

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

1. Kuruppu Arachchige Vincent
Lio Dharmarathne,
2. Kuruppu Arachchige Erandi
Upuli Dharamarathne
3. Kuruppu Arachchige Udari
Nedishika Dharmarathne

No. 72/11, Sakvithi Uyana,
Jayamalpura,
Gampola.

Petitioners**SC /FR/ Application No. 189/2020****Vs,**

1. Divisional Secretary,
Divisional Secretariat,
Udawalpala, Gampola.
2. District Secretary,
District Secretariat,
Kandy.
3. Grama Niladhari,
116, Jayamalpura Division,
Udawalpala Divisional Secretary Division,
Gampola.
4. Deputy Election Commissioner,
District Election Office,
Kandy.
5. Senior Surveyor Superintendent,
Divisional Survey Office,
Kandy.

6. Surveyor Superintendent,
Divisional Survey Office,
Doluwa, Gampola.
7. Regional Coordinating Officer,
Human Rights Commission,
Division Office, 8/1,
Primrose Road,
Kandy.
8. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Justice Vijith K. Malalgoda PC,
Justice A.L. Shiran Gooneratne,
Justice Janak De. Silva,

Counsel: Three Petitioners appeared in person
Viveka Siriwardena, PC ASG with Sureka Ahmed, SSC for the Hon. Attorney
General

Argued on: 16.02,2024, 05.04.2024

Judgment on: 09.08.2024

Vijith K. Malalgoda PC J

The three Petitioners namely Kuruppu Arachchige Vincent Lio Dharmarathne, Kuruppu Arachchige Erandi Upuli Dharmarathne, and Kuruppu Arachchige Udari Nedishika Dharmarathne had come before this Court alleging the violation of their Fundamental Rights by failing to register the inmates of the two houses built by the 2nd and the 3rd Petitioners in Jayamalapura Grama Niladhari Division

in the Udapalatha Divisional Secretary Division and thereby deprived the voting rights of the Petitioners and the spouses of the 2nd and 3rd Petitioners.

The Petitioners appeared in person before this Court and supported the granting of leave to proceed on 4th September 2020. This Court having considered the material placed by the Petitioners granted Leave to proceed for the alleged violations of the Fundamental Rights guaranteed under Articles 12 (1), 12 (2), and 14 (1) (h) of the Constitution.

The Respondents having raised two preliminary objections concerning the maintainability of this application, took up the position that the Fundamental Rights of the Petitioners had not been violated by any of the Respondent, as alleged by the Petitioners.

As the first objection, the Respondents submitted that the Petitioners have failed to allege any specific violation in the papers filed before this Court. It was further submitted as the second objection, that the Petitioners have failed to add necessary parties and therefore the Petitioners are not entitled to claim relief from the Respondents who are before this Court.

Out of the two preliminary objections, the second objection concerning the necessary parties can only be considered after analyzing the merits of this application and therefore the said objection will be considered by me towards the end of this judgment.

As already referred to in this judgment, the three Petitioners appeared in person before this Court on every occasion the case was called in open Court. As further observed by this Court, the papers filed before this Court, alleging the violation of their Fundamental Rights were filed under Article 17 read with 126 (2) by the three petitioners without obtaining any legal assistance. In this regard we should consider the relevant provisions in the Constitution which read as follows;

Article 17 Every Person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter

Article 126 (2) Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an Attorney at law

on his behalf, within one month thereof in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two Judges.

As observed by this Court the above provisions of the Constitution provide for this Court to grant leave to proceed when a Petitioner comes before this Court either by himself or represented by an Attorney at law and complains before this Court by way of a petition in accordance with such rules of this Court of any infringement of the Petitioners fundamental rights by one or more of the Respondents.

It is also observed that not less than two judges of this Court are empowered under Article 126 of the Constitution to consider the material placed before this Court by the Petitioners and decide the granting of leave to proceed or not.

Rule 44 of the Rules of this Court deals with the provisions relevant to Article 126 of the Constitution and as submitted by the learned ASG, the Petitioners have failed to comply with Rules 44 (1) (a) and (d) when invoking the jurisdiction of this Court. I would like to reproduce the relevant provisions as follows;

- 44 (1) (a) Set out in his petition a plain and concise statement of the facts and circumstances relating to such right and the infringement or imminent infringement thereof, including particulars of the executive or administrative action whereby such right has been, or is about to be infringed, where more than one right has been, or is about to be infringed, the facts and circumstances relating of each such right and the infringement or imminent infringement thereof shall be clearly and distinctly set out, he shall also refer to the specific provisions of the Constitution under which any such right is claimed.
- (d) Shall specify in such petition the relief or redress prayed for including the grant of leave to proceed in the first instance

The implementation of the above provisions found in the Supreme Court Rules was the subject matter in several applications filed before the Supreme Court and except on a few occasions, this Court preferred to follow strict compliance with the above rules subject to the provisions found in Rule 44 (7) of the Supreme Court Rules.

In the case of ***Leelawathie Manike vs. Dharmasinghe Bandara and Another SC Appeal 172/2011*** this Court took up the view that “Rules should not obstruct the path of justice”

In the case of ***S.P. Gupta vs. Union of India AIR 1982 SC 149, 234 Bhagwati J*** had observed the compliance of rules as follows;

“It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 (Indian Constitution) and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a hand- maiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of public minded individual as a writ petition and act upon it.”

However, as observed by this Court Rule 44 (7) of the Supreme Court Rules had identified the situation referred to in the case of ***S.P. Gupta vs. Union of India (Supra)*** and provided as follows;

- 44 (7) (b) if it appears to such Judge that such complaint discloses *prima facie* an infringement, or imminent infringement of a fundamental right or a language right of any person, whether such person be the complainant or not he may in his discretion, direct that such complaint be treated as a petition in writing under and in terms of Article 126 (2) notwithstanding non-compliance with any of the foregoing provisions of this rule if he is satisfied that
- i) Such person does not or may not have the means to pursue such complaint in accordance with the provisions of this rule and
 - ii) Such person has suffered or may suffer, substantial prejudice by reason of such infringement, or imminent infringement

and may further direct the Registrar to refer such complaint to the Legal Aid Commission.....

In the case of ***P. Thavarajanie vs. Kanaganayagam Acting Principal, College of Nursing Ampara and Others SC FR Application No SC Special/04/2014*** SC minute dated 04.08.2017 Aluwihare PC J whilst referring to another decision by Dr. Amarasinghe J and to the decision in the case of ***Leelawathie Manike vs. Dharmasinghe Bandara*** (*supra*) had observed as follows;

..... *The Petitioner had submitted further that Rule 44 (1) of SC Rule is not mandatory, but only directory and had referred to the decision in SC Appeal 72/2011 Leelawathie Manike vs. Dharmasinghe Bandara and Another, where the Court remarked that “Rules should not obstruct the path of justice”*

“I wish however to rely on the pronouncement made by Justice Dr. Amarasinghe in the case of Fernando vs. Sybil Fernando 1997 (3) Sri LR page 1 wherein Justice Amarasinghe, signifying the importance of procedural law, stated,

There is the substantive law and there is the procedural law, procedural law is not secondary. The two branches are complementary the maxim ubi ius, ibi remedium reflects the complementary character of Civil Procure Law. The two branches are also independent, Halsbury (ibid) points out that the interplay between the two branches often conceals what is substantive and what is procedural. It is by the procedure that the law is put into motion, and it is procedural law which puts the life into substantive law, gives it remedy and effectiveness, and brings it into being.”

It was the submission of the learned Senior State Counsel that when the fresh petition was filed by the Attorney at Law for the Petitioner, it no longer can be treated as an informal complaint which attracts the part of Rule 44 (7).

It was further submitted that when such permission was granted to file a fresh petition, he was expected to act with due diligence and was required to comply with the applicable Rules and therefore the prayer to petition should have specified the threshold relief or redress including the grant of leave to proceed in the first instance, in terms of Rule 44 (1) (d) of the Supreme Court Rules.

I am of the view that compliance with the Rule referred to is mandatory and the petition filed on behalf of the Petitioner dated 9th September 2014 is defective for the reason set out above. The Petitioner had failed to offer any explanation nor has the Petitioner averred any reason for the default.

I am of the view that even in instances where the epistolary jurisdiction of this Court is invoked, once the Court grants permission to formalize the documents parties are required to comply with the applicable rules and the procedure.”

