

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

1. Abdul Careem Jamal Mohideen,  
The President,  
Jama-Athul Muslimeen,  
Kaduwela Branch,  
37, Araliya Mawatha, Kaduwela.
2. Seinulafdeen Samoon,  
The President,  
Jama-Athul Muslimeen,  
Division 01, Pulmuddai.

**PETITIONERS**

**CA (Writ) Application No. 52/2017**

Vs.

1. The Director,  
Department of Muslim Religious and  
Cultural Affairs,  
No. 180, T.B. Jaya Mawatha,  
Colombo 10.
2. Sultan Naina Mohamed  
No. 15, Hewagama, Kaduwela.

3. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J

**Counsel:** E. Thambiah with S. Vijayakumar for the Petitioners

Ms. Chaya Sri Nammuni, Senior State Counsel for the 1<sup>st</sup> and 3<sup>rd</sup>  
Respondents

M. Yusuf Nazar for the 2<sup>nd</sup> Respondent

**Written Submissions:** Tendered on behalf of the Petitioners on 2<sup>nd</sup> January  
2019 and 13<sup>th</sup> May 2019

Tendered on behalf of the 1<sup>st</sup> Respondent on 5<sup>th</sup>  
December 2018 and 3<sup>rd</sup> June 2019

**Decided on:** 17<sup>th</sup> June 2019

**Arjuna Obeyesekere, J.**

When this matter was taken up on 13<sup>th</sup> May 2019, the learned Counsel for all parties moved that judgment be delivered on the written submissions that would be filed by the parties. While written submissions have been tendered on behalf of the Petitioners and the 1<sup>st</sup> Respondent, written submissions have not been tendered on behalf of the 2<sup>nd</sup> Respondent, inspite of being afforded several opportunities of doing so.

The Petitioners have filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to cancel the registration granted by the 1<sup>st</sup> Respondent to three organisations, namely Masjid-un-Noor Jummah Mosque, Masjidun Noor Jummah Mosque and Madrasathun Noor;
- b) A Writ of Mandamus to inquire into the registration of the said organisations and the activities of the said organizations;
- c) A Writ of Mandamus to accept the application of the 1<sup>st</sup> Petitioner to register the Weliwita Jumma Mosque.

The facts of this matter very briefly are as follows.

The 2<sup>nd</sup> Petitioner states that he is the President of the Jama-athul Muslimeen, an Islamic call and guidance centre which the Petitioners state is registered with the Department of Muslim Religious and Cultural Affairs as a Muslim welfare association. The 1<sup>st</sup> Petitioner states that he is the President of the Kaduwela Branch of the said Jama-athul Muslimeen, which the Petitioners claim is responsible for the operation of a mosque at premises No. 37C, Araliya Mawatha, Weliwita, Kaduwela. The 1<sup>st</sup> Petitioner states that he is the owner of the said premises and that he has donated the said premises to the Jama-athul Muslimeen, subject to his life interest. This Court must observe that the Petitioners have not produced any documentary proof to support their position that a Mosque is being carried out at the said premises by them.

The 1<sup>st</sup> Petitioner states that he made an application to the 1<sup>st</sup> Respondent to register the Weliwita Jummah Mosque at the aforementioned address. The Petitioners state that one of the requirements for the registration of a mosque is that the land on which the Mosque is situated should belong to the person making the application for the registration of the Mosque. The Petitioners state that they have complied with this requirement. The 1<sup>st</sup> Petitioner states further that the 1<sup>st</sup> Respondent has refused to accept the said application as three other organizations, namely Masjid-un-Noor Jummah Mosque, Masjidun Noor Jummah Mosque and Madrasathun Noor have been registered by the 1<sup>st</sup> Respondent at the same address as that of the Petitioners. The Petitioners claim that the registration of the aforementioned Mosque and other organisations at the said address is *ultra vires* the powers of the 1<sup>st</sup> Respondent as the said Mosque and the organisations do not have any ownership to the said land and that consequently, the refusal by the 1<sup>st</sup> Respondent to accept the application of the 1<sup>st</sup> Petitioner on the basis that a Mosque and other organisations have been registered at the said address is illegal. It is in these circumstances that the Petitioners have sought the aforementioned relief.

The learned Senior State Counsel appearing for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have taken up the position that granting approval for the registration of a Mosque is the function of the Muslim Mosques and Charitable Trusts or Wakfs Board and that the failure on the part of the Petitioners to name the said Board and its members is fatal to the maintainability of this application.

The learned Senior State Counsel has also taken up the position that approval has not been granted by the Muslim Mosques and Charitable Trusts or Wakfs Board for the registration of the Mosque belonging to the Petitioners and

therefore, the 1<sup>st</sup> Respondent is under no legal obligation to register the said Mosque.

The long title of the Muslim Mosques and Charitable Trusts or Wakfs Board Act No. 13 of 1956, as amended (the Act) specifies that it is an Act to provide for the registration of Mosques, Muslim shrines and places of religious resort. While Section 2(1) of the Act provides for the appointment of a Director of Mosques and Muslim Charitable Trusts, in terms of Section 5(1) of the Act, the Muslim Mosques and Charitable Trusts or Wakfs Board has been established for the purposes of this Act.

Section 10(2) of the Act requires the trustee for the time being of a Mosque, or if there is no such trustee, the person for the time being in charge of a Mosque, opened for public worship on or after the appointed date<sup>1</sup> to make a written application to the Board for the registration of that Mosque within six months after the date on which that Mosque is so opened. Section 11(1) of the Act specifies that upon receipt of an application under Section 10, the Wakfs Board may, require the applicant to furnish to the Wakfs Board, within such time as may be specified in the notice, all such information and documents regarding the Mosque to which that application relates as the Wakfs Board may consider necessary. In terms of Section 13 of the Act, after obtaining any such information that the Wakfs Board may require, the Board shall cause that Mosque to be registered in the register of Mosques by the entry therein of the prescribed particulars relating to that Mosque.

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<sup>1</sup> Section 58 – appointed date means the 1<sup>st</sup> of May, 1957.

This Court is in agreement with the submission of the learned Senior State Counsel that the responsibility of granting approval for the registration of a Mosque is vested with the Wakfs Board. Thus, it is paramount that the Board and/or the members of the Board should have been named as parties to this application. This Court is of the view that the Board and/or their members are necessary parties for a proper determination of the Writ of Mandamus sought by the Petitioners to accept their application to register their Mosque and that an order in this regard cannot be made in the absence of the Wakfs Board.

This Court would nonetheless consider each of the relief prayed for by the Petitioners, especially in view of the serious allegations that the Petitioners have made against the 2<sup>nd</sup> Respondent and the aforementioned Mosque and the organisations.

This Court would first consider the Writ of Mandamus sought by the Petitioners directing the 1<sup>st</sup> Respondent to register the Weliwita Jummah Mosque.

The Petitioners have not submitted any material to this Court to establish that they have in fact submitted an application to the Wakfs Board, in terms of Section 10(2) of the Act or that approval has been granted by the Wakfs Board for the registration of their Mosque in terms of Section 13 of the Act. In the absence of any proof of registration by the Wakfs Board of the Weliwita Jummah Mosque which the Petitioners claim is operated by them, this Court is of the view that the 1<sup>st</sup> Respondent is under no statutory obligation to register the Mosque of the 1<sup>st</sup> Petitioner. Hence, this Court is of the view that the

Petitioners are not entitled to seek a Writ of Mandamus directing the 1<sup>st</sup> Respondent to accept their application.

This Court would now consider the Writ of Certiorari sought by the Petitioners to cancel the registrations of the aforementioned Mosque and other organisations.

The 2<sup>nd</sup> Respondent has submitted with his Statement of Objections marked 'R1', a letter dated 19<sup>th</sup> November 2012 issued by the 1<sup>st</sup> Respondent, which is re-produced below:<sup>2</sup>

"The Trustees,  
Masjidun Noor Jummah Mosque,  
No. 37, Araliya Mawatha,  
Weliwita,  
Kaduwela.

**Registration of Masjidun Noor Jummah Mosque**

I am pleased to inform you that the Wakfs Board of Sri Lanka has approved the registration of the above named Mosque with this Department.

Subsequently, the Department of Muslim Religious and Cultural Affairs has registered the aforesaid Mosque with effect from 2012.09.16 and assigned with Registration No. R/2017/C 103."

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<sup>2</sup> This letter has been produced by the 1<sup>st</sup> Respondent marked '1R3a'.

The 2<sup>nd</sup> Respondent has also produced marked 'R2', the certificate of registration issued by the Department of Muslim Religious and Cultural Affairs certifying that, "the Wakfs Board has been pleased to register the Masjidun Noor Jummah Mosque situated at No. 37, Araliya Mawatha, Weliwita, Kaduwela in terms of Section 13 of the Wakfs Act."

The 1<sup>st</sup> Respondent has submitted with his Statement of Objections marked '1R3' the minutes of the meeting of the Wakfs Board held on 16<sup>th</sup> September 2012 granting approval to register the Masjidun Noor Jummah Mosque. However, it appears from '1R2' that approval has been granted notwithstanding the fact that the deed to the land on which the Mosque was to be situated was not in order.

The 1<sup>st</sup> Respondent has also produced with his Statement of Objections marked '1R6' a letter dated 3<sup>rd</sup> July 2008 issued by the Department of Muslim and Cultural Affairs confirming that the 'Madarasathun Noor' situated at No. 37, Araliya Mawath, Weliwita, Kaduwela has been registered with the said Department.

This Court is at a loss to understand how the registration of the said Mosque and the 'Madarasathun Noor' was recognized and effected by the 1<sup>st</sup> Respondent as borne out by 'R1' and '1R6' respectively, if the requirement for registration stipulated by the 1<sup>st</sup> Respondent that the applicant must have title to the land had not been complied with.



It is in the above factual background that the Petitioners have alleged that the registration of the Masjid-un-Noor Jummah Mosque, Masjidun Noor Jummah Mosque and Madrasathun Noor is not in accordance with the law. While claiming that the above organisations are not operating at the said address and are fake organisations, the Petitioners have also made serious allegations of fraud against the 2<sup>nd</sup> Respondent who is a Trustee of the Masjid-un-Noor Jummah Mosque.<sup>3</sup>

This Court observes that the Petitioners ought to have complained to the Wakfs Board if they were dissatisfied with the registration granted by the Wakfs Board to the aforementioned Mosque and other organizations. In fact, if such a complaint had been made, the Wakfs Board could have acted under Section 13C of the Act after a proper inquiry.<sup>4</sup> In these circumstances, this Court is not inclined to grant the Writ of Certiorari to quash the registrations that have been issued by the 1<sup>st</sup> Respondent pursuant to the approval granted by the Wakfs Board.

However, in view of the serious allegations made by the Petitioners against the 2<sup>nd</sup> Respondent and the Mosque of which he is a Trustee, and the other organisations, it is the view of this Court that the 1<sup>st</sup> Respondent has a public duty to inquire into the activities of the said organisations, instead of merely granting registration and turning a blind eye to complaints made against such organisations.

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<sup>3</sup> Paragraphs 8 and 11 of the Written Submissions filed by the Petitioners on 13<sup>th</sup> May 2019.

<sup>4</sup> Section 13C reads as follows: "If at any time the Board is satisfied that it has caused a mosque to be registered by reason of a mistake of law or of fact, it shall be lawful for the Board to cause the entry relating to that mosque to be deleted from the register of mosques, and such mosque shall be deemed to be not registered with effect from the date of such deletion."

In these circumstances, this Court issues a Writ of Mandamus in terms of paragraph (c) of the prayer to the petition, directing the 1<sup>st</sup> Respondent to conduct an investigation in terms of the law into the affairs of the 2<sup>nd</sup> Respondent, the Masjid-un-Noor Jummah Mosque, the Masjidun Noor Jummah Mosque and the Madrasathun Noor and to take steps thereafter in terms of the law.

This Court makes no order with regard to costs.

**Judge of the Court of Appeal**