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 Habeas Corpus under

Article 141 of the Constitution of the Democratic Socialist Republic of Sri Lanka

CASE NO :- CA HCA 04/2023

Wettasinghe Arachchige Don Tilak Wettasinghe,
No.160, Hospital Road,
Kalubowila, Dehiwala.

PETITIONER

-Vs-

1. Loku Geeganage Sunanda Malraj de Silva,
   No.285/9, 7th Lane,
   Pamunuwa Road,
   Maharagama.

   Or at

   No.466/5-7/7,
   Sea Road (Muhudu Mawatha)
   Kollupitiya, Colombo-03.

2. Sunil,
   Retired Army Officer,
   No.466/5-7/7,
   Sea Road,
   Kollupitiya, Colombo 03.

3. Head Quarters Inspector
   Kollupitiya Police,
   Kollupitiya,
   Colombo 03.

4. Head Quarters of Inspector
   Special Crime Unit 1,
   Dematagoda,
   Colombo 09.

5. Wettasinghe Arachchige Don
   Siriwardene,
   No.466/5-7/7,
   Sea Road (Muhudu Mawatha)
   Colombo 03.

RESPONDENTS

Before: Hon. D.N. Samarakoon, J.

Counsel: Hemantha Situge instructed by A. W. Gunesekera for the petitioner.

ReveendraSumathipala for the 01st Respondent.

Malin Danansuriya for the 05th Respondent.

Supported on:18.09.2023

Written submission tendered on: 13.10.2023by the Appellant.

13.10.2023by the 01stRespondent.

13.10.2023 by the 05th Respondent.

Decided on:07.12. 2023

D.N. Samarakoon, J

The 05th respondent, the Corpus, Wettesinghe Arachchige Don Siriwardene was according to the petitioner, who claims to be his son 94 years and 05 months old on 11th September 2023 when the amended petition was filed.

The petitioner is Wettesinghe Arachchige Don Tilak Wettesinghe born on 18th November 1960.

The Corpus was born on 10th March 1929.

He denies that the petitioner is his son.

The petitioner's complaint to this Court is that the 01st and 02nd respondents keep the Corpus in illegal custody. It appears that the Corpus owns a number of valuable properties.

The petitioner, among other things, attaches as P.07 a deed of gift bearing No. 153 dated 09th November 2018 and as P.08 a deed of gift No. 154 bearing the same date by which the Corpus has transferred property to the 01st respondent.

The petitioner has marked as P.01 the alleged birth certificate of the Corpus bearing No. 165. P.02 is the Marriage Certificate of the Corpus with whom the petitioner claims his mother, since deceased, Weeratunge Arachchige Wimala de Costa. The marriage certificate bearing No. 3046 is dated 08th August 1959.

In the birth certificate of the petitioner marked as P.04, where his name appears as Thilak Wettesinghe, in the 04th Column the full name of the father appears to be "Wettesinghe Arachchige Don Siriwardene". In the 05th Column the full name of the mother is "Weeratunge Arachchige Wimala de Costa". The 06th Column indicates that the parents are married.

The petitioner's written submissions have referred to the presumption attached to documents 30 years or more old, produced from the proper custody in section 90 of the Evidence Ordinance.

What is against P.04?

On the day this matter was supported before me for notice and interim relief, the learned counsel who appeared for the Corpus informed that the Corpus has been brought to the Court on a wheel chair and out of the regard he had for (informal) notice issued by the petitioner he was brought to Court on 15th September 2023 too. The date on which the matter was supported was 18th September 2023. Hence to prevent the Corpus undergoing the difficulty of coming to Court again despite I sat as Single Judge on that day, the matter was heard for support.

As requested for the Corpus he was admitted to the Open Court on his wheel chair and the Court asked him a few questions to which he answered in Sinhalese. The entirety of those questions and answers will be reproduced below in their English rendering,

" Q. Can you hear me?

A. Yes.

Q. What is your name?

A. Wettesinghe Arachchige Don Siriwardene.

Q. Where do you live now?

A. Room No. 47 at the Building Complex at Kollupitiya.

Q. With whom do you live?

A. With Sunanda.

Q. Who is he of you?

A. The one who looks after me for a long time (edaindan). He is the one who is there as my guardian.

Q. Do you know a person called Tilak Wettesinghe?

A. That is the son of the carpenter who was at home.

(Ee ithingedarahitapuwaduwageputha)

Q. Is he not a son of yours?

A. No. No. Not a son of mine (smiling)

Q. Do you now have your National Identity Card?

A. Given (to the Security Point in Court)

Q. Bring it to see.

Q. How old are you now?

A. About 85 years.

Q. What is the name of your wife?

A. She is dead.

Q. What was her name?

A. Wimala de Costa.

Q. Did you divorce her?

A. She died.

Q. Did you divorce her when she was living?

A. I did not divorce her I think, I cannot remember.

Later his Identity Papers were examined by the Court. It was not a National Identity Card but Driver's License bearing No. 184078 which gave his National Identity Card number as 383210372V indicating that he was born in 1938. The

date of the issuing of the Diver's license was 23rd February 1948. But never in this country Driver's license was issued to a person 10 years of age. The name given on the Driver's license was "Wettesinghe Arachchige Don Siriwardene". The address was No. 157, Stanley Thilakerathne Mawatha, Nugegoda.

