

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

*In the matter of an application for
mandates, in the nature of Writs of
Certiorari and Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

The Thiruketheeshvaram
Temple Restoration Society
“Saraswathy Hall”
No.75, Lorenz Road,
Colombo 4.

C.A. Writ Application No.184/2016

PETITIONER

-Vs-

1. R.P.R. Rajapakse
Land Commissioner General,
Land Commissioner General's
Department,
'Mihikatha Medura', Land Secretariat,
No.1200/6, Rajamalwatta Road,
Battaramulla.
2. M.Y.S. Deshapriya
District Secretary of Kachcheri,
Mannar.
3. K.S. Vasanthakumar
Divisional Secretary,
Divisional Secretariat,

Esplanade Road,
Mannar.

4. The Bishop of Mannar
Bishops House,
Mannar.

5. Rev. Kingsley Swampillai
Apostolic Administrator of Mannar,
Diocese Bishop's House,
Mannar.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adhithya Patabendige, J.

Counsel : Dr. K. Kanag-Isvaran, P.C. with L.
Jeyakumar instructed by Mr. Sumathipala
for the Petitioner.
Vikum de Abrew, A.S.G. for the
1st - 3rd Respondents.
Rienzie Arseculeratne, P.C. with
Chamindri Arseculeratne for the 4th and
5th Respondents.

Supported on : 19.09.2025

**Written Submissions
tendered on** : 4th and 5th Respondents : 23.10.2025

Ordered on : 02.12.2025

Dhammika Ganepola, J.

This is an application filed by the Petitioner, 'The Thiruketheeshvaram Temple Restoration Society', *inter alia*, seeking:

- Writ of Certiorari to quash the Gazette Notification marked 'P12A';
- Writs of Prohibition restraining the 2nd and 3rd Respondents from acting on said Gazette Notification; and
- Writs of Prohibition restraining the 1st, 2nd, 3rd and 6th Respondents from alienating the lands or part thereof constituting the land depicted in 'Thiruketheeshvaram Sacred Area Development Scheme' (marked P4) shown in the 'Plan for Development of Thiruketheeshvaram Temple Surroundings' marked P3, including the land described in the said Gazette Notification.

The Petitioner in this application, filing a motion dated 02.06.2025, moved this Court to dispose of the application upon taking into consideration the contents of the aforesaid motion. The contents of the above motion were supported by the learned President's Counsel for the Petitioner on 19.09.2025 and moved to terminate the proceedings based on the settlement entered into between the Petitioner and the 4th and 5th Respondents. However, the learned President's Counsel for the 4th and 5th Respondents opposed the application. This order pertains to said application.

When this main application was taken up for support at the threshold stage, it was noted that the parties had indicated their intention to settle the matter in issue before the Court. Upon perusal of the Journal Entries dated 15.11.2016 and 03.11.2016, it is observed that the Petitioner, with the 4th and 5th Respondents, had agreed upon terms of settlement dated 21st November 2016 in view of resolving the matter and has handed over such terms to the learned Counsel who appears for the State (1st, 2nd and 3rd Respondents) to consider whether such terms are amiable.

While considering the terms of settlement tendered, the 1st to 3rd Respondents have taken steps to prepare a plan (see J.E. dated 17.01.2017, 29.03.2017, and 30.03.2021) and demarcate the boundaries on the ground to settle the matter with the consent of the parties (see J.E. dated 21.02.2022). Accordingly, the Survey General has prepared the Survey Tracing No. Ma/MNN/2021/11, in

accordance with the terms of settlement entered. Said Survey Tracing and the Report are marked as X1 and X2. As per the Journal Entries dated 21.02.2022, it appears that the Petitioner and the 4th and 5th Respondents had informed the Court that they have no objection with regard to the tracing prepared by the Survey General.

The letter issued by the Divisional Secretary, dated 06.05.2025, marked 3R2 to the Attorney General, tendered by way of motion dated 08.05.2025, stipulates that the above Tracing was prepared in the presence of the representatives of both parties in accordance with the terms of settlement entered into between the Petitioner and the 4th and 5th Respondents. Further, it was confirmed by the Land Commissioner that, as per the Tracing prepared by the Surveyor General, there had been no reduction of the extent of the land granted on lease to the Bishop of Mannar as reflected in Gazette P12A. Hence, it appears that no objection had been raised by any of the parties interested in the above Tracing. It further appears that (as per the Journal Entry dated 06.12.2023) the Land Commissioner, the 1st Respondent, has also agreed to settle the matter based on the above Tracing. In the above circumstances, the Petitioner moves this Court to make an Order in view of the motion dated 02.06.2025 to conclude the proceedings.

