

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

In the matter of an application for Writ
of Mandamus under Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

C.A. Application No. 555/2007(Writ)

1. Mohamed Cassim Abdul Hameed
No. 27, Rodrigo Lane,
Dehiwela.
2. Adam Lebbe Mohamed Kaleel,
No.26, Main Street, Colombo-01100
3. Yoosuf Lebbe Ahamed Mohideen
No. 38/21, Vijayaraja Mawatha,
Nikape, Dehiwala.
4. Mohamed Zarook Mohamed Ruzaick,
No.212/2, Ganawala Road,
Gonawala, Kelaniya.
5. Mohamed Sherief Abul Haseen,
No. 207/1, Tharul Karam,
Akkaraipattu-02.

6. Meera Mohideen Mohamed Cassim,
No. 46, Bazaar Street, Badulla.

And nine (09) others).

Petitioners.

-Vs-

1. The Inspector General of Police,
Police Head Quarters,,
Colombo 00100
2. The Senior Superintendent of
Police, Batticaloa Division,
Batticaloa.
3. The Officer-in-Charge,
Kattankduy Police Station,
Kattankudy.

And five (05) others.

Respondents.

Before: **Anil Gooneratne, J &**
Deepali Wijesundera, J

Counsel: M.A. Sumanthiran with Ermiza Tegal and Ms.
Juanita Arulananthan for the Petitioner.
S. Rajaratnam DSG for 1st to 3rd Respondents.
M. Nizam Kariappar with M.I.M. Iynullah and M.C.M.
Muneer for 4th and 5th Respondents.

Argued on 14.05.2013

Judgment delivered on 03.06.2013

Anil Gooneratne, J

When this Writ Application was taken up for hearing on 14.05.2013, learned counsel appearing for the Petitioners informed this Court that the only relief as prayed for in sub para ' F ' of the prayer to the Petition would be pursued and that the other remedies prayed for in the prayer to the petition would not be

pursued. As such this application is restricted, to Sub para 'F' of the prayer to the petition which reads thus:

“Issue a mandate in the nature of Mandamus compelling the 4th and 5th Respondents to return the body of the spiritual leader Shewhul Muflihin MSM Abdulla (alias Pailvan Wrestler) to the Petitioners particularly the 14th Petitioner.

The learned counsel for the Petitioner submits that the spiritual leader referred to in sub para 'F' above, died on or about 06.12.2006. Attention of Court was drawn to Journal Entry 11.02.2010 and the submissions of learned counsel for the 4th and 5th Respondents as stated therein, that learned Counsel for the 4th and 5th Respondents have received instructions that body of the spiritual leader was buried by the people of Kattankudi. Our attention was also drawn to affidavit dated 03.12.2010 of the 1st Petitioner and more particularly to paras 3 and 4 of same. It is averred in the said paras that the spiritual leader's body was burnt by the people of Kattankudy and para 4 states that the body was not burnt but buried at the cemetery of the Nooraniya Jumma Mosque. Several other bodies have been buried in the same area and the said body cannot be located.

The affidavit of Chairman Kattankdy one Marzork, dated 20.08.2010 reveals that unauthorized building located at Abdul Latheef Mawatha, Kattankudy was removed by the officers of the Urban Council and at the time of removal as aforesaid a body was found. Thereafter the body discovered was buried at an authorized burial ground after having performed the religious rites. In the affidavit it is averred that at the time the body was recovered the Senior Superintendent of the Police and the Officer-in-Charge of the relevant police station was present.

The material made available to this court does not show a consistent approach as regards the body of the spiritual leader referred to above. i.e whether the body was buried or burnt. It appears to be somewhat a disputed fact, and the affidavit of Chairman Urban Council makes no reference to an identifiable body, but merely that a body was found. On the other hand learned counsel for the Petitioner submitted that the spiritual leader died on or about December 2006. As at the date of Judgment so many years have lapsed, with uncertainties mentioned above. Nor have the Petitioner disclosed proper statutory provisions to establish

the required public duty to invite this Court to consider granting a writ of Mandamus.

In all the above circumstances we are of the view that this a futile application. Further when disputed facts are disclosed Court will not interfere. Vide Thajudeen Vs Sri Lanka Tea Board and another 1981 (2) SLR 471. Per Gunawardana, J.... It is worth observing that the review procedure is not well suited to the determination of disputed facts, in Public Interest Law Foundation Vs Central Environmental Authority and Another 2001 (3) SLR 330. This Court also observe that the Petitioner has failed to establish the required public and statutory duty to consider granting such a writ. Therefore we dismiss this application without costs.

Judge of the Court of Appeal

Deepali Wijesundera, J

I agree.

Judge of the Court of Appeal

Kpm/-