

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

CA INJ/03/2017

1. The Bishop of Colombo,
2. L. N. Francis,
1st and 2nd Petitioners of; 368/3A,
Church of Ceylon - Diocese of Colombo,
Baudhaloka Mawatha, Colombo 07.
3. Rev. Crispus Chandrasekaran, St. Jame's Church,
No. 82, Kotahena Street, Colombo 13.

PETITIONERS

Vs.

1. Mr. Rupanatha,
Principal, C/Cathedral Vidyalaya, Kotahena.
2. Mr. P. Srilal Nonis, Provincial Director of Education,
Provincial Department of Education,
No.76, Ananda Kumaraswami Mw, Colombo-07
3. Mr. Ranjith Somawansa, Hon. Minister,
4. Mr. S.G. Wijayabandu, Secretary,
The 3rd & 4th Respondents of; Ministry of Education,
Cultural and Arts, Sports and Youth
Affairs and Information Technology,
Western Province, No. 89, 4th Floor, Ranmagapaya,
Kaduwela Road, Battaramulla.
5. Mr. Sunil Hettiarachchi, Secretary, Ministry of Education,
Isurupaya Battaramulla.
6. Officer-in-Charge, Police Station, Kotahena.
7. Mr. Isura Devapriya, Hon. Chief Minister of Western Province,
No. 32 Sir Marcus Fernando Mw, Colombo 07.
8. Hon. Attorney General,
Attorney General's Department, Colombo 12.

RESPONDENTS

Court of Appeal case no. CA/03/2017 Injunction**Before** : L.T.B. Dehideniya J. (P/CA)

A.L.S.Gooneratne J.

Pulasthi Hewamanne instructed by D.L. & F. de Seram for
the PetitionersDilrukshi Dias Wickramasinghe PC ASG with Ganga
Warkishte Arachchi SSC for the Respondents**Decided on** : 08.08.2017**L.T.B. Dehideniya J.**

This is an application for an injunction under article 143 of the Constitution.

The Petitioners case is that the Government had given a land in extent of 01 Acre and 01 perch on a Crown Grant in 1854 and a Church was built in the said land in 1877. A portion of the said land consisting of an extent of 02 Roods and 14 Perches has been sold to the Good Shepherd Convent in 1899. Thereafter in 1962, the Cathedral College which was lying to the northern and southern boundaries of the church with land in extent of 20 Perches was acquired by the State under the Assisted Schools And Training Colleges (Supplementary Provisions) Act No.08 of 1961. In 1969 another portion of land in extant of 5.2 Perches had been acquired by the State. The Petitioners submit that after all these alienations, the church was left with a land in extant of 02 Roods and 39.20 Perches.

The Petitioners submit that a survey of the church land had not been done subsequent to the said dispossessions. They further submit the

Petitioners wanted to survey the entire land to ascertain the boundaries of the church land but were denied the permission to survey the school land.

There is no doubt that the Petitioners can survey their own land but they cannot, as of a right, survey the lands belong to others. It may be true that the Petitioners were the original owners of the entire land, but either selling by the Petitioners or acquiring by the State, the Petitioners have lost the ownership of the said portions.

The Petitioners have submitted a sketch prepared by them showing the school and church premises and its boundaries. The learned President's Counsel for the Respondents tendered across the Bar Table certain photographs showing the ground situation of the school and the church including the parapet walls. No affidavit is sworn to testify the truth of the said photos, but those photographs speak for itself. There are two walls separating the entrance to the church from the rest of the land. The school buildings are situated outside the wall which separates the entrance. The Petitioners have failed to submit any evidence establish that the land beyond the wall was in the possession of the Petitioners.

The Petitioners submit that the Respondents are constructing a building encroaching in to the church land. They submit that they have already send a notice under section 461 of the Civil Procedure Code indicating that a civil action will be filed and until one month period expires, they are unable to file an action in a Court of first instance. Therefore they made this application to this Court under Article 143 of the Constitution seeking for an injunction to prevent the Respondents from constructing the building.

As I said earlier, the Petitioners are unaware of the boundaries of the church land. When this fact is considered with the photographs that show the school is situated outside the wall separating the entrance to the church,

the Petitioners have failed to establish that the Respondents are constructing the building in the church premises.

The Petitioners application is to prevent a school building been constructed. The building under construction was put on track after demolishing two existing buildings. The documents tendered by the learned President's Counsel for the Respondents are official communications between Respondents and they establish this fact. If the Court issues an injunction to prevent the building construction the school children will have to face immense hardships specially this being a school situated in a small extent of land. The equitable consideration does not favour the Petitioners.

Under these circumstances, I refuse the application for injunction and dismiss the application.

President of the Court of Appeal

^N
A.L.S. Goon^earatⁿne J.

I agree.

Judge of the Court of Appeal