The learned President's Counsel for the 4th and 5th Respondents argues that this Court has no jurisdiction to allow the application of the Petitioner, giving effect to the impugned settlement, without the Petitioner supporting the original application and issuing formal notices to the Respondents. It is observed that in the instant application, at the threshold stage that no formal notices have been issued to the Respondents.

I am mindful of the regular procedure in a Writ application, which requires the issuance of notice to consider the merits of the application. Although this Writ Application was not supported formally, it appears from the Journal Entries of the docket that the Petitioner did not support the main application, as the parties were exploring the possibility of a settlement. As per the J.E. dated 23.11.2016, learned President's Counsel for the Petitioner and the learned President's Counsel for the 4th and 5th Respondents had informed the Court that they had agreed on terms of settlements and that such terms have now been handed over to the learned State Counsel who appears for the 1st to 3rd

Respondents for consideration. Since then, as evident from the journal entries, until the Petitioner filed the motion dated 02.06.2025 and moved to terminate proceedings, no steps whatsoever had been taken by the 4th and 5th Respondents to deviate from their position to settle the matter or to challenge the process. Moreover, over a period of nearly nine years, the Petitioner and the 4th and 5th Respondents, with the assistance of the 1st to 3rd Respondents, have been pursuing the execution of the settlement. Therefore, in the circumstances of this application, it is my view that the course of conduct of the 4th and 5th Respondents throughout the instant application precludes them from raising any objections to allow the application of the Petitioner, besides the lack of issuance of formal notices to the Respondents.

Further, the learned President's Counsel for the 4th and 5th Respondents submits that the relevant parties have not signed the impugned settlement. The settlement marked Z1 was entered into between the Petitioner and the 4th and 5th Respondents on the 21.11.2016 under the hands of the Registered Attorneys-at-Law for the Petitioner and the 4th and 5th Respondents. Since the parties have issued their proxies to the Attorneys-at-Law to act on their behalf, the objection that the 4th and 5th Respondents have not signed the terms of settlement cannot be accepted.

In *Francis Wanigasekara and Another v. Pathirana* (1997) 3 Sri LR 231, Weerasekera J. observed,

"There has been a very pernicious practice among litigants to resile from Agreements merely because they have not subscribed their signature to the record. This pernicious practice in my view must be condemned and refuted with all the contempt it deserves."

The 1st to the 3rd Respondents have not signed the terms of settlement, and they are not parties to such settlement. Even though the 1st to 3rd Respondents did not sign the terms of the impugned settlement, they have facilitated the implementation of the settlement by preparing the Tracing No.MA/MNM/2021/11 dated 10.05.2021. The Journal Entry dated 06.12.2023, which speaks for the same, provides as follows:

"pursuant to the agreement entered between the parties on 21.11.2016, the plan tracing has been prepared and that tracing has now been filed along with the motion dated 31.08.2021, tracing No. Is MA/MNM/2021/11 dated 10.05.2021."

Petitioner and the 4th and 5th Respondents are now agree that red lines depicted in this plan were the original boundaries according to the earlier plan. However, now parties agree to the dotted line as the depicted on the plan as the agreed boundaries.

Based on the tracing without prejudice to the rights of the Respondents, the 1st Respondent would explore the possibility of settling this matter.” (J.E. dated 06.12.2023).

Accordingly, the Court observes that the preparation of Tracing No.MA/MNM/2021/11 dated 10.05.2021 had been prepared with the consent of all parties. Further, the 1st Respondent at no time had stood against the settlement arrived at by the Petitioner and the 4th and 5th Respondents. In the above context, the Court observes that there is no bar for the State to facilitate further actions pursuant to the settlement reached among the Petitioner and the 4th and 5th Respondents, subject to applicable laws.

Considering the above and the circumstances of this application, the Court decides to terminate the proceedings.

Accordingly, proceedings are terminated.

Judge of the Court of Appeal

Adhithya Patabendige, J.

I agree.

Judge of the Court of Appeal