

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

In the matter of an application under Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Paniyanduwege Saman,
No. 110/2, Maha Ambalangoda,
Ambalangoda.
2. Paniyanduwege Gigum Shavindra,
No. 110/2, Maha Ambalangoda,
Ambalangoda.

(Appearing by his next friend and father,
the above-mentioned 1st Petitioner -
Paniyanduwege Saman, No. 110/2, Maha
Ambalangoda, Ambalangoda)

Petitioners**SC /FR/ Application No 43/2017**

Vs,

1. Hasitha Kesara Weththimuni,
Principal,
Dharmashoka Vidyalaya,
Ambalangoda.
2. K.P. Dayaratne,
Vice Principal,
Dharmashoka Vidyalaya,
Ambalangoda.
3. Dasan Nainduwawadu,
4. K.K. Kema Chandani,
5. Sujani Senaratne,
6. G.D. Nalaka De Silva,
7. Tharaka Maduwage,

(All members of the Admissions Interview Board to Grade 1 of Dharmashoka Vidyalaya, Ambalangoda, and c/o. Dharmashoka Vidyalaya, Ambalangoda)

8. Francis Welage,
Chairman,
Admissions Appeal Board,
Dharmashoka Vidyalaya,
Ambalangoda
9. Shantha Ariyaratne,
Chairman,
Admissions Appeal Board,
Dharmashoka Vidyalaya,
Ambalangoda.
10. P.M. Vikum Priyalal,
11. K.A. Nishanthi,
12. Lushman Waduthanthri,
13. Ujith Indikaratne,
14. B. Anthony,
(All of whom were members of the Admissions Appeals and Objections Board of Dharmashoka Vidyalaya, Ambalangoda)
15. Sunil Hettiarachchi,
Secretary,
Ministry of Education,
"Isurupaya", Pelawatte,
Battarammulla.
16. S.P Chandrawathie,
Zonal Director of Education,
Zonal Education Office,
Ambalangoda.

17. Y. Wickramasiri,
Provincial Secretary of Education,
Southern Province Provincial Ministry of
Education,
2nd Floor, Talbert Town Shopping Complex,
Dickinson Junction,
Galle.

18. Hon. Attorney General,
Attorney General's Department,
Colombo 12

Respondents

Before: Priyantha Jayawardena PC J
Anil Goonaratne J
Vijith K. Malalgoda PC J

Counsel: Nilshantha Sirimanne with Uween Jayasinghe for the Petitioners
M.I.F. Razik, SSC for the Attorney General

Argued on: 19.10.2017

Judgment on: 05.12.2017

Vijith K. Malalgoda PC J

The two Petitioners namely Paniyanduwage Saman and Paniyanduwage Gigum Shavinda, a father and his minor son had filed the present application before this court, alleging violation under Article 12 (1) of the Constitution.

As revealed before this court, the 1st Petitioner had submitted two applications for admission of his son Gigum Shavinda, the 2nd Petitioner to grade one at Dharmashoka Vidyalaya,

Ambalangoda for the year 2017 under the category, children of residents in close proximity to the school as laid down in clause 6.1 and brothers and sisters who are already studying in the school as laid down in clause 6.3 of the circular 17/2016 dated 27th May 2016 which governed the school admission to grade one for the year 2017.

Under clause 6.1, 50% of the total number of vacancies and under clause 6.3, 15% of the total number of vacancies are allocated to the children who come under the said categories. How such parents should establish their claims and how the marks should be allocated based on the documents produce by the applicant is identified under the said clauses.

As observed by this court, maximum of 10 marks are given to the nature of the ownership to the property under both these categories and considerable percentage of marks were given for establishing the residence by electoral register during the past five years and to the proximity to the school from the place of residence under both these categories.

As revealed before this court, the 1st and the 2nd Petitioners were residing at No. 110/2, Maha Amabalangoda, Ambalangoda, at the time the applications were submitted to Dharmashoka Vidyalaya under both the said categories. In support of the said applications, the 1st Petitioner had annexed several documents as required by the circular referred to above.

In order to establish the residence at the above address, the 1st Petitioner had submitted extracts of the electoral register for the past five years, other documents such as utility bills and two title deeds including a deed of transfer and a deed of declaration. Since the decision challenge before this court is mainly depend on the deeds referred to above, it is necessary to consider the said deeds in order to understand the cases submitted by the two parties before this court.

As submitted above, the Petitioners have strongly taken up the position that they reside at 110/2 Maha Amabalangoda, Ambalangoda. Out of the two deeds submitted to establish the ownership to the said premises, the transfer deed 6911 referred to an undivided share from a land called “ඉරදිග පතිරවත” identified in plan 961 prepared by H.B. Gunawardena LS on 14.12.1929. The said transfer had taken place on 25th September 1996.

Even though the plan 961 referred to above is not produced along with the deed 6911, subsequent plan prepared in the year 1985 was produced along with the deed of declaration 3256 submitted by the Petitioners.

By the said deed of declaration attested on 18th December 2012, lot A8 in plan No 1127 prepared by P.A. Rabin Chandrasiri LS on 23rd October 1985 had been declared as the land referred to in deed 6911, said to have purchased by the 1st Petitioner, and it is further declared that the premises referred to as 110/2 is also within the said premises.

It is the position taken up by the Petitioner that he continued to live in the premises identifies as 110/2 since 1997 with his wife and children, after building a house with two bedrooms, kitchen and a living room. His parents with whom the Petitioner lived prior to the purchase of the land referred to in deed 6911, continued to live in the parental house bearing assessment No 110/1, which is situated North of his land, outside “ඉරදිග පතිරවනේ”. Between 1998 and 2008 the 1st Petitioner had purchase 3 more undivided shares of the said land by 3 more deeds bearing Nos. 1146 dated 17.06.1998, 1150 dated 27.05.1998 and 1944 dated 02.05.2008 and the said shares referred to in the plan 1127 as lot A7 which is on the South of lot A8.

According to the Petitioner, his brother too had built a house in lot A8 but at present there is no house in lot A7. In the said circumstances the Petitioner had submitted that, there is a house occupied by his parents bearing assessment No 110/1, North of “ඉරදිග පතිරවනේ”, two houses in lot A8 of “ඉරදිග පතිරවනේ” bearing assessment Nos. 110/2 and 110/2A occupied by him and his brother and lot A7 continued to be a bare land.

Whilst placing the above position with regard to the deeds he produced at the interview, the Petitioners have further submitted that,

- a) The Petitioners have attended the formal interview on 27.09.2016 at 9.00 a.m. under the children of residents in close proximity and at 11.00 a.m. on the same day under the brothers/sisters of students studying in the school at present
- b) According to the applicable marking scheme provided for in the circular 17/2016 the 2nd Petitioner was entitled to receive a total of 95 marks under the category of, children of residents in close proximity and a total of 68 marks under the category of brothers/sisters of students studying in the school at present

- c) On or about 12.11.2016 officials from Dharmashoka Vidyalaya, Ambalangoda including the 1st Respondent and two other persons had visited the 1st Petitioner's residence on site inspection but, the 1st Petitioner, his wife or the children were not at home on that day. However the said team of officials had visited the 1st Petitioner's parental house bearing assessment No 110/1.
- d) On 16.11.2016 the 1st Petitioner received a telephone call from Dharmashoka Vidyalaya, Ambalangoda requesting him to be present for a meeting with the 1st Respondent Principal.
- e) When the 1st Petitioner met the 1st Respondent the same day, the said 1st Respondent alleged that he had submitted false documents to prove his residence. It was further alleged that the Petitioner did not reside at No 110/2, Maha Ambalangoda, Ambalangoda.
- f) At the said meeting the 1st Petitioner had once again produce all the relevant documents before the 1st Respondent, but the 1st Respondent had selectively kept copies of deed No 181 and plan No 560 with him.
- g) On the same day around 5.00 pm the 1st Respondent along with few other officials visited the house of the 1st Petitioner.
- h) The following day (i.e. on 17.11.2016) the 1st Respondent once again visited his house and took photographs. On both the said occasions, when the 1st Respondent arrived on site inspection, the Petitioner was at his parental house (110/1) but, the Petitioner showed his house and other properties referred to above to the 1st Respondent.
- i) On 18.11.2016 the temporary list containing the names of children selected to grade one was released and displayed in the notice board but, to the 1st Petitioner surprise, the 2nd Petitioner's name was not on the said list.
- j) Being dissatisfied with the said decision, the 1st Petitioner lodged two appeals requesting the authorities to reconsider the said decision but the said Appeals Board did not change the decision of the Interview Board.

When going through the material placed before this court by the 1st Petitioner referred to above, it is clear that the Petitioner had taken a strong stand that, at the time he submitted the applications, he was permanently residing at 110/2, Maha Ambalangoda, Ambalangoda with his family only. However his parental house bearing No. 110/1 was situated North of his house and most of the time the children use to stay at the parental house (110/1) but as a family they eat,

drink, live and sleep at their residence, No 110/2 Maha Ambalangoda, Ambalangoda at all times material to the present application.

However, the Respondents whilst challenging the said position, submitted material before this court to establish that there wasn't two houses bearing assessment Nos. 110/1 and 110/2 in the adjoining lands as submitted by the 1st Petitioner, but, both the Petitioners' family and his parents lives in one house bearing assessment no. 110/2. In other words, the 1st Petitioner and his family was permanently residing with his parents at the parental house and therefore the Petitioner is not entitled to obtain full marks under any of the categories, he applied, for the ownership of the property in question.

It was further submitted by the Respondents that, when the 1st Petitioner met the Principle on 16.11.2016 as submitted by the 1st Petitioner above, the 1st Respondent had discovered a deed of gift bearing No. 181 dated 12th May 2015 written by one Thotawattage Wijitha Manel who is the mother of the 1st Petitioner, to the Petitioner, among the documents submitted to him by the 1st Petitioner. The said deed referred to a Plan 560 dated 05.05.2015. Since the said deed referred to premises 110/2, the 1st Respondent had obtained, copies of the said deed and the Plan referred to above.

As observed by me, the 1st to the 3rd paragraphs of the said deed of gift reads as follows;

මෙහි ඇතැම් තැනක "තෂාග දීමනාකාරිය" (මෙයින් ඇයගේ උරුමක්කරුවන් පොල්ම:කරුවන්, අද්මිනිස්ත්‍රාසිකරුවන්, බලකරුවන ද වේ) ලෙස හඳුනවනු ලබන ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික ජනරජයේ දකුණු පළාතේ, ගාල්ල දිස්ත්‍රික්කයේ, අම්බලන්ගොඩ, මහ අම්බලන්ගොඩ, අංක 110/2 දරණ ස්ථානයේ පදිංචි තොටවත්තගේ විසිතා මානෙල් (ජා.හැ.අංක 545060507V) වන මට,

මට ප්‍රසිද්ධ නොතාටිස් ඩී. එච්. ඩික්සන් ගුණවර්ධන මහතාගේ වර්ෂ 2008 ක් වූ සැප්තැම්බර් මස 19 වන දින සහ අංක 2007 දරණ සින්නකර ඔප්පුව ප්‍රකාරව අයිතිව නිරවුල්ව භුක්ති විඳගෙන එනු ලබන මේ පහත උපලේඛනයේ මනාව විස්තර වන ඉඩම ද ඊට අදාල එහි කොටසක් හැටියට ඒ සමඟ භුක්ති විඳින ගොඩනැගිලි, ගහකොල සමඟ වෙනත් සියළුම දේ ද ශ්‍රී ලංකාවේ වලංගු මුදලින් රුපියල් ලක්ෂ හතර (400000/)කට වටිනාකම නියම කර

තැනි දීමනා කාර තොටවත්තගේ විසිතා මානෙල් වන මාගේ පීචන භුක්තියට යටත් කොට,

මෙහි පහත ඇතැම් තැනක "තෂාග ලැබුම්කරු" යැයි හඳුනවනු ලබන තෂාග දීමනාකාර මාගේ ආදරණීය පුතණුවකු වන ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික ජනරජයේ දකුණු පළාතේ, ගාල්ල දිස්ත්‍රික්කයේ, අම්බලන්ගොඩ, මහ අම්බලන්ගොඩ, අංක 110/2 දරණ ස්ථානයේ පදිංචි පනියන්දුවගේ සමන් (ජා.හැ.අංක 752752281V) යන මාගේ පුතණුවන් කෙරෙහි මාගේ සිත්තුල පවත්නා ආදරය, කරුණාව, දයාව සහ වෙනත් පවත්නා යහපත් සංකල්පනාවන් කරණ කොට ගෙන ඉහත තැනි දීමනාකාර තොටවත්තගේ විසිතා මානෙල් වන මම පහත

සඳහන් දේපල ඉහත නම් සඳහන් එක් න්‍යාය ලැබුම්කරු වන පනියන්දුවගේ සමන් යන අයට මෙයින් තෘණගත් වශයෙන් අයිතිකර හිමකම් පවරා දුනිමි

Even though the 1st Petitioner whilst submitting the said deed marked as P6a before this court had taken up the position that the said deed of gift referred to the land on which his parental house bearing assessment No 110/1 is situated, it appears that there is specific reference that, the donor and the donee both lives at 110/2, Maha Ambalangoda, Ambalangoda.

The Respondents have further relied on the electoral register submitted by the 1st Petitioner at the interview and according to the said extracts of the electoral register submitted by the Respondents marked R-11a-11e (the Petitioners have not produced the above extracts along with the Petition and the affidavit), Paniyaduwege Sumithradasa (said to have been the father of the 1st Petitioner) Thotawattage Wijitha Manel (mother of the 1st Petitioner) Paniyanduwege Saman (the 1st Petitioner) and his wife Gusthinnadura Nirosha Damayanthi de. Silva along with several other members of their family had registered themselves under No. 110/2, Maha Ambalangoda, Ambalangoda for the period 2011-2015.

The Respondents have submitted marked R-12a-12e the extracts of the electoral register for the house bearing assessment number 110/1, Maha Ambalangoda, Ambalangoda and according to the said extracts one Liyanage Sirisena, Liyanage Tharaka Madushanka, Magage Dayaseeli de Silva and Liyanage Himeshi Indurangi had been registered under the said assessment number. In the said circumstance, Respondents have submitted that the position taken up by the Petitioner that their parents live in a separate house bearing assessment number 110/1 cannot be accepted.

During the argument before this court, the Petitioners whilst challenging the above position, had tried to contradict the above by submitting another plan bearing No 866 prepared by Upali Akuretiya LS (CA-3) indicating where the two houses bearing assessment Numbers 110/1 and 110/2 are situated but, as admitted by the Petitioners, the house built by the 1st Petitioner's brother on lot A8 is not marked on the said plan. In the said circumstance, it appears to me that their own document CA-3 contradicts the position already taken up by the Petitioners before this court.

As submitted by the Petitioners, all three occasions the 1st Respondent and/or his agents visited, they only visited the parental house bearing assessment No 110/1 where his parents

live and on two such occasions the 1st and 2nd Petitioners were also in the parental house but, showed their house to the 1st Respondent and /or his agents. Whilst relying on the Supreme Court decision in ***Dasanayakage Gayani Geethika and two others V. D.M.D. Dissanayake Principal D.S. Senanayake College and five others*** SC/FR/35/2011 SC minute dated 12.07.2011, where Suresh Chandra (J) had observed,

“A consideration of clause 6.I of the circular (RI) shows that the main consideration for selection of children under the category of “Children of those who are residing close to the school”, would be the Applicant’s place of residence. The relevant indices or criteria that are to be taken into account regarding the establishing of same are set out in 6.I -I- IV referred to above.

The main thread which runs through all four categories is the concept of “Residence”

The ordinary meaning that is given to “Residence” is “the place where an individual eats, drinks, and sleeps or where his family or his servants eat, drink and sleep. (Wharton’s Law Lexicon)”

and submitted that the 1st Respondent had ignored to consider his place of residence, which he proved by submitting documents even though his children spent time in his parental house during the day time.

However as observed by me, the most important fact to be considered in the present case is the fact whether the Petitioners are living with the parents of the 1st Petitioner in the one and the same house and the said house bears the assessment No. 110/2. Even though the 1st Petitioner takes up the position that his parents live at 110/1, he had failed to establish this by submitting any documentary proof. In the contrary, documents P6A and R-11a-11e confirms the fact that the 1st Petitioner as well as his parents resides at No.110/2, Maha Amabalgoda, Ambalangoda.

Whilst submitting the material referred to above, the Respondents have, drawn the attention of this court to part 8 of the application where the Petitioner has made the following declaration,

“I hereby declare that my child is not attending any government school; government approved private schools or any other school at present for his/her studies. I also declare that the details

furnished above are true and correct and I agree further to submit satisfactory evidence relating to my permanent residence and other information indicated here. **I am also aware that my application will be rejected if any information furnished by me is found to be false/forged.** If it is revealed after the admission of my child that the information furnished is false/forged I agree to remove child from the school and admit him/her to another school in the area nominated by the department of Education” (emphasis added) and submitted that, the Respondents are entitled to reject the application submitted by the 1st Petitioner to gain admission for the 2nd Petitioner to Dharmashoka Vidyalaya, Ambalangoda since the information provided by the 1st Petitioner with regard to his residence along with deeds bearing Nos. 6911 (P4a) 3256 (P4b) and plan 1127 are false.

When considering the material already discussed above, I see no reason to reject the above position taken up by the Respondents before me. I therefore hold that the Respondents have not acted in violation of the Fundamental Rights guaranteed under Article 12 (1) of the Constitution when they decided to reject the application submitted by the 1st Respondent to gain admission for the 2nd Petitioner to Dharmashoka Vidyalaya, Ambalangoda. I make no order with regard to costs.

Application dismissed.

Judge of the Supreme Court

Priyantha Jayawardena PC J

I agree,

Judge of the Supreme Court

Anil Goonaratne J

I agree,

Judge of the Supreme Court