

Sri Lankan court allows limited resettlement of evicted villagers

Vilani Peiris
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More than two years after fundamental rights petitions were filed, the Supreme Court in Sri Lanka ruled on May 8 that 7,456 Tamil families evicted from the Palaly High Security Zone (HSZ) on the Jaffna peninsula be resettled in their village Valikamam. Onerous conditions apply, however, which mean that the villagers must be vetted and supervised by the military, which will remain entrenched in the area.

The case has highlighted the plight of tens of thousands of Tamils displaced during the country's 20-year war to maintain the political dominance of the island's Sinhala majority. In the course of the conflict with the Liberation Tigers of Tamil Eelam (LTTE), the military has transformed large areas of the North and East into HSZs that exclude the civilian population.

On the Jaffna peninsula alone, 15 HSZs have been established since 1990, covering about 160 square kilometres or 18 percent of the land mass. About 130,000 persons, including an estimated 20,000 farming and 8,000 fishing families, have been forced to leave their homes and land. An estimated 275 schools, 300 places of worship and 20 important roads are all out of bounds. According to the military, these areas contain only 10,000 homes, but Jaffna newspapers insist that 30,000 houses are affected.

In 2002, a ceasefire agreement was signed between the LTTE and the government, which remains in place despite escalating violence in the North and East. Yet four years later, none of the refugees have been permitted to return. During talks in 2002 and 2003, the armed forces tried to use the issue as a lever against the LTTE, claiming any change to the HSZs without the disarming of the LTTE would endanger their personnel.

In 2004, Mavai Senathirajah, an MP belonging to the pro-LTTE Tamil National Alliance (TNA), and Kassipillai Yogeswaran, a farmer, filed fundamental rights violation applications. Both were displaced from

the Palaly area of the Jaffna peninsula, occupied by the military during the 1990s and subsequently declared as an HSZ.

The case has dragged on so long that most of the respondents have left office. They include former president Chandrika Kumaratunga, former prime minister Ranil Wickremesinghe, former army commander Lionel Balagalle and former Jaffna security forces commander Paramy Kulatunga. Only Attorney General K. C. Kamalasabesan is still in office.

A three-judge bench headed by Chief Justice Sarath N. Silva heard the petitions. The petitioners alleged that their constitutional rights to occupy and live in their village had been violated and that actions of the respondents were illegal, unfair and unreasonable. They asked the Supreme Court to rule that they could return to their homes at Valikamam and be paid compensation. Other displaced persons filed cases as well.

Lawyers arguing the case for Senathirajah and Yogeswaran said there was no basis for including the village in the Palaly HSZ, under any law or any operative emergency regulations. Neither the judges nor the legal counsel for the state contradicted the argument, effectively admitting that the forced dispersal of the villagers was illegal.

One would have thought that the case was open and shut. However, rather than rule on the basis of the constitution and the law in favour of the petitioners, the Supreme Court encouraged them to accept the military's "compromise" of land elsewhere or other compensation.

As part of the case, the Jaffna district secretary reported to the court on March 20 that none of the petitioners were prepared to accept the alternatives. He pointed out that Valikamam is located on highly productive agricultural land and near lucrative fishing areas. About 60 percent of those displaced were farmers and 30 percent were fishermen. The cement factory at Kankesanthurai, the

country's largest, was closed. For the past 15 years, most of the displaced persons had no livelihood and were forced to live on limited rations provided by the state.

The Supreme Court finally declared on May 8 that the "alleged infringement" be resolved by resettling the petitioners in their village. In doing so, however, it imposed four conditions on them. The military will be involved in verifying the identity of the villagers and their claims to land, and will also have a veto over their agricultural and other activities.

A particularly oppressive condition is that the villages "form into citizen committees and ensure that security forces are in no way imperiled in the area due to any armed or terrorist activity". In other words, the responsibility for preventing attacks on troops inside the Palaly HSZ is placed onto the villagers themselves, providing a pretext for removing them again.

A list of 7,456 families willing to accept the conditions has been submitted to the court. The Jaffna District Government Agent has been ordered to prepare a preliminary report on the proposed resettlement for submission on July 24, giving priority to displaced families in refugee camps and welfare centres. After more than a decade, some families will be allowed back to their village under strict military supervision.

The Valikamam villagers are, however, just the tip of the iceberg. The narrow character of the court ruling makes it difficult to use the case as a precedent for the tens of thousands of other refugees forced out of their homes to make way for HSZs. Nor will it provide any relief for the many more displaced persons forced to flee over the past two decades. Estimates put the overall figure at 250,000 for the Jaffna peninsula and another 500,000 from other areas of the North and East.

The continued presence of the HSZs is a graphic demonstration that the Sri Lankan military functions in the island's war zones as an army of occupation against the Tamil minority.



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