SC (SD) No.06/2021

SRI LANKA LAND DEVELPOMENT CORPORATION

(AMENDMENT) BILL

BEFORE:	**Justice Vijith K. Malalgoda PC**	**- Judge of the Supreme Court**
	Justice E.A.G.R. Amarasekara	**- Judge of the Supreme Court**
	Justice Achala Wengappuli	**- Judge of the Supreme Court**

SC (SD) No.06/2021

Petitioner: **A.D.P.A. Gooneratna**

Counsel: Mayura Gunawansa PC with Sandarenu Peiris, Isuru Siriwardena, Yasanthi Dissanayake, Thanuja Karunarathne Instructed by Mahesh N. Pathirana

Respondent: **Hon. Attorney General**

Counsel: Indika Demuni de. Silva, PC, Additional Solicitor General, with Yuresha de. Silva, Senior State Counsel, Ms. Indumini Randenya, State Counsel, and Ms. Shewanthi Dunuwille, State Counsel,

The Court assembled for hearing at 10.00 a.m. on 19.04.2021.

A Bill in its short title referred to as "Sri Lanka Land Development Corporation (Amendment) Act No. of 2021 was published in the Gazette of the Democratic Socialist Republic of Sri Lanka on 10th February 2021 and placed on the Order Paper of Parliament on 8th April 2021.

The Petition to this Court was filed by the Petitioner above named on 15th April 2021, within one week of the bill being placed on the Order Paper of Parliament as required by Article 121 (1) of the Constitution. Upon receipt of the petition the Court issued notice on the Attorney General as required under Article 134 (1) of the Constitution.

The petition was referred to this bench by His Lordship the Chief Justice on 15th April 2021 with an order to Registrar to list it for hearing on 19th April 2021. The Petition was taken up for consideration on the same day, i.e., on 19th April 2021 with the consent of both parties.

In the petition filed before this court, the Petitioner had alleged that the entirety of the Bill violate and inconsistent with Articles 3, 4, 12 (1), 12 (2), 75 and 154G of the Constitution but restricted his submissions mainly to the alleged violation of Article 154G of the Constitution and submitted that the Parliament cannot proceed with this Bill without first referring it for the expression of the views of the Provincial Councils under Article 154G (3) as the proposed amendment deals with the subjects Land, Irrigation and Local Government listed under items 18, 19 and 04 in the list I to the 9th schedule or the Provincial Council List.

According to the Article 154 G (3) of the Constitution,

> "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."

The learned President's Counsel took up the position that 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.

As observed by us, Clause 2, 3 and 4 of the bill amends sections 2A, 2B and 4A of the Principal Enactment by prescribing a fine and term of imprisonment which was not found in the principal enactment and also prescribing a specific procedure to follow when prosecuting violations already identified under section 2A, 2B, and 4A of the Principal enactment.

Clause 7 which amends Section 20A of the Principal Enactment also introduces a specific procedure to be followed when applying for restraining orders before the Magistrate's Court when prosecuting violations already identified under the Principal Enactment.

Clause 8 introduces two new Sections as Section 20D and 20E. Section 20D introduces a procedure that should be followed by a Police officer when a complaint is made for violations already identified under Section 2A, 2B and 4A of the Principal Enactment. The said section further declares those violations as cognizable offence in order to conduct effective investigations. Section 20E makes provisions to identify the liabilities of body of persons or partnerships.

Clause 9 had further clarified Section 22A of the Principal Enactment by identifying the procedure the Magistrate should follow, for offences, no penalty is identified under the Principal Enactment.

In addition to the above, Clause 5 of the Bill amends the Principal Enactment by replacing two ex-officio members of the Board of the Corporation and Clause 6 amend Section 9 of the Principal Enactment by introducing a new paragraph as 9 (1) (ea) which reads as follows;

> (ea) "to enter into join ventures, partnerships or other commercial agreements with foreign or local companies or individuals directly, jointly or otherwise, within or outside Sri Lanka with the concurrence of the Minister and in accordance with other written law to achieve the objects of the corporation by utilizing the skilled labour, expert knowledge and the experience of the Corporation"

Clause 10 amends Section 28 of the Principal Enactment in order to provide for a new definition.

When considering the amendments referred to above, it appears that the main object of the Bill is to strengthen the legal framework already identified in the principal enactment.

In this regard this Court is mindful of the structure and the provisions in the Principal Enactment which clearly demonstrates that the Sri Lanka Land Development Corporation was brought into effect for the purpose of safeguarding low lying marshy, waste or swampy areas as they act as water retention areas for water to decede in cases of huge influx of water. It is for this purpose that the Principal Enactment prohibits person from filling or developing areas that are declared as development areas or low lying, marshy, swampy areas and canal reservations.

