

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

W.E. Viswasam,  
No. 34/3,  
Pragathi Mawatha,  
Kerawalapitiya,  
Hendala,  
Wattala.  
And Two Others  
Petitioners

**CASE NO: CA/WRIT/418/2015**

Vs.

Wattala Pradeshiya Sabhawa,  
Kerawalapitiya,  
Wattala.  
And 8 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Saliya Peiris, P.C., with Pulasthi Hewamanna  
for the Petitioner.  
Aravinda Aturupana for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents.

Decided on: 12.03.2019

Samayawardhena, J.

The petitioners are followers of a religion known as *Jehovah's Witnesses*. The matter in issue concerns of construction of a religious hall, peculiar to that religion, known as *Kingdom Hall*.

It is the contention of the petitioners that, first, the 1<sup>st</sup> respondent Pradeshiya Sabha granted the approval to construct the said building by P8 dated 14.11.2014 (read with P4(a), P5(a), P5(b) and P15), but later, by P11 dated 05.05.2015, suspended the said approval, which is *ultra vires*.

Accordingly, the petitioners filed this application seeking (a) to quash P11 by way of writ of certiorari; and (b) to compel the respondents by way of writ of mandamus to allow the petitioners to continue with the construction; and (c) to prevent the respondents by way of writ of prohibition from interfering with the construction of the said building.

According to P11, approval for construction has been suspended due to protests by the people of the area who have *inter alia* given a letter of protest with about 150 signatures, which has been tabled before the Pradeshiya Sabha on 29.04.2015. The Chairman on behalf of the Pradeshiya Sabha has not cancelled the approval but only suspended it "*until recommendations are obtained from the relevant institutions*".

What are the relevant institutions to obtain recommendations from? This is stated in P6, which is the application tendered by the petitioners to the Pradeshiya Sabha, seeking the approval for the construction of the religious building. The Chairman of the Pradeshiya Sabha, as seen from Page 4 of P6, has, on 14.11.2014, specifically mentioned that, as this is a religious

construction, the Pradeshiya Sabha has no objection to the construction after obtaining the recommendation from the Ministry of Religious Affairs.

It is important to note that P8, which the petitioners heavily rely on, is also of the same date, i.e. 14.11.2014, and signed by the same Chairman. Simply stated, P6 and P8 have been issued on the same day by the same officer—the Chairman of the Pradeshiya Sabha. Therefore those two documents are inseparable and shall be read and understood together.

This has been suppressed by the petitioners in the petition. This is a material fact, nay the main fact, which goes to the root of the matter. Between P6 and P8, it appears that, some unconnected and irrelevant documents have been introduced—I do not know why?<sup>1</sup> The petitioners have not acted with *uberrima fides*, and that itself warrants dismissal of the application *in limine*.

It is clear that after P6, the petitioners did not obtain the recommendation for the construction from the Ministry of Religious Affairs, and it appears to me that it has not been obtained up to now.

It is this recommendation which was referred to by the Chairman in P11 dated 05.05.2015. This is made amply clear by looking at P12, written by the Chairman on the following day, i.e. on 06.05.2015, to the Divisional Secretary whereby the Chairman informed the Divisional Secretary that he has sent the relevant application to the Divisional Secretary on 04.03.2015 to

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<sup>1</sup> As seen from page 2 of P6, the application has been tendered on 24.10.2014. P7 is a document dated 17.02.2014. Also there is no relevancy of the List of Names of the Jehovah's Witnesses filed before P7.

obtain the approval for the construction from the Ministry of Religious Affairs. A copy of this letter has been marked by the respondents as 1R3.

The respondents have, with their objections, tendered a circular/letter dated 02.09.2011 issued by the Secretary to the Ministry of Buddhasasana and Religious Affairs marked 1R1 whereby the Divisional Secretaries and Local Bodies have been informed to obtain approval from the that Ministry before granting permission to construct religious buildings in order to maintain religious harmony among the general public in the area and to avoid conflicts on different religious beliefs/faiths.

In paragraph 2 of R1, it is stated that the approval from the Ministry shall be obtained through “*Form අංක 01*”. P6 referred to above, as seen from page 1, is “*Form අංක 01*”. That means, the petitioners had been aware of the procedure although they now say insisting approval from an “*unknown Ministry*” is *ultra vires*.

If the petitioners challenge 1R1 issued by the Secretary to the Ministry of Buddhasasana and Religious Affairs, the Secretary to the Ministry of Buddhasasana and Religious Affairs shall be a necessary party. But he is not a party to these proceedings. Without giving him a hearing, 1R1, cannot, in any event, be declared null and void.

For the aforesaid reasons, I dismiss the application of the petitioners with costs.

Judge of the Court of Appeal