

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

1. Venerable Halmillawe Saddhatissa
Thero,
Devanampiyathissa Pura Viharaya,
Tissawewa,
Anuradhapura.
2. H.M. Jinasena,
No. 440,
Devanampiyathissa Pura,
Tissawewa,
Anuradhapura.
Petitioners

CASE NO: CA/395/2016/WRIT

Vs.

1. R.M. Wanninayake,
District Secretary,
District Secretariat,
Anuradhapura.
2. G.A. Kithsiri,
Divisional Secretary,
Madyama Nuwara Gampalatha,
Pandulugama.
3. R.M.P.M. Herath,
Commissioner General of Lands,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

4. M. Thusaisingham,
Director General Irrigation,
No. 230,
Bauddhaloka Mawatha,
Colombo 7.
 5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
- Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Nimal Jayasinghe for the Petitioner.
U.P. Senasinghe, S.C., for the Respondents.

Written Submissions:

by the Petitioner on 20.07.2018

by the Respondents on 13.08.2018

Decided on: 04.09.2018

Samayawardhena, J.

The two petitioners as public spirited citizens have filed this application basically to prevent water pollution of Tissawewa in Anuradhapura by human activities such as bathing, washing vehicles, littering etc. They seek in the prayer to the petition (a) to issue a writ of certiorari to quash the decision taken by the 1st respondent-District Secretary of Anuradhapura to relax the prohibition on bathing in Tissawewa by P3; (b) to issue a writ of mandamus compelling the 1st respondent to re-impose the prohibition contained in P2; and (c) to issue a writ of mandamus to

compel the 1st-4th respondents to take appropriate steps to prevent water pollution in Tissawewa.

P2 is a Report of the District Agricultural Committee of Anuradhapura dated 24.06.2016. According to that Report, the Committee has *inter alia* discussed the subject of "*taking steps to prevent water pollution in Tissawewa due to bathing*" (විෂය: නිසා වැවේ දිය නැම නිසා ජලය අපවිත්‍ර වීම වළක්වා ගැනීමට පියවර ගැනීම) and "*arrived at a consensus on principle to prohibit bathing in Tissawewa*" (දිස්ත්‍රික් කෘෂිකර්ම කමිටුවේ සියලුම සාමාජිකයින්ගේ එකඟතාවය මත නිසා වැවේ දිය නැම තහනම් කිරීමට ප්‍රතිපත්තිමය එකඟතාවයකට එළඹෙන ලදී.) "*subject to use by the residents around Tissawewa for their daily purposes*" (කෙසේ වෙතත් මෙහිදී වැව අවට පදිංචිකරුවන්ගේ දෛනික අවශ්‍යතා සඳහා වැව අපවිත්‍ර නොවන ආකාරයෙන් පරිහරණය කිරීමට බාධාවක් නොවන ලෙස මෙය ක්‍රියාත්මක විය යුතු බවද දිසාපතිවරයා විසින් ප්‍රකාශ කරන ලදී).¹ In my view, no firm decision to implement forthwith prohibiting bathing in Tissawewa has been taken by the said Committee at the said Meeting, and this is made clear by the last paragraph of the said section of the Report, which says that the relevant institutions including the Municipal Council of Anuradhapura, Irrigation Department were informed of to look into the legal position to take steps in this regard. (තවද, මේ පිළිබඳව අදාළ ආයතන වන අනුරාධපුර මහනගර සභාව, වාරිමාර්ග දෙපාර්තමේන්තුව ඇතුළු ආයතන වලට මෙහි සම්බන්ධයෙන් ක්‍රියාමාර්ග ගැනීමට අදාළ නීතිමය තත්ත්වය පිළිබඳව සොයා බලන ලෙසටද දැනුම් දෙන ලදී.)

Be that as it may, the principal relief sought by the petitioners is to issue a writ of certiorari to quash the decision taken by the 1st respondent to relax the prohibition against bathing in Tissawewa

¹ Vide pages 3-4 of the report.

by P3. It is the position of the petitioners that, by P3 dated 24.08.2016, the 1st respondent "*relaxed the said prohibition (contained in P2) and permitted only those who are resident around the tank to bathe in Tissawewa until facilities for bathing will be provided to them.*" This relaxation contained in P3, in my view, is not a novel thing as the same is contained in P2 as well, as seen from what I have quoted above from the Report of P2. The main relief of the petitioners is therefore misconceived and cannot be granted.

The second relief sought by the petitioners is to issue a writ of mandamus compelling the 1st respondent to re-impose the prohibition contained in P2. If there is no relaxation of the prohibition contained in P2, the necessity of re-imposing the prohibition does not arise.

The final relief sought by the petitioners is to issue a writ of mandamus compelling the 1st-4th respondents to take appropriate steps to prevent water pollution in Tissawewa. This relief is not specific. The petitioners shall state precisely the appropriate steps according to them the said respondents are legally bound to take to prevent water pollution in Tissawewa, and only then can the Court consider whether the respondents shall be compelled to take such steps. Court cannot by mandamus compel the respondents to do what they are not authorised to do or what they are unable to do in practical terms.

The petitioners in paragraph 36 of the petition state that pollution in Tissawewa shall be avoided (a) since it is the main source of water for drinking purposes of the residents in the sacred area of the city of Anuradhapura and (b) for performance of religious rites. The (a) above was strongly supported by the Report P6 issued by

the National Water Supply and Drainage Board. When the respondents in their objections took up the position that according to the case of the petitioners National Water Supply and Drainage Board is a necessary party, the petitioners in paragraph 4.7 of the written submissions have taken up the position that "*The petitioners are exclusively concerned with the supply of water from Tissawewa for performance of religious activities and they are not so concerned with the supply of water for drinking purpose.*"

The respondents in their objections have taken up the position that water of Tissawewa is not nowadays used to perform religious rites, and this has not been disputed by the petitioners, and in reply say that it is due to the water pollution of Tissawewa. However there is no evidence before Court from any responsible party including the Chief Prelate in charge of Sri Maha Bodhi that the water of Tissawewa is not now used for religious rites due to pollution.

Application of the petitioner is dismissed but without costs.

Before I part with this Judgment it must be emphasised that there cannot be any doubt that water pollution of Tissawewa shall be stopped. However blanket prohibition of bathing without a viable alternative will gravely affect the ordinary devotees who flock to Anuradhapura for religious observances and also the daily lives of residents in the surrounding areas. A right balance between these two competing interests shall be the order of the day and steps in that direction shall in my view be taken not by District Agricultural Committees but by national level with the direct involvement of the central government for the greater benefit of the public.

Judge of the Court of Appeal