

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

*In the matter of an application made
under Article 140 of the Constitution for
mandates in the nature of Writs of
Certiorari and Prohibition.*

1. Premni Anushan
2. Umakanthan Anushan
3. Jegethambal Umakanthan

All three of,
'Nayan Markandu Ayurveda
Vaidyasalai'
No.262, Chemmani Road,
Nannur.

PETITIONERS

C.A. WRIT - 0010-2020

Vs.

1. Minister of Lands and
Parliamentary Reforms.
2. District Secretary, Jaffna.
3. Divisional Secretary, Nallur.
4. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : M. SAMPATH K. B. WIJERATNE, J

WICKUM A. KALUARACHCHI, J

COUNSEL : S. Kumarasingham for the Petitioners.
Abigail Jayakody, SC for the Respondents.

ARGUED ON : 20.03.2023

DECIDED ON : 23.05.2023

WICKUM A. KALUARACHCHI, J.

The petitioners have filed this application for writs because a decision was taken in terms of Proviso (a) to Section 38 of the Land Acquisition Act as published in the Gazette Extraordinary No. 2143/54 dated 04.10.2019 to acquire the land where a treatment center, namely, “Nayanmarkaddu Ayurveda Vaidyasalai” was situated.

The petitioners have sought a writ of certiorari quashing the notice issued under Section 04 of the Land Acquisition Act, as well as a writ of certiorari quashing the Gazette Extraordinary dated 04.10.2019, in which the Minister of Lands and Parliamentary Reforms directed the Acquiring Officer to take immediate possession of the land. In addition, the petitioners have sought a writ of prohibition against the 3rd respondent, Acquiring Officer, to refrain from acting on the order issued by the Minister of Lands and Parliamentary Reforms under Proviso (a) to Section 38 of the Land Acquisition Act.

The statements of objections have been filed on behalf of the respondents and subsequently, a counter affidavit was also filed. At the hearing, the learned counsel for the petitioners and the learned state counsel for the respondents made oral submissions.

According to the petitioners, “Nayanmarkaddu Ayurveda Vaidyasalai” was originally established nearly 200 years ago as a treatment center by an ayurvedic doctor known as Dr. Vettinelu. Following the death of Dr. Vettinelu, Mailvaganam Pandithar and Vettivetpillai Sivasubramaniampillai, who claimed that the first was the Chief Manager and the second was the Sub Manager, executed a deed on 11.07.1915, bearing No. 5189, attested by K.S Ramalingam Notary Public, and took steps to establish the hospital as a trust to ensure its continuity and future.

As per the judgment of the District Court in the case bearing number TR.55 marked R-2, the trustees named as defendants of the case were found to have engaged in misconduct and mismanagement. As a result, they were removed from their positions and the court directed to submit a scheme of management. Subsequently, seven persons were appointed as members of the “Board of Trustees” for a term of one year, commencing on 02.05.1983 by an order of the district court dated 29.04.1983.

The petitioners stated in the petition that the 1st petitioner is the manageress of the said ayurveda hospital, the 2nd petitioner is the chief occupant of the premises in which the said ayurvedic hospital is situated and the 3rd petitioner is the mother-in-law of the 1st petitioner and the mother of the 2nd petitioner.

Stating the history of this treatment center and the events that took place in respect of this place, the learned counsel for the petitioners contended that steps were taken to acquire this ayurvedic hospital without hearing the objections raised by the 3rd petitioner, violating the procedure stipulated in the Land Acquisition Act.

The learned state counsel for the respondents submitted that the land in question had been acquired in terms of Section 38A of the Land

Acquisition Act as per Gazette Extraordinary 2143/54, dated 04.10.2019, on the ground of urgency, and according to Section 40 of the Act, when an order of the minister under Section 38 is published in the Gazette, and where that order is in regard to the taking possession of a particular land, that land shall, by virtue of that order, vest absolutely in the State free from all encumbrances with effect from the date on which that order is so published. Therefore, the learned state counsel contended that the issue of not giving an opportunity to raise objections does not arise in this case.

Addressing the issue of whether the petitioners have "*locus standi*" to maintain this application, the learned state counsel submitted the judgment of the Jaffna district court case No. TR.55, a subsequent order of the said district court case, dated 29.04.1983, and contended that the learned District Judge had appointed seven persons as members of the board of trustees and Doctor A. Umakanthan, through whom the petitioners purportedly derived standing in this application was not included in the board of trustees appointed by the District Court. The learned state counsel contended further that the petitioners have filed the "proposed scheme of management" marked "X" tendered on behalf of the defendants to the district court and attempted to demonstrate that Doctor A. Umakanthan's name was included in the "board of trustees", which is a misrepresentation of facts, and thus the petitioners lack *locus standi* to maintain this application.

At this point, it is vital to consider through whom the petitioners derived standing in this application. In paragraph 12(l) of the petition, the petitioners admit that the Supreme Court, in case No. 15/84, declared "Nayanmarkaddu Ayurveda Vaidyasalai" to be a public trust and directed that a "scheme of management" be established for the public trust. Further, it is stated in the petition that one Dr. Umakanthan was appointed as the Chief Trustee and Manager of the said "Nayanmarkaddu Ayurveda Vaidyasalai". Furthermore, it is stated in

the petition that Dr. Umakanthan's appointment was strictly in terms of the Deed of Trust bearing No. 5189, (marked P-4) the operation of which still remains valid and so recognized by the said scheme of management. In paragraph 12(q) of the petition, it is specifically stated as follows: "*Dr. Umakanthan died in the year 2002 and his wife the 3rd petitioner succeeded to the deceased person's rights as trustee and manager of the said public trust in terms of her hereditary entitlement as per the Deed No. 5189 and also in terms of the scheme of management which recognizes the said deed.*" This is how the petitioners have become interested parties to maintain this application, according to the petition. As stated previously, the contention of the learned state counsel was that this is a misrepresentation of facts and thus the petitioners lack *locus standi* to maintain this application.

Before dealing with the aforementioned issue, I wish to address a point raised in the counter affidavit. In response to the aforementioned argument of lack of *locus standi*, in paragraph 9(c) of the counter affidavit of the petitioners, it is stated that "*the petitioners state that there could not have been any gross misrepresentation on the part of the petitioners for the reason that no document marked "X" purported to be the proposed scheme of management was annexed to the petitioners' affidavit at any time as claimed by the respondents in their statement of objections.*" During the hearing also, the learned counsel for the petitioners stated that they had not filed a document marked "X" and that the statement of objections contained incorrect facts.

However, when the learned state counsel for the respondents pointed out that the petitioners had in fact filed the "proposed scheme of management" marked as "X", the learned counsel for the petitioners admitted that a document had been filed as "X" on behalf of the petitioners.

The vital matter that arises from the said document marked “X” was that it was only a proposed scheme of management tendered to the district court of Jaffna on behalf of the defendants. However, it is evident from the order of the district court, dated 29.04.1983 (one of the documents pertaining to R-1), that Dr. A Umakanthan has not been appointed as a member of the Board of Trustees by the said order of the district court and some other seven persons have been appointed as the board of trustees. Dr. A Umakanthan’s name had only been mentioned in the proposed scheme of management submitted by the defendants. Therefore, the assertion of the petitioners that Dr. Umakanthan was appointed as the Chief Trustee and Manager of the "Nayanmarkaddu Ayurveda Vaidyasalai" in the petition is a total misrepresentation of the facts, as contended by the learned state counsel because the district court did not appoint Dr. Umakanthan as a member of the board of trustees.

Apart from that, explaining how the petitioners derived standing to institute this application for writs, the petitioners claim that after the death of Dr. Umakanthan, his wife, the 3rd petitioner, succeeded to the deceased person’s rights as trustee and manager of the said public trust. In the circumstances that Dr. Umakanthan was not a member of the board of trustees, the said claim is also a misrepresentation of a material fact.

The aforesaid facts reflect a total lack of “*uberima fides*” on the part of the petitioners. In the order of the district court, dated 29.04.1983, in which the board of trustees was appointed, it is mentioned that “All properties of this institution shall vest in the Board of Trustees. ... The Board of Trustees should generally conduct themselves as the Board of Directors of a public limited liability company subject however to periodic directions by Court. ... The Board of Trustees shall have full power to collect and safeguard the properties of the trust.” Therefore, it is apparent that the management of the Ayurvedic hospital as well as

its properties were vested with the board of trustees, to which the petitioners had no connection. In the circumstances, it appears that the petitioners have misrepresented the material facts to this court in the aforesaid manner in order to create a link to the trusteeship of the public trust. Without creating such a link, the petitioners have no acceptable basis to state that one of them is the manageress of the said Ayurveda Hospital at present, another petitioner is the chief occupant of the premises at present, and after the death of Dr. Umakanthan, his wife, the 3rd petitioner, succeeded to the deceased person's rights as trustee and manager of the said public trust.

It is stated in the case of ***The State Graphite Corporation v. Fernando and Another***- (1981) 2 Sri L.R 401 at page 415 as follows: "As Pathirana J held in the case of ***Alphonso Appuhamy v. Hettiarachchi*** - (1973) 77 NLR 131, if a party who moves for a prerogative writ fails to disclose material evidence and so is wanting in *uberrima fides*, the Court will not grant him relief. As the petitioner has failed to disclose facts material to its application, the Court will not in any event grant and issue the writ it prays for - see also De Smith: *Judicial Review of Administrative Action* (1980) 4th Ed. P. 576."

In the case at hand, the petitioners' statements that Dr. Umakanthan was appointed as the chief trustee and manager of the said "Nayanmarkaddu Ayurveda Vaidyasalai and that upon his death, his wife, the 3rd petitioner, succeeded to the deceased person's rights as trustee and manager of the said public trust, are misrepresentations of most fundamental and material facts required to determine this case.

In ***Hulangamuwa v. Siriwardena and Others*** - (1986) 1 Sri L.R. 275 it was held that a petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to this court, bare every material fact so that the discretion of this court is not wrongly invoked or exercised. ... For not disclosing the fact that the petitioner had a

resident at Dehiwala, it was held that on this ground too the application must be dismissed for lack of “*uberima fides*”.

In ***Laub v. Attorney General and Another***- (1995) 2 Sri. L.R. 88, the petitioner had not acted with *uberima fides*, he had suppressed material facts and it was held that the application could be dismissed *in limine*.

After carefully considering the facts presented in this case, it is clear that the petitioners misrepresented the most important and material facts in this case. After establishing a trust, the petitioners appear to lack authority over the hospital. Misrepresenting facts, the petitioners stated that Dr. Umakanthan was appointed to the board of trustees and that upon his death, his wife, the 3rd petitioner, succeeded to his rights as trustee and manager of the said public trust. Petitioners’ claim that the 1st petitioner is presently the manageress of the said ayurveda hospital, and that the 2nd petitioner is the chief occupant of the hospital premises could not be accepted because after establishing the trust pursuant to the order made by the Court, the management of the hospital and the properties of the hospital were vested with the board of trustees and even the petitioners do not say that the management of the hospital by the trust has ever changed. In considering the way that the most important facts have been misrepresented in this case, I am of the view that it is not necessary to go into the other issues relating to this application because the petitioners have laid the foundation to maintain this application by misrepresenting material facts. It is settled law that, on the basis of the suppression or misrepresentation of material facts alone, an application for writ could be dismissed.

It should be noted that it is essential to maintain the highest standards of honesty and transparency by all parties in legal proceedings to ensure that justice is served fairly and equitably. On careful consideration of the facts of this case, I hold that the application for writs be dismissed without considering the other facts of the application

on the ground of a lack of "*uberrima fides*", or the lack of utmost good faith of the petitioners.

Accordingly, the application for writs is dismissed with costs fixed at Rs. 60,000/-.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL