

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 in terms of Article 140 of the Constitution of the Democratic Socialist of Sri Lanka.

CA (Writ) Application No: 151/2017

- 1) M.N.M. Sanfi
- 2) M.A.M.Fasly
- 3) M.A.M. Ashraff
- 4) M.A.M. Ramsan
- 5) M.S.M. Lafir
- 6) M.B.M. Rinas

Members of the School Development Society,
Mummana, Dambadeniya

PETITIONERS

Vs.

- 1) N.H. Premawathie,
Director of Zonal Education,
Zonal Education Office, Giriulla.
- 2) A.A. Hettiarachchi,
Assistant Director of Zonal Education,
Zonal Education Office, Giriulla.
- 3) A.S.K. Jayalath,
Provincial Educational Directir,
Provincial Department of Education,
Kurunegala.

- 4) R.M.S.W.Bandara,
Divisional Secretary,
Divisional Secretariat, Pannala.
- 5) M.A.H.Vijitha Bandara,
Secretary,
Ministry of Education, Culture and Arts,
North Western Provincial Council,
Kurunegala.
- 6) W.M. Bandusena,
Secretary, Ministry of Education,
Battaramulla.
- 7) Gayantha Karunatileke,
Minister of Lands and Parliamentary
Reforms,
Battaramulla.
- 8) W.H. Karunaratne,
Secretary, Ministry of Lands and
Parliamentary Reforms,
Battaramulla.
- 9) M.S. Shuhaib,
Principal,
Mummana Muslim Vidyalaya,
Dambadeniya.
- 10) L.M.S.K. Ranjth Lansakara,
Chairman,
Pradeshiya Sabhawa, Pannala.
- 11) Minister of Education, Culture and Arts,
North Western Provincial Council,
Kurunegala.
- 12) Akila Viraj Kariyawasam,
Minister of Education,
Battaramulla.
- 13) J.M.P.C. Jayalath,
Officer-in-Charge, Police Station, Pannala

- 14) H.A. Athula Rohana Marasinghe,
President,
Podu Depala Surakeeme Ekamuthuwa,
Wettewa,
Dambadeniya.
- 15) W.M. Sugath Premachandra,
Secretary,
Podu Depala Surakeeme Ekamuthuwa,
Wettewa,
Dambadeniya.
- 16) Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal

Counsel: Rushdy Habeeb with Ms. Rizwana Uvais for the Petitioners

Ms. Chaya Sri Nammuni, Senior State Counsel for the 1st – 9th and 11th, 12th and 16th Respondents

M.C. Jayaratne, P.C., for the 10th Respondent

Nilantha Kumarage for 14th and 15th Respondents

Argued on: 10th September 2020

Written Submissions: Tendered on behalf of the Petitioners on 24th August 2020

Tendered on behalf of the 1st – 9th and 11th, 12th and 16th Respondents on 10th September 2020

Tendered on behalf of the 14th and 15th Respondents on 2nd September 2020

Decided on: 7th June 2021

Arjuna Obeyesekere, J., P/CA

The 1st and 2nd Petitioners are the President and Secretary of the School Development Society of the Mummana Muslim Vidyalaya, a rural school situated in Dambadeniya with a student population of over 200 students and offering classes from Grade 1 to the Ordinary level examination. While the 3rd and 4th Petitioners are old boys of the said school, the children of the 5th and 6th Petitioners are currently studying in the said school.

The Petitioners state that at its inception in 1962, the school was situated on a land in extent of 3R 39P. That extent has since been reduced to an extent of 80P, apparently as a result of the School allocating land once occupied by the school for the construction of a building for commercial use. The Petitioners state that the school was in need of a playground for its students, and that in 1977, a local businessman named L.M.P. Navaratne had agreed to make available to the school, a land in extent of 1A 7.2P owned by his mother, which was situated opposite the school, for the above purpose. The Petitioners state further that the acquisition procedure laid down in the Land Acquisition Act commenced in September 1976 with the issuance of the Section 2 notice followed by the notice under Section 4 in September 1978. It is admitted that even though the notice under Section 7 had been published, the acquisition process had come to a standstill in 1980.

The Petitioners claim that the owner had agreed to make available the land for the exclusive use of the school and that the above acquisition was for the said purpose. The Petitioners state further that the land was used by the school as its playground as well as for all school functions. In 2002, the School Development Society had taken steps to fence the said land with the approval of the 4th Respondent, the Divisional Secretary, Pannala. The Petitioners claim that the playground was maintained at all times by the school and that all expenses in that regard were borne by the school.

The Petitioners admit that the said playground had been used over the years by several societies and groups belonging to other communities for their functions and events. Whenever the playground was required for such use, the practice had been for the party requiring the land to make a request to the 9th Respondent, the

Principal of the School who then sought the approval of the 1st Respondent, the Zonal Director of Education.

In April 2016, a group by the name of 'Samagi Kreedha Samajaya' had sought the approval of the 9th Respondent to use the playground for a New Year event followed by a musical show. The Petitioners state that although the 9th Respondent had sought approval for both events, the 1st Respondent had only granted approval to use the playground from 6am-6pm for the events associated with the New Year. As a result, the event had not been held.

The Petitioners state that this incident led to the creation of tension between the communities living in that area and that normalcy was initially restored with the assistance of the law enforcement agencies. However, as the events escalated, the Police had reported facts to the Magistrate who had issued an order to maintain law and order in the area.

The above issue has prompted the 4th Respondent, the Divisional Secretary, Pannala to seek permission of the Secretary, Ministry of Education to abandon the acquisition process and thereafter hand over the land to the Pradeshiya Sabha, Pannala, for the use of the school and those living in the said area – vide letter dated 24th August 2016 marked 'P2'.

The Petitioners state that the 2nd Respondent had thereafter directed the 9th Respondent not to use the said land for any activities of the school. This position has been conveyed to the Secretary of the School Development Society by the 9th Respondent – vide letter dated 29th September 2016 marked 'P27'.

This issue had also been discussed at the meeting of the Pannala Pradeshiya Development Committee held on 10th October 2016, as borne out by the minutes of the said meeting marked 'P29', where it had been decided that the land be acquired by the Pradeshiya Sabha and for the playground to be made available for the use of the school during school hours and for the residents of the area thereafter.

The Petitioners claim that they had a legitimate expectation that the land will be acquired for the exclusive use of the school and that the above decisions violate that

expectation. Aggrieved by the decisions in 'P2', 'P27' and 'P29' that the playground be shared with the people of the area, the Petitioners filed this application in April 2017. By an amended petition filed on 3rd October 2019, the Petitioners have sought the following relief:

- a) A Writ of Certiorari to quash the decisions in 'P2', 'P27' and 'P29';
- b) A Writ of Mandamus directing the 4th, 7th and 8th Respondents to complete the acquisition process and vest the land in the said School;
- c) A Writ of Prohibition preventing the 4th Respondent from handing over the land to the Pradeshiya Sabha.

I shall first consider whether the Petitioners are entitled to a Writ of Mandamus. The conditions that must be satisfied for a Writ of Mandamus to issue have been clearly set out by the Supreme Court in Ratnayake and Others vs C.D.Perera and Others¹ as follows:

“The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties.”

In Rajeswari Nadaraja v. M. Najeeb Abdul Majeed, Minister of Industries and Commerce and Others² Aluwihare, J held that:

“In an application for a writ of mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the

¹ (1982) 2 Sri LR 451.

² SC Appeal No. 177/15; SC Minutes of 31st August 2018.

power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists."

I have examined the letter marked 'P2' and observe that the children of the owner of the land had informed the 4th Respondent in 2016 that the land was allocated for the use of both Sinhala and Muslim children and the residents of the area. This position is reflected in the letter dated 16th June 2016 sent by L.H.P. Navaratne marked '14R6'. Thus, the argument of the Petitioners that the land was intended for the exclusive use of the school does not appear to be correct. In any event, the Petitioners too concede that the land was used by both the school and the people in the area. In his written submissions, the learned Counsel for the Petitioners has admitted that the land has been used by several societies and community groups for their private functions. The learned Counsel for the 14th and 15th Respondents too has admitted that both groups have used the said land for their community activities. Thus, the Petitioners cannot have a legal right to have the land acquired for the exclusive use of the school nor does the 4th Respondent owe the Petitioners a legal duty to do so. I am therefore not inclined to direct the 4th Respondent to complete the acquisition process forty years after it was stalled.

This brings me to the legality of the decisions in 'P2', 'P27' and 'P29'. The Petitioners themselves have traced the events that arose as a result of trying to restrict the use of the said land to the school. The school does not have the exclusive use of the said land and the decisions that are reflected in 'P2' and 'P29' must be viewed in the light of the circumstances that had arisen in the said area. The learned Counsel for the Petitioners have submitted that, *'the Petitioners are agreeable to use this as school playground which could be acquired for the Ministry of Education in the Province and to conduct different activities by the communities and sports clubs when it is not needed for the school'*.³ This is the same decision that is reflected in 'P2' and 'P29'. 'P27' has been sent to reflect the decision in 'P29'. In these circumstances, I do not see any illegality in the said decisions.

³ Vide paragraph 28 of the written submissions of the Petitioners.

The learned Senior State Counsel has quite correctly submitted that the dismissal of this application will not resolve the underlying issue that gave rise to this application. The owners of the said land have indicated by '14R6' that the land must be used for a playground for all communities living in the area. I direct the 4th Respondent to ensure that the said land:

- (a) is made available for the use of the school during week days from 6am – 4pm and for the use of the general public from 4.30pm to 8pm;
- (b) is made available for the use of the general public on public holidays and every weekend except the last weekend of every month which shall be allocated for the use of the school,

provided the factual position in '14R6' has not changed.

This judgment shall not prevent the (a) 4th Respondent from seeking the assistance of the Pradeshiya Sabha of Pannala and the Ministry of Education of the North Western Province with regard to the maintenance of the land; (b) 4th Respondent from taking steps to hand over the land to the Pradeshiya Sabha, Pannala subject to the above directions with regard to the use of the land, as may be amended in such a manner that ensures the use of the land by the school and all communities; (c) the Pradeshiya Sabha, Pannala taking steps to have the said land acquired in terms of Section 128 of the Pradeshiya Sabha Act No. 15 of 1987, as amended for the use of the school and the community.

Subject to the above, this application is dismissed, without costs.

President of the Court of Appeal