

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

*In the matter of an Application under Article 126,
read with Articles 17, 3, 4, 105 and Chapters III and
VI of the Constitution of the Democratic Socialist
Republic of Sri Lanka, together with an Application
under Article 132, read with Articles 118 and 123 of
the Constitution*

AND NOW

*An Application under Article 132 of the Constitution
for a review and re-examination of the Special
Determination of 24.10.2011 in SC (SD) No. 2/2011,
as a matter of utmost general and public importance,
by a Fuller Bench of the Supreme Court, to consider,
as to whether the said Special Determination had
been made per-incuriam and/or ultra-vires Article
123(3) of the Constitution and/or warrants to be
rescinded and/or varied*

Nihal Sri Ameresekere
167/4, Vipulasena Mawatha
Colombo 10.

Petitioner

SC FR Application No. 534/2011

Vs

1. Hon. Attorney General, as representing the
Minister of Finance, Mahinda Rajapakse,
- in terms of Article 35 of the Constitution
Attorney General's Department
Colombo 12.
2. Basil Rajapakse, M.P.
Minister of Economic Development
Ministry of Economic Development
No. 464 A, T.B. Jayah Mawatha
Colombo 10.
3. P.B. Jayasundera
Secretary, Ministry of Finance & Secretary to the
Treasury and Secretary Ministry of Economic
Development
The Secretariat
Colombo 1.
4. G.L. Peiris, M.P.
Minister of External Affairs
Ministry of External Affairs
Republic Building
Colombo 7.

5. C.R. de Silva, P.C.
Former Hon. Attorney General
C 83, Gregory's Avenue
Colombo 7.
6. Mohan Peiris, P.C.
Former Hon. Attorney General, and later
Advisor to the Cabinet of Ministers
3/14 D, Kynsey Road
Colombo 8.
7. Rauf Hakeem, M.P.
Minister of Justice
Superior Courts Complex
Colombo 12.
8. Suhada Gamalath
Secretary, Minister of Justice
Superior Courts Complex
Colombo 12.
9. Chamal Rajapakse, M.P.
Hon. Speaker of the Parliament
Sri Jayewardenepura
Kotte.
10. Hon. Attorney General
- in terms of Article 134 of the Constitution
Attorney General's Department
Colombo 12.

Respondents

TO: HER LADYSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

On this 8th day of May 2012

The **Petition** of the **Petitioner** above-named, appearing in person, states as follows:

1. The Petitioner filed

- (a) on 14.11.2011 SC (FR) Application No. 534/2011, and
- (b) on 17.1.2011 SC (SD) Application No. 2/2011

vis-à-vis

- (i) Bill titled "*Revival of Underperforming Enterprises and Underutilized Assets*" dated 8.11.2011 (hereinafter sometimes referred to as the '**Bill**'), and
- (ii) Special Determination of **24.10.2011** in *SC (SD) No. 2 of 2011 on Bill titled - "An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets"* (hereinafter referred to as the '**Special Determination**'),

both tabled only **8.11.2011 for the very first time** in the Parliament.

True copies of the said Applications, without the Documents attached thereto, are annexed respectively marked “A1” and “A2”, pleaded as part and parcel hereof

2. The Petitioner

- (a) on 25.11.2011 supported SC (FR) Application No. 534/2011 before a 3 Judge Bench of the Supreme Court, comprising Their Lordships, Justices N.G. Amaratunga, R.K.S. Sureshchandra and Sathya Hettige, submitting 2 Notes thereon.

True copies of the said 2 Notes, respectively, dated 23.11.2011 and 25.11.2011 are annexed marked “B1” and “B2”, pleaded as part and parcel hereof

- (b) on 25.11.2011 *specifically* submitted that only by Hansard of **22.11.2011** he had become aware, that the aforesaid Bill had been certified into law on **11.11.2011** by the Speaker of Parliament, and
- (c) *conceded* that in such circumstances, Article 80(3) of the Constitution *debarred* the Supreme Court from inquiring into or pronouncing upon the validity of such law
- (d) *accordingly*, submitted that the said Bill having been endorsed under Article 122 of the Constitution, that he only *sought* to have the Special Determination of 24.10.2011 in SC (SD) No. 2 of 2011 *reviewed* and *re-examined*, as having been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution, **which governed the said Special Determination** – viz: *Article 123(3) of the Constitution (Emphasis added)*

“123.(3) *In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution,** and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article.”*

- (e) in his brief submissions on 25.11.2011, and *particularly in his aforesaid Note “B1” dated 23.11.2011* the Petitioner **expressly pointed out** the fact that, whilst the Constitution, as per Article 122 thereof had provided for the enactment of urgent legislation, that Article 123(3) of the Constitution had an **inbuilt check and balance**, *to wit*, that **if the Supreme Court entertains any doubt** on such a Bill or any provision thereof, that **it shall be deemed to have been determined** as inconsistent with the Constitution.
- (f) **in his aforesaid Note “B1” emphatically pointed out that the threshold therefore is the question of whether there is in fact any ‘doubt’**, and
- (g) pointed out that the said Special Determination of 24.10.2011 in SC (SD) No. 2 of 2011 not only disclosed that *several doubts* had been entertained, but also that the Supreme Court had proceeded to **address and answer such doubts**, *which was not permissible* and was *ultra-vires* Article 123(3) of the Constitution.
- (h) in making the foregoing submissions *contended* that the *jurisdiction* of the Supreme Court was not *ousted* by Article 80(3) of the Constitution from *reviewing* and *re-examining a Special Determination made per-incuriam* and/or *ultra-vires* the Constitution.

- (i) explaining the foregoing circumstances, *sought* and *obtained* on 25.11.2011 the permission of the Supreme Court to amend his Petition dated 14.11.2011 in SC (FR) Application No. 534/2011, which Amended Petition was directed to be served on the Respondents, through the Registrar of the Supreme Court.
3. In Petitioner's SC (SD) Application No. 2/2011 made on 17.11.2011, the Supreme Court had *inter-alia*, minuted the following *per-incuriam* Order -

“any party that had wanted to intervene should have done so at the time, it was taken before the Supreme Court”

in that, the aforesaid Bill and the Special Determination of 24.10.2011 were both tabled ***for the very first time*** in the Parliament ***only on 8.11.2011***, whereby it was an ***impossibility*** for any party to have so *intervened* on ***24.10.2011***.

4. The Petitioner

- (a) consequently on 16.12.2011 tendered to the Supreme Court his Amended Petition in SC (FR) Application No. 534/2011, *essentially* seeking a *review* and *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, ***as having been made per-incuriam and/or ultra-vires Article 123(3) of the Constitution***, submitting copies of Notices to be issued on the Respondents.

True copy of the said Amended Petition, without the Documents attached thereto, is annexed marked “C”, pleaded as part and parcel hereof

- (b) at paragraphs 16, 17 and 18 of the Amended Petition, *morefully dealt with* the foregoing matter *vis-à-vis* his SC (SD) Application No. 2/2011 *referred to at paragraph 3 above*.
- (c) in his Amended Petition dated 16.12.2011, *inter-alia*, cited Article 17 of the **United Nations Universal Declaration of Human Rights**, *to which Sri Lanka is a party – viz: (Emphasis added)*

“Article 17 (1)

- (1) Everyone has the right to own property alone as well as in association with others**
(2) No one shall be arbitrarily deprived of his property”

and submitted that the foregoing Article of the United Nations Universal Declaration of Human Rights had been *blatantly* and *flagrantly* breached.

- (d) in addition to the foregoing, being a Shareholder of Hotel Developers (Lanka) Ltd., (HDL), *the only* Underperforming Enterprise *questionably* listed in Schedule I to the Bill, in his Amended Petition dated 16.12.2011 made extensive *averments* pertaining thereto – *viz: .*
- (i) the Government advanced to HDL Rs. 4,436 Mn., over the years 1997 to 2010, to make payments to Japanese, under the State Guarantees. The Government claimed compound interest, at varying rates, on such advances to HDL, averaging an interest of 13% p.a. Accordingly, the Government claimed from HDL a total of Rs. 12,099 Mn., as at May 2011. (**Capital Rs. 4,436 Mn., + Interest Rs. 7,663 Mn.**)

- (ii) the 1st Respondent, Finance Minister had so confirmed the same in Parliament on 21.12.2012 - *vide Hansard Column 3223*. At paragraph 1(d) of the Amended Petition dated 16.12.2011, the Petitioner set out *Article 151 of the Constitution, which contemplates that the Minister in charge of the subject of Finance and the President would be two different persons, in conformity with basic rubrics of governance and accountability.*
- (iii) in addition, the Government provided 7 Acres of Land in the City of Colombo to HDL for the Hilton Hotel, valued today at around Rs. 12 Mn. per perch, amounting to a total value of Rs. 13,440 Mn.
- (iv) therefore, the Government's total *contribution* to HDL as at May 2011 would be around **Rs. 25,539 Mn.**
- (v) in comparison to the foregoing, the *write-off* obtained by the Petitioner from the Japanese, on the State Guarantees, through his *sole sustained efforts, amidst obstructions and pressures*, amounted to US \$ 207 Mn., in June 1995, then equivalent to SL Rs. 10,200 Mn., and at an interest of 13% p. a., such sum as at May 2011 would have amounted to **Rs. 70,703 Mn.**
- (vi) **thus the Petitioner's contribution to HDL was of a far greater value than the Government's aforesaid contribution.**
- (vii) HDL was plunged into such *plight* and dire straits *by the Government, itself*, as morefully *averred* in the Amended Petition dated 16.12.2011, and those offenders responsible, who *included the 4th Respondent, Minister of External Affairs, ironically have not been arraigned before the law.*
- (viii) by the Government, represented by the Treasury, by Letter dated **10.5.2011** had given HDL **2 years time** to *re-pay* the aforesaid monies – *vide* Document marked “**X36**” with his Amended Petition dated 16.12.2011- *viz:*



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திறைசேரி செயற்பாடுகள் திணைக்களம்
Department of Treasury Operations

X36

හයා හාත්පිටාරය, මුදල් හා මෙහෙයුම් දෙපාර්තමේන්තුව, කු.පො. 1559, කොළඹ 01.	පොදු මුදල් කළමනාකරණ, කු.පො. 1559, කොළඹ 01.	General Treasury, Ministry of Finance & Planning, P.O.Box: 1559, Colombo 01.
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Mr. T.Nadesan,
 Chairman,
 Hotel Developers (Lanka) PLC.
 C/o Colombo Hilton,
 Colombo 01.

Dear Sir,

Loans Granted by the Government of Sri Lanka for the Settlement of the Loans to the Japanese Lenders Mitsui & Co Ltd. and Taisei Corporation.

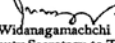
This refers to your letter dated 0th May 2011 on the above subject.
 It is regretted to inform our inability to accept the repayment schedule proposed by HDL, extending the repayment period for 18 years.

In view of the high occupancy ratio resulting in development of tourism industry, the General Treasury requests HDL to repay the outstanding amount of Rs.12,098,694,769.77 within a shortest period of time preferably two years, on monthly installment basis.

I, therefore, would request you to keep the Board of Directors informed of the Treasury's stand.

Thanking you,

Yours faithfully


 D. Widanagamage
 Deputy Secretary to Treasury

අතිරේක ප්‍රධාන නිලධාරී (මුදල් සේවා සහ මෙහෙයුම්) Additional Director General (Treasury Operations) Tel: 0094 112 484738 Fax: 0094 112 484832 awid@treasury.gov.lk	අතිරේක ප්‍රධාන නිලධාරී (මුදල් සේවා සහ මෙහෙයුම්) Additional Director General (Public Services & Accounting) Tel: 0094 112 484748 Fax: 0094 112 484838 awid@treasury.gov.lk	අධ්‍යක්ෂ (මුදල් කළමනාකරණය) Director (Fund Management) Tel: 0094 112 484771 fundmgt@treasury.gov.lk	අධ්‍යක්ෂ (මුදල් සේවා සහ මෙහෙයුම්) Director (Public Services & Accounting) Tel: 0094 112 484750 acct@treasury.gov.lk	අධ්‍යක්ෂ (මුදල් සේවා සහ මෙහෙයුම්) Director (Revenue) Tel: 0094 112 484741 rev@treasury.gov.lk
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- (ix) in the context of the foregoing, *having been preparing for some time*, the Petitioner, as a Shareholder of HDL, filed on 8.11.2011 HC (Civil) W.P Case No. 52/2011, making an Application under and in terms of the provisions of the Companies Act No. 7 of 2007 to *re-structure* and *re-arrange* the affairs of HDL, in the face of the aforesaid **2 years time** given on **10.5.2011** to HDL by the Government, to re-pay the aforesaid Loans.
- (x) nevertheless, **reneging** on the foregoing **just only 5 months thereafter**, the Government on **8.11.2011** *intriguingly* and *questionably* listed HDL, as *the only* Underperforming Enterprise in Schedule I to the Bill titled “*Revival of Underperforming Enterprises and Underutilized Assets*”, to be unjustly acquired by the Government.

5. (a) After filing his Amended Petition dated 16.12.2011, the Petitioner filed Motion dated **18.1.2012**, *inter-alia*, **making an Application under Article 132 of the Constitution**, for hearing by a Fuller Bench of the Supreme Court of his Amended Petition dated 16.12.2011, in that, *the matters involved questions of utmost general and public importance*, specifically as to whether the said Special Determination of 24.10.2011 was *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution.

True copy of the said Motion dated 18.1.2012 is annexed marked “D”, pleaded as part and parcel hereof

(b) The Petitioner's Application for a Fuller Bench of the Supreme Court *was not granted*, but his Amended Petition dated 16.12.2011 was directed to be supported on 9.2.2012 before the same Bench of the Supreme Court, *who had heard him in the first instance on 25.11.2011*, as referred to at paragraph 2 above.

6. (a) Previously however on 15.11.2011, a 5 Judge Bench of the Supreme Court, comprising Their Lordships, Justices N.G. Amaratunga, I. Imam, R.K.S. Sureshchandra, Sathya Hettige and Dep, P.C., had heard the following 5 Fundamental Rights Applications made by several other Petitioners, *vis-à-vis*, the Bill titled "*Revival of Underperforming Enterprises and Underutilized Assets*".

SC (FR) Application No. 514/2011 filed by 1 Petitioner on 4th November 2011

SC (FR) Application No. 515/2011 filed by 7 Petitioners on 4th November 2011

SC (FR) Application No. 516/2011 filed by 6 Petitioners on 4th November 2011

SC (FR) Application No. 535/2011 filed by 5 Petitioners on 14th November 2011

SC (FR) Application No. 536/2011 filed by 4 Petitioners on 14th November 2011

True copies of the Petitions in the said Applications are annexed, respectively, marked "E1", "E2", "E3", "E4" and "E5", pleaded as part and parcel hereof

(b) The *Prayers* of the foregoing 5 Fundamental Rights Applications had been in relation to and/or arising from the Bill and/or the law, and ***had not been for a review and/or re-examination*** of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, ***as having been made per-incuriam and/or ultra-vires Article 123(3) of the Constitution.***

(c) Judgment delivered on 15.11.2011 in the aforesaid first Application SC (FR) Application No. 514/2011 is set out below: (*Emphasis added*)

"Learned Acting Deputy Solicitor General Mr. Janak de Silva states that he has no objection to the acceptance of the amended petition. He states that he **wishes to take up a preliminary objection in limine to the jurisdiction of this Court to entertain and deal with this application as well as applications in SC FR 515/11 and 516/11.** Amended Petition filed in SC FR No. 514/11 is accepted.

We have heard the learned President's Counsel for the Petitioner and the learned Acting Deputy Solicitor General for the Hon. Attorney General. We see no basis to grant leave to proceed. Accordingly leave to proceed is refused and the application is dismissed."

(d) Thus on 15.11.2011, Leave to Proceed was refused by the Supreme Court in all the above 5 Fundamental Rights Applications, *upholding the aforesaid Preliminary Objection.*

True copies of the Judgments delivered in the above 5 Fundamental Rights Applications are annexed respectively marked "F1", "F2", "F3", "F4" and "F5", pleaded as part and parcel hereof

(e) **Admittedly on 15.11.2011, the Supreme Court had upheld the *bar* in terms of Article 80(3) of the Constitution, since the Bill had been certified previously into law by the Speaker of Parliament on 11.11.2011.**

7. As morefully set out in paragraph 2 above,
- (a) after the foregoing Judgements of a 5 Member Bench of the Supreme Court delivered on 15.11.2011 the Petitioner's SC (FR) Application No. 534/2011 came up for Support on 25.11.2011
 - (b) whilst *conceding* the *ouster* of the *jurisdiction* of the Supreme Court by Article 80(3) of the Constitution, the Petitioner on 25.11.2011 *specifically pointed out*, that what he sought was a *review* and/or *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, as having been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution, *contending* that such *review* and/or *re-examination* was *not ousted* by Article 80(3) of the Constitution, – viz: *123(3) of the Constitution (Emphasis added)*

“123.(3) *In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution,** and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article.”*
 - (c) consequently, as was sought by the Petitioner, the Supreme Court on 25.11.2011 granted the Petitioner permission to file an Amended Petition, which was *essentially* in the given changed circumstances as aforesaid, seeking a *review* and/or *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, **as having been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution**
 - (d) the Supreme Court directed that Notices of the aforesaid Amended Petition be issued on the Respondents, *through the Registrar of the Supreme Court, which the Petitioner complied with on 16.12.2011*.
8. (a) Thereafter, *as had been directed*, the Petitioner's Amended Petition dated 16.12.2011 was taken up on 9.2.2012 before the same 3 Judge Bench of the Supreme Court, comprising Their Lordships, Justices N.G. Amaratunga, R.K.S. Sureshchandra and Sathya Hettige.
- (b) (i) Deputy Solicitor General, Janak de Silva appeared for the 10th Respondent, Attorney General, noticed as per Article 134 of the Constitution, and also for the 1st Respondent, Minister of Finance, represented by the Attorney General as per Article 35 of the Constitution, and also appeared for the 3rd, 4th, 5th, 6th, 7th, 8th and 9th Respondents.
 - (ii) D.S. Wijesinghe, P.C., Senior Legal Advisor to the President appeared for the 2nd Respondent, Minister of Economic Development.
 - (c) On 9.2.2012 the Petitioner *countering* the Preliminary Objections taken up by the Deputy Solicitor General, *stressingly* pointed out that his Application was *completely different* in scope and *ambit*, to the other Fundamental Rights Applications referred to at paragraph 6 above, which had been disposed of *previously* on 15.11.2011, as having been *ousted* by Article 80(3) of the Constitution.
9. (a) The Petitioner *conceded* that since the Bill had been certified on 11.11.2011 by the Speaker of Parliament into law and announced to the Parliament on 22.11.2011, the *jurisdiction* of the Supreme Court being *ousted* from dealing with any provision of the Bill or law and contended that *as he, himself, had submitted previously* in the Supreme Court on 25.11.2011, he had *amended* the Petition, with the permission of the Supreme Court, *essentially* to seek a *review* and *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, **as having been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution.**

- (b) The Petitioner asserted that Article 123(3) of the Constitution *mandated* that an Urgent Bill *endorsed under and in terms of Article 122 of the Constitution*, as was the instant case, **had to be deemed to be determined to be inconsistent with the Constitution**, if the Supreme Court, **entertained a doubt**, that the Bill or any provision thereof was inconsistent with the Constitution; *and that this was the basic premise of the Petitioner's Application and argument - viz: 123(3) of the Constitution (Emphasis added)*

"123.(3) *In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt** whether the Bill or any provision thereof is inconsistent with the Constitution, **it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution**, and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article."*

10. *Contending* that he was not *ousted* from seeking a *review* and/or *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, **as having been made per-incuriam and/or ultra-vires Article 123(3) of the Constitution**, the Petitioner cited the *famous* House of Lords Judgment *re – Pinochet*, where the House of Lords **entertained** a Petition of Appeal, **unanimously holding that they have jurisdiction to rescind or vary an earlier Order, to correct an injustice caused** - viz:

"Jurisdiction

As I have said, the respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority.

In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered.

However, it should be made clear that the House will not reopen any appeal save in circumstances where, through no fault of a party, he or she has been subjected to an unfair procedure. Where an order has been made by the House in a particular case there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong."

By Judgment of 17.12.1998, with reasons given on 15.1.1999, the new Committee of the House of Lords, set aside the previous Judgment of 25.11.1998 of the House of Lords, directing a re-hearing by a differently constituted Committee, without any of their Lords, who had heard the matter.

11. (a) To *substantiate* the Petitioner's submissions that *doubts* in fact had been entertained by the Supreme Court, as *admittedly revealed* by the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, itself, the Petitioner tendered a Note thereon to the Supreme Court.
- (b) The said Note had comprised the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, *interpolating* therein, in a different 'font', the Petitioner's *submissions* on the several matters, on which *doubts* had been entertained by the Supreme Court.

A true copy of the aforesaid Note dated 9.2.2012 is annexed marked "G", pleaded as part and parcel hereof

- (c) The Petitioner *submitted* that the Supreme Court had proceeded to even ***answer such doubts, which he contended was not permissible in terms of Article 123(3) of the Constitution, and thus ultra-vires Article 123(3) the Constitution***
- (d) The Petitioner's Note, also pointed out *instances*, in the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, itself, where in his opinion, in addition to having entertained *doubts*, there had been grave *misdirections* and serious *errors*. The following are some of the *examples*:
- (i) The issue as to whether Article 17 of the **United Nations Universal Declaration of Human Rights**, inclusive of right to own property and not to be *arbitrarily deprived thereof*, had not been taken cognisance of; and the same had been permitted to be *blatantly* and *flagrantly* breached .
 - (ii) The treatment of Land, ***as a subject not falling within the Provincial Council List, and subject to Constitutional stipulations in that behalf, contrary*** to other Supreme Court Judgments and Determinations, *vis-à-vis*, the subject of Land.

The Petitioner, himself, having cited in his Submissions the Supreme Court Judgment in SC (FR) Application No. 209/2007 and in the Special Determination No. 3/2011, further *cites* the following from an Article published in *Ceylon Today* of 11.2.2012 by Austin Fernando, *former* Secretary, Ministry of Defence, *which stood uncontradicted: (Emphasis added)*

“The government also should be mindful of its difficulties due to this demand having constitutional validity, backed by recorded judicial decisions from the superior courts, some decided by the very same luminaries who will one day sit on judgment on the issue. I quote for example : Combined judgment of 10 December 2003 by the present Chief Justice Shirani A. Bandaranayake *et al* in cases S.D. 26/2003, S.D. 27/2003, S.D. 28/2003, S.D. 29/2003, S.D. 30/2003, S.D. 31/2003, S.D. 33/2003, S.D. 34/2003, S.D. 35/2003 and S.D. 36/2003; the SC (FR) 209/2007 judgment by Sarath N. Silva, CJ *et al* ; Court of Appeal (CA) Judgment (Case No. 50/2009) of June 23rd 2011; Supreme Court Appeals judgment of Case Nos. 41 and 42/96; Provincial High Court of North Central Province judgment in Case NCP/HCCA/Writ/46/2008. **Even late as mid-January 2012, when the land power sharing debate was ongoing, Chief Justice Shirani Bandaranayake *et al* (i.e. S.C. Reference No. 04/2011 – NCP/HCCA/ARP Writ No. 04/2008) submitted that State land “disposition could be carried out in accordance with Article 33(d) read with 1:3 Appendix II” which could be justly interpreted as reiteration and endorsing that State land is a subject devolved to the provinces, as she declared nine years back in the judgment of S.D. 26/2003 and nine other cases quoted earlier.**”

- (iii) As to the *criteria* for ***intelligible differentia***, devoid of a *transparent* evaluation process, and the *differential treatment* of private negotiation *vis-à-vis* Sri Lankan Airlines and Shell Gas, and vesting in the State of Sri Lanka Insurance and Lanka Marine Services after *inter-partes* Supreme Court *adjudications* thereon, ***in conformity with natural justice, which is paramount; and that this was ad hominem legislation.***
- (iv) As to whether the Directive Principles of State Policy can be *selectively* applied by selecting only two Sub-Articles of Articles 27 of the Constitution, without taking the *entirety* of Article 27 of the Constitution into cognisance, and thereby violating other Directive Principles in the other Sub-Articles of Article 27 of the Constitution

- (v) Article 157 of the Constitution *prohibiting* the enactment of any law, where international treaties or agreements have the force of law, except in the interest of *national security*, whereas the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 had *permitted* the same for *public purpose*; thereby adversely impacting upon foreign direct investments and such investment confidence, *constitutionally guaranteed*.
 - (vi) Totality of the facts pertaining to HDL, including the blatant violation of the provisions of the Companies Act No. 7 of 2007, and the personal liabilities of the Directors of HDL, *as morefully averred in the Amended Petition dated 16.12.2011*, having not been taken into cognisance; and the Government *renegeing* on a written directive given by the Government, itself.
12. (a) Upon such submissions, the Supreme Court Bench expressed the view, *that unlike in UK*, in Sri Lanka, the practice to *review* and/or *re-examine* a Judgment has to be by the same Bench, who had delivered such Judgment *previously*, and that Their Lordships' Bench cannot hear the Petitioner's Application for a *review* and/or *re-examination* of the Special Determination of 24.11.2011 in SC (SD) No. 2/2011.
- (b) Hence the foregoing was a clear admission and an explicit indication that the original Bench could and/or should hear the Petitioner's Application for a *review* and/or *re-examination* of the Special Determination of 24.11.2011 in SC (SD) No. 2/2011, *as to whether it had been made per-incuriam and/or ultra-vires Article 123(3) of the Constitution*.
- (c) The Petitioner promptly *responded* that being so aware, he had filed Motion dated **18.1.2012** ("D") *making an Application under Article 132 of the Constitution*, seeking a direction from Her Ladyships the Chief Justice, specifically in such regard, *vis-à-vis* his Amended Petition dated 16.12.2011 – *as referred to at paragraph 5 above – vide Document ("D")*:
- (d) The Petitioner submitted that consequent to his aforesaid Motion dated **18.1.2012** ("D"), a Minute had been made, *directing* that his Application be supported on 9.2.2011 before a Bench, comprising Their Lordships, Justices N.G. Amaratunga, R.K.S. Sureshchandra and Sathya Hettige.
- (e) Whilst *acknowledging* and *admitting* such Minute, the Supreme Court Bench *intimated* that they had been asked *only to hear the Petitioner*.
- (f) In the Judgment "I" delivered on 9.2.2012 referred to at paragraph 14 hereinbelow, the foregoing was *reiterated* stating that **'the Supreme Court Bench nominated had no power to accept the Petitioner's Application or to deal with the same'**.
13. (a) Thereupon, the Petitioner submitted, that in acting in the public interest and in the discharge of public duty, he was *compelled* to tender a further Note and tendered such further Note, adducing *additional grounds* warranting the *rescinding or variation* of the Special Determination of 24.11.2011 in SC (SD) No. 2/2011, arising from the Judgment by the Lords of Appeal in the House of Lords *re- Pinochet*.
- (b) Upon the two Counsel of the Respondents having perused the said Note, they *promptly objected* thereto, whereupon the Supreme Court Bench pointed out that the Petitioner had stated matters from the record of the Supreme Court.

- (c) The Petitioner *asserted* that the circumstances disclosed in his further Note were similar to or *even graver* than the circumstances, which resulted in the Judgment by the House of Lords *re-Pinochet being set aside in Appeal by another Committee of the House of Lords, itself*, and that he was making this Submission, as an ***additional ground*** warranting the ***rescinding*** and/or ***variation*** of the Special Determination of 24.11.2011 in SC (SD) No. 2/2011.
- (d) As morefully set out in paragraph 19 hereinbelow, a 7 Judge Bench of the Supreme Court had ***relied*** on UK authorities in *interpreting* the Constitution.

A true copy of the aforesaid further Note dated 9.2.2012 and the said Judgment of the Lords of Appeal of the House of Lords re - Pinochet, with relevant paragraphs highlighted, are annexed marked “H1” and “H2”, pleaded as part and parcel hereof

14. (a) Consequently, the Supreme Court Bench upholding a *Preliminary Objection* taken by the Deputy Solicitor General, delivered the following Judgment: (*Emphasis added*)

“We have heard the Petitioner who appeared in person and the learned Deputy Solicitor General who appeared for the 1st, 3rd to 10th Respondents and the Learned President’s Counsel who appears for the 2nd Respondent. After considering the submission made by all parties, we uphold the preliminary objection raised by the Learned Deputy Solicitor General that *in view of the decision in SC.FR. 516/2011, 535/2011 and 536/2011, **this Bench has no power to accept this petition or to deal with it.*** Accordingly the preliminary objection is upheld and the Petition is dismissed *in limine*.

All papers submitted by the Petitioner in supporting this application to assist the Bench is returned to the Petitioner and those papers shall not form a part of record in this case.

The record consist only of the Petition and the amended petition filed by the Petitioner and no other material is to considered as a part of the record.”

A true copy of a certified copy of the said Judgment dated 9.2.2012 is annexed marked “I” pleaded as part and parcel hereof

- (b) The foregoing Judgment also ***reiterated*** that the **Supreme Court Bench nominated had no power to accept the Petitioner’s Application or to deal with the same.**
- (c) It is very respectfully submitted that thus and thereby it had been conceded that another Bench of the Supreme Court had the power to accept and deal with the Petitioner’s Application, in this instance by the same Supreme Court Bench which delivered the Special Determination of 24th October 2011 in SC (SD) No. 2/2011.

15. (a) As pointed out at paragraph 6 above, the Judgments in the foregoing 3 SC (FR) Applications 516/2011, 535/2011 and 536/2011 were based upon the Judgment in SC (FR) Application No. 514/2011 - wherein the Court held that – ‘***the Court upheld the Preliminary Objection that the Court had no jurisdiction to entertain and deal with the said Application, as well as Applications in SC (FR) 515/2011 and 516/2011***’. (*Emphasis added*)

- (b) Nevertheless, the *scope* and *ambit* of the Petitioner’s Application by Amended Petition dated 16.12.2011 was *distinctly different* to the foregoing Applications referred to at paragraph 6 above, and was an Application to *review* and/or *re-examine* the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, **as having been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution.**
- (c) The aforesaid matter **of utmost general and public importance had not been addressed and/or adjudicated upon**, by the Supreme Court in the foregoing Applications referred to at paragraph 6 above.
- (d) Petitioner’s original Petition dated **14.11.2011** and Submissions made, *vis-à-vis*, Note “**B1**” tendered on **23.11.2011** on the *changed circumstances*, were *entertained* by the Supreme Court on **25.11.2011**, granting permission, subject to objections, for the amendment of the Petition, as was sought by the Petitioner, to seek a *review* and/or *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, **as having been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution.**
- (e) Significantly, the Petitioner’s Application was not **dismissed in limine** by the Supreme Court on **25.11.2011**, after the aforesaid Judgments delivered previously on **15.11.2011**.
- (f) The Supreme Court Bench also *opined* that a ***review or re-examination of a previous Judgment has to be by the same Bench, who had delivered such Judgment***, and not by a another Bench, unlike the instance of the House of Lords Judgment *re – Pinochet*, cited by the Petitioner.
16. (a) On the very next day i.e. on **10.2.2012**, after the aforesaid Supreme Court Proceedings of 9.2.2012, the Petitioner made a record to the best of his re-collection of his Submissions / Proceedings on the previous day in the Supreme Court.

A true copy of the said record made by the Petitioner is annexed marked “J” pleaded as part and parcel hereof

- (b) On an Application made in SC (FR) Application No. 209/2007 by the 3rd Respondent therein to be *re-instated* in public office, Your Ladyships’ Court in August 2009 was pleased to constitute a 7 Judge Bench of the Supreme Court, for reviewing a previous Order of Your Ladyships’ Court.
17. The Petitioner very respectfully submits that the following issues are of far greater and of utmost *general and public importance*, warranting a *review and/or re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 by a Fuller Bench of the Supreme Court, to consider whether the said Special Determination **had been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution.**
- (a) Whether, *inasmuch as the Constitution had made provision as per Article 122 of the Constitution for the enactment of urgent legislation*, that the Constitution **also had an inbuilt safeguard** in Article 123(3) of the Constitution, *in respect of such enactment of urgent legislation – viz: Article 123(3) of the Constitution (Emphasis added)*

“123.(3) *In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt** whether the Bill or any provision thereof is inconsistent with **the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution**, and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article.” ?*

- (b) Whether, in view of the several *doubts entertained and answered by the Supreme Court*, it ought to be examined, as to whether the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 had been *ultra-vires* the aforesaid Article 123(3) of the Constitution ?
- (c) Whether in view of the several *doubts entertained and answered by the Supreme Court*, that in terms of the mandatory provisions of Article 123(3) of the Constitution, the Supreme Court stood constitutionally bound **to have deemed to have determined** the said Bill or such provision/s thereof was/were **inconsistent with the Constitution** ?
- (d) Whether, in addition, the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 warrants to be *reviewed* and/or *re-examined* to consider, as to whether any determinations thereof had been made *per-incuriam*, *inter-alia*, *vis-à-vis*:
- (i) the issue as to whether Article 17 of the **United Nations Universal Declaration of Human Rights**, inclusive of right to own property and not to be *arbitrarily deprived thereof*, had not been taken cognisance of; and the same had been permitted to be *blatantly* and *flagrantly* breached ?
 - (ii) the treatment of Land, *as a subject not falling within the Provincial Council List, and subject to Constitutional stipulations in that behalf*, **contrary** to other Supreme Court Judgments and Determinations, *vis-à-vis*, the subject of Land ?
 - (iii) the *criteria* for **intelligible differentia**, devoid of any *transparent* evaluation process, and the *differential treatment* of private negotiation *vis-à-vis* Sri Lankan Airlines and Shell Gas; and the vesting in the State of Sri Lanka Insurance and Lanka Marine Services after *inter-partes* Supreme Court **adjudications** thereon in conformity with natural justice *which is paramount*; and **whether this was ad hominem legislation** ?
 - (iv) whether the Directive Principles of State Policy can be *selectively* applied by selecting only two Sub-Articles of Article 27 of the Constitution, without taking the *entirety* of Article 27 of the Constitution into cognisance, and thereby violating other Directive Principles in the other Sub-Articles of Article 27 of the Constitution ?
 - (v) Article 157 of the Constitution **prohibiting** the enactment of any law, where international treaties or agreements have the force of law, except in the interest of **national security**, whereas Special Determination of 24.10.2011 in SC (SD) No. 2/2011 had *permitted* the same for **public purpose**; thereby adversely impacting upon foreign direct investments and such investment confidence, *constitutionally guaranteed* ?
 - (vi) totality of the facts pertaining to HDL, including the blatant violation of the provisions of the Companies Act No. 7 of 2007, and the personal liabilities of the Directors of HDL, *as morefully averred in the Amended Petition dated 16.12.2011*, having not been taken into cognisance; and the Government **renegeing** on a written directive given by the Government, itself ?
- (e) Whether the *circumstances disclosed in paragraph 13 above and Documents “H1” and “H2” thereto*, warrants the *rescinding* and/or *variation* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 ?

18. The time taken to make this Application for a *review* and/or *re-examination* by a Fuller Bench of the Supreme Court, after the Judgment delivered on 9.2.2012 in SC (FR) Application No. 534/2011 was caused by the Petitioner having to obtain certified copies from the Supreme Court Registry of the relevant documents referred to herein and annexed hereto. Petitions and Documents referred to herein are in the Court Record and should Your Ladyships' Court require any copy of Document the Petitioner very respectfully shall do so. The Petitioner further respectfully reserves the right to tender any further Documents which may be required.

True copies of the Petitioner's Letter dated 24.4.2012 to the Registrar of the Supreme Court and a copy of the certified copy of 2.5.2012 of the Bill dated 20.10.2011 referred by the President, to the Supreme Court in terms of Article 122 of the Constitution, for Determination thereon, are annexed respectively marked "K" and "L", pleaded as part and parcel hereof

19. (a) In the foregoing premises, good, sufficient and valid causes have arisen to the Petitioner, to invoke the jurisdiction of Your Ladyships' Court on this matter of **utmost general and public importance**, to seek a *review* and/or *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 by a Fuller Bench of Your Ladyships' Court to consider whether it had been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution and/or warrants to be *rescinded* or *varied* in the circumstances disclosed in paragraph 13 and Documents "H1" and "H2" thereto.
- (b) In urging as aforesaid, the Petitioner *cites* the following *dicta*, ***interpreting the Constitution***, made in October 2002 by a 7 Judge Bench of Your Ladyships' Court, comprising Their Lordships then Chief Justice, Sarath N. Silva, and Justices J.A.N. De Silva, Shirani Bandaranayake, S.W.B. Wadugodapitiya, A. Ismail, P. Edussuriya and H.S. Yapa, on the aborted 18th and 19th Amendments to the Constitution; (*Emphasis added*)
- i) "Therefore, shorn of all flourishes of Constitutional Law and of political theory, on a plain interpretation of the relevant Articles of the Constitution, it could be stated that any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an "alienation" of sovereignty which is inconsistent with Article 3, read together with Article 4 of the Constitution".
 - ii) "It necessarily follows that the **balance that had been struck between the three organs of government in relation to the power that is attributed to each such organ, has to be preserved, if the Constitution itself is to be sustained**"
 - iii) "The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3, read with Article 4 of the Constitution"
 - iv) "**The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised, where necessary, in trust for the People.** This is not a novel concept. The basic premise of Public Law is that power is held in trust. From the perspective of Administrative Law in England, the 'trust' that is implicit in the conferment of power has been stated as follows:

‘Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way with Parliament when conferring it is presumed to have intended’ – (Administrative Law 8th Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356) ‘ ”

- v) “It had been firmly stated in several judgments of this Court that ‘rule of law’ is the basis of our Constitution”.
 - vi) “A.V. Dicey in Law of the Constitution postulates that ‘rule of law’ which forms a fundamental principle of the Constitution has three meanings one of which is described as follows:-

‘It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone ’
 - vii) “If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, **it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective - (Cited from Indian Judgment) ‘**
 - viii) “The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution”
 - ix) **“We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to “uphold and defend the Constitution” ‘**
- (c) The foregoing *dicta* of a Determination by a 7 Judge Bench of Your Ladyships’ Court *reveals* that *reliance* had been placed upon authorities from the United Kingdom, thereby *warranting* that due cognisance ought be taken of the *dicta* of the Judgment by the Lords of Appeal in the House of Lords *re – Pinochet* in UK referred to at paragraph 13, read with Documents “**H1**” and “**H2**” referred to above, in the consideration to rescinding and/or varying the Special Determination of 24.10.2011 in SC (SD) No. 2/2011.
- (d) The Petitioner also *cites* the *dicta* by Bhagawati J in *State of Rajasthan v Union of India, AIR 1977 SC 1361, 1413; (Emphasis added)*

“.... So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed, it would be its constitutional obligation to do so **No one howsoever highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This Court is the ultimate interpreter of the Constitution It is for this Court to uphold the constitutional values and to enforce the constitutional limitations.** That is the essence of the Rule of Law”

- (e) The Petitioner also *cites* the following dicta from the Judgment in S.C. FR No. 431/2001 (*Emphasis added*)

“It is now firmly established that all powers and discretions conferred upon public authorities and functionaries are held upon trust for the public, to be used reasonably, in good faith, and upon lawful and relevant grounds of public interest; that they are not unfettered, absolute or unreviewable; and that the legality and propriety of their exercise must be judged by reference to the purposes for which they were conferred”

20. (a) The executive and the legislature is constitutionally bounden to respect the exercise of the *judicial power of the people*, whereby the judiciary is entrusted with the task of keeping every organ of the State, within the limits of the law, **making the rule of law meaningful and effective**.
- (b) The enactment of laws must necessarily be in conformity with the mandates of the Constitution, warranting that the Special Determinations on Bills by the Supreme Court ought be strictly in accordance with the Constitution.
- (c) The Petitioner
- (i) in April 2003 *failed* in his endeavour in SC (SD) No. 11/2003 to challenge Inland Revenue (Special Provisions) Act No 10 of 2003, with his Application having been held to have been made outside the narrow time of 7 days in terms of Article 121 of the Constitution.
- (ii) in July 2003 *failed* in his endeavour in SC (SD) No. 20/2003 to challenge Inland Revenue (Special Provisions) (Amendment) Act No 31 of 2003, having been erroneously determined by the Supreme Court, *to have been a mere extension of a date*, whereas the provisions of the law were being *re-enacted* to apply to another group of persons.
- (iii) *ultimately* in March 2004 *succeeded* in persuading the President to refer the aforesaid two Statutes for an Opinion of the Supreme Court in terms of Article 129 of the Constitution, at the hearing into which, the Petitioner appeared in person and made submissions.
- (iv) consequently in March 2004 in SC Reference No. 1/2004, a 5 Judge Bench of the Supreme Court, *inter-alia*, pronounced that the provisions of the aforesaid two Statutes were
- ‘*inimical to the rule of law*’
 - ‘*violative of the Universal Declaration of Human Rights and International Covenant on Civil & Political Rights*’, and that
 - ‘*they had defrauded public revenue, causing extensive loss to the State*’.
- (v) **respectfully states that the foregoing amply demonstrates that the Supreme Court can and had, in fact, previously made a *per-incuriam* Determination**, and.
- (vi) as a consequence in October 2004, the foregoing becoming a public issue at the General Election of April 2004, the new Government caused Parliament to enact Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004, repealing the *obnoxious* provisions of the aforesaid two Statutes.

- (d) Given the foregoing sequence of events, it is quite *evident* and *patently clear* that **in upholding and defending the Constitution** a review and/or *re-examination* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, *is well and truly warranted*, to consider as to whether it had been made *per-incuriam* and/or *ultra-vires* Article 123(3) of the Constitution and/or warrants to be *rescinded* or *varied* as aforesaid.

21. The Affidavit of a Petitioner in support of the averments herein contained in annexed hereto.

WHEREFORE the Petitioner respectfully prays that Your Ladyships' Court be pleased to:

A) In terms of Article 132 of the Constitution, constitute a Fuller Bench of Your Ladyships' Court in view of the questions involved being of utmost general and public importance, particularly the Fundamental Duty to uphold and defend the Constitution, to *review* and *re-examine* the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 and to determine, as to whether:

- (a) certain *doubts had been entertained* by the Supreme Court and such *doubts answered* by the Supreme Court in the Special Determination of 24.10.2011 in SC (SD) No. 2/2011
- (b) *inasmuch as the Constitution had made provision as per Article 122 of the Constitution for the enactment of urgent legislation*, that the Constitution **also had an inbuilt safeguard** in Article 123(3) of the Constitution, *in respect of such enactment of urgent legislation – viz: Article 123(3) of the Constitution (Emphasis added)*

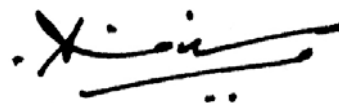
“123.(3) In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt** whether the Bill or any provision thereof is inconsistent with the Constitution, **it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution**, and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article.”

- (c) in view of the several *doubts entertained and answered by the Supreme Court*, it ought be examined, as to whether the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 had been *ultra-vires* the aforesaid Article 123(3) of the Constitution.
- (d) in view of the several *doubts entertained and answered by the Supreme Court*, that in terms of the mandatory provisions of Article 123(3) of the Constitution, the Supreme Court stood constitutionally bound **to have deemed to have determined** the said Bill or such provision/s thereof was/were **inconsistent with the Constitution**.
- (e) in addition, the Special Determination of 24.10.2011 in SC (SD) No. 2/2011 *warrants* to be *reviewed* and/or *re-examined* to consider, as to whether any determinations thereof had been made *per-incuriam*, *inter-alia*, *vis-à-vis*:
- (i) the issue as to whether Article 17 of the **United Nations Universal Declaration of Human Rights**, inclusive of right to own property and not to be *arbitrarily deprived thereof*, had not been taken cognisance of; and the same had been permitted to be *blatantly* and *flagrantly* breached.
- (ii) the treatment of Land, *as a subject not falling within the Provincial Council List, and subject to Constitutional stipulations in that behalf*, **contrary** to other Supreme Court Judgments and Determinations, *vis-à-vis*, the subject of Land.

- (iii) the *criteria* for ***intelligible differentia***, devoid of any transparent evaluation process, and the *differential treatment* of private negotiation *vis-à-vis* Sri Lankan Airlines and Shell Gas; and the vesting in the State of Sri Lanka Insurance and Lanka Marine Services after *inter-partes* Supreme Court *adjudications* thereon, in conformity with natural justice, *which is paramount*, and **whether this was *ad hominem* legislation**.
- (iv) whether the Directive Principles of State Policy can be *selectively* applied by selecting only two Sub-Articles of Article 27 of the Constitution, without taking the *entirety* of Article 27 of the Constitution into *cognisance*, and thereby violating other Directive Principles in the other Sub-Articles of Article 27 of the Constitution.
- (v) Article 157 of the Constitution *prohibiting* the enactment of any law, where international treaties or agreements have the force of law, except in the interest of ***national security***, whereas Special Determination of 24.10.2011 in SC (SD) No. 2/2011 has *permitted* the same for ***public purpose***; thereby adversely impacting upon foreign direct investments and such investment confidence, *constitutionally guaranteed*.
- (vii) totality of the facts pertaining to HDL, including the blatant violation of the provisions of the Companies Act No. 7 of 2007, and the personal liabilities of the Directors of HDL, *as morefully averred in the Amended Petition dated 16.12.2011*, having not been taken into cognisance; and the Government *reneging* on a written directive given by the Government, itself .
- (f) The *circumstances disclosed in paragraph 13 above and Documents “H1” and “H2” thereto*, warrant *the rescinding or variation* of the Special Determination of 24.10.2011 in SC (SD) No. 2/2011.

AND TO rescind and/or set aside and/or vary the Special Determination of 24.10.2011 in SC (SD) No. 2/2011, should any one or more or all of the foregoing issues are answered in the affirmative.

B) grant such other and further relief, as to Your Ladyships' Court shall seem meet



Petitioner