When considering the above, it is clear that this Court is mindful of the circumstances under which the Petitioner had come before this Court and the extent to which the Rules apply to each case. In the case ***P. Thavarajanie vs. Kanaganayagam*** (*supra*) this Court had permitted the petitioner to file fresh papers before the objection was raised. However, in the instant case, the Court was satisfied with the material submitted by the Petitioners when the matter was supported to leave and granted leave to proceed for alleged violations under Articles 12 (1), 12 (2) and 14 (1) (b) of the Constitution.

Even though the Court could have acted under Rule 44 (7) and referred the matter to the Legal Aid Commission, the Court was satisfied that the Petitioners had submitted sufficient material for the Court to act upon under the provisions of Rule 44 (7) and to treat the petition filed before this Court under Article 126 (2) of the Constitution.

In the said circumstances this Court is satisfied that the Petitioners have not violated Rules 44 (1) (a) and (d) when invoking the jurisdiction of this Court under Article 17 read with Article 126 (2) of the Constitution. I therefore overrule the said preliminary objection.

As revealed before this Court from the submissions made by the 1st Petitioner and the documents placed before this Court, one of the main grievances complained before this Court was the failure by the authorities to register the two premises bearing Nos. 72/11 and 72/11A, Sakvithi Uyana, Jayamalapura, Gampola under Udapalatha Divisional Secretary’s Division and register the three Petitioners and the spouses of the 2nd and 3rd Petitioners in the electoral register of Jayamalapura Grama Niladhari Division which comes within the Gampola Electoral District.

As submitted by the 1st Petitioner, he was residing with his family in Athgala East Grama Niladhari Division, and two of his daughters namely Erandi Upuli Dharmarathne and Udari Nedishika

Dharmarathne (2nd and 3rd Petitioners) had purchased two adjoining plots of land from its previous owner Suranga Sanjeewa Abeyaratne. The Petitioners have produced marked P-1 a certified copy of Surveyor General's plan ක. සී. 320016 (zone 1) and according to the said plan, the plot of land belonging to the two Petitioners' predecessor in title was identified as lot No. 333. In the said plan, the following details were provided about the area referred to in the plan.

Village- Jayamalapura

Grama Niladhari Division- Jayamalapura

Divisional Secretary's Division- Udapalatha

District- Kandy

Surveyor General had divided lot 333 into two blocks and after the said sub-division, lot 333 was divided as lots 430 and 431, and title registration certificates on both lands were issued to the 2nd and the 3rd Petitioners. As per the two title Registration certificates produced marked P-4 and P-5, the location of the two lands were identified as follows;

“මධ්‍යම පළාතේ මහනුවර දිස්ත්‍රික්කයේ උඩපලාත ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ 1116 ඡයමාලපුර ග්‍රාමනිලධාරී කොට්ඨාශයේ ඡයමාලපුර ගමෙහි පිහිටියා වූද,.....”

As further submitted by the Petitioners, the 2nd and the 3rd Petitioners had preferred building applications to the Urban Council Gampola, and both plans were approved by the said Urban Council and the two Petitioners have constructed two houses in those lands. Construction of the two houses by the 2nd and the 3rd Petitioners concluded by 2014 and the Petitioners went for occupation of two houses in the year 2015.

After moving to the said houses the 2nd and the 3rd Petitioners met the Grama Niladhari Jayamalapura and requested for the electoral registration from the two houses they built in the village of Jayamalapura. However, the Grama Niladhari Jayamalapura had refused to entertain the applications of the two Petitioners and informed them that their registration should come within Athgala East Grama Niladhari Division under the Ganga Ihala Korale Divisional Secretary's Division.

By this time the 1st Petitioner who was with the rest of his family in Athgala East Grama Niladhari Division too had moved to the house of the 2nd Petitioner and started living with the family of his

daughter, the 2nd Petitioner. The Petitioners have made several appeals to the Divisional Secretary Udapalatha requesting the Divisional Secretary to intervene and Register the Petitioners under the Udapalatha Divisional Secretary's Division as per the identification made in the Title Registration documents issued to them and the cadastral plan 320016 prepared by the Surveyor General.

As further submitted by the Petitioners, they are paying rates to the Gampola Urban Council with regard to the two houses built by the 2nd and 3rd Petitioner up to now but the authorities have refused to register the three Petitioners and the spouses of the 2nd and 3rd Petitioners under Jayamalapura Grama Niladhari Division for the Gampola Electoral Division.

The Petitioner had made several complaints to the authorities, including the petitions sent to the Presidential Secretariat, Prime Minister's Office, and the Human Rights Commission, but on every occasion a complaint was made, an inquiry was conducted but there was no finality to the grievance complained by the Petitioners to the Authorities. As a last resort, the Petitioners have come before the Supreme Court and complained their grievance to this Court. As further complained by the Petitioners some administrative matters such as issuing permits to fell trees, and transport soil were entertained by the Udapalatha Divisional Secretary's Office initially but after the Petitioners filed the instant application and invoked the jurisdiction of this Court, the said office had refused to entertain new applications submitted by them. Whilst complaining the above, the Petitioners have produced several documents to establish that whenever an application is refused by the Udapalatha Divisional Secretary's Office, the petitioners have made a further request to the Ganga Ihala Korale Divisional Secretary's Office, but the said request was also turned down by the said office informing that they do not have the jurisdiction to entertain such application.

As further complained by the Petitioners, even though their request to register themselves from the two houses they live in Jayamalapura, their names were included under No.3 Athgala Janapadaya, in the Athgala East Grama Niladhari Division, for the Nawalapitiya Electoral Division. However, the names of the two spouses of the 2nd and 3rd Petitioners were not included in the electoral register even under the above address informing that they do not live in No. 3 Athgala Janapadaya and thereby deprived their voting right to the Presidential Election held in the year 2019.

While raising two preliminary objections, the Respondents have denied the allegations leveled against them in the objections filed before this Court. The 1st, 4th, and 5th Respondents tendered affidavits explaining their position before this Court.

The 4th Respondent who is the Deputy Commissioner of Elections in charge of Kandy District while explaining his position has taken up, that the electoral boundaries and the administrative boundaries do not always tally with each other and the electoral boundaries are not decided by the election commission but it is decided by the delimitation commission which is not a party before this Court.

4th Respondent had produced a block plan bearing No. 2606 prepared by Ratnayake Licensed Surveyor marked 4R3 and had submitted that the blocks of lands depicted as 10, 11, 21, 22, 23, 24, G, and 25 which are situated south of the road which runs across Jayamalapura, does not come within the Gampola Urban Council limits but it comes under Ganga Ihala Korale Pradeshiya Saba Division, since the Urban Council limits runs through the road as shown from the dotted line in the said plan. He has also produced two letters written by him to the Gampola Urban Council and Ganga Ihala Korale Pradeshiya Sabawa Marked 4R3 inquiring whether there are changes to the limits as shown in R-3 but both the Urban Council and the Pradeshiya Saba had confirmed that the demarcation of the Urban Council limits found in 4R3 had not changed. (4R-5 and 4R-6)

The 5th Respondent under whose authority the document marked P-1 the cadastral map 320016 was prepared, had also tendered an affidavit before this Court. According to the 5th Respondent, the map in question was prepared for implementing the provisions of the Title Registration Act No. 21 of 1998 and admits P-1 as the relevant cadastral map prepared for Jayamalapura and lot 333 is the lot in question and the said map was prepared only to issue Title Certificates but it was not prepared to demarcate the boundaries of the two local government institutions namely Gampola Urban Council and Ganga Ihala Korale Pradeshiya Sabawa. However, in his affidavit, he admits that, as per the cadastral map 320016 Jayamalapura including lot 333 comes within the Udapalatha Divisional Secretary's Division and the Grama Niladhari Division of Jayamalapura but the said identification made on the ground cannot be connected to the demarcations already made in deciding the electoral boundaries by the delimitation commission.

Since the Petitioners were silent on the position taken up by the 4th Respondent, that several blocks of land including the two blocks belonging to the 2nd and the 3rd Petitioners situated south of the road that runs across Jayamalapura village do not come within the Gampola Urban Council area, the Court questioned the Petitioners as to the correctness of the above submission.

While responding to the above, the Petitioners took up the position that, except for the 2nd and the 3rd Petitioners, all the other residents who occupy the plots of lands situated south of the road that runs across Jayamalapura were residing in those plots before the implementation of the provisions of the Title Registration Act No. 21 of 1998. However, at the time the two Petitioners purchased lots 430 and 431 they were issued with the Title Registration Certificates identifying the Grama Niladhari Division and the Divisional Secretary's Division as Jayamalapura Grama Niladhari Division and Udapalatha Divisional Secretary's Division.

As submitted by the Petitioners, with the above title Certificates the Petitioners were forced to register their lands at Gampola Urban Council since the request made to Ganga Ihala Korale Pradeshiya Sabawa to register the land was turned down by the said Pradeshiya Sabawa mainly due to the details provided in the Title Registration Certificate.

The 2nd and the 3rd Petitioners continued with obtaining all necessary approvals from the Gampola Urban Council and the Council too had entertained their request and up to now the 2nd and the 3rd Petitioners pay annual rates to the Gampola Urban Council.

When analyzing the material already discussed in this judgment, it is clear that one of the main reasons for the grievance complained by the Petitioners before this Court, was the implementation of the provisions of the Title Registration Act No. 21 of 1998 and identifying the two blocks of land under Jayamalapura (including lot 333 and lots 430 and 431 after subdivision) under Udapalatha Divisional Secretary's Division and Jayamalapura Grama Niladhari Division.

It is also evident before this Court that when the Surveyor General prepared cadastral map 320016 to issue Title Registration Certificates, the Surveyor General had found the correct boundaries of the two Divisional Secretaries Divisions and included them in the cadastral map but that cannot be taken into consideration by the election office without a proper demarcation by the Delimitation Commission. As submitted by the 4th Respondent the present demarcation in Jayamalapura was decided by using the block out plan 2606 prepared by Ratnayake Licensed Surveyor and without

proper delimitation process the election commission is bound to follow the delimitation which is in operation at present.

As submitted by the Petitioners, when they complained their grievance to the Human Rights Commission (HRC), whilst relying on the observations furnished by the 1st Respondent, the Petitioners were informed by letter dated 8th April 2019, that steps had been taken by the 1st Respondent to resolve the matter. The observations submitted by the 1st Respondent to the HRC are produced as P-36.

In the said observations reference is made to a joint inspection carried out with regard to a Petition said to have been sent by the 1st Petitioner to the Prime Minister by the Secretary to the Ministry of Home Affairs and until a final decision is taken to identifying the boundaries, it was decided to register the Petitioners under Ganga Ihala Korale Divisional Secretary Division. However as per clauses 20 and 21 of the said letter the observation of the representative of the Surveyor General is stated as follows,

20. 2019.02.22 දින රජයේ මිනින්දෝරු 2005.02.14 දිනැති අංක 1423/9 ගැසට් පත්‍රය අනුව කෙණ්දුයේ මායිම පෙන්වා දෙන ලදී (ඇමුණුම 20)
21. 2019.02.22 දින පෙන්වා දෙන මායිම අනුව ධර්මරත්න මහතාගේ දියණිය සිටින ඉඩම උඩපලාන ප්‍රාදේශීය කොට්ඨාශයට අයත් බව දිස්ත්‍රික් ලේකම් වෙත දන්වා ඇත. ඒ සම්බන්ධ ඉදිරි කටයුතු සිදු කිරීමට උපදෙස් ඉල්ලා ඇත. (ඇමුණුම 21) මැනුමට අදාළ මැනුම් වාර්තාව මෙතෙක් ලැබී නොමැත.

However based on the observation submitted by the Divisional Secretary the Human Rights Commission informed the Petitioners on 08.04.2019 that,

“ඔබගේ පැමිණිල්ල සඳහන් ගැටලුව විසඳීම සඳහා අවශ්‍ය ක්‍රියා මාර්ග උඩපලාන ප්‍රාදේශීය ලේකම් විසින් ගෙන ඇති අතර ඉදිරියේ දී ඔබට සහන ලබා ගැනීමට හැකියාව පවතී”

but until the petitioners came before this Court in June 2020 no such relief had been given to the Petitioners.

In addition to the above the Petitioners have relied on a letter written by the 1st Respondent to Grama Niladhari (administration) at Udapalatha Divisional Secretariat Division and another letter

sent by the Additional District Secretary Kandy to the 1st Respondent informing the 1st Respondent to carry out the administrative work concerning the lands in question by the office of the 1st Respondent based on the cadastral plan prepared by the Surveyor General, but no steps had been taken to implement the said directive (P-42 dated 28.05.2019)

During the arguments before this Court, the learned Additional Solicitor General who represented the Respondents, raised two preliminary objections and I have already considered the first preliminary objection and overruled the said objection. As the second objection, the learned Additional Solicitor General took up the position that Petitioners have failed to name and bring before this Court the necessary parties and thereby the Petitioners are not entitled to claim relief against the Respondents who present before this Court. Whilst making the said preliminary objection, the learned Additional Solicitor General had named few parties and submitted that this Court would not be able to decide the parties responsible for the grievance complained before this Court without the presence of the necessary parties. In this regard, the Respondents have named the following parties as necessary parties.

1. Gampola Urban Council
2. Ganga Ihala Korale Pradeshiya Saba
3. National Delimitation Commission
4. Divisional Secretary Ganga Ihala Korale
5. Commissioner General Title Registration

When considering the grievance complained before this Court, the explanation that would be offered by the Gampola Urban Council and Ganga Ihala Korale Pradeshiya Sabawa would be useful and necessary to identify the true nature of the matter before this Court. If the identification made in the Title Registration Certificate could be considered accurate, then the authorities including the National Delimitation Commission should rectify the boundaries of the two local government bodies but none of these parties are before this Court for the Court to make appropriate order and also to identify the lapses (if any) by those parties.

In the case of ***Senaweera and Others vs. Vocational Training Authority of Sri Lanka and Others*** 2011 BLR 93 Suresh Chandra J whilst referring to a decision in ***Dr. K.D.G. Wimalarathne vs. Secretary to the Ministry of Public Administration SC Application 654/95*** SC minute dated 09.06.1997 and

H.A.S. Hettiarachchi vs. Secretary of Public Administration and Home Affairs SC Application 780/1999 SC minute dated 25.01.2001 had concluded that;

- a) A Party coming into Court must decide as to who should be made necessary parties to such application and it is not for a party to surmise that objections would be taken up by the opposing party and then decide to add parties to the application when it becomes necessary
- b) When it comes to a situation where the proper and necessary parties have to be brought in at the time of filing the application is a mandatory requirement, reserving a right to add parties would not be sufficient and would amount to a fatal defect in the maintaining of such an application
- c) The promotions that are complained of have been made after a recommendation had been made by the political victimization committee and after obtaining cabinet approval. In such a situation the political victimization committee and the cabinet of ministers would be necessary parties to the application at the time of filing the application.
- d) Failure to cite the cabinet of ministers as a necessary party at the time of filing an application has been held to be a fatal defect in several judgments of this Court.

In the above circumstance, I Hold that the preliminary objection raised by the state concerning the failure to make necessary parties should succeed.

Even though the Petitioners have complained of losing the opportunity to cast their vote due to the failure by the 1st, 3rd, and 4th Respondents, the material placed before this Court by the 4th Respondent confirms the position that the names of the 3 petitioners had been registered under a residence in Athgala Janapadaya in the Athgala East Grama Niladhari Division during the period of the Presidential Election 2019, even though their permanent residences were different. However, the complaint that was made concerning the spouses of the 2nd and the 3rd Petitioners, that their names were neither registered under Athgala East Grama Niladhari Division nor in their parental addresses in the respective Grama Niladhari Divisions, was objected to by the learned Additional Solicitor General on the ground that the Petitioners had no *locus standi* to make an application on behalf of the spouses of the 2nd and the 3rd Petitioners. It was brought to our notice by the learned Additional Solicitor General that the Petitioners had failed to explain as to why the spouses of the 2nd and the 3rd Petitioners are not before this Court.

In the case of ***Somawathie vs Weerasinghe (1990) 2 Sri LR*** when the wife of a detainee applied to the Supreme Court under Article 126 (2) Amarasinghe J (Bandaranayake J agreeing) held that the Petitioner had no *locus standi* to make an application on behalf of her husband. The Court further held that construed according to the ordinary, grammatical, natural, and plain meaning of its language gives a right of complaint to the person affected or to his Attorney at law and no other person.

This position was further considered in the case of ***Sriyani Silva vs. Iddamal goda (2003) 1 Sri LR 14 Shirani Bandaranayake J*** (as she then was) with Sarath Silva CJ agreeing held the golden rule of plain literal and grammatical construction had to be read subject to the qualification that the language of the statute is not always that which a grammarian would use.

In the above case, the Petitioner was the wife of a deceased detainee who had succumbed to death due to injuries he received whilst in police custody and in the above context Shirani Bandaranayake J observed,

“It could never be contended that the right ceased and would become ineffective due to the intervention of the death of the person, especially in circumstances where the death in itself is the consequence of injuries that constitute the infringement. If such an interpretation is not given it would result in a preposterous situation in which a person who is tortured and survives could vindicate his rights in proceedings before this Court, but if the torture is so intensive that it results in death, the right cannot be vindicated in proceedings before this Court. In my view, a strict literal construction should not be resorted to where it produces such an absurd result.”

The three Petitioners before this Court had not explained any reason for the failure by their spouses to come before this Court and complaint their grievance before this Court.

In those circumstances, I hold that the Petitioners have no *locus standi* to come before this Court complaining about the grievances of their spouses.

For the reasons explained above, the Petitioners have failed to bring necessary parties before this Court and had no *locus standi* to complain the grievance of the spouses of the 2nd and 3rd Petitioners

before this Court and therefore the application before this Court is liable to be dismissed for the above reasons.

However, the main grievance complained before this Court that, the three Petitioners were not allowed to register their votes from their residences has remained unsolved and therefore this Court is empowered under Article 126 (4) to make an appropriate order to give relief to the Petitioners.

In this regard, this Court is mindful of the decision in the case of ***Noble Resources International Pte Limited vs. Ranjith Siyambalapitiya and others SC FR 394/2015*** SC Minute dated 24.06.2016.

Where *K. Sripawan CJ* observed;

“It would be appropriate to quote the observation made by Wanasundera, J. in Jayanetti Vs. The Land Reform Commission (1984) 2 S.L.R. 172 at 179

“... we are empowered after such inquiries, as we consider necessary to grant such relief or make such direction in the case as we may deem just and equitable. This is an extensive jurisdiction and it carries with it all implied powers that are necessary to give effect and expression to our jurisdiction. We would include within our jurisdiction, inter alia, the power to make interim orders and to add persons without whose presence questions in issue cannot be completely and effectually decided. In fact, our present decision in no way widens the ambit of Article 126 but seeks to articulate its real scope and to make the remedy more effective”

In the words of Md Faizal Karim J, in the case of SSA Bangladesh Ltd. Vs. Engineer, Mahmud – ul Islam 9 BLC (AD) (2004), “The judiciary has an important role to play not only preventing or remedying the wrong or illegal exercise of power by the authority but has a duty to guide the nation in shaping its destiny within the framework of the law and the Constitution. The Court of law would always jealously guard against any abuse or misuse of power/authority by the State functionary in dealing with the State property.”

As I observed in the case of State Electricity Board Accountants’ Association Vs. Hon. Patali Champika Ranawaka and Others, in S.C. F.R. 18/15 (S.C. Minutes of 03.05.2016) that Constitutions do not change with the varying tides of public opinion and desire, the Courts should never allow a change in public sentiment to influence them in giving a construction

not warranted by the intention of its founder. Thus, this application is dismissed in limine on the first preliminary objection raised by the Respondents. However, considering the procedural flaws, I have referred to above, the fact that the award of tender involved public funds, and the solemn duty of the Court to protect the Rule of Law embodied in the Constitution in order to ensure its credibility in the faith of the people, I consider it appropriate to make the following directions”

As already observed in this judgment, the 3 Petitioners had gone from the pillar to the Post requesting redress for the grievance they complained of. The HRC was informed by the 1st Respondent of an inquiry in the year 2019. The 2nd Respondent had instructed the 1st Respondent in the year 2019 to carry out administrative duties under the Udapalatha Divisional Secretary Division but none of the instructions and recommendations were given effect to. It is evident from the two letters (P 36 and 42) that the Surveyor General had identified the correct boundaries but, that need to be considered by the delimitation commission and decide the correct boundaries of the Gampola Urban Council and the Ganga Ihala Korale Pradeshiya Sabawa. Under these circumstances, we direct the 1st Respondent to give effect to P-42 dated 28.05.2019 and also direct the 1st, 2nd, 4th, 5th, and 6th Respondents to continue with its inquiries and submit the necessary recommendation to the National Delimitation Commission at the earliest possible date to rectify the boundaries of the Gampola Urban Council and the Ganga Ihala Korale Pradeshiya Sabawa with regard to the village of Jayamalapura which comes within the Grama Niladhari Division of Jayamalapura.

Subject to the aforesaid directives, the application is dismissed.

Judge of the Supreme Court

Justice A.L. Shiran Gooneratne,

I agree,

Judge of the Supreme Court

Justice Janak De. Silva,

I agree,

Judge of the Supreme Court