

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 Writs of
prohibition under and in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C.A. Writ Application No.
556/2024

Rev. Bengamuwe Dhammadinna Thero
Pothgul Rajamaha Viharaya,
Karangoda,
Ratnapura.

Petitioner

Vs.

1. Sunanda Kariyapperuma
Commissioner-General of Buddhist
Affairs,
Department of Buddhist Affairs,
“Dahampaya”
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

- 1A. R.M.P. Rathnayake,
Commissioner-General of Buddhist
Affairs,

Department of Buddhist Affairs,
“Dahampaya”
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

1B R.M. Gamini Senarathne,
Commissioner-General of Buddhist
Affairs,
Department of Buddhist Affairs,
“Dahampaya”
No. 135, Srimath Anagarika
Dharmapala Mawatha,
Colombo 07.

2. Deputy Commissioner of Buddhist
Affairs,
Department of Buddhist Affairs,
Ratnapura.

Respondents

Before : Hon. Rohantha Abeysuriya PC, J.(P/CA)
: Hon. K. Priyantha Fernando, J.(CA)

Counsel : Gamini Hettiarachchi for the Petitioner

Shemanthi Dunuwille, SC for the
Respondents

Written Submissions on : 15.07.2026 for the Petitioner.

03.08.2026 for the Respondents.

Supported on : 02.06.2026

Decided on : 05.10.2026

K. Priyantha Fernando, J.(CA)

1. The Petitioner, Rev. Bengamuwe Dhammadinna Thero of Karangoda Pothgul Rajamaha Viharaya, invoked jurisdiction of this Court under Article 140 of the Constitution praying for Writs of **Prohibition** and Stay Orders against the 1st Respondent, Sunanda Kariyapperuma (and 1A Respondent, R. M. P. Ratnayake), Commissioner General of Buddhist Affairs, and the 2nd Respondent, the Deputy Commissioner of Buddhist Affairs, Ratnapura.

POSITION OF THE PETITIONER:

2. The Petitioner contended that the title of Viharadhipathiship does not originate from any appointment made by the Maha Nayaka Thero. Instead, the office devolved upon him according to the ancient and legally recognized rule of pupillary succession, and that subsequent documents relied upon by him merely recognized an already existing legal status. Accordingly, the Petitioner's argument is that the title he holds, being one which was not created by the Maha Nayaka Thero, and therefore it cannot be withdrawn by the Maha Nayaka Thero, nor can it be cancelled by the Commissioner General of Buddhist Affairs.

3. It is the Petitioner's contention that Courts have consistently recognized for well over one hundred and forty years that succession to the office of Viharadhipathi is governed by the rule of pupillary succession. The Petitioner drew the attention of this Court to the case of Unnanse v. Unnanse 22 NLR 323, wherein it was held that there are only two rules of succession known to Buddhist law, *Sisyanusisya Paramparawa* (pupillary succession) and *Siwuru Paramparawa* (a form of pupillary succession with the special characteristic that the pupil is a blood relation of the original priestly incumbent) with the legal presumption being that incumbency is subject to the *Sisyanusisya Paramparawa* rule in the absence of evidence to the contrary.
4. The Petitioner further referred to the case of Parusselle Dhammejoty Unnanse v. Tikiri Banda Parenatale (1881) 4 SCC 121, in which Dias J. explained that succession follows *Sisyanu Sisiya Paramparawa*, passing from tutor to pupil and thereafter to that pupil's senior pupil. Additionally, the Petitioner highlighted the recent Supreme Court decision in Ven. Gatamanne Sasamaratana Thero v. Ven. Gatamanne Dhammalankara Thero SC/Appeal/171/2014 decided on 12.11.2024, which reaffirmed that succession to the office of Viharadhipathi passes from tutor to senior pupil and thereafter to that pupil's senior pupil, rather than sideways to collateral pupils. The Petitioner contended that the law governing pupillary succession is therefore settled.
5. The Petitioner noted that the Respondents seek to justify the impugned acts upon the footing that the Maha Nayaka Thero possesses an unrestricted authority to appoint a Viharadhipathi, a proposition the Petitioner submitted has no foundation in law. The Petitioner argued that neither the

Buddhist Temporalities Ordinance, nor any other written law confers power upon the Maha Nayaka Thero to appoint a Viharadhipathi where a lawful successor exists, to remove a lawful Viharadhipathi, and cancel an already vested succession, or to supersede the operation of the rule of pupillary succession. Consequently, the Petitioner contended that where a lawful successor exists, the office devolves automatically by operation of law and no discretion survives. The Commissioner General of Buddhist Affairs maintains only statutory records under the Buddhist Temporalities Ordinance and possesses no power to determine ecclesiastical succession. The Petitioner argued that the Commissioner General has no jurisdiction to decide who is Viharadhipathi, to reject lawful succession, or to recognize an unlawful appointment contrary to pupillary succession. The Petitioner is therefore of the view that the statutory functions of the Commissioner General are purely consequential in nature.

6. According to the Petitioner, the impugned communication is not merely unlawful, but is void *ab initio* as it was made in complete absence of conferred authority or jurisdiction. The Petitioner submitted that an act performed without jurisdiction is a complete legal nullity that neither creates rights nor destroys existing rights, and requires no judicial validation before it may be ignored. In support of the same, the Petitioner relied on the principle articulated by Lord Denning in *Macfoy v. United Africa Co. Ltd.* [1961] 3 All ER 1169, stating that if an act is void, it is in law a nullity, not only bad, but incurable.
7. The Petitioner explained that while *Certiorari* ordinarily lies where a public authority possesses jurisdiction but exercises that jurisdiction unlawfully or in excess of its powers, the present case is fundamentally different because the Maha Nayaka Thero possessed no legal jurisdiction whatsoever to appoint, remove, or supersede a Viharadhipathi where succession had

already vested by operation of law. The Petitioner submitted that if no jurisdiction exists, there is nothing capable of being quashed, rendering the impugned communication legally ineffective from its inception. Thus, the Petitioner argued that the Court need not first quash a void instrument before restraining another public authority from acting upon it. Thus, it was argued that since a Writ of Prohibition is to prevent a public authority from acting without lawful authority, Prohibition is the proper and appropriate constitutional remedy in this instance.

8. In addressing the Respondents' contention that the Application is defective due to the non-joinder of the Maha Nayaka Thero, the Petitioner submitted that this objection is misconceived. The Petitioner stated that since he seeks no relief against the Maha Nayaka Thero (i.e. to quash the impugned communication), nor does he seek a declaration, damages, or any mandatory order against him, he is not a necessary party.
9. It was further argued that the communication relied upon by the Respondents is legally incapable of affecting the Petitioner's title because its author possessed no jurisdiction to issue it. The Petitioner stated that the real controversy lies strictly between the Petitioner and the Commissioner General of Buddhist Affairs, who proposes to give legal effect to an instrument that is void in law. The Petitioner contended that a person against whom no relief is sought and whose act is asserted to be a nullity is not a necessary party to the proceedings.
10. The Petitioner contended that neither the Maha Nayaka Thero nor the Commissioner-General possesses legal authority to defeat that succession where the lawful line exists, and the Respondents threaten to act upon an instrument that is void for want of jurisdiction. The Petitioner finally highlighted that it was the Respondents themselves who had appointed the

Petitioner as the Trustee of the temple in terms of the Buddhist Temporalities Ordinance.

POSITION OF THE RESPONDENTS:

11. The Respondents noted that following the death of the Petitioner's predecessor, Ven. Karangoda Jinaratana Thero, on 30.01.2003 (as recorded in document P10), a dispute arose concerning ecclesiastical succession to the office of Viharadhipathi. The Respondents explained that the Petitioner initially claimed entitlement as Viharadhipathi based on a letter of recognition dated 06.04.2005 (marked **P9**) issued by the Venerable Mahanayaka Thero of the Malwathu Chapter of the Siamopali Maha Nikaya, which the Department of Buddhist Affairs acknowledged and recorded in accordance with established administrative practice.
12. However, the Respondents pointed out that by letter dated **24.03.2021** (marked **P12**), Thibbotuwawe Sri Siddhartha Sumangala Mahanayaka Thero cancelled the earlier letter of recognition P9 on the ground that material facts relating to pending civil litigation in the District Court of Rathnapura (Case No. 13344/L) had not been disclosed when P9 was issued.
13. It was contended that following this cancellation, a dispute arose regarding the administration and custodianship of temple properties. It was submitted that acting pursuant to statutory obligations under the Buddhist Temporalities Ordinance, No. 19 of 1931 to safeguard temple property during disputes, the 1st Respondent appointed Ven. Kamburugamuwe Abhayadhamma Thero as Temporary Trustee with effect from 11.10.2021.

14. Furthermore, by Motion dated **16.01.2025**, additional documents were placed before Court, including a letter dated **30.10.2024** (Annexure B) authored by Venerable Mahanayaka Thero. In that communication, that recognition that P9 had been cancelled was reaffirmed via P12 and the 1st Respondent was informed that he had assumed and appointed himself to the office of Viharadhipathi in accordance with ecclesiastical authority vested in him under the customs, traditions, and internal governance of the Malwathu Chapter. The Respondents stated that the 1st Respondent subsequently issued a communication confirming and conveying this ecclesiastical determination, **thereby demonstrating that the Department never independently determined or adjudicated the ecclesiastical status of Viharadhipathi.**
15. The Respondents submitted that the Department of Buddhist Affairs did not make any independent determination regarding the appointment, removal, recognition, or status of the Petitioner as Viharadhipathi. **The role of the Department was strictly confined to acknowledging, recording, and giving administrative effect to ecclesiastical decisions communicated by the competent ecclesiastical authority, rendering their actions purely ministerial and consequential in nature.** Accordingly, the Respondents argued that these consequential communications cannot be characterized as independent administrative decisions capable of being subjected to judicial review under Article 140 of the Constitution.
16. The Respondents stated that the true grievance of the Petitioner lies against the ecclesiastical determination made by Venerable Mahanayaka Thero. The Respondents emphasized that since Venerable Mahanayaka Thero is not a public officer exercising statutory administrative powers under public law, his decisions regarding ecclesiastical status fall outside the writ jurisdiction exercised by the Court of Appeal under Article 140.

17. The Respondents argued that all actions taken by the 1st and 2nd Respondents were carried out strictly within the statutory framework established by the **Buddhist Temporalities Ordinance No. 19 of 1931**. The Respondents emphasized that the Ordinance does not confer any authority upon the Commissioner General of Buddhist Affairs to appoint, recognize, remove, or determine the holder of the ecclesiastical office of Viharadhipathi, which is governed exclusively by religious traditions, customs, and succession practices such as *Sisyanu Sisya Paramparawa*.
18. The Respondents pointed out a fundamental legal distinction between the ecclesiastical office of **Viharadhipathi** and the statutory office of **Trustee** under Sections 4(1), 10(1), and 11 of the Ordinance. While a Trustee is a statutory officer appointed for the management, administration, and protection of temple property, the Viharadhipathi holds an ecclesiastical office arising from religious traditions.
19. The Respondents contended that the appointment of Ven. Kamburugamuwe Abhayadhamma Thero as Temporary Trustee on 11.10.2021 was executed under Sections 11(3)(b) and 17(1) of the Ordinance solely as a statutory administrative measure to protect temple properties from neglect or mismanagement during a period of dispute, and did not constitute an appointment of a Viharadhipathi or an interference with ecclesiastical governance.
20. The Respondents submitted that the Petition is fundamentally defective and ought to be dismissed *in limine* based on eight preliminary objections:
- i. Grievance is regarding an ecclesiastical decision, and not an administrative action

The Respondents argued that the Petition is misconceived in law because the Petitioner's grievance arises from an ecclesiastical decision made solely by Venerable Mahanayaka Thero (contained in the letter P12) and not from any independent administrative decision taken by the 1st or 2nd Respondents.

ii. Non-joinder of a necessary Party

The Respondents contended that the Application is fatally defective due to the failure to join His Most Venerable Thibbotuwawe Sri Siddhartha Sumangala Mahanayaka Thero of the Malwathu Chapter as a Respondent. The Respondents submitted that because the decision sought to be challenged originated solely from Mahanayaka Thero, granting relief in his absence would directly prejudice his ecclesiastical authority without affording him an opportunity to be heard.

In support of this principle, the Respondents cited the cases of Rawaya Publishers and Others v. Wijedasa Rajapaksha and Others [2001] 3 Sri L. R. 213, Ramasamy v. Ceylon State Mortgage Bank 78 NLR 510, Gnanasambanthan v. Rear Admiral Perera and Others [1998] 3 Sri L. R. 169.

iii. Futility of relief and Premature nature of the action

The Respondents stated that the interim relief seeking to restrain the Respondents from interfering with the Petitioner is speculative, pre-emptive, and futile, as the Petitioner remains in physical occupation of the Karangoda Pothgul Rajamaha Viharaya and continues his daily religious functions. The Respondents stressed

that no steps have ever been taken to remove, evict, or obstruct the Petitioner, and extraordinary writ jurisdiction cannot be invoked to grant preventive orders against hypothetical future acts.

iv. Indirectly challenging what cannot legally be challenged

The Respondents contended that the Petitioner cannot obtain indirectly, through proceedings against ministerial officers, relief that would effectively set aside an ecclesiastical determination made by competent authorities.

v. Dispute concerns ecclesiastical governance and is thus outside the scope of Article 140

The Respondents submitted that the entitlement to the office of Viharadhipathi relates strictly to internal religious governance, customs, traditions, and Nikaya authority, which are not administrative matters and therefore fall outside judicial review under Article 140.

vi. Failure to identify an enforceable legal right or statutory duty owed to the Petitioner

The Respondents argued that the Petitioner failed to identify any statutory duty breached by the 1st or 2nd Respondents or any legal right owed to him by the Department. Dissatisfaction with an administrative consequence arising from another authority's decision does not disclose an enforceable statutory right.

vii. *Laches* and undue delay:

The Respondents asserted that the Petitioner is barred by *laches* and delay, having failed to challenge the cancellation decision **P12 dated 24.03.2021** within a reasonable period, instead attempting to challenge subsequent consequential communications after an unreasonable lapse of time.

viii. Unclean Hands

The Respondents contended that the Petitioner failed to make full disclosure of material facts and did not approach the Court with clean hands, disentitling him to equitable writ relief.

21. Finally, the Respondents submitted that the application filed by the Petitioner is misconceived in law, procedurally defective, legally untenable, and devoid of any basis upon which extraordinary writ jurisdiction may be invoked.

DISCUSSION OF FACTS AND SUBMISSIONS:

22. The subject matter of the instant application relates to the recognition and appointment of the Viharadhipathi of the Karangoda Pothgul Rajamaha Viharaya situated at Karangoda, Ratnapura. The Petitioner claims to be the Viharadhipathi of the said temple and relies upon the recognition previously granted by the Ven. Mahanayake Thero of the relevant Chapter by letter dated **06.04.2005** (P9). By the letter P9, the Mahanayake Thero has communicated the recognition of the Petitioner in relation to the office of Viharadhipathi. Thereafter, the Department of Buddhist Affairs acted upon

the said P9 in accordance with the established administrative practice followed by the Department,

23. It is common ground that the predecessor of the Petitioner, Ven.Karangoda Jinarathana Thero passed away on 30.01.2003 (P10). Subsequently, a dispute arose concerning the recognition and succession relating to the office of Viharadhipathi. According to the annexure marked 'X', an action bearing No. 13344/L has been instituted in the District Court of Ratnapura by Rev. Kotamulle Sirisumana Thero against the Petitioner on 9th September 1996.
24. By letter dated **24.03.2021** (P12), Ven. Mahanayaka Thero cancelled the earlier letter dated 06.04.2005 (P9) by which the Petitioner had previously been recognized. As per the contents of P12, the said cancellation has been made due to the non-disclosure of the pending civil litigation when the earlier recognition was granted. In particular, reference has been made to the pending proceedings before the District Court of Ratnapura bearing No. 13344/L.

IS THE DECISION CONTAINED IN P12 AN ECCLESIASTICAL DETERMINATION?

25. It was the position of the Respondents that decision in P12 was an ecclesiastical determination made by the Most Venerable Mahanayaka Thero in the exercise of the **authority vested in him by virtue of the customs, traditions and internal governance of the Malwathu Chapter**; and that the Petition is misconceived as it seeks to challenge an ecclesiastical determination through proceedings directed against parties who merely performed a ministerial function.

26. The relief sought in the Petition is limited to a writ of Prohibition prohibiting the 1st and/or 2nd Respondents from disturbing and intervening the lawful activities of the Petitioner as the Viharadhipathi of the Karangoda Pothgul Rajamaha Viharaya and a Stay Order preventing the Respondents from disturbing and intervening the lawful activities of the Petitioner as the Viharadhipathi of the same. The Petitioner argues that issuance of P12 on 24.03.2021 by the Mahanayaka Thero of the Malwatta Chapter of the Siyam Nikaya will not affect the Viharadhipathiship and the 1st and 2nd Respondents have no power or authority to dispute the Viharadhipathiship.

27. By the letter dated 29th July 2021 (P14) addressed to the Petitioner by the 1st Respondent, it has been informed that not to grant permission to any new lease or new development or mining. It seems that the Petitioner considers the direction in P14 by the 1st Respondent, the Commissioner of Buddhist Affairs, a disturbance and intervention on the lawful activities of the Petitioner as the Viharadhipathi. It is further revealed by the Respondents that, Ven. Kamburugamuwe Abhayadhamma Thero as Temporary Trustee on 11.10.2021 was executed under Sections 11(3)(b) and 17(1) of the Ordinance solely as a statutory administrative measure to protect temple properties from neglect or mismanagement during a period of dispute, and did not constitute an appointment of a Viharadhipathi or an interference with ecclesiastical governance.

28. To decide on this issue, it is important to analyse the scope of powers vested in the Commissioner General of Buddhist Affairs under the Buddhist Temporalities Ordinance, No. 19 of 1931 (hereinafter referred to as the **BTO**).

29. In terms of Section 5 of the BTO, every Trustee and Controlling Viharadhipathi is subject to the general supervision of the Public Trustee. The Public Trustee in his official activities in relation to Buddhist Temporalities is subject to direction of an Advisory Board consisting of 5 members of which the Chairman is the Public Trustee himself. Public Trustee is entitled to hold inquiries in respect of issues relating to temple property.

30. In terms of the Act, the Public Trustee is entitled to take steps for recovery of property alienated. No property can be mortgaged by a Trustee without approval of the Public Trustee. The Buddhist Temporalities (Amendment) Act No. 42 of 1981 introduced the following amendment. For the expression 'Public Trustee', wherever that expression occurs in the principal enactment, other than in sections 2,9,15(4),46 and 48 of the expression 'Commissioner of Buddhist Affairs'. Accordingly, other than above, **all powers and duties which has been exercised by the Public Trustee has now been vested with the Commissioner of Buddhist Affairs.**

31. In order to answer the question whether the act of the Commissioner of Buddhist Affairs only ministerial, the decision in the case of Buddharakkitha Thero v The Public Trustee and Another (1948) 49 NLR 325 is of much importance.

32. There, the petitioner (Buddharakkita) asked the Supreme Court to issue a Writ of *Mandamus* on the Public Trustee directing him to appoint as trustee for the Kelaniya Rajamaha Vihare, the person nominated by the petitioner. The appeal to the Supreme Court occurred in the following way, Mapitigama Dhammarakkita Thero who was the Viharadhipathi of the Kelaniya Raja Maha Viharaya died on 17th July 1947. He had two pupils - Sangarakkita and Buddharakkita. Of the two, Sangarakkita was the senior

pupil and should have succeeded as the Viharadhipathi under the Sisyanu Sisya Paramparawa rule which admittedly governed the succession. However, the petitioner alleged that one month prior to death while his tutor was in hospital, Dhammarakkita Thero had by a writing dated 26th June 1947, appointed the petitioner (although he was the junior pupil) to succeed him. However, Sangarakkita, the senior pupil contested his written appointment and Buddharakkita's claim to succession and Sangarakkita also nominated a person to be the trustee of the Temple.

33. Under the provisions of the BTO, the *de jure* Viharadhipathi of the temple is empowered to nominate a trustee and the Public Trustee is obliged to appoint such trustee. Now in this instance, two persons each claiming to be the *de jure* Viharadhipathi of the temple, had nominated two different persons to be the trustee. In this situation, the Public Trustee, appointed a neutral person as the interim or provisional trustee until the two contestants to the Viharadhipathi got a Court of law to adjudicate which of the two contesting priests was the *de jure* Viharadhipathi. Buddharakkita Thero then argued that the Public Trustee had no discretion in the matter under the legislation and could not appoint a provisional trustee (as he had done) and asked the Supreme Court for a writ of Mandamus directing the Public Trustee to appoint Rev. Buddharakkita's nominee as the trustee.

34. The Supreme Court (per Justice Dias) refused Buddharakkita's request and dismissed his application and gave following reasons. The Kelaniya Temple was not an exempt temple. Therefore, the management of the temple vested in a trustee appointed under the BTO of 1931. After the death of the former Viharadhipathi, it was the duty of the new Viharadhipathi (a) to nominate a trustee, or to nominate himself as trustee, and (b) to report such nomination forthwith to the Public Trustee in whom is vested the legal duty

of appointing the trustee under Section 11(2) of the said Ordinance; Punchi Appuhamy v Appuhamy 39 NLR 329.

35. It is the duty of the Public Trustee 'forthwith' to issue a letter of appointment in favour of the nominee of the *de jure* Viharadhipathi. However, the word 'forthwith' used in Section 11(2) cannot be construed to mean 'immediately'. The Public Trustee must be afforded time in which to make independent enquiries as to the qualifications of the nominee or whether there is a dispute as to status of the person making the nomination. In this case, the Petitioner, alleging that the Public Trustee has failed to perform the legal duty cast upon him under Section 11(2) of the Ordinance, moved for a writ of Mandamus on him to perform that duty. However, in this case, there was a dispute between two priests as to the *de jure* Viharadhipathiship of the temple and the Public Trustee had heard both parties and their lawyers as well as to their respective claims. It was, therefore, incorrect to say, as argued for the petitioner, that the Public Trustee had acted without bringing his mind to bear on the questions involved. Not only was it clear that the Public Trustee had considered the matter, but his interview with the lawyers of both parties must have brought his mind forcibly to bear on all the implications involved, were he to issue a letter of appointment in favour of one of the disputants.

Justice Dias held as follows:

"The Public Trustee must decide which of the two persons making the nomination was the Viharadhipathi, i.e. the de jure incumbent of the Kelaniya Temple. If the Public Trustee honestly had a doubt on the point as to whether the nomination was 'duly' made, I hold that his statutory duty to issue a letter of appointment does not arise until such doubt is resolved. Section 11(3) of the Ordinance makes special

provision for such a situation. Pending a 'legal nomination', i.e., a nomination by a de jure Viharadhipathi, he can refuse to issue a letter of appointment, and if necessary appoint as a provisional trustee some person duly qualified for the safe management of the property of the Temple, while the priestly contestants have the question decided elsewhere as to who has the better right'.

In conclusion, it was held that:

“On the facts before me, I find it impossible to hold that the Public Trustee should have upheld the nomination of the petitioner and rejected that of Sangarakkita or vice versa. Until some tribunal lay or ecclesiastical, decides whose right to be the Viharadhipathi is the better one, a layman like the Public Trustee cannot be expected to say which of the two monks had the right to make the nomination for the trusteeship of this temple under Section 11(2), the Public Trustee was bound to accept as a “due” nomination.

I am therefore, of opinion that there has been no failure on the part of the Public Trustee to perform, a statutory duty which was incumbent on him to perform. The application for the writ, therefore, fails; and it is dismissed with costs”. (the emphasis was added)

36. The next case relating to the office of Public Trustee is the decision in D.C. Wijewardena v The Public Trustee (1954) 57 NLR 78. On the facts, the Public Trustee was sued in the District Court of Colombo for a declaration that the plaintiff be appointed as the Trustee of Sripadasthana. The plaintiff had been nominated by Moronthuduwe Sri Dammananda Nayaka Thero on the basis that he had been duly elected as the Viharadhipathi of Sripadasthana on 18th February 1934. **The Public Trustee refused to issue**

the letter of appointment to the plaintiff, alleging that another priest - Ratnajothi Thero had been elected to that office on 14th February 1934 and that Ratnajoti Thero had also nominated a trustee.

37. The Public Trustee in his Answer denied that Morontuduwe Dhammananda Thera had any legal right to the office of Nayaka Thera of Sripadasthana, and the legal capacity to nominate the plaintiff as Trustee. He denied that the refusal by him to issue a letter of appointment was wrongful. Another defence raised was that the District Court had no jurisdiction to entertain this action in the absence of any provision in the BTO (Cap. 222) conferring jurisdiction on such Court in a case where the Public Trustee has refused to issue a letter of appointment in terms of section 11 of that Ordinance.

Justice Sansoni held against the Public Trustee as follows:

- (i) That by established custom, Morontuduwe Sri Dammananda Nayaka Thero was the duly elected Viharadhipathi of Sripadasthana and he had the right to nominate the plaintiff as the trustee.
- (ii) That it was wrongful for the Public Trustee to refuse to appoint the plaintiff as the trustee.
- (iii) That such relief could be claimed in a regular action in the relevant District Court and it was wrong to say that such relief was only available by a prerogative writ of *Manadamus*.
- (iv) On the facts, Morontuduwe Sri Dammananda Thero was the duly elected Viharadhipathi of Sripadasthana and the alleged election of Ratnajoti Thero was irregular and invalid.

(v) The plaintiff, the nominated trustee of Morontuduwe Thero should be appointed by the Public Trustee as the trustee of the temple.

(vi) The Public Trustee by his objections 'caused unnecessary expense by raising issues with little jurisdiction' and should therefore bear the costs of the litigation in the trial court and the Appeal Court.

BACK TO THE CASE AT HAND:

38. Unlike in the case considered above, in the instant matter Ven. Kamburugamuwe Abhayadhamma Thero was appointed as Temporary Trustee on 11.10.2021 under Sections 11(3)(b) and 17(1) of the Ordinance **solely as a statutory administrative measure to protect temple properties from neglect or mismanagement during a period of dispute**, and did not constitute an appointment of a Viharadhipathi or an interference with ecclesiastical governance. Thus, it is clear, that the Petitioner cannot claim as of right to be appointed as a trustee when there is a pending litigation over the Viharadhipathiship. This act of appointing a temporary trustee/provisional trustee does not constitute appointing of Viharadhipathi or interfering with the functions of the Petitioner as Viharadhipathi since it is a performance of a statutory duty vested of the 1st and 2nd Respondents.

39. Since there is a District Court action bearing No. 13344/L to decide the Viharadhipathi of the subject matter, appointing a temporary trustee is a statutory administrative measure to protect the temple properties during the disputed period. It has no connection with the pupillary succession of the temple and it is for the District Court to decide on the Viharadhipathiship at the conclusion of the trial in Case No. 13344/L. The application of the Petitioner is misconceived in law since the 1st Respondent

has acted within the purview of powers vested on him under the Buddhist Temporalities Ordinance.

40. Furthermore, P12 was issued on **24th March 2021** with a copy to the Petitioner, and P14 was issued on **29th July 2021**. However, this application was filed on **28th August 2024** without explaining the delay of more than 3 years. This amounts to *laches*.

41. For all the above reasons, the Petitioner has not been able to establish any entitlement for a writ of Prohibition against the Respondents. Accordingly, the application is dismissed with costs.

Judge of the Court of Appeal

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

I agree.

President of the Court of Appeal