within the entirety of Sri Lanka and creating employment and developing a skilled work force throughout Sri Lanka.

The Reserved List commences with the declaration that the subject of *"National Policy on all Subjects and Functions"* is within the Reserved List. Consequently, it is clear that all matters of National Policy on whatever Subject or Function are within the Reserved List, with Parliament having sole and exclusive legislative authority on such matters.

Further, it is apparent that the development of an international air sea logistic hub which is specified in Clause 15 and reiterated in Clause 3 which specifically refers to a port and an airport, are subjects in the Reserved List which lists *"Ports and Harbours"* and *"Aviation and Airports"*. Next, it is seen that, as submitted by learned Senior Additional Solicitor General, the promotion of globally competitive economic activities and increasing backward linkage of industries and services throughout Sri Lanka, which are both specified in Clause 15, are subjects in the Reserved List which lists *"Foreign Trade - Inter Province Trade and Commerce"*. It would also appear that the creation of employment and the development of a skilled work force ,which are specified in Clause 15, and the promotion of local and foreign investment and internationally focused economic development, which are specified in Clause 3, are subjects in the Reserved List which states that *"All Subjects and Functions not Specified in List I or List III ....."* are to be regarded as falling within the ambit of the Reserved List. It should also be mentioned that the Provincial Council List does not specify the creation of employment or the development of a skilled work force or make any reference to the promotion of investment from both local and foreign sources and economic development aimed at increasing Sri Lanka's capacity on an international scale. In this regard, we keep in mind the Determination on the Welfare Relief Benefits Bill in which the Court placed significance on the specific services and processes listed in the Provincial Council List and took the view that services and process not so listed would be outside the scope and ambit of that List. For the sake of completeness, it should be mentioned that, while Item 21 of the Provincial Council List sets out the power to promote, establish and engage in agricultural, commercial and trading enterprises and other income-generating projects within the Province, this power is expressly made *"Subject to the formulation and implementation of National Policy in regard to development and planning"* and *"without prejudice to the power of the Government and Public Corporations to have such enterprises and projects."* within a Province. Further, as set out above, the objects of the Corporation in terms of the scheme set out in the Bill are not limited to one Province since the Area includes Administrative Districts in two Provinces. This would make the establishment of the Corporation by the Bill a subject falling within the Reserved List which specifically includes the incorporation of Corporations *"….. with objects not confined to one province…..".*

Accordingly, the necessary conclusion is that from the standpoint of the *"purpose and object of the Bill as a whole",* to use the words of this Court in the Determination on the Town and Country Planning (Amendment) Bill, and also on a perusal of the individual provisions of the Bill, the Bill is for the purpose of enacting and giving effect to National Policy.

However, even in instances where the *"purpose and object of the Bill as a whole"* is in respect of matters set out in the Reserved List, it is possible that individual Clauses in the Bill or a group of them will encroach on the territory of matters set out in the Provincial Council List. For example, in the Determination on the Water Services Reform Bill, although the subject of Water Services was not included in the Provincial Council List and appeared to be a subject within the Reserved List, the Court examined the functions of the individual provisions of the Bill and concluded that they pervasively eroded the functions of Local Authorities which are a subject within the Provincial Council List.

In this connection, learned counsel for the petitioners have submitted that *"numerous"* Clauses of the Bill are in respect of matters set out in Items 2, 9, 10, 18, 19, 20, 21 and 34 in the Provincial Council List. Therefore, it is necessary to consider the Clauses of the Bill in the context of each of these Items in the Provincial Council List.

Both learned counsel for the petitioners have focused, to a considerable extent, on Item 18 in the Provincial Council List. In our view, the issues arising from some Clauses of the Bill in the context of Item 18 raise difficulties. Therefore, they will be considered first.

Item 18 in the Provincial Council List states *"Land - Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and improvement, to the extent set out in Appendix II".* Appendix II to the Provincial Council List commences with the heading *"Land and Land Settlement"* followed by a declaration that *"State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written law governing this matter. Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions : - …..".* Appendix II contains three types of *"special provisions"* which qualify the earlier pronouncement that *"Subject as aforesaid, land shall be a Provincial Council Subject".* These *"special provisions"* stipulate specifications in respect of: (1) *"State land"* within a Province; (2) *"Inter-Provincial Irrigation and Land Development Projects"* within a Province and those where the command area falls within two or more Provinces; and (3) the establishment of a

"National Land Commission" by the Government of Sri Lanka. It is not necessary to reproduce these *"special provisions"* here. Instead, we will refer to them, if required.

Learned counsel for the petitioners state that Item 18 in the Provincial Council List read with Appendix II to the Provincial Council List make it clear that Land is a subject devolved to Provincial Councils subject to the aforesaid *"special provisions"* in Items (1), (2) and (3) of Appendix II. They highlight that Clause 16 (2) of the Bill empowers the Minister to establish and designate *"any land area within the Area"* as an Economic Development Zone and that, thereupon, *"Such land area shall stand vested in the Corporation."*. Counsel submit that Clause 16 (2) provides that any land area situated within a Province will stand vested in the Corporation by the simple device of the Minister designating and establishing, by a notice published in the Government Gazette, a designated Economic Development Zone within which that land area is situated. They also highlight that Clause 16 (4) of the Bill states that any land within a designated Economic Development Zone may be alienated or leased to any Body Corporate for the purpose of achieving the objects of the Corporation and, thereby, *"permits the alienation of state land"* within a Province in a manner which is outside the framework specified in Item 18 read with Appendix II to the Provincial Council List. Learned counsel also refer to Clause 16 (7) of the Bill which empowers the Minister to declare and designate any *"State land"* as a designated Economic Development Zone and restricts the alienation of such State Land for the purposes of private use. Learned counsel submit that these Clauses of the Bill encroach on the subject of Land which is devolved to the Provincial Councils in terms of Item 18 in the Provincial Council List read with Appendix II to the Provincial Council List.

It is the position of learned counsel for the petitioners that, for the reasons set out in the preceding paragraph, the Bill is one which is in respect of a matter set out in the Provincial Council List and, therefore, there is a mandatory requirement specified in Article 154G (3) of the Constitution that His Excellency, the President must refer the Bill to every Provincial Council for an expression of their views, before the Bill can be lawfully placed on the Order Paper of Parliament.

On the other hand, learned Senior Additional Solicitor General submits that the availability of land is an essential requirement for the establishment of designated Economic Development Zones under and in terms of the Bill. He submits that *"such land could be obtained from two sources, namely, either privately owned land or State lands. Accordingly, specific provisions have been included in the Bill to obtain land from both such sources."*.

Firstly, with regard to privately-owned land, learned Senior Additional Solicitor General categorically states that the acquisition of any privately-owned land to give effect to the purposes and objects of the Bill or for purposes of the Corporation, can only be done under and in terms of Clause 26 of the Bill which stipulates that any such acquisition is to be done under the provisions of the Land Acquisition Act on the basis that such land is deemed to be required for a `public purpose'. Any such acquisition will entail the payment of compensation based on the market value of the land. He submits that *"..... clause 26 of the Bill requires recourse to the Land Acquisition Act, which is the usual procedure adopted for State institutions to acquire privately-owned lands for public purposes."*.

Secondly, with regard to State Land, learned Senior Additional Solicitor General refers to Clause 16 (7) of the Bill which, *inter alia*, provides that the Minister may *"declare and designate any State land as a designated economic development zone."*. He highlights that Clause 16 (7) itself specifies that the Minister may exercise the aforesaid power only *"Subject to the provisions of the Constitution and any written law"* and contends that, therefore, the power granted by Clause 16 (7) to the Minister to designate State Lands as a designated Economic Development Zone does not encroach on the powers devolved to Provincial Councils in terms of the Provincial Council List. Learned Senior Additional Solicitor General goes on to submit that Clause 16 (2) of the Bill should *"be read and interpreted in conjunction with the aforementioned clauses 26 and 16 (7) and not in isolation ....."*. He submits that Clause 16 (2) is not intended to be a *"stand-alone provision"* and that the Bill does not seek to achieve any *"automatic vesting of lands in the Corporation."*. However, he acknowledges that if Clause 16 (2) is taken in isolation *"it may have the effect of distorting the intention sought to be achieved under the Bill relating to the use of land"*. In these circumstances, learned Senior Additional Solicitor General has, upon specific instructions received by him, undertaken that the last sentence in Clause 16 (2) of the Bill [*ie:* the words *"Such land area shall stand vested in the Corporation"*] will be deleted. Learned Senior Additional Solicitor General submits that, for these reasons, Clause 16 of the Bill does not encroach on the powers devolved to Provincial Councils in terms of Item 18 in the Provincial Council List read with Appendix II of that List.

