

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

In the matter of an application for Mandate
in the nature Writ of Certiorari, Writ of
Prohibition and Writ of Mandamus under
and in terms of Article 140 of the
Constitution of Republic of Sri Lanka.

C A Writ Application
No. 162/2018

Gunathilake Alahakoon Mudiyansele
Udaya Emetiyagoda,
Ematiyagoda Walawwa, Emetiyagoda,
Godakawela.

Petitioner

Vs.

- 1 Nimal Kottawalagedara
Commissioner General of Buddhist Affairs,
"Dahampaya", No. 135,
Srimath Anagarika Dharmapala Mawatha,
Colombo 07.
- 2 Hon. Gamini Jayawickrama Perera,
Minister of Buddha Sasana, 135,
Srimath Anagarika Dharmapala Mawatha,
Colombo 07.

3 Dilruwan Rajapaksha,
Office of the Basnayaka Nilame,
Ruhunu Maha Katharagama Devakata,
Katgharagama.

Respondents

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

A.L. Shiran Gooneratne, J.

Counsel : Tharindu Rajakaruna for the Petitioner

instructed by Nalin Samarakoon

Sumathi Dharmawardene, SDSG with Chaya Sri

Nammuni, SSC and Maheshika Silva, SC for the

1st and 2nd Respondents

Chathura Galhena with Manoja Gunawardena for

the 3rd Respondent

Supported &

Decided on : 04.05.2018

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

The Petitioner in this application seeks several writs to prevent the 3rd Respondent from acting as the temporary trustee of the Kataragama Maha Devalaya. Section 17 of the Buddhist

Temporalities Ordinance empowers the Commissioner of Buddhist Affairs to make a provisional arrangement for the purpose of the duties of the office of the trustee pending the appointment of a successor in case of suspension of the incumbent trustee.

The Petitioner does not complain that the Commissioner of Buddhist Affairs had acted without powers or in excess of his powers.

The Petitioner only relies on two grounds in support of this application.

Firstly, he claims that the Petitioner has had a legitimate expectation of being appointed as the temporary trustee of the Kataragama Maha Devalaya by the 1st Respondent.

Secondly, it is the submission of the learned counsel for the Petitioner that the 3rd Respondent is unfit for appointment of the trustee of the Kataragam Maha Devalaya.

Learned counsel for the Petitioner submits that on long standing traditions the Petitioner should have been appointed to the post of acting Basnayake Nilame of Kataragama Maha Devalaya. Petitioner relies on the documents produced marked

P 13 and **P 15** to prove the claimed tradition.

This Court observes that the **P 13** is a letter written by Basnayaka Nilame of Uggal Aluth Nuwara Kataragama Devalaya on 31.01.2015. **P 15A**, **P 15B**, **P 18C** and **P 18D** are affidavits sworn by other Basnayaka Nilames on 11.04.2018. Having considered these documents, this Court is of the view that the Petitioner has not established to the satisfaction of this Court that there has been such a tradition.

Petitioner relies on the documents produced marked **P 11** to argue that the 3rd Respondent is unfit for this appointment. This Court observes that **P 10** is only a print out of a website. In any case, learned counsel for the 3rd Respondent submitted to this court that the 3rd Respondent is no longer holding any public office and in particular it was so at the time of his impugned appointment. Learned counsel for the Petitioner stated to Court that he is satisfied with that statement from the learned counsel for the 3rd Respondent. This Court observes that **P 11** is only an article published in a newspaper as a general news item and hence it is not possible for this Court to accept that as evidence. In any case, the contents of the documents produced marked

P 11 does not state anything adverse to the 3rd Respondent.

In these circumstances, this Court is of the view that the Petitioner has failed to prove the two grounds he had relied on, to canvass for writs prayed for by him in this application. Therefore, this Court decides to refuse to issue notices on the Respondents. Application is dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J.

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-