The learned Additional Solicitor General who represented the Hon. Attorney General relied on several Cabinet decisions which emphasized the need to strengthen the legal framework of the Principal Enactment in order to curb the violations under the Act.

On 1st July 2014 the then Minister of Defence and Urban Development had submitted a Cabinet Memorandum placing before the Cabinet of Minister the need to strengthen the legal framework of the Principal Enactment, in the following terms;

> "The corporation is responsible for the preservation of the retention areas, law lying, marshy, waste and swampy lands and canal reservations declared under the SLLR & DC Act. The corporation is facing legal issues when prosecuting the persons who carryout largescale un authorized filling of declared areas under the SLLR & DC Act and is hard pressed to stop these activities without having effective legal provisions."

The Cabinet paper thereafter proceeded to submit five areas that has to be strengthen and the said proposals are as follows;

1. Even though the Corporation has powers to take legal action against the unauthorized fillings and constructions within the declared areas under Section 2 (1) and 2 (b) of the Act No. 15 of 1968 as amended by the Act No. 35 of 2006, there is no provision in the existing Act for issuing of interim order by the competent court for the immediate stoppage of unauthorized fillings or development activities. Therefore, an amendment to the Section 2 (a) (5), 2 (b) (5) and 4 (a) (5) of the existing Act expected for issuance of interim order by the Magistrate Court for the immediate stoppage if unauthorized fillings or development activities on the facts of the first complaint to Courts.
2. Further the Chief Executive Officer of the Corporation should take every action to prevent unauthorized reclamations under Section 2 (a) (4) of the existing Act, and CEO may obtain the assistance of the Police where necessary. It is expected to incorporate provisions to the Section 2 (a), 2 (b) and 4 (b) to obtain greater assistance from the police in respect of persons carrying out an unauthorized activity and to give powers to the police in respect of persons carrying out the unauthorized filling and arrest them with their equipment and vehicles where unauthorized activity is taking and produce such persons and equipment before Magistrate's Court.

3. To consider offences stipulated under Section 2 (a) (3), 2 (b) (3), 4 (a) (3) and 20 (c) as cognizable offences and give power to the Magistrate Courts for hear and determination the case.
4. On conclusion of the case recover the damages as a fine by introducing a procedure with power to demolish construction and reinstate the land by unearthing to its original status and to charge the cost incurred and confiscate the relevant equipment and vehicles as deemed necessary.
5. In terms of Section 22 (a) of the existing Act, every person guilty of an offence under this Act for which no penalty is prescribed shall be liable to a fine not less than one hundred thousand rupees and not exceeding five hundred thousand rupees or to imprisonment for a period not exceeding one year and there is no provisions in the existing Act, that in which court such cause of action should hear and determine. Therefore, to overcome the procedural issues it is expected to incorporate provisions under Section 22 (a), to confer judicial powers to the Magistrate to take action regarding all offences.

The Cabinet of Ministers had approval the said memorandum at the Cabinet meeting held on 17th July 2014 and directed the legal draftsman to proceed with the drafting.

Once again, a Cabinet Memorandum was submitted before the Cabinet of Ministers by the then Ministers of Megapolis and Western Development emphasizing the need to strengthen the Principal Enactment having effective legal provisions. The said Cabinet Memorandum which was tabled before the Cabinet of Ministers at its meeting on 02.12.2015 contained identical proposals to the earlier Cabinet paper but had three new paragraphs recommending.

a) It is expected to incorporate provisions to enter into joint ventures/ partnerships and/or other commercial agreements with foreign or local companies or individuals directly, jointly or otherwise for conducting development projects within or out of Sri Lanka by utilizing the skilled labour/expert knowledge of the corporation endowed with experience and technical knowledge.
b) In terms of the prevailing Act, the board shall consist of three ex-officio members wiz; Directors of Irrigation, Director of Town and Country Planning and Commissioner for National Housing. It is proposed to incorporate provisions to appoint the line Ministry Secretory/ his representative in the place of the Commissioner for National Housing and Director General of

the National Physical Planning in the place of Director of Town and Country Planning as the said two posts are not functional.

c) Provisions have been laid down in the Act, regarding the powers vested in the Chief Executive Officer of the corporation in respect of the Seal of Corporation, prevention of unauthorized filling in the areas declared under the Act and prevention of the pollution of canals as well as taking action against the unauthorized activities/ constructions carried out in declared canal reservations.

   As there is no interpretation to the word "Chief Executive Officer" in the Act, it is expected to define the post of General Manager of the Corporation as the "Chief Executive Officer"

The said Cabinet paper too was approved and the Cabinet decision was communicated to the relevant authorities for further steps by the secretory to the Cabinet including one copy to the "My/ National Policies and Economic Affairs"

Minister of Urban Development and Housing had submitted the draft Bill before the Cabinet, by Cabinet Memorandum dated 18th September 2020 along with the observations of the Minister of Justice and the Cabinet of Ministers at its meeting on 01st December 2020 approval was granted;

i) To publish the Sri Lanka Land Development Corporation (Amendment) Bill annexed to the Memorandum, in the Government Gazette; and

ii) To submit the said Bill referred to at (i) above, thereafter in Parliament for approval.

Sri Lanka Land Development Corporation as it is named at present, was originally established in 1968 as "Colombo District (Law-Lying Areas) Reclamation and Development Board under Act No. 15 of 1968. The said Act was amended on four occasions by Acts No. 27 of 1976, 52 of 1982, 35 of 2006 and 11 of 2019.

By amending Act 52 of 1982 the name of "Colombo District (Low Lying Areas) Reclamation and Development Board" was changed as "Sri Lanka Land Reclamation and Development Corporation" and the existing Board was converted to a Corporation.

By Section 2 of the amending Act 35 of 2006, the Long Title of the Principal Enactment was repealed and replaced to read as follows;

"AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A CORPOTATION, TO BE KNOWN AS THE SRILANKA LAND RECLAMATION AND DEVELOPMENT CORPORATION FOR THE DEVELOPMENT

AND RECLAMATION IN ACCORDANCE WITH THE NATIONAL POLICY RELATING TO LAND RECLAMATION AND DEVELOPMENT OF SUCH AREAS AS MAY BE DECLARED BY ORDER OF THE MINISTER; FOR SUCH CORPORATION TO UNDERTAKE CONSTRUCTION WORK AND CONSULTANCY ASSIGNMENTS IN THE FIELD OF ENGINEERING; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO."

Even though the long title of the principal enactment was amended only to change the name of the corporation as, Sri Lanka Land Development Corporation by the amending Act 11 of 2019, the long title of the principal enactment remained unchanged.

Accordingly, it is clear that, since the amendment introduced to the principal enactment by amending Act 35 of 2006, it was the function of the Corporation to implement the National Policy of Land Reclamation and Development of the Areas identified by the Act.

In the said circumstances it is clear that the main objective of the Bill is to give effect to the National Policy on Land Reclamation and Development, where the Cabinet of Ministers in three successive Cabinets since 2014, had observed the need to strengthen the principal enactment in order to "empower the Sri Lanka Land Development Corporation to demolish unauthorized developments and to reinstate the land by unearthing the land to the original status, to empower the Magistrate's Courts to take action regarding all offences stipulated under the Sri Lanka Land Development Corporation Act" (Principal Enactment) and "to obtain greater assistance from the Police in respect of persons carrying out an unauthorized activity and give powers to arrest them with their equipment and vehicles where unauthorized activity is taking place."

When the principal Enactment was amended in 2006 to entrust the implementation of the National Policy on Land Reclamation and Development, to the Corporation, "undertake construction work and consultancy assignments in the field of Engineering" was also identified as part of the implementations of the National Policy.

However, no detailed provisions were made at the time the amendment was introduced but, when the Government Policy on Land Reclamation and Development was once again considered before the Cabinet in the year 2015, the said requirement was also included into the Cabinet Paper and obtained approval to include those requirements in to the Bill.

In these circumstances it appears that the provisions of the Bill fall within the subject of National Policy which is identified as item 1 in List II to the Ninth Schedule or the Reserve List, and the Provisions of the Bill does not fall within the subjects of Land, Land Development, Irrigation and/or Local Government as submitted by the Petitioner.

For the aforesaid reasons we are of the view that the provisions of the Bill are not inconsistent with any provisions of the Constitution.

Thus, we do hereby make determination in terms of Article 121 (3) of the Constitution, that the Sri Lanka Land Development Corporation (Amendment) Bill which is impugned by the Petitioner, is not inconsistent with any provisions of the Constitution and as such may be passed by parliament by a simple majority of members present and voting.

We place on record our deep appreciation of the assistance given by the learned Counsel for the Petitioner and learned Counsel who appeared on behalf of the Hon. Attorney General.

Justice Vijith K. Malalgoda, PC,
Judge of the Supreme Court

Justice E.A.G.R. Amarasekara,
Judge of the Supreme Court

Justice Achala Wengappuli,
Judge of the Supreme Court