When considering the opposite positions taken by the parties, we must first look at Item 18 in the Provincial Council List read with Appendix II of that List. Item 18, which was reproduced earlier, makes it clear that the subject of *"Land"* has been devolved to the Provincial Councils only *"to the extent set out in Appendix II"*. Thereafter, Appendix II makes it clear, at its commencement itself that its scope and ambit is with regard to *"Land and Land Settlement"*. Thus, in the Determination on the Land Ownership Bill [SC SD 26/2003 and others reported in SD Reports Vol. VII 455], the Court observed [at p.457] *"Appendix II, which again is under and in terms of the Provincial councils list, is solely dedicated to matters pertaining to `land and land settlement'. This refers to State lands ....."*.

In this light, the provisions in Clause 26 of the Bill which would, *ex facie*, apply in the case of an acquisition of privately-owned land, under and in terms of the provisions of the Land Acquisition Act, to give effect to the purposes and objects of the Bill or for purposes of the Corporation, would not impinge on the ambit of the Provincial Council List. In this connection, we also note that the learned Senior Additional Solicitor General has correctly stated that the provisions of Clause 26 reflect *"the usual procedure adopted for State institutions to acquire privately-owned lands for* *public purposes.".* We also note that a similar procedure was provided for in Section 17 of the Southern Development Authority of Sri Lanka Act No. 18 of 1996. Further, we see broadly similar provisions in Section 28 of the Board of Investment of Sri Lanka (Greater Colombo Economic Commission) Law No. 04 of 1978, as amended and Section 19 of the Udarata Development Act No. 26 of 2005. All three of these Statutes provided for the establishment of a Body Corporate which has the object of promoting development, as the Bill under examination does. In fact, learned Senior Additional Solicitor General has submitted that the Southern Development Authority of Sri Lanka Act is the *"genesis"* of the Bill under examination. It should be mentioned here that the Southern Development Authority of Sri Lanka Act and the Udarata Development Act were later repealed by the Divineguma Act No. 1 of 2013.

However, in the case of State Land, the provisions of Clause 16 of the Bill pose difficulties in the context of the Provincial Council List.

In the first place, Clause 16 (2), as it now stands, provides that *"any land area"* within the Area which is designated as an Economic Development Zone by the Minister shall stand vested in the Corporation. Thereafter, Clause 16 (4) states that any land within a designated Economic Development Zone may be alienated or leased [by the Corporation] for the purpose of achieving the objects of the Corporation and in accordance with any economic development plans, programmes or schemes made under and in terms of the proposed Act. Even if, as learned Senior Additional Solicitor General submits, Clause 16 (2) is to be read and interpreted with Clause 16 (7) and Clause 16 (2) is deemed to only refer to State Land with the words *"Such land area shall stand vested in the Corporation"* being omitted [on the basis of the undertaking that these words will be deleted], Clause 16 (4) and Clause 16 (7) remain with full force. Clause 16 (7) empowers the Minister, subject to the provisions of the Constitution and any written law, to declare and designate *"any State Land"* as a designated Economic Development Zone. Clause 16 (7) also states that any State Land within such a designated Economic Development Zone shall not be alienated for private use except to *"the developers, operators or enterprises or any other body of persons established within the designated Economic Development Zone".* Clause 16 (4) empowers the Corporation to lease or alienate the land in an Economic Development Zone to any person or body corporate only for the purposes of the proposed Act. Next, Clause 17 stipulates that, subject to the provisions of any other written law, no person shall carry on business as *"an economic development zone developer, operator or enterprises or provide or maintain activities or facilities within a designated economic development zone except under the authority of a license issued by the Corporation in accordance with regulations made under the proposed Act.".* Thereafter, Clause 39 (2) of the Bill empowers the Minister to make Regulations with regard to, *inter alia*, the manner in which Licenses may be issued to *"economic zone developers ..... in respect of each designated economic development zone.";* the facilities to be established and provided within Economic Development Zones; the categories of industrial and commercial organizations to be established within an Economic Development Zone; the manner of procuring to

Developers of Economic Development Zones, available areas of land which have been established as Economic Development Zones; and the development, management and control of Economic Development Zones.

When the aforesaid Clauses are read together [with the words *"Such land area shall stand vested in the Corporation"* in Clause 16 (2) being disregarded in view of the aforesaid undertaking], it is clear that the proposed scheme of Clause 16 and Clause 17 is that the Minister will be empowered to declare any State Land [presumably within the Area] as a designated Economic Development Zone and that, thereafter, upon such State Land being vested in the Corporation in terms of the applicable law relating to the alienation of State Land or by a statutory exercise, the Corporation will be empowered to transfer that land area to an Economic Development Zone Developer or to an Economic Development Zone Operator who will proceed to develop and/or operate that Economic Development Zone within which various Enterprises are expected to commence and carry on their businesses. That would be the usual pattern of activity which is envisaged by the scheme of the Bill.

It is perhaps relevant to mention that a similar statutory scheme is not found in the Southern Development Authority of Sri Lanka Act, Udarata Development Act and the Board of Investment of Sri Lanka (Greater Colombo Economic Commission) Law which, as observed earlier, were Statutes providing for the establishment of a Body Corporate which has the object of promoting development, as the Bill under examination does.

It is manifestly clear from the aforesaid analysis that the provisions of Clause 16 and Clause 17 of the Bill deal with the subject of the *"use"* of State Land within the Area [which lies within two Provinces] and provide for the Minister and the Corporation to decide on the *"use"* of any area of State Land which is located within that Area and is to be declared to be a designated Economic Development Zone in terms of the proposed Act.

Item 18 of the Provincial Council List make it clear that *"use"* of State Land within a Province is a subject within the Provincial Council List *"to the extent set out in Appendix II"*. Thereafter, Item 1:1 under the heading *"State land"* in Appendix II specifies that *"State land required for the purposes of the Government in a Province in respect of a reserved or concurrent subject may be **utilised** by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the **utilisation** of such land in respect of such subject."* [emphasis added]. Thus, by operation of Item 18 of the Provincial Council List read with Item 1:1 under the heading *"State land"* in Appendix II, although the Government of Sri Lanka is entitled to *"use"* or *utilise"* State Land within a Province in accordance with the laws governing the matter, the Government is mandatorily required to consult the relevant Provincial Council with regard to the proposed *"use"* or *"utilisation* of that State Land within that Province.

On related lines with regard to Item 1:3 under the heading *"State land"* in Appendix II which refers to the alienation or disposition of State Land within a Province by the President on the advice of the relevant Provincial Council, this Court recently observed in the Determination on the State Land (Special Provisions) Bill [SC SD 01/2019 and others] that the Provincial Councils have *"only an advisory/functional role to play in carrying out the process of alienation of State Lands"*. We would add that, in the case of the *"use"* or *"utilisation* of State Land within a Province, Item 1:1 under the heading *"State land"* in Appendix II invests the Provincial Councils with a similar advisory/functional role with regard to the Government *"using"* or *"utilising"* State Land within a Province.

We think it is also necessary to observe here that the provisions of Clause 16 of the Bill, as it now stands, envisage that State Land which is within a land area established and designated to be an Economic Development Zone under and in terms of the proposed Act [and will

lie within one or both of two Provinces] shall stand *"vested"* in the Corporation and, thereafter, can be alienated by the Corporation to any person or body corporate for the purposes of achieving the objects of the Corporation and the purposes of proposed Act. However, Item 1:3 under the heading *"State land"* in Appendix II states that alienation or disposition of State Land within a Province *"shall be by the President, on the advice of the relevant Provincial Council"*. Learned Senior Additional Solicitor General has conveyed an undertaking that the words *"Such land shall stand vested in the Corporation"* in Clause 16 (2) will be deleted. In such event, any State Land could be lawfully alienated or transferred only in terms of and by the mechanisms specified in the statutory law dealing with the alienation or transfer of State Land and in compliance with the aforesaid procedures described in Appendix II of the Provincial Council List. A departure from that process in the Bill, will entail Parliament legislating in respect of a matter set out in the Provincial Council List and will require compliance with the procedure set out in Article 154G (3) of the Constitution and the other provisions of the Constitution.

In this light, it is clear that the provisions of Clause 16 and Clause 17 of the Bill, as they now stand, are in respect of a matter set out in the Provincial Council List. In these circumstances, Article 154G (3) of the Constitution stipulates that the Bill has to be referred by His Excellency, the President to every Provincial Council for the expression of their views before the Bill can be validly and lawfully placed on the Order Paper of Parliament. As mentioned at the outset, it is common ground that the Bill has not been referred to the Provincial Councils.

Accordingly, we determine that, under and in terms of and by operation of the mandatory provisions of Article 154G (3) of the Constitution, the Bill under examination cannot be validly and lawfully placed on the Order Paper of Parliament until it has been referred by His Excellency, the President, to the Provincial Councils for the expression of their views on the Bills. The Bill can be validly and lawfully placed on the Order Paper and be brought before Parliament only after that mandatory procedural step is complied with. Thereafter, the manner of passing the Bill will depend on the views expressed by the Provincial Councils, as set out Article 154G (3).

Comparable circumstances arose in the recent Determination on the State Land (Special Provisions) Bill and the Court held [at p. 18]: *"In our view, the Court is required to go by the strict letter in this matter, as the intention of the 13th Amendment was to devolve powers to the Provinces to the proper extent set out therein. This leads to the conclusion that Parliament must refer proposed Bills for the views of the Provincial Councils, if the subject matter finds expression in List I."*. The Court went on later state *"Naturally, this interpretation results in the requirement that Parliament must first refer to Provincial Councils all Bills dealing with subject matter which is properly within the ambit of List I - even if Provincial Councils only have a functional power as opposed to legislative, in respect of that subject matter. However, this procedure is constitutionally mandated and does not affect the legislative competence of Parliament, with the relevant legislative power remaining with Parliament. Following this procedure may make the legislative process more time consuming. However, the fact that a constitutionally mandated procedure may at times be time-consuming or even cumbersome cannot be taken as a ground to invalidate constitutional requirements."*.

To move on to the petitioners' aforesaid contention that *"numerous"* other clauses of the Bill are in respect of subjects in the Provincial Council List, learned counsel for the petitioners have cited Item 2 in the Provincial Council List which reads *"Planning - Implementation of provincial economic plans."*. We are of the view that the promulgation of a National Policy which is intended to have a nation-wide effect on the lines spelt out in Clause 15 of the Bill is entirely outside the limited scope of Provincial Economic Planning and Implementation which is envisaged by Item 2. Further, the package of *"economic development projects, plans, programmes or scheme necessary to give effect to the National Policy ...."* mentioned in Clause 18 of the Bill and reflected in Clause 3 and Clause 4 of the Bill, are in relation to giving effect to the National Policy outlined in Clause 15 of the Bill.

Next, learned counsel for the petitioners have cited Item 9 in the Provincial Council List which reads *"Agriculture and Agrarian Services - 9.1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, State land and plantation agriculture); 9.2 Rehabilitation and maintenance of minor irrigation works; 9:3 Agricultural research save and except institutions designated as national agricultural research institutions."*. The only use of the word related to *"Agriculture"* in the Bill is found in Clause 16 (6) of the Bill which lists *"high technology agricultural enterprises"* as one of eight types of enterprises, industries and ventures which could be included within a designated Economic Development Zone. It is *ex facie* clear that Clause 16 (6) cannot be said to amount a legislative exercise in respect of the subject of *"Agriculture and Agrarian Services"* as described in Item 9 of the Provincial Council List.

Thereafter, learned counsel for the petitioners have cited Item 10 in the Provincial Council List which reads *"Rural Development"*. As observed in the aforesaid Determination on the Agrarian Services (Amendment) Bill, the entire subject of *"Rural Development"* is listed in the Provincial Council List without any qualification or elaboration and, therefore, that entire subject has been devolved to the Provincial Councils. However, it seems to us that the term *"Rural Development"* is usually used to refer to village and community based development at the grassroot level, typically the development of village-level infrastructural projects which directly benefit village communities and small scale agricultural, industrial and artisanal projects at the village level. Thus, it appears that in the Determination on the Divineguma Bill [SC SD 01/2012 and others] this Court was of the view that the term *"Rural Development"* in Item 10 referred to *"development at grassroot level of the society."*. In that connection, a perusal of the provisions of the Divineguma Bill shows that it, *inter alia,* proposed the setting up of Divineguma Community Based Organisations which would be assigned the task of development within their own Grama Niladhari Divisions and, thereby, sought to set up a framework to achieve development at a grassroot level. However, the Bill under examination has a very different purpose, as described earlier. In our view, the creation of designated Economic Development Zones containing industries, parks and various types of sophisticated enterprises and aimed at promoting *"internationally focused competitive market driven and rapid sustainable economic development"* as provided for in the Bill and the powers, functions and duties granted to the Corporation to achieve those objectives, cannot be considered to be *"Rural Development"* as envisaged in Item 10 of the Provincial Council List.

Learned counsel for the petitioners have also cited Item 19 in the Provincial Council List which reads *"Irrigation - Planning, designing, implementation, supervision and maintenance of all irrigation works, other than irrigation schemes relating to rivers running through more than one Province or interprovincial irrigation and land development schemes."*. We cannot discern any Clauses in the Bill which could be said to fall within Item 19 of the Provincial Council List. The mention in Item 2:3 of Appendix II of the requirement that the Government must consult with the Provincial Councils with regard to the *"size of holdings of agricultural and homestead lands"* arising out of Inter-Provincial Irrigation and Land Development Projects, has no relation to the scope, ambit and scheme of the Bill under examination.

Next, learned counsel for the petitioners have cited Item 20 in the Provincial Council List which reads *"Animal husbandry - Preservation, protection and improvement of stock and prevention of animal diseases within the Province."* In this instance too, we do not see any Clauses in the Bill which are in respect of Item 20 of the Provincial Council List. The fact that Clause 16 (6) of the Bill provides that an Economic

Development Zone could include *"livestock enterprises"* does not bring Clause 16 (6) within the ambit of Item 20 in the in the Provincial Council List.

Thereafter, learned counsel for the petitioners have cited Item 21 in the Provincial Council List which reads *"Subject to the formulation and implementation of National Policy in regard to development and planning, the power to promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income-generating projects, within the Province without prejudice to the power of the Government and Public Corporations to have such enterprises and projects."*. Thus, Item 21 makes it clear that the Government of Sri Lanka retains its power not only to formulate and implement National Policy on development and planning with regard to *"agricultural, industrial, commercial and trading enterprises and other income-generating projects"* within a Province, but also the power to carry on such enterprises and projects.

Finally, learned counsel for the petitioners have cited Item 34 in the Provincial Council List which reads *"Development, conservation and management of sites and facilities in the Province for the generation and promotion of electrical energy (other than hydro-electric power and power generated to feed the national grid)."*. In this instance too, we cannot discern any Clauses in the Bill which are in respect of Item 34 of the Provincial Council List. The fact that Clause 4 (b) of the Bill grants the Corporation the power, function and duty of providing infrastructure facilities for designated Economic Development Zones, does not bring that Clause within the ambit of Item 34 in the Provincial Council List.

Learned counsel for the petitioners have also referred to Item 3 of Appendix II to the Provincial Council List which is headed *"National Land Commission"* and provides for the Government of Sri Lanka to establish a National Land Commission which would be responsible for the formulation of a National Policy with regard to the use of State Land. Item 3 also states that the Commission will include representatives of all Provincial Councils in the Island. Learned counsel submit that Clause 15 of the Bill sets out a *"policy formulation pertaining to Land (which) is a matter for the National Land Commission."* and submit that the Bill is in respect of a matter in the Provincial Council List. In the first place, we do not agree that Clause 15 sets out a Policy pertaining to State Land. That contention is not supported by the wording of Clause 15 which is focused on strengthening the national economic base of Sri Lanka by engaging in the six types of activities listed earlier. In any event, a National Land Commission has not been established despite the passage of over three decades since the 13th Amendment to the Constitution and the introduction of Item 3 of Appendix II to the Provincial Council List. In these circumstances, we see no merit in the aforesaid contention made on behalf of the petitioners.

Accordingly, we determine that the provisions of the Bill are not in respect of any matter set out in Item 2, Item 9, Item 10, Item 19, Item 20, Item 21 and Item 34 of the Provincial Council List. We go on to state that we see no other provisions in the Bill which are in respect of any matter set out in the Provincial Council List.

