

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

*In the matter of an appeal in terms of Article
128 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

SC Appeal 67/ 2018

CA Application No. 1789/2002 (Writ)

1. Senaka Kumar Weerarattna

2. Lakshman Jayaraj Kumar
Hettiaratchi

Trustees of the German
Dharamaduta Society,
of which the administrative office
is situation at,
No. 14,
Bethesda Place,
Colombo 05.

PETITIONERS

Vs.

1. S. J. Pathirana, formerly and S.
D. A. B. Boralessa, presently
Land Commissioner,
Department of Land Commission,
No. 07,

Gregory's Avenue,
Colombo 07.

2. Lalith Kannangara, formerly and G. Imaduwa, presently Provincial Land Commissioner (Western Province),
Kachcheri Complex,
Dam Street,
Colombo 12.
3. George Kulatunga, formerly and M. B. M. Somaratne, presently divisional Secretary,
Divisional Secretariat,
Thimbirigasyaya,
No. 7,
Vajira Lane,
Colombo 05.
4. D. L. T. Mendis,
President,
Sri Kalyani Dharma Peramuna,
No. 417,
Buddhaloka Mawatha,
Colombo 07.
5. M. P. Perera
Jt. Secretary,
Sri Kalyani Dharma Peramuna,
No. 417,
Buddhaloka Mawatha,

Colombo 07.

6. K. M. Ariyaratne,
Treasurer,
Sri Kalyani Dharma Peramuna,
No. 417,
Buddhaloka Mawatha,
Colombo 07.

7. Ven. Mirihana Nanda Thero,
Member of the Board of
Trustees,
Sri Kalyani Dharma Peramuna,
No. 417,
Buddhaloka Mawatha,
Colombo 07.

8. Piyadasa Samaraweera
Siriwardhana,
Member of the Board of
Trustees,
Sri Kalyani Dharma Peramuna,
No. 417,
Buddhaloka Mawatha,
Colombo 07.

9. Merigngnage Padmananda,
Member of the Board of
Trustees,
Sri Kalyani Dharma Peramuna,
No. 417,
Buddhaloka Mawatha,

Colombo 07.

RESPONDENTS

AND NOW BETWEEN

1. Senaka Kumar Weeraratna
2. Lakshman Jayaraj Kumar
Hettiaratchi

Trustees of the German
Dharamaduta Society, of which
the administrative office is
situated at,
No. 14,
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PETITIONER-APPELLANTS

Vs.

1. S. J. Pathirana, formerly and
S. D. A. B. Boralessa, presently
Land Commissioner,
Department of Land Commission,
No. 07,
Gregory's Avenue,
Colombo 07.

1(a) R. P. R. Rajapaksha

Land Commissioner,
Department of Land Commission,
No. 07,
Gregory's Avenue,
Colombo 07.

1(b) G. D. Keerthi Gamage

Land Commissioner,
Department of Land Commission,
No. 07,
Gregory's Avenue,
Colombo 07.

2. Lalith Kannangara, formerly and
G. Imaduwa, presently Provincial
Land Commissioner (Western
Province),
Kachcheri Complex,
Dam Street,
Colombo 12.

2(a) E. A. R. Renuka

Provincial Land Commissioner
(Western Province),
Kachcheri Complex,
Dam Street,
Colombo 12.

2(b) Nirosha Deepani Ishwara

Provincial Land Commissioner
(Western Province),
Kachcheri Complex,

Dam Street,
Colombo 12.

3. George Kulatunga, formerly and
M. B. M. Somaratne, presently
Divisional Secretary,
Divisional Secretariat,
Thimbirigasyaya,
No. 7,
Vajira Lane,
Colombo 05.

3(a) Geetamani Karunarathna
Divisional Secretary,
Divisional Secretariat,
Thimbirigasyaya,
No. 7,
Vajira Lane,
Colombo 05.

3(b) Priyantha Dissanayaka
Divisional Secretary,
Divisional Secretariat,
Thimbirigasyaya,
No. 7,
Vajira Lane,
Colombo 05.

4. D. L. T. Mendis,
President,
Sri Kalyani Dharma Peramuna,
No. 417,

Buddhaloka Mawatha,
Colombo 07.

4(a) M. B. Vickramapala
President,
Sri Kalyani Dharma Peramuna,
No. 417,
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Colombo 07.

RESPONDENT-RESPONDENTS

Before : **P. PADMAN SURASENA, J.**
A. L. SHIRAN GOONERATNE, J. &
MAHINDA SAMAYAWARDHENA, J.

Counsel : Shantha Jayawardena with Ms. Thilini Vidanagamage for
Petitioner-Appellants instructed by Sanjeewa Kaluarachchi.

M. Gopallawa, SDSG for 1(a), 2(a) and 3(a) Respondent-
Respondents.

Uditha Egalahewa, PC with Damitha Karunarathna for 4th to 9th
Respondent-Respondents.

Argued on : 29-04-2024

Decided on : 13-09-2024

P. PADMAN SURASENA, J.

The two Petitioner-Appellants (hereinafter sometimes referred to as the Petitioners) who filed the instant Writ Petition in the Court of Appeal are two of the Trustees of *German Dharmaduta Society*. Although the Petitioners in their Petition have admitted the existence of three other Trustees, the Petitioners have stated that the other three Trustees are abroad. Therefore, the Petitioners have stated that they are the only Trustees of said *German Dharmaduta Society* remaining at present in Sri Lanka. They claim that they are in-charge of, and looking after, the interests of said *German Dharmaduta Society*.

According to the Petitioners, said *German Dharmaduta Society* was earlier known as *Lanka Dharmaduta Society* and the Trustees of *Lanka Dharmaduta Society*, in the year 1955, had applied to the Land Commissioner to obtain the land in extent of 1 Acre 4.65 Perches situated at No. 417, Buller's Road, Colombo 07 on a 99-year lease. The Land Commissioner in a Notification published under the Regulation No. 21 (2) of the Crown Lands Regulations 1948, in The Ceylon Government Gazette No. 10,847 dated 7th October 1955, had given notice of the said intended lease to be granted to *Lanka Dharmaduta Society*. The Petitioners have produced this Gazette Notification, marked **X 2**.

Acting in accordance with the Notification **X 2**, the District Surveyor on the direction of the Government Agent-Colombo, had handed over the possession of the said land, to the then President of *Lanka Dharmaduta Society*. The Petitioners have produced the relevant letter handing over the possession of the said land, addressed to the Honorary Secretary of *Lanka Dharmaduta Society*, dated November 1955, marked **X 3**. This letter has been signed by the Government Agent-Colombo District.

According to the Petitioners, it was on 8th May 1957, that *Lanka Dharmaduta Society*, by a resolution passed at a special general meeting and with the prior approval of its

Trustees, had changed its name to *German Dharmaduta Society*. According to the Petitioners, it is through that process that the Trustees of *Lanka Dharmaduta Society* had become the Trustees of *German Dharmaduta Society*. It is on that basis that the Petitioners claim that all the movable and immovable properties and proprietary rights of *Lanka Dharmaduta Society* had become vested in the hands of the Trustees of *German Dharmaduta Society*.

Although the Petitioners in their Petition filed in the Court of Appeal, had narrated a sequence of some events relevant to the internal working arrangements of *German Dharmaduta Society*, in view of the questions of law in respect of which this Court has granted Special Leave to Appeal, it would not be necessary for me to consider those aspects in full relating to the prevailed internal working arrangements of *German Dharmaduta Society*, for the final disposal of this Appeal. It would suffice for me to state in this Judgement that there have been certain disputes between the Petitioners and the entity identified as *Sri Kalyani Dharma Peramuna*.

The Petitioners themselves have claimed that said *Sri Kalyani Dharma Peramuna* had forcibly taken over the possession of the premises in which *German Dharmaduta Society* had conducted its affairs. Admittedly, this was as far back as 1992.¹

The 3rd Respondent-Respondent (1st, 2nd and 3rd Respondent-Respondents hereinafter sometimes referred to as 1st, 2nd and 3rd Respondents respectively), who is the Divisional Secretary, by his letter dated 18-06-2001, addressed to the Honorary Secretary of *German Dharmaduta Society*, had informed the Honorary Secretary of *German Dharmaduta Society* that it would not be possible to renew the lease given in respect of the aforesaid premises to *German Dharmaduta Society* any further. The 3rd Respondent (Divisional Secretary), in the said letter dated 18-06-2001, marked **X 17**, has cited following reasons:

(a) Neither German Dharmaduta Society nor anyone else connected to that Society is in possession/ ownership of the said property;

¹ Paragraphs 19 and 21 of the Petition dated 14-10-2002, filed in the Court of Appeal.

- (b) *Neither German Dharmaduta Society nor anyone else connected to that Society is engaged in developing this property;*
- (c) *Neither German Dharmaduta Society nor anyone else connected to that Society is engaged in either developing or maintaining the buildings on the property;*
- (d) *Sri Kalyani Dharma Peramuna while being currently in possession of the property is engaged in developing the land, maintaining the buildings;*
- (e) *Sri Kalyani Dharma Peramuna and its membership comprising both the clergy and laity are utilizing the buildings on the property and have established themselves on the site.*

According to the letter **X 17**, it can be seen that the Government Agent Colombo on 29-11-1955, had only issued a temporary permit for the Society to occupy the relevant premises. Admittedly, *German Dharmaduta Society* had been paying annual rents in respect of this lease. It was in that backdrop that the 1st Respondent Land Commissioner, had written to the 3rd Respondent (Divisional Secretary of Thimbirisgasyaya) by his letter dated 01-06-2001, produced by the 1st Respondent marked **1 R 4**, to take necessary steps to revoke the temporary permit issued to *German Dharmaduta Society*. It is important to note that the 1st Respondent Land Commissioner in the said letter (**1 R 4**) has highlighted the fact that *German Dharmaduta Society* or its Trustees are not in possession of this premises anymore.

The 1st Respondent had thereafter published in the Government Gazette dated 28-06-2002, a notice of his intention to lease out the said premises to *Sri Kalyani Dharma Peramuna* at the request of the Board of Trustees of *Sri Kalyani Dharma Peramuna*. The Petitioners have produced the said Gazette Notification dated 28-06-2002, marked **X 22**.

It is in the above backdrop, that the Petitioners claim in their Petition before the Court of Appeal that they as Trustees of *German Dharmaduta Society* were aggrieved by the following decisions of the 1st, 2nd and 3rd Respondents who are respectively the Land Commissioner, the Provincial Land Commissioner and the Divisional Secretary of

Thimbirisgasyaya. (The Petitioners have set out those decisions in Paragraph 32 of their Petition filed in the Court of Appeal).

- (i) *The decision of the 1st, 2nd and 3rd Respondents to cancel and/or not to renew the said lease with German Dharmaduta Society for the year 2001/2002; and*
- (ii) *The decision of the 1st, 2nd and 3rd Respondents to grant a lease of the said allotment of land described in the said Gazette Notification dated 28th June 2002, to Sri Kalyani Dharma Peramuna.*

The Petitioners in their Petition before the Court of Appeal, had claimed that the aforesaid decisions are unlawful, ultra vires and in breach of the Principles of Natural Justice. It was on that basis that the Petitioners had prayed from the Court of Appeal: firstly, a Writ of Certiorari to quash the afore-stated decisions of the 1st, 2nd and 3rd Respondents contained in the said documents, marked 'X 17' and 'X 22' respectively; secondly, a Writ of Mandamus to compel the 1st, 2nd and 3rd Respondents to recognise the Petitioners and the other three Trustees as the lawful continuing lessees of the said land and premises.

After the conclusion of the argument, the Court of Appeal, having considered the material adduced before it, by its Judgement dated 29-07-2010, had proceeded to dismiss the Petition of the Petitioners.

Being aggrieved by the Judgment dated 29-07-2010, pronounced by the Court of Appeal, the Petitioners had filed the Special Leave to Appeal Petition relevant to this Appeal before this Court. This Court upon that Petition being supported before it, had decided to grant Special Leave to Appeal on the following two questions of law which are the questions of law set out at Paragraphs 10(a) and 10(b) of the Petition, dated 08-09-2010, filed in the Supreme Court. They are reproduced below in verbatim:

- (a) *Did the Court of Appeal err in law in failing to take into account, that by reason of long period of possession and improvements effected, the Petitioners were entitled to be heard prior to an adverse decision being*

taken and as such the determination to lease out the land in issue to the Sri Kalyani Dharma Peramuna is in violation of the Principles of Natural Justice?

(b) Did the Court of Appeal err in law in failing to appreciate that the decision to lease out the land in issue to the Sri Kalyani Dharma Peramuna is unreasonable and arrived at by failing to take into account the relevant circumstances?

In the course of the hearing, it became clear to Court that *German Dharmaduta Society* had not continued either its possession or its activities in this premises since 1992. This could be seen from several averments in Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 of the Petition filed before the Court of Appeal. Most importantly, in Paragraph 21 of the Petition filed before the Court of Appeal, the Petitioners themselves have admitted that the 1st Respondent Commissioner of Lands on or about September 1992 had taken steps to conduct an inquiry after meeting representatives of both *German Dharmaduta Society* and *Sri Kalyani Dharma Peramuna*. The Petitioners themselves have produced the report of the said inquiry (dated 06-11-1992) submitted by the Commissioner of Buddhist Affairs to the Commissioner of Lands, marked **X 12**. The 4th to 9th Respondents named in the Petition filed by the Petitioners before the Court of Appeal, are representatives of *Sri Kalyani Dharma Peramuna* to whom the 3rd Respondent had handed over the possession of this premises. The document, marked **3 R 3**, which is a paper advertisement, published in the Daily News on 07-03-2000, also confirms that *German Dharmaduta Society* had remained inactive for several years. It is worthwhile reproducing the said short paper advertisement which is as follows:

GERMAN DHARMADUTA SOCIETY

It is intended to revive the German Dharmaduta Society which was founded by Mr. Asoka Weeraratna in 1952. This Society which sponsored the first Theravada Buddhist Mission to Germany in 1957 has remained inactive for several years.

All members of the Society including Founder Members, Life Members and Ordinary Members are kindly requested to send in their names, addresses and telephone numbers to the following address: Dr. Granville Dharmawardene, 152, Kynsey Road, Colombo 7, before the 11th of March.

Dr. Granville Dharmawardene,

Chairman,

Working Committee for the Revival of the German Dharmaduta Society.

Even the Petitioners in their Petition have admitted that *Sri Kalyani Dharma Peramuna* had taken the possession of the premises on 17th August 1992. The Petitioners have so mentioned in paragraph 19 of their Petition filed in the Court of Appeal, in the following manner:

Thereafter in or about August 1992 the German Dharmaduta Society selected two monks for the purpose of training in Dharmaduta work and thereafter to be sent to Germany. They were given accommodation in the Sangawasaya on August 17, 1992. On the same date while some members of the Board of Management of the German Dharmaduta Society were holding a meeting in the office and library building a group of thugs including several monks at the instigation of Ven. Mirihana Nanda assaulted them and physically ejected the Board of Management Members of the German Dharmaduta Society from the office and the library building, which was in the exclusive possession of the German Dharmaduta Society until then. The two monks who were found accommodation in the Sangawasaya were also chased away by these rowdy elements. They also removed the name board of the German Dharmaduta Society which was placed on the lawn facing the road, and replaced it with the name board of the 'Sri Kalyani Dharma Peramuna' while screaming that "there is no more German Dharmaduta Society, it is dead now".

The fact that the Petitioners since that date had not taken any action with regard to their alleged dispossession could also be seen from paragraph 20 of their Petition filed in the Court of Appeal, which is as follows:

The aforesaid incident was reported to the Cinnamon Gardens Police on the same day but nothing eventuated out of that complaint with the Police taking no action. Thereafter the German Dharmaduta Society being a Buddhist organization made representations to the Commissioner of Land and the other authorities to settle this dispute amicably, without resorting to litigation.

The Petitioners have further asserted this position in Paragraph 22 of the Petition filed in the Court of Appeal also by stating thus: "*However, all these attempts for an amicable settlement failed, because the Sri Kalyani Dharma Peramuna was not prepared to vacate the buildings constructed by the German Dharmaduta Society.*"

In Paragraph 25 of the Petition, the Petitioners have admitted the issuance of the letter dated 18th June 2001 (**X 17**). Petitioners have also admitted the fact that the 3rd Respondent in the said letter had given *German Dharmaduta Society* an opportunity to appeal against the decision mentioned therein, before 31st July 2001. It is pertinent to note that *German Dharmaduta Society* had indeed submitted to the 3rd Respondent, a comprehensive letter (dated 25th July 2001) as an appeal against the said decision.²

In light of the material adduced by both the Petitioners and the Respondents, I am unable to come to a different conclusion than the conclusion that *German Dharmaduta Society* had neither been in possession nor conducted its activities in this premises for a long period of time. Therefore, it is justifiable for the 3rd Respondent Divisional Secretary to have issued the letter dated 18-06-2001 (**X 17**) informing the Honorary

² Produced by the Petitioners, marked **X 18** in the Court of Appeal.

Secretary of *German Dharmaduta Society* that it would not be possible to renew the lease of this premises for the year 2001/2002, in favour of *German Dharmaduta Society*.

The question of law set out in paragraph 10(a) of the Petition revolves around the issue whether the Respondents had breached the Rules of Natural Justice in particular the Rule of Audi Alterum Partem. Thus, the next issue I have to consider is whether the 1st to 3rd Respondents have breached the Rules of Natural Justice by not giving a hearing to the Petitioners before making the impugned decisions. At the outset, I observe that the 1st Respondent Commissioner of Lands, in the Gazette Notification (**X 22**), while notifying to the public that the Board of Trustees of *Sri Kalyani Dharma Peramuna* had requested a lease of the state land relevant to this case, had also called for any objections from any concerned party before taking a decision to grant the said request. This is mentioned in Clause 4 of **X 22** which is as follows:

"If acceptable reasons are not submitted to me in writing within six weeks of the date herein below to the effect that this land must not be given on lease, the land will be leased out as requested."

This notification has been published on 28-06-2002.

In response to the above Gazette Notification, *German Dharmaduta Society* had submitted their objections by letter dated 27-08-2002 (marked **X 23**). Although there are five reasons given in **X 23**, I am unable to see any acceptable basis for such objection amongst those reasons.

The Petitioners themselves have admitted in paragraph 30 of the Petition filed in the Court of Appeal, the fact that the Petitioners were aware of the Gazette Notification **X 22** dated 28-06-2002 and the fact that *German Dharmaduta Society* had responded to the said notice in the said Gazette Notification setting out their objections.

Thus, it is clear that the 1st Respondent before making the decision to grant the lease in favour of *Sri Kalyani Dharma Peramuna*, had ensured that an opportunity was given, not only to the Petitioners, but to all concerned parties by way of the Gazette Notification (**X 22**) to submit any objections thereto, for consideration. Indeed, as has been already mentioned above, the Petitioners admittedly, have submitted their objections in that regard, to the 1st Respondent. In these circumstances, I have to hold that the 1st Respondent has sufficiently complied with the Rule of *Audi alterum partem*. Therefore, I answer the question of law set out in paragraph 10(a) of the Petition in the negative.

As has already been mentioned above, the two Petitioners have admitted in their Petition that the majority of the members of the Board of Trustees are abroad. While there is no evidence placed before Court by the Petitioners, to convince Court about the presence of the entity by the name of *German Dharmaduta Society* in Sri Lanka, all the evidence thus far placed by the Petitioners themselves, unequivocally point to the fact that the entity by the name of *German Dharmaduta Society* had ceased to operate in Sri Lanka long time ago. Moreover, the Petitioners are just two members of the Board of Trustees of *German Dharmaduta Society* which consists of a total of five members. Therefore, one would not have any convincing evidence in the first place to satisfy that the Petitioners who are residents of the country would still have the necessary locus standi to challenge the decision of the 1st Respondent, claiming to act on behalf of the said *German Dharmaduta Society*.

I have already adverted to above, the reasons given by the 1st Respondent not to renew the temporary permit issued to *German Dharmaduta Society* after 2001. Petitioners have not been able to satisfy Court that those reasons are invalid reasons. Indeed, what has been established by the Petitioners is the validity of those reasons for the impugned decisions taken by the 1st Respondent both in **X 17** and **X 22**. Thus, in those circumstances, I have to answer the question of law set out in Paragraph 10(b) of the Petition dated 08-09-2010, also in the negative. For the above reasons, I have no basis to interfere with the Judgement dated 29-07-2010 pronounced by the Court of Appeal which dismissed the Writ Petition filed by the Petitioners. I therefore,

affirm the Judgment of the Court of Appeal dated 29-07-2010 and proceed to dismiss this appeal with costs.

JUDGE OF THE SUPREME COURT

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT