

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

CA (Writ) App. No. 372/2024

1. Abdullajan Gullamjan
No. 154/4, Main Street,
Norwood,
Hatton
2. Samsudeen Abdul Hakeem
No. 126, Main Street,
Norwood,
Hatton.
3. Jeyawudeen Mohammed Rimaz
No. 20, Kelin Veediya,
Norwood,
Hatton.
4. Abdul Asees Mohamed Lafeer Lebbe
No. 28, Gaminipura,
Hatton.
5. Mohammed Paleel Mohammed Aqram
No. 37, Main Street,
Norwood, Hatton.

PETITIONERS

Vs.

1. I. M. Senanayake,
Divisional Secretary,
Norwood Divisional Secretariat,
Norwood.
2. Mrs. Sithara Ruwini Gamage,
Divisional Secretary,
Divisional Secretariat,
Ambagamuwa.
3. Mr. K.D. Lal Kantha,
Minister,
Ministry of Agriculture, Livestock,
Land and Irrigation,
'Mihikatha Madura',
Land Secretariat,
No. 1200/6, Rajamal Watta Road,
Battarmulla.
4. Mr. D.P. Wickremasinghe,
Secretary,
Ministry of Agriculture, Livestock,
Land and Irrigation,
'Mihikatha Madura',
Land Secretariat,
No. 1200/6, Rajamal Watta Road,
Battarmulla.
5. Mr. A.H.M.H. Abayarathna,
Minister,
Ministry of Public Administration,
Provincial Council and Local
Government,
Independence Square,
Colombo 07.
6. Mr. S. Aloka Bandara,
Secretary,

Ministry of Public Administration,
Provincial Council and Local
Government,
Independence Square,
Colombo 07.

7. Mr. M.L.M.H. Mohideen Hussain,
Chairman,
Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

8. Prof. P.C.P. Jaufer,
Member,
Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

9. Moulavi M.I. Abdul Jabbar,
Member,
Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

10. B.M. Dole,
Member,
Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

11. Mufthi M.Z.M. Mustafa Raza,
Member,
Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

12. M.A. Matheen,
Member,

Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

13. Moulavi M.N.M. Ijlan,
Member,
Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10.

14. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: S. U. B. Karalliyadde, J

Dr. D. F. H. Gunawardhana, J.

Counsel:

Dayani Panditharathne for the Petitioner.

P. Jayasekara, S.C. for the 1st – 6th Respondents and 14th Respondent.

Supported on: 03.09.2025

Order delivered on: 30.09.2025

Dr. D. F. H. Gunawardhana, J.

Order

Introduction

The five Petitioners are the trustees of the Norwood Jummah Mosque; and they state that they being the trustees, have developed the premises by erecting six housing units as a complex to be given to its devotees, in addition to that, they are in the process of constructing another four houses to be given to its devotees. It is their position that it has the authority to do so in terms of Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956 (as amended). Additionally, they state that the land containing the said mosque, being the only Jummah mosque of the Norwood area, has been in their possession since 1952, and the Grama Niladhari as well as the Secretary to the local authority had issued certificates to that effect. In fact, having constructed the six houses, it has obtained electricity supply from the Electricity Board to the said housing units.

However, in 2018, the Ambagamuwa Divisional Secretary (2nd Respondent), having instituted proceedings under the State Land Recoveries of Possession Act (as amended), secured an eviction order against the trustees and the lessees who hold under them for those housing units which are situated within the said mosque premises.

The Fiscal Officers of the Magistrate's Court of Hatton have executed the eviction order issued by the Magistrate's Court, despite the fact that the Petitioners have filed a Revision Application in the High Court against the orders given in several cases filed by the 2nd Respondent in the Magistrate's Court of Hatton. Accordingly, the Petitioners and its lessees who were occupying the six housing units have been evicted from the said housing units.

As such, the Petitioners complain that the fundamental rights of the mosque have been violated by the said eviction order. Therefore, they seek the following reliefs;

- “1) Issue Notices on the Respondents above named;*
- 2) To issue an Interim Injunction to stop further proceedings of the Hatton Magistrate Court with regard to case numbers 8351, 8353, 8354, 8355, and 8356 until the final determination of this case;*
- 3) To grant / issue an order in the nature of a Writ of Mandamus to the 1st to 4th Respondents that all persons including their dependents settled by the Respondents on the land in question should be evicted from the land in question;*
- 4) To grant / issue an order in the nature of a Writ of Mandamus to the 1st to 4th Respondents to restore the possession of the land in question to the Petitioners;*
- 5) To issue an Interim Injunction restraining the 2nd Respondent and his representatives from unlawful encroachment on the land or part of the land described and not to prohibit the worship of the Norwood Jummah Mosque;*
- 6) Grant costs and,*
- 7) Grant such other and further relief as to Your Lordship’s Court shall deem fit.”*

This case came up for support on 03.09.2025, and the following contentions were advanced by the counsel on either side.

Arguments

The first contention of Mr. Dias is that the trustees had been possessing the building through the tenants and other lessees of the Mosque; therefore, taking steps to eject the Petitioners from the premises is illegal. As such, the decision to take action under the State Lands (Recovery of Possession) Act is illegal. Therefore, since they have been evicted from the premises through the Magistrate Court proceedings, the Petitioner is entitled to a *Writ of Mandamus* to restore them in possession. He relies heavily on **P11** and **P19** to establish his possession.

Answering a question posed by the Court, Mr. Dias conceded that his clients are the occupiers of the premises; therefore, under the State Lands (Recovery of Possession) Act, if at all, occupiers are liable to be evicted and the notice in terms of Section 5 has to be served on him. Further, he concedes that the Petitioners are not seeking any title against the State, as the premises belong to the State.

However, on the other hand, Mrs. Jayasekara contended that, since the Petitioners were in unlawful occupation, the relevant Government officers took the necessary steps to evict them from the premises in suit.

The second argument advanced by Mrs. Jayasekara is that the Petitioners have not shown any statutory or legal duty cast upon the Respondents to compel them to carry out any duty. Similarly, the Petitioners have not shown any right to possess the premises in suit to obtain a *Writ of Mandamus* against the Respondents.

Issues in the application

In this case, the Petitioners are seeking to obtain a *Writ of Mandamus* against the 2nd Respondent and the other Respondents to restore the Petitioners and their lessees to the houses standing on the land in question and to settle them on the land and premises where six housing units have already been constructed, and four more housing units have been proposed to be constructed by the Petitioners as the trustees of the Jumah Mosque of Norwood. The decision of the 2nd Respondent to recover possession of the land and premises was followed by a notice sent to the Petitioners and their lessees or tenants. The notices were sent in accordance with Section 3 of the State Land (Recovery of Possession) Act No. 7 of 1979, and since then, there has been no response from the Petitioners, their lessees, or their tenants. The 2nd Respondent initiated proceedings in the Magistrates' Court, cases bearing numbers 8351, 8353, 8354, 8355, and 8356 in the Magistrate

Court of Hatton, seeking to eject the Petitioners or those who hold under them as tenants or lessees, and recover possession of the premises claimed to be state land by the 1st and 3rd Respondents.

The Petitioners' argument is of twofold:

- (i) They have a right to stay on or hold onto the said property.
- (ii) The said ejectment orders and recovery of possession by the 1st and 3rd Respondents for and on behalf of the State is violative of the Petitioners' religious rights guaranteed by Article 10 of the Constitution.

Now, I will consider whether the Petitioners are entitled to obtain a *Writ of Mandamus* to restore them in possession, and thereby, stay the proceedings in the Magistrates' Court from further proceedings resulting in the ejectment orders and its implementation that is alleged to be violative of the rights of the Petitioners. If such decision by the 2nd Respondent to recover the said land is violative of the Petitioners' rights, then the Petitioners are entitled to a *Writ of Mandamus*.

In addition to that, I will consider whether the Petitioners have the right to obtain injunctive relief against the Respondents.

