

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

In the matter of an application under Article 140 of the Constitution for a mandate in the nature of Writs of *Certiorari*, Prohibition and *Mandamus*.

1. Ven. Buddama Nandasara Thero,  
Sirinandanaramaya,  
Monaragala.
2. Kadirawel Shashikumar,  
Muppaneweliwatta,  
Monaragala.
3. Sugathapala Siriwardena  
Disanayake,  
Prajashalawa Road,  
Monaragala.

**PETITIONERS**

**Court of Appeal Case No:**  
**CA/WRIT/202/2024**

**Vs.**

1. M.J. Gunasiri,  
Commissioner General of Excise,  
Excise Department,  
Kotte Road,  
Rajagiriya.
- 1(A). U.L. Udaya Kumara Perera,  
Commissioner General of Excise,  
Excise Department,  
Kotte Road,  
Rajagiriya.

2. K. Dharamseelan,  
Deputy Commissioner General of  
Excise (Revenue and Operation),  
Excise Department,  
Kotte Road,  
Rajagiriya.
- 2(A). M.J. De Silva, (Acting),  
Deputy Commissioner General of  
Excise (Revenue and License),  
Excise Department,  
Kotte Road,  
Rajagiriya.
3. S. Ranjan,  
Assistant Commissioner of Excise,  
Excise Department,  
Uva Province,  
Badulla.
- 3(A). A.M.G. Adikari,  
Assistant Commissioner of Excise,  
Excise Department,  
Uva Province,  
Badulla.
4. T.M.B. Tilakarathna,  
Superintendent of Excise,  
Excise Department,  
Monaragala.
- 4(A). R.A.L. Ramanayake,  
Superintendent of Excise,  
Excise Department,  
Monaragala.
5. T.P. Gamage,  
Officer in Charge,  
Excise Centre,  
Monaragala.

6. Dayananda Ranwala,  
Excise Inspector,  
Excise Centre,  
Monaragala.
- 6(A). E.W.A.C. Ediriweera,  
Excise Inspector,  
Excise Centre,  
Monaragala.
7. W.D.P.C. Samarasekara,  
Divisional Secretary,  
Divisional Secretariat,  
Monaragala.
8. K.M.N. Jayawardena,  
Senior Superintendent of Surveyor,  
Surveyor General's Office,  
Monaragala.
9. Lanka Sathosa Limited,  
CWE Secretariat Building,  
Vauxhall Street,  
Colombo 02.

**RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Saman Liyanage with Krishan Elpitiya instructed by Optima law Associates for the Petitioners. Optima Law Associates for the Petitioners.

Prabhashanee Jayasekara, S.C. for the 1st to 8th Respondents.

Shantha Jayawardena with Hirannya Damunupola and Tharuka Ranathunga for the 9th Respondent.

**Supported on:** 10.09.2025

**Decided on:** 24.10.2025

**Mayadunne Corea, J.**

The Petitioner seeks, *inter alia*, the following reliefs:

- “b) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision of the 01<sup>st</sup> to 08<sup>th</sup> Respondents to grant a liquor license to 09<sup>th</sup> Respondent to run a liquor shop in the Sathosa building in question or to renew the liquor license of the 09<sup>th</sup> Respondent to run a liquor shop in the said Sathosa building in question as contained in the document marked P30.*
- c) Grant and issue a mandate in the nature of a Writ of Prohibition preventing the 01<sup>st</sup> to 08<sup>th</sup> Respondents from issuing and or renewing a liquor license to the 09<sup>th</sup> Respondent periodically to run a liquor shop in the said Sathosa building in question.*
- d) Grant and issue a mandate in the nature of Writ of Mandamus directing the 01<sup>st</sup> to 08<sup>th</sup> Respondents to hold a proper and impartial inquiry into the complaints and objections made by the Petitioners against the issuing or renewing of the liquor license to the 09<sup>th</sup> Respondent to run a liquor shop in the said Sathosa building in question.”*

The facts of the case briefly are as follows. The 9<sup>th</sup> Respondent had made an application to the 1<sup>st</sup> Respondent to obtain a liquor license on 23.04.2021. The 9<sup>th</sup> Respondent is currently running a liquor shop at one of its branches in Monaragala on a liquor license issued by the 1<sup>st</sup> to 8<sup>th</sup> Respondents. The Petitioners allege that the Monaragala branch

of the 9<sup>th</sup> Respondent is situated in close proximity to religious places of worship and schools in the area as follows:

<b>Place of worship/school</b>	<b>Distance in meters</b>
Temple including a sacred Bo-tree (a branch of the sacred Jaya Sri Maha Bodhi) and a Buddha statue	74.70
Muslim Mosque	129.23
Ganadevi Kovil	320
Sambodhi Viharaya	370.60
Mahanama Central College	423
Bukkeeriyagolla Rajamaha Viharaya	493
St. Anthony's Church	806.40

The Petitioners state that the Petitioners, religious leaders, and the general public had opposed the issuance of a liquor license to the 9<sup>th</sup> Respondent due to the building being situated in close proximity to places of worship and schools, as this would be in contravention of the guidelines and conditions set out under the Extraordinary Gazette Notification No. 1544/17 dated 10.04.2008 which is also known as Excise Notification No. 902. Despite this, the 1<sup>st</sup> to 8<sup>th</sup> Respondents had issued a liquor license to the 9<sup>th</sup> Respondent. Thereafter, the Petitioners had filed a Fundamental Rights Application bearing No. SC/FR/303/2021 in the Supreme Court, which the Petitioners then withdrew as the Respondents decided against issuing a liquor license to the 9<sup>th</sup> Respondent.

Nevertheless, the 9<sup>th</sup> Respondent was issued a liquor license in 2023 on a subsequent survey plan approved by the 8<sup>th</sup> Respondent. The Petitioners state that the 1<sup>st</sup> to 8<sup>th</sup> Respondents have issued the license on the initial application preferred by the 9<sup>th</sup> Respondent without calling for a new application and that such conduct/action/decision is bad in law.

### **The Petitioners' contention**

The Petitioners challenged the acts of the Respondents on the following grounds:

- The Respondents have acted contrary to Extraordinary Gazette Notification No. 1544/17 dated 10.04.2008 by acting in violation of the minimum distance rule, by not conducting a proper inquiry to ascertain public opinion, and by issuing liquor licenses above the maximum limit prescribed to one entity.
- The Respondents have acted contrary to the undertaking in the Fundamental Rights Application before the Supreme Court in SC/FR/303/2021.

- The survey plan approved by the 8<sup>th</sup> Respondent does not indicate the correct distances.

### **The Respondents' contention**

The 1<sup>st</sup> to 8<sup>th</sup> Respondents raised the following objections:

- A report was called from the Government Superintendent of Surveys to ascertain the actual distances under Rule 13(h) of Excise Notification No. 902.
- An inquiry was held with regard to the public complaints received against the application of the 9<sup>th</sup> Respondent.
- The Petitioners have wilfully misrepresented or suppressed material facts.
- The Petitioners' Application is futile.

The 9<sup>th</sup> Respondent raised the following objections:

- The Petitioners are guilty of laches.
- The Petitioners' Application is misconceived in law.
- The Minister of Finance, Economic and Policy Development had granted approval under section 28A (1) of the Excise Ordinance for the issuance of the liquor license of the 9<sup>th</sup> Respondent.
- The Cabinet of Ministers approved a Cabinet Memorandum seeking to issue 100 retail liquor licenses for Lanka Sathosa.
- The 9<sup>th</sup> Respondent fulfilled all the necessary requirements as laid down under the Excise Ordinance, Excise Notifications and Circulars.

