

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

Sinnathurai Pushparajah,
President,
Kavunavathai Narasinha Vairavar
Temple,
Paripalana Saba (the Trustee),
Karukampanai.
Intervenient-Respondent-Petitioner

CA CASE NO: CA (PHC) 171/2017

HC JAFFNA CASE NO: 1951/2016/WRIT

Vs.

Sivakolunthu Sothimuthu,
President,
Ahilailangai Saiva Maha Sabai
College Road,
Kokkuvil.
Petitioner-Respondent
And 19 Others
Respondent-Respondents

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: K.V.S. Ganesharajan for the Intervenient
Respondent-Petitioner.

Luxmanan Jayakumar for the Petitioner-Respondent.

Manohara Jayasinghe, S.S.C., for the Respondent-Respondents.

Decided on: 18.07.2019

Mahinda Samayawardhena, J.

The original Petitioner-Respondent filed this application on 01.04.2016 as a “public interest litigation” in the High Court of Jaffna against the Pradeshiya Sabas and Medical Officers of Health in the Northern Province preventing the said Respondents from granting permission for animal sacrifice as a religious practice. The Petitioner also sought the main relief as an interim relief. The High Court readily granted that interim relief *ex parte* and directed that order to be communicated not only to the Respondents of the case but also to others who are not parties to the case, and specifically stated that “*If any Hindu temple conducts animal sacrifice against this interim order, all the members of the Board of Trustees will be charged with contempt of Court and legal action will be taken.*” A huge publicity was given to this case and to the interim order by both electronic and print media.

The Petitioner before this Court is one such outsider on whom the notice or the interim order was served, and later upon his application, he was made a party as the Intervenant-Respondent. The Intervenant-Respondent objected to the application of the original Petitioner stating *inter alia* that the subject matter has already been decided by the Judgment of the Court of Appeal in *Sri Bodhiraja Foundation v. Inspector General of Police* reported in [2013] BLR 219 and affirmed by the Supreme Court in

Kanagaratnam v. Sri Bodhiraja Foundation reported in [2015] BLR 3. The copies of the two Judgments have also been tendered to the High Court.

Thereafter the High Court delivered the following final order dated 24.10.2017.

I order a writ of prohibition restraining the Respondents or any other person authorized by them from issuing a Permit to carry out slaughter of animals and fowls in temple premises during temple festival in their jurisdiction.

In this view of the matter, the writ application is allowed and the application of the Intervenient-Respondent is rejected. I make no order as to cost.

- *The Secretary, Ministry of Local Government (Northern Province-11th Respondent), The Secretary, Ministry of Health (Northern Province-18th Respondent) and Regional Health Service Director (17th Respondent) are directed to implement the Court Order very strictly.*

- *Hon. Chief Minister (Northern Province) and Hon. Minister of Health (Northern Province) are required to direct the Local Authorities and officers to implement the Court order very strictly.*

- *Hon. Governor is hereby informed to monitor for implementation and enforcement of Court Order by local authorities.*

Follow up Action

The follow-up action should be carried out by police department and local authorities concerned to bring the violators before nearest Magistrate Court. Any member of public is entitled to file contempt of court proceedings before

Provincial High Court of Northern Province in Jaffna against the violators of the Court Order such as Priest, Trustee of the temples and officers of local authorities as well.

Registrar is directed to transmit the order to learned Magistrate Mallakam, S.D.I.G. North of Police, SSP, ASP Kankesanthurai, OICs of MC jurisdiction of Mallakam, all Respondents, Hon. Chief Minister, Hon. Minister of Health, Hon. Governor and Government Agent Jaffna.

The procedure adopted by the learned High Court Judge from the beginning to the end is irregular. The general rule is, Court shall not, unless there are compelling reasons to do so, grant the main relief by way of an interim relief, particularly, upon an application made *ex parte*. Applications for interim reliefs, as a rule, shall be supported *inter partes* not *ex parte*, unless it is extremely urgent that there is no time to give notice to the opposite party.

In the instant case, there was absolutely no necessity for the Court to have allowed the Petitioner to support for interim relief *ex parte*, which is also the main relief. Then the Court cannot in a writ application make orders to be bound by the entire Jaffna peninsula. Unless it is an action in rem, an order or Judgment of a Court is bound by the parties to the case and their privies. Here the learned High Court Judge has directed to serve notices/interim orders on people who are not parties to the action. One such person is the Intervenant Petitioner.

Then the learned High Court Judge has stated that any member of public is entitled to file contempt of Court proceedings before the High Court of Jaffna against violators of the Court order such as priests, trustees of the Hindu Kovil etc. There is a laid down procedure to deal with a party for contempt of Court, and any

member of public cannot bring before Court any violator of the Court order for contempt of court. I cannot understand how priests, trustees in the Jaffna Peninsula who are not parties to the case are bound by the said order.

The writ of prohibition is to prohibit issuance of licences to slaughter animals for animal sacrifice. Priests, Trustees etc. obviously do not issue licences.

The learned High Court Judge has given directions to and made requests from various Government officials including public representatives to implement the Court order “very strictly”. There is no reason to personalize the matter.

The learned High Court Judge has clearly exceeded his limits. This was conceded at the argument in unison by the learned counsel for the Respondents including the Senior State counsel.

In my view, the writ of prohibition issued by the High Court restraining the Respondents from issuing licences to slaughter animals at temple festivals is contrary to the Judgment of the Divisional Bench of the Court of Appeal in *Sri Bodhiraja Foundation v. Inspector General of Police [2013] BLR 219*, which was affirmed by the Supreme Court in *Kanagaratnam v. Sri Bodhiraja Foundation [2015] BLR 3*.

Animal sacrifice as religious practice was the subject of decision in the said two cases. The instant case was also filed on the very same subject. Both are writ applications seeking the identical reliefs. The conspicuous difference is that the instant case was heard by a single Provincial High Court Judge, and the other two cases by three Justices of the Court of Appeal and three Justices of the Supreme Court including the Chief Justice.

The said Court of Appeal case was filed to stop animal sacrifice as a religious ritual at Munneswaram Kovil, Chilaw. The following are the two reliefs sought from the Court of Appeal in that case.

A writ of prohibition restraining the 5th and/or 6th Respondents or any person authorized by them from issuing an annual or temporary licence to the 8th and 9th Respondents to carry out the slaughter of animals at the above Kovil.

A writ of mandamus directing the 1st, 2nd, 3rd and 4th Respondents to take all necessary actions as permitted and empowered by law to prevent the cruelty and slaughter of animals taking place at the said Kovil.

The Court of Appeal refused to issue writ of prohibition preventing the Respondents from issuing licences to slaughter animals for animal sacrifice as religious practice.

To save time, I will straightaway quote the relevant part of the Judgment of the Court of Appeal appearing at page 224:

The Petitioners in their petition have sought a writ of prohibition restraining the 5th and/or 6th Respondents or any person authorized by them from issuing an annual or temporary licence or any other approval under section 4 of the Butchers Ordinance to the 7th, 8th and 9th Respondents or their representatives to carry out the slaughter of animals at Kovil...In considering this application I have to consider the following matters. If the 7th, 8th and 9th Respondents, after fulfilling necessary requirements to maintain a slaughter house, make an application to issue a licence under the provisions of the Butchers Ordinance, can the proper authority refuse without accepting the application? The answer is no.

The proper authority under the law is bound to consider it and take a decision to grant the licence or reject the application. If this Court issues a writ of prohibition, the proper authority will not be able to exercise their duty under the Butchers Ordinance. For these reasons I hold the view that it is not correct for this Court to issue a writ of prohibition. For these reasons, I refuse to issue a writ of prohibition as prayed for.

What was decided by the Court of Appeal was that animal sacrifice as a religious practice cannot be performed in violation of the law of the land. If any religious place including a Kovil is to slaughter animals as animal sacrifice, a licence under the Butchers Ordinance shall be obtained and also shall not violate the provisions of the Cruelty to the Animals Act. The Court of Appeal also emphasized the adherence to By Laws relating to the Slaughter Houses published in the Government Gazette No. 52017 dated 23.08.1988.

What the High Court did in the instant writ application was what the Divisional Bench of the Court of Appeal refused to do. The High Court issued *“a writ of prohibition restraining the Respondents or any other person authorized by them from issuing a Permit to carry out slaughter of animals and fowls in temple premises during temple festival in their jurisdiction.”*

There is absolutely no reason for the High Court to revisit the subject of animal sacrifice when the matter has been directly dealt with by a Divisional Bench of the Court of Appeal, which has later been affirmed by the Supreme Court. All Sri Lankans including the citizens in the Northern Province are bound by that Judgment. There is no separate Law on the subject of animal sacrifice applicable to the Northern Province.

Cases under the popular banner of “Public Interest Litigation” shall not be filed and decided as publicity stunts. This is a textbook case of that kind.

I unhesitatingly set aside the order of the learned High Court Judge of Jaffna dated 24.10.2017. The writ application filed in the High Court shall stand dismissed. The original Petitioner shall pay a sum of Rs. 50,000/= as costs to the Intervening Petitioner.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal