

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

***In the matter of an application under
and in terms of the Art 17 and Art 126
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.***

Case no. SC (F/R) No. 53/2022

1. Dona Shanudi Jaanya Pathirage
No. D/2/3/1,
Stage III, Housing Scheme
Torrington Avenue
Longden Place
Colombo 07.

2. Madwala Liyanage Iroshi
Suriyasena
No. D/2/3/1,
Stage III, Housing Scheme
Torrington Avenue
Longden Place
Colombo 07.

PETITIONERS

vs.

1. H. M. C. M. K. Senvirathne
Principal
Visakha Vidyalaya
No.133, Vajira Road
Colombo 04.

2. K. P. P. Suriyapperuma
Vice Principal
Visakha Vidyalaya
No.133, Vajira Road
Colombo 04.

3. Kithsiri Liyanagamage
Director national School
Ministry of Education
Isurupaya, Pelawatta
Battaramulla.

4. Prof. K. Kapil C. K. Perera
Secretary
Ministry of Education
Isurupaya, Pelawatta
Battaramulla.

4A. M. Nihal Ranasinghe
Secretary
Ministry of Education
Isurupaya, Pelawatta
Battaramulla.

5. Hon. Dinesh Gunawardena
Minister
Ministry of Education
Isurupaya, Pelawatta
Battaramulla.

5A. Hon. Dr. Susil Premjayantha
Minister
Ministry of Education
Isurupaya, Pelawatta
Battaramulla.

6. Hon. Attorney General
Attorney General's
Department
Colombo 12.

RESPONDENTS

BEFORE : **S. THURAIRAJA, PC, J**
KUMUDINI WICKREMASINGHE, J AND
MAHINDA SAMAYAWARDHENA, J

COUNSEL : Charith Galhena with Ms. Shalani Jayasinghe instructed by Ms.
Dimuthu Karunarathne for 1st and 2nd Petitioners with
Ms. Yuresha De Silva, DSG for the Hon. Attorney General

WRITTEN SUBMISSIONS : 1st and 2nd Petitioners on 29.07.2022

Respondents on 03.08.2022

ARGUED ON : 08th November 2022

DECIDED ON : 23rd February 2023

S. THURAIRAJA, PC, J.

The Petitioners have filed this application seeking a declaration that the Fundamental Rights of the 1st Petitioner guaranteed under Article 12(1) of the

Constitution have been violated by 1st to 6th Respondent and/or by the state by refusing to admit her to Visakha Vidyalaya in Colombo 04.

Leave to proceed was granted on 05.05.2022, for the alleged violation of Article 12(1) of the Constitution, against 1st to 6th Respondents.

In determining the same, the facts and circumstances of this application needs to be considered.

The Facts

The 1st Petitioner is a five-year-old Minor being represented by the 2nd Petitioner, her mother as her 'next friend'. The 1st and 2nd Respondents are the Principal and Vice Principal of Visakha Vidyalaya, Colombo 04, respectively.

This application concerns an application to Visakha Vidyalaya, a national school in Colombo 04, where the 2nd Petitioner had submitted an application to the said school to admit the 1st Petitioner into Grade 1 for the academic year 2022, before the deadline of 30.06.2021. Admissions to government schools for the year 2022 were governed by Circular No. 29/2019 issued by the Ministry of Education and dated 24.05.2019 (marked and hereinafter sometimes referred to as **P3**), and under clause 3.1 of this circular, they had applied under the category of "Children of Residents in close proximity to the school". The 2nd Petitioner states that the application was made on the basis of their permanent residence at captioned address No. D/2/3/1, Stage III, Housing Scheme, Torrington Avenue, Longden Place, Colombo 07, and that they had shown proof of residence.

Following an interview, their application was rejected due to insufficient documentary proof to establish the Petitioners' residence at the captioned address, and Petitioners learned of this through a letter dated 30.11.2021 (**P8**).

The 2nd Petitioner appealed against this decision via letter dated 12.12.2022, citing that despite the property obtained from the National Housing Development Authority being under her father, Mr. Priya Suriyasena's name, she had resided in the

aforementioned captioned address since 2001, utilising as proof, a letter that the National Housing Development Authority had specifically issued on 14.06.2019, confirming her entitlement to reside in the said property as a lawful heir to her father.

Further evidence of the 2nd Petitioner's permanent residency at the captioned address was provided by an affidavit and letter from the 2nd Petitioner's father, dated 10.12.2021, accepting her residence and confirming her right to stay in the property as his lawful heir to the said property.

Through a letter dated 07.01.2022, the 2nd Respondent informed the Petitioners to participate in an interview regarding documentary proof of residence in reconsidering the application made by the 2nd Petitioner. Subsequently, the Petitioners took part in the said interview, however, their application was rejected once again and a marking scheme was communicated to them.

However, 2nd Petitioner's elder son, and the 1st Petitioner's elder brother, was able to secure school admission to Royal College Colombo 07 in 2020, D. S. Senanayake College, Colombo 07, and Isipathana College, Colombo 05, under the same category of "children of residents in close proximity to the school", he was given marks in consideration of the same address.

As the Respondents claim that the 1st Petitioner does not fall under the category of "Children of residents in close proximity to the school", under clause 3.1, we must examine whether the documents submitted by the Petitioners provide concrete proof of Petitioners' residence at captioned address.

Therefore, in order for the 1st Petitioner to be considered under clause 3 of the Circular, other documents that further establish the residency need to be looked at. According to clause 7.2.1, there are main and additional documents that will serve as further establishments of proof of residence. These are

- Title Deeds
- Bimsaviya Certificates

- Gift Deeds
- Deemana Pathra
- Government Grants
- Deeds issued under Buddhist Temporalities Ordinance and certificates issued by Viharadhipathi's certified by Commission General of Buddhist Affairs
- Declaration deeds with proof of extracts for more than 10 years
- Agreements for Houses purchased on instalment basis and payment receipts.

According to the provisions of the said clause, if the main document is in the name of the applicant or the spouse, he or she is entitled to get maximum of 20 marks in proof of the residency. However, if the main document is in the name of the father or mother of the applicant or spouse, the applicant will get only 15 marks. In order to get full marks for the proof of residence, the main document should be 5 years old.

Under clause 7.2.1.1 of the Circular, the last type of main document that establishes proof of residence is

ගෙවීමේ පදනම මත මිල දී ගෙන ඇති නිවාස ලේඛන (අයිතිකරු සමඟ ඇති කර ගත් ගිවිසුම හා ගෙවීම් කරන ලද ලදුපත්)

For ease of reference, this translates to

"Agreements for Houses purchased on instalment basis (The agreements with the owners and payment receipts)

As per clause 7.2.1.1 (i), if the above documents are under the name of the applicant/ spouse, applicant would be entitled to 20 marks, or as per 7.2.1.1 (ii) if the ownership is under the name of the mother or father of applicant/spouse, the applicant would be entitled to 15 marks.

"ඉල්ලුම්කරුගේ/ කලත්තයාගේ මවගේ හෝ පියාගේ නමට හිමිකම ඇත්නම්"

As the 2nd Petitioner has made the application under clause 7.2.1.1 (ii), we must examine as to whether she fulfils the requirements in said clause.

As per the Agreement to Sale (**P7(d)**) between the National House Development and Mr. Priya Suriyasena, the 2nd Petitioner's father, possession would be transferred to the 2nd Petitioner's father, after he had completed the payment as referred to in a previous paragraph, which stated that Mr. Suriyasena had to pay Rs. 341,250/= at the execution of the agreement.

Evidence of this payment can be found in the same document, where it is stated that

"at the execution of these presents the receipt whereof the party of the First Part hereby admit and acknowledge"

This proves that possession had been passed on to the 2nd Petitioner's father, Mr. Priya Suriyasena on the date the agreement was signed, on 23.11.2001.

The 2nd Petitioner has submitted that despite the property being obtained from National Housing Development Authority to her father's name, she was residing in the aforementioned captioned address since 2001 and she further filed a specially issued letter from the National Housing Development Authority dated 14.06.2019, confirming her entitlement to reside in the said property. After perusing this document, it was confirmed that the legal ownership of the house under the captioned address is under Mr. Priya Suriyasena, and as the last paragraph states

"මෙම නිත්‍යානුකූල නිවාස හිමියාගේ දියණිය වන මඩවල ලියනගේ ඉරොෂනී සූරියසේන මහත්මිය ඇතුළු පවිලේ සාමාජිකයින් ද මෙම නිවසේ පදිංචිව සිටින බැව් මා වෙත දන්වා ඇති අතර, නිත්‍යානුකූල නිවාස හිමියාගේ උරුමකරුවන් මෙම නිවසේ පදිංචි වීම සම්බන්ධයෙන් ජාතික නිවාස සංවර්ධන අධිකාරියේ කිසිදු විරුද්ධත්වයක් නොමැති බවත්, ඒ සඳහා ඔවුන්ට නෛතික හිමිකමක් ඇති බවත්, ජාතික නිවාස සංවර්ධන අධිකාරිය පිළිගනී."

Which translates to

"I have been informed that the members of the family, including Ms. Madawala Liyanage Iroshani Suriyasena, the daughter of this legal owner of the house, are also residing in it, and that the National Housing Development Authority accepts that there is no objection to the legal home owner's heirs residing in this house, and they have a legal right to it. "

Further evidence of permanent residency at the said property was provided by the 2nd Petitioner through an affidavit and letter dated 10.12.2021 from her father Mr. Priya Suriyasena, where he accepts that she has been residing in the said address since 2001, and that she has a legal right to stay in the property as his lawful heir to the said property.

Although 2nd Petitioner and mother of 1st Petitioner is not the owner of the property, as previously established, ownership does not need to be with the applicant/spouse as long as there is proof to show that ownership belongs to the mother or father of said applicant/spouse. As the 2nd Petitioner submitted 1st Petitioner's application under clause 7.2.1.1 (ii) of the circular, I am of the view that the mother fulfilled this requirement as she is the daughter of Mr. Priya Suriyasena, who is the legal owner of the said house.

Another point of contention is the reason that was communicated to the Petitioners as being the reason for the rejection of the school application is different to the reason that was cited in the marking scheme (**R1**).

The rejection letter dated 30.11.2021, sent by the 2nd Respondent stated that stating that the 1st Petitioner's application was rejected, for the reason

"ජා. නි. ස. අධිකාරිය මගින් ලබාගත් ගිවිසුම් ඉල්ලුම්කරුගේ පියා නමින් ඇත"

(The contracts obtained through the National Housing Development Authority are in the name of the applicant's father)

The marking scheme as submitted by the Respondents (**R1**), however has placed the occupancy of the Petitioners in the category of occupants of government land,

“අයදුම්කරු / කලත්‍රයා අඛණ්ඩව වසර 10කට වඩා වැඩි කාලයක් රජයේ ඉඩමක (අදාළ ලිපිනයේ) පදිංචි බවට ප්‍රදේශයේ නාගරික කොමසාරිස්/ ප්‍රාදේශීය ලේකම් විසින් නිකුත් කරන සහතික.”

(Documents issued by the Municipal Commissioner/Divisional Secretary of the area that the applicant/spouse has resided in a government land (at the relevant address) for a period of more than 10 consecutive years.)

awarding zero marks under the said category in the application making a note under the above category, stating

“ඉල්ලුම්කාරියගේ පියාගේ නමින් ජා. නි. ස. අධිකාරිය හා එලඹී විකිනීමේ ගිවිසුමක් ඉදිරිපත් කර ඇත. එය ඉල්ලුම්කාරියගේ හෝ කලත්‍රයාගේ නමට පැවතිය යුතු බැවින් වක්‍රලේඛය අනුව ලකුණු ලබාදිය නොහැක”

*(A Sale Agreement in the name of the applicant's father, between him and the National Housing Development Authority has been submitted. **As it has to be in the name of the applicant or the spouse, points cannot be given as per the circular**)*

(Emphasis Added)

The Petitioners have made the application under clause 3 and thereafter 7.2.1.1 (ii) of the Circular, whereas the grading in the marking scheme has been focused on another category. The Petitioners do not fall under the category of “proving residency by using other documents”, rather they have made the application under the category in which ownership of the property was obtained by an Agreement to Sale and Purchase on payment of consideration by way of instalments. The Ministry of Education, through their Committee Report, too has accepted that there was an error

in communication, where it was stated that the reason for making the note made on the marking scheme (vide supra) had not been stated clearly.

"දෙමාපියන් වෙත ලබාදෙන ලද ලකුණු ලේඛනයෙහි (P11) පාසල විසින් "ඉල්ලුම්කාරියගේ පියාගේ නමින් ජාතික නිවාස සංවර්ධන අධිකාරිය හා එලඹී විකිනීමේ ගිවිසුමක් ඉදිරිපත් කර ඇත. එය ඉල්ලුම්කාරියගේ හෝ කලත්‍රයාගේ නමට පැවතිය යුතු බැවින් වක්‍රලේඛය අනුව ලකුණු ලබාදිය නොහැක" ලෙස සඳහන් කර ඇත. එහි අයිතිය පියාට හිමිව නැති බවද සඳහන් කළ යුතුව තිබූ අතර, එය සඳහන් කිරීම මඟහැරී ඇත.

In the marking scheme (P11) given to the parents, it is mentioned by the school that "a sale agreement with the National Housing Development Authority in the name of the applicant's father has been submitted. As it has to be in the name of the applicant or the spouse, marks cannot be given as per the circular". Although it should have been mentioned that the father does not have the right to it, this has been omitted.

Furthermore, it has also been stated in the same report that

"ලකුණු ලේඛනයෙහි, පාසල විසින් "ඉල්ලුම්කාරියගේ පියාගේ නමින් ජාතික නිවාස සංවර්ධන අධිකාරිය හා එලඹී විකිනීමේ ගිවිසුමක් ඉදිරිපත් කර ඇත. මෙහිදී ජාතික නිවාස සංවර්ධන අධිකාරිය නිකුත් කර ඇති ලිපිය තුළින් අයිතිය ඉල්ලුම්කාරියගේ පියාගේ වන බැවින් ලකුණු ලබාදිය නොහැක" බව සඳහන් කර ඇත. එම සටහනෙහි හේතුව පැහැදිලි ලෙස ප්‍රකාශ වී නොමැත."

*In the marking scheme, it is mentioned by the school that "a sale agreement with the National Housing Development Authority in the name of the applicant's father has been submitted. It has been stated that the letter issued by the National Housing Development Authority says that the right belongs to the applicant's father, so points cannot be given." **The note did not clearly state the reason.**"*

(Emphasis Added)

Therefore, it appears that the Petitioners' application has been rejected due to misapprehension, which would further frustrate the Petitioners and contribute in making them feel that their rights are violated to a greater extent. Hence, the Court sees this as a violation of her rights under Art 12 (1) of the Constitution. Further, to support the above decision, it has been evidenced that applications to other national schools have been accepted when the applications have been made using the captioned address.

2nd Petitioner's elder son, and the 1st Petitioner's elder brother, was able to secure school admission to Royal College Colombo 07 in 2020 under the same category of "children of residents in close proximity to the school", through the same address in question. The 2nd Petitioner has made a note that when she attempted to secure admission of her son to D. S. Senanayake College, Colombo 07, and Isipathana College, Colombo 05, under the same category, he was given marks in consideration of the same address.

Further the Petitioners submit that at the admission interview to grade one for the year 2022 for Sirimavo Bandaranayake Vidyalaya, Colombo 07 under the same category, 77.5 marks were given in consideration to the same residence in question. Since all the above-mentioned schools are graded as National Schools of Sri Lanka, I do not see any reason as to why Visakha Vidyalaya should adopt a different approach to admit the child to this school. In addition, as the cut-off marks for the Grade 1 admissions for the year 2022 were 53.45 marks as submitted by the Respondent, and as agreed by both parties, the 1st Petitioner has obtained 63.6 marks, it is quite evident that she can enter Visakha Vidyalaya.

Therefore, under these circumstances, stated rules and under the Circular 29/2019, after careful consideration, we accept the submissions by the Petitioners and conclude that 1st Petitioner is eligible to enter Visakha Vidyalaya, Colombo 04, and that her rights under Art 12 (1) have been violated by the Respondents mentioned.

The Court recognises that the fundamental rights of the 1st and 2nd Petitioners enshrined under Art 12 (1) of the Constitution have been violated. While declaring a violation under Art 12 (1), I direct the 1st and 2nd Respondents to admit the 1st Petitioner Dona Shanudi Jaanya Pathirage to the relevant grade at Visakha Vidyalaya, for the academic year 2023 as soon as practicably possible, as furthering this application will only result in an unjust outcome for the 1st Petitioner.

This order should be complied with before 30th of April 2023.

Application Allowed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J

I agree

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J

I agree

JUDGE OF THE SUPREME COURT