### **Analysis**

The Petitioners' main argument was two-fold namely, that there is a distance violation as per the Excise Notification No.902 in Gazette 1544/17 dated 10.04.2008 marked as P3, and secondly, the application tendered by the 9<sup>th</sup> Respondent is not recommended by the Excise Officer-in-Charge or the Superintendent of Excise. Hence, granting of a liquor license is in violation of the Gazette marked as P3 and, therefore, is bad in law.

Let me first consider the submission made pertaining to the distance of the purported liquor stall from the place of religious worship. The parties are not at variance that a liquor license under the Excise Ordinance cannot be issued if there is a violation of the

said provisions contained in the Gazette. In order to have a better understanding of this case, it would be prudent to understand the sequence of events that has transpired between the parties.

The 9<sup>th</sup> Respondent had made an application to obtain a liquor license for the Sathosa outlet in Monaragala. It is the contention of the 9<sup>th</sup> Respondent that this application is pursuant to a Cabinet decision that permitted Sathosa supermarkets to obtain FL/4 licenses. To substantiate this argument, the 9<sup>th</sup> Respondent had submitted the document marked as 9R6 which was pursuant to the Cabinet Memorandum marked as 9R5. Thereafter, the Sathosa outlet in Monaragala had made an application to obtain an FL/4 license and that application is marked as 9R10. The Petitioners have submitted the same application marked as P21.

It is common ground that in the said application, the Excise Officer-in-Charge, Excise Superintendent and the Assistant Commissioner General of Excise had observed that there had been a public objection based on distance. While the Superintendent had observed that there should be an inquiry pertaining to the objections before the permit is issued, the Superintendent of Excise and the Assistant Commissioner of Excise had not recommended the application based on the distance. This will be dealt with elsewhere in the Order.

Subsequent to the said application, the Petitioners in this case had filed a Fundamental Rights Application in the Supreme Court, namely SC/FR/303/2021 marked as P24. When the said application was taken up for argument on 25.10.2022 the learned Counsel appearing for the 9<sup>th</sup> Respondents, along with the objections has tendered a document which was marked as P23 whereby the Deputy Commissioner of Excise had informed the 9<sup>th</sup> Respondent that since there is an objection and a purported violation of Excise Notification No. 902, they have not recommended granting a liquor license for the premises. However, the learned Counsel for the 9<sup>th</sup> Respondent contended that this letter had been issued prior to obtaining a report from the Surveyor General and prior to conducting an inquiry pertaining to the public objections.

### **The case before the Supreme Court**

It was common ground that the Petitioners had filed a Fundamental Rights Application in the Supreme Court against the Commissioner General of Excise and several other Respondents challenging the decision to grant a permit to the Sathosa outlet in Monaragala. All parties had filed their objections in the Fundamental Rights

Application. It was the contention of the Petitioners, that in the said Fundamental Rights Application, the Respondents had tendered a letter dated 02.08.2021, which pertained to the application for the FL/4 license for the Sathosa outlet in Monaragala. In the said letter, the Deputy Commissioner of Excise has stated that as there are public objections and a violation of Excise Notification No. 902, the Assistant Commissioner of Excise (Uva Province) had not recommended issuing a FL/4 license to the said outlet. However, this Court observes that this letter was sent in the year 2021.

Also, the Court observes that when the application for the FL/4 license had been tendered, the Excise officers had not recommended issuing the license. This is evident under the heading “observations and recommendations” in the application. It is observed that these recommendations and observations have been made in the month of July 2021. Subsequent to this letter, it is alleged that the Petitioners have withdrawn the said Fundamental Rights Application.

However, the Petitioners submitted that subsequent to the withdrawal, the Respondents had issued P30. In response, the learned State Counsel appearing for the 1<sup>st</sup> -8<sup>th</sup> Respondents gave a lengthy submission which this Court will consider shortly. Keeping it as it may, let me now consider the objection based on distance.

**The distance to the places of religious worship and schools from the 9<sup>th</sup> Respondent’s outlet**

The Petitioners’ main grievance is that, as per the Gazette marked as P3, one of the main requirements is given under rule 20 (c) which reads as follows:

“20.

*(c) The location of the premises for operation of license in respect of sale of liquor off the premises should be 100 meters away (as the crow flies from boundary to boundary) from Schools and places of public religious worship in respect of licenses for selling liquor for the consumption within the premises should be 500 meters away (as the crow flies from boundary to boundary) from schools and places of public religious worship.*

*Provided, however that in respect of the following types of existing licenses, the relaxation of the distance specified in paragraph (c) of this item may be determined by the Commissioner General of Excise, if he is satisfied that there are no specific objections by the public in respect of the issuance of licenses to such premises.*

- (i) *Licences approved by the Tourism Development Authority.*
- (ii) *Licenses which have been continuous operation for 10 years or more at the same location.*
- (iii) *Licenses remained enforced prior to the embellishment of such public religious places of worship or school.”*

The said rule deals with two instances. Firstly, for license pertaining to the sale of liquor whereby it says that the outlet should be 100m away from schools and places of public religious worship. Secondly, pertaining to consumption within the premises, the said rule states that it would be 500m away from schools and places of public religious worship (as the crow flies from boundary to boundary). At the submissions stage, all parties agreed that the said conditions should be complied with and there should be strict adherence to the distance rule. While the Petitioners contended that these conditions have been violated by granting the impugned license marked as P30. The Counsel for the Respondents denies the said allegations.

Let me now consider the particular rule in the Gazette. The plain reading of the said rule clearly demonstrates that as far as the impugned license contained in P30 is concerned, there should be a distance of 100m from schools and places of public religious worship. The application made was for a FL/4 license. Hence, the distance from the said premises should be 100m away from the above-stated schools and public places of religious worship. The Petitioners specifically pleaded and submitted that there is a breach of this rule as there are schools and public places of religious worship within the prescribed distance. To substantiate this argument, the Petitioners submitted a plan made by them, which is marked as P2. As per the said plan P2 submitted by the Petitioners themselves, I observe that there are no schools within a 100m radius. However, the Petitioners contended that there is a temple including a sacred Bo tree within a 100m radius of the Sathosa outlet. Hence, they argued that the issuance of P30 was in violation of the provisions contained in the Gazette marked as P3.

The learned Counsel for the 9<sup>th</sup> Respondent contended that upon the application being made, it poses a specific question as to whether there are places of public religious worship under the second part of the application. The 9<sup>th</sup> Respondent's application has been marked as P21 and submitted to this Court. The said application under the second part on page 6 states that the applicant had annexed a survey plan to depict the distance of places of public religious worship and schools from the premises where the impugned license has been issued. The said plan was tendered with the 9<sup>th</sup> Respondent's objections marked 9R27. The said plan had been drawn by a registered licensed surveyor on 20.06.2021. As per the said plan, there are no schools or places of public religious worship within a distance of 100m. As this plan had been objected to, the Respondents

had called for the plan to be drawn out by the Surveyor General's Department. Accordingly, a survey had been conducted by the Surveyor General's Department and the resulting plan is marked as 1R1a. As per 1R1a, the survey plan had been made on 30.06.2023. As per this plan, it is evident that there are no schools or public religious places of worship depicted within the prescribed 100m radius from the Sathosa outlet, Monaragala. All parties agreed that, as per the presumption contained in the Evidence Ordinance under section 83, a map made by the Surveyor General is to be presumed as accurate. However, the learned Counsel for the Petitioners submitted that as pleaded in their Petition, there is a Sacred Bo tree within the radius of 100m from the 9<sup>th</sup> Respondent's outlet along with a temple, which is not reflected in Surveyor General's plan.

### **The Petitioners confine their argument to the distance rule**

The learned Counsel for the Petitioners further submitted that he will be confining his argument to the distance issue pertaining to the public places of religious worship. The attention of the Court was drawn by the Petitioners to a photograph of the said public place of religious worship, namely, the Bo tree marked as P4. However, the Petitioners failed to explain whether there was a temple within the same premises, and upon inquiry by the Court, conceded that there is no resident priest on the premises. The learned Counsel further conceded that what is there is only a Bo tree. However, it was their contention that even if there is no temple, a Bo tree is a public place of religious worship and therefore, it violates the Excise Notification No.902 as it is within a 100m radius from the Sathosa outlet.

In response, the learned State Counsel brought to our attention that the Surveyor General in carrying out the survey, had also filed a survey report which would depict how the survey would be conducted. It was the contention of the learned State Counsel that he had considered the public places of religious worship which he has enumerated under paragraph 4 of the survey report and has also under paragraph 5 stated who had shown the boundaries of the same places of worship. It was the contention of the learned State Counsel that the place of public religious worship depicted in P4 does not contain any building and also contended that the said place though it is a place of worship, is not considered a place of "public" religious worship within the meaning of the Excise Notification No. 902.

Thus, whether the said P4 contains a public place of religious worship becomes a disputed fact which can only be determined by evidence. It is trite law that the Writ Courts are reluctant to exercise their discretionary Writ jurisdiction when the facts are

in dispute. In coming to this conclusion, I am guided by *Kumudu Akmeemana v. Hatton National Bank & others CA Writ Application No.72/2020 decided on 30.4.2021*, *Thajudeen v. Sri Lanka Tea Board & another (1981) 2 SLR 471* and *Dr. Puvanendran and another v. Premasiri and two others (2009) 2 SLR 107*.

Hence, in view of the Surveyor General's plan, the Petitioners' contention that the Respondents had violated the Excise Notification contained in P3 by the issuance of P30 is not tenable. This takes me to the next ground the Petitioners raised, namely, the non-recommendation of the 9<sup>th</sup> Respondent by the District Excise Officer-in-Charge, the Excise Superintendent and the Deputy Commissioner of Excise as depicted in P21.

### **The recommendation of the 1<sup>st</sup> Respondent's officers**

On a careful consideration of the application, I find the Officer-in-Charge of Excise, for the reasons stated in P21, has said that as per his observations there is a Bo tree within a 100m and considering the public objections, he has recommended that this application may be referred to an objection's inquiry under the Excise Notification before considering the grant of a permit. Hence, it is observed that he had not objected to the granting of the permit but has raised his concerns that in view of his observations, it is appropriate to have an inquiry prior to granting the license which is provided for by the law.

The second box under the heading of observations and recommendations contains the Excise Superintendent's observations, whereby he had stated that he observed that there is a mosque and a Bo tree within a radius of 100m from the 9<sup>th</sup> Respondent outlet and as there are six public complaints, he has recommended that the public objections be inquired into. He had not recommended the issuance of a license until the conclusion of the inquiry.

In the last box, under the said heading in the application marked as P21 the Assistant Commissioner General of Excise too, agreeing with the observations of the Officer-in-Charge of Excise has made an observation pertaining to the existence of the mosque and the place of public religious worship within the 100m radius from the location. Accordingly, he had not recommended the issuance of the permit on the basis of a violation of the Excise Notification No.902.

The Court observes that all these recommendations and observations have been made in the month of July 2021. In August 2021, the Deputy Commissioner General of Excise had issued a letter to the manager of Sathosa Limited which is marked as P23, whereby, they have communicated the non-recommendation of the an FL4 license, due to the public complaints and violation of Excise Notification 902.

As correctly submitted by the Respondents, all these recommendations and observations were submitted prior to the survey being carried out to ascertain the objection raised on the basis of distance and accordingly to ascertain any violation of Excise Notification No. 902. Further, these recommendations and decisions have been made without a proper inquiry being carried out.

It was the 9<sup>th</sup> Respondent's Counsel's contention that, subsequent to the survey by the Surveyor General and the inquiry into the public objections, it has been revealed that there was no place of religious public worship within a distance of 100m to violate Excise Notification No. 902 which resulted in the 9<sup>th</sup> Respondent being issued the FL/4 license.

One of the main contentions of the Petitioners is that the 1<sup>st</sup> Respondent cannot issue a license contrary to his own officers' recommendations and observations that are contained in the 9<sup>th</sup> Respondent's Application. It was strenuously argued that rule 13(c) makes it a requirement to submit a report which includes the recommendation of the Officer-in-Charge of the Excise station, Superintendent of Excise and the Assistant Commissioner of Excise (as per Schedule II). Hence, the argument that any license granted contrary to the said recommendations and observations are bad in law.

Let me now examine the said contention. It is pertinent to note, that the said observations and recommendations are there for a purpose. However, in the said recommendations, except for the Additional Excise Commissioner, the others have not refused to recommend the issuance of a license. What they have observed is to hold an inquiry to ascertain the merits of the objections into distance before the issuance of a license. Let me now consider the Exercise Notification No. 902 rule 3 to examine whether the Commissioner General is bound to accept the officers' recommendations contained in the application and whether his role is to simply rubberstamp the said recommendations.

This Court observes that as per the Excise Notification No. 902 rule 3, it is the duty of the Commissioner General of Excise to take a decision to issue the license. This will be an opportune time to consider the said rule. Which reads as follows;

*“3. The Commissioner General shall on receipt of all applications under rule 2, and having considered them in light of the provisions of the **Ordinance satisfy himself** that they are in conformity to the guidelines and conditions which are satisfied in Schedule III to these rules. The guidelines and conditions shall be applicable until varied or rescinded, for the ... of all categories liquor licenses in respect of any financial year commencing from January 1<sup>st</sup> of any year and ending in December 31<sup>st</sup> of the relevant year.”* (emphasis added).

As per the said rule the decision to issue the license is vested with the Commissioner General of Excise and in coming to the said decision, he should consider the application in light of the Ordinance, and he must satisfy himself that the application is in conformity with the guidelines and conditions enumerated in Schedule III thereof.

In my view, the said recommendations or non-recommendations should only be considered by the Commissioner General of Excise. It is his prerogative upon being satisfied that there is compliance and conformity with Schedule III to issue the license.

As per the wording of rule 3, what is important is that the Commissioner General should be satisfied that the application is in conformity with the guidelines and conditions.

The said rule does not imply whether he is bound to accept or reject the recommendations enumerated under rule 13(c). The requirement is only for him to be satisfied that there is conformity. Hence, the Petitioner’s second ground relied upon namely, that the granting of FL/4 license is bad in law in view of the non-recommendation of the Superintendent of Excise and the Assistant Commissioner of Excise, cannot be sustained.

Further, I observe that both the non-recommendations are based on the premise that there are public places of religious worship within a 100m radius. However, rule 13(g) and (h) both contemplate how this distance can be decided at the time the Superintendent of Excise and the Assistant Commissioner of Excise made their recommendations they had not recourse to rule 13 (g) and (h) specifically by obtaining

a plan from the Surveyor General's Department. Hence, their non recommendations are based on a premise which has not been established by the Surveyor General's plan marked as P26. It was also brought to our attention by the learned State Counsel that even in the objections by the Respondents before the Supreme Court they had specifically pleaded that they are in the process of ascertaining this distance through a survey done by the Surveyor General and they were in the process of inquiring into the public objections.

However, before the said objection's inquiry was concluded and the final decision taken the Petitioners in the Fundamental Rights Application had decided to withdraw their Application.

### **Are the reliefs prayed by the Petitioners futile?**

The learned Counsel for the 9<sup>th</sup> Respondent submits that prayer (b) seeks to quash the decision of the 1<sup>st</sup> - 8<sup>th</sup> Respondents to grant a liquor license to the 9<sup>th</sup> Respondent as contained in the document marked as P30. The document P30 has a specific period of validity. It is valid only from 14.12.2023 to 31.12.2023. It was their contention that this permit has expired and they further contended that as per P30 there is no provision to renew the said license. The renewal of license is based on a separate application which is not contained in P30. Hence, what is pleaded is to quash the decision contained in P30. This Court is inclined to agree with the submissions of the 9<sup>th</sup> Respondent. On a careful consideration of the document P30, it is clear the said license on the face of it had expired even at the time of filing of this Writ Application.

By the second relief the Petitioners seek a Writ of Prohibition, prohibiting the 1<sup>st</sup> -8<sup>th</sup> Respondents from renewing the license. It is trite law that a Petitioner seeking a Writ of Prohibition should demonstrate that act to be done is illegal. In this instance the Petitioners have failed to demonstrate that there is an illegality to obtain the relief of a Writ of Prohibition, especially in the light of the Petitioners' main objection based on the distance rule being unsustainable.

The next substantial relief the Petitioners are seeking is a Writ of *Mandamus* to hold an impartial inquiry into the complaints and objections made by the Petitioners against the issuance of the license. As contended by, the learned State Counsel, the Court observes an inquiry had been held and the 1<sup>st</sup> Petitioner himself had taken part in the said inquiry. This is amply evident by the document marked as 1R2 which was not contradicted by the Petitioners. Therefore, this Court is of the view that the decision to grant the FL/4

license has been taken subsequent to the said inquiry. Hence, in my view, relief (d) has to fail as the Petitioners have failed to impugn the proceedings of the said inquiry. In any event the petitioner did not contest the proceedings of the inquiry.

In view of the plan submitted and marked as P26 by the Surveyor General and in view of the Petitioners inability to impugn the said plan. In my view prayer (f) has to fail. Further I observe that by calling for the said plan there is sufficient compliance of rule 13(h) of P3.

### **The issuance of a license on an application rejected by the Respondents**

The Petitioners contended that the application marked as P21 was tendered by the 9<sup>th</sup> Respondent to obtain the liquor license. However, the Petitioners contend that the said application for the liquor license had been rejected by the Respondents. It is further contended that in the recommendations, the Respondent's agents too had rejected the application and even when the said matter was contested before the Supreme Court it was revealed that the said application had been rejected. It is their contention that without calling for a fresh application, the 1<sup>st</sup> Respondent had granted a liquor license on the same application that had been rejected and therefore, the grant of the said license is bad in law. In answering this objection, the question that begs an answer from this Court is whether the said application was rejected as per the procedure laid down in the Excise Notice. On a careful perusal as stated above in this judgement, the Excise Department officers' recommendations do not reject the application. It only states that an inquiry should be held before issuing a permit. As correctly stated by the learned State Counsel, even in the Supreme Court case, a letter P23 had been issued saying that the application should not be proceeded with. However, it was brought to our attention that the objections filed to the FR application that the Respondents to the application had clearly stated that the objections pertaining to distance is being inquired into. Hence, the non-recommendation of the Excise officers as well as the letter that had been issued was prior to affording the 9<sup>th</sup> Respondent an opportunity to face an inquiry and prior to the Respondents ascertaining the distance under the Excise Notice governed by the procedures laid down thereon. As stated above, at the inquiry, the objection pertaining to distance was dismissed after considering the Surveyor General's plans. Hence, considering all the factors, the application marked P21 tendered by the Petitioners had never been rejected. Therefore, in my view, there is no impediment for the Respondents to grant the license on the same application which had been cleared after inquiry. Hence, the Petitioners' said objection has to fail.

## **Conclusion**

Considering all the above facts and for the aforesaid reasons, this Court is not inclined to issue formal notice on the Respondents. I am of the view the Petitioners have failed to prove the existence of a *prima facie* case. Accordingly, this Court proceed to dismiss this Application.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**