

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

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

**SC. FR. NO. 50/2021**

1. D. Wathsala Subhashini De Silva  
78/E, Gangarama Road, Urawatte,  
Ambalangoda.
2. Menuwara Gedara Viheli Sehansa  
Devhari Samarathunga  
78/E, Gangarama Road, Urawatte,  
Ambalangoda.

**PETITIONERS**

**Vs.**

1. Hasitha Kesara Wettimuni  
Former Principal of Dharmasoka College,  
C/O, Principal, Dharmasoka College,  
Ambalangoda.
- 1A. Sanuja Jayawickrama  
Principal,  
Dharmasoka College,  
Ambalangoda.
2. B. Anthony  
Secretary,  
Interview Board,  
C/o Principal,  
Dharmasoka College,  
Ambalangoda.
3. T.M. Dayaratne  
Member,  
Interview Board,  
C/o Principal,  
Dharmasoka College,  
Ambalangoda.

4. L.N. Madhavi Dedunu  
Member,  
Interview Board,  
C/o Principal,  
Dharmasoka College,  
Ambalangoda.
5. N. Channa Jayampathi  
Member,  
Interview Board,  
C/o Principal,  
Dharmasoka College,  
Ambalangoda.
6. Gamini Jayawardene  
Chairman,  
Appeals and Objections Investigation Board,  
Principal,  
Mahinda College,  
Galle.
7. Rekha Malawaraarachchi  
Secretary,  
Appeals and Objections Investigation Board,  
C/o, Principal,  
Dharmasoka College,  
Ambalangoda.
8. J.P.R. Malkanthi  
Member,  
Appeals and Objections Investigation Board,  
C/o, Principal,  
Dharmasoka College,  
Ambalangoda.
9. S.A.B.L.S. Arachchi  
Member,  
Appeals and Objections Investigation Board,  
C/o, Principal,  
Dharmasoka College,  
Ambalangoda.
10. Rasika Prabhoda Hendahewa  
Member,

Appeals and Objections Investigation Board,  
C/o, Principal,  
Dharmasoka College,  
Ambalangoda.

11. Prof. Kapila C.K. Perera  
Former Secretary to the Ministry of Education,  
C/o Secretary,  
Ministry of Education,  
'Isurupaya',  
Battaramulla.
- 11A. M. N. Ranasinghe  
Secretary,  
Ministry of Education,  
'Isurupaya'
12. Sobanahandi Dilani  
No.77/B/1, Gangarama Road,  
Urawatte,  
Ambalangoda.
13. R.T. Dahamsara de Zoysa  
No.77/B/1, Gangarama Road,  
Urawatte,  
Ambalangoda.
14. Hon. Attorney-General  
Attorney-General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE** : **P. PADMAN SURASENA, J.  
MAHINDA SAMAYAWARDHENA, J. &  
ARJUNA OBEYESEKERE, J.**

**COUNSEL** : Shyamal A. Collure with Prabhath S. Amarasinghe,  
A.P. Jayaweera instructed by Ravindra Silva for the Petitioners.  
Ganga Wakishta Arachchi DSG for the Respondents.

**ARGUED &  
DECIDED ON** : 08-01-2024.

**P. PADMAN SURASENA, J.**

Court heard the submissions of the learned Counsel for the Petitioner as well as the submissions of the learned Deputy Solicitor General and concluded the argument.

The 1<sup>st</sup> Petitioner is the mother of the 2<sup>nd</sup> Petitioner who is a minor and whose admission was sought to the school of which the 1A Respondent is the Principal. The 1<sup>st</sup> Respondent has produced (marked **1R2**), the application made by 1<sup>st</sup> Petitioner seeking the admission of her child (the 2<sup>nd</sup> Petitioner) to the above school from the "close proximity category". According to the said application (**1R2**), the address of the permanent residence of the Petitioners is mentioned as No. 78/E Gangarama Road, Urawatta, Ambalangoda.

The 1<sup>st</sup> Petitioner has also produced the Deed (marked **P4**) and the plan relevant to the property (marked **P14**). The Petitioners' residential premises is depicted as Lot X in Plan No. 2134/2015 (**P14**) in which two permanent buildings marked "P" have been clearly depicted. It is important to note that both the permanent buildings are situated within the afore-said Lot X.

It is not disputed between parties that there are two houses in the Petitioners' compound: one an old house; the other, a newly constructed house.

We observe that the 1<sup>st</sup> Petitioner has claimed her entitlement to admit her child, the 2<sup>nd</sup> Petitioner on the basis that they are living in house No. 78/E (old house).

The learned Deputy Solicitor General conceded before this Court that if in fact the Petitioners are living in the old house, the school authorities must admit the 2<sup>nd</sup> Petitioner to the relevant school. Thus, the issue we have to decide is whether the Petitioners are entitled to succeed with their application for the admission to the relevant school on the basis of their claim that they live in the address provided in the application they had submitted. i.e. No. 78/E, Gangarama Road, Urawatta, Ambalangoda.

Although, the learned Deputy Solicitor General concedes that the child must be admitted if the Petitioners' family is living in the old house, the school authorities had not admitted the child. The reason provided to this Court by the learned Deputy Solicitor General for not admitting the 2<sup>nd</sup> Petitioner to the school is the fact that the Petitioners' family is in fact living

in the newly constructed house and not in the old house. Moreover, it is the submission of the learned Deputy Solicitor General that the distance to the school was measured from the newly constructed house as that was the premises shown by the Petitioners to the school authorities.

At the outset, we need to state here that, so long as both premises (the old house and the new house) and the land on which those houses are situated, are owned by the 1<sup>st</sup> Petitioner; so long as there is no other family living in any of those two houses; so long as the Petitioners have submitted the other relevant documents such as Water Bills, Electoral Registers & Electricity Bills, it should be irrelevant for the school authorities to go on the voyage of discovery as to which part of the premises owned by the Petitioners' is actually occupied by the Petitioners' family. Indeed, it is not disputed that the school authorities have awarded marks for those documents submitted by the Petitioners. However, we wish to add a caution that the position might have been different if another family is found living in one of those houses. In the absence of any other family living in any of these houses, we have no basis to hold that the 1<sup>st</sup> Petitioner, for the purposes of the application for the admission of her child to the relevant school, is not occupying the old house.

The Petitioners are relying on the documents produced (marked **Y19** and **Y20**) to further establish this fact.

According to these two documents, the old house is a house which is 35 years old and is the house which has been assigned the Assessment No. 78E. Those two documents also establish that the new house has not been assigned any Assessment Number.

It appears from the document **Y19** that the new house has been constructed without a proper approval from the Rajgama Pradeshiya Sabha. Indeed, the document **Y20** states (a letter by the Divisional Secretariat, Madampagama) that it is not certain as to which house of the compound has been assigned the Assessment No. 78E.

In the factual circumstances of this case, we are of the view that the Petitioners are free to reside in any of the houses they own. As to which portion of their properties (in the same compound) the Petitioners must reside should not be a serious matter for the school authorities to decide on the application to admit the child particularly in view of the fact that no other family is occupying any of those houses as has already been mentioned earlier.

We also wish to add that we are mindful that the parties are not permitted to rely on documents obtained after completion of the admissions/ interview process in School Admission cases. Documents produced marked **Y19** and **Y20** are documents which the 1<sup>st</sup> Petitioner had obtained subsequently in order to establish the injustice she had suffered at the hands of the School Authorities.

We note that one need not rely on the documents marked **Y19** and **Y20** to establish that the School Authorities had infringed the Fundamental Rights of the Petitioners guaranteed to them under Article 12 (1) of the Constitution as on the face of the application made by the 1<sup>st</sup> Petitioner, the school authorities should have admitted the 2<sup>nd</sup> Petitioner to the school on merits. We are unable to accept the reason provided by the learned Deputy Solicitor General for the refusal by the School Authorities to admit the child. Thus, the presence of the documents produced marked **Y19** and **Y20** before us would not create any new grounds for the Petitioners' success. In other words, even in the absence of **Y19** and **Y20** which are documents obtained at a later stage, the original decision made by the school authorities not to admit the 2<sup>nd</sup> Petitioner to the school still remains illegal. Therefore, one does not have to rely on the subsequently obtained documents (**Y19** and **Y20**) to decide that the 2<sup>nd</sup> Petitioner should have been admitted to the relevant school on the application submitted by the 1<sup>st</sup> Petitioner.

We have already held that on the material adduced by the 1<sup>st</sup> Petitioner with the application and as per the relevant provisions in the relevant circular produced marked **1R1**, the School Authorities should have admitted the 2<sup>nd</sup> Petitioner to the relevant school. The refusal by the School Authorities to admit the 2<sup>nd</sup> petitioner to the relevant school is therefore an infringement of the Fundamental Rights of the Petitioners guaranteed to them under Article 12(1) of the Constitution.

It also must be mentioned here that it is not the position of the School Authorities, that the premises in which two permanent buildings are situated is not owned by the 1<sup>st</sup> Petitioner.

For the forgoing reasons, we decide to grant a declaration that the Petitioners' Fundamental Rights enshrined in Article 12(1) of the Constitution have been infringed by the respondent school authorities.

We direct the incumbent Principal of Dharmashoka College Ambalangoda (1A Respondent) to admit the 2<sup>nd</sup> Petitioner to the relevant grade as the 2<sup>nd</sup> Petitioner was entitled to have been admitted to Grade-I of Dharmashoka College, Ambalangoda in the year 2021. We make no order for costs.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J**

I agree,

**JUDGE OF THE SUPREME COURT**

**ARJUNA OBEYESEKERE, J**

I agree,

**JUDGE OF THE SUPREME COURT**

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