

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

In the matter of an application under and in
terms of Article 126 of the Constitution.

Loku Hetiarachchige Sanjana Pradeep
Kumara

Petitioner

SC FR Application No.825/09

Vs.

1. S. M. J. Samaranayake,
Chief Inspector of Police,
Officer in Charge Police Station,
Kirindiwela.
2. Nandatissa Sambandaperuma,
Home Guard,
Police Station,
Kirindiwela
3. Laxman Cooray,
Superintendent of Police,
Gampaha.

Presently detained at the Terrorist
Investigation Division.

4. Sarath Kumara,
Senior Superintendent of Police,
Senior Superintendent of Police Office,
Gampaha.
5. K. P. P. Pathirana,
Deputy Inspector General of Police,
Western (North) Range,
DIG's Office,
Peliyagoda.

6. Inspector General of Police,
Police Headquarters,
Colombo 01.
7. Sarath Weerasekara,
Rear Admiral, Headquarters of the
Department of Civil Defence,
Station Road,
Colombo 04.
- 7A. Ananda Peris,
Rear Admiral, Headquarters of the
Department of Civil Defence,
Station Road,
Colombo 04.
8. K. P. Karunaratne,
Hospital Road,
Radawana.
9. Nimalsiri Wijethunge,
Hospital Road,
Radawana.
10. Dias Kumara Wijethunge,
No.436D, Hospital Road,
Radawana.
11. Yashmi Sambandaperuma,
No.172, Obawatta Road,
Radawana.
12. Ananda Sarathkumara,
No.176, Landa,
Radawana.
13. Kapila Sambandaperuma,
No.188/2, Rambutanghawatta,
Radawana.

14. Amitha Sambandaperuma,
No.17/B, Radawana,
Kirindiwela.
15. Aminda Rajapaksha,
Member of Dompe Pradeahiya Sabha,
Dompe Pradeshiya Sabha, Kirindiwela.
16. Dompe Pradeshiya Sabha,
Kirindiwela.
17. J. A. Jayawardane,
Chairman,
Dompe Pradeshiya Sabha,
Kirindiwela.
18. Honourable Attorney General,
Department of the Attorney General,
Colombo 12.

Respondents

BEFORE: S.E.WANASUNDERA, PC, J
BUWANEKA ALUWIHARE, PC, J &
K.T. CHITRASIRI, J.

COUNSEL: Asthika Devendra with Lilan Warusavithana for
Petitioner.
W.D.Weeraratne for 1st, 2nd and 8th to 17th
Respondents
Nadun de Silva for 3rd Respondent
Viraj Dayaratne, DSG for 6th and 18th Respondents.

ARGUED ON: 03.03.2016

DECIDED ON: 05.03.2018

ALUWIHARE, PC, J:

The Court granted leave to proceed in this matter for the alleged infringement of Article 12 (1) and 12 (2) of the Constitution.

The facts relating to this incident are as follows:

The Petitioner says that in 2008 he commenced constructing a house on a plot of land he had purchased in 2007 and by June, 2008 he managed to have the ground floor built and had proceeded to build the upper floor. On 6th July, 2008 the Petitioner who belongs to the Christian faith along with a crowd of about 14 people and led by the Pastor of his church offered prayers at the construction site. In the midst of the prayers a crowd of about 30 people had trespassed onto the land. The Petitioner states that the 2nd and 12th to 14th Respondents threatened the crowd congregated and had made specific reference to the 2nd Respondent who had been armed with a club. According to the Petitioner the 2nd Respondent had told him that there is no room for churches or to build houses and that he will be killed if he were to come again.

As a result of this intervention of the people referred to, the gathering had dispersed. The Petitioner states that he refrained from lodging a complaint at the Police Station as he had observed the unruly crowd, including the 2nd Respondent, heading towards the Police Station. Another reason he attributes for his reticence to make a complaint was the thought, that he has to live peacefully with the neighbors and wanted to avoid a confrontation with them.

After this incident a Police Officer, however, from the Kirindiwela Police Station had visited him at his residence and had a statement recorded from him in relation to a complaint alleged to have been made against him.

A couple of days later, upon being informed that the temporary hut he had put up to store building material at the construction site had been broken into, the Petitioner had visited the site and found the hut had in fact been broken into and the construction equipment and building material removed. He also had observed the word “බුදු සරණයි” written on the front wall of the hut.

The Petitioner asserts that he proceeded to Kirindiwela Police Station to lodge a complaint and had met the 1st Respondent, the O.I.C of the station. The Petitioner had been directed by the 1st Respondent to the Minor Offences Branch and from there he was redirected to the Crime Branch. The Crime Branch however, had not entertained his complaint but the police officers had visited the scene of the incident. The Petitioner had stated further that while he was waiting at the Police Station a lady police officer wanted the Petitioner to attend an inquiry before the Superintendent of Police, Gampaha, the 3rd Respondent, where the persons who intimidated him had also been asked to attend.

When the Petitioner attended the inquiry on 11th July, 2009 he had seen a crowd of people demonstrating against him. The Petitioner had attended the meeting with Pastor Chaminda and Rev. Sister Kalyani whilst the 8th to the 14th Respondents had also attended the inquiry. The Petitioner had alleged that the 3rd Respondent conducted the inquiry in a partial manner. The Petitioner also alleges that, after much persuasion the 3rd Respondent gave directions to have his complaint recorded.

Again on 14th July, 2009 he was informed by the Pastor that damage had been caused to his partly built house. As the Petitioner had no confidence in the 3rd Respondent, he had complained to the 5th Respondent, the Deputy Inspector General of Police Western Province (North) who had promptly acted on the complaint of the Petitioner and had given necessary directions to the 4th Respondent to make inquiries personally. On the very day, the Petitioner states that his statement was recorded by an officer, on the direction of the 3rd Respondent. Petitioner had been further requested to attend the Police Station on 21st July, 2009 and Police had visited the scene on that date.

The police had also taken steps to have facts reported to the Magistrate's Court of Pugoda and 8 persons had been cited as suspects (8th to 14th Respondents to the present application). The Petitioner alleges that some of the building material removed from his construction site had been used to repair a road by the 15th Respondent. The Petitioner had lodged another complaint with regard to the use of building material as well.

In the application before this court, the Petitioner had referred to three distinct incidents, the first one on 6th July, 2009, where the Petitioner alleges that a crowd of people threatened him and forced him to leave the building site.

The second incident, according to the Petitioner had occurred two days later, *i.e.* 8th July, 2009 where the hut where the building material was stored had been broken into.

The third incident had happened a few days thereafter, on the 14th July where damage had been caused to the structure of the partly built house.

With regard to the first incident, the Petitioner elected not to make any complaint or take any action.

As to the third incident, the Petitioner had complained to the 5th Respondent, who had taken prompt action and consequently facts had been reported to the court and suspects named. Thus, the issue of any transgression of the fundamental rights of the Petitioner does not arise in relation to the first and the third incidents referred to above.

The only aspect that needs consideration is whether the conduct of the 1st and the 3rd Respondents, in not having entertained the complaint of the Petitioner and the delay in acting upon his complaint had infringed the fundamental rights of the Petitioner.

It would be relevant at this stage to consider the positions taken by the 1st and the 3rd Respondents. The 3rd and 4th Respondents in their statements of objections had denied all the allegations leveled against them. The 3rd Respondent had stated that he accorded a fair hearing to the Petitioner. However, he has not placed any material before this Court that could assist the court in appreciating these circumstances. The 1st Respondent, on the other hand, asserted that the Petitioner never made a complaint to the Police Station on 08. 07. 2009 and that by the time his officers were ready to take down the Petitioner's statement, the Petitioner had left. In support of his assertion, he had produced an entry made by Police Constable Sisira on 08. 07. 2009 at 05. 05 pm ("1R2") which is to the following effect: "මේ අවස්ථාවේදී, අපරාධ අංශයේ ස්ථානාධිපතිතුමා බල අපරාධ තොරතුරු සටහන් පොත කියවන බැවින් ඔහුට එම ලේඛනය කියවා අවසන් වන තෙක් රැඳී සිටින ලෙසට උපදෙස් දුන්නා. [...] මා අපරාධ අංශයේ ස්ථානාධිපතිතුමා පොත කියවා පැය 1700 ට අවසන් වීමෙන් පසුව පැමිණිල්ල සටහන් කිරීමට බලන විට එල්. එච්. සංජන ජරදීප් කුමාර යන අය හා අනෙකුත් දෙදෙනා සිටියේ නැත."

It was contended on behalf of the Petitioner that the 1st Respondent had failed to act on the complaint of the Petitioner with due diligence, and that the 1st Respondent had acted with bias towards the persons who were named as suspects. The attention of this Court was drawn to the fact that the ‘B’ report filed before the learned Magistrate reveals commission of offences under Sections 142, 43, 369 and 437 of the Penal Code which are cognizable offences. It was contended, however, that the 1st Respondent instead of taking steps to arrest the suspects, had moved for summons on them through the court.

The 8th to 14th Respondents to this application are private individuals. Article 126 speaks of an infringement by executive or administrative action. In the present case, the Petitioner seeks, *inter alia*, a declaration that the 1st to the 4th Respondents and 6th to the 17th Respondents violated his fundamental rights. This court, however, is only seized of the jurisdiction to determine whether the failure of the 1st, 3rd and the 4th Respondents to record his complaint and direct investigations violated his fundamental rights. Claims against the 2nd and 8th to the 17th Respondents cannot be pursued as their alleged conduct is a matter pending before the Magistrate’s Court. In any event, 8th to the 14th Respondents are private individuals who are not amenable within the fundamental rights jurisdiction.

Although this Court has held in the case of **Faiz v Attorney General [1995] 1 SLR 372** that “*The act of a private individual would be executive if such act is done with the authority of the executive; such authority, transforms an otherwise purely private act into executive or administrative action (including inaction in circumstances where there is a duty to act)*” there is, however, no material before this Court to warrant such a conclusion.

It appears that the initial complaint had been by the villagers with regard to the conduct of the Petitioner and an inquiry, according to the 3rd Respondent, had been held with the participation of the Petitioner and two other members of the clergy and a few others representing the complainants. The 3rd Respondent states that both parties were advised to maintain peace. It also appears that the situation had caused some tension in the area which is evident from the ‘news clip’ from a newspaper filed by the Petitioners (P4) which had reported a protest march by the villagers agitating over distress caused to the villagers as a result of the activities of the Petitioner.

Where an equal protection claim is advanced, an intentional and purposeful discrimination must be shown by any person protesting discrimination in the administration of the law. In **Wijeisnghe v Attorney General [1978-79-80] 1 SLR 102** His Lordship Justice Wanasundera with whom Justice Sharvananda and Justice Ismail agreed, quoting Stone CJ.’s dictum in *Snowden v Hughes*, held that:

“The Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State. The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.”

It was further pointed out that *“Every wrong decision or breach of the law does not attract the constitutional remedies relating to fundamental rights. Where a transgression of the law takes place, due solely to some corruption, negligence or error of judgement, I do not think a person can be allowed to come under Article*

126 and allege that there has been a violation of the constitutional guarantees. There may also be other instances where mistakes or wrongful acts are done in the course of proceedings for which ordinarily there are built-in safeguards or adequate procedures for obtaining relief.”

This Court is undoubtedly the guardian and protector of the fundamental rights secured for the people and our powers are given in very wide terms; but the authority vested, is not absolute and we have to concede that there are limits which we cannot transgress, however hard and unfortunate a case may be. We have to take cognizance of the distinction between ordinary rights and fundamental rights, and it is only a breach of a fundamental right that calls for our intervention.

In the present case, while the conduct of the 1st and the 3rd Respondent delay in acting upon his complaint very much falls short of the standards of professionalism, I do not hold that it constitutes a violation of the Petitioner’s fundamental rights. There is no evidence to conclude that the 1st, 3rd and 4th Respondents acted with an insidious discriminatory purpose. Neither is there sufficient material to conclude that the delay prevented the Petitioner from a fair investigation. Proceedings before the Magistrate’s Court, Pugoda are pending and both the learned Magistrate and the 6th Respondent have issued orders to the Respondents to conduct impartial investigations. There is also no evidence to conclude that the delay definitively facilitated the subsequent damage of the property. Furthermore, the learned Senior Deputy Solicitor General for the 6th and 18th Respondents has brought to the attention of this court that disciplinary actions have already been taken against the 1st Respondent.

Having considered the facts and circumstances in this case I hold that the Petitioner had not established that the 1st, 3rd and the 4th Respondents violated his Fundamental Rights guaranteed under Article 12 (1) and (2) of the Constitution.

I wish, however, to record my disapproval in the strongest terms of the dereliction of the professional duties on the part the 1st and the 3rd Respondents.

Application dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE EVA WANASUNDERA P.C

I agree

JUDGE OF THE SUPREME COURT

JUSTICE K. T CHITRASIRI

I agree

JUDGE OF THE SUPREME COURT