

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

In the matter of an Application under
and in terms of Article 143 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal Case No.

CA/WKF/0002/2023

1. **Abdul Raheem Mohamed Mudassir,**
No. 128, Kohilawatha, Angoda.
2. **Mohamed Niyas Mohamed Haroon,**
No.61/A, Abathala Road, Kohilawatha,
Angoda.
3. **Ali Hassan Mohamed Gazzaly,**
No.151, Stace Road, Grandpass,
Colombo 14.
4. **Baba Mohamed Himson Lye,**
No.450/16 H3, Belagama Road,
Kelanimulla.
5. **Mohamed Rafeek Mohamed Mihilar,**
No.40/30A, Araliya Mawatha,
Kohilawatha, Angoda.
6. **Aboobaidha Nazar,**
No.98/7, Abathala Road, Wellampitya.
7. **Mohamed Raseed Mohamed Ramees,**
No,102/24, Donal Perera Mawatha,
Kohilawatha, Wellampitiya.
8. **K.J.M. Foundation (Guarantee)
Limited,**
No.65/17, Abathala Road,
Kohilawatta, Wellampitiya.

Petitioners

Vs.

1. **Mohamed Munawwar Mohamed Mushtaf,**
No.55/7, Kohilawatta,
Angoda.
2. **Mohamed Munawwar Mohamed Mufeeth,**
No.55/7, Kohilawatta,
Angoda.
3. **Mohamed Razik Mohamed Nadeer,**
No.102/2, Donel Perera Mawatha,
Kohilawatta, Wellampitiya.
4. **Mohamed Farook Mohamed Riyadh,**
No.66/1/1, Donel Perera Mawatha,
Kohilawatta, Wellampitiya.
5. **Mohamed Farook Mohamed Miraz,**
No.40/1A, Araliya Mawatha Kohilawatta,
Angoda.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
P. KUMARARATNAM, J.

Counsel: N.M. Riyaz for the Petitioners.

Muneez Thoufeek with K.A.W. Rinoshaw, Ms. Vishvi A. Azundathi, instructed by Naszeen Naushadh for the Respondents.

Argued on: Disposed by way of written submissions.

Written Submissions on: 18.03.2024 by the Petitioner
19.03.2024 by the Respondent

Decided on: 01-08-2024

MOHAMMED LAFFAR, J.

The Petitioners, in terms of Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka, having invoked the jurisdiction of this Court, seeks injunctions as prayed for in the prayers to the Petition. Article 143 reads thus;

“The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which might ensue before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance:

Provided that it shall not be lawful for the Court of Appeal to grant an injunction to prevent a party to any action in any court from appealing to or prosecuting an appeal to the Court of Appeal or to prevent any party to any action in any court from insisting upon any ground of action, defence or appeal, or to prevent any person from suing or prosecuting in any court, except where such person has instituted two separate actions in two different courts for and in respect of the same cause of action, in which case the Court of Appeal shall have the power to intervene by restraining him from prosecuting one or other of such actions as to it may seem fit.”

The substantial reliefs prayed for in the prayers to the petition, *inter-alia*, are as follows;

1. Issue an injunction restraining the Respondents from blocking access to the College by padlocking the access gate, entering the premises of the College, disconnecting water and electricity to the College, interfering, threatening, abusing or doing any act that impedes or obstructs the Petitioners from managing and administering the College till the final determination of Case No. WB/9433/2023 of the Wakfs Board of Sri Lanka.
2. Grant a declaration that the Respondents are not entitled to assume the office of Trustees of the Kohilawatte Jumma Mosque till the Instrument of Appointment is issued by the Wakf Board of Sri Lanka.
3. Issue an injunction restraining the Respondents from interfering, threatening, abusing or doing any act that impedes or obstructs the 1st, 2nd, 4th, 5th, 6th and 7th Petitioners' right from managing and administering the Kohilawatte Jumma Mosque till the final determination of Case No. WB/9433/2023 of the Wakfs Board of Sri Lanka.

On 11-08-2023, having scrutinized the Petition, affidavits, documents and the submission of the learned Counsel for the Petitioners, this Court issued an interim order against the Respondents as prayed for in paragraph (b) of the Petition, which reads thus;

- Restraining the Respondents from blocking access to the College by padlocking the access gates, entering the premises of the College, disconnecting water and electricity to the College, interfering, threatening, abusing or doing any act that impedes or obstructs the Petitioners from managing and administering the College. Thereafter, the inquiry pertaining to the interim injunction was resolved as the Respondents permitted the Petitioners to carry on the administration of the said College without any impediments.

FACTUAL MATRIX:

Admittedly, in terms of the provisions of the Muslim Mosques and Charitable Trust or Wakfs Act No. 51 of 1956 (as amended), the 1st, 2nd, 4th, 5th, 6th and 7th Petitioners were elected by the *Jamaath* as trustees of the Kohilawatta Jumma Mosque, and subsequently, they were duly appointed by the Wakfs Board. On 15-01-2023, an election to appoint new trustees was held at the Mosque premises, and thereupon, the Respondents having claimed that they had been elected as new trustees took over management and control of the Mosque. The learned Counsel for the Petitioners asserts that the said conduct of the Respondents is erroneous and contrary to Section 15A of the said Act. There is a pending action before the Wakfs Board in case No. WB/9433/2023 challenging the purported election of the Respondents as trustees to the said Mosque. In this context, the Wakf Board has not issued instruments of appointment to the Respondents as trustees yet. In those circumstances, the Petitioners state that in terms of the provisions of the said Act, they are the lawful trustees of this Mosque.

The 8th Respondent College (incorporated as a company) was established in 2015 on the land belonging to the Mosque and managed by the Board of Trustees consisting of members of the Board of Trustees of the said Mosque and others. The Petitioners are the Directors of the College. The said College currently has 485 students in Grades 1 to 11 and serves the children of low-income residents in the area. It is a non-profit organization. There are 28 teachers in this College and the monthly school fee is 1500/- for all grades. More than half of the student population does not pay the school fees as they cannot afford to pay. The shortfall in the finances of the school is provided by the personal funds of the Board of Directors and from three donors residing in that area. A breakfast program to feed 150 students daily is also implemented by the College with funds from people in the area. The College is situated separately from the said Mosque and has separate access gates but shares common electricity and water lines.

The Respondents, having wrongfully taken over the administration of the said Mosque began disturbing the management and administration of the said College, that is to say, disrupting the water and electricity supply to the College while the classes are in session, forcefully entering, trespassing and causing disturbance and nuisance to the students and staff in the school. On

31-07-2023, while the Board meeting was in session at the college premises the Respondents wrongfully entered and damaged the property belonging to the college. Disrupted and prevented the Petitioners from conducting Board meetings by disconnecting the electricity supply. The Respondents padlocked the access gates to the College preventing the students and the staff from entering (P8, P9 and P10).

In those circumstances, the Petitioners state that they have a right to administer and manage the College undisturbed and free from any interference from the Respondents until the final determination of the case before the Wakf Board in case No. WB/9433/2023.

The Petitioners further plead that unless this Court grants injunctive relief the Petitioners fear that the said premises and its properties are likely to be demolished and likely to cause injury to the person and body of the students and the staff of the said College {Vide P11(1) to P11 (10)}.

It is averred that as the Wakfs Board of Sri Lanka is not empowered by any written law to grant injunctive relief and therefore the Petitioners are compelled to invoke the jurisdiction of this Court seeking injunctive relief under Article 143 of the Constitution of the Democratic Socialist Republic of Sri Lanka till the final determination of the said case pending before the Wakfs Board.

The Respondents in their statements of objection moved for a dismissal of the Petitioners' application on the footings *inter-alia*, that;

1. The instant application is liable to be dismissed *in-limine*, on the basis that the Petitioners are not entitled to make this application under Article 143 of the Constitution as the Wakfs Board does not fall under the category of Courts of First Instance under section 2 of the Judicature Act.
2. The College is currently located at the property owned by the Mosque and the said property was purchased by the donations of the *Jamaath* members for the purpose of burial ground. The Petitioners have misappropriated the Wakfs property.
3. The Petitioners failed to establish *prima facie* case to obtain an injunctive relief. Irreparable loss is not established.
4. The Respondents are duly elected trustees and waiting for instruments of appointment by the Wakfs Board, and therefore, they have the right to manage the Mosque and the College.

The law governing the appointment of trustees:

Section 14 (1) of the said Act deals with the appointment of trustees, which reads thus;

“As soon as may be, after a mosque has been registered under section 13, the board shall appoint a person or persons from among Muslims to

be a trustee or trustees of that mosque and issue to every person so appointed as a trustee **an instrument of appointment**. In selecting a person or persons for appointment as a trustee or trustees of a mosque, the board shall have regard to the following matters”

(a) the terms of any trust instrument relating to that mosque ;

(b) the religious law and custom of the sect of the Muslim community concerned ;

(c) the local custom with reference to that mosque; and

(d) the practice and other arrangements in force for the administration of the mosque.

(1A) The board may at any time after the appointment of a person as trustee of a mosque revoke his appointment if it is satisfied that such appointment was made by reason of a mistake of law or of fact. Where the board decides to revoke the appointment of any person as a trustee it shall by notice in writing addressed to such person”

(i) inform him of the revocation of his appointment as trustee, and

(ii) require him to return to the board the instrument of appointment issued to him, and upon receipt of such notice such person shall comply with such requirement.

(2) Every person appointed as a trustee by the board shall, subject to such general directions as the board may from time to time issue, officiate as trustee for such period, not exceeding five years, as may be specified in his instrument of appointment, unless he vacates his office under section 15 or his appointment as trustee is revoked by the board under subsection (1A). Every such person on the expiry of his term of office shall be eligible for reappointment.

(3) Until the board makes an appointment or appointments under the preceding provisions of this section, the trustee or trustees for the time being of that mosque or, if there is no such trustee, the person for the time being in charge of the mosque shall be responsible for the exercise of all powers and the performance of all duties in connexion with that mosque.

(4) The board may, by notice in writing addressed to a trustee, require him to return to the board the instrument of his appointment as trustee for the insertion therein of such condition or conditions as it may deem necessary and upon receipt of the notice the trustee shall return such instrument to the board. Every condition inserted in an instrument of appointment shall take effect from the date on which such condition is inserted.”

In the light of the foregoing provisions, it is abundantly clear that the elected persons by the *Jamaath* members will receive legal rights as trustees of the Mosque only when they are appointed by the Wakf Board by an instrument of appointment. In short, the elected persons will not be considered as trustees until they are appointed by the Wakf Board. Moreover, it is manifestly clear that until the newly elected persons are appointed by the Wakf Board as trustees, the trustees for the time being of that Mosque shall be responsible for the administration of that Mosque.

It is pertinent to note that, in the instant application, in spite of the fact that the Respondents are purportedly elected by the members of *Jamaath*, the Wakf Board has not appointed them as trustees by an instrument of appointment yet. In this scenario, it is abundantly clear that in terms of the provisions of this Act, the Respondents are not lawful trustees of this Mosque.

In these circumstances, under section 14 (3) of the said Act, the trustees for the time being, namely the 1st, 2nd, 4th, 5th, 6th and 7th Petitioners are the lawful trustees of this Mosque until the instruments of appointment are issued to the new persons by the Board.

In terms of section 15A of the said Act, once the new trustees are appointed by the Board, there is a duty cast upon the former trustees to deliver possession of the wakf property together with the documents to the newly appointed trustees. Section 15A is reproduced as follows;

“Upon the appointment of a trustee or trustees of a mosque by the board, the person or persons who immediately prior to the date of such appointment had in any capacity whatsoever the possession, custody or control of any property which;

(a) belonged to that mosque, or

(b) in any way appertained to that mosque, or

(c) was appropriated to the use of that mosque, shall, upon a request being made in writing therefor by such trustee or trustees, hand over, or deliver possession of, such property, together with any documents relating to such property, to such trustee or trustees.”

In the application in hand, it is evident that the Respondents those who have not been appointed as trustees by the Wakf Board had forcibly taken over the possession of the Mosque properties and documents from the trustees for the time being, which is illegal, unlawful and contrary to the provisions of the Act. The Respondents have no legal right to administer the said Mosque and wakf properties including the College as they have not been issued with the instruments of appointment. In the meantime, the aforesaid Petitioners as trustees for the time being have every right to administer the said Mosque, wakf properties including the said College without any interference from the Respondents or by any other persons.

For the foregoing reasons, it is the considered view of this Court that the Petitioners are entitled to an interim injunction as prayed for in the prayers to the Petition as they have well established a *prima facie* case against the Respondents.

It is evident that;

1. The Respondents unlawfully, illegally and forcefully had taken over the possession of the Mosque premises, wakf properties and the College in dispute from the said Petitioners.
2. The Respondents are disturbing the management and administration of the said College.
3. The Respondents have disrupted the water and electricity supply to the College while the classes are in session.
4. The Respondents have caused disturbance and nuisance to the students and the staff by forcefully entering and trespassing the College premises.
5. The Respondents have disturbed the Board meeting of the College and damaged the properties.
6. The Respondents have padlocked the main gate during the weekend and thereby preventing the conduct of evening and weekend classes.

In these circumstances, if the interim injunction is not issued, an irreparable loss will be caused to the students, parents, staff and the Petitioners.

The Respondents averred that the Petitioners have misappropriated the wakfs property. If it is so, there is no impediment for the Respondents to take action against the Petitioners before the Wakf Board. Instead, the Respondents have no legal right to forcefully take over and administer the said Mosque and wakf properties, particularly, no right to disturb and obstruct the education of the poor students and the staff. Indeed, this is a fit and proper case to issue an interim injunction against the Respondents as prayed for.

Preliminary objection:

The learned Counsel for the Respondents raised a preliminary objection as to the maintainability of this application stating that this Court has no jurisdiction to issue an injunction under Article 143 of the Constitution on the basis that the Wakf Board does not fall under the category of Courts of First Instance in terms of section 2 of the Judicature Act. The learned Counsel for the Respondent relied upon the observation made by Padman Surasena J¹ stating that the Debt Conciliation Board does not fall under the category of Courts of First Instance.

Article 143 of the Constitution provides that this Court can grant an injunction to prevent any irremediable mischief and before a party making an

¹ Shanthi Stana Vs. Samantha Fernando Sherine CA (INJ)Application No. 01/2018 dated 17-05-2018.

application for an injunction could prevent that mischief by bringing an action in any court of first instance. It is pertinent to note that, in the instant application, the fact of disturbance to the College in dispute by the Respondents is already well established. The Wakfs Act does not have provisions to grant injunctions against the Respondents to prevent irremediable mischief caused by the Respondents to the said College. In those circumstances, the only forum available for the Petitioners is this Court. In these circumstances, in the name of justice, a necessity arises to give a liberal interpretation to the phrase “court of first instances”. The Constitutional provisions being the superior law cannot be constrained by an Act of Parliament and must be interpreted expansively in order to ensure the Constitution operates on a wider spectrum of facts and ensure that the jurisdiction of this Court is maintained as wide as possible. In the case of **Azath Salley Vs. Colombo Municipal Council**² the Supreme Court observed that “Article 126(2) of the Constitution must be given a broad and expansive interpretation keeping in line with the development that had taken place in the arena of Public Law.” In **Sriyani Silva Vs. Iddamalgoda**³ it was held that “Article 126 (2) should be interpreted expansively.”

In Jowitt’s Dictionary of English Law 6th Edition the phrase “court of first instances” is defined as follows;

“A court before which an action is first brought for trial, as contrasted with an appellate court; hence the expression "at first instance" means at the original trial.”

Furthermore, according to Osborn’s Concise Law Dictionary 12th Edition, the term ‘Court of First Instance’ is defined with two core characteristics

- “(1) Where a case commences.*
- (2) A court of trial as opposed to an appellate court.”.*

In this premise, I am of the view that the phrase “court of first instance” should not be confined to Section 2 of the Judicature Act. In terms of the provisions of the Muslim Mosques and Charitable Trust or Wakfs Act No. 51 of 1956 (as amended) the Board has the power to summon witnesses, to compel the production of documents, and to administer any oath or affirmation to witnesses. As such, it is well established that the trial or inquiry under the said Act commences before the Board, thus having in its mandate original jurisdiction and therefore, the Wakfs Board falls within the purview of the phrase “court of first instance”. Accordingly, I hold that the foregoing preliminary objection is devoid of merits.

² 2009 (1) SLR-365.

³ 2003 (2) SLR-63.

- For the foregoing reasons, an injunction as prayed for in paragraph (d) of the Petition, restraining the Respondents from blocking access to the College by padlocking the access gates, entering the premises of the College, disconnecting water and electricity to the College, interfering, threatening, abusing or doing any act that impedes or obstructs the Petitioners from managing and administering the College is issued till the final determination of Case No. WB/9433/2023 of the Wakfs Board of Sri Lanka.
- It is held that the Respondents are not entitled to assume the office of Trustees of the Kohilawatta Jumma Mosque until the instrument of appointment is issued by the Wakfs Board of Sri Lanka in terms of the provisions of the said Act.
- It is further held that the Respondents those who have not been appointed as trustees by the Wakf Board had forcibly taken over the possession of the said Mosque properties and documents from the trustees for the time being, which is illegal, unlawful and contrary to the provisions of the Act.
- It is further held that under section 14 (3) of the said Act, the trustees for the time being, namely the 1st, 2nd, 4th, 5th, 6th and 7th Petitioners are the lawful trustees of this Mosque until the instruments of appointment are issued to the new persons by the Board.
- The preliminary objection raised by the learned Counsel for the Respondents as to the maintainability of this application is overruled.

Application allowed. No costs.

JUDGE OF THE COURT OF APPEAL

P. KUMARARATNAM, J.

I agree.

JUDGE OF THE COURT OF APPEAL