

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

Pallaniappan Mohammed Irfan,  
No. 224, Badowita 3<sup>rd</sup> Stage,  
Mount Lavinia.  
Petitioner

**CASE NO: CA/WRIT/291/2018**

Vs.

1. National Housing Development  
Authority,  
No. 34, Sir Chitampalam A.  
Gardiner Mawatha,  
Colombo 02.
2. L. S. Palansuriya,  
Chairman,  
National Housing Development  
Authority.
3. Karunaratne Athukorala,  
Vice Chairman,  
National Housing Development  
Authority.
4. K. G. Wickrama,  
Working Director,  
National Housing Development  
Authority.

5. Shantha Jayawardhana,  
Board Member,  
National Housing Development  
Authority.
6. R. A. Choolananda,  
Board Member,  
National Housing Development  
Authority.
7. Amal Wickramathunga,  
Board Member,  
National Housing Development  
Authority.
8. N. M. D. Nawarathne,  
Board Member,  
National Housing Development  
Authority.  
Above 2 to 8, all c/o  
National Housing Development  
Authority,  
No. 34, Sir Chitampalam A.  
Gardiner Mawatha,  
Colombo 2.

9. A. Sendil Nathan
10. S. Suresh
11. A. L. Tiron
12. S. Pradeep Kumara
13. M. Abraham Lingan
14. D. Karthik

15. M. Ilangowan
  16. T. Ranjinikantha
  17. K. Welayudan
  18. V. Jeewan
  19. K. Selwaraj
  20. D. Suresh
  21. M. Sandanarajah
  22. P. Selvanathan
  23. Raj Gopal Krishna Kumar
  24. R. Deepan
  25. A. Amurdhalingam
  26. S. Selvanayagam
  27. Perumal Punniyamoorthi
  28. Arumugam Nithyananthan
  29. Nallu Balakrishnan
  30. Rajalingam Mahendran
  31. Ponniah Ramasamy
- Above 9 to 30, all c/o  
Badowita Sri Sakthi Karumari  
Amman Temple,  
No. 32/74B, 3<sup>rd</sup> Stage, Badowita,  
Mount Lavinia.

Respondents

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Boopathy Kahathuduwa for the Petitioner.  
Maithree Amarasinghe, S.C., for the 1<sup>st</sup>-8<sup>th</sup>  
Respondents.

Lasitha Kanuwanaarachchi with Jessica  
Mathiasz for the 9<sup>th</sup>, 11<sup>th</sup>, 16<sup>th</sup>, 23<sup>rd</sup>, 25<sup>th</sup>-31<sup>st</sup>  
Respondents.

Argued on: 02.06.2020

Decided on: 23.06.2020

Mahinda Samayawardhena, J.

The Petitioner filed this application against the National Housing Development Authority (NHDA) and the members of the Board of Trustees of the Siva Shakthi Karumari Amman Kovil, seeking (a) to quash by certiorari the Lease Agreement marked P7 entered into by the NHDA with the Kovil; (b) to compel the NHDA by mandamus to evict illegal occupiers from Lot 353 of the Plan marked P3A; and (c) to compel the NHDA by mandamus to demolish any structure in Lot 353.

The Badowita housing scheme was initiated as a low-income housing scheme to accommodate those who were displaced in the implementation of the Greater Colombo Flood Control and Canal Development project. The Petitioner is a beneficiary of the project and received Lot 360 in the said Plan from the NHDA by deed marked P2B. On to the right of Lot 360 lies Lot 354, which is a vacant strip of land, possibly demarcated for sewerage facilities, ventilation etc. Next to Lot 354 is Lot 353, which has been given by the NHDA on a long-term lease to the Siva Shakthi Karumari Amman Kovil for religious activities. This Kovil, as seen from 1R4 and 1R5, is registered as a Hindu

Religious Temple with the Department of Hindu Religious and Cultural Affairs. There are several other documents, including 1R3(a), 1R3(b), R1(a), R3(i)-(iv), R4, R10, R11, R12, R16, R17, R20(i) and (ii), R21(i) and (ii) which tend to give credence to this Kovil as a *bona fide* Hindu Religious Temple.

Learned Counsel for the Petitioner submits the leasing of Lot 353 to the Kovil is unreasonable, arbitrary, malicious, illegal and *ultra vires* on four grounds.

The first argument is, given its stated objectives, the NHDA can only dispose of lands for housing development and not for religious purposes as was done in this case.

Section 4 of the NHDA Act, No.17 of 1979, as amended, sets out the objectives of the Authority.

*The objects of the Authority shall be—*

- (a) to directly engage itself in the construction of flats, houses and other living accommodation or buildings;*
- (b) to formulate schemes to establish housing development projects in order to alleviate the housing shortage;*
- (c) to cause the clearance of slum and shanty areas and the re-development of such areas;*
- (d) to promote housing development;*
- (e) to develop or re-develop land for the carrying out of any of the objects of the Authority;*
- (f) to make land available to any person for housing development;*

- (g) to provide financial or other assistance to persons engaged in any activity which is similar to any of the objects of the Authority;*
- (h) to conduct, promote and co-ordinate activities in relation to all aspects of housing development; and*
- (i) to do all such other acts as may be necessary or conducive to the attainment of any or all of the above objects.*

The phrase “housing development” cannot be given a narrow interpretation to mean only the construction of houses. Learned Counsel for the Petitioner does not contend the NHDA cannot undertake or initiate housing schemes such as the Badowita housing scheme. Housing development includes the provision of infrastructure facilities and related amenities to the housing units in a scheme. Learned Counsel for the Board of Trustees of the Kovil draws the attention of the Court to section 5(e) of the Act, which says the Authority shall have power “*to establish new housing estates and to encourage self-help housing projects and the provision of amenities for the inhabitants of such estates or projects including transport and other services*”.

There is no definition given in the Act for “amenities” in section 5(e). But the National Housing Policy, revised in January 2017,<sup>1</sup> states the provision of public amenities, including community facilities – which can be taken to encompass religious facilities – is part of the NHDA’s role in regulating and managing housing developments. Page 43 of the said Policy, under the sub-heading “Planning and Management”, states as follows:

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<sup>1</sup> <http://www.nhda.lk/index.php/en/about-usa/housing-policy>.

*Land use for private or public housing developments are also regulated as to optimizing of densities, provision of infrastructure, environmental services such as waste disposal, drainage, sewerage, etc. and provision of public amenities such as playgrounds, community facilities, public spaces etc. At the same time, access to education and health facilities is also insisted on. The object is to ensure that the management and use of land fulfills the expectations of citizens without compromising on the urban environment of the cities, especially due to transport-related activities.*

There is no necessity to go further, as the Plan marked P3A relied upon by the Petitioner himself goes to show several lots in the Plan have been reserved for common amenities or as common areas for the greater benefit of inhabitants of the housing scheme — for instance, Lot 24 for a Church, Lot 217 for a Bo tree and possibly a Buddhist shrine, Lot 177 for a playground, Lots 117 and 372 for septic tanks. Some other larger lots have been left vacant, without an indication in the Plan of their purpose. Lot 353, the disputed lot, is one such lot. As the Petitioner received Lot 360 shown in the Plan, he must also have got a copy of the Plan along with his deed. This means he was aware there were provisions for common amenities in the scheme, including for different religious purposes. It is arguable that selective, religion-based reservations on the part of the NHDA may not be in the best interests of communal harmony. But when certain lots have been reserved for other religions, ruling out the request of followers of Hinduism may be discriminatory. I cannot accept the argument that the NHDA

cannot lease out Lot 353 to the Kovil to conduct religious activities on the contention that to do so is obnoxious to the objectives of the NHDA.

The second argument of learned Counsel for the Petitioner is due process has not been followed in this instance. Learned Counsel referring to section 8(1) of the Act, which requires the Minister's approval for a lease to be granted, states that in terms of paragraph 13 of the statement of objections of the NHDA, such approval has not been obtained prior to the execution of the Lease Agreement. Counsel took up this position for the first time at the argument and therefore the NHDA was unable to tender proof of the approval, if any, at that stage. However, as learned Counsel for the Board of Trustees of the Kovil points out, the documents marked 1R3(a) and (b), referred to in the said paragraph 13, make it clear Cabinet approval has been given to lease Lot 353 to the Board of Trustees of the Kovil. Hence this argument fails.

According to the Lease Agreement, the lessor is the NHDA and the lessee is the Board of Trustees of the Siva Shakthi Karumari Amman Kovil. As the third argument, Counsel for the Petitioner submits the lessee being neither a natural nor legal person could not have entered into a Lease Agreement with the NHDA, and therefore, the said Agreement is void *ab initio*. Counsel contends in such circumstances there is no legally enforceable agreement in the eyes of the law. It is the submission of Counsel for the Petitioner that the Lease Agreement "should have been entered into by the trustees personally on behalf of the Siva Shakthi Karumari Amman Kovil".



The main relief sought by the Petitioner is to quash the Lease Agreement by certiorari. Learned State Counsel for the NHDA is technically correct when she states what shall be prayed for is not to quash the Lease Agreement *per se* but the decision of the NHDA to lease the land to the Board of Trustees of the Kovil, which has not been challenged in these proceedings. The Lease Agreement, which is a by-product of the decision of the NHDA to lease the land, is not the central issue but a peripheral one.

The question whether there is a legally enforceable Agreement or not is a matter of concern to the parties to the Lease Agreement, not to any others. If it is legally unenforceable, one party to the Agreement is bound to suffer. But there is no such dispute between the two parties to the Lease Agreement. Hence, the said issue raised on behalf of the Petitioner will not address the main grievance of the Petitioner, i.e. the decision of the NHDA to give Lot 353 to the Kovil on a long lease in furtherance of the latter's religious activities.

As learned Counsel for the Board of Trustees of the Kovil points out, if the Court holds the Lease Agreement is void for the reason all the trustees have not signed, the trustees can enter into a fresh Lease Agreement with the NHDA. The NHDA, I suppose, is ready to do so, if required. Then it is clear the answer to this issue is not crucial but maybe academic.

This is a writ application and writ is a discretionary relief. The role of the writ Court is different to that of the District Court. If there is an issue regarding the establishment of a charitable trust, it shall be decided by the District Court under the Trusts

Ordinance. Whether the Lease Agreement is legally enforceable shall also be decided by the District Court, predominantly under the principles of the law of contract. The writ Court is not the proper forum to canvass these matters.

Having said so, let me state the following. As I said before, the contention of Counsel for the Petitioner is the Lease Agreement ought to have been entered into between the NHDA and the trustees on behalf of the Kovil.

According to R1, the Board of Trustees of the Kovil comprises 11 trustees. According to page 1 of the Lease Agreement R2, the lessee is the Board of Trustees of Siva Shakthi Karumari Amman Kovil. Page 3 of the Lease Agreement reveals two trustees, namely the President and the Secretary of the Board of Trustees, have signed the Lease Agreement for the lessee. By the corresponding affidavit dated 04.04.2019, tendered with the statement of objections of the Respondent trustees, it is clear the said two trustees signed the Lease Agreement on behalf of all the trustees. In my view, in the facts and circumstances of this case, the requirement of the Lease Agreement being signed by all the trustees is satisfied.

Hence I am not inclined to agree with that submission.

The last argument of Counsel for the Petitioner is, permission to construct a Kovil in the middle of a housing scheme would cause nuisance to the other households and degrade the quality of life in the surrounding area. Perhaps the Petitioner is referring to the likely sound of religious activities taking place in the Kovil. Occasional sound emanating from a place of worship is common

to any religion. I am not impressed by this argument. One might argue instead that providing for such facilities enhances the quality of life.

The application of the Petitioner is dismissed without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal