

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

In the matter of an application for
Writs of Certiorari and Prohibition &
Mandamus under Article 140 of the
Constitution of the Republic.

CA (Writ) Application No: 243/2017

1. Wanninayaka Mudiyansele
Dhanapala,
Pahe Kanuwa, Nakolagane,
Ataragalla, Ehetuwewa.
2. Wanninayaka Mudiyansele
Wijey Kumarapala,
Pahe Kanuwa, Nakolagane,
Ataragalla, Ehetuwewa.
3. Environmental Foundation
(Guarantee) Limited,
3A, 1st Lane, Highlevel Road,
Kirulapane, Colombo 05.

Petitioners

Vs

1. Mr. Nimal Kotawalagedara
Commissioner of Buddhist
Affairs,
Department of Buddhist Affairs
"Dhammapaya",
No 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

2. Professor Lal Mervyn
Dharmasiri
Chairman,
Central Environment Authority,
“Parisara Piyasa”,
No. 104, Denzel Kobbekaduwa
Mawatha, Battaramulla.
3. Central Environment Authority
“Parisara Piyasa”,
No. 104, Denzel Kobbekaduwa
Mawatha, Battaramulla
4. Mr. Saman Kumara Lenaduwa
Acting Director
North Western Provincial
Environmental Authority
(NWPEA)1st Floor, Provincial
Office Complex, Kurunegala.
5. North Western Provincial
Environmental Authority
(NWPEA)1st Floor, Provincial
Office Complex, Kurunegala.
6. Mr. W.S.K. Pathirathne
Director General,
Department of Wildlife
Conservation,
811A, Jayanthipura,
Battaramulla,
7. Mr. Welipitiya,
Divisional Secretary,
Galgamuwa-Nikawewa Road,
Ehetuwewa.

8. Dr. Senarath Dissanayake,
Director General,
Department of Archeology,
Sir Marcus Fernando Mawatha,
Colombo 07.
9. Eng. Anura Wijapala,
Ceylon Electricity Board,
50, Sri Chittamapalam
Mawatha,
Colombo 02.
10. Ven. Walathwawe Rāhula
Thero,
Chief Incumbent,
Nakolagane Purana Rajamaha
Viharaya,
Vijaya Sri Sumangaramya,
Ataragalla, Galgamuwa.
11. Hon. Attorney General,
Attorney General's
Department,
Hulftsdrop, Colombo 02.

Respondents

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

Counsel : A.L. Nanayakkara for the Petitioner.
: L. Perera PC with P. Kottearachchi for the 10th Respondent.
M. Jayasinghe SC for the Attorney General

Argued on : 31.10.2017

Decided on : 07.11.2017

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

This is an application for mandates in the nature of writs of Mandamus and Prohibition. The Petitioners state that the 10th Respondent was in the process of clearing about 20 acres of forest and constructing an electrical fence round the cleared area. The Petitioners case is that the area being a natural elephant habitat, this human intervention may disturb the seasonal movements of the elephant and it can increase the elephant-human conflict. The paragraph 10 of the petition states thus;

10) The said report inter alia states that clearing/developing this area will result blocking of the seasonal movement of the Elephants as well as the loss of critical resources and habitat. This will lead to elephants having to move through villages and cultivations during their seasonal movements and increased crop raiding by elephants to survive. Therefore it will cause severe escalation of human-elephant conflict in the area.

The Petitioners have made several negotiations with Government Officials in this regard and found that the 10th Respondent had not obtained any permit or license to clear the forest or to construct an electric fence. Therefore the Petitioners move this Court to issue several writs of mandamus compelling the Respondents to act according to law.

The writ of mandamus is issued against a government official or a body in authority to compel them to do their statutory function. The Petitioners

explain in paragraph 34 of the petition the statutory duty that the respondents failed to carry out. The Petitioners complain is that;

34) There is a failure on the part of the 1st to the 9th Respondent to take adequate steps to make necessary inquiries and investigations to ascertain the title to the land, the legality of the forest clearance and the putting up of the electric fence and to enforce the provisions of the law.

The 1st to 9th Respondents are government officials and authorities entrusted with different duties and powers under separate statutes. The Petitioners have failed to explain to what statutory function of duty that each Respondent failed to comply with.

The Petitioners application to issue writs of mandamus against these officials is also without specifying the statutory duty that they failed to comply. Writ of mandamus follows with a penal liability for not complying. Therefore it is necessary to identify the relevant duty that each official is directed to perform. In the prayer to the petition sub paragraph (b) to (f) the petitioners move that;

(b) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law in respect of the several violations of the provisions of the law.

(c) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law to stop the aforesaid destruction of the forest and the environment in violation of the provisions of the law.

(d) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law to prevent the escalation of the human-elephant conflict in the area in question and in particular in the Ehetuwewa Divisional Secretariat Division of Ehetuwewa of Galgamuwa, Kurunegala in the Western Province

(e) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law to have the site restored.

(f) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law preventing the unlawful obstruction of the migration/movement of elephants in the Ehetuwewa area.

In all these prayers, the Petitioners move this Court to issue writs of mandamus in general against the 1st to 9th Respondents. Since there is a punishment for non compliance of the Court order, I am of the view that the Petitioners cannot maintain an application for a writ of mandamus in this nature. It has to be specific. Especially in the wide range of activities that are being complained of in this case, it is essential to explain each and every order directed to which Respondent and the statutory duty that has to be complied with. Otherwise the 1st to 9th Respondents will have to face a situation that they could be charged for Contempt of Court on unimaginable instances. In the case of *Samastha Lanka Nidahas Grama Niladhari Sangamaya v. Dissanayake and others* 2011 (2) B.L.R. 467 Sathya Hettiga J cited with approval the decision in the case of *P.S. Bus Company V. Secretary of Ceylon Transport Board* 61 NLR 491 at 496 where it was held

that “*the Court held when considering granting a Writ the Court will consider the probable consequences of granting a prerogative writ*”.

The prayers (g), (h) and (i) are connected to the main prayers and cannot stand alone.

The Counsel for the 10th Respondent submitted that the 10th Respondent is the owner of about 2000 acres under a “sannasa” and it has been registered under the relevant laws and therefore he is entitled to possess his land in the way he wants. The Divisional Secretary of Ehatuwewa had confirmed that the 10th Respondent owns several lands on a “sannasa” by letter marked P7(e). Even if it is a private or Sangika land, if it is a forest, under relevant laws it is necessary to obtain the necessary permits prior to clear the forest. The environment protection laws in relation to deforestation are not only for the state lands but it applies to the private lands as well subject to the fact that it is a forest. In the present case, the Petitioners cannot maintain the application as it is.

Under these circumstances, I refuse notice and dismiss the application.

President of the Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal