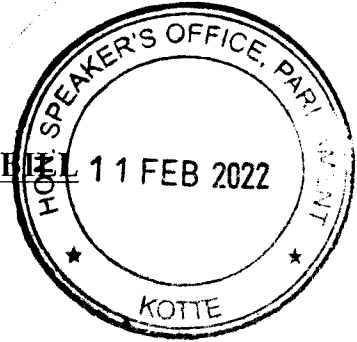


IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

S.C.S.D. No. 11 / 2022

LAND DEVELOPMENT (AMENDMENT) BILL



BEFORE

Justice E.A.G.R. Amarasekara	Judge of the Supreme Court
Justice Kumudini Wickremasinghe	Judge of the Supreme Court
Justice Achala Wengappuli	Judge of the Supreme Court

S.C.S.D. No. 11 / 2022

Petitioner	:	Jayantha Chandrasiri Dehiaththage
Counsel	:	Nuwan Bopage with Kaushalya Samaraweera
Respondent	:	Hon. Attorney General
Counsel	:	Yuresha de Silva S.S.C. with Indumini Randeny S.C.

The Court assembled at 10.00 am on 2nd February 2022 for hearing.

A Bill titled "Land Development (Amendment)" had been placed in the Order Paper of the Parliament for 21st January, 2022.

The Petitioner sought to invoke the jurisdiction conferred on the Supreme Court by Article 121(1) of the Constitution by way of a written petition addressed to this Court on 28th January 2022 and prayed for a determination on the Constitutionality of the said Bill .

At the commencement of the hearing into the Constitutionality of the said Bill by this Court, the learned Senior State Counsel who appeared for the Hon. Attorney General raised a preliminary objection that the Petitioner had failed to properly invoke the jurisdiction of this Court and moved that the petition be rejected on that account.

Learned Senior State Counsel's objection as to the improper invocation of the jurisdiction is based on the factual position that the Petitioner had acted in contravention of the mandatory provisions contained in Article 121(1). She contended that the Petitioner's failure to deliver a copy of the petition to the Speaker simultaneously with his act of filing the instant petition, is fatal to its maintainability. She invited our attention to the motion by which the Petitioner tendered his petition to the Registry of this Court. The motion indicated that the courier receipt attached is "*... proof of having delivered a copy of the Petition, Affidavit and annexure to the Speaker of the Parliament as required by law*", but the said receipt had no indication as to the date of delivery.

Therefore, she contends that since Article 121(1) made it mandatory for the Petitioner to deliver a copy of his petition to the Hon. Speaker at the same time of filing a written petition in this Court and in the absence of clear proof that he had complied with those provisions, the jurisdiction of this Court had not been properly invoked. She stressed that the words in Article 121(1) that "*... a copy thereof shall at the same time be delivered to the Speaker*" must be strictly be complied with.

In support of the said objection, the learned Senior State Counsel relied on several determinations made by this Court on the invocation of its jurisdiction conferred under Article 121(1) where strict compliance of the mandatory provisions contained in the said Article have been insisted upon. The Special Determinations of *Sri Lanka Telecommunications Bill* - SC Special Determination Nos. SC SD 5-7/91, *Social Security Benefits Bill* - SC Special Determination No. SC SD 13/91, *Divineguma Bill* - SC Special Determination

Nos. 1-3/2012 and *Homeopathy Bill* - SC Special Determination No. 27/16 were referred to in support of the preliminary objection.

Learned Counsel for the Petitioner, in his reply to the preliminary objection, submitted that the Petitioner had complied with the two procedural requirements as laid down by Article 121(1). He submitted that the Petitioner had filed his petition in the Registry of this Court within the stipulated time period of seven days which ended on 28th January 2022 and also a copy of his petition had been dispatched to the Hon. Speaker on the same day.

He further added that the said requirement of delivery of the copy of the petition to the Speaker at the same time of filing the petition is only a procedural step stipulated in the Constitution and given the Constitutional importance of granting a concerned citizen of the opportunity to challenge a Bill, which may subsequently become law, that consideration ought to outweigh such procedural anomalies which may have occurred in the filing process. It is also his contention that the purpose of this procedural step is to make the Members of the Parliament aware that the Constitutionality of the Bill has been challenged and that proceedings are pending before the Supreme Court.

In support of his position, the learned Counsel for the Petitioner had relied on the judgments in *Reid v Samsudin* 1 NLR 292, *Dalfa Umma v Urban Council*, *Matale* 40 NLR 474, *Ariyaratne v Laksiri Fernando* (2004) 1 Sri L.R. 184 and *HNB Ltd v Hameed*, CA Appln. 303/99F - CA minutes of 5th July 2000, where the superior Courts have made their reservations on the practice of taking up of technical objections over non-compliance of the procedural rules.

The undisputed facts are that the Bill titled "Land Development (Amendment)" has been placed in the Order Paper of the Parliament on 21st January 2022. The Petitioner had filed the instant petition in the Registry of this Court on the 28th January 2022 along with an undated receipt issued by the courier service that an item addressed to the residence of the Speaker of the Parliament was handed over to the courier by the registered Attorney of the Petitioner. The Petition on

the Bill titled "Land Development (Amendment)" had in fact been delivered to the residence of the Speaker only on 29th January 2022.

Thus, the questions to be decided by this Court are whether the Constitutional provisions contained in Article 121(1) are a mandatory requirement or a mere procedural requirement and whether the Petitioner had delivered a copy of his petition to the Speaker of the Parliament at the same time of filing his petition in this Court.

In relation to the first of the two questions, namely whether the Constitutional provisions that are contained in Article 121(1) are mandatory, this Court had, in view of similar objections that had been raised, consistently determined that they are mandatory in nature and therefore strict compliance of it is necessary for the proper invocation of the jurisdiction conferred under the said Article. When a similar contention was advanced before this Court, as done by the Petitioner, that the provisions of this Article should be regarded as being directory and not mandatory, in *Sri Lanka Telecommunications Bill - SC* Special Determination Nos. 5-7/91, this Court had determined as follows;

"The legal principles embodied in Article 121 are:

- (i) that the Constitutional jurisdiction of the Supreme Court may be invoked for the purpose of adjudicating on the Constitutionality of a Bill,*
- (ii) the persons who may invoke such jurisdiction,*
- (iii) the manner by which such jurisdiction may be invoked,*
- (iv) the period of within which such jurisdiction may be invoked*
- (v) the consequences of such invocation (i.e.) suspension of considering the Bill by Parliament for a period of 3 weeks within which the Supreme Court should convey its decision.*

These principles spell out the aims and scope of the provision. The aim of the Article in general terms is to ensure that in given circumstances what may be regarded as a Constitutionally valid Bill is placed before Parliament. Once the opinion of the Supreme Court is known Parliament is more advantageously placed in proceeding with the process of legislation. This purpose of the Article cannot be achieved unless the provisions designed to secure such result are regarded as mandatory."

In ***Social Security Benefits Bill*** - SC Special Determination No.13/91 it had been determined that the time limit imposed by the said Article "... *had been regarded by this Court to be mandatory.*" This Court reiterated that position in ***Divineguma Bill*** - SC Special Determination No. 1/12, in determining that "... *the provisions contained in the Article 121 are mandatory in its nature and therefore it is necessary for strict compliance by parties who would be invoking the said jurisdiction.*" Thus, the Petitioner's contention that those provisions are mere directory procedural steps is clearly contrary to the already made determinations of this Court on the point. The judgments cited by the learned Counsel for the Petitioner which have considered the procedural aspects of the Civil Procedure Code are of no relevance in the consideration of requirements that are imposed by Constitutional provisions.

Since the Constitutional provisions of Article 121(1) are considered mandatory provisions and strict compliance of those provisions is a must for proper invocation of jurisdiction, we then proceed to consider the question whether the Petitioner had filed his written petition in this Court "... *within one week of the Bill being placed on the Order Paper of the Parliament and a copy thereof shall at the same time be delivered to the Speaker*".

The Bill titled "Land Development (Amendment)" has been placed in the Order Paper of the Parliament on 21st January 2022 and therefore the Petitioner should file his petition in this Court within one week of such placement. The said 7-day period as contemplated by the said Article ends on 28th January 2022. The

Petitioner had filed his petition on the 28th January 2022 and therefore had complied with that part of the Article 121(1).

However, there is no material to conclude that a copy of the petition was “delivered” to the Hon. Speaker on the 28th January 2022 itself, being the other mandatory Constitutional requirement that the Petitioner had to simultaneously fulfil, along with his act of filing a written petition in this Court. On the contrary, the Secretary General of Parliament confirmed to the Hon. Attorney General that the petition of the Petitioner had in fact been delivered to Hon. Speaker’s residence only on 29th January 2022 and was thereafter dispatched to the Speaker’s Office in Parliament on 31st January 2022.

It was contended on behalf of the Petitioner that the tendering of proof that the copy of the petition had been dispatched to the Speaker through a courier when he filed his petition in the Registry of this Court should be treated as sufficient compliance of the said Constitutional provisions.

This particular requirement as stated in Article 121(1) reads “... *a copy thereof shall at the same time be delivered to the Speaker.*” The words “*at the same time*” cannot be considered in isolation after being ripped off from the context in which it had been used in the Article, as the Petitioner did. The phrase “*at the same time be delivered to the Speaker*” refer to an already specified time period. The words “*same time*” therefore must be read in conjunction with the part of that Article which specified a time period. Article 121(1) states that the petition in invoking the jurisdiction under it “... *shall be filed, within one week of the Bill being placed in the Order Paper of the Parliament ...*”.

That makes it clear that the copy of such a petition also must be delivered to the Speaker “*within one week of the Bill being placed in the Order Paper of the Parliament*” and at the same time as the filing of the petition in the Supreme Court. The Petitioner contends that he did ‘dispatch’ a copy of the petition to the Speaker “*within one week of the Bill being placed in the Order Paper of the Parliament*”. Thus, the contentious issue before Court could be further narrowed down to whether the Petitioner, by dispatching a copy of the petition through a courier, had

(accordingly complied with the mandatory requirement of delivering the petition at the same time to the Speaker.

The word “delivered” is attributed with the meanings “*Set free, disburdened of offspring, handed over, surrendered, formally uttered or stated*” (Oxford Dictionary Vol. IV, 2nd Ed. [1989] at page 423) while the word ‘delivery’ is given the meanings “*the formal act of voluntarily transferring something, the act of bringing goods, letters etc to a particular person or place*” by Black’s Law Dictionary (11th Ed. [2019] at page 541). Thus, it is evident from these multiple meanings, the applicable one in relation to the word “delivered” that appears in Article 121(1) is the act of handing over or surrender of a letter to a particular person or address.

(The Petitioner’s reading as to the purpose of imposition of such a requirement is to make the Members of Parliament aware that the Constitutionality of the Bill has been challenged and that proceedings are pending before the Supreme Court. In view of this contention of the Petitioner, it is relevant to consider the effect of proper invocation of the jurisdiction conferred under Article 121(1) of this Court.

The applicable Constitutional provisions are found in Article 121(2) which reads thus;

(*“Where the jurisdiction of the Supreme Court has been so invoked no proceedings shall be had in Parliament in relation to such Bill until the determination of the Supreme Court has been made, or the expiration of a period of three weeks from the date of such reference or petition, whichever occurs first.”*

Article 78(2) provides as follows “*The passing of a Bill or a resolution by Parliament shall be in accordance with the Constitution and the Standing Orders of Parliament.*”

(Standing Order 50 (1) of the Parliament of the Democratic Socialist Republic of Sri Lanka[2018] states that when a Bill is presented “ *... the title of the Bill shall be*

read by the Secretary-General and the Bill shall then be deemed to have been read the first time and to have been ordered to be printed and shall stand for Second Reading on a date not earlier than a week from the date on which it was presented."

When the jurisdiction of this Court under Article 121 has been properly invoked, Standing Order 55(2)(b) provides "*no proceedings in relation to such Bill shall be had until the determination of the Supreme Court in respect thereof has been made and communicated to the Speaker or until the expiration of a period of three weeks from the date of such reference or filing of such petition, whichever occurs first...*".

This Court, in *Sri Lanka Telecommunications Bill* (supra) noted that the provisions of Article 121(2) "*... provides for the suspension of the Ordinary Legislative powers of the Parliament for a period of three weeks when a Bill is referred to the Supreme Court for its adjudication. The aims of the Article will be defeated unless its scope is wide enough to prevent Parliament from debating or proceeding with the Bill whilst the Supreme Court is engaged in deliberating its Constitutionality.*"

Hence, when a citizen properly invokes the jurisdiction conferred on this Court under Article 121(1), that invocation acts as a fetter on the proceedings of Parliament in the exercise of its Legislative function over that particular Bill, although the duration is limited to a period of three weeks.

In view of the effect of a proper invocation of the jurisdiction under Article 121 as per the determination of *Sri Lanka Telecommunications Bill* (supra), the time period of a week, as provided for in the Standing Orders referred to above, is obviously referable to the period of one week found in Article 121(1), thereby allowing a concerned citizen to invoke the jurisdiction of this Court and to seek determination of this Court over the Constitutionality of a particular Bill, during that limited time period.

It is therefore clear that once a Bill had been placed in the Order Paper, the Parliament would not proceed with it for a period of one week as the Standing Order 55(1) provides that; "*A Bill shall be set down for Second Reading on a day not earlier than a week from the day on which it was presented*".

The only communication the Parliament would receive that a citizen had invoked jurisdiction of this Court under Article 121 over a Bill is by way of delivery of the copy of that petition to the Speaker, until this Court makes its determination and communicates it. Thus, the said period of one week, as provided for in the relevant Articles as well as in Standing Orders plays a crucial role in relation to the continuation of the proceedings of the Parliament on that particular Bill. The failure to deliver a copy of the petition to the Speaker that had been filed in the Supreme Court within this mandatory period of one week, may result in a situation where the Parliament would proceed with the Bill, whilst its Constitutionality is being adjudicated by this Court.

In foreseeing the consequences of such an undesirable situation this Court had emphasised that the provisions of Article 121(1) are strictly complied with as in *Sri Lanka Telecommunications Bill* (supra) it was determined that “ *to take a view that the requirement that a copy of the petition be delivered to the Hon. Speaker at the same time the petition is filed by a citizen is merely directory could in our opinion lead to mischief and even a possible confrontation between the Parliament and the Court which needless to say must be avoided.*”

In these circumstances, we are of the view that the mandatory requirement imposed by Article 121(1) that a citizen must deliver a copy of his petition to the Speaker at the same time of filing it in this Court should be taken to read as the petitioner must ensure that the said copy is in fact delivered to the Hon. Speaker within the said period of one week and at the same time as the filing of the petition in this Court. The Petitioner’s claim of the copy had been ‘dispatched’ is not sufficient compliance of the requirement of delivery. Therefore, for the reasons contained in the preceding paragraphs, this Court is not inclined to accord with the view taken in *Divineguma Bill* (supra) that “ *... what matters is the filing and the posting the petitions to be simultaneous and carried out within the stipulated period of 7 days*”

In this instance there is no dispute that the copy of the petition was delivered to the Speaker’s residence on 29th January 2022, and therefore the copy of the

petition had in fact been delivered to the Speaker only after the expiry of the mandatory one-week period.

Hence, the Petitioner has failed to comply with the mandatory provisions of Article 121(1), and therefore has failed to properly invoke the jurisdiction of this Court to adjudicate upon the Constitutionality of the Bill titled "Land Development (Amendment)".

We therefore uphold the preliminary objection raised by the learned Senior State Counsel. Accordingly, we reject the petition of the Petitioner.

This Court records its appreciation of the able assistance rendered by both Counsel.

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

Justice Kumudini Wickremasinghe
Judge of the Supreme Court

Justice Achala Wengappuli
Judge of the Supreme Court