

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

The Thiruketheeswaram,
Temple Restoration Society,
“Saraswathy Hall”,
No. 75,
Lorenz Road,
Colombo 4.
Petitioner

CASE NO: CA/WRIT/153/2015

Vs.

1. M.Y.S. Deshapriya,
District Secretary of Kachcheri,
Manner.
2. K.S. Vasanthakumar,
Divisional Secretary,
Divisional Secretariat,
Esplanade Road,
Manner.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Dr. K. Kanag-Isvaran, P.C., with Lakshmanan
Jeyakumar for the Petitioner.
Farzana Jameel, P.C., A.S.G., for the
Respondents.

Decided on: 10.05.2019

Samayawardhena, J.

The petitioner filed this application against the two respondents, the District Secretary (Government Agent) and the Divisional Secretary of Mannar respectively, basically seeking a writ of prohibition prohibiting the respondents from proceeding with the inquiry referred to in P3. P3 is a letter written by the Divisional Secretary to the petitioner stating *inter alia* that “*Upon a complaint made by Mr. Sivakumar Namasivayam, an elected member of the Board of Trustees, and others, the Government Agent, Mannar has appointed me as the Commissioner in terms of section 102(4) of the Trusts Ordinance to inquire into the said complaint.*” The “*complaint*” referred to in P3 has been marked as P11. This “*complaint*” is not a “*plaint*”. According to section 102(3) of the Trusts Ordinance, what the Commissioner shall inquire into is not the “*complaint*”, but “*the subject-matter of the plaint*”. In *Velautham v. Velauther* (1957) 61 NLR 230 at 231-232 Basnayake C.J. stated that “*the commissioners cannot make such a report unless the plaint is annexed to the petition presented to the Government Agent*”. Admittedly, no such plaint has been annexed to the complaint/petition sent by Namasivayam and others to the Government Agent.

Section 102(3) reads as follows:

No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent of the Administrative District in which such place or establishment is situate praying for the appointment of a commissioner or commissioners to inquire

into the subject-matter of the plaint, and unless the Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported—(a) that the subject-matter of the plaint is one that calls for the consideration of the court; and (b) either that it has not proved possible to bring about an amicable settlement of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at.

Section 102(4) reads as follows:

It shall be the duty of the Government Agent, in any case in which he shall have good reason to believe that the persons presenting such petition or any five of them are persons interested within the meaning of subsection (2) of this section, for which purpose he may require to be satisfied by affidavit or otherwise, to appoint for the purposes of the inquiry a commissioner or commissioners whom he may consider to be a person or persons of acknowledged standing and repute in the general or local religious community concerned;

Provided that the Government Agent may appoint himself as the commissioner or as one of the commissioners;

Provided further, that the Government Agent may require the petitioners to deposit with him an amount sufficient to cover the reasonable expenses of the commissioner or commissioners in respect of traveling expenses and subsistence incidental to the inquiry prayed for and any

such costs certified by the Government Agent to have been properly incurred for the purposes of the inquiry and to have been duly paid shall be deemed to be costs in the action.

The argument of the learned ASG that the plaint is necessary to be tendered only if the complainant decides to go to Courts, and there is no prohibition for the Government Agent/District Secretary to hold an inquiry into any complaint as it might end up in a settlement is devoid of merit. The inquiry under section 102 shall necessarily be on “*the subject-matter of the plaint*”.

I issue a writ of prohibition prohibiting the 1st and 2nd respondents from taking further steps on the inquiry contemplated in P3. No costs.

Judge of the Court of Appeal