

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

**In the matter of an Application for a mandate in
the nature of *Writ of Certiorari and Mandamus*
under article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka**

Rt. Rev. Dr. Cleatus Chandrasiri Perera,
Roman Catholic Bishop of Ratnapura,
Bishop's House, Madola,
Avissawella.

PETITIONER

CA/WRIT/95/2013

Vs,

1. Hon. Minister of Education,
Isurupaya,
Sri Jayawardanapura Kotte,
Battaramulla.
2. Secretary to Ministry of Education,
Isurupaya,
Sri Jayawardanapura Kotte,
Battaramulla.
3. R. B. Gankewela,
Senior Assistant Secretary,
Combined Service and lands,
Ministry of Education,
Isurupaya,
Sri Jayawardanapura Kotte,
Battaramulla.
4. R. Abeysinghe, Provincial Director of
Education,
Ratnapura.

5. H.A. Hemawathie Hamine,
Zonal Education Director,
Zonal Education Office,
Kegalle.
6. B.A.B.P Wijetunga,
Acting Principle,
KG/ Ambepussa Maha Vidyalaya,
Amepussa.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

And now between

Abeyratnage Ajith Thushara,
483/3, Mahena,
Warakapola.

INTERVENIENT –PETITIONER

Rt. Rev. Dr. Cleatus Chandrasiri Perera,
Roman Catholic Bishop of Ratnapura,
Bishop's House, Madola,
Avisawella.

PETITIONER-RESPONDENT

1. Hon. Minister of Education,
Isurupaya,
Sri Jayawardanapura Kotte,
Battaramulla.
2. Secretary to Ministry of Education,
Isurupaya,
Sri Jayawardanapura Kotte,
Battaramulla.

3. R. B. Gankewela,
Senior Assistant Secretary,
Combined Service and lands,
Ministry of Education,
Isurupaya,
Sri Jayawardanapura Kotte,
Battaramulla.
4. R. Abeysinghe, Provincial Director of
Education,
Ratnapura.
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Zonal Education Director,
Zonal Education Office,
Kegalle.
6. B.A.B.P Wijetunga,
Acting Principle,
KG/ Ambepussa Maha Vidyalaya,
Amepussa.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS - RESPONDENTS

**Before: Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel: J. Joseph for the Petitioner

S. Collure with A.P. Jayaweera for the Intervenient-Petitioner

A. Samaranayake SSC, Suranga Wimalasena SSC, and Chaya Sri Nammuni SSC
for Respondents

Inquiry on: 02.07.2015

Written Submissions On: 03.11.2015

Order on: 15.02.2016

Order

Vijith K. Malalgoda PC J

Petitioner to the present application Rev. Doctor Cleatus Chandrasiri Perera had come before this court seeking inter alia,

- b) To grant and issue a *Writ of Certiorari* to quash the decision to hold the classes KG/ Ambepussa Maha Vidyalaya (Grade 4-6) at KG/ Roman Catholic Mixed School and, the decision of the 1st, 2nd and the 3rd Respondents refusing to divest the said school.
- c) To grant and issue a *Writ of Mandamus* directing the 1st, 2nd and the 3rd Respondents to make order, divesting the belonging to the Petitioner vested in the state where the KG/Ambepussa Roman Catholic Sinhala Mixed School at Mahena, Warakapola was conducted, which property is more fully described in the schedule hereto.

It was the position of the Petitioner before this court that the Roman Catholic Bishop of Galle, the predecessor of the Petitioner was the proprietor of KG/Ambepussa Roman Catholic Sinhala Mixed School at Warakapola prior to the said property vested in the Government under the Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 5 of 1960 and No.8 of 1961.

Petitioner has alleged that the said school which was vested with the Government was not used for the purpose to which it was vested, i.e. to use it as KG/Ambepussa Roman Catholic Mixed

School or to use it under the changed name KG/ Ambepussa Sarasawi Prathamika Vidyalaya and therefore the Petitioner being the Roman Catholic Bishop of Ratnapura, created as a new diocese in place of Roman Catholic Bishop Galle is entitled under section 10 of the Act No 8 of 1961 for the divesting of the said school property. It is the position of the Petitioner before this court that the Petitioner received a positive response from the Education Authorities when the request was made for the divesting of the said property with the Catholic Church, but later it was revealed that the Education Authorities of the area has decided to operate few classes of KG/ Ambepussa Maha Vidyalaya in the said premises and the Petitioner has decided to come before this court against the said decision.