Rights of the Petitioners

Now I will consider whether the Petitioners have any right as claimed by them. The Petitioners' claim that they have the right to possess the premises or the land on which they have constructed the six housing units and propose to construct four more units, altogether ten housing units, is based on two documents, **P11** and **P19**. The document marked as **P19** has been issued by the Grama Niladhari of the area to the effect that the Petitioners, being the trustees of the Jumah Mosque of Norwood, are possessing the premises as claimed by them: **P11** is to a similar effect. **P11** that has been issued by the Secretary to the Ambagamuwa local authority is based on **P19**.

Therefore, none of these documents give any right, title, or any other authority to the Petitioners, including the right to possess the land.

Unauthorized possession

However, in the course of the argument, Mr. Dias conceded that the land on which the Mosque itself was constructed belongs to the State, and the lands where the six housing units and the other land where the other proposed housing units are to be constructed also belongs to the State. However, the Petitioners' claim is that they have been in possession of the land since 1952, but there is no proper regularization or legalization of their possession. Therefore, even if they possessed the said land for a century, their possession would remain unregularized, unless it is regularised by the issuance of a permit in terms of Section 19(2) of the Land Development Ordinance or further legalised by the issuance of a grant under Section 19(4) of the same Ordinance or any other law.

Unauthorized construction

Therefore, the unauthorized constructions effected by the Petitioners have been constructed without any authorization, and no approved plan has been produced by the Petitioners as approved by the Pradeshiya Sabha, or any local authority. As a result, the construction itself appears to be illegal, in addition to the unlawful possession of state land. As such, they have so far not established any right to possess the said land, in respect of which the 2nd Respondent has secured an order from the Magistrate Court of Hatton, implemented the same, and recovered possession of the land thereof, after ejecting the Petitioners and their lessees or tenants.

Therefore, it is my view that the decision taken by the 2nd Respondent to eject the Petitioners or those who are holding under them as lessees or tenants are justified, and she has no other way of recovering the same after the issuance of the notice to evict, to which the Respondents have failed

to respond. As a result, she has initiated legal proceedings by instituting legal actions as provided by the law for the recovery of the State land, in which the Respondents have also not made a successful claim. Therefore, the learned Magistrate has granted the eviction orders in favour of the 2nd Respondent as sought by her and later implemented the said orders. Even the High Court revision application has been an utter failure, which the Petitioners preferred in challenging the eviction orders issued in the Magistrate Court cases in the Magistrate Court of Hatton bearing numbers 8351, 8353, 8354, 8355, and 8356. Therefore, it is my view that the Petitioners have no legal right or any other right to obtain a *Writ of Mandamus*.

Religious rights are not affected

Now I will consider whether the implementation of the ejectment order issued by the learned Magistrate affects the religious rights of the Petitioners. The Petitioners, on their own, have stated in their Petition that after constructing the 6 housing units, they have leased or rented them out to tenants, and two of them have already left. Those lessees or tenants are their own devotees. However, no affidavit or any other document has been placed before the Court except the assertion that their religious rights are affected by securing possession of the said unlawfully constructed housing units situated on the state land.

However, the Government or the state officers have not decided to take possession of the Mosque, which they have allowed to stand as it is, and the Petitioners, along with their congregation, have not been affected in their rights to profess their religion collectively or individually, along with others. What the 2nd Respondent, as a state officer, has done is to recover possession of a certain state-owned land, subject to unlawful possession adjacent to the Mosque. Therefore, the Petitioners have failed to establish that their religious rights as guaranteed under Article 10 of the Constitution, have been violated.

Accordingly, it is my view that the Petitioners have not successfully invoked the jurisdiction of this Court in obtaining the writs the Petitioners seek, namely the *Writ of Mandamus*, as mentioned in the prayer, which I have already referred to above.

In this case, the Petitioners are also not entitled to obtain injunctive relief, because they have not made out a *prima facie* case¹ against the Respondents, and the balance of convenience² as well as equity lies against them.

Conclusion

For the reasons adumbrated above, I refuse to issue formal notice, and this application is dismissed *in limine*.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL

¹ Soza J., *Felix Diaz Bandaranayake v The State Film Corporation and Another* [1981] 2 S.L.R 287

² Lord Diplock, *American Cyanamid Co v Ethicon Ltd* [1975] 2 WLR 316