

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 Mandamus, under and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA-WRT-383-23

Pahalage Sarath Wijaya Abeygunawardena
Chairman
Traditional Puppet Art Museum
Pinwatta
Dehiwala.

Petitioner

Vs.

1. Hon. Susil Premjayanth
Minister of Education
Ministry of Education
'Isurupaya', Battaramulla.

1A. Hon. Hrini Amarasuriya
Minister of Education
Ministry of Education
'Isurupaya', Battaramulla

2. M.N. Ranasinghe
Secretary
Ministry of Education
'Isurupaya', Battaramulla

2A. J.M.T. Jayasundara

Secretary
Ministry of Education
'Isurupaya', Battaramulla

2B. K.M.G.S.N. Kaluwewa
Secretary
Ministry of Education
'Isurupaya', Battaramulla

3. P.L. Pathmakumara
Additional Secretary(Administration)
Ministry of Education
'Isurupaya', Battaramulla
4. P. Shrilal Nonis
Provincial director of education
Department of Education Western
Province
No. 89, 'Ranmagapaya'
Kaduwela road. Battaramulla.
5. P.K.D.U. De S. Gunasekara
Zonal Director of Education
Zonal Education Office
Piliyndala.
6. W.S.S. Sirimanna
Deputy Zonal Director (School
Administration)
Zonal Education Office
Piliyandala.
7. Divisional Secretary
Divisional Secretariat of Dehiwala

Dehiwala.

8. Hon. Attorney General
Attorney Generals department
Colombo 12.

Respondents

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: Ranil Samarasooriya with Isuru Somadasa and Akila Ranawala for the
Petitioner
Shemanthi Dunuwille, SC for the Respondents.

Supported On: 28.11.2024

Written

Submissions: Not filed

On

Order On: 28.01.2025

ORDER

B. Sasi Mahendran, J.

This order pertains to whether to issue notice to the Respondents and to grant interim reliefs.

The instant application involves a property that was claimed to be originally owned by the Petitioner and later acquired by the State for C/Pinwatta Upananda Vidyalaya, Dehiwala. After the said school was closed down as a result of it being used as a Tsunami

Displaced Campsite, the Petitioner registered the Traditional Puppet Art Museum in 2007.

The Petitioner instituted this application by amended petition dated 25.10.2024 seeking *inter alia* writs of Certiorari to quash the decision of the 2nd and 3rd Respondents not to divest the property in question to the Petitioner as contained and communicated by the document marked P11 and to quash the document marked P14 to use the property where C/Pinwatta Upananda Vidyalaya, Dehiwala was located as a Counselling and Guideline Counselling Resource Centre attached to the Dehiwala S. De. S. Jayasinghe College and a writ of Mandamus directing the 1st Respondent to divest the property in question to the Petitioner under and in terms of the provisions contained in Section 10(1)(a) of the Assisted Schools and Training Colleges (Supplementary Provisions) Act, No. 8 of 1961 (hereinafter referred to as the 'Act').

According to the Petitioner, by virtue of Deed of Transfer bearing No. 7939 dated 02.10.1960 attested by D.A. Weerakoon, Notary Public, the Petitioner became the owner of the property/premises depicted as lot A in plan No. 1466 dated 20.02.1959 made by V.A.L. Senaratne, Licensed Surveyor, which was later acquired by the State for the said C/Pinwatta Upananda Vidyalaya, Dehiwala.

The Petitioner states that thereafter, the above-mentioned property was acquired by the predecessor of the 1A Respondent for C/Pinwatta Upananda Vidyalaya, Dehiwala under Section 4 of the Act. However, C/Pinwatta Upananda Vidyalaya, Dehiwala was closed down as a result of the said property being used as a campsite for the displaced persons owing to the tsunami devastation that occurred on 26.12.2004 and the said camp continued to function in the said property till 2006.

The Petitioner states that thereafter, with the approval of the Cabinet of Ministers of the Western Provincial Council, the Petitioner established the said Traditional Puppet Art Museum in the disputed land and registered the same on 05.02.2007 as an institute for Puppet Art with the Department of Cultural Affairs.

The Petitioner further states that by letter dated 06.09.2018, the Petitioner requested the then Minister of Education to divest the said property under and in terms of the provisions contained in Section 10 (1)(a) of the said Act to the Petitioner on the basis that he is the original owner of the said property. As a result of the said request, the Senior Assistant Secretary (Administration) by letter dated 25.09.2018 communicated to the Provincial Secretary of Education of the Western Provincial Ministry of Education that as the said

school had been closed down, Colombo Buddhist Theosophical Society and the Petitioner by the letters dated 15.01.2013 and 06.09.2018 respectively have requested to divest said property, in terms of the provisions contained in the said Act, a property acquired under the said Act cannot be used for any purpose other than the purpose for which it was acquired and if such property is not used for the purpose for which it was acquired the said property shall be divested to the original owner and in the event they wish to divest the same then to fill and send the necessary forms.

The Petitioner avers that the Additional Secretary (Administration) on behalf of the Secretary of the Ministry of Education has written to the Divisional Secretary by letter dated 06.09.2019 asking for the recommendations of the Divisional Secretary indicating that the Colombo Theosophical Society by the letter dated 28.12.2012 has requested to divest the said property and for reasons unknown to the Petitioner, purposely has refrained from disclosing the fact that the Petitioner also has requested to divest the same to the Petitioner on the basis that the Petitioner was the original owner of the said property prior to it was acquired by the Minister of Education.

The Petitioner further states that the Assistant Secretary (Land) to the Ministry of Education by letter dated 19.11.2019 instructed the Zonal Director of Education to identify the original owner by perusing the title deeds, plans and other documents.

The Petitioner states that thereafter the Petitioner by letter dated 09.12.2019 informed the then Minister of Education attaching a report from the Grama Niladhari that the said building was constructed by the Petitioner replacing the existing old building after he came into possession of the said property.

Thereafter, the Divisional Secretary of Dehiwala by letter dated 09.01.2020 informed the Secretary to the Ministry of Education that the report received from the Grama Niladhari is self-explanatory and the Municipal Council of Dehiwala- Mount Lavinia informed that the ownership of the said property is with the Municipal Council, therefore the Divisional Secretary of Dehiwala has recommended to ascertain the original owner of the said property and divest the same to the original owner.

The Petitioner further states that the Divisional Secretary was informed by the Grama Niladhari through his reports that the Petitioner was the person who built the present building situated within the said property. Further, there was a recommendation made by the Divisional Secretary in his letter addressed to the Secretary to the Minister of Education to find out as to who is the original owner of the said property, the Petitioner

by letter dated 23rd November 2020 requested the Divisional Secretary of Dehiwala to establish Petitioner's ownership to the said property.

In response to the letter dated 25th September 2021 sent by the Petitioner, the Senior Assistant Secretary (Administration and Land) to the Ministry for Education by letter dated 8th October 2021 had informed that they have sought advice from the Honourable Attorney General regarding the further steps of the divesting process.

The Petitioner states that however, to the surprise and dismay of the Petitioner, the Petitioner received a copy of the letter dated 7th February 2023 marked P11 sent by the 3rd Respondent and countersigned by the 2nd Respondent, addressed to the Provincial Secretary to the Western Provincial Minister of Education stating that they have decided not to divest the property as they feel that the said property could be used for a future educational purpose and therefore requesting for observations and proposals as to which school or other educational purpose for which the said property could be used.

Further, by letter dated 2nd September 2024 marked P14, it was decided to use the said property where the said school was located as a Counselling Guideline Counselling Resource Centre attached to the S. De S. Jayasinghe College of Dehiwala.

The Petitioner contends that both the documents marked P11 and P14 are illegal and ultra vires.

In this context, the Petitioner has invoked the writ jurisdiction of this Court seeking a writ of Certiorari quashing the documents marked P11 and P14.

The issue before us is whether the particular land was acquired from the Petitioner. When we peruse the document marked P1(b), the schedule reads as follows:

“North by: Remaining portion of Lot 52 in No. 415737

East by: Temple Road

South by: Path

West by: Remaining Portion of Lot 51 in No. 415737”

This survey was done on 20.02.1959 and there is no indication that there was a school existing at the time of the said survey.

When we peruse the document marked P2, the Ceylon Extraordinary Gazette No. 13,319 dated 01.10.1962, the school boundary of the C/Pinwatta Upananda Vidyalaya Dehiwala was depicted as follows:

“The premises in which C/Pinwatta Upananda Vidyalaya, Dehiwala, was conducted and maintained on July 21, 1969, viz., all that portion of land called and known as Pinwatta Upananda Vidyalaya premises, situated at Dehiwala in Colombo Mudaliyar’s Division of the District of Colombo, Western Province, and bounded on the north by land claimed by Dehiwala-Mount Lavinia Municipality, east by the Health Square, south by Arthur’s Place, west by Allan Avenue, and containing in extent about one rood. (0A. 1R. 00P.)”

This Court notes that both the Deed and the Plan claimed by the Petitioner and annexed to this application are totally different to the said schedule of the Gazette.

The Petitioner has not established the fact that he is the original owner of the said property and that the said property was acquired by the State from him. We are mindful that the Respondents have required the Petitioner to establish that he is the original owner of the property.

Since the Petitioner has failed to establish that he is the original owner of the property where the C/Pinwatta Upananda Vidyalaya was situated when the property was acquired by the State, the Petitioner has failed to establish a prima facie case.

For the above-said reasons, we dismiss the application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL