

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

*In the matter of an application under and in
terms of Articles 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

SC/FR/164/2017

1. Frances Joan Anne Priyadarshini Perera
(nee Ratnayeke),
Horakelle Estate,
Katana.
2. Juanita Marie Antoinette Geraldine
Ganlath (nee Ratnayeke),
No. 92/4,
Thapathpitiya Road,
Udahamulla,
Nugegoda.
3. Justin Celine Hilaria Nimal Gunasekara
(nee Ratnayeke),
No. 119/3,
Model Farm Road,
Borella,
Colombo 08.
4. Frances Nirmali Roselle Perera
Wijegunaratne,
Horakelle Estate,
Katana.

PETITIONERS

Vs.

1. Chief Inspector Nissanka Silva,

Office-in-Charge,
Police Station,
Ja-ela.

2. Johanne Micheal Constantine
Rathnayeke,
No. 103,
Kapala Kanda Road,
Kanuwana Estate,
Ja-ela.
3. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : **P. PADMAN SURASENA, CJ.**
A. L. SHIRAN GOONERATNE, J.
ACHALA WENGAPPULI, J.

COUNSEL : Manohara de Silva, PC with Hirosha Munasinghe and
Kaveesha Gamage for Petitioner instructed by Dinusha
Mirihna.

Ms. Varunika Hettige, ASG for 1st and 3rd Respondents.

ARGUED ON : 09-02-2026

DECIDED ON : 05-08-2026

P. PADMAN SURASENA, CJ.

There are four Petitioners in this case. The 2nd Petitioner, who is a former District Judge, has instituted four partition actions bearing the case numbers 3302/P, 3303/P, 3304/P and 3305/P on 15-05-2015 in the District Court of Negombo seeking to partition the lands more fully described in the Schedules of the four Plaints. The Petitioners have produced copies of the said Plaints marked **P1(a)**, **P2(a)**, **P3(a)**, and **P4(a)**.

Pursuant to the above cases being filed, the learned District Judge/Additional District Judge of Negombo then issued commissions on the surveyor to carry out a survey of the corpus relevant to the actions and to prepare the preliminary plans. Pursuant to the said Commissions, the Commissioner went to the land on 27-08-2016. However, the Commissioner was unable to conduct the survey due to the obstructions by the 2nd Respondent (This is the version as per the Petition). According to the Petitioners, the 2nd Respondent having obstructed the Commissioner then lodged a complaint at Ja-Ela Police Station on 27-08-2016. Ja-Ela Police Station pursuant to the said complaint, summoned 2nd and 3rd Petitioners and recorded their statements. The Petitioners have marked these statements as **P7(a)** and **P7(b)**.

The Objections raised by some parties to the Commissioner in the land was thereafter reported to Court. This was done by the Court Commissioner by the letter dated 30-08-2016 which the Petitioners have produced marked **P6(a)**. In the same letter [**P6(a)**], the Court Commissioner has requested that the police protection be provided during the conduct of the survey.

The learned District Judge of Negombo has thereafter ordered police to provide protection to facilitate the conduct of the survey. The Registrar of District Court of Negombo, by the letter dated February 2017 marked **P10(a)**, has informed the OIC Police Station, Ja-Ela, to take steps to provide police protection for the conduct of the survey.

Accordingly, the Court Commissioner by the Notice, which the Petitioners produced marked **P12(b)**, has notified the Parties that the survey will be carried out on the 25-03-2017.

On 25-03-2017, the 2nd Respondent along with others having come to Ja-Ela Police Station, has complained against the Petitioners, alleging that the Petitioners have unlawfully entered into this land. The officers of Ja-Ela Police Station (the 1st Respondent, the Officer-in-Charge of Ja-Ela Police Station) has admitted in his Affidavit dated 25-09-2019, that the officers of Ja-Ela Police Station conducted an inquiry into this complaint and reported facts to Court. The 'B Report' submitted by Ja-Ela Police Station to the Magistrates Court of Negombo is the 'B Report' dated 05-04-2017. The said 'B Report' filed in the Magistrate's Court is a report with a brief content and hence is reproduced below:

"ඉහත පැමිණිලිකරු ඉහත ලිපිනයේ දැනට වසර 47ක් පමණ උපන්දා සිට පදිංචිවී සිටින බවත් ඔහුගේ පියා වන ජෝශප් රත්නායක දැනට අවු. 77ක් පමණ පදිංචිවී සිටින බවත් මෙම ඉඩම සඳහා මීගමුව දිසා අධිකරණයේ බෙදුම් නඩුවක් පවතින බවත් එසේ තිබියෙදී 2017.03.25 වන දින උදේ 10.45 පමණ අංක. 119/3, මොඩල් පාම් රොඩ් බොරැල්ල, කොළඹ 08 පදිංචි ජෙරල්ඩින් ගම්ලත් සොරකැල්ලේ වත්ත කඳාන ලිපිනයේ පදිංචි නිර්මලි විජේගුණරත්න, පැන්සස් පෙරේරා, නිමල් ගුණසේකර යන අය කිසි අවසරයක් නොමැතිව ඉඩමට අයුතු අතුල්වී මෙම ඉඩම මැනීමට අවශ්‍ය කියා මැනීමට උත්සාහ කළ බවත් මෙම ඉඩම සඳහා අධිකරණ නඩුවක් තිබියදී මේ අධිකරණ නියෝගයක් නොමැතිව මෙලෙස ඉඩමට අයුතු අතුල්වීම සම්බන්දව විභාග කරන ලෙසටත් මෙම පැමිණිල්ල සම්බන්දව අධිකරණයට යොමු කරන ලෙසටත් පැමිණිලිකරු විසින් ඉල්ලා ඇත.

... අතුලු වී මෙම මැනීම තැත්කිරීම පොලිස් බැඳුම් කර මත මුදා හරිනලද සැකකරුවන් ... සම්බන්දව ගරු අධිකරණයට කරුනු වර්තා කිරීම. මෙය ද. ද. නි.ස 433 වගන්තිය යටතේ දඬුවම් ලැබිය හැකි වරදකි.

ඉහත පැමිණිල්ල පො.කො. 60130 විහාර නිලධාරියා විසින් සටහන් කර ඇති අතර පො.කො. 82249 කුමාර නිලධාරියා විසින් විමර්ශන සටහන් ඇතුලත් කර ඇත. මෙම අපරාධය සම්බන්ධව 2017.04.02 වන දින දැනුම්දී පරිදි ස්ථානය විමර්ශනය සිදු වී කිරීමට උ.පො.ප. රංජිත් නිලධාරියා විසින් ස්ථානයට ඉදිරිපත් වූ වගඋත්තරකාරියන් වන 01). සොරකැල්ලේ වත්ත, කඳාන ලිපිනයේ පදිංචි

ප්‍රැන්සරිය නිර්මලී රොසෙල් පෙරේර විජේගුණරත්න 02). සොර කැලේවත්ත, කඳාන පදිංචි පෙරේරා ප්‍රැන්සස් පොත් ඇත් ප්‍රියදර්ශන රත්නායක 03). අංක. 92/4, තලපත් පිටිය පාර, උඩහමුල්ල, නුගේගොඩ පදිංචි ප්‍රමනිමා මාරි අත්ටොන් ජෙරල්ඩින් ගම්ලත් 4) අංක. 21, උදය මාවත, පන්සල පාර, ගල්කිස්ස පදිංචි නිමල් ගුණසේකර යන අයට 2017.04.05 වන දින මීගමුව අධිකරණයේ පෙනී සිටීමට පොලිස් බැඳුම් කර මත පෙනී සිටීමට අවවාද කර සාමයෙන් සිටීමට උපදෙස් ලබාදී ඇති අතර අද දින සැකකාරියන් ගරු අධිකරණයේ පෙනී සිටින අතර ඇප නියෝගයක් නිකුත් කරන මෙන් ගරු අධිකරණයෙන් ඉල්ලා සිටිමි.”

The Petitioners in their Petition allege that the 1st Respondent has arrested them and enlarged them on bail, irrespective of the fact that they have had a right to enter into the land on the basis that they are co-owners of the land. Upon this Petition being supported, this Court by its Order dated 03-07-2018 has decided to grant Leave to Proceed in respect of the alleged violations of the Fundamental Rights of the Petitioners guaranteed under Article 12(1) and 13(1) of the Constitution.

The fact that the 2nd Petitioner has filed four partition cases; the fact that the learned District Judges of Negombo had issued Commissions to survey the land; the fact that the Court Commissioner went to the land on 25-03-2017 to survey the land; the fact that the learned District Judges has informed the OIC Ja-Ela Police Station to provide security on the previous dates, are all admitted facts in this case. The issue to be decided in this case therefore, is whether the 1st Respondent, who is the Officer-in-Charge of Ja Ela Police Station, by his action of conducting an inquiry, and taking incidental actions he had taken pursuant to the said inquiry, has violated the Fundamental Rights guaranteed to the Petitioners by Article 12(1) and 13(1) of the Constitution.

I have to note that any citizen in this country is free to walk into a police station and make a complaint. It is incumbent on the part of the OIC of a police station to take steps to ascertain the merits of such complaint. Under normal circumstances this is done through summoning relevant parties to the police station and making inquiries from them to ascertain as to what has happened at a particular occasion. It is not unnatural that police officers generally proceed to record statements from those persons who are so

summoned for such purposes. Section 121 of the Code of Criminal Procedure Act No. 15 of 1979, as amended, provides for this type of action to be taken by a police officer to whom such complaint has been made by a citizen.

Moreover, Section 121(2) of the Code of Criminal Procedure Act No. 15 of 1979, as amended, also provides that if the Officer-in-Charge of a police station has reason to suspect the commission of a cognizable offence, he shall forthwith send a report of the same to the Magistrate's Court having jurisdiction in respect of such offence.

When the OIC of the police station takes the view that such persons must be released, he will direct such persons to enter into a bond to ensure their appearance on the next date. Section 6 of the Bail Act provides for that type of cause of action to be taken by an Officer-in-Charge of a Police Station. This provision of law is reproduced below for easy reference:

"Where an offence being investigated by the police is a bailable offence, the officer-in-charge of the police station shall not be required to forward the suspect under its custody before the Magistrate having jurisdiction over such offence, but such officer shall not later than twenty-four hours of the suspect being taken into custody, release him on a written undertaking and order such suspect to appear before the Magistrate on a given date: ..."

Moreover, it is the position of the Petitioners according to the Petition, that the Officers of Ja-Ela Police Station had merely advised them to be present before the Negombo Magistrate's Court on 05-04-2017 and released them.¹ It is also their position that on 05-04-2017 at the Negombo Magistrate's Court, a Police Officer who was attached to the Ja-Ela Police Station who was acting under the instructions of the 1st Respondent approached them and obtained their signatures on a Bail Bond stating that they were released on 02-04-2017 on bail without signing the Bail Bond.² It is also the position of the Petitioners that it was then only that they realized that they had been arrested at the Police Station

¹ Paragraph 27 of the Petition dated 05-05-2017.

² Paragraph 28 of the Petition dated 05-05-2017.

on 02-04-2017.³ Thus, the position of the Petitioners is that 'they were not informed the fact of arrest nor the reason of arrest but have been treated as arrested'.⁴

As has already been mentioned above, the 2nd Petitioner, is a person who had at one time functioned as a District Judge and now works as an Attorney-at-Law. According to the Petition, the 3rd Petitioner is a wife of a lawyer. Thus, in the light of their legal background and also upon their admission, I am unable to accept the submission of the Petitioners that either the Officers of Ja-Ela Police Station or the 1st Respondent had caused an unlawful arrest of anyone of them. Indeed, I have already mentioned above that it was only on 05-04-2017 at the Negombo Magistrate's Court that the Petitioners had realized that they had been arrested at the Police Station on 02-04-2017. It is difficult to think of a situation where it could have been possible for a Police Officer to arrest a person without even making the person under arrest aware that he or she was being arrested.

Let me now briefly turn to the 'B Report'. Although the 'B Report' under the hand of the OIC of Ja-Ela Police Station has reported that the Petitioners are alleged to have committed an offence under Section 433 of the Penal Code. This must be viewed only as a fact inserted into the B Report as a narration of the complaint made by the 2nd Respondent to the police.

The 1st Respondent in his Affidavit categorically denies the allegation that the Petitioners were arrested. He has produced the list of persons who have been arrested marked **1R1**. The names of the Petitioners are not to be seen in that list. The complaint made by the 2nd Respondent to Ja-Ela Police Station on 27-08-2016 has also been produced marked **1R2**. In his complaint, he has referred to the presence of several young persons who had manna knives and clubs in their hands. The 2nd Respondent had requested in his statement to have this incident investigated by police. Accordingly, the Petitioners were also afforded an opportunity to present their side of the story to the investigating police officers.

³ Paragraph 29 of the Petition dated 05-05-2017.

⁴ Paragraph 29 of the Petition dated 05-05-2017.

The Respondents have produced a copy of the Magistrate's Court proceedings marked **1R9**. According to the proceedings, the four Petitioners were present in the Magistrate Court of Negombo on 04-05-2017, represented by Counsel. On that date, the learned Magistrate has directed the police to consider whether there is any criminal offence committed by the four Petitioners and report back to Court. The learned Magistrate had directed the case to be called again on 05-05-2017.

On 05-05-2017, the 1st Respondent by further report has brought to the notice of Court that the District Court had ordered to conduct a survey of this land and therefore the Petitioners have not committed any criminal offence. I observe that although an application on behalf of the Petitioners was made to the learned Magistrate to award compensation under Section 17 of the Code of Criminal Procedure Act No. 15 of 1979, as amended, the learned Magistrate had refused to grant any compensation on the basis that the revelation that the District Court had ordered to conduct the survey had been revealed subsequent to the investigation conducted by police. In my view that was a right order to have been made in the present circumstances.

In the above circumstances, the mere fact that the 'B Report' dated 05-04-2017 has referred to some allegation of Petitioners having committed an offence punishable under Section 433 of the Penal Code, cannot in my view be a basis for this Court to hold that the 1st Respondent has violated the Fundamental Rights guaranteed to the Petitioners under Article 12(1) of the Constitution. This is because in the factual circumstances of this case, it would only be after an inquiry that the Respondent police officers would have come to a position to exactly know whether there is merit in the complaint made by the 2nd Respondent.

Similarly, when there is a suspicion entertained in the minds of the OIC with regard to any possible continuing breach of peace, it is natural that he would get the parties with dispute to enter into a bond before releasing them.

Admittedly, the 1st Respondent has not proceeded to arrest the Petitioners and produce them in Court. All what he had done was to get them to enter into a bond and asked

them to appear in Court on a subsequent date. The learned Magistrate had also not treated them as suspects. Indeed, they were discharged on the second day.

The Fundamental Rights jurisdiction vested in the hands of this Court must be exercised in a fit case. The said jurisdiction must also be exercised as an equitable jurisdiction. Having regard to the afore said circumstances of the instant case, (which I have already described), I am unable to hold (on this set of facts) that the 1st Respondent has done anything arbitrarily with the connivance of the 2nd Respondent (opposing party) to falsely fix the Petitioners and deliberately file a false case against them. Therefore, I hold that the Petitioners are not entitled to succeed with this Petition. I proceed to dismiss this Petition but without costs.

CHIEF JUSTICE

A. L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree.

JUDGE OF THE SUPREME COURT