

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

*In the matter of an application for
Mandate in the nature of Writ of
Certiorari, Mandamus under Article 140
of the Constitution of the Republic of Sri
Lanka.*

**C.A. (Writ) Application No:
CA/WRIT/131/2020**

Ramakrishna Thenabadu,
Nayaka Pujaka Mahabethme,
Sri Vishnu Maha Dewalaya,
Devinuwara.

Also, at:

Eswarage Watta, Tangalle Road,
Devinuwara.

PETITIONER

Vs.

1. Sunanda Kariyapperuma,
Commissioner General of Buddhist
Affairs,
Department of Buddhist Affairs,
No. 135, Anagarika Dharmapala Mw,
Colombo 07.

1A. R. M. P. Rathnayake,
Commissioner General of Buddhist
Affairs,
Department of Buddhist Affairs,
No. 135, Anagarika Dharmapala Mw,
Colombo 07.

2. Kunama Hennadige nandasiri,
Basnayaka Nilame,
Sri Vishnu Maha Dewalaya,
Devinuwara.

Also, at;
No. 443, “Chejana”
Pamburana,
Matara

RESPONDENTS

Before	:	Hon. Rohantha Abeysuriya PC, J.(P/CA)
	:	Hon. K. Priyantha Fernando, J. (CA)
Counsel	:	Sandamal Rajapaksha with Harsha Mendis for the Petitioner Shemanthi Dunuwille, SC for the 1 st Respondent. Priyantha Alagiyawanna with Sahan Gunasekara for the 2 nd Respondent instructed by Nadeesha Alawaththa.
Written Submissions on	:	25.05.2026 for the 2 nd Respondent. 25.06.2026 & 02.09.2026 for the Petitioner. 25.08.2026 for the 1 st Respondent.
Decided on	:	30.09.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner, namely Ramakrishna Thenabadu (Nayaka Pujaka Mahabethme of Sri Vishnu Maha Devalaya, Devinuwara) sought the following mandates in the nature of Writs of:

- (1) *Certiorari* quashing the decision and/or omission of the 1st Respondent in his failure and/or neglect to conclude the inquiry process against the Petitioner within a reasonable period of time pursuant to his suspension/interdiction;
- (2) *Certiorari* quashing the charge sheet which was issued on the Petitioner dated 06.09.2019 [P12(a)];
- (3) *Mandamus* compelling the 1st Respondent to re-instate the Petitioner as Basnayaka Nilame of the Ruhunu Maha Kataragama Devalaya forthwith or within a period of time as deemed reasonable.

POSITION OF THE PETITIONER:

2. The Petitioner has filed an application seeking a Writ of *Mandamus* to compel the 1st Respondent, the Commissioner-General of Buddhist Affairs, to take steps in accordance with Section 15(1) of the Buddhist Temporalities Ordinance and to conduct an inquiry against the 2nd Respondent (Basnayaka Nilame of Sri Vishnu Maha Devalaya).
3. The Petitioner stated that he held the hereditary office of Naayaka Pujaka Mahabethme and Chief Kapurala of the Devinuwara Uthpalawarna Sri Vishnu Devalaya until his purported suspension and dismissal by the 2nd Respondent in April of 2018. It was argued that, acting in the public interest and owing a fiduciary duty to devotees, this action was initiated against the 2nd Respondent, the former Basnayaka Nilame, who allegedly committed serious financial malpractices and misused public funds for personal gain during his tenure. The Petitioner contended that three internal audit reports from 2016, 2017, and 2019 revealed exorbitant, unauthorized expenditures and widespread financial irregularities committed by the 2nd Respondent. It was stated that despite sending several letters and a formal letter of demand urging the 1st Respondent to initiate disciplinary action, the 1st Respondent neglected the statutory duties cast upon him. Furthermore, the Petitioner argued that the 1st Respondent displayed discriminatory partiality, as he turned a blind eye to the 2nd Respondent's conduct while keenly pursuing disciplinary action against a trustee of a different Devalaya, and swiftly ratified the Petitioner's arbitrary dismissal upon the 2nd Respondent's recommendation.

4. The Petitioner contended that under Sections 15, 38, and 39 of the Buddhist Temporalities Ordinance, No. 19 of 1931 (as amended), the 1st Respondent is under statutory obligation to oversee temple properties, mandate audits, and hold formal inquiries into alleged misfeasance, criminal breaches of trust, or neglect of duty. Furthermore, it was alleged that the 2nd Respondent's misconduct amounts to violations of Sections 24, 25, 26, 35, and 36 of the Ordinance as trustees hold an absolute duty to account for all offerings for the benefit of the religious institution. The Petitioner argued that the 2nd Respondents conduct of failing to deposit funds into the authorized bank accounts, misapplying income, and failing to maintain precise financial records hence constitute statutory and criminal breach of trust.
5. The Petitioner contended that the Buddhist Temporalities Ordinance applies equally to Devalayas, thus rendering their funds subject to the requirement of strict public scrutiny and transparency, notably under the Right to Information Act and Article 14A of the Constitution. Additionally, the Petitioner argued that this Court has *parens patriae* jurisdiction over temple properties. Finally, the Petitioner argued that the 1st Respondent's inaction and failure to investigate these serious allegations was arbitrary, unreasonable, contrary to procedural fairness, and frustrated the Petitioner's legitimate expectation of a fair inquiry, thereby making necessary the intervention of the judiciary to protect the Devalaya's temporalities.

POSITION OF THE 2ND RESPONDENT:

6. The 2nd Respondent stated that during the pendency of the application, he ceased to hold the office of Basnayake Nilame in the year 2020. It was contended that under Section 5 of the Buddhist Temporalities Ordinance, the supervisory authority of the 1st Respondent, the Commissioner General of Buddhist Affairs, extends strictly to active trustees and controlling Viharadhipathis; Consequently, the 2nd Respondent argued that the 1st Respondent lacks the statutory authority over an officeholder who has now ceased to hold office; for this reason, the 2nd Respondent contended that the relief prayed for is rendered futile and inapplicable. In support of this position, the 2nd Respondent relied on the latin maxim, *lex neminem cogit ad vana seu impossibilia*.
7. The 2nd Respondent further contended that the Petitioner lacks the legal standing required to invoke the writ jurisdiction of the Court; the Buddhist Temporalities Ordinance does not recognize or provide for the post of "Chief Kapurala," nor does it confer any legal rights or

statutory provisions upon such a role regarding the offerings of devotees made to the Devalaya; while the Act permits lodging a complaint, it creates no substantive legal right over temple offerings. It was argued that this position is affirmed by the 1st Respondent in a letter dated 22nd March 2018 (marked "R2A") to the Gandara Police Station.

8. Furthermore, it was contended that the Petitioner acted *mala fide*, as the Petitioner allegedly personally collects and uses offerings from the inner Devalaya for personal benefit. Thus, it was the 2nd Respondent's argument that the Petitioner instituted this action merely to gain control over offerings elsewhere on the Devalaya premises. It was also pointed out that when invited by the 1st Respondent to attend an official inquiry regarding these allegations, the Petitioner willfully kept away and did not attend the same.
9. The 2nd Respondent denied all allegations of financial irregularities, malpractices, or misuse of funds during his tenure, emphasizing that no formal charges were ever communicated to him while he held office as Basnayake Nilame. He challenged the credibility of the Petitioner's documents and submitted that, even assuming the audit reports marked "P4", "P5", and "P6" were authentic, their primary recommendations were merely to update the Devalaya's Cash Book, which is a task falling within the official duties of the Devalaya's Accountant rather than that of the Basnayake Nilame.
10. The 2nd Respondent highlighted that page 4 of the 2016 Audit Report ("P4") confirms that the total till box income for 2016 and up to 28th August 2017 was duly deposited into the bank account of the Devalaya. Furthermore, in addressing page 12 of the 2018 Audit Report ("P6"), the 2nd Respondent stated that; disparities between the estimated budget and bi-annual account statements arose strictly from unforeseen circumstances; all funds were utilized for Devalaya improvements; and that minor administrative record-keeping irregularities do not amount to a failure of statutory duty or justify disregarding his service to the Devalaya.
11. Furthermore, the 2nd Respondent submitted that the Petitioner dis-entitled himself to equitable relief by suppressing material facts regarding Case No. SPL 1037 previously filed in the District Court of Matara between the exact same parties on the same issues. The 2nd Respondent noted that in refusing an Enjoining Order in that case, the Learned District Judge explicitly held that the Petitioner lacked legal standing because no evidence proved the legal existence of the "Chief Kapurala" position or any legal right over temple offerings. In addition to the same,

the 2nd Respondent argued that writ will not lie where an adequate alternative remedy exists and that this Court is not able to adjudicate where major facts are in dispute. In support of the same, the 2nd Respondent relied on the authorities of Thajudden v. Sri Lanka Tea Board and Good Fellows (Pvt) Ltd v. People's Bank [1981] 2 Sri L. R. 471 and Credit Information Bureau of Sri Lanka v. Messrs Jefferjee & Jafferjee (Pvt) Ltd. [2005] 1 Sri L. R. 89.

DISCUSSION OF THE FACTS AND SUBMISSIONS:

12. The main grievance of the Petitioner is that the 1st Respondent in his capacity as the Commissioner General of Buddhist Affairs failed to conduct an inquiry under section 15(1) of the Buddhist Temporalities Ordinance. I will consider this point by referring to the relevant provision in the Ordinance and the circumstances in which the inquiry has not been proceeded.

Section 15(1) of the BTO provides as thus:

“On the complaint of any person interested or in his own motion the Public Trustee shall have power to hold an inquiry into any alleged misfeasance, breach of trust or neglect of duty committed by any trustee or controlling viharadhipathi in respect of property belonging to his temple and if at the conclusion of any such inquiry into the conduct of a trustee the Public Trustee is of opinion that proceedings should be taken for his dismissal, it can be competent for the Public Trustee as a preliminary to suspend such trustee, to frame charges in writing against him and to call upon him to answer thereto”. (the emphasis was added)

13. The simple reading of the statutory provision envisages a two-step process before suspending and issuing of a charge sheet on a trustee.

(a) The Public Trustee should hold an inquiry into any alleged misfeasance, breach of trust or neglect of duty.

(b) At the end of such inquiry, if the Public Trustee is of opinion that proceedings should be taken for the dismissal of a trustee, then suspend the said trustee in order to frame charges.

HAS THE 1ST RESPONDENT FAILED TO PERFORM HIS DUTY AS ENVISAGED IN SECTION 15(1) OF THE ORDINANCE?

14. As per the letter dated **25.08.2020** (1R29) by the Commissioner General of Buddhist Affairs, the Petitioner has been requested to attend an inquiry on 31.08.2020. Admittedly, the Petitioner has not attended on that day. Thereafter, by letter dated 07.09.2020 (1R30), he was again requested to attend the inquiry. The Petitioner has communicated his position by letter dated 11.09.2020 (1R31) by which he has sought to make his attendance conditional upon prior action being taken against the relevant trustee, including the issuing of a charge sheet. This letter 1R31 is significant because it discloses the reason why the Petitioner declined to participate. He has not merely sought another convenient date or indicated that he was unable to attend for a temporary reason. His position was that he would attend only if prior action was taken against the 2nd Respondent trustee and charges were issued.
15. In order to proceed under section 15(1) of the Ordinance, the 1st Respondent has to form an opinion as to the alleged fraudulent acts of the 2nd Respondent. Therefore, it is compulsory to have an inquiry and it is seen that the Petitioner who was the complainant has been asked to participate in such inquiry. **Without first forming an opinion upon an inquiry, the 1st Respondent is unable to proceed ahead by either discharging the 2nd Respondent or suspending the 2nd Respondent before framing charges.** The Petitioner has demanded the suspension of the 2nd Respondent which is contrary to the statutory scheme of the provision envisaged in Section 15(1) of the Ordinance. Thus, the non-compliance of the inquiry cannot be characterized as a failure by the statutory authority to act.
16. The documents marked P4, P5 and P6 concerning audits and observations relating to the Devalaya has to be considered in the context of subsequent correspondence and action taken by the relevant authorities. An audit observation or a complaint arising from such audit is not, by itself, a final statutory determination that a trustee has committed misfeasance, breach of trust or neglect of duty within the meaning of section 15(1). Such material may constitute information upon which the competent authority may act, but the statutory determination remains one for the authority entrusted with that responsibility by the Ordinance.
17. The documents 1R1 to 1R7 shows that the 1st Respondent has communicated concerning the audit material and the matters raised by the Petitioner. Document 1R1 dated 19.12.2016 records

correspondence concerning the audit inquiry and recommendations for appropriate action, while 1R2 dated 27.12.2016 records the response thereto. Thereafter, further audit-related correspondence and action have followed, including 1R3 dated 10.10.2017 and the subsequent documents marked 1R4, 1R5, 1R6 and 1R7.

18. The above contemporaneous documents demonstrate that the complaints made against the 2nd Respondent were not ignored by the 1st Respondent. By the letter marked 1R13 dated 04.05.2018, the Petitioner made a complaint to the Minister concerning the conduct of the 2nd Respondent, who was then Basnayake Nilame of the Devalaya. Pursuant thereto, by letter dated 10.07.2018 (1R14) 1st Respondent called upon the 2nd Respondent to submit his observations in respect of the allegations made against him. By the letter dated 06.09.2018 (1R15), the 2nd Respondent submitted his response to the matters raised in 1R14. Thereafter, by letter 14.02.2019 (1R16) the 1st Respondent called upon the Petitioner to appear and give evidence at the inquiry scheduled to be held on 17.02.2019.
19. The above sequence of correspondence shows that the 1st Respondent considered the complaint made by the Petitioner, called for the observations of the 2nd Respondent, considered his response and proceeded thereafter by requiring the Petitioner to appear and give evidence at an inquiry.
20. The above sequence of events is considered in the context of the audit material relied upon by the Petitioner. There is a distinction between the official audit reports P4, P5, P6 and the documents marked P4A, P5A and P6A which contain the Petitioner's own observations, interpretations and conclusions based upon the audit reports. The documents P4A, P5A and P6A cannot be treated as independent findings or determinations made by the competent statutory authority. The Petitioner is not the competent authority to pronounce upon, determine or give legal effect to the findings or observations contained in the official audit reports nor is he entitled to substitute his own interpretation of such reports for the determination of the authority vested with the relevant statutory powers under the Buddhist Temporalities Ordinance. An audit observation or query does not by itself establish that a trustee has committed misfeasance, breach of trust or neglect of duty within the scope of section 15(1). The determination whether such matters warrant further action remains a matter for the competent statutory authority in accordance with the Ordinance.

21. The statutory scheme under section 15(1) vests the relevant discretion in the competent statutory authority. Accordingly, the burden lies upon the Petitioner to establish that the 1st Respondent failed to execute the discretion vested in him, exercised it unlawfully, or otherwise acted in a manner warranting the intervention of this Court. The Petitioner has failed to establish any such failure or unlawful exercise of discretion. On the contrary, the above correspondence established that the 1st Respondent has considered the matters raised and taken appropriate steps.

22. Furthermore, it is seen that the audit process has been undertaken in terms of section 38(1) and (2) of the Ordinance and the relevant audit material has been placed before the competent authority, which was empowered under section 38(2) to take such action. Thus, the contention that the 1st Respondent remained inactive or failed to take steps for the protection and proper administration of the Devalaya is untenable.

THE CONDUCT OF THE PETITIONER AND MULTIPLICITY OF ACTIONS:

23. The Petitioner has previously filed numerous proceedings in relation to substantially connected matters: including:

- (i) DSP/88/2008 – District Court of Colombo
- (ii) CA(Writ) 787/2009 - Court of Appeal
- (iii) SPL / 778 – District Court of Matara
- (iv) SPL 1037 – District Court of Matara
- (v) SC/SPL/LA/101/2020 - Supreme Court
- (vi) CA (Writ) 538/2021 - Court of Appeal

24. The orders and judgments made in the aforesaid proceedings demonstrate the manner in which the respective proceedings were disposed of, including matters which were dismissed and/or withdrawn, as the case may be. The multiplicity of proceedings and their respective outcomes when considered together warrant particular caution before this Court exercise discretionary jurisdiction.

25. It is trite law that a person seeking a Writ of *Mandamus* must establish a clear legal right to performance coupled with an imperative statutory duty that has been expressly demanded and

unlawfully refused. Justice A. L. Shiran Gooneratne in CA/WRT/395/2013 decided on 17.05.2018, held as follows,

“It is trite law that, a mandate in the nature of Mandamus cannot be issued if the Petitioner fails to establish a legal right and a corresponding legal duty on the statutory functionary.

In the case of Perera Vs. National Housing Development Authority 2001 (3) SLR 50 at page 53 the court held, that;

"On the question of legal right, it is to be noted that the foundation of mandamus is the existence of a legal right. Mandamus is not intended to create a right but to restore a party who has been denied his right to the enjoyment of such right"

26. Applying these principles to the instant matter, the documentary evidence marked 1R29 and 1R30 established that the 1st Respondent has not refused or neglected to exercise jurisdiction under Section 15(1) of the Buddhist Temporalities Ordinance. On the contrary, the 1st Respondent initiated steps to hold an inquiry and invited the Petitioner to participate but the Petitioner has failed to attend resulting the non-completion of the inquiry.

27. For all the above reasons, the application is dismissed with costs.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal