

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 a writ of mandamus under Article 140 of the Constitution.

C.A. (Writ) Application  
No.332/2016

Dompe Shanthivihari Thero,  
Viharadhikari,  
Sri Shanthi Nikethanaramaya,  
B.O.P. 398, Abayapura,  
Pulasthigama, Polonnaruwa.

PETITIONER

-Vs-

1. W.M.A. Karunarathna,  
Divisional Secretary,  
Divisional Secretariat,  
Lankapura.
2. Nimal Kotawelagedara,  
Commissioner of Buddhist Affairs,  
Department of Buddhist Affairs,  
"Dahampaya",  
No.135, Srimath Anagarika Dharmapala Mawatha,  
Colombo 7.
3. Mahaweligama Sumanarathana Thero,  
of Abayapura, Pulasthigama,  
Polonnaruwa.

4. Samaraweera Patabendinge Premarathana,  
of Abayapura, Pulasthigama,  
Polonnaruwa.
5. Samaraweera Patabendinge Upali Samaraweera  
of Abayapura, Pulasthigama,  
Polonnaruwa.
6. Samaraweera Patabendinge Sunil Dharmasena  
No.91, Abayapura, Pulasthigama,  
Polonnaruwa.
7. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Nimal Jayasinghe with Mahanama Dissanayaka for  
the Petitioner  
M. Jayasinghe, SC for the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup>  
Respondents  
A.S.M. Perera, PC with Nevilla Ananda for the 3<sup>rd</sup>  
Respondent

Argued on : 01.02.2019

Decided on : 05.02.2019

**A.H.M.D. Nawaz, J.**

**T**he Petitioner in this case seeks a Writ of Mandamus to compel the Divisional Secretary, Lankapura to take all necessary steps to prevent the construction of a place of worship on a land that is subject to a grant under the Land Development Ordinance. The gravamen of the complaint of the Petitioner is that it is illegal for the 3<sup>rd</sup>

Respondent to construct a temple on a land that had been granted to the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents upon a nomination made under the Land Development Ordinance.

The 3<sup>rd</sup> Respondent who is a Buddhist Thero belonging to Udarata Amarapura Chapter had received higher ordination on 27.06.2009-A certified copy of the declaration regarding Upasampada Bhikshu under Section 41 of the Buddhist Temporalities Ordinance No.19 of 1931 issued by Commissioner of Buddhist Affairs has been annexed as 3R2 to the statement of objections.

The 3<sup>rd</sup> Respondent came to the temple (Sri Shanthinikethanaramaya) on or about 14.11.2013 on an invitation of the then Chief Incumbent of the said temple, Rev. Elamalpotha Devarakkitha Thero, and stayed there performing religious activities. However the owner of a rice mill named L. Mithrapala was not in good terms with the 3<sup>rd</sup> Respondent since the 3<sup>rd</sup> Respondent along with the people of the village had protested against the disposal of waste products from the said rice mill to a lake thereby.

It is averred that on the influence of the said owner of the rice mill, the Chief Incumbent of the said temple did not want the 3<sup>rd</sup> Respondent to continue to stay there. It is further averred that the villagers wanted the 3<sup>rd</sup> Respondent to stay in the same village and the 6<sup>th</sup> Respondent was gracious enough to offer one of his houses with the land in extent  $1\frac{3}{4}$  acres situated within the same village to the 3<sup>rd</sup> Respondent and invited the 3<sup>rd</sup> Respondent to stay there. In the said circumstances, the 3<sup>rd</sup> Respondent together with his 6 student Samanera Bhikshus shifted to the new place and started the constructions of a new place of worship with the permission of the owner (6<sup>th</sup> Respondent), and in association with the people of the village.

The uncontroverted averment is then that notwithstanding his disputes with one L. Mithrapala in Pulasthigama, the villagers requested the 3<sup>rd</sup> Respondent to stay in the village and it was on their invitation he began to construct the temple on the land which was on a state grant. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents and one J.H. Shiran Abeykumara who are the owners of the adjoining lands submitted affidavits expressing their consent to the Divisional Secretariat, Lankapura and these affidavits have been appended to the

Statement of Objections filed by the 3<sup>rd</sup> Respondent. The 3<sup>rd</sup> Respondent had also sought permission from the Secretary, Ministry of Buddha Sasana and Religious Affairs to construct or maintain a place of worship and in consequence the 3<sup>rd</sup> Respondent received a letter dated 04.01.2017 from the Senior Assistant Secretary of the Ministry of Buddha Sasana stating that the particular land had not been legally transferred and requested that the application for registration be submitted after having fulfilled the relevant requirements. A number of persons from the village of Abeypura, Pulasthigama had made a request of the District Secretariat of Polonnaruwa dated 08.11.2014 seeking permission for registration and construction of the new temple. It is the contention of the 3<sup>rd</sup> Respondent that since the villagers have been associated with him, the Petitioner has acted with malice and he avers that this application has been made *mala fide* to prevent the construction of the new temple and its religious activities.

The laudable objective of the 3<sup>rd</sup> Respondent is brought out by the fact that he had commenced the construction of the new temple at the request of the villagers and it would appear that he is motivated with a genuine intent to uplift the spiritual knowledge of the villagers and community of the area. The uncontroverted assertion of the 3<sup>rd</sup> Respondent is that among other community services of the new temple, it maintains a training centre for Samanera Bhikkus publishing Thripitaka Dharma and Sunday Daham School.

The 3<sup>rd</sup> Respondent also has stated in his affidavit that the main requirements which should be in a temple i.e. Bodhi Prakaraya, Bodhi Kutiya and Ghantara Kuluna are all perfectly completed and the Sangawasaya has been constructed with the approval of Lankapura Pradeshiya Sabha. Thus it would appear that the 3<sup>rd</sup> Respondent has obtained a sanction of all authorities to construct a temple and if at all, the question whether the 3<sup>rd</sup> Respondent and any other persons possess the right to construct a temple within the land on a state grant is a matter for the 1<sup>st</sup> Respondent, Divisional Secretary, Lankapura who represents the interest of the state and this Court observes no objections towards the construction of this temple from this Respondent.

It will be inequitable and unreasonable if this Court is to interfere with the discretionary power of the 1<sup>st</sup> Respondent which has been properly exercised in order to promote spiritual upliftment of the people in the area. I do not find any legal right in the Petitioner, nor does he have *locus standi* to file or maintain this application before this Court. In these circumstances, this Court is disinclined to grant this application for a Writ of Mandamus and I proceed to refuse this application.

JUDGE OF THE COURT OF APPEAL