Learned counsel for the petitioners have also made submissions with regard to an alleged lack of any guidelines and arbitrariness in the powers granted to the Minister to establish and designate *"any land area"* and *"any State land"* as designated Economic Development Zones and resulting violations of several Articles in Chapter III of the Constitution which deals with Fundamental Rights. They have also submitted that, in terms of Article 33 (2) (*f*) of the Constitution, it is only His Excellency, the President who is empowered to alienate or dispose of State Land. Further, they make submissions that some of the powers, functions and duties of the Corporation are arbitrary, unlawful and unconstitutional. Learned Senior Additional Solicitor General has made forceful submissions to the effect that these positions taken by the petitioner have no substance or merit.

In this regard, in the aforesaid Determination on the State Land (Special Provisions) Bill, the alienation of State Land [which is a matter set out in the Provincial Council List], was the very essence and purpose of the Bill. In those circumstances, the Court saw no practical purpose in examining the individual Clauses of the Bill unless and until the aforesaid procedure set out in Article 154G (3) of the Constitution was complied with. The Court had adopted a similar approach in the Determination on the Town and Country Planning (Amendment) Bill and the Determination on the Divineguma Bill [SC SD 01/2012]. However, in contrast, in the Determination on the Land Ownership Bill, the Court held that, although the Bill was in respect of a matter set out in the Provincial Council List, it had not been referred to the Provincial Councils before being placed on the Order Paper of Parliament. The Court held this to be a procedural deficiency which precluded the Bill from becoming Law. Nevertheless, the Court went on to examine and pronounce upon several other constitutional aspects of the Bill.

In the case of the Bill under examination, the scheme set out in Clause 16 and Clause 17 of the Bill with regard to the establishment and designation of Economic Development Zones in areas of State Land and the ownership, control, utilisation, administration and management of State Land situated within such Economic Development Zones, is central to the Bill. The entire scheme of the Bill is constructed around the premises enunciated in Clause 16 and Clause 17. In fact, this reality has led learned Senior Additional Solicitor to state that *"The availability of land is an essential requirement for the establishment of EDZs under the Bill ....".*

In these circumstances, we consider that it is fitting for us to follow the approach adopted in the Determination on the State Land (Special Provisions) Bill since we see no practical purpose, at this stage, in examining the aforesaid submissions with regard to the constitutionality of the Clauses in the Bill [other than our aforesaid determination that compliance with the procedure set out in Article 154G (3) of the Constitution is required before the Bill can be placed on the Order Paper of Parliament] in the light of the possibility that, the process of obtaining the views of the Provincial Councils could, conceivably, result in changes to the Bill which would be presented to Parliament after those views are obtained.

In conclusion, we reiterate our determination in terms of Articles 121 and 123 of the Constitution that, since the provisions of Clause 16 and Clause 17 of the Bill are in respect of matters set out in the Provincial Council List and since the Bill has not been referred by His Excellency, the President, to every Provincial Council for the expression of their views as mandatorily required by Article 154G (3) of the Constitution, the Bill has not been validly or lawfully placed on the Order Paper of Parliament. Consequently, the Bill can be validly and lawfully placed on the Order Paper of Parliament and be placed before Parliament only after the aforesaid procedure has been complied with. Thereafter, the manner of passing the Bill will depend on the expression of the views of the Provincial Councils, as set out Article 154G (3).

For the reasons mentioned earlier, we do not, at this stage, make a determination on the other grounds of challenge mentioned above. A requirement for this Court to make a determination on those matters may arise only in the event the Bill [or a revised Bill] is validly and lawfully placed on the Order Paper of Parliament and the jurisdiction of this Court under and in terms of Articles 121 and 123 of the Constitution is then lawfully invoked.

We place on record our appreciation for the assistance given by learned President's Counsel and other learned Counsel for the petitioners and by learned Senior Additional Solicitor General and learned Deputy Solicitor General who appeared on behalf of the Hon. Attorney General.

Prasanna Jayawardena, PC
Judge of the Supreme Court

Murdu Fernando, PC
Judge of the Supreme Court

P. Padman Surasena
Judge of the Supreme Court