

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

In the matter of an application for Writ of Certiorari, under the terms of the article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Dinusha Mohanthi Wijethunga
No. 18, Nayingala Watta,
Gurullagama,
Meerigama.

Petitioner

CA Writ Application No:
CA/writ/356/20

Vs

1. Sunanda Kariyapperuma
The Commissioner General of Buddhist
Affairs,
The Department of Buddhist Affairs,
No 135, Srimath Anagarika Dharmapala
Mawatha, Colombo 7
2. A.M.Nandasiri,
The Divisional Secretary,
The Divisional Secretariat -
Katharagama.
3. Rev. Bandarawela Amithananda Thero
Sri Kalyana Dharmashrawa Bhawana
Madhyasthanaya,
No 227. Colombo Road, Dompe.
4. The Hon. Attorney General, Attorney
General's Department,
Colombo 12

Respondents

Before: Dhammika Ganepola, J.
Damith Thotawatte, J.

Counsel J. P. Gamage for the Petitioner instructed by Chamara Fernando for
the Petitioner.
Shemanthi Dunuwille S.C for the 1st, 2nd and 4th Respondents.
3rd Respondent absent and unrepresented

Argument	24-03-2025
Written submissions tendered on:	03-04-2025 By the Petitioner
Judgement Delivered on:	20-05-2025

D. Thotawatte, J.

The Petitioner claims that she is the the lawful owner of a parcel of land measuring one acre in extent situated at Gaminipura, Katharagama, having acquired the same through a Deed of Gift dated 2nd August 2004, executed by the prior owner, Korale Kankanamge Dharmathilake, who received the property under a Presidential Grant dated 20th November 1996.

Following her acquisition, the Petitioner, together with her husband, had constructed a house on the said land to facilitate their visits to religious sites in Katharagama. After the Petitioner's husband passed away in May 2008, the Petitioner had undertaken the construction of additional buildings, with the purpose of providing free accommodation to pilgrims and clergy visiting the sacred sites of Katharagama.

Rev. Bandarawela Amithananda Thero the 3rd Respondent who was "known to the Petitioner" had suggested naming premises as "Neelakaramaya" after the petitioner's husband's name, and in 2010, she addressed a letter (annexed as P15 and R1) to the 2nd Respondent expressing an intent to donate this property to Rev. Amithananda Thero to construct a "Sangawasa" and asking the 2nd Respondent to take the necessary steps for that purpose. However, no formal deed of gift was executed.

After the construction was completed, Rev. Amithananda Thero had suggested to the Petitioner to allow few Bhikkhus' to reside in the premises to help the visiting monks, devotees and further to permit local devotees to use the premises for religious activities. The Petitioner had agreed to these suggestions.

The petitioner states that as she received reports about unauthorized monetary collections and complaints of misconduct by certain bhikkhus residing at the premises. Although she brought these issues to the attention of the 3rd Respondent, the 3rd Respondent had failed to take any remedial measures. Thereafter, the petitioner has informed the 3rd Respondent by a letter dated 30th December 2012 (annexed as P16) that owing to these reports she would not take steps to donate the property to Rev. Amithananda Thero as she previously intended and not to pursue the matter with the 2nd Respondent. However, the Petitioner had omitted to inform the 2nd Respondent of this change of intention.

Eventually, in December 2019, Rev. Udugampola Dhammananda, a bhikkhu residing at “Neelakaramaya” claiming authority under the 3rd Respondent had physically obstructed the Petitioner from entering the premises which resulted in the Petitioner making a police complaint. Thereafter, proceedings had been initiated in the Magistrate’s Court under Section 66 of the Primary Court Procedure Act and at the conclusion of the inquiry the Learned magistrate had made an order granted the possession of the premises for the time being to Rev. Amithananda Thero.

The petitioner states that she came to know at this time, that the 3rd Respondent had requested from the 1st and 2nd Respondents to register the said premises as a temple and that the 1st Respondent on the recommendation issued by the 2nd Respondent dated 16.01.2013 (annexed as P12) has issued a certificate of registration bearing No. බෞ.කො./විහා.දේ/19/27/25 dated 29.01.2013 (annexed as P11) registering the premises as a Buddhist temple.

The petitioner had obtained the impugned registration certificate (annexed marked P11), the 3rd Respondents application for registration (annexed marked P14 and P13 a) and the letter of the 2nd Respondent recommending the registration of the relevant premises as a Buddhist Temple, through a Right to Information application.

The Petitioner, having filed a revision application in the High Court of Hambantota, against the order of the Learned magistrate, has received interim relief from the High Court allowing her to re-enter the premises. Parallely, Petitioner had instituted an action in the District Court of Tissamaharama against Rev. Dhammananda Thero and Rev. Amithananda Thero as respondents for declaration of title and ejectment of the bhikkus from the relevant premises. After filing the answer, the respondents (of the District Court case) had not appeared in person and by the time the matter was fixed for argument, there had been no representation on their behalf. The trial had continued in absentia, and the judgment had been entered in the Petitioner's favor on 12th January 2023 (the Judgement is annexed to the Docket by motion on 25th February 2025).

Although the Petitioner had obtained the declaration of ownership and the possession of the relevant residence she has failed to get the registration of the relevant residence as a temple canceled and as such she has filed this application seeking inter alia, a writ of certiorari to quash the certificate of registration of a temple, namely ‘Neelakarama Mahasen Bhawana Madhyasthanaya’ bearing No. බෞ.කො./විහා.දේ/19/27/25 dated 29.01.2013 issued by the 1st Respondent and the letter of recommendation to such registration dated 16.01.2013 issued by the 2nd Respondent and the decision therein.

The instant application was filed by the Petitioner on 21st September 2020 and the Petitioner maintains she never gifted or donated the relevant property to the Sangha or for purposes of establishing a temple, and the registration was done without her consent, based on false representation.

Although notices were issued on the 3rd Respondent, the 3rd Respondent had never appeared in this court nor was he represented.

The 1st, 2nd and 4th respondents have taken up the position that, due to the delay in invoking the writ jurisdiction of the court, the Petitioner is guilty of laches and, as such, no relief should be granted. The principle of laches prevents a party from claiming judicial review if they have unreasonably delayed in asserting their rights. However, it has also been held that if the delay is adequately explained by the applicant, the objection regarding laches can be disregarded.¹ Further, what will constitute undue delay will depend upon the facts and circumstances of a particular case².

In the instant case, Petitioner has averred that she had no knowledge of the registration until 2019 and thereafter, time was needed to acquire the relevant documents under the Right to Information Act. Further, that she had to institute two parallel proceedings for urgent relief in two other forums. I am of the view that the Petitioner has explained the delay to the satisfaction of the Court, and further, I am satisfied that the Petitioner has acted diligently after she became aware that the relevant land had been registered as a Buddhist Temple. As such, I reject the objection raised with regard to laches.

The 1st and 2nd respondents have also taken up the position that they acted on the letter (P15) given to the 2nd Respondent by the Petitioner which clearly state an intention to donate the property to the 3rd Respondent to be utilized as a “Sangavasaya” and by the same letter she has requested to the 2nd Respondent to make necessary arrangements for the transfer of the property.

The 1st and 2nd Respondents further claim that the 3rd Respondent has fulfilled the requirements for the premises in dispute to be registered as a “viharaya” and as such the 1st and 2nd Respondents have not acted illegally or unlawfully.

I reproduce below paragraph 30 of the petition:

30. The Petitioner states that in the circumstances the decisions of the 1st and 2nd Respondents to register the private property belongs to the Petitioner as a temple under the Buddhist Temporalities Ordinance is illegal, against Law, arbitrary, mala fide and capricious and the 1st and 2nd Respondents have no authority to register the Petitioners private property as a temple under the Buddhist Temporalities Ordinance or any other Law.

By the above reproduced paragraph, it’s clear that the Petitioner is challenging the authority under which the registration was done. This is a serious jurisdictional allegation; a complete absence of legal authority for the act renders the decision or act nullity ab initio.

The 1st, 2nd, and 4th Respondents have not specifically answered allegations of paragraph 30. In the statement of objections, the only reference to paragraph 30 is at paragraph 1, which is reproduced below.

¹ *Arachchige Dona Christene Shani De Silva et al. v. Urban Development Authority et al.* CA WRIT/278/18, CA Minute 26-10-2021

² *Dinamithra Gedara Upali Ranasinghe vs Commissioner General of Lands* CA WRIT 333/15 CA Minute 16-10-2024

11. With reference to the averments contained in paragraph 30 of the petition, and the corresponding paragraphs of the Affidavit tendered by the Petitioner, the Respondents state that the Petitioner has been sleeping on her rights and not taken any steps to make representations to the 2nd Respondent in order to facilitate her request in P15.

The Respondents has not specifically denied or answered the averments in paragraph 30 of the petition. The Respondents appear to be relying on the general denial clause, denying all those averments or paragraphs that are not specifically and expressly denied or admitted. As such it is reasonable to assume that paragraph 30 has been denied in its entirety without any reason being given.

In spite of the direct challenge to the authority under which the registration was done and the impugned certificate issued, the 1st, 2nd, and 4th Respondents have not mentioned by what authority the impugned certificate was issued, or any statutory foundation for the registration process.

This only statute that has been mention in this application (by the Petitioner) is the Buddhist Temporalities Act. However, there is no provision in this act that justifies issuing of registration certificates in order to register any land as a Buddhist Temple or a “Viharaya”. I have been unable to find any legislation that permits such a registration. The only conclusion that can be drawn from Respondents deliberate silence regarding a jurisdictional challenge, is that they are unable to submit where the power is drawn from for this particular registration. It appears that no statutory power is vested in the 1st Respondent to register the Petitioner’s property as a Temple or a “Viharaya”. As such, the registration and the issuance of the certificate of registration regarding ‘Neelakarama Mahasen Bhawana Madhyasthanaya’ bearing No. ෧෧෧.෧කා./විහා.෧෪/19/27/25 dated 29.01.2013 issued by the 1st Respondent is ultra vires and void from its inception.³

Accordingly, this Court issues a writ of certiorari, formally quashing the impugned registration and registration certificate of the 1st Respondent for lack of jurisdiction.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree

Judge of the Court of Appeal

³ *Gunaratne v. Chandrananda De Silva* [1998] 03 SLR 265 CA NO. 927/98

