

**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 Writ of Certiorari,
Prohibition and Mandamus in terms of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Archbishop of Colombo

Bishops House

Colombo 08

Petitioner

Vs.

C.A (Writ) Application No: 1413/2006

- 1 Hon. Akila Viraj Kariyawasam,
Minister of Education,
Ministry of Education,
Isurupaya, Battaramulla.
- 2 Mr. W.M. Bandusena,
The Secretary,
Ministry of Education,
Isurupaya, Battaramulla.
- 3 Provincial Minister of Education,
Cultural & Art Affairs,
Kaduwela Road,

Battaramulla.

- 4 Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

- 5 Kolamba Thantrige Janaka
Pushpakumara,
Secretary – School Development
Society of Pamunuwa Primary
School, No.123/3, Pamunuwila,
Gonawala

- 6 M.L.S Perera,
Auditor –
School Development Society,
No.370, Bathalahena Watta,
Gonawala.

Added Respondents

BEFORE : L.U Jayasuriya J.
Deepali Wijesundera J.

COUNSEL : Ikram Mohamed PC with R. Hettiarachchi
for the Petitioner

Naomi Kahawita S.C for the 1st to 4th
Respondents

Samhan Munzir with Hassan Hameed for the 5th
and 6th Respondents

ARGUED ON : 19th May, 2016

DECIDED ON : 25th November, 2016

L.U Jayasuriya J.

The petitioner invoked the writ jurisdiction of this court vested under and in terms of Article 140 of the Constitution seeking a writ of Prohibition, Prohibiting the 1st Respondent from cancelling and/or revoking and/or annulling the divesting order published in the Government Gazette produced marked P11 dated 17.02.2006.

The Petitioner was the lawful owner of the land called Kongahawatta alias Kahatagahawatta situated in the village of Pamunivila consisting in extent of 1 Acre, 2 Roods and 4 perches as evidenced by document produced marked P1.

The Petitioner had constructed four buildings in which the school known as Pamunivila Roman Catholic Mixed School was conducted. (Hereinafter referred to as the said school).

The Petitioner states that the said school consisting of 1 Acre, 2 Roods was vested under and by virtue of the provisions of Assisted Schools and Training Colleges (Special Provisions) Act No.5 of 1961 as amended in the State for the purpose of administration of the said School by the government. The Petitioner further states that in the year 1978 the Government acquired another land containing an extent of 8 acres situated one mile away from the said school and constructed a three storied building in 1994, housing more than 24 classrooms with all the facilities.

The petitioner contends that on completion of the said construction the entire upper school from grades 6 to 11 of the Pamunivila Roman Catholic Sinhalese Mixed School was shifted to the newly constructed Pamunivila Maha Vidyalaya in or about 1995.

The Petitioner admits that classes for the years 3, 4 and 5 were conducted in the premises of the vested school. The Petitioner's agent Rev Father Ivan Perera who was the General Manager of Catholic Schools has requested the 3rd Respondent to divest the vested property by a letter dated 18.03.1998 produced marked P5.

It appears from the brief that after the exchange of some letters the divesting order produced marked P11 was issued by the Document marked P11. The Petitioner's complaint is that the 1st Respondent is not authorized to take steps to effect a cancellation of the divesting order produced marked P11.

The argument advanced by the Petitioner's counsel is that once the statutory power to divest property under the provision of the Act No 8 of 1961 as amended is exercised by the 1st Respondent, he does not have further power under the statute to revoke the said order as statute has not granted such power. Thus, any purported decision made to revoke or cancel the divesting order is void in law.

The 1st Respondent has submitted that his case rests on section 18 of the Interpretation Ordinance. Section 18 of the Interpretation Ordinance is as follows:

“Where by enactment whether passed before or after the commencement of this ordinance, confers power on any authority to issue any proclamation, order or any notification so issued or made may be at any time amended varied rescinded or revoked by the same authority and in the same manner, and subject to the like consent and conditions, if any, or by or in which or subject to which such proclamation, order or notification may be issued or made.”

The Petitioner cited a decision reported in 2001 ISLR 2008 where His Lordship S.N Silva C.J dealt with a claim submitted by the auctioneer in the proceedings instituted in the commercial high court of Colombo. The second decision cited by the Petitioner **Sivayanama and Another Vs People's Bank 2009 ISLR 180** deals with the Audi Alteram Partem Rule. This court is of the view that those two cases have no application to the case at hand.

The Petitioner submits that the effect of the S.18 of the Interpretation Ordinance has been considered by the Supreme Court in **Nadaraja Limited V Krichnadasan 78 NLR 155**. In this case the Supreme Court held that:

“Where the Minister has duly made an order under section 4(1) of the Industrial Disputes Act referring an industrial dispute for settlement by arbitration he has no power to revoke the said order of reference. “

It was further held that the rule of construction embodied in section 18 of the Interpretation Ordinance was not intended to apply to an order of reference made under section 4 of the Industrial Disputes Act and cannot be invoked to revoke or rescind the order of reference made in terms of section 4 of the said act.

Counsel for the 1st Respondent contend that the divesting order was obtained by misrepresentation of facts and once the true position was made known to him, he made an order cancelling the Divesting Order marked P11.

In support of his argument he cited **Methodist Tourist Association vs. Minister of Hindu Resources and Others 2006 3SLR 85.**

In that case, the Methodist Trust Association sought a Writ of Mandamus against the subject Minister to divest the property in suit on the basis that the school which was vested in the Crown in terms of Act no. 10 of 1961 has ceased to function as the building which housed the school was burnt down as a result of the communal riots of 1983. His Lordship Justice Sri Skandarajah dealt with Section 10 of the Act No. 10 of 1961 and dismissed the application.

In **James Perera vs Government Agent Kandy**, notices were caused to be published calling for the nomination and election of members to the village committee by the Government Agent. Subsequently, he canceled the same on the basis that Galaha Mixed School was not a convenient Polling place for the Inhabitants of the Ward. It was held that the Government Agent had the right to cancel the notices under section 15 of the Interpretation Ordinance.

This court is of the view that the decisions of those cases have no application to the case at hand.

This court is inclined to agree with the argument of the Petitioner's Counsel that Section 18 of the Interpretation Ordinance does not permit the revocation of the order made to revoke the gazette notification dated 17.02.2006 produced marked P11.

For the foregoing reasons, the Petitioner's Application in terms of Prayer (b) and (c) is allowed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL