

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

In the matter of an application for mandates in the nature of Writs of Mandamus and prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application
No 510/2011

1. Sri Bodhiraja Foundation,
Sri Bodhiraja Dharmayathanaya,
Emblipitiya.
2. Jathika Sangha Sammelanaya,
Jathyanthara Thorathuru saha Dharma
Paryeshayathanaya, Gothami Mawatha
Rajagiriya.
3. Olcott Gunasekera
President Dharmavijaya Foundation.
4. Ven. Bandirippuwe Vineetha Thero
5. Iranganie de Silva,
Chairperson, Animal Welfare Trust.
6. Visakha Tillekarathne,
Trustee, Animal Welfare Trust.
7. Lorraine Margueritte Bartholomeusz,
Vice President,
Sri Lanka Animal Protection Association.
8. Sharmini Desiree Ratnayake, Secretary, Sri Lanka
Animal Protection Association.
9. Sagarica Rajakarunanayke, President, Sathva Mithra.
10. Lalani Serasinghe Perera
11. Dr. Chamith Nanayakkara
12. Somasiri Alakolanage
13. Nikita Ravin Tissera
14. Gamini Wanigaratne.

Pétitioners

Vs

1. Inspector General of Police
2. Deputy Inspector General of Police, Puttalam District.
3. Senior Superintendant of Police, Chilaw.
4. Officer-in-Charge, Police Station, Chilaw.
5. Chairman, Pradeshiya Sabha, Chilaw.
6. Assistant Commissioner of Local Government.
7. M. Kanagaratnam.
Sri Bhadra Kali Amman Kovil, Munneswaram, Chilaw.
8. Kalimuttu Shivapakyasuntheram
Sri Bhadra Kali Amman Kovil, Munneswaram, Chilaw.
9. Mahendra Samy,
Sri Bhadra Kali Amman Kovil, Munneswaram, Chilaw.
10. President, All Ceylon Hindu Congress
11. The Attorney General

Respondents

Before : Sisira J de Abrew J
Deepalie Wijesundera J &
Sunil Rajapakshe J

Counsel : CR De Silva President's Counsel with Suren de Silva,
RJ de Silva and Chinthaka Rankotge
for the 1st, 3rd to 14th petitioners.
Raja Dep for the 2nd petitioner.
Parindra Ranasinghe DSG for the 1st to 4th and 11th Respondents
S. Sivarasa President's Counsel with KVS Ganesharaja for the
7th and 9th respondents.
AR Surendran President's Counsel with M Jude Dinesh and
N Kadeepan for the 8th Respondent.

Argued on : 18th, 19th, 20th, 24th, 26th of June 2013, 3rd and 9th of July 2013
Decided on : 29.08.2013

Sisira J de Abrew J.

The petitioners, in their petition, have stated that they have instituted the present action in the public interest and for and on behalf of large group of people who are genuinely interested in the implementation and enforcement of the law

relating to the protection of animals and the prevention of cruelty to animals. The petitioners have, among other things, stated the following matters.

1. In or around August and/or September every year slaughter of animals take place at annual festival of Sri Bhadra Kali Amman Kovil in Munneswaram Chilaw (hereinafter referred to as the Kovil).
2. During the said annual festival a large number of goats and fowls are slaughtered in the most cruel and barbaric manner in violation of the provisions of the Butchers Ordinance and the Cruelty to Animals Act. This slaughter takes place in the full public view of both children and adults.
3. In 2010, a temporary shed had been set up in front of the said Kovil, within the Kovil complex to carry out the slaughter of goats.
4. In the Kovil premises, a large number of persons swung fowls around by both head and feet several times each, before dashing on the ground.

The petitioners have produced (marked P3) an affidavit of one Augustine Fernando who was the correspondent in Chilaw for Lankadeepa Newspaper. He says that he, on 25.8.2009, went to the Kovil to cover the annual festival for the purpose of preparing news items for the said news paper. He says among other things that he witnessed the following things in the Kovil premises.

1. Many people were seen bringing goats to the Kovil premises and hundreds of fowls gathered in the Kovil premises.
2. Bare chested males who may have been priests of the said Kovil were seen carrying knives blades of which were about three feet long.
3. One bare chested male was seen pulling the goat's head towards him while another male pulled its legs in opposite direction.

4. While each goat was so held, another bare chested male was seen raising one of the knives above its head and bringing it down cutting the neck of the goat thereby severing the head of the goat from its body.
5. Hundreds of fowls being swung around many times after their necks were twisted and dashed on the ground by males who may have been priests of the Kovil. On being so dashed fowls struggled for several moments and died.
6. Carcasses of goats were brought to a place in the Kovil premises where part of the flesh was sold while the other parts were given to persons gathered around who cooked and distributed it.

The petitioners inter alia ask for

1. A writ of prohibition restraining the 5th and/or 6th respondents or any person authorized by them from issuing an annual or temporary licence to 7th, 8th and 9th respondents to carry out the slaughter of animals at the above Kovil.
2. A writ of mandamus directing the 1st, 2nd, 3rd and 4th respondents to take all necessary actions as permitted and empowered by law to prevent the cruelty and slaughter of animals taking place at the said Kovil.

The 8th and 9th respondents, in their objections, state that the offering of animals sacrifices which takes place during the annual festival is a long standing religious practice observed at the said Kovil and that the animal sacrifice is not carried out in a cruel barbaric or inhuman manner as alleged by the petitioners.

Learned President's Counsel (PC) for the 1st, 3rd to 14th petitioners and learned counsel for the 2nd petitioner contended that when the goats are killed in the said Kovil premises without a licence issued under the provisions of the Butchers Ordinance, the 7th, 8th and 9th respondents violate the Butchers Ordinance.

Section 4(1) of the Butchers Ordinance reads as follows:

“No person shall carry on the trade of a butcher except under the authority of an annual licence in that behalf issued by the proper authority.”

Learned PC on behalf of the 7th, 8th and 9th respondents submitted that it was not necessary for them to obtain a licence under section 4 (1) of the Butcher Ordinance as they did not carry on a trade of a butcher. Various dictionaries were cited to prove that they do not carry on a trade of a butcher. At this stage it is pertinent to consider the By Laws relating to the slaughter houses published in the Government Gazette No.520/7 dated 23.8.1988. Section 6 of the said By law reads as follows: “No animal shall be slaughtered in the presence of other animals or until the carcass of any animal of any animal previously slaughtered shall have been removed from the slaughter house or screened off from view of the animals to be slaughtered or until the premises have been cleaned so as to remove the evidence of such previous slaughter.”

According to the contention advanced on behalf of the 7th, 8th and 9th respondents a person can kill animals (defined in the Butchers Ordinance) in his back garden, consume and give meat of the slaughtered animals to the others if he does not carry on the trade of a butcher. If this contention is correct the person who kills animals in his back garden does not have to observe By Laws relating to slaughter houses and can take up the defence that he does not carry on the trade of a butcher but the person who holds a permit has to observe all the conditions relating to slaughter houses. If the said contention is correct a butcher is placed at an advantageous position than a licenced butcher. Then is the said contention correct? I think not. The 8th and 9th respondents have admitted that the animal sacrifice takes place in the Kovil premises during the festival. What do they do with the carcasses of the animals? They have in their objections admitted that they

give alms to the devotees on the festival day. Mr. Surendran PC who appeared for the 8th respondent admitted at the hearing of this application that the carcasses of the animals are turned into meat and give alms to the devotees who come to the Kovil on the festival day. To turn carcasses of animals into meat, the person who does the job must have a skill and everybody cannot do it. Thus if a person kills an animal and turns the carcass into meat he does the trade of a butcher. The word 'trade' in section 4(1) of the Butchers Ordinance cannot be interpreted to say that it includes only the person who sells or exposes for sale the meat. In my view the word 'trade' in the said section also includes a person who does the work of a butcher and the person who turns carcass of an animal into meat. What is the meaning of the word butcher? Section 2 of the Butchers Ordinance defines the butcher which reads as follows: "Butcher shall include every person that slaughters animals or exposes for sale the meat of animals slaughtered in Sri Lanka." Mr. Surendran PC cited the judgment in the case of Fernando Vs Abdul Carim, Appeal Courts Reports Vol. I page 28. Middleton J (single judge decision) on 7.2.1908 held thus: "An isolated act of slaughtering a goat and selling its flesh does not make a man responsible for carrying on the trade of a butcher without a licence in breach of section 7 of the ordinance No.9 of 1893.

The intention of the ordinance is to prevent habitual trading and is not intended to prevent a person who had occasion to slaughter an animal in his house from selling such parts as were superfluous for his own use."

In the said case the accused had been found guilty of carrying on the trade of a butcher for the reason that he slaughtered a goat and sold flesh thereof without obtaining a licence under the Butchers Ordinance. The evidence against the accused was that he, on one occasion, slaughtered a goat and sold flesh without a licence. But according to the facts of the present case a large number of goats are

killed during the festival in every year. Thus the facts of the said case are very much different from the facts of the present case. I therefore hold that the above judicial decision does not apply to the present case. For the above reasons, I am unable to agree with the contention advanced on behalf of 7th 8th and 9th respondents. The 8th and 9th respondents, in their objections, have admitted that animals sacrifice takes place in the said Kovil premises. For the above reasons I hold that the person who kills animals and/or the person who turns carcasses of animals into meat in the said Kovil premises carry on the trade of a butcher.

The 8th and 9th respondents admitted that animals sacrifice takes place in the Kovil premises. This shows that the animals are killed in the Kovil premises. Mr. Surendran PC (who initially appeared for the 7th, 8th and 9th respondents) admitted that the 7th 8th and 9th respondents give alms by using the flesh of the animals. For the above reasons, I hold that the 7th, 8th and 9th respondents have carried on the trade of a butcher. They should obtain a licence under the provisions of the Butchers Ordinance if they continue to kill animals in the Kovil premises and if they continue to turn carcasses of animals into meat.

Learned PC for the 7th, 8th and 9th respondents contended that the respondents could slaughter animals on the occasion of religious festivals under the proviso to section 17(1) of the Butchers Ordinance. They further contended that since slaughter of animals takes place on the festival day, it was not necessary for them to obtain a licence. Section 17(1) of the Butchers Ordinance reads as follows: "The proper authority for any area may, from time to time, by order published in the Gazette, prohibit the slaughter of animals in that area or any specified part thereof during any specified period:

Provided, however, that the proper authority may, for the purpose of permitting the slaughter of animals on the occasion of any religious festival or other special event, by notice exhibited at the office of the proper authority, declare that the Order shall not apply on such day or days as may be specified in such notice.”

What is the idea of enacting section 17 of the Butchers Ordinance? If this section was not enacted a licenced butcher can kill animals (stated in section 2) even on Vesak Full moon day or Poson full moon day or any poya day and can take up the position that he does so by virtue of the licence granted to him. Such a situation can be avoided by taking steps under section 17(1). What will happen if Hajji Festival falls on a poya day and the proper authority has published an Order under section 17(1) of the Butchers Ordinance and the people who celebrate Hajji Festival want to consume meat? If the proviso to section 17(1) was not enacted, the Order published under section 17(1) would be operative. In such a situation the proper authority acting under the proviso can bring alteration to the Order already published in order to avoid the problematic situation discussed above. Thus in my view for the proper authority to act under the proviso to section 17(1), the Order made under section 17(1) should exist. The action can be taken under the proviso, only if the proper authority has made an order under section 17(1). In my view permitting the slaughter of animals on the occasion of any religious festival or other special event is in the hands of proper authority and not in the hands of the priest of the Kovil or person in charge of the festival. Thus the priest of the Kovil or person in charge of a festival cannot, after killing the animals, take up the defence that he did it on the occasion of any religious festival if the proper authority had not published a notice under the proviso to section 17(1).

For the above reasons, I hold that the priest of the Kovil or the person in charge of the Kovil must obtain a licence under section 4 of the Butchers Ordinance to kill animals defined in Section 2 of the Butchers Ordinance.

The 8th and 9th respondents, in their statement of objections, admit that animal sacrifice takes place in the said Kovil. They (7th, 8th and 9th respondents) do not have a licence issued under the Butchers Ordinance. I therefore hold that they have violated section 4 of the Butchers Ordinance. There is no guarantee from the 7th, 8th and 9th respondents that they would not violate section 4 of the Butchers Ordinance at the next festival. If the 7th, 8th and 9th respondents or their agents or servants or employees kill animals without a licence issued under the provisions of the Butchers Ordinance, they will commit an offence and the police will then be entitled to prevent the killing of animals in the Kovil premises. Then the police should take actions to prevent the violations of the Butchers Ordinance. Learned President's Counsel for the respondents relying on the judgment of the Court of Appeal in the case of Thajudeen Vs Sri Lanka Tea Board and Another [1981] 2 SLR 471 [a decision by two Judges] contended that since the facts are in dispute a writ of mandamus cannot be issued. In the case of Thajudeen Vs Sri Lanka Tea Board and Another (supra) Ranasinghe J considered the following passage of the book titled 'Law of Writs and Fundamental Rights (2nd edition) Vol.2 page381 by Choudri' "Where the facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

Are the facts in dispute in the present case? I now advert to this question. The petitioners in their petition stated that the manner in which the goats and fowls were killed. This position was supported by the affidavit of Augustine Fernando.

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The 8th and 9th respondents have admitted the sacrifice of these animals in the Kovil premises. Thus it is clear that the killing of animals takes place in the Kovil premises. Both parties have admitted the killing of animals that takes place in the Kovil premises. When the petitioners state the manner in which the animals were killed in the Kovil premises, the 8th and 9th respondents merely denied the said averment but failed to state the manner in which they kill the animals. Therefore the facts are not in dispute. I therefore reject the contention of learned President's Counsel that this court cannot issue a writ of mandamus.

I now advert to the question whether cruelty to animals takes place in the Kovil premises. If I answer this question in the affirmative police will be entitled to take steps to prevent the cruelty to animals. In considering this question it is necessary to consider section 2(1) of the Cruelty to Animals Act which reads as follows:

“Any person who shall-

- (a) cruelly beat, ill treat, over-drive, over-ride, abuse, or torture, or cause or procure to be cruelly beaten, ill treated, over-driven, over-ridden, abused, or tortured, any animal;
- (b) by any act or omission cause unnecessary pain or suffering to any animal; or
- (c) convey or carry, or cause to be conveyed or carried, in any ship, boat, canoe, or in any vehicle, basket, box, or cage, or otherwise, any animal in such manner or position as to subject such animal to unnecessary pain or suffering,

shall be guilty of an offence, and shall be punished with a fine which may extend to one hundred rupees, or with imprisonment of either description for a term which may extend to three months, or with both.”

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The question that must be considered is whether when animals are killed in the Kovil premises whether unnecessary pain is caused to them. The animal, which the butcher is waiting to kill, should not see an animal being killed, or should not feel an animal has already been killed at this place; or should not get the smell of blood. This is why By Law No.6 relating to Slaughter Houses has been enacted. I have elsewhere of this judgment stated this By Law. What is the reason for this? The reason is that the animal which the butcher is waiting to kill then feels that same misery will befall on it. If such a thing takes place in the Kovil premises or anywhere in a slaughter house it causes unnecessary pain to the animal. Augustine Fernando in his affidavit says that carcasses of animals could be seen at the place where goats were slaughtered. For the above reasons, I hold that unnecessary pain had been caused to goats when they were killed in the Kovil premises and as such goats had been killed in an unnecessary cruel manner. The 8th and 9th respondents have admitted that killing of goats takes place in this Kovil premises. For the above reasons I hold that they (7th, 8th and 9th respondents) have violated the provisions of the Cruelty to Animals Act. There is no guarantee by 7th, 8th and 9th respondents that they would not violate the provisions of Cruelty to Animals Act at the next festival. Therefore Police will be entitled to prevent the violation of the provisions of the Cruelty to Animals Act.

I will now consider whether the provisions of the Cruelty to Animals Act are violated when the fowls are killed in the Kovil premises. Both petitioners and the 8th and 9th respondents admit the killings of fowls in the Kovil premises. The 8th and 9th respondents have not stated the manner in which the fowls were being killed. Augustine Fernando, in his affidavit filed in this court, states that hundreds of fowls being swung around many times after their necks were twisted and dashed

on the ground by males who may have been priests of the Kovil. On being so dashed fowls struggled for some times and died. The 7th, 8th and 9th respondents, in their objection, did not describe the manner in which fowls were killed although they admit the killings of fowls. When I consider all these matters I hold that fowls had been killed in this Kovil in the year of 2009 and 2010 in an unnecessary cruel manner and that 8th and 9th respondents have violated Section 4 of the Cruelty to Animals Act. There is no guarantee by the 7th, 8th and 9th respondents that they would not violate the said provisions during the next festive season. If they violate section 4 or any other provision of the Cruelty to Animals Act, police will be entitled to prevent the violation.

Learned PC cited Article 10 of the Constitution which reads as follows: "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice." Learned PC for the 7th, 8th and 9th respondents citing Article 10 of the Constitution contended that they have the freedom to follow a religion of their choice including the freedom to have or to adopt a religion or belief of their choice. I accept this contention. But no one is entitled to violate the law when he follows a religion or belief of his choice. I have earlier stated that if 7th or 8th or 9th respondents or their agents or servants or employees kill animals (defined in the Butchers Ordinance) without a licence, they will be committing an offence under Section 4(2) of the Butchers Ordinance. The punishment for the offence is a fine of Rs.100 and default of the payment of the fine entails six months imprisonment. This shows that violation of Section 4(1) Butchers Ordinance is an offence. Can one follow a religion or adopt a religion or belief of his choice violating the law? The obvious answer is no. Then the 7th, 8th and 9th respondents when following a religion or having a belief of their choice cannot violate the law.

Learned PC for the 7th, 8th and 9th respondents submitted that the Kovil has been conducting the animal sacrifice as a longstanding religious practice for the last 350 years and that therefore it should be allowed. But religious practice cannot be performed in violation of the law. I therefore reject the said contention.

The petitioners, in their petition, have sought a writ of prohibition restraining the 5th and/or 6th respondents or any person authorized by them from issuing an annual or temporary licence or any other approval under section 4 of the Butchers Ordinance to the 7th, 8th and 9th respondents or their representatives to carry out the slaughter of animals at the Kovil. Mr. CR De Silva President's Counsel who appeared for the petitioners except the 2nd petitioner submitted that he would not be asking for a writ of prohibition as such an application would be premature at this stage. But learned counsel for 2nd petitioner moved court to issue a writ of prohibition as prayed for. In considering this application I have to consider the following matters. If the 7th, 8th and 9th respondents, after fulfilling necessary requirements to maintain a slaughter house, make an application to issue a licence under the provisions of the Butchers Ordinance, can the proper authority refuse without accepting the application? The answer is no. the proper authority under the law is bound to consider it and take a decision to grant the licence or reject the application. If this court issues a writ of prohibition, the proper authority will not be able to exercise their duty under the Butchers Ordinance. For these reasons I hold the view that it is not correct for this court to issue a writ of prohibition. For these reasons, I refuse to issue a writ of prohibition as prayed for.

I have earlier held that 7th, 8th and 9th respondents carried on the trade a butcher; that they have killed animals without a butcher's licence; that they have violated section 4 of the Butchers the Ordinance and that there is no guarantee that they would not violate the section 4 of the Butchers Ordinance in future. I have

also held that they have violated the provisions of the Cruelty to Animals Act. I have also held that Police will be entitled to prevent the killing of animals if 7th, 8th and 9th respondents do not possess a licence under the Butchers Ordinance and if they violate the provisions of the Cruelty to Animals Act.

For the above reasons, I issuing a writ of mandamus direct the 1st, 2nd, 3rd and 4th respondents to take all necessary action as permitted and empowered by law to prevent

1. the slaughter of animals defined in the definition of the Butchers Ordinance at Sri Badra Kali Amman Kovil Munneswaram Chilaw if the 7th, 8th and 9th respondents do not possess a licence issued under Butchers Ordinance and/or if they violate the provisions of Butchers Ordinance and
2. the slaughter of animals defined in the definition of Cruelty to Animals Act at Sri Badra Kali Amman Kovil Munneswaram Chilaw if they violate the provisions of the Cruelty to Animals Act.

Judge of the Court of Appeal.

Deepalie Wijesundera J

I agree.

Judge of the Court of Appeal.

Sunil Rajapakshe J

I agree.

Judge of the Court of Appeal.