

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

An application for in the nature of Writs of  
Certiorari and Mandamus in terms of Article  
140 of the Constitution.

Court of Appeal Application No. CA Writ 362/2017

Ven. Demunnewe Sumanarathna  
Thero  
Presently of  
Kiriwaula Purana Viharaya  
Kiriwaula, Pilimathalawe.

**Petitioner**

Vs.

1. Nimal Kotawalagedara  
Commissioner General of Buddhist  
Affairs,  
Buddhist Affairs Department,  
“Dahampaya”, No. 135,  
Anagarika Dharmapala Mawatha,  
Colombo 07.
2. Ven. Bodhimaluwe Sangananda  
Thero,  
Presently acting as Viharadipathi of  
Sri Sudharsana Chaityarama  
Viharaya,  
Presently residing at Wayamba Sri  
Sathjaya Daham Nikethanaya,  
Rajakumara Uyana,  
Metiyagane, Narammala.

3. Ven. Anamaduwe Dhammadassi  
Thero,  
Presently Anunayaka,  
Formerly Secretary of the Asgiriya  
Chapter of Siyam Maha Nikaya,  
Asgiri Maha Viharaya, Kandy.
4. Ven. Medagama Dhammananda  
Thero,  
Presently Secretary of the Asgiriya  
Chapter of Siyam Maha Nikaya,  
Asgiri Maha Viharaya, Kandy.
5. Most Ven. Thibbatuwawe Sri  
Siddhartha Sumangala Thero,  
Mahanayaka of the Malwatta Chapter  
of Siyam Nikaya,  
Malwatu Maha Viharaya, Kandy.
6. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : L.T.B. Dehideniya J. (P/CA)  
Shiran Goonaratne J.

**Consel** : Dr. Mahinda Ralapanawa with Nisansala Fernando for the  
Petitioner.  
Nayomi Kahawita SC for the Attorney General.

**Argued on** : 4/12/2017

**Decided on** : 14/12/2017

**L.T.B. Dehideniya J. (P/CA)**

This is an application instituted by the Petitioner, Ven. Demunnewa Sumanarathana Thero seeking for a mandate in the nature of Writ of Certiorari cancelling the registration of Sri Sudharsana Chaityarama Vihraya of Werellagama, Alauwa, as a temple belonging to the Asgiriya Chapter, a Writ of Certiorari cancelling the registration of recognizing the 2<sup>nd</sup> Respondent as the Viharadipathi of the said temple. Further the Petitioner is seeking for a Mandamus directing the 1<sup>st</sup> Respondent to register the said temple as a temple belonging to the Malwatta Chapter and to recognize the Petitioner as the Viharadipathi of the said temple.

The Petitioner submits that the said temple belongs to Malwatta Chapter. The Petitioner's tutor, at his robing and higher ordination Ven. Galwarama Sumanatissa Thero, was the Viharadipathi of the said temple and he belonged to the Malwatta Chapter. The Petitioner further submits that said Sumanatissa Thero has transferred the Viharadipathiship of the temple to the Petitioner by deed No. 2019 dated 14/10/2009 attested by Anura Kithsiri Bandara Notary Public.

The 1<sup>st</sup> Respondent, the Commissioner General of Buddhist Affairs has registered the said temple as a temple belonging to the Asgiriya Chapter and recognized the 2<sup>nd</sup> Respondent as the Viharadipathi of the said temple. The Petitioner moves this court to cancel the said registration by the way of a Writ of Certiorari and to compel the 1<sup>st</sup> respondent to register the temple as a temple belonging to Malawatta Chapter.

The Most Ven. Thibbatuwawe Sri Siddhartha Sumangala Thero, the Mahanayaka of the Malwatta Chapter, the 5<sup>th</sup> Respondent, had requested the 1<sup>st</sup> Respondent by the document marked X5 dated 03/07/2017 to register this

temple as a temple belonging to the Malwatta Chapter. The 1<sup>st</sup> Respondent has replied the 5<sup>th</sup> Respondent informing that the Secretary of the Asgiriya Chapter has informed him that the temple belongs to the Asgiriya Chapter and the Viharadipathi Ven. Galwarama Sumanatissa Thero had transferred the Viharadipathiship by a deed to the 2<sup>nd</sup> Respondent, Ven. Bodhimaluwe Sangananda Thero. Mahanayaka of the Malwatta Chapter has again informed the 1<sup>st</sup> Respondent by the letter dated 06/09/2017 marked as X10 giving the history of the temple and requesting him to register it as a temple belonging to the Malwatta Chapter.

The petitioner submitted that by the deed No. 2019 marked as X4, he was appointed as the Viharadipathi. The Petitioner, as a full disclosure, submitted the deed No. 1773 dated 02/08/2011 attested by P. Wijerathne Notary Public where the Petitioner's deed was revoked and the deed No. 1774 attested by the same Notary on the same day appointing the 2<sup>nd</sup> Respondent as the Viharadipathi. The Petitioner challenges the validity of the said two deeds on the basis that the deed No. 2019 was an irrevocable deed.

The Petitioner further submits a certified copy of a letter issued by the Ven. Pandith Thumbulle Sri Dhammananda Thero to the 1<sup>st</sup> Respondent certifying that the temple in question belongs to the Asgiriya Chapter.

With this evidence it is very clear that there is a dispute in relation to the fact whether this temple belongs to the Malwatta Chapter or the Asgiriya Chapter. The 1<sup>st</sup> Respondent had asked for observations from the Mahanayaka of the Malwatta Chapter before coming into a conclusion. There is no evidence to show that the 1<sup>st</sup> Respondent has held a formal inquiry by calling witnesses but he has called for the observations of the Most Ven. Mahanayaka Thero of the Malwatta Chapter.

When the facts are in dispute, a Writ Court cannot intervene. The facts in issue have to be decided by a proper forum.

It had been held in the case of *Thajudeen V. Sri Lanka Tea Board and another* [1981] 2 Sri L R 471 that;

*Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue.*

The 1<sup>st</sup> Respondent has come to a certain conclusion on the evidence made available to him. This Court cannot issue a mandate in the nature of a Writ of Certiorari to quash the registration of the temple as a temple belongs to Asgiriya Chapter or a writ of Mandamus compelling the 1<sup>st</sup> Respondent to register the temple as a temple belongs to the Malwatta Chapter on disputed facts.

Under these circumstances I refuse to issue notice and dismiss the application.

President of the Court of Appeal

**Shiran Gooneratne J.**

I agree.

Judge of the Court of Appeal