

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

In the matter of an application under and
in terms of Articles 17 & 126 of the
Constitution of the Republic.

SC. FR. Application No. 231/2012

1. Mani Nuwan Jayawardana
2. T.W.N. Priyanga
3. Oshadha Randika Jayawardana
(minor)

The Petitioners of 55/2T-37, Maitland
Place, Colombo 07.

Petitioners

Vs.

1. D.M.D. Dissanayaka, Principal,
D.S. Senanayake College,
Gregory's Road, Colombo 07.
2. Mayura Samarasinghe (Secretary)
3. Mr. Prince

1st to 3rd Respondents of the Interview
Board (on admission to Year 1, 2012),
D.S. Senanayake College,
Gregory's Road, Colombo 07.

4. Ranjith Jayasundara (President)
5. Mr. Prince

4th & 5th Respondents of the Appeal
Board (on admission to Year 1, 2012),
D.S. Senanayake College,
Gregory's Road, Colombo 07.

SC. Appeal 231/2012

6. Director- National Schools,
Ministry of Education,
"Isurupaya", Pelawatte,
Battaramulla.
7. S.M.G. Jayaratne, Secretary
Ministry of Education,
"Isurupaya", Pelawatte,
Battaramulla.
8. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

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- Before** : Marsoof, PC. J.
Sripavan, J. &
Wanasundera, PC,J.
- Counsel** : Senura Abeywardane for Petitioners.
Ms. Viveka Siriwardane, SSC. for Respondents.
- Argued On** : 30.10.2013
- Written**
Submissions filed : By the Petitioner on 06.12.2013
By the Respondents on 14.11.2013
- Decided On** : 18.12 .2013

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Wanasundera, PC.J.

The Petitioners are the parents of a minor child and the minor child himself. They have come before this Court alleging that the fundamental right guaranteed to them under

Article 12(1) of the Constitution of the Democratic Socialist Republic Sri Lanka have been violated by the Respondents.

Article 12(1) stipulates that all persons are equal before the law and are entitled to the equal protection of the law.

At the stage of hearing of this case, the main argument was that the 3rd Petitioner, the minor child was not admitted to D.S. Senanayake College on account of the Petitioners' residence being situated on the State Land. This state of affairs was described as "unlawful occupation of state land" by the interview board that selected entrants to grade 1 of the school in 2012, in terms of Circular No. 2011/18 dated 11.5.2011.

The 1st Petitioner, the father of the child has affirmed in his affidavit that 30 years ago he was born in the same residence that they are living at present. The 1st Respondent has along with his objections dated 2nd July 2013 filed a copy of the Birth Certificate of the 1st Petitioner, the father of the child, which was produced at the interview for admission of the child marked as 1R2B, and states that the address in that Birth Certificate is not the same as that averred in the petition. However, I note that in cage 9 of the said Birth Certificate, the address of the informant, the father of the 1st Petitioner is mentioned, as Maitland Lane, Colombo 7. The number of the house is not legible but the place is the same as at present. I am of the view that the 1st Petitioner's Birth Certificate is proof of the fact that he was living in Maitland Place, Colombo 7 from his birth. His marriage certificate dated 28.10.2005 and the 3rd Petitioner child's Birth Certificate also show that the family has been living at 55/2, Maitland Place, Colombo 7. The other documents such as electoral lists and electricity bills confirm the fact that the parents of the child have been living continuously at 55/2, Maitland Place, Colombo 7.

Clause 6.1 of the Circular No. 2011/18 stipulates that 50 marks would be awarded to a child who is a resident in the feeder area of the school. The record of marks given at the interview to the Petitioners was produced by the Respondents marked 1R3 and the fact that 78 marks was awarded at the interview to the 3rd Petitioner is recorded and signed by all the members of the interview board as well as the father of the child, the 1st Petitioner having accepted the marks. Thereafter for no reason indicated by the

Respondents to the Petitioners, the child's name was not included in the temporary list of children to be admitted to Grade 1 in 2012. Admittedly other children who were awarded below 78 marks have got selected. This fact is confirmed by 1R4 which shows the list to be admitted. The only reason given by the Respondents as put forward only at the hearing of this application is that, the occupants of the residence were in "unlawful occupation of state land".

I believe that if the word "resident" in the circular is to be interpreted as 'lawfully resident' as submitted by the Learned Senior State Counsel, children belonging to the poorer segment of society, living in State Land for a very long period will be deprived of education. Circulars are not made for particular cases but for the society in general. The object of every Court is to do justice within the circular. The word "lawfully" does not appear in the circular; It is an interpretation suggested to Court by the Learned Senior State Counsel on behalf of the school. It is my considered view that respect must be paid to the language used in the circular, and the traditions and usages which have given meaning to that language. Article 126 of the Constitution too imposes a duty to make an order which is just and equitable. It is not for this Court to decide on whether those who are permanently living within the feeder area are occupying their houses lawfully or not. In the instant case the Petitioners are occupying State Land. This is not the only family in Maitland Place in occupation of State Land. In fact the electoral lists show a large number of residencies in 55/2, Maitland Place. All of them are occupying State Land. If the authorities have failed and neglected to evict them from State Land for a long period, it may be that they have been occupying the land for over one third of a century or so, which by itself could confer dominium over land. Whether such person can be evicted or not is a different matter altogether. The fact is that they are 'resident' within the feeder area of the school, and have not been evicted for an extremely long period of time. Are the children in these families to be deprived of their right to education? I am of the opinion that residency in the circular should not be interpreted as lawful or unlawful because it is not a subject matter for the interview board. If the fact that they are resident within the area for the relevant period is proved, then the child should be admitted under Clause 6.1 and given marks accordingly. The interview board has correctly done so giving 78 marks, as explicitly shown in 1R3 which

the Respondents have filed in Court but later decided not to admit the child on the ground of unlawful occupation of State Land. The Respondents at no time informed the Petitioners of this reason until this application was filed. The 1st and the 2nd Petitioners have been prevented from admitting the 3rd Petitioner to D.S. Senanayake Vidyalaya by reason of arbitrary and unreasonable conduct by the Respondents which violates the fundamental rights of the Petitioners guaranteed in terms of Article 12(1) of the Constitution.

I therefore direct that the 3rd Petitioner, Oshadha Randika Jayawardana, who is the child of the 1st and 2nd Petitioners should be admitted to Grade 3 of the D.S. Senanayake Vidyalaya at the beginning of the year 2014. The Petitioners shall be entitled to Rs. 30,000/(Thirty Thousand Rupees) as costs payable by the State.

Judge of the Supreme Court

Marsoof, PC.J.

I agree.

Judge of the Supreme Court

Sripavan, J.

I agree

Judge of the Supreme Court