According to the birth certificate of the petitioner, P.04, the place of birth of the father is "Kalubowila Dehiwala". The present address of the petitioner is No. 160, Hospital Road, Kalubowila, Dehiwala.

Furthermore, according to P.04, the date and place of birth of the petitioner is on "Eighteenth day of November 1960 (Sixty) St. Anne's Nursing Home, Ward Place, Colombo".

It is a question to be considered as to who admitted the mother of the petitioner, Weeratunge Arachchige Wimala de Costa to a private nursing home, instead of the Government Hospital, whether it was the Corpus (the alleged husband and father) or the alleged carpenter who was at home, or someone else.

It must also be noted, that, in P.04 the informer is Wettesinghe Arachchige Don Siriwardene of No. 242, Dehiwala Road, Gangodawila, Nugegoda.

In P.04 the name of the (paternal) grandfather has been given as Wettesinghe Arachchige Don Harmanis Appuhamy, his birth year as 1863 and the place of birth as Bentota.

According to the alleged birth certificate of the Corpus too, which is P.01 bearing No. 165 the name of the father of the Corpus has been given as Wettesinghe Arachchige Don Harmanis Appuhamy and the name of the mother as Weeratunge Arachchige Dona Isabela de Costa.

The petitioner has referred to in his written submissions to the book about Lord Denning, **"The Judge and the Law",** Edited by J. L. Jowell & J. P. W. B. Mc Auslen, Sweet and Maxwell London 1984, where it has been said that, "**Intermittently he (Lord Denning) would make libertarian**

pronouncements, as in McIlraith vs. Grady that "<u>no man's liberty is to be taken away unless every requirement of the law has been strictly complied with</u>". The reference of that case is (1968) 1 Q.B.D. 468 at 477.

In the written submissions of the 01st respondent dated 13th October 2023 it is stated that the petitioner has failed to establish a prima facie case of illegal confinement.

In defining what is "illegal confinement", the 01st respondent has cited the definition in Black's Law Dictionary which is "the right of freedom of a person to behave as they would like".

It is also cited from the case **Kharak Singh vs. State of Uttar Pradesh and others, 1964, 1 SCR 332, AIR 1963 SC 1295,** that,

> "…the right to personal liberty constitutes not only the right to freedom from restrictions placed on one's movement but also freedom from encroachments on one's private life".

The 01st respondent also cites from **Indian Journal of Forensic Medicine and Toxicology April June 2021 Vol. 15 No. 2 by Dr. Ishitha Sharma, Hebeas Corpus on illegal incarceration of individuals,** that,

> "…when an individual is being denied of freedom of movement, occupation and exercise of freedom of choice".

Upon what was stated above, this Court is of the view that the petitioner has established a prima facie case, that the Corpus is possibly his father, or to put it on another form, that he is the son of the Corpus. This itself raises the possibility that it could be that the freedom of choice of the Corpus is restrained by the 01st and 02nd respondent. Therefore this Court issues formal notice on all respondents.

The citing of the 01st respondent from the Forensic Medicine Journal draws the attention of this Court to paragraph (01)(d) of the said 01st respondent's written submissions. It says, that one of the reliefs claimed by the petitioner is,

> "make order directing the JMO of Colombo to submit a report on the Physical and Mental Medical condition of the 05th respondent the Corpus to Your Lordship's Court".

The petitioner has thereafter filed an Amended petition. But the Court can issue a direction as above. The Court thinks that it is expedient to obtain that report before the Court considers making the interim order.

Therefore the Court directs the Judicial Medical Officer Colombo to examine the Corpus by himself or through an assistant of him equally qualified and to make a report on the Physical as well as Mental condition of the Corpus which may include any incidental matter the physician thinks fit to include.

The Officer in Charge of the Kollupitiya Police Station is also directed to provide the services of two police officers as security, if the JMO or his assistant so requires.

Nothing in this order shall be construed as authorization to effect a DNA test on the Corpus.

The Registrar is directed to inform the JMO Colombo and OIC Kollupitiya Police about the above directions without any delay.

The JMO is to report to Court within one month of the receipt of the order.

Judge of the Court of Appeal.