

**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.

C.A. (Writ) Application

No: 449/2013

1. S.H. Saboordeen,
2. H A Kabeer,
3. C. Illyas,
4. F.A. Rahman,
5. L. Aswer,
6. H.D. Hasandeen,
7. N.P. Muththalif,
8. M.H.M. Sanoos,
9. S.L.M. Imran,
10. M.S. Samsudeen,
11. M. Aslam,
12. S. Maharroof,
All at Thelambugalla, Dodangaslanda

Petitioners

Vs.

1. The Wakfs Board of Sri Lanka,
No. 180, T.B. Jayah Mawatha,
Colombo 10
1(*aaa*). M.L.M.H.M. Mohideen Hussain,
Chairman,
1(*bbb*). Mr Baba Mahil Dole,
Member,
1(*ccc*). Prof. P.C. PakkeerJawfer,
Member,

1(*ddd*). Mohamed Abdul Matheen,
Member,

1(*eee*). Moulavi, Abdul Jabbar,
Member.

1(*fff*). M. Musthafa Raza M. Zaffer,
Member.

1(*ggg*). Mohamed Nasir M. Ijlan
Member.

1(*aaa*) to 1(*ggg*) Respondents at:
The Wakfs Board of Sri Lanka.
No. 180, T.B. Jayah Mawatha
Colombo 10.

2BBB. Z.A.M. Faizal,
Director,
Department of Muslim Religious and
Cultural Affairs,
No. 180 T.B. Jayah Mawatha,
Colombo 10.

3. Prof. Kapila Gunawardana
The Secretary,
Ministry of Buddhasasana and
Religious Affairs,
No. 135 Dharmapala Mawatha
Colombo 07.

4. Divisional Secretary
Divisional Secretariat, Ridigama

5. Ridigama Pradeshiya Sabha
Ridigama

6. The Chairman
Ridigama Pradeshiya Sabha,
Ridigama

7. A.S. Hisbathulla

8. S.L. Najeer,

9. M.S. Ranees,

10. A.S.M. Nazick

11. C.L. Hussaindeen,

12. I.L. NoohuLebbe,

13. S.M. Zarook,

14. M.M.F. Ahamed

7th to 14th Respondents

All of Thelambugalle, Dodangaslanda.

Respondents

Before : P. Kirtisinghe J
&
R. Gurusinghe J

Counsel : Chathura Galhena with Devmini Bulegoda
For the Petitioner
M.M. Zuhair, PC with Rushdhi Habeer, Rizwan Uwais and
Aravinda Manatungaarachchi
For the 7 to 14 Respondents
Manohara Jayasinghe DSG for the State

Argued on : 19.06.2023

Decided on : 20.07.2023

R. Gurusinghe J

The Petitioner filing this application sought to issue a writ of certiorari quashing the decision of the 1st and 2nd respondents to register the Al Huda Mosque (hereinafter referred to as the new mosque) and appointment of Trustees to the said mosque and to issue a writ of prohibition, preventing and/or restraining the 5th and 6th respondents from taking steps towards making any decision and/or an order to share the cemetery, situated in the land owned by the Thelambugalle Jumma mosque (hereinafter referred to as the old mosque) which is also known as Darula Lafah Mosque.

The petitioners are the Trustees of the old mosque. The 1st respondent is the Wakfs Board of Sri Lanka. The 2nd respondent is the Director of Muslim Religious and Cultural Affairs appointed in terms of Section 2 of the Muslim Mosques and Charitable Trust Act at No. 51 of 1956 as amended, hereinafter referred to as the Act. 3rd to 6th respondents are public bodies who were made parties for the relief in respect of the burial ground. The 7th to 14th respondents are the Trustees of the new mosque.

The petitioners averred that the new mosque was an unauthorized building constructed in close proximity to the old mosque and this fact was brought to the notice of the 4th respondent, who is the Divisional Secretary of Ridigama and the 2nd respondent. The 3rd respondent is the Secretary to the Ministry of Buddhasasana and Religious Affairs, who directed the 2nd respondent not to register the new mosque by letters P5. P7 is the document which informs the fact that P5 was forwarded to the Wakfs Board.

P8, P8 (a), P8 (b), P8 (c) are letters or circulars issued to all Divisional Secretaries and other Public Bodies of the country by the 3rd respondent, informing that, before any new religious place of worship is constructed, sanction of the Ministry of Buddhasasana and Religious Affairs (hereinafter referred to as the Ministry) should be obtained.

The Petitioners relied on P8 documents as guidelines that should be followed when registering a new religious place of worship. The petitioners pleaded that following the commencement of religious activities in the new mosque, clashes erupted between the devotees of the old mosque and new mosque resulting in casualties. The petitioners' position is that the registration of the new mosque was an *ultra vires* act and sought to quash the documents P14(a) and P 14 (b).

The procedure to register a new mosque is set out in sections 10 to 13 of the Act. The Wakfs board is authorized to register a mosque in terms of the abovementioned provisions of the Act, especially under section 13. Section 13 of the Act is as follows:

“13. Upon application made to the board for the registration of a mosque under section 10, the board, after making such inquiries as it may deem necessary for verifying-

*(a) the particulars contained in such application and,
(b) if any information and documents had been received by it in accordance with any notice served under section 11 on the applicant for registration, such information and the particulars contained such documents, shall cause that mosque to be registered in the register of mosques by the entry therein of the prescribed particulars relating to that mosque.”*

The Wakfs Board also has the power to delete a name of a Mosque from the register of mosques in terms of section 13C of the Act. Section 13C is as follows:

13C: If at any time the board is satisfied that it has caused a mosque to be registered by reason of a mistake of law or of fact, it shall be lawful for the board to cause the entry relating to that mosque to be deleted from the register of mosque, and such mosque shall be deemed to be not registered with effect from the date of such deletion.

The first respondent pointed out the above provisions of the Act and submitted that the petitioners have an alternative remedy that they should have resorted to. The petitioners have not addressed any letters to the Wakfs Board, which has the authority under section 13C of the Act, to investigate such matters, and if satisfied that there was a mistake of law or fact, it can delete a name of a mosque from the register of mosques. If the petitioners have complained or informed their grievances regarding the registration of the new mosque, the 1st respondent is under an obligation to investigate such matters and make a decision in that regard.

The petitioners have not resorted to this simple and effective remedy available to them to complain or make representation to the Wakfs Board. Although the alternative remedy will not operate as an absolute bar for entertaining a writ application and the existence of an alternative remedy does not affect the jurisdiction of this court, it could be a ground for refusal of the petition as it is a discretionary remedy.

The petitioner's case against the 1st respondent is based on the non-compliance of P8 documents. None of the P8 documents are addressed to the Wakfs Board. The 1st respondent is the only body that has the statutory power to register a mosque and to appoint Trustees to such mosque. It is a statutory power exclusively given to the 1st respondent by the Act. Therefore, the powers given to the Wakfs Board by the Act should be used by itself and cannot be surrendered to anybody. The 1st respondent is bound to follow the procedure set out in the Act when registering a new mosque and appointing Trustees to such a mosque.

P8 Documents are concerned with the construction of new religious places of worship. In the prayer to the petition, the petitioners had not sought any relief regarding the construction of a new mosque. The first or second respondents cannot approve the construction of any building and they have not done so. The first respondent has done only the statutory duty entrusted to it under the Wakfs Act. We see no ground to issue a writ of certiorari against the first respondent. In the circumstances, the application for a writ of certiorari fails.

The petitioners are seeking only two substantial reliefs, namely,

(1) to issue a writ of certiorari quashing the decisions of the 1st and 2nd respondents to register the new mosque and appointment of Trustees to the said mosque and

(2) to issue a writ of prohibition against the 5th and 6th respondents regarding the cemetery.

The relief sought against the 5th and 6th respondent is to issue a writ of prohibition preventing and/ or restraining the 5th and 6th respondent or their servant or agents from taking any steps towards making any direction and /or an order to share the cemetery situated in the land owned by the old mosque with the new mosque.

The 5th and 6th respondents objected to this relief being granted to the petitioner on the ground that the cemetery involved in this matter is a public cemetery used by all villagers. The ownership of the cemetery is a disputed fact and cannot be satisfactorily decided without taking evidence; it is not the practice of Courts to decide such questions in a writ application.

A writ of mandamus and prohibition will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts. Hence, the reliefs sought by the petitioners in regard to the cemetery cannot be granted.

For the reasons set out in the judgment, the application for writ certiorari and prohibition is dismissed without costs.

Judge of the Court of Appeal

Pradeep Kirtisinghe J.

I agree.

Judge of the Court of Appeal.