

**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 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.***

SC/FR/393/2010

Gunarathinam Manivannan

Thiru Murikandi Pillayar Kovil,

Thiru Murikandi

More recently of

No.20/10, Housing Scheme,

Kanakambikai Kulam, Kilinochchi.

PETITIONER

Vs.

1. Honourable D.M. Jayaratne, M.P
Prime Minister and Minister of Buddhist
and Religious Affairs 135, Anagarika
Dharmapala Mawatha,
Colombo 00700.

1A. Honourable D.M.Swaminadan

Minister of Resettlement, Reconstruction
and Hindu Religious Affairs

No.146, Galle Road,

Colombo 00300.

2. Shanthi Thirunavukkarasu

Director,

Department of Hindu Cultural Affairs,

No.248 1/1, Galle Road,

Colombo 00400.

2A. A. Uma Mageshwaran

Director,

Department of Hindu Cultural Affairs,

No.248 1/1, Galle Road,

Colombo 00400.

3. Major General (Retd) M.A.Chandrasiri

Governor-Northern Province, Jaffna.

3A. H M GS Palihakkara

Governor-Northern Province, Jaffna.

3B. Mr. Reginold Cooray

Governor-Northern Province, Jaffna.

4. Puthukudiruppu Pradeshya Sabha,

Puthukkudiruppu

Replacing,

Mullaitivu Pradeshya Sabha, Mullaitivu

5. Emelda Sukumar

Government Agent, Mullaitivu.

5A. N Vethanayagam

Government Agent, Mullaitivu.

5B. Rupawathy Keetheesvaran

Government Agent, Mullaitivu.

6. Subashini

Assistant Government Agent

Oddusuddan-Mullaitivu, Mullaitivu.

6A. R Kurubaran

Assistant Government Agent

Oddusuddan-Mullaitivu, Mullaitivu.

6B. Yathukulasingham Aniruththanan

Assistant Government Agent

Oddusuddan-Mullaitivu, Mullaitivu.

6C. Jeganathasharma Rajamalligai

Assistant Government Agent

Oddusuddan-Mullaitivu, Mullaitivu.

7. Ranjith Kumar

Grama Sevakar – Thiru Murikandi

Thiru Murikandi.

7A. N Jeyasuthan

Grama Sevakar – Thiru Murikandi

Thiru Murikandi.

8. Vishvamadu Co-operative Society

Vishvamadu.

9. Johnson

Commissioner of Local Government

Northern Provincial Council

Varodaya Nagar, Kanny, Trincomalee.

Instead of

Johnson Land Officer

Northern Provincial Council,

Varodaya Nagar, Trincomalee.

10. Jeyanthan Sharma

Officiating Priest,

Thiru Murikandi Pillayar Kovil,

Thiru Murikandi.

10A, Ravindra Kurukkandi

Officiating Priest

Thiru Murikandi Pillayar Kovil,

Thiru Murikandi.

11. Puvannakumar

Manager,

Thiru Murikandi Pillayar Kovil,

Thiru Murikandi.

11A. Paramasamy

Manager,

Thiru Murikandi Pillayar Kovil,

Thiru Murikandi.

12. Thanaledchumy Thirunavukkarasu of

C/O Kuhakumaran

Thiru Murikandi Pillayar Kovilady,

Thiru Murikandi.

12A. Thirunavukkarasu Kuhakumaran

Thiru Murikandi Pillayar Kovil,

Thiru Murikandi.

13. Honourable Attorney General

Attorney General's Department,

Colombo 01200.

14. Thirunavukkarasu Jeevanantham

No. 75/43, A9 Road, Thiru Murikandy.

15. Velusamy Nagarajah

No. 75/150, A9 Road, Thiru Murikandy.

RESPONDENTS

BEFORE : **S. THURAIRAJA, PC, J**
A.L. SHIRAN GOONERATNE, J AND
JANAK DE SILVA, J

COUNSEL : Dr. K. Kanag-Isvaran, PC with M.A.Sumanthiran, PC; Lakshmanan Jeyakumar and N.S. Nishenthiran instructed by Sinnadurai Sunderalingam & Balendra for the Petitioner.

Rajiv Goonetilleke, DSG for 1st, 2nd, 3rd, 5th, 6th, 9th and 13th Respondents.

A.Muttukrishnan, PC with Gowthamy Reepan instructed by Diani Millavithanachchi for the 4th Respondent.

Vivekananthan Puvitharan, PC with Anuja Rasanayakham for the 12A respondent.

K.V.S. Ganesharajah with Sutheshana Sothalingam for the Intervenant Respondent.

WRITTEN SUBMISSIONS: Petitioner on 14th November 2022.

4th Respondent 14th November 2022.

1st, 2nd, 3rd, 5th, 6th, 9th and 13th Respondents on 1st November 2022.

Intervenant Respondent 14th November 2022.

12A respondent 14th November 2022.

ARGUED ON : 17th October 2022

DECIDED ON : 24th October 2023

S. THURAIRAJA, PC, J.

The Petitioner namely, Gunarathinam Manivannan (hereinafter referred to as "the Petitioner") and the 12th Respondent are the hereditary trustees of the Thiru Murikandi Pillayar Kovil (hereinafter sometimes referred to as the Temple), a venerated place of worship situated on the A9 Highway. Petitioner states that, since the 12th Respondent is over 80 years of age, although she is a resident in Sri Lanka due to her advanced age, she is not in a position to join in with the Petitioner in filing this application as a co-trustee.

The Petitioner has made the instant application seeking relief in respect of the infringement of his Fundamental Rights guaranteed under and in terms of the Constitution, in the manner hereinafter more fully set out, against the Respondents. The Petitioners instituted this action at the Supreme Court under Article 126 of the Constitution, through Petition dated 2nd July 2010 against the 1st -13th Respondents claiming that the Fundamental Rights of the Petitioner as guaranteed by Articles 10, 12(1), 12(2), 14(1)(e) and 14(1)(f), 14(1)(h) of the Constitution have been infringed by the Respondents. Further, an interim order restraining the 1st-11th Respondents and those under them from causing any further destruction, alteration or new construction to the land granted under the Crown Lease, constituting trust property on which the said Temple and its temporalities stand. Moreover, an interim order directing the 1st - 11th Respondents to hand over to the Petitioner and the 12th Respondent the control and management of the Temple and to restrain any commercial exploitation of the Temple.

This matter was supported on 15th July 2010 and leave was granted under Article 12(1) of the Constitution. The Respondents filed their Statement of objections, and the Interventient - Respondents, who are the devotees of the subject temple and representing the "Worshippers Society" of the Thiru Murikandy Pillayar Temple, made

an application to intervene in this matter by their Petition dated 01st August 2012 seeking inter-alia the reliefs prayed for therein and the application for intervention was allowed by this Court. Thereafter, when the matter came up on 17th October 2022 for Argument, the parties made their respective oral submissions before this Court and at the conclusion, the Court directed the parties to file their respective written submissions.

I find it pertinent to establish the facts of this matter before addressing the issue of violation of Fundamental rights.

Facts of this case

The Petitioner states that the 1st Respondent is the Minister of Buddhist and Religious Affairs and in charge of the Buddhist and Religious Affairs Ministry, under whose purview, formulation of policies and programmes to inculcate religious values among people in order to create a virtuous society falls. Both the Department of Hindu Religious and Cultural Affairs and the Department of Buddhist Affairs fall under the said Ministry; the 2nd Respondent is the Director of the Department of Hindu Religious and Cultural Affairs, and the Petitioners further that the 2nd Respondent together with the 4th to 9th Respondents has, as hereinafter set out, acted contrary to the Fundamental Rights of the Petitioners guaranteed and protected under the Constitution.

Petitioner states that the Thiru Murikandi Pillayar Kovil and its temporalities, the subject matter of this application, is a place held in veneration by all and is situated on the A9 Highway (Kandy to Jaffna), at Murikandy in Kilinochchi. It is said that all vehicles plying the A9, be it towards Colombo or towards Jaffna, stop at the Thiru Murikandi Pillayar Kovil to pay their obeisance to the presiding Deity before proceeding. The Petitioner's and the 12th Respondent's ancestor, Kathiresar Vythilingam, was an engineer in the employment of the Crown and was posted to Thiru Murikandi in or about the year 1880. During his time at Thiru Murikandi, a God called Pillayar (Pillayaar

is a Hindu God who is believed to remove obstacles) appeared in his dream and told him that he, the Thiru Murikandi Pillayar, was in the new well that was being dug there and to extricate him from the rock and to consecrate him at a Kovil there. Kathiresar Vythilingam, as directed by the Thiru Murikandi Pillayar found the Deity in the well that was being dug and was thereafter consecrated at the Thiru Murikandi Pillayar Kovil with Kathiresar Vythilingam as the trustee of the Thiru Murikandi Pillayar Kovil and built a home as well adjoining the Temple. In a short span of time, the Thiru Murikandi Pillayar Kovil became well known as a place of Hindu religious worship, and soon thereafter, by a Deed dated 10th December 1886, a Crown Lease, in extent Two Acres One Rood and Eight Perches (A2-R1-P8), including the land on which the temple and its temporalities stood was granted in favour of the said Kathiresar Vythilingam in what would appear to be in perpetuity. Upon the death of Kathiresar Vythilingam, the trusteeship of the Thiru Murikandi Pillayar Kovil devolved on his son Vythilingam Kanagasabai. Upon the demise of the said Vythilingam Kanagasabai, the trusteeship of the Thiru Murikandi Pillayar Kovil devolved on his nephew Kandappan Sellappan and his adopted son Ponnuthurai, who functioned as co-trustees of the Thiru Murikandi Pillayar Kovil.

Upon the demise of Kandappan Sellappan, his trusteeship devolved on his son Sellappan Gunarathinam by virtue of deed No. 7429 dated 4th April 1967. Likewise, Ponnuthurai, by a deed of donation dated 20th September 1951, passed on the trusteeship to Thirunavukarasu Thanaledchumy, the daughter of Kandappan Sellappan, the 12th Respondent. Thereafter, upon the demise of Sellappan Gunarathinam on 6th October 1993, his rights of management and trusteeship of the Thiru Murikandi Pillayar Kovil devolved on the Petitioner, namely, Gunarathinam Manivannan who is the only son of the said Sellappan Gunarathinam. From the inception of the Thiru Murikandi Pillayar Kovil, the Petitioner's and 12th Respondent's ancestors had lived in very close proximity to the Thiru Murikandi Pillayar Kovil. However, in or about the year 1990, the LTTE (Liberation Tigers of Tamil Eelam- A

militant group) forcibly took over the Thiru Murikandi Pillayar Kovil and its temporalities, which forced the Petitioner's family, including the Petitioner, to flee to India. Thereafter, the LTTE appointed their representatives to administer the Thiru Murikandi Pillayar Kovil and collected all the income that accrued to the Thiru Murikandi Pillayar Kovil. During the LTTE's administration of the Thiru Murikandi Pillayar Kovil, several shops sprung up in the vicinity of the Temple with the only aim being the generation of income and without any concern whatever for the religiosity and the sanctity of the Thiru Murikandi Pillayar Kovil and its surroundings.

Petitioner states that, in 2003, during the ceasefire, when the A9 was diverted around the Temple, which continues to date, the 12th Respondent's consent was sought and obtained in this regard. After the military defeat of the LTTE, the Petitioner made several attempts to speak to the relevant authorities in order that he, along with the 12th Respondent, may, as they lawfully might, resume the exercise of their legal right to the management and control of Thiru Murikandi Pillayar Kovil and its temporalities as the lawful trustees thereof. However, upon visiting the Thiru Murikandi Pillayar Kovil, the Petitioner was reliably informed, and he verily believes that the Thiru Murikandi Pillayar Kovil is now being managed and administered primarily by the 2nd Respondent together with the 4th to 9th and 11th Respondents.

The Petitioner states that the continued management and administration of the Thiru Murikandi Pillayar Kovil by the 2nd Respondent, together with the 4th to 9th and 11th Respondents, is arbitrary, capricious, without any legal right or authority of whatsoever nature and is violative of the Petitioner's Fundamental Rights enshrined and protected under the Constitution.

The Petitioner, to his utter dismay, also found that the Viswamadu Cooperative Society, the 8th Respondent, with the concurrence and/or collusion and/or permission of the 2nd, 4th, 5th, 6th, 7th, 9th and 11th Respondents, was running a Cooperative Store and a

restaurant at the building that was the Petitioner's and 12th Respondent's home prior to their forcible eviction by the LTTE.

The Viswamadu Co-operative Society, the 8th Respondent, had caused serious and extensive damage to the Petitioner's home. The Petitioner also verily believes that the Viswamdu Cooperative Society, the 8th Respondent, and/or its officers and/or its agents and/or the 2nd, 4th, 5th, 6th, 7th, 9th and 11th have not taken any steps whatsoever to prevent the consumption of alcohol in close proximity to the Thiru Murikandi Pillayar Kovil and are thus defiling and desecrating the sanctity of the Thiru Murikandi Pillayar Kovil.

The Petitioner further verily believes that moves are afoot to once again commercially exploit the Thiru Murikandi Pillayar Kovil and its environs and thus defile the sanctity of the Thiru Murikandi Pillayar Kovil as was done by the LTTE.

The Petitioner has been reasonably informed and also verily believes that the Viswamadu Cooperative Society, the 8th Respondent, is planning to make Several structural changes/alterations to the Petitioner's home, which is at least 130 years old and that the said changes would completely alter the nature and character of the Petitioner's home and would render it unfit to be used as a home.

The Petitioner, by his letters dated 7th April 2010 addressed to the Government Agent of Mullaitivu, the 5th Respondent, and the Assistant Government Agent of Oddusuddan, Mullaitivu, the 6th Respondent, through the Grama Sevaka, the 7th Respondent, informed them that he had returned to Sri Lanka upon the cessation of the war and that his properties are being administered by the Government and pleaded that his properties be returned to him and Petitioner annexed several documents authenticating this claim.

The Petitioner, by letter dated 3rd May 2010, preferred an appeal to the 3rd Respondent, Governor of the Northern Province, setting out his circumstances and pleading that the Governor intervene in the matter. Thereafter, by letter dated 6th May

2010 addressed to the 2nd Respondent, the Petitioner set out his current predicament and requested that his properties be returned to him. Petitioner states that, regretfully, none of the Petitioner's letters to the relevant authorities were even acknowledged or replied.

In this background, the Petitioner was alarmed and perturbed to read a news item in the "Uthayan" Newspaper of 21st May 2010 which stated that the Thiru Murikandi Pillayar Kovil had been taken over by the Government and was being run by the Department of Hindu Religious and Cultural Affairs by Shanthi Thirunavukkarasu, the 2nd Respondent. This news item further went on to state that in response to a query posed to the 2nd Respondent regarding the same, she had stated that the Department of Hindu Religious and Cultural Affairs was administering the Thiru Murikandi Pillayar Kovil and had appointed a priest and a Manager and that once resettlement was completed in the area the administration and control of the Thiru Murikandi Pillayar Kovil was to be handed over to representatives of the persons resettled. The Petitioner, by Email of 21st May 2010, addressed to the "Uthavan" newspaper, set out the true factual position regarding the Thiru Murikandi Pillayar Kovil and stated that the statements attributed to the 2nd Respondent appearing in the above-mentioned news article were false.

Since no response whatsoever was forthcoming from the 2nd Respondent regarding the Thiru Murikandi Pillayar Kovil, the Petitioner, once again by letter dated 12th June 2010 addressed to the 2nd Respondent and copied to Government Agent – Mullaitivu, Assistant Government Agent Oddusuddan, Grama Sevaka Thiru Murikandi, Governor - Northern Province, Minister Douglas Devananda, The Prime Minister, Member of Parliament Chandrakumar, set out yet again his claim to the Thiru Murikandi Pillayar Kovil and its temporalities by annexing several documentation in proof of his claim.

The Petitioner alleged that, however, not even a single acknowledgement for the letters was received from the 2nd Respondent, neither were any favourable steps taken

by the 2nd Respondent and/or any of the other Respondents to return to the Petitioner and the 12th Respondent the Thiru Murikandi Pillayar Kovil and its temporalities.

Objections filed by the Respondents and Intervening Respondent

The 2nd Res, the Director of Hindu Cultural Affairs, has filed an affidavit dated 29th September 2010, stating that, the Temple has been managed by a Board of Trustees since 1992 and has been administered as a Public Temple for the past 18 years; on the request of the Public, the Department of Hindu Religious and Cultural Affairs took over the administration of the Temple in or about November 2009 and appointed a priest to carryout religious ceremonies. Further, 2nd Respondent states that, on completion of the resettlement process, the administration of the affairs of the Temple will be handed to a committee comprising of the residents of the area and the as Petitioner alleged, the Department of Hindu and Cultural Affairs is not responsible for any construction activities in the vicinity.

The 9th Respondent, the Commissioner of Local Government has filed an affidavit dated 5th January 2011, stating that the validity of the Crown Lease and the extent of land granted thereby are matters to be established by the Petitioner in Court of Law; there are many building which were previously controlled by the LTTE and thereafter abandoned, hence private ownership in regard to lands would have to be established in law; there are many land disputes in Killinochchi District and it is not practical for the Governor to investigate these matters; the activities of the temple and the surrounding lands are not matters that the Commissioner of Local Government is involved with.

It was submitted on behalf of the 1st, 2nd, 3rd, 5th, 6th, 9th and 13th Respondents that, the Petitioner's application is primarily in the nature of a vindicatory action in which he seeks possession and control of the Temple and the administration of its affairs.

Further, the 1st, 2nd, 3rd, 5th, 6th, 9th and 13th Respondents states that, they have not dispossessed the Petitioner and the Petitioner according to his affidavit has abandoned the temple and its premises in or about 1990 and has been away for a long period of time, with no evidence of having controlled the affairs of the temple in that period of absence of 18 years. In the circumstances, the Petitioner would have to establish in a District Court, his right to control the Temple and the Administration of its affairs.

The 4th Respondent submits that, the lease relied on by the Petitioner, was expired in the absence of the renewal and, therefore, the Petitioner has no rights to the subject matter. Further, it was submitted that the land is a State land given to Vythilingam from whom the Petitioner claims that he is a hereditary trustee. The 4th Respondent alleges that the Petitioner abandoned his trusteeship for a long time, and his claims are prescribed in law. The 4th Respondent submits that, as far as concerned, the 4th Respondent is a public-oriented body and is involved in serving the public. They have constructed 46 peanut shops, 12 tea kiosks and a toilet to enable the worshippers and the users of the road to ease themselves and buy pooja items. The money for the construction of the shops is from public funds and entitled to collect rents and has no duty to account to Petitioner.

The Interventient-Respondent states that, in terms of Trusts Ordinance No.9 of 1917 as amended and as the Petitioner claimed in paragraph 1 of the Petition, the place as a venerated place of worship and when there are no Trustees, then an application has to be made under Sections 75 and 76 of the Trusts Ordinance No.9 of 1917 as amended with regard to the trusteeship. The Interventient- Respondent alleges that, there was no application made or no order was provided to that effect by the Petitioner and there is no instrument of Trust was submitted or produced to court with regard to the said claim by way of Hereditary Trustee by the Petitioner. In these circumstances, a competent court should have issued an order under Section 112 of the Trusts Ordinance. In this case, there was no such order produced by the Petitioner. In these

circumstances, the Petitioner has no status to file this application. The Petitioner sought relief in the Petition on the basis that he is entitled to the management and control of the "Thiru Murikandi Pillayar Kovil". But no order has been obtained or produced under Section 75 or 76 or 112 of the Trusts Ordinance No.9 of 1917 as amended.

Further, the Interventient-Respondent states that the best interest of the devotees shall be in the safe custody of the "State Institution" or a receiver appointed under Section 671 of the Civil Procedure Code by the District Court. In the event the Petitioner establishes his right in the proper forum, namely "District Court", which has jurisdiction to make an appropriate order in respect of the Religious Charitable Trust under the Trusts Ordinance No. 09 of 1917 or under Section 671 of the Civil Procedure Code, the Petitioner may claim by a Court order. In the absence of such court order, the Petitioner has no right to file this application as the Petitioner has filed this application for his personal and individual right as a hereditary Trustee.

The 12A Respondent states that the Petitioner and the 12th Respondent, Thirunavukkarasu Thanaladchumy (She died pending the Case), are the hereditary trustees of the Thiru Murikandy Pillayar Temple situated by the side of A9 road at Murikandy in Kilinochchi and the other Respondents have illegally, unlawfully and against the law applicable in the Country taken over the possession, administration, maintenance and management of the Thiru Murikandy Pillayar Temple and its temporalities after the end of civil war and thereby violated the fundamental rights of the Petitioner and 12A Respondent.

The 12A Respondent states that the Trusteeship of the Petitioner and the 12th Respondent is affirmed in the Supreme Court Case No. 115/1954, decided on 1st April 1955. The 12th Respondent is a party to the said case. Decree, Writ and the execution papers of District Court of Vavuniya Case No. 826 are filed by the 12th Respondent along with the Affidavit of the 12th Respondent.

As per the submission of the 12A Respondent, the Pillayar (Vinayakar) was placed under a tree by Great Grandfather of the 12th Respondent in the year 1884. He constructed a small hut and maintained the Pillayar as a Vazhi Pillayar with the belief that God protected their journey. The Thiru Murikandy Pillayar temple is a famous "vazhi Pillayar" which means temple situated by the side of a road where the devotees are people and passengers using the said road. Thus, these types of temples do not have any permanent devotees. These temples are not traditional temples. In these temples, there is no priest and there are no rights and rituals observed strictly.

The Temple is situated in the State Land. The State has, by a long-term lease, given the land in extent of about Two and a half Acres (including the land where the temple is situated) to the predecessors of the Petitioner and the 12A Respondent. Till 1990, the Petitioner and the 12th Respondent and their predecessors to the Trust were in possession, control, management and administration of the said temple and its temporalities. Thereafter, the LTTE took control of the Kilinochchi district and considering the "Till" collection from the said temple, LTTE took total control, management and administration of the temple, which forced the Petitioner to flee to India and the 12th Respondent to Nellyyadi in Point Pedro. The Petitioner and the 12th Respondent were forcibly prevented from performing their duties as trustees due to the said illegal and unlawful taking-over of the LTTE. The Petitioner and the 12th Respondent did not have any place or forum to seek any effective relief against the said acts of the LTTE. The above facts, such as the Trusteeship of the Petitioner and 12th Respondent, taking over of the Temple and its temporalities by the LTTE and its control and fleeing of the Petitioner and 12th Respondent against their will, are admitted by the 4th Respondent.

Article 12(1) violation

The Petitioner and the 12A respondent in this application claim that the actions of the Respondents have violated their fundamental rights under Article 12(1) of the Constitution. Article 12(1) of the Constitution provides as follows;

"All persons are equal before the law and are entitled to the equal protection of the law."

The Petitioner filed this application on the basis that his fundamental rights have been violated in as much as the State Institutions have taken over and managed the subject temple of this application. The above facts, such as the Trusteeship of the Petitioner and 12th Respondent, taking over of the Temple and its temporalities by the LTTE and its control and fleeing of the Petitioner and 12th Respondent against their will are admitted by the 4th Respondent in the Statements of Objection of the 4th Respondent. As in the 6th Paragraph, it was stated that, *"...the 2nd Respondent together with the 4th Respondent and 9th Respondent did not act so as to deny the rights of the Petitioner and the 12th Respondent, but to preserve and protect the temple which was abandoned by the trustees from 1992 till the military took over"*. Further, in paragraph 16, it was stated as *"... the management and trusteeship of Thiru Murikandi Pillayar Temple was taken over by LTTE from the year 1990. Therefore, the Petitioner and the 12th Respondent by flying to India have lost their rights to be trustees."*

Furthermore, in 20th, 21st and 22nd paragraph reads as follows, - *".... Petitioner and the 12th Respondent abandoned the said trusteeship, and thereby allowed the management and control of Thiru Murikandi Pillayar Temple to be temporally managed by the Department of Hindu Religious and Cultural Affairs and to do eventually taken over by the Board of Trustees elected or selected by the worshipers once settlement of displaced people is over."*, *"....as the Petitioner and 12th Respondent abandoned the said trust..."*, *".... as the Petitioner and the 12th Respondent failed to manage the trust and the right to repossess."*

The above quotes, extracted from the Statement of Objections of the 4th Respondent is proof of facts and admissions of the Trusteeship of the Petitioner and 12th Respondent, taking over of the Temple and its temporalities by the LTTE and its control and fleeing of the Petitioner and 12th Respondent against their will are admitted by the 4th Respondent. Further, as submitted above it is clearly established that the 12A Respondent and the Petitioner are the hereditary trustees of the said Temple.

It is an admitted fact that the Department of Hindu Religious and Cultural Affairs has taken over the possession and administration of the Thiru Murikandy Temple and its temporalities after the end of the civil war. The 2nd Respondent, who is the Director of the Department of Hindu Religious and Cultural Affairs, has in her affidavit stated that the Department of Hindu Religious and Cultural Affairs, on or about 9th November 2009, took over the administration of the Temple and appointed a priest to conduct the pooja at the said Temple. Further, as per paragraphs 06, 20 and 22 of the Statements of Objection of the 4th Respondent, in which the 4th Respondent has clearly stated that the Department of Hindu Religious and Cultural Affairs under the Ministry of Cultural Affairs have taken over the temple and its temporalities.

As the 2nd and/or 4th respondents claimed, they did not submit any legal authority to prove that they have power or authority whatsoever under any laws of the country to take over the temple/temples on anyone's request and/or to regulate the administration and management of any temple/temples. The 2nd Respondent is not empowered to take over any temples in any manner whatsoever and for any reasons whatsoever without any legal authority; therefore, I am of the view that the 2nd Respondent had acted in contravening the law and the fundamental rights of Petitioner.

