

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

In the matter of an application under and in terms of Article 17 and Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC. FR Application No. 54/2018

K. Nishanthika Pushpa Kumari
No. 23/F/I/3. E.D Dabare Mawatha
Naraheinpita.
For and on behalf of,
Samarasinghe Arachchige Hirundi Udanya.

Petitioner

Vs.

1. R.A.M.R.Herath,
Principal, Sirimavo Bandaranaike Vidyalaya,
Colombo 7.
2. Sunil Hettiarachchi,
Secretary
Ministry of Education, Isurupaya,
Battaramulla.
3. Premasiri Epa,
4. Chintha Kanthi
5. Kalyani Samarakoon,
6. Amali Gunasekara,
7. Kapila Prasanna

All of 3rd to 7th Respondents,
C/o Principal,

Sirimavo Bandaranaike Vidyalaya,
Colombo 7.

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

Respondents

Before : Sisira J de Abrew J

Prasanna Jayawardene PC J

Murdu Fernando PC J

Counsel : Uditha Egalahewa PC with Ranga Dayananda for the Petitioner

Sureka Ahamad SC for the Attorney General

Argued on : 30.8.2018

Decided on : 6.3 .2019

Sisira J de Abrew

The Petitioner in this application alleges that her fundamental rights guaranteed by Article 12(1) of the Constitution were violated by the Respondents when they failed to admit her child to Sirimavo Bandaranaike Vidyalaya, Colombo. This court by its order dated 26.3.2018 granted leave to proceed for alleged violation of Article 12 (1) of the Constitution.

The Petitioner states in her petition that she and her sister live in the house located at No.23/F/1/3, E.D Dabare Mawatha, Naraheinpita; that all seven members of the Petitioner's family including their mother live in upstairs of the said house. The

owner of the house is the mother of the Petitioner. The Petitioner complains that her sister's child who was living in the same house was admitted to Sirimavo Bandaranaike Vidyalaya but her child was not admitted. The most important question that should be decided in this case is whether the Petitioner lives in the said house. The Petitioner in order to establish this matter has produced several documents including bank books and electoral registers. It is not necessary to refer to the said documents one by one. The Principal of Sirimavo Bandaranaike Vidyalaya, the 1st Respondent, rejected the admission of the Petitioner's child on the basis that the Petitioner does not live in the said house. The 1st Respondent has produced the Inspection Reports marked 1R3, 1R4 and 1R5. Learned PC for the Petitioner contended that the said reports should not be considered as the people who inspected the house had not filed affidavits. He further contended that the document marked 1R3 dated 24.10.2017 and 1R4 dated 31.10.2017 should not be considered as they relate to the Petitioner's sister's child. In my view even if they relate to the Petitioner's sister's child if the Petitioner was living in the said house as at 24.10.2017 and 31.10.2017, they become relevant. The date of 1R5 is 12.12.2017. The learned SSC who appeared for the Respondents admitted before us that the person who inspected the house (Principal Isipathana Vidyalaya) had, by mistake, stated the date as 12.12.2017 in 1R5 but it should be corrected as 23.12.2017. Learned PC however relying on the sad mistake contended that the said document should be rejected. The documents referred to above have been produced by the Principal Sirimavo Bandaranaike Vidyalaya along with her affidavit. When I consider all the above material, there is no reason for me to reject the said documents.

On 24.10.2017, when two people (Illangakoon and Gunasekara) went to inspect the said house, the Petitioner and her sister had not been present in the house.

However little later they came to the house. The two inspectors (Illangakoon and Gunasekara) have made observations in the document marked 1R3 that the Petitioner's sister was living in the downstairs of the said house. When the said inspectors made inquiries from the Petitioner regarding the place where she was living she (the Petitioner) had replied she was living in upstairs of the house. She has further said that she could not show inside of upstairs since her mother had gone away taking the keys of the upstairs of the house. The question that arises is as to why her mother took away the keys of the living section of the house if she (the Petitioner) was living in the said section of the house. The time of the inspection was 7.45 a.m.

On 31.10.2017, when two inspectors (Illangakoon and Gunasekara) visited the house they had found that the Petitioner's sister, her mother and her children were living in the downstairs of the house. When they made inquiries about the residence of the Petitioner, the sister of the Petitioner informed them that younger sister of the Petitioner had gone away with the keys of the upstairs of the house and as such the upstairs of the house could not be examined. The Petitioner was not present in the house on this day.

On 23.12.2017 Premasisri Epa who is the Principal of Isipathana Vidyalaya and one Kapila Prasanna on behalf of Sirimavo Bandaranaike Vidyalaya visited the said house again. But they did not meet the Petitioner in this house. On this day they had the opportunity of visiting the upstairs of the house. According to their observation brooms and some plastic items had been stored in the upstairs of this house. Although the Petitioner had claimed that she and her family live in the upstairs of this house, they did not find clothes, books, school bags and shoes of the children. However they observed that the Petitioner's sister and children were

living in downstairs of this house. Even Illangakoon and Gunasekara had made the same observation regarding the downstairs of the house. However the Petitioner along with her counter objections has produced photographs to show that there were certain items such as a bed, a fan and an iron in the upstairs of this house. When I consider all the aforementioned matters, I feel that these photographs had been taken for the purpose of filing the case.

When I consider all the aforementioned matters, it is not possible to conclude that the Petitioner and her family live in the upstairs of the said house. In my view the Petitioner has failed to establish that she and her family live in the upstairs of this house. For the above reasons, I hold that the decision of the 1st Respondents not to admit Petitioner's child to Sirimavo Bandaranaike Vidyalaya is correct and that the Petitioner's fundamental rights have not been violated by the Respondents. For the above reasons, I dismiss the petition of the Petitioner with costs.

Petition dismissed.

Judge of the Supreme Court.

Prasanna Jayawardena PC J

I agree.

Judge of the Supreme Court.

Murdu Fernando PC J

I agree.

Judge of the Supreme Court.

