

**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, Prohibition and Mandamus, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C/A. (Writ) Application  
No: 0243/2017**

01. Wanninayaka Mudiyansele Dhanapala  
Pahe Kanuwa, Nakolagane,  
Ataragalla, Ehetuwewa.
02. Wanninayaka Mudiyansele  
Wijey Kumarapala  
Pahe Kanuwa, Nakolagane,  
Ataragalla, Ehetuwewa.
03. Environmental Foundation  
(Guarantee) Limited  
No. 171, Sri Gnanendra Mawatha,  
Nawala.

**Petitioners**

- **Vs** -

01. Mr Sunnanda Karipapperuma,  
Commissioner of Buddhist Affairs  
Department of Buddhist Affairs,  
Dahampaya”  
No. 135, Srimath Anagarika  
Dharmapala Mawatha, Colombo 07.
- 01(a). Mr Keerthi Siribaddana (Acting),  
Commissioner of Buddhist Affairs  
Department of Buddhist Affairs,  
“Dahampaya”  
No. 135, Srimath Anagarika  
Dharmapala Mawatha, Colombo 07.
- 01(b). Mr R.M.P. Rathnayake,  
Commissioner General of Buddhist Affairs  
Department of Buddhist Affairs

“Dahampaya”  
No. 135, Srimath Anagarika  
Dharmapala Mawatha, Colombo 07.

2. Mr. A.G.M. Muzammil,  
Chairman  
Central Environmental Authority  
“Parisara Piyasa”  
No. 104 Denzil Kobbekaduwa Mawatha  
Battaramulla

2(a) Mr Siripala Amarasingha,  
Chairman  
Central Environmental Authority  
“Parisara Piyasa”  
No. 104 Denzil Kobbekaduwa Mawatha  
Battaramulla.

2(b) Mr Supun S. Pathirage,  
Chairman  
Central Environmental Authority  
“Parisara Piyasa”  
No. 104 Denzil Kobbekaduwa Mawatha  
Battaramulla.

2(c) Mr Venura Fernando,  
Chairman  
Central Environmental Authority  
“Parisara Piyasa”  
No. 104 Denzil Kobbekaduwa Mawatha  
Battaramulla.

3. Central Environmental Authority  
“Parisara Piyasa”  
No. 104 Denzil Kobbekaduwa Mawatha  
Battaramulla.

04. Mr Saman Kumara Lenaduwa  
Acting Director  
Northwestern Provincial Environmental  
Authority (NWPEA)  
Dambulla Road  
Kurunegala

Mr Saman Kumara Lenaduwa  
Acting Director  
Northwestern Provincial Environmental  
Authority (NWPEA)  
Dambulla Road  
Kurunegala

05. North Western Provincial Environmental  
Authority (NWPEA),  
Dambulla Road,  
Kurunegala

06. Mr M.G. Suriyabandara,  
Director General  
Department of Wild Life Conservation  
811A, Jayanthipura, Battaramulla.

06 (a). Mr Chandana Suriyabandara,  
Director General  
Department of Wild Life Conservation  
811A, Jayanthipura, Battaramulla.

07. Mr W.R.W.R.Welipitiya  
Divisional Secretary  
Galgamuwa - Nikawewa Road,  
Ehetuwewa.

07(a). Mrs Renuka P. Wijepura  
Divisional Secretary  
Galgamuwa - Nikawewa Road,  
Ehetuwewa.

07(b). Mrs W.M.U. Weerasinghe  
Divisional Secretary  
Galgamuwa - Nikawewa Road,  
Ehetuwewa.

08. Prof. P.B. Mandawala,  
Director General  
Department of Archaeology  
Sir Marcus Fernando Mawatha  
Colombo 07.

08(a). Prof. Anura Manatunga,,  
Director General  
Department of Archaeology  
Sir Marcus Fernando Mawatha  
Colombo 07.

08(b). Dr. Pradeep Serasinghe,  
Director General (Acting)  
Department of Archaeology  
Sir Marcus Fernando Mawatha  
Colombo 07.

08(c). Mr Thusitha Mendis,  
Director General  
Department of Archaeology  
Sir Marcus Fernando Mawatha  
Colombo 07.

09. Mr W.B. Ganegala  
Chairman  
Ceylon Electricity Board  
50, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.

09(a). Mr Vijitha Herath  
Chairman  
Ceylon Electricity Board  
50, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.

09(b). Mr M.M.C. Ferdinando  
Chairman  
Ceylon Electricity Board  
50, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.

09(c).Mr Nalinda Illangakoon  
Chairman  
Ceylon Electricity Board  
50, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 02.

10. Ven. Walathwawe Rahula Thero,  
Chief Encumbent  
Nakolagane Purana Rajamaha Viharaya,  
Vijaya Shri Sumangaramaya  
Ataragalle, Galgamuwa.

11. Hon. Attorney General  
Attorney General's Department  
Hulftsdorp, Colombo 12

**Respondents**

Before : R. Gurusinghe J  
&  
M.C.B.S. Morais J

Counsel : Chandaka Jayasundara, PC., with Madhusa Kavindi,  
Lakshi Ranasinghe and Praveen Wimalaweera  
Instructed by K. Kaneshyogan

**For the Petitioner**

Kaushalya Nawarathna, PC., With Bhagya Herath  
**For the 10<sup>th</sup> Respondent.**

M. Jayasinghe, DSG  
**For the 01<sup>st</sup> – 09<sup>th</sup> and 11<sup>th</sup> Respondents**

Argued on : 18.09.2024

Decided on : 30.01.2025

R. Gurusinghe J.

The petitioner filed this Writ application seeking several Writs of Mandamus, a Writ of Certiorari and two Writs of Prohibition under Article 140 of the Constitution to restrain the alleged illegal activities of the 10<sup>th</sup> respondent and to compel the 1<sup>st</sup> to 9<sup>th</sup> respondents to fulfil their statutory duties. The petitioners alleged that the 10<sup>th</sup> respondent, the Chief Incumbent of Nakolagane Purana Rajamaha Viharaya, Vijaya Shri Sumangaramaya,

Ataragalle, Galgamuwa, had cleared an area approximately 15 to 20 acres of forest in the immediate vicinity of Nakolagane Purana Raja Maha Viharaya,

(hereinafter referred to as the temple) contrary to and in violation of the provisions of law and such activities were being carried out in collaboration with /or with the funding of private investors. The petitioner further states that the 10<sup>th</sup> respondent proceeded with clearing the forest and erecting the electric fence without obtaining necessary approvals required by the National Environmental Act, the Buddhist Temporalities Ordinance, the Antiquities Ordinance, the North Western Provincial Environmental Statute and the Fauna and Flora Protection Ordinance.

The petitioners further state that an electric fence has been erected surrounding the cleared area contrary to the instructions of the Department of Wild Life Conservation and the provisions of the law. The petitioner further states that the cleared area was a natural forest patch that formed a refuge for elephants that regularly traverse this area and is a critical part of their home range. Clearing and blocking areas such as these result in a decrease in access to natural forest areas for the elephants, thereby compelling them to use the area inhabited by humans more and more, leading to the escalation of human-elephant conflict in the area.

The 1<sup>st</sup> to 9<sup>th</sup> respondents and the 11<sup>th</sup> respondent filed objections to the petitioner's application together, while the 10<sup>th</sup> respondent filed objections to the petitioner's application separately.

The respondents stated that the 10<sup>th</sup> respondent had not cleared forest land. The 10<sup>th</sup> respondent had cleared shrubs/bushes and weeds in the area for the purpose of cultivating a mango plantation. Further, the respondent states that mango trees result in a lush forest area when fully developed. Consequently, the assertion that the 10<sup>th</sup> respondent has harmed the environment by clearing forest land is unreasonable and without merit.

In his objections the 10<sup>th</sup> respondent stated that the development committee of the temple decided to plant mango trees in the temple land to generate income to bear the expenses of the temple. He further states that he had cleared only shrubs and bushes and not removed any trees. In the cleared area, he planted mango saplings. The 10<sup>th</sup> respondent provided photographs (marked 10R 14 and 10R 15) of the cultivated mango trees and a sketch of the disputed area.

The petitioners have not specifically demonstrated what provisions of law had been violated by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent, the

Commissioner of Buddhist Affairs, has nothing to do with clearing the lands belonging to the temple lands. It is clear from the objections and the documents tendered by the respondents that the 10th respondent has not cleared any area declared as a forest by any law or gazette notification. Clearly, the land used for mango cultivation belongs to the temple. That mango cultivation is adjoining the main road from Nakolagane to Ehetuwewa. It is also adjoining the Nakolagane Kanishta Vidyalaya and the temple. The 10<sup>th</sup> respondent carried out the plantation of the mango saplings, leaving the major trees that were on the location.

While this action was pending before this court, there was a joint field inspection by all the parties to the action. A copy of the observations by the parties was attached to the affidavit of the 10<sup>th</sup> respondent. According to that report, a Deputy Commissioner of Buddhist Affairs, two officers from Central Environment Authority, an officer from Wild Life Conservation, the acting Director of Provincial Environmental Authority, the 10<sup>th</sup> respondent, two representatives representing the 1st and 2nd petitioners, a legal officer of the 3<sup>rd</sup> petitioner, a Deputy Director of Central Environment Authority and two officers from Ehetuwewa Divisional Secretariat Office had participated in the joint field inspection. In their report, they observed that Nakolagane Kanishta Vidyalaya, the temple, the mango plantation and two houses of the petitioners were all situated on the same side of the Nakolagane Ehetuwewa main road. All three are almost adjoining lands and were protected by electric fences. They also came to the conclusion that the electric fence erected by the 10<sup>th</sup> respondent does not obstruct any elephant corridor. All the parties stated above signed these observations.

The petitioners have failed to substantiate the allegation that the 10<sup>th</sup> respondent has obstructed an elephant corridor or where the alleged elephant corridor is situated. The land used to cultivate mango saplings clearly belonged to the temple and was not a forest land. The allegations that the 10th respondent and his servants or agents have acted contrary to and in violation of the provisions of law are not substantiated. There is no allegation to say that specific provisions of law have been violated.

The respondents dispute the major facts pleaded by the petitioners. When the petition raises questions of fact that are disputed, their determination requires oral evidence and such disputes may not appropriately be tried in a writ application.

In *Thajudeen v. Sri Lanka Tea Board and Another* 1981 (2) SLR 471, His Lordship Ranasinghe J held;

*“That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation, Parraju v. General Manager B. N. Rly.”*

In Public Interest Law Foundation v. Central Environmental Authority [2001] 3 SLR 330, His Lordship U.De Z. Gunawardena J. held,

*“It is worth observing that the review procedure is not well suited to determination of disputed facts - factual issues arising in this case being imprecise and disputed.”*

In the case of Dr Puvanendran and another v. Premasiri and others [2009] 2 SRI L.R. 107, the Supreme Court held that;

*“The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”*

In Public Interest Law Foundation v. Central Environmental Authority CA WRIT, 527/2015 decided on 24.02.2020 His Lordship Mahinda Samayawardhena J. held,

*“This Court in the exercise of writ jurisdiction cannot decide on administrative decisions where the facts involved are in dispute. Simply stated, when major facts are in dispute writ will not lie.....This Court cannot decide whether the Petitioner or the Respondents are correct on this issue. That is outside the purview of this Court. When this main*



*ground upon which the Petitioner's whole case is based is in dispute, can this case be maintained? I think not."*

Most of the facts pleaded by the petitioners are in dispute. When the significant facts are in dispute, writs cannot be issued.

For the reasons stated above, the application of the petitioners is dismissed.

Judge of the Court of Appeal

M.C.B.S. Morais J.  
I agree.

Judge of the Court of Appeal