

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

1. The Colombo Buddhist
Theosophical Society,
203, Buddhist Mandiraya,
Olcott Mawatha,
Colombo 11.
 2. The Dharmaraja Foundation,
Dharmaraja Old Boys' Union
Headquarters,
35, Anagarika Dharmapala
Mawatha,
Kandy.
 3. Dr. O.C. Ranasinghe,
352/1, Dharmaraja Mawatha,
Kandy.
- Petitioners

CASE NO: CA/WRIT/338/2009

Vs.

1. The Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.
2. The Central Cultural Fund,
317/1, Bauddhaloka Mawatha,
Colombo 7.

3. Ananda Heekenda,
Basnayaka Nilame of the
Natha Devalaya,
3/1, Deva Veediya,
Kandy.
- 3A. Gayan Heenkenda,
Basnayaka Nilame of the
Natha Devalaya,
3/1, Deva Veediya,
Kandy.
4. The Divisional Secretary–Kandy,
Divisional Secretariat, Kandy.
5. The Secretary,
Ministry of Urban Development
and Sacred Area Development.
6. Director General of Education,
Ministry of Education,
Isurupaya,
Battaramulla.
7. Director National Schools,
Ministry of Education,
Isurupaya,
Battaramulla.
8. Susil Premajayantha,
Ministry of Education,
Isurupaya,
Battaramulla.
9. The Principal,
Dharmaraja College,
Kandy.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Manohara de Silva, P.C., with Hirosha
Munasinghe for the Petitioner.
Nayomi Kahawita, S.C. for the 1st and 4th-7th
Respondents.
Vidura Ranawaka with Nirodha
Sooriyabandara for the 3A Respondent.
Mayura Gunawansa, P.C., with Vishvani
Pathirana for the 9th Respondent.

Argued on: 26.02.2020

Decided on: 28.05.2020

Mahinda Samayawardhena, J.

Dharmaraja College, Kandy, is a premier Buddhist school founded as far back as in 1887, under the leadership of Colonel Henry Steel Olcott. Two of its historical buildings are Banbury building, constructed in 1898, and Bilimoria hall in 1915.

By Gazette marked P6/1R1 issued in 1962, the said two buildings, together with the appurtenant land, were vested in the Crown. This was done under section 4 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act, No.8 of 1961. Section 4(1) thereof reads as follows:

Where the Minister considers it desirable to do so, the Minister may, by Order published in the Gazette (in this Act referred to as a “Vesting Order”), declare that, with effect from such date as shall be specified in the Order (not being a date earlier than fourteen days after the date of such

publication), all property of the description specified in the Order, being property liable to vesting, shall vest in the Crown.

The Assisted Schools and Training Colleges (Supplementary Provisions) Act was passed to give teeth to its precursor—the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960.

The Vesting Order published in the Gazette proves that at the time of vesting, the said buildings were in use by Dharmaraja College Primary School. The Vesting Order reads as follows:

*ASSISTED SCHOOLS AND TRAINING COLLEGES
(SUPPLEMENTARY PROVISIONS) ACT, NO.8 OF 1961*

Vesting Order No.164 A

K/DHARMARAJA COLLEGE PRIMARY SCHOOL, KANDY

BY virtue of the powers vested in me by section 4 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961, I, Badi-ud-din Mahmud, Minister of Education and Broadcasting, do hereby declare that with effect from the 1st day of July, 1962, all property specified in the schedule appended hereto, being property liable to vesting, shall vest in the Crown.

SCHEDULE

- 1. The premises in which K/Dharmaraja College Primary School, Kandy, was conducted and maintained on July 21, 1960, viz., all that portion from and out of the land called and known as*

Natadewala land, situated in Kandy in the District of Kandy, Central Province and which portion is bounded on the north by King Street, east by Nathadewala land—this boundary being 11 feet east of the eastern wall of the school building and more or less parallel to it, south by Nathadewala land—this boundary being a line of 9 feet south of the southern wall of the school building and more or less parallel to it and meeting the boundary wall which deviates south to a distance of 49 feet and again deviates due west up to a distance of 78 feet, west by St. Paul's College land by a wall and hedge.

- 2. All the buildings and structures in or on the land specified in paragraph 1 of this schedule.*
- 3. All movable property used for the conduct and maintenance of the said school as declared in the National Educational Survey Forms and the Inventories and Records maintained in and on behalf of the said school.*
- 4. All moneys lying to the credit of the said school due to it by way of grants from the Director of Education and all other grants, fees, donations and endowments held for and on behalf of such school by the proprietor or by any other person or persons.*

*BADI-UD-DIN MAHMUD,
Minister of Education and Broadcasting
Ministry of Education and Broadcasting,
Sir Ernest de Silva Mawata,
Colombo 3,
June 8, 1962.*

It is important to bear in mind that the cumulative effort in introducing the above two Acts was not to destroy the Assisted Schools in operation, but to revive and manage those schools in a more efficient manner.

There is no dispute that the said two buildings were right throughout in the custody of the 9th Respondent, the Principal of Dharmaraja College, and the keys of the said buildings were with him. Admittedly, in 1993, the Principal handed over the keys of the two buildings to the 2nd Respondent, the Central Cultural Fund, for renovation and repairs.¹ After the renovation, the 2nd Respondent, instead of handing over the keys to the person from whom they were taken, handed them over to a third party, the 3rd Respondent, the Basnayake Nilame of Natha Devalaya.

In summary, the Petitioners filed this application before this Court to recover the said two buildings for Dharmaraja College.

The 2nd Respondent in paragraph 15 of its statement of objections states “*as there was a necessity to renovate and reconstruct the buildings in dispute the keys to the said buildings were handed over by the 9th Respondent to the 2nd Respondent*” and “*on completion of the said renovations the 2nd Respondent handed over the keys to the 3rd Respondent [Basnayake Nilame of Natha Devalaya] in view of a directive issued by the President as set out in the letter issued by the Commissioner of Buddhist Affairs [marked 2R1]*”.²

¹ Vide P8.

² Vide also 1R2.

The 2nd Respondent also tendered a letter marked 2R2, whereby the Director General of the 2nd Respondent has explained to the 3rd Respondent the mistake made by the 2nd Respondent in handing over the keys of the two buildings to the 3rd Respondent after the repairs, and requesting the 3rd Respondent to hand over the keys to the 2nd Respondent.

The President referred to in 2R1 and 1R2 is no longer among the living. No scrap of paper issued under the hand and/or seal of the President or by any officer of the President's Office has been tendered. Hence, without any proof whatsoever, this Court cannot accept the position of the 2nd Respondent that the handing over of keys to the 3rd Respondent was done upon a directive of the President. Such an irresponsible statement can easily be made as an excuse for an *ex facie* illegal act.

Although the 2nd Respondent filed a statement of objections to the application of the Petitioners, the 2nd Respondent did not participate at the argument. Learned State Counsel stated she had no instructions to appear for the 2nd Respondent.

In any event, the President could not have directed the 2nd Respondent to hand over the keys to the 3rd Respondent, in grave violation of the Public Trust doctrine.

In *Sugathapala Mendis v. Chandrika Kumaratunga*,³ the Supreme Court held:

The principle that those charged with upholding the Constitution - be it a police officer of the lowest rank or the President - are to do so in a way that does not "violate the

³ [2008] 2 Sri LR 339 at 352.

Doctrine of Public Trust” by state action/inaction is a basic tenet of the Constitution which upholds the legitimacy of Government and the Sovereignty of the People. The “Public Trust Doctrine” is based on the concept that the powers held by organs of government are, in fact, powers that originate with the People, and are entrusted to the Legislature, the Executive and the Judiciary only as a means of exercising governance and with the sole objective that such powers will be exercised in good faith for the benefit of the People of Sri Lanka. Public power is not for personal gain or favour, but always to be used to optimize the benefit of the People. To do otherwise would be to betray the trust reposed by the People within whom, in terms of the Constitution, the Sovereignty reposes. Power exercised contrary to the Public Trust Doctrine would be an abuse of such power and in contravention of the Rule of Law. This Court has long recognized and applied the Public Trust Doctrine, establishing that the exercise of such powers is subject to judicial review (Vide De Silva v. Atukorale [1993] 1 Sri LR 283, 296-297, Jayawardane v Wijayatilake [2001] 1 Sri LR 132, 149, 159.

The Supreme Court further stated that State officials are not bound to follow wrong directives, even by the Head of State.

[B]eing a creature of the Constitution, the President’s powers in effecting action of the Government or of state officers is also necessarily limited to effecting action by them that accords with the Constitution. In other words, the President does not have the power to shield, protect or coerce the action of state officials or agencies, when such

*action is against the tenets of the Constitution or the Public Trust, and any attempts on the part of the President to do so should not be followed by the officials for doing so will (i) result in their own accountability under the Public Trust Doctrine, betraying the trust of good governance reposed in them under the Constitution by the People of this nation, in whom sovereignty reposes and (ii) render them sycophants unfit to uphold the dignity of public office.*⁴

The two buildings in question have been admittedly constructed by Dharmaraja College, not by the Natha Devalaya.

The question of title to the land on which these two buildings are standing cannot be the subject matter of this writ application. The 3rd Respondent's whole claim before this Court is based on alleged ownership of the land, which is disputed by the Petitioners who counter claim ownership to the same. This is not a land case or a *rei vindicatio* action. The question of title shall be solved, if so advised, in a separate action. Hence no relief can be granted to the 3rd Respondent.

According to section 6 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act, a Vesting Order shall have the effect of vesting the property in the Crown, free from all encumbrances. Therefore, the 3rd Respondent can have no claim to ownership.

Under section 10 of the same Act, a Divesting Order can be made. That has not been done in this case. Section 10(1) reads as follows:

⁴ *Ibid* at 374-375.

Notwithstanding that any property used for the purpose of any school to which this Act applies has vested in the Crown by virtue of a Vesting Order, the Minister, by subsequent Order published in the Gazette (in this Act referred to as a “Divesting Order”)—

- (a) shall, if such property ceases to be used, or is not needed for the purpose of a school conducted and maintained by the Director for and on behalf of the Crown, revoke that Vesting Order in so far as it relates to such property with effect from the date on which such property so ceased to be used or was not so needed; or*
- (b) shall, if the Director ceases to be manager of that school by virtue of the operation of any Order made under the principal Act, revoke that Vesting Order with effect from the date on which the Director so ceased to be the manager; or*
- (c) shall, if a determination is made on a reference to arbitration under this Act that any property in respect of which that Vesting Order was made is not property liable to vesting, revoke that Vesting Order in so far as it relates to such property with effect from the date on which that Vesting Order took effect.*

In the event a Divesting Order is made, learned Counsel for the 3rd Respondent was heard to say in his submissions that the land shall pass to the true owner. That is incorrect. Section 10(2) states:

Where a Vesting Order in respect of any property is revoked by a Divesting Order in whole or in part, the property in

respect of which the Divesting Order is made shall be deemed never to have vested in the Crown by virtue of that Vesting Order, and any question which might arise as to any right, title or interest in or over that property shall be determined accordingly.

This means, the land with the buildings on it shall pass to Dharmaraja College for the reason that when the Vesting Order was made the said land was in the control of Dharmaraja College. In other words, if there was no Vesting Order, Dharmaraja College would have been using the buildings as before without any intervention from the Minister of Education or the Natha Devalaya.

The Petitioners in the prayer to the petition sought to compel the 8th Respondent, the Minister of Education, to make a Divesting Order by way of a writ of mandamus.

However, having considered the position taken by the 1st, 6th, 7th and 8th Respondents in *inter alia* paragraphs 21 and 34 of their joint statement of objections, learned President's Counsel for the Petitioners informed the Court that the Petitioners do not wish to pursue that relief.

By paragraph 21 of the said statement of objections, the Respondents state "*as the aforesaid buildings are necessary for the use of Dharmaraja College, steps cannot be taken to revoke the vesting order in favour of the 1st Petitioner.*"

By paragraph 34 of the statement of objections, they say "*the buildings in dispute are necessary for the use of the school as there is a limitation on the space that is currently available for the use of the school*" and "*these Respondents are opposed to any*

decision to divest the said land and buildings to the Petitioners as there is an urgent requirement for the same by the school.”

Several letters have been sent both to the 2nd Respondent and 3rd Respondent to hand over the keys of the said buildings to Dharmaraja College, but to no avail.⁵

The Attorney-General has directed the 1st Respondent, the Secretary to the Ministry of Education, to communicate with the 4th Respondent, the Divisional Secretary, Kandy, to take possession of the said buildings under the State Lands (Recovery of Possession) Act, No. 7 of 1979.⁶ Despite repeated requests, the 4th Respondent has refused to take steps under the said Act, without affording any reason why he is unable to carry out the directive of the Attorney-General.⁷

Learned Counsel for the 3rd Respondent submits that the Petitioners have no *locus standi* to file this application. I cannot agree. High technical objections regarding *locus standi* have no place in modern administrative law. A writ application can be filed by any person, as defined in section 2(s) of the Interpretation Ordinance, who has “sufficient interest” in the matter, notwithstanding a lack of “personal interest” because of the element of “public interest” involved in the subject matter of controversy. The Petitioner in such an application can even be a stranger. If the Petitioner comes to Court genuinely, as a public-spirited citizen concerned to see that the law is obeyed in the interest of all, his application shall be entertained. (*Vide Lanka Viduli Podu Sevaka Sangamaya v. Ceylon Electricity Board*,⁸

⁵ Vide P9-P13, 9R2.

⁶ Vide P17, P18.

⁷ Vide P19, P19(a)-(e), 1R3(a)-(c).

⁸ CA/WRIT/193/2015, CA Minutes of 02.04.2019.

Wijesiri v. Siriwardene,⁹ *Perera v. Central Freight Bureau of Sri Lanka*,¹⁰ *Jathika Sevaka Sangamaya v. Sri Lanka Ports Authority*,¹¹ *Premadasa v. Wijewardena*,¹² *Vasudeva Nanayakkara v. Governor, Central Bank of Sri Lanka*,¹³ *Sugathapala Mendis v. Chandrika Kumaratunga*.¹⁴)

In *Wijesiri v. Siriwardene (supra)* the Supreme Court stated:¹⁵

In this connection it would be relevant to refer to the views of an eminent jurist on the question of locus standi. Soon after the decision of the Privy Council in Durayappah Vs. Fernando (1967) 3 WLR 289, in an Article entitled Unlawful Administrative Action in (1967) 83 L.O.R. 499, H. W. R. Wade expressed the view that one of the merits of Certiorari is that it is not subject to narrow rules about locus standi, but is available even to strangers, as the Courts have often held, because of the element of public interest. In other words it is a genuine remedy of public law, and all the more valuable for that reason (at p. 504). As regards the applications for Mandamus they should, in his view, in principle be no more exacting than it is in the case of the other prerogative remedies, because public authorities should be compellable to perform their duties, as a matter of public interest at the instance of any person genuinely concerned; and in suitable case, subject always to discretion, the Court should be able to award the remedy on the application of a public spirited citizen who has no other

⁹ [1982] 1 Sri LR 171.

¹⁰ [2006] 1 Sri LR 83.

¹¹ [2003] 3 Sri LR 146.

¹² [1991] 1 Sri LR 333.

¹³ [2009] BLR 41.

¹⁴ [2008] 2 Sri LR 339 at 352.

¹⁵ At 175.

interest than a due regard for the observance of the law-Wade-Administrative Law (4th Ed) 608. The result of a restrictive doctrine of standing, therefore, would be to encourage the government to break the law; yet this is exactly what the prerogative writs should be able to prevent (p. 609). To restrict Mandamus to cases of personal legal right would in effect make it a private law remedy (p 610). These observations, with which I am in respectful agreement, appear to make the second requirement, insisted upon by Tambiah J. i.e.: some personal interest in the matter complained of, unnecessary. But the first requirement ought, in my view, to be satisfied and it is satisfied if the applicant can show a genuine interest in the matter complained of, and that he comes before Court as a public-spirited citizen concerned to see that the law is obeyed in the interest of all, and not merely as a busy body perhaps with a view to gain cheap publicity. As to whether an applicant satisfies this second requirement will depend on the facts of each case. (emphasis added)

For the aforesaid reasons, I hold:

- (a) after the renovations, the handing over of the keys of the two buildings by the 2nd Respondent to the 3rd Respondent is illegal, and therefore that decision is liable to be quashed by way of certiorari; and
- (b) the refusal or reluctance on the part of the 4th Respondent to take steps to evict the 3rd Respondent from the premises under the provisions of the State Lands (Recovery of Possession) Act is unjustifiable, and

therefore the former shall be compelled to do so by way of mandamus.

I grant the Petitioner the reliefs as prayed for in paragraphs (d) and (e) of the prayer to the petition.

I make no order as to costs.

Before I part with this Judgment, let me add one more thing. Learned Counsel for the 3rd Respondent submitted that the Court cannot grant the relief in paragraph (e) of the prayer to the petition, as it requires the 4th Respondent to hand over the buildings to the 1st Petitioner or to the 9th Respondent once possession is taken over. According to the 3rd Respondent, the 4th Respondent cannot be compelled to hand over the buildings to the 1st Petitioner or to the 9th Respondent. I am not inclined to agree with this submission in view of the admission made by the 1st, 6th, 7th and 8th Respondents *inter alia* in paragraphs 21 and 34 of their joint statement of objections, which I have quoted above.

Judge of the Court of Appeal