

**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 *Certiorari* and *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Rev. Beligalle Jinawansa Maha Nahimi, MahaNayake of “Amarapura Siri Saddammawansa Dheerananda Sanga Sabawa” of Chethiyagara Purana Maha Viharaya, Kalegana, Galle.
2. Rev. Rajawatte Vappa Thero, AnuNayake of “Amarapura Siri Saddammawansa Dheerananda Sanga Sabawa” of Sri Jayashekararamaya Purana Maha Viharaya, Kuppiyawatta, Colombo 10.
3. Rev. Borelle DhammaGawesa Thero of Sri Pada Pathma Viharaya, Gallelegama, Kirigalwewa, Madewachchiya.
4. Rev. Gallelegama Dhammaparinda Thero of Sri Pada Pathma Viharaya, Gallelegama, Kirigalwewa, Madewachchiya.
5. Rev. Gallelegama Dhammabandu Thero of Sri Pada Pathma Viharaya, Gallelegama, Kirigalwewa, Madewachchiya.
6. Rev. Gallelegama Dhammabadra Thero of Sri Pada Pathma Viharaya, Gallelegama, Kirigalwewa, Madewachchiya.

7. Rev. Gallelegama Dhamma Viharee Thero of Sri Pada Pathma Viharaya, Gallelegama, Kirigalwewa, Madewachchiya.
8. Rev. Gallelegama Dhamma Dassana Thero of Sri Pada Pathma Viharaya, Gallelegama, Kirigalwewa, Madewachchiya.
9. Rev. Dhaapane Dhamma Kosala Thero of Sri Vijaya Bimbaramaya, Gammadapitiya, Hakmana.
10. Rev. Middeniya Dhammaseela Thero of Sri Vijaya Bimbaramaya, Gammadapitiya, Hakmana.
11. Rev. Mahavilachchige Dhamma Sarana Thero of Sri Vijaya Bimbaramaya, Gammadapitiya, Hakmana.
12. Rev. Bandathtara Dhamma Vilaasa Thero of Sri Vijaya Bimbaramaya, Gammadapitiya, Hakmana.
13. Rev. Udumalagala Piyananda Thero of Parama Vichithrananda Maha Viharaya, Galwadugoda, Galle.
14. Rev. Monaragala Piyasiri Thero of Parama Vichithrananda Maha Viharaya, Galwadugoda, Galle.
15. Rev. Monaragala Piyawansa Thero of Parama Vichithrananda Maha Viharaya, Galwadugoda, Galle.
16. Rev. Morawake Sumanathissa Thero of Sri Vidyaraaja Maha Piriwena, Galwadugoda, Galle.
17. Rev. Kotawila Nandasara Thero of Sri Jinendraramaya, Aththilagoda, Galle.

18. Rev. Koongala Buddhima Thero of Bauddha  
Madyastanaya,

1/24, Station Road, Matara.

19. Rev. Siyabaleawe Thupananda Thero of  
Sangamittha Viharaya,

Eliyas Pedesa, Colombo 09.

4<sup>th</sup> to 19<sup>th</sup> Petitioners being minors appearing by  
their next friend 2<sup>nd</sup> Petitioner.

**Petitioners**

**CA (Writ) Application No: 67/2015 Vs.**

Mr. Chandraprema Gamage,  
Commissioner General of Buddhist Affairs,  
Ministry of Buddhasasana and Religious  
Affairs,  
No. 135, Dharmapala Mawatha,  
Colombo 07.

**Respondent**

**Before** : P. Padman Surasena, J. (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : Manohara de Silva, PC with Hirosha Munasinghe for the  
Petitioners.

Nayomi Kahawita, SC for the Respondent.

**Argued on** : 10/10/2017

**Written Submission on:** 04/12/2017

**Judgment on : 25/05/2018**

**A.L. Shiran Gooneratne J.**

The Petitioners have invoked the jurisdiction of this Court, seeking a mandate in the nature of a writ of Certiorari to quash the decision communicated to the 2<sup>nd</sup> Petitioner by the Respondent, by letter dated 16/07/2014, marked P5, that the Department of Buddhist Affairs does not recognize a Nikaya/ Chapter by the name “Amarapura Siri Saddammawansa Dheerananda Sanga Sabawa”, (hereinafter sometimes referred to as the “Sanga Sabawa”) and the rejection of registration of declarations made by 3<sup>rd</sup> to 19<sup>th</sup> Petitioners in terms of Section 4, of the Buddhist Temporalities Ordinance No. 19 of 1931 (as amended), (hereinafter sometimes referred to as “the Act”) submitted in terms of Section 41, of the Act. The Petitioners have also sought a mandate in the nature of writ of Mandamus to direct the Respondent to take appropriate steps to register the said declarations in terms of the said Act.

When this case was taken up for argument, both parties agreed that the case could be disposed of by written submissions and accordingly, the Petitioners and the Respondent’s written submissions are filed of record.

The Petitioners state that, there are around 88 temples and about 243 bhikkhus belonging to the said Sanga Sabawa and further state that due to divisions among the bhikkhu community a number of Nikayas or Chapters came

into existence other than the three main Nikayas in Sri Lanka, namely, Shyamopali Maha Nikaya, Amarapura Maha Sanga Sabawa and Ramangya Maha Nikaya. The Petitioners submit that under the said Act, there is no requirement for the said Sanga Sabawa to be affiliated to either of the three main Nikayas in Sri Lanka, to have their declarations registered under the said Act. However, by letter dated 09/10/2013, marked R3, Rev. Belideniye Sridhamma and Rev. Rajawatte Wappa made an application to the Respondent requesting approval for registration of the said Sanga Sabawa as a new chapter under the Amarapura Maha Sanga Sabawa. The Respondent inter alia, submits that in terms of the constitution of the Sri Lanka Amarapura Maha Sanga Sabawa marked R1 and R2, it is conventionally and customarily accepted that the appointment of a Maha Nayake Thero of a new sub chapter affiliated to the Sri Lanka Amarapura Maha Sanga Sabawa has to be accepted or recognized by the said Maha Sanga Sabawa.

Section 41(2) (a) of the Buddhist Temporalities Ordinance (as amended) states;

*(a) in respect of every person who becomes a bhikkhu after the commencement of this Ordinance.*

*(i) if he becomes an upasampada bhikkhu he shall procure from the Commissioner of Buddhist Affairs copies of from A in the Schedule and enter therein the details regarding himself for which space is there provided; and*

*(ii) if he becomes a samanera the robing tutor shall procure copies of from B in the Schedule and enter therein the details regarding such samanera for which space is there provided.*

(b) .....

From B contains, cages 1-15 to be filed, inter alia, giving the name of the Nikaya and the name of Mahanayake Thero.

The Respondent by letter date 07/11/2013, marked R4, has sought advice on this issue from the Mahanayake Thero of the Amarapura Sanga Sabawa, which has been copied to the said bhikkhus.

For reasons stated in letter dated 12/11/2013, marked R5, the Mahanayake Thero of the Amarapura Maha Nikaya has not approved the new chapter created in the name of the Amarapura Nikaya. The Respondent thereafter has communicated the said decision to the 1<sup>st</sup> Petitioner by the impugned letter dated 16/07/2014, marked P5.

The Respondent by letter dated 07/11/2013, marked R4, has informed the Petitioners concerns to the Mahanayake Thero of the Amarapura Sanga Sabawa and sought counsel regarding the application to register a new chapter in the name of the said Sanga Sabawa. Thereafter, by letter dated 12/11/2013, marked R5, the Mahanayake Thero of the Amarapura Maha Sanga Sabawa, for reasons stated, informed the Petitioner, that it would not be appropriate to grant the registration sought by the said Sanga Sabawa. Accordingly, the Respondent has communicated

the said decision by the impugned letter marked P5, to the Petitioners. It is observed that the decision not to grant the Sanga Sabawa of the required registration as a chapter/ Nikaya was made in consideration of the observations submitted by the Mahanayake Thero of the Amarapura Maha Sanga Sabawa.

In the circumstances, the question arises, as a party affected by the outcome of this writ application, shouldn't the Maha Nayake Thero of the Amarapura Nikaya made a Respondent to the Petition. The Respondent in his statement of objections has made reference to the Petitioners of directly violating the rights of the Sri Lanka Amarapura Sanga Sabawa, and the Petitioners failure to produce vital material documents to establish their claim for registration in terms of clause 5.00 of the Amended Constitution produced marked, R2.

In the case of *Wijeratne Vs. Ven. Dr. Paragoda Wimalawansa Thero and others, (2011) 2 SLR 258*, the Supreme Court considered the effect of necessary parties to an application, where the court held, that;

*“those who would be affected by the outcome of the writ application should be made respondents to the application”*

As noted earlier, the said Sanga Sabawa, by letter dated 09/10/2013, marked R3, has made an application to be registered as a new chapter which is formed within and submits to the authority of the Amarapura Maha Sanga Sabawa. For reasons stated in letter dated 12/11/2013, marked R5, the said declarations have been rejected to be registered by the said Amarapura Maha

Sanga Sabawa, a party which is not before court. In the circumstances, the Amarapura Maha Sanga Sabawa is a necessary party and should be made a Respondent to this Petition, failure to do so, is fatal to the validity of this Petition.

In the circumstances, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**P. Padman Surasena, J. (P/CA)**

I agree.

PRESIDENT OF THE COURT OF APPEAL