



IMPACT

Protecting Ancient Agricultural Lands in Sri Lanka

The lasting impact of this case may be the creation of a new legal doctrine that could help protect natural resources around the world.

On June 2, 2000, E-LAW advocates at Sri Lanka's Environmental Foundation Limited (EFL) celebrated a landmark Supreme Court decision protecting the site of an ancient kingdom and agricultural lands, and preventing the forced relocation of residents in Sri Lanka's North Central Province.

EFL represented residents of the Eppawela area. They argued that a proposed high-intensity phosphate mining operation to be located in the heartland of Sri Lanka's ancient civilization would cause irreparable damage to the surrounding environment, in particular a network of ancient irrigation tanks, streams and canals that are still in use today. The mining operation has been proposed by a U.S.-based company.

The proposed operation would use up known reserves in 30 years and generate waste products including phospho-gypsum and other radioactive substances.

The residents argued that the government held the natural resources in trust and that the proposed project violated that trust. Attorneys supported this argument with a case from India which traced the Public Trust Doctrine. The Indian court said: "The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

Protecting this ecosystem is a tremendous victory. However, the lasting impact of this case may be the creation of a new legal doctrine that could help protect natural resources around the world.

While discussing the government's responsibility to protect Sri Lanka's natural resources,



the Sri Lankan court went a step beyond the Public Trust Doctrine to create the "Public Guardianship Doctrine." In a note, the court said: "The organs of the State are guardians to whom the people have committed the care and preservation of the resources of the people." The court rejected the Public Trust Doctrine and described an expanded doctrine: "[t]he public trust doctrine...has been extended in the United States on a case by case basis. Nevertheless...it is comparatively restrictive in scope and I should prefer to continue to look at our resources and the environment as our ancestors did, and our contemporaries do, recognising a shared responsibility." Although the court did not rely on these issues in its final decision, the case will serve as a persuasive document.

EFL called on E-LAW to help challenge the mine. E-LAW U.S. provided information about the U.S.-based corporations intent on developing the mine and an analysis of the Public Trust Doctrine under U.S. law. E-LAW U.S. also provided information about the impacts of phosphate mining.

E-LAW advocates around the world have requested copies of this case, so they can begin building the Public Guardianship Doctrine.

For more information about this E-LAW Impact or EFL, contact the Environmental Law Alliance Worldwide at elawus@elaw.org.