Further, the 4th Respondent had failed to prove in which manner they got the authority to collect the rents from the shops constructed by utilizing the money of public funds offered for charitable purposes of the Temple. As the 2nd Res claimed in her Affidavit,

paragraph 8, the Department of Hindu and Religious Affairs nor the persons administering the Temple are responsible for the purported constructions referred to by the Petitioner and the said constructions, if any, are by private persons.

The 2nd Respondent and the 4th Respondent stated that there were requests from the devotees to take over the temple, and as such, the 2nd Respondent took over the temple and after the resettlement, the temple will be handed over to a committee elected by the devotees. But there are no permanent devotees or worshipers to the said Vazhi Pillayar Temple as it was a temple situated by the side of a road where the devotees are people and passengers using the said road.

As it was submitted by the Respondents, I am of the view that Section 75 or 76 or 112 of the Trusts Ordinance No. 09 of 1917 will not apply to this application since the Petitioner and the 12th Respondent as hereditary trustees of the Thiru Murikandi Pillayar Kovil did not abandoned their rights and responsibilities as trustees willfully but due to the reason of civil war occurred they were forced to leave the area or the country for their protection of lives.

Further, I am of the view that Section 102 of the Trusts Ordinance No. 09 of 1917 will not apply to this application, since this Thiru Murikandi Pillayar Kovil is a "Vazhi Pillayar" which means temple situated by the side of a road where the devotees are people and passengers using the said road.

Decision

In the above premise, I am of the view that the acts and deeds of the Respondents are arbitrary, capricious, contrary to law, without authority and without any legal basis and violated the Fundamental Rights of the 12th Respondent and the Petitioner under Article 12(1) of the Constitution. Therefore, I order the 1st to 11th Respondents or any one or more of them to hand over the management and control of the Thiru Murikandi

Pillayar Kovil, its temporalities and the appurtenant land constituted in the Crown Lease marked and annexed as "P1" of the Petition. Further, I direct the 1st- 11th Respondents not to interrupt the trusteeship of the Temple and the land on which the temple and its temporalities stand.

Application Allowed.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J

I have had the benefit of reading in draft, the judgment proposed to be delivered by my brother Thuraiaraja, J. As I am respectfully not in agreement with it, I have written this dissenting judgment.

I do not wish to set out the factual circumstances in great detail as my brother has done so. I will refer to them to the extent required to explain my conclusions.

The Petitioner claims that he is a hereditary trustee of the Thiru Murikandi Pillayar Kovil (Kovil), which is undoubtedly a venerated place of Hindu religious worship. The State land forming the subject matter of this application was leased in perpetuity to Kathiresar Vythilingam, an ancestor of the Petitioner. It is claimed that the LTTE forcibly took over the Kovil and property around 1990. The Petitioner and his family were forced to flee to India.

After the military defeat of the LTTE, the Kovil and properties have been managed by the 2nd, 4th to 9th and 11th Respondents. The Petitioner is seeking to recover possession and control of the Kovil and properties.

As I held in ***Centre for Environmental Justice (Guarantee) Ltd. v. Anura Satharasinghe, Conservator General and Others*** [C.A. 291/2015, C.A.M. 06.11.2020 at pages 5,14], there is a need to settle down all internally displaced persons, who were displaced due to the war in Sri Lanka, as far as possible in the areas where they were residing. However, this is subject to other overriding concerns and, above all, the respect for the rule of law, which is the foundation of our Constitution.

There is no unequivocal admission by the Respondents that the Kovil and its properties are trust property or that the Petitioner is a hereditary trustee. Admittedly, paragraphs 6, 16, 20, 21 and 22 of the statement of objections of the 4th Respondent may be understood in that sense. Nevertheless, in paragraph 3 thereon, it is clearly claimed that the state land leased in 1880 to Kathiresan Vythilingam has expired. Moreover, it is asserted that Kathiresan Vythilingam or his heirs are not the owners of the said land and cannot claim hereditary trusteeship. Hence, the position of the 4th Respondent on these two issues is equivocal.

The Petitioner relies on a judgment of the Supreme Court of Ceylon (P3). It is one made in an appeal between Velupillai Thirunavukkarasu and Kandappan Sellappan and Chelliah Ponnadurai. The State was not a party to that case. Moreover, it is based on a settlement decree between the parties.

The 2nd Respondent states that the Kovil is been managed by a Board of Trustees since 1992 and has been administered as a public Kovil for more than 18 years as at the time the affidavit was attested in 2010. At the request of the public, the Department of Hindu Religious and Cultural Affairs took over the administration of the Kovil in or about November 2009 and appointed a priest to carry out religious ceremonies. On completion of the resettlement process, the administration of the Kovil will be handed over to a committee comprising the residents of the area.

In this context, it is incumbent on the Court to examine the claim made by the Petitioner that the land forming the subject matter of this application is trust property.

In terms of section 3 of the Trusts Ordinance No. 17 of 1917 as amended ("Trusts Ordinance"), "*trust*" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner.

In ***Fernando v. Sivasubramaniam Aiyer*** (61 NLR 241 at 243), it was held that no particular formula is required by law for the creation of a trust. The requirement of law is that the author should make his meaning clear and evince his intention to create a trust, and the Court will give effect to that intention.

However, there is nothing on the face of the Crown Lease (P1) which indicates that the Crown (then) intended it to form part of a religious trust or trust property. A clear typed copy of P1 has been produced by the State with motion dated 16th May 2018. It is a lease granted in the name of Kathiresan Vayittilingam and his heirs and assigns in free and common socage forever on the payment of an annual quit-rent. In that sense, it appears to be a lease in perpetuity as claimed by the Petitioner. However, it permits the State to enter upon the land for reasons specified therein. In my view, the contents of the said lease do not support the claim of the Petitioner that it is part of a Hindu religious trust.

No doubt, section 107 of the Trusts Ordinance permits the Court to assume an implied trust if it is of the opinion from all the circumstances of the case that the trust, in fact, exists, or ought to be deemed to exist. However, no such material is available before the Court.

Hence, in my view, the application of the Petitioner must fail on the ground that it has not been established that the State land forming the subject matter of this application has been shown to be part of the trust property in question.

Even if one assumes that it is so established, the question of hereditary trusteeship and control over the State land must be addressed.

In examining these two issues, it must be borne in mind that there are two distinct and different modes associated with the devolution of trust property, one in regard to title and the other in regard to the office of trusteeship. The relevant principles have been succinctly stated in ***Kumaraswamy Kurukkal v. Karthigesu Kurukkal* (26 N.L.R. 33)**, ***Karthigasu Ambalawanar v. Subramaniam Kathiravelu* (27 N.L.R. 15)** and ***Letchi Raman Balasunderam and Others v. Kalimuttu Letchi Raman and Others* [(79) I N.L.R. 361]**. They are as follows:

When a person who owns a land dedicates it for the purpose of religious worship or transfers it to a temple, the effect of his doing so is to constitute himself a trustee for a charitable trust for the purpose of the religious worship to be carried out at the temple.

The legal title or dominium remains with the dedicator or the author of the trust and, on his death, passes to his heirs subject to the obligations of the trust, the heirs being constructive trustees.

The legal ownership or dominium does not ordinarily devolve with the office of trustee. Upon the death of the trustee, in whom legal title is vested to the property, the legal ownership does not pass to the new trustee. In the absence of any formal instrument, it will pass to the trustee's heirs, who will hold it subject to the trust.

In so far as the devolution of trusteeship is concerned, Vythilingam Kanagasabai is said to have inherited the trusteeship from Kathiresan Vythilingam. Nevertheless, there is a question mark over the devolution thereafter. It is said that it devolved in equal shares to Kandappar Sellappah, his nephew and Ponnuthurai, his adopted son. How they became the heirs of Vythilingam Kanagasabai is not established.

Moreover, the 14th and 15th Respondents, who are worshippers of the Kovil and the President and Secretary, respectively, of the Kovil Worshippers Council, state that the management of the Kovil should not be left to individuals or to a Government Department of Ministry. They further state that the Kovil should be managed by the Hindus, and they should not be politically involved in any manner. It is claimed that either they or the 12th Respondent are in law entitled to possession, management or control of the Kovil.

For the foregoing reasons, I hold that the Petitioner has failed to establish that the State land in issue is trust property. Neither has he succeeded in establishing that he is an heir of Vythilingam Kanagasabai or a trustee. Hence, I refuse to grant the relief claimed by the Petitioner.

In conclusion, I wish to state that my conclusions are based on the evidence placed before the Court. It should not prevent the Petitioner from seeking to establish both matters before any other Court in appropriate proceedings. In fact, most of the Respondents claim that these matters are more suitable to be determined as provided for in the Trusts Ordinance.

Application dismissed. No costs.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J

I have considered the Judgement of S. Thurairaja P.C. J. and I have also considered the Dissenting Judgement of Janak De Silva J. and I am inclined to agree with the said Dissenting Judgement of Janak De Silva J.

JUDGE OF THE SUPREME COURT