

Eppawela case

SC declares imminent infringement of petitioners' rights

06/06/00

Daily News

by Kumar Wethasinghe

The Supreme Court in its yesterday's order in the fundamental rights violation plea against the Eppawela phosphate deal, directed the state and 5th and 7th respondents to jointly pay Rs. 50,000/- to each of the seven petitioners who claim to be residents of Eppawela area.

The Bench comprised Justices Dr. A. R. B. Amarasinghe, S. W. B. Wadugodapitiya and D. P. S. Gunasekera.

In last October the Supreme Court granted leave to proceed in this Fundamental Rights application filed by seven petitioners who are farmers from the Eppawela.

The petitioners submitted that the proposed implementation of the Eppawela Phosphate project would give rise to an infringement of their fundamental rights.

The proposed project has been agreed upon by the Government of Sri Lanka and Sarabhumi Resources (Pvt) Ltd. and Lanka Phosphate Ltd.

The seven petitioners Messrs T. B. Bulankulama, R. M. Ranmanike, Palitha Nissanka Bandara, Disanayake Kiribandage Ranbanda, Palihawadana Arachchige Kiri Banda, Dissanayake Ukkubandage Seneviratne and Ven. Mahamankaduvela Piyaratana Thera had cited eight respondents including the Secretary, Ministry of Industrial Development, Board of Investment, Geological Survey and Mines Bureau, Central Environmental Authority, Sarabhumi Resources (Pvt) Ltd., Lanka Phosphate (Pvt) Ltd., Geological Resources Lanka (Pvt) Ltd. and the Attorney General.

The petitioner had also claimed that their rights under the constitution to equality and equal protection, their rights to carry on their choice of occupation and to reside in a place of their choice within the country as guaranteed in the constitution would be infringed, if project went ahead.

Justices Dr. Amarasinghe delivering a lengthy judgement declared that there had been an imminent infringement of the fundamental rights of the peti-

tioners. The order said: 'For the reasons set out in my judgement I declare that an imminent infringement of the fundamental rights of the petitioners guaranteed by Articles 12(1), 14(1)(g), 14(1)(h) has been established. There is no assurance of infallibility in what may be done; but in the national interest every effort ought to be made to minimise guess work and reduce margins of error.

Having regard to the evidence adduced and the submissions of the counsel for petitioners and respondents. In terms of the Article 126(4) of the Constitution, I direct the respondents to desist from entering into any contract relating to the Eppawela Phosphate deposits up to the time (1) a comprehensive exploration and study relating to the (a) location (b) quantity moving inferred reserves into the proven category and (c) quality of the apatite and other phosphate minerals in Sri Lanka is made by the 3rd respondent, The Geological Survey and Mines Bureau in consultation with the National Academy of Science in Sri Lanka and the National Science Foundation and the results of such exploration and study are published and (2) any project proponent whosoever obtains the approval of the Central Environmental Authority according to law including the decision of the Superior Courts of records in Sri Lanka.

I make further order that (1) state shall pay each of the petitioners Rs. 25,000/- as costs.

The 5th respondent Sarabhumi Resources (Pvt) Ltd., shall pay to each of the petitioners Rs. 12,500/- as costs.

The 7th respondent Geological Resources Lanka (Pvt) Ltd., shall pay to each of the petitioners Rs. 12,500/- as costs.

Deputy Solicitor General K. Siripawan with State Counsel B. J. Tilakaratne and Anusha Navaratne appeared for the respondents.

Mr. R. K. W. Gunasekera with Ruana Rajapakse (5th and 7th petitioners), Mr. Romesh de Silva, PC with Mr. Harsha Amarasekera and Mr. Chulani Panditaratne appeared for the petitioners.