When the said matter was supported before this court on 10th May 2013, court issued notices on the Respondents. The Respondents who came before this court had challenged the position taken up by the Petitioner and submitted during their objections that there was no decision to divest the said property and it is being used now, for the same purpose it was vested in 1961.

However when this matter was fixed for Argument after the pleadings were completed, a person by the name Aberathnage Ajith Thushara of 483/3, Mahena, Warakapola had filed papers before this court seeking intervention for the present case.

Since the Petitioner objected to the above intervention, this court decided to first consider the said objections and decide on the application made by the Interventient-Petitioner for intervention.

According to the Interventient –Petitioner, prior to the present application was filed in the Court of Appeal, Rev. Noel Rovel of the Christ the King Church, Ambepussa filed a Writ Application in the Provincial High Court of Sabaragamuwa Holden in Kegalla against the Zonal Director of Education –Kegalle seeking a *Writ of Mandamus* compelling the said Director to erecting a fence along the boundaries of the school in question.

When the Interventient-Petitioner his mother and his uncle become aware of the said application, they moved to intervene in the said application, since the access road to their house runs through the premises of the school concerned. However the Interventient-Petitioner, settled the said application with the Petitioner and the Respondent to the said application.

Interventient-Petitioner has submitted several deeds with regard to the premises on which the KG/ Ambepussa Roman Catholic Sinhala Mixed School was said to have situated, and claims title to the said land and further moved that, in case the said land is divested, it should be handed over not to the Petitioner but to the Interventient -Petitioner

In the said circumstances Interventient-petitioner has submitted that he is a necessary party to the present application and therefore moved that he be permitted to intervene to the present case.

The fact that Interventient-Petitioner lived in one of the boundary to the school in question and the Writ application which was pending in the Provincial High Court of Sabaragamuwa Holden in Kegalle was settled with the Interventient-Petitioner cannot be considered in favour of the Interventient-Petitioner in considering the present request by him for intervention to the application since the nature of the two applications were somewhat different.

As observed in this judgment the Petitioner has come before this court under the provisions of Assisted Schools and Training Colleges (Supplementary Provision) Act No. 5 of 1960 and No. 8 of 1961 claiming that the said premises is not used for the purpose to which it was vested.

As admitted by the Interventient-Petitioner, it is the Petitioner's predecessor who was in occupation and control of the KG/ Ambepussa Roman Catholic Sinhala Mixed School at the time the school was vested with the Government, even though Interventient-Petitioner claims title to the said property.

When filing objections before this court the Respondents have taken up the position that the said property is being used now for the same purpose it was vested in 1961.

Under these circumstances the issuance of a Writ as prayed by the Petitioner or rejection of the Writ is purely based on the material already furnished by the Petitioner and the Respondents.

As submitted by the Interventient-Petitioner before this court, the main purpose of his intervention is to submit a claim to the premises in question but his claim will not in any event assist this court to find the merits or demerits of the present case.

In the case of *Illandari Devage Ranasinghe and Others V. Commissioner General of Excise and Ven. Udawaththa Nanda Thero and Others*; CA/Writ application 127/10 (CA minutes of 11.05.2011) the Court of Appeal followed the following criteria in considering intervention,

- a. The Interventient –Petitioners must have sufficient cause and interest and are affected parties and that,
- b. It would be the interest of Justice to permit intervention and that the intervention of the Interventient-Petitioner would assist court in the proper administration of justice and adjudication of the matter before court

The same issue was considered in the case of *L.U.P. Jayawardena V. Minister of Health and Others CA/Writ application No. 978.2008* (CA minutes of 21.05.2009) as follows,

“What the court at this point of time needs to consider is whether the intervenient party is a necessary party and having such party in the case would in all circumstances assist court in considering the merits and demerits of the application before this court”

As discussed by me earlier, the Interventient–Petitioner’s claim will not assist the court in considering the merits or demerits of this case.

The Intervent- Petitioner though admit that the land in question was occupied and in the control of the Predecessor to the Petitioner, disputes the ownership of the said land and it is observed by this court that as claimed by both parties, the ownership of the land in question is in dispute and that has to be decided by a proper trial court but not by this court.

The Intervent-Petitioner has failed to satisfy this court that he is a necessary party to the present application before this court. Therefore I make order refusing the application by the Intervent-Petitioner for intervention in the present case.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL