

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

**C.A. Writ Application
No.448/2023**

In the matter of an application for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Amaraweera Wickrama Gunawardhana
Tharanga Nalaka
“Weligama Wine Stores”
No. 06, Super Market,
Weligama.

Petitioner

Vs.

1. Saman Jayasinghe
The Commissioner General of Excise,
Department of Excise,
No. 353, Kotte Road,
Rajagiriya.

2. K. Kumarasinghe
Deputy-Commissioner of Excise
Revenue and License,
Department of Excise,
No. 353, Kotte Road,
Rajagiriya.

3. Nirosha Mendis
Divisional Secretary – Weligama
Divisional Secretariat – Weligama
Samaraweera Place,
Weligama.

4. Surveyor General,
Surveyor General's Department,
150 Kirula Road,
Colombo 05

5. Superintendent of Surveyors, Matara
District Survey Office,
Matara

6. Cargills Foods Company (Pvt) Ltd.
No. 40,
York Street,
Colombo 00100.

Respondents

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Dulindra Weerasuriya P.C with Pasan Malinda
for the Petitioner.

Shemanthi Dunville, S.C for the 1st to 5th
Respondents.

Harsha Amarasekara, P.C with Kanchana Peiris and Ransith Gunawardena instructed by Paul Rathnayake Associates for the 6th Respondent.

Written Submissions : 6th Respondent filed on 10.10.2025

Supported on : 30.09.2025

Decided on : 04.11.2025

K. Priyantha Fernando, J.(CA)

ORDER REGARDING AMENDMENT TO THE PETITION

This application was filed on **07.08.2023** challenging the validity of the F.L.04 liquor license (for the sale of liquor not to be consumed in the premises) issued to the 6th Respondent-Cargills Food Company Pvt Ltd in *Weligama* by the 1st Respondent-the Commissioner General of Excise.

The main basis for challenge is that the issue of the liquor license is in violation of rule 20(c) of the Excise Notification 902 marked as P3 viz., that the operative sales outlet at No. 454, Matara Road, *Weligama* is within 100 meters to a place of public religious place of worship in violation of the rule 20(c).

The Petitioner has filed a motion dated **05.02.2025** moving to amend the Petition by adding a prayer and interim relief that,

*“to issue by way of an interim relief, an Order **suspending the validity/the operation of the liquor license** issued to the 6th respondent by the 1st to 3rd*

*respondents under the Excise Ordinance and the Regulations promulgated under the same to the Liquor Sale Outlet at the premises No. 454, Matara Road, Weligama of the 6th Respondent **until the final determination** of this Application”*

On behalf of the 6th Respondent, preliminary objections to the maintainability of the application to amend pleadings were raised:

1. Application to amend the petition only contained in motion dated 05.02.2025 but no amended petition presented to Court.
2. No affidavit accompanying the application and that no material deposed to the satisfaction of Court.
3. The petitioner is guilty of grave laches.
4. Application to amend pleadings is mala fide and dishonest.

BACKGROUND

The Petitioner has made an application to intervene in CA Writ 152/2020 which was rejected. Then he has filed this application on the premise that 6th Respondent's liquor outlet was less than 100 meters from a place of religious worship. At such time, the Petitioner was in possession of a Survey Plan No. 1144 dated 24th September 2022, which (the Petitioner contends) establishes the ‘distance rule’ violation.

In this application, **no interim relief was sought to cancel or suspend the liquor license.** The matter was then fixed for argument on 22nd February 2024 at the behest of the Petitioner. The 6th Respondent in the meantime was directed to file its objections on 24th October 2023.

The Petitioner thereafter by motion dated 23rd August 2023, sought to support the interim relief which it had sought in its Petition.

The 6th Respondent thereafter filed its Statement of Objections on 22.01.2024 and raised multiple preliminary objections in respect of the maintainability of the application.

Pursuant to the motion filed by the Petitioner, case was mentioned on 13th March 2024 on which date, the 4th Respondent informed that it would, on its own motion conduct a survey to ascertain the distance between the relevant outlet and the place of public religious place. This request was allowed on the basis that the same would be conducted by the 4th Respondent on its own volition and not pursuant to an order of Court, and the condition that such survey would be conducted without prejudice to the legal positions of the parties.

After conducting the said survey, the report was submitted to the Court by the 4th Respondent on 8th January 2025.

The Petitioner, by motion dated 05th February 2025, **sought to introduce new reliefs by amending the Petition contending that the amendment was required by reason of the findings of the survey.** The 6th Respondent filed

objections on 20th August 2025, and oral submissions were made on 26th September 2025.

IS THE PETITIONER GUILTY OF LACHES?

It was the Petitioner's position from the beginning that the liquor outlet was situated less than 100 meters from the place of religious worship. By paragraphs 5 and 6 of the original Petition dated 7th August 2023, it was specifically pleaded that he caused Survey Plan No. **1144 dated 24.09.2022** (P2) to be drawn by which the Petitioner claims he was able to determine that the liquor license had been granted in violation of **Rule 20 (c)** of the Excise Notification No. 902.

In the previous Writ application No. CA/Writ/152/2020, by prayer 'k' the Petitioner has sought the same relief which he is now seeking to introduce into the Petition by way of an amendment. By the order dated 17th May 2023, the Court has dismissed the application to intervene made by the Petitioner. Subsequently, the Petitioner has instituted present application on the same ground on **7th August 2023**.

It is thus manifest that the same position was taken by the Petitioner as early as September 2022 which is the date of Survey No. 1144. Therefore, it is evident that the Petitioner had taken position that there was distance rule violation by the 6th Respondent from 24th September 2022 but did not institute present application until almost a year after becoming aware of it.

It was stressed by the learned President Counsel for the 6th Respondent that despite having premised this petition on such alleged violation, the Petitioner

still opted to not seek interim relief which he is now attempting to introduce by way of an amendment.

THE POSITION OF THE PETITIONER:

It was submitted that this application is not yet supported for leave and still at its initial stage. No prejudice is caused to the 6th Respondent by this prayer. If at all the 6th Respondent could only object to the Interim Relief been granted on the same at the stage of supporting. Prejudice will be caused only if the Interim Relief on the said prayer granted by this Court.

It was submitted that when this matter was fixed for inquiry, 6th Respondent took a few dates to file written submissions. The dates given for filing written submissions on 01.08.2025 (for the 6th Respondent) and 25.08.2025 (for the Petitioner) and fixed for inquiry on 09.09.2025. However, by motion dated 01.08.2025, the 6th Respondent moved for further 3 weeks' time till 21.08.2025 to file his written submissions.

It was further submitted that liquor licenses are issued for a period of one year ending 31st of each year. The 6th Respondent by moving for extended periods for his written submissions is attempting to keep on postponing or delaying the Court from issuing notices on the Respondents and interim relief till the end of the year.

CONCLUSION:

The main issue that arisen for determination in relation to this matter, viz., whether to amend the petition by including a prayer for interim relief, based on the Survey Plan bearing No. MR/DSO/2024/175 dated **07.10.2024** which is filed of record by the motion dated 08.01.2025 filed by 1st to 5th Respondents.

As per the said Plan and report ‘clarifying and ascertaining the actual distance’ from *Dharmavijayarama* Temple to the liquor sales outlet at No. 454, Matara Road, Weligama, is only **79.08** meters.

Furthermore, it is revealed that the 6th Respondent has demarcated a separate portion of premises No. 454, Matara Road, Weligama, supposed to be in, which area the said liquor sales outlet/counter is located and got the distance surveyed showing the distance as **101.68** meters.

At the preliminary stage, before supporting for leave as per proceedings dated **13.03.2024**, the learned State Counsel has informed the Court that if a direction is made by court to conduct a further survey to ascertain the distance between two places, it could be complied with by the Surveyor General (SG). Then, the learned President’s Counsel for the Petitioner has informed that if the SG and the Excise Commissioner are willing to do it from their own without any direction, he has no objection but, if they want a direction from Court, may the learned President’s Counsel to record his application. At that point, learned President’s Counsel for the 6th Respondent had informed Court that they have

no objection regarding resurvey done by the Surveyor General **but not as a direction from this Court.**

The President's Counsel for the Petitioner has informed court as a settlement, if the distance is more than 100 meters, he is willing to withdraw the petition. Consequently, the court has recorded that, "*Considering the circumstances of the case, as the Petitioner is willing to withdraw the case if the distance is more than 100 meters, Court is of the view that the Survey General can do the resurvey on expenses incurred by the Petitioner and the report should be tendered to this Court on the next date*".

Thus, it is clearly seen that **to facilitate settlement only**, the Court has allowed the application of the Respondents. The 6th Respondent has objected to the resurvey to be done as a direction of the Court.

It is pertinent to note that by paragraphs 5 and 6 of the **original petition dated 7th August 2023**, it is clearly averred that the Petitioner obtained the services of a Licensed Surveyor and had a survey done to ascertain the distance and the Survey Plan is annexed marked as P2; on the said Plan (P2), it is clear that the distance is only 79.2 which is a blatant violation of regulation 20(c), under which FL 4 Licenses are issued. It was specifically pleaded that he caused Survey Plan No. **1144 dated 24.09.2022** (P2) to be drawn by which the Petitioner claims he was able to determine that the liquor license had been granted in violation of **Rule 20 (c)** of the Excise Notification No. 902.

Despite having premised this petition on such alleged violation, the Petitioner has still opted to not seek interim relief on 7th August 2023. This amounts to *laches* and it is the view of this Court that such amendment should not be allowed at this stage. Furthermore, there is no irreparable damage caused by not allowing the amendment leading to interim relief since the final relief of quashing the FL 4 License is will not be nugatory by not allowing the amendment. On the contrary, if this amendment is allowed it can lead to granting of interim relief, which carries the effect of the final relief.

For the aforesaid reasons, the amendment to the petition is disallowed. No costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal

