

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

*In the matter of an application for orders
in the nature of Writs of Mandamus under
and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

ARIYAKAMMATTANA
Bomaluwa Helagama,
Maha Urulawa,
Andiyagala.

CA/WRIT/225/2022

Petitioner

Vs.

1. The Minister of Buddha Sasana
Religious and Cultural Affairs,
Ministry of Buddha Sasana,
Religious and Cultural Affairs,
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

2. Hon. Widura Wickramanayake
Former State Minister of National
Heritage,
Performing Arts and Rural Arts
Promotion,

State Ministry of Cultural &
Performing Arts,
4th Floor, Stage II,
"Sethsiripaya", Battaramulla.

3. The Secretary
The Ministry of Defence,
Defence Headquarters Complex,
Sri Jayawardenepura, Kotte.
4. Prof. Anura Manatunga,
The Director General of
Archaeology
Department of Archaeology,
Sir Marcus Fernando Mawatha,
Colombo 07.
5. Assistant Director of Archaeology
Divisional Archaeology Office,
Anuradhapura.
6. Assistant Director of Archaeology
Divisional Archaeology Office,
Dharmapala Mawatha,
Kandy.
7. Wasana Sirimalwatta
Senior Archaeologist,
Department of Archaeology,
Sir Marcus Fernando Mawatha,
Colombo 07.

8. The Divisional Secretary
Divisional Secretariat Palagala,
Negama Road, Palagala.
9. The Divisional Secretary
Divisional Secretariat Galnewa,
Main Street, Galnewa.
10. The Divisional Secretary
Divisional Secretariat Dambulla,
Kurunegala Road, Dambulla.
11. The District Secretary
District Secretariat Anuradhapura,
Maithripala Senanayake Mawatha,
Anuradhapura.
12. The District Secretary
District Secretariat Matale, Matale.
13. The Director General
Department of Wildlife
Conservation,
811A, Jayanthipura, Battaramulla.
14. The Conservator General of
Forests
Department of Forest
Conservation, "Sampathpaya",
No. 82, Rajamalwatta Road,
Battaramulla.

15. The Minister of Wildlife and
Forest Resources Conservation
Ministry of Wildlife and Wildlife
Conservation,
Ministry of Wildlife and Forest
Resources Conservation,
No.1090, Sri Jayawardenapura
Mawatha, Rajagiriya.

16. The Surveyor General
The Survey Department,
No.150, Kirula Road,
Narahenpita, Colombo 05.

17. The Minister of Tourism and
Lands
Ministry of Tourism and Lands,
6th Floor, No. 21, Rakshana
Mandiraya, Vauxhall Street,
Colombo 02.

18. Ranage Kudahenaya
Alias "Gedi Wedamahaththaya",
Kaluaarachchiyagama,
Andiyagala.

19. Herath Bandaralage Dayarathna
Alla Wewa,
Galkiriyagama.

20. The Officer in Charge
Sri Lanka Police Station,
Ulpathagama, Galkiriyagama.

21. The Officer in Charge
Sri Lanka Police Station,
Link Road, Dambulla.

22. The Officer in Charge
Sri Lanka Police Station,
Andarawewa-Balaluwewa Road,
Galnawa.

23. C. D. Wickramarathna
Inspector General of Police,
Police Headquarters, Colombo 01.

24. Hon. Attorney General
The Attorney General's
Department, No.159,
Hulftsdorp, Colombo 12.

Respondents

Before :Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Dharshana Weraduwege with Ushani Atapattu for the Petitioner.

Amsara Gajadeera, SC for the 4th, 20th to 24th Respondents.

Supported on : 20.09.2022

Decided on : 07.10.2022

Sobhitha Rajakaruna J.

The learned Counsel for the Petitioner draws the attention of this court to the archaeological site located at Ramegala Maha Urulewa, Andiyagala area in the Palalagala Divisional Secretariat division in the Anuradhapura District ('the Urulewa Site'). According to the Petitioner, the Urulewa Site had been identified as an archaeological site as listed in the "Archaeological Survey of Ceylon" Annual Report 1895, marked 'X3i' and 'X3j'. The learned Counsel for the Petitioner states that on or around 09.01.2021, the Petitioner had noticed that the Urulewa Site had been vandalized by an unknown group.

Therefore, the Petitioner on 10.01.2021 has written the email marked 'X4' informing the 2nd Respondent of the destruction of archaeological sites by organized gangs and has requested the 2nd Respondent to take steps to prevent such destruction. On 11.01.2021, the Petitioner wrote the letter marked 'X5' to the 8th Respondent informing him of the same and offering to lend the Petitioner's support in protecting such archaeological sites.

The Petitioner in the letter marked 'X6' dated 08.04.2021 has informed the 3rd Respondent of the important archaeological sites located in the area and that a gang of thieves had been vandalizing the sites acting on the myth that there was hidden treasure trove. Further, the Petitioner claimed that the police officers and public officials were assisting the gangs hoping to find treasure trove for themselves. Therefore, though the Galkiriyagama Police had captured the main suspect of the Urulewa Site's destruction, the Petitioner alleges that the Police had later set him free, stating that he escaped.

The Petitioner, inter alia, seeks for an order in the nature of a writ of Mandamus compelling the 1st and 4th Respondents to take immediate steps to secure the archaeological sites as more fully described in the Schedule to the Petition, by including them in a Gazette under the

Antiquities Ordinance. An order in the nature of a writ of Mandamus is also being sought to compel the 23rd Respondent to issue circulars and/or Orders under the Police Ordinance, setting out the necessary instructions to secure the sites described in the schedule to the Petition.

However, I must draw my attention to the 5th Respondent's letter dated 23.02.2021 addressed to the 8th Respondent, marked 'X10', listing several sites of archaeological value, requesting the 8th Respondent to take necessary steps to assist the 16th Respondent to survey and mark the listed sites as archaeological reserves.

Further, the 4th Respondent's letter marked 'X9', dated 10.11.2021 informs the Petitioner of the measures taken and to be taken in future to protect and conserve the archaeological sites that the Petitioner raised concerns about. The Petition of the Petitioner illustrates that many requests which were made for the protection and conservation of several archaeological sites and that the relevant Respondents have responded to such requests by informing the Petitioner of the measures that have and will be taken to that end.

For a writ of mandamus to be issued, the Court must be satisfied that a request to a public authority was made to act in accordance with its statutory powers and such request was unfairly, illegally and arbitrarily denied.

Sripavan J. stated in *Mageswaran vs. University Grants Commission and Others (2003) 2 Sri L.R. 276 at p.285*;

"A writ of mandamus only commands the person or body to whom it is directed to perform a public duty imposed by law. In other words, a writ of mandamus would lie where a statute requires certain action in defined circumstances and despite the existence of such circumstances, the required action has not been performed."

However, in the instant case, I do not find any denial of the Petitioner's claims by the 4th & 5th Respondents as those Respondents have taken action to execute their official duties in pursuant to main concerns of the Petitioner. On a careful consideration of the events that had taken place, I observe that the 4th & 5th Respondents have taken reasonable action to protect and conserve the archaeological sites the Petitioner mentions in the Schedule to the Petition.

It is important to note that the Petitioner is not seeking any order from Court to get the above letters, marked 'X9' & 'X10' executed and also the Petitioner has not made any request or application challenging or disputing the contents in 'X9'.

This Court has consistently taken the view that the reasons in support of a Judgement in a case must be cogent and succinct. Merely giving a sequence of evidence in the body of the Petition is not sufficient as the judgement of this case finally focused on the prayer of the Petition of the Petitioner. Mere characterization of a claim as a claim in public law is not sufficient for consideration by the review Court.

Thus, I am not convinced that the Petitioner's illustration of the sequence of events would establish cogent grounds for the exercise of this Court's discretion and this Court should not intervene with any decision or action of the Respondents. In view of the foregoing, I take the view that this is not a fit and proper case for the exercise of the jurisdiction of this Court to issue a writ of mandamus.

In contrast to the above, the contents of the letter dated 17.10.2021, marked 'X7' should be taken in to serious consideration. In the said letter, marked 'X7', the Petitioner requests the 4th to 6th Respondents to protect and conserve certain archaeological sites in Urulewa & Dambulla and volunteers to assist the Respondents to do so. In the letter marked 'X8', the Petitioner states the same and further requests the 2nd Respondent to hand over the abovementioned archaeological sites to the Petitioner to protect and conserve them.

The above stance taken by the Petitioner appears in both the said letters marked 'X7' and 'X8';

"මේ වන විට මෙම ස්ථානයට යාබද ප්‍රදේශයේ අප සංවිධානය විසින් පෞද්ගලික ඉඩම් කිහිපයක් මිලට ගෙන ඒවායේ ස්වාභාවික අහාර වනයක් ස්ථාපිත කරමින් සිටී. අප මෙම ස්වභාවික වනය වචන ඉඩම් වලට යාබදව දැනට විනාශව ඇති ඉහත සඳහන් පුරාවිද්‍යා නටඹුන් නැවත නිබු පරිදි ප්‍රතිසංස්කරණය කර, සංරක්ෂණය කර දීමට හා ඒ ප්‍රදේශය පුරා විසිරී ඇති නටඹුන් සහ සෙල් ලිපි, ලෙන් ලිපි සහිත ගල් ලෙන් පුරාවිද්‍යා දෙපාර්තමේන්තුවේ නිලධාරීන්ගේ අධීක්ෂණය යටතේ ආරක්ෂා කර දීමට අප

සංවිධානයට හැකියාව ඇත. මේවා හඳුනා ගැනීම සඳහා කරන ගවේෂණයකට යන පිරිවැය දැරීමට අප සංවිධානයට හැකිය.”

The above assertions by the Petitioner clearly show that they are purportedly cultivating the land adjoining to the subject archaeological sites. A reasonable doubt arises as to why the Petitioner is extending its willingness to bear the cost of exploration of such archaeological sites. Moreover, the Petitioner expresses its willingness to provide their own security to the subject site, to which in my view, the Petitioner has no right whatsoever. No archaeological site can be alienated to any private individual even to protect and provide security as it is the prime duty of the Department of Archaeology and other government authorities.

The 4th Respondent's said letter marked 'X9' informs the Petitioner that according to the Antiquities Ordinance No.9 of 1940, the managing of archaeological sites cannot be handed over to organizations which have no prior experience in excavating or conserving such sites.

Section 6 of the said Antiquities Ordinance provides;

Subject as hereinafter provided, no person shall excavate for the purpose of discovering antiquities, whether on land belonging to himself or otherwise, except under the authority of a licence issued by the Director-General of Archaeology:

Provided that nothing in this section shall apply to any excavation carried out by or on behalf of the Director-General of Archaeology.

Therefore, I take the view that the Petitioner's abovementioned unexplained request was made without good conscience or clean hands. In light of the above, I use my discretion to arrive at the conclusion that the Petitioner's request to hand over the responsibility of the Urulewa site's protection and conservation to them, showed collateral purposes and an attempt to illegally obtain undue advantages. I am of the view that unmeritorious and dilatory challenges should not be entertained in judicial review.

Based on my above findings on collateral purposes and unclean hands of the Petitioner and on a careful consideration of the whole matter including the manner in which the interim orders prayed for in the prayer, I should exercise my discretion to direct 1st, 2nd, 4th to 14th

Respondents not to alienate any State land in relation to the subject archaeological sites through whatsoever manner without a policy decision being taken by the Cabinet of Ministers.

In the circumstances, I am of the view that the Petitioner has failed to come to this Court with clean hands and has failed to submit a prima facie case which warrants this Court to issue formal notices on the Respondents. This Court has consistently adopted the arguability principle to decide on the issuance of notice on the Respondents and held that an arguable ground for judicial review includes whether there is some properly arguable vitiating flaw such as unlawfulness, unfairness or unreasonableness. (See-*R vs. Chief Rabbi ex p. Wachmann (1992) 1 WLR 1036 at 1037H* and *Prof. D.G. Harendra de Silva & others vs. Hon. Pavithra Wanniarachchi Minister of Health & others, CA/Writ/422/2020 decided on 01.02.2022*).

Application is refused.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal