

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

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

**SC FR Application No: 328/2011**

Dr. Indrani Swarna  
Hassanally nee  
Senaratne,  
No 35B, Torrington  
Avenue,  
Colombo 07,  
Presently of No 52/3,  
5<sup>th</sup> Lane Nawala,  
Rajagiriya

**PETITIONER**

**Vs.**

1. Mr. Kapila  
Premadasa,  
Inspector of Police,  
Officer- in- Charge,  
Cinnamon Garden  
Police Station,  
Colombo 07.
2. Mr. Hettiarachchi,  
Inspector of Police,  
Officer-in-Charge of

Minor Offences  
Branch,  
Cinnamon Garden  
Police Station,  
Colombo 07.

3. Mr. Ajantha, Police  
Constable(18982),  
  
Cinnamon Garden  
Police Station,  
Colombo 07.
4. Mr. Mendis,  
Sergeant,  
Cinnamon Garden  
Police Station,  
Colombo 07.
5. Mr. Roshan De Silva,  
Assistant  
Superintendent of  
Police,  
Office of Assistant  
Superintendent of  
Police, Gampaha.
6. Mr. Anura  
Senanayake, Deputy  
Inspector General of  
Police, Police Head  
Quarters, Colombo  
01.
7. Mr. Panditheratne,  
Area Manager, Ceylon  
Electricity Board,  
High Level Road,  
Kirulapone,  
Colombo 06.

8. Mr. Sivapatham  
Vakeesan,  
No. 35,  
Torrington Avenue,  
Colombo 07.
9. Mrs. Nirmala  
Vakeesan nee  
Velliampalam, No. 35,  
Torrington Avenue,  
Colombo 07.
10. Inspector  
General of Police,  
Police Head Quarters,  
Colombo 01.
11. Hon. Attorney  
General,  
Attorney General's  
Department,  
Hulfsdrop, Colombo  
12.

**RESPONDENTS**

**BEFORE:**

**Hon. Yasantha Kodagoda, PC, J.**  
**Hon. K. Kumudini Wickremasinghe J.**  
**Hon. Achala Wengappuli, J.**

**COUNSEL:**

Sanath Weerasinghe with  
Shiromi Wanasinghe instructed  
by Jayalath Hissella for the Petitioner.

Ganga Wakishta Arachchi, DSG  
instructed by Sonali Colluray for the 1st  
to 5th, 10th and 11th Respondents.

Sanjeewa Jayawardhena, PC for the 5th  
and 9th Respondents.

WRITTEN SUBMISSIONS: By the Petitioner on 08.05.2013.  
By the 8th Respondent on 02.11.2012  
By the 1st to 5th, 10th and 11th  
Respondents on 04.11.2025

ARGUED ON: 10.12.2024

DECIDED ON: 23.03.2026

**K. KUMUDINI WICKREMASINGHE, J.**

This is an Application filed under Article 126(1) of the Constitution by the Petitioners seeking, *inter alia*, declarations of infringement of their fundamental rights guaranteed under Article 11, Article 12(1), Article 12 (2) and Article 14(1) (g) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

On 29.05.2012, having heard the Learned Counsel for the Petitioners as well as the Learned Senior State Counsel who appears for the 11th Respondent, this court granted leave to proceed against the 1st to 6th Respondents for the alleged violations of Article 11, Article 12(1), Article 14(1)(g) of the Constitution.

It must be emphasised at the outset that leave to proceed in this application was granted only in respect of the alleged violations of Articles 11, 12(1) and 14(1)(g) of the Constitution against the **1st to 6th Respondents**, who are police officers attached to the Cinnamon

Gardens Police Station and the supervisory police officers within the relevant police division. Therefore, the primary duty of this Court in the exercise of its jurisdiction under Article 126(1) of the Constitution is to ascertain whether the acts or omissions of the said Respondent, being State authorities, amount to executive or administrative action resulting in the infringement of the Petitioner's fundamental rights.

### **Factual Matrix**

#### **Petitioner's version of facts**

The Petitioner averred that she was a citizen of Sri Lanka, sixty years of age and a qualified Ayurvedic practitioner duly registered under the Ayurveda Act No. 31 of 1961. She explained that she was the mother of two daughters and the caregiver of her husband, who suffered from Parkinson's disease and resided with her.

The Petitioner identified the 1st to 6th Respondents as officers of the Sri Lanka Police, including officers attached to the Cinnamon Gardens Police Station and senior supervisory officers within the relevant police division. The 7th Respondent was the Area Manager of the Ceylon Electricity Board, while the 8th and 9th Respondents were the co-owners and landlords of premises bearing No. 35B, Torrington Avenue, Colombo 07. The 10th Respondent was the Inspector General of Police, and the 11th Respondent was the Attorney General.

The Petitioner asserted that she possessed extensive professional qualifications and experience in Ayurvedic medicine. She maintained that she had obtained registration as an Ayurvedic practitioner in 1991 and had been awarded the honorary title "Ayurveda Visharada Panditha" in 2002. She further claimed membership in the Association of All Island Ayurvedic Physicians and service on the Ayurvedic Experiment Committee between 01.08.1998 and 31.07.2001, pursuant

to an appointment by the then Minister of Health and Indigenous Medicine. She further explained that she had been appointed a Justice of the Peace for the whole island and had received multiple recognitions for her public and professional service, including leadership roles in the Sri Lanka Justices of the Peace Society and participation in professional workshops and international programmes related to traditional medicine and governance.

According to the Petitioner, she had registered and operated Ayurvedic clinics since 29.01.1993 and, on 25.01.2011, registered a business titled “SJF Spa and Ayurveda Clinic” with the intention of operating from premises at No. 35B, Torrington Avenue, Colombo 07. She also claimed to hold qualifications in complementary medicine, including a Diploma of Fellowship and a Doctor of Medicine (Medicina Alternativa).

The Petitioner contended that on or about 30.12.2010 she entered into a lease agreement with the 8th and 9th Respondents in respect of the premises at No. 35B, Torrington Avenue, for a period of two years. She paid a refundable deposit of Rs. 200,000 and thereafter made several rental payments into the 8th Respondent’s bank account between 10.01.2011 and 22.06.2011.

She alleged that on 05.07.2011 the 8th Respondent removed fuses from the main switch supplying electricity to the leased premises, which led to a heated exchange between them. That same night, she reported the incident to the Cinnamon Gardens Police Station. On the following morning, 06.07.2011, the 8th Respondent returned, removed an additional fuse, and threatened her, claiming influence over the police.

Later on 06.07.2011, the Petitioner visited the regional office of the Ceylon Electricity Board at Kirulapone, seeking to meet the Area Manager. She was informed that the officer was aware of the

disconnection but was denied a meeting. She then proceeded to the Cinnamon Gardens Police Station requesting police intervention to restore the electricity supply. She alleged that the police failed to act against the 8th Respondent and instead entertained allegations that she was operating a massage parlour.

She further asserted that the police officers who were present at the said Police Station biased towards the 8th Respondent, justified the disconnection of electricity, and pressured her to vacate the premises. She claimed that threats and intimidation were directed at her, warning her to leave for her own safety. The Petitioner stated that the 8th Respondent admitted to the police the fact that he had disconnected the electricity and sealed the fuse box. She also contended that she was compelled to sign a document agreeing to vacate the premises by 15.07.2011, which she refused to do.

The Petitioner further stated that she produced recordings to police officers of alleged death threats made by the 8th Respondent, but no action was taken by the Police. She then sought assistance from the Ministry of Power and Energy. Thereafter, upon payment of Rs. 18,207 and submission of the lease agreement, a temporary electricity connection was obtained on 07.07.2011.

On 08.07.2011, she alleged that the 8th Respondent hosted a gathering attended by police officers and individuals she believed to be linked to the criminal underworld, during which threats were uttered against her life. She reported the matter to the police emergency unit, but no action was taken.

The Petitioner further contended that on 10.07.2011, at about 22.15 hours, the 8th Respondent forcibly entered the premises with several individuals who assaulted her husband and attacked her and her

assistant with knives, causing injuries and damage to property. She reported that the 8th Respondent was taken into custody by the police but was later released on bail.

She stated that she and her assistant received medical treatment at the National Hospital and lodged further complaints with the police. She alleged that numerous household items were destroyed during the attack. She also claimed that police officers later removed weapons allegedly used in the attack from the vicinity of the 8th Respondent's premises. She maintained that she had previously paid outstanding electricity bills at the request of the 8th Respondent.

The Petitioner lodged complaints to the Human Rights Commission but was not informed of any action taken. She further alleged that in November 2011 she was taken into custody by the Fraud Investigation Bureau based on a false complaint made at the instigation of the 8th Respondent, allegedly as part of a collusive effort to evict her. While in custody, she asserted that the locks of the leased premises were changed and her belongings were removed unlawfully.

She maintained that the actions of the Respondents were arbitrary, unlawful, and in violation of her fundamental rights under Articles 11, 12(1), 12(2), and 14(1)(g) of the Constitution.

### **Respondent version of facts**

The Respondents filed their Statement of Objections on 05.11.2013 through the affidavit of Kapila Premadasa, Officer-in-Charge of Cinnamon Gardens Police Station, marking documents **1R1** to **1R6** as part of their submissions. The 8th Respondent also filed his Statement of Objections on 09.10.2012 with documents 8R1 to 8R6.

The Respondents averred that the Petitioner had entered into a Lease Agreement with the 8th and 9th Respondents dated 30.12.2010, which was marked as P-17. According to the Lease Agreement, the lease period was to commence on 10.01.2011 for a duration of two years, with a monthly rental of Rs. 100,000/- and a refundable deposit of Rs. 200,000/- to be paid prior to the execution of the agreement. The Respondents contended that the Petitioner had defaulted on the payment of rent, as evidenced by the documents marked as **P-18(a)** to **P-18(1)**, and that a dispute arose between the Petitioner and the Lessors around 05.07.2011, which led to the disconnection of electricity to the premises leased to the Petitioner (marked as **P-24(a)** to **P-24(e)**).

The 8th Respondent and his wife purchased the property at Colombo 07 in or around 2004 and constructed five individual houses on the premises with assessment numbers 35, 35A, 35B, 35C, and 35D, Torrington Avenue. Premises No. 35B was leased to the Petitioner after she responded to a paper advertisement. The Respondents asserted that they initially believed the Petitioner intended to occupy the premises for residential purposes, but it later became apparent that she intended to see her patients there and they further alleged subsequently it was revealed that she was conducting a brothel under the guise of a massage clinic.

The Respondents further submitted that the Petitioner had registered an individual business under the name "S.J.F. Spa and Ayurveda Clinic" on 07.01.2011 using the leased premises as her business address, and had previously registered "Ayurveda and Acupuncture Clinic" on 22.01.1993 (marked as **P-13**). The Respondents claimed that the Petitioner and the 8th Respondent lodged complaints against each other on several occasions, which were documented in the documents marked as **P-23**, **P-27**, **P-33**, **P-34**, and **8R6**.

It was further submitted that the Cinnamon Gardens Police (1st to 5th Respondents) had taken all possible steps to investigate the complaints impartially. The Respondents emphasized that the Petitioner had been involved in another ongoing matter before Unit 05 of the Fraud Bureau, where she was accused of cheating another individual of Rs. 600,000/- , with the complaint lodged on 17.10.2011 (marked as P-31). Additionally, her brother, Duncan Malaka Senarathne, had provided a statement to the Cinnamon Gardens Police on 20.11.2011 (marked as **P-33/P-34**). The police had also found other complaints against the Petitioner for cheating various parties of money, including Rs. 3.6 million (marked as **P-38 and P-36**).

The Respondents further submitted that both the Petitioner and the 8th Respondent had lodged complaints against each other and that the police conducted investigations into those complaints. The Petitioner, being dissatisfied with the manner in which the police had dealt with the matter, subsequently invoked the jurisdiction of this Court. However, the Respondents asserted that the dispute between the Petitioner and the Lessors arose primarily due to the Lease Agreement marked as **P-17** and that the police officers and other Respondents had acted promptly and impartially in attending to the matters. The Respondents further contended that on occasions when the Petitioner was requested to attend the police station for investigations, she failed to do so of her own accord (marked as **1R2 and 1R3**).

The Respondent stated the fact that the actions taken, (including the disconnection of electricity) and other interventions, were lawful and proportionate in view of the rental arrears, misuse of the premises and ongoing complaints against the Petitioner.

## **Legal Analysis**

At the outset, it is necessary to observe that this application has been instituted under the jurisdiction of the Supreme Court conferred by Article 126(1) of the Constitution of Sri Lanka alleging the infringement of the Petitioner's fundamental rights guaranteed under Article 11 of the Constitution of Sri Lanka, Article 12(1) of the Constitution of Sri Lanka and Article 14(1)(g) of the Constitution of Sri Lanka. Leave to proceed was granted by this Court only in respect of the alleged violations of the aforesaid Articles against the 1st to 6th Respondents, who are police officers attached to the Cinnamon Gardens Police Station and the relevant police hierarchy.

It must be noted that a substantial portion of the grievances raised by the Petitioner arise out of a dispute between herself and the 8th and 9th Respondents concerning the lease of premises bearing No. 35B, Torrington Avenue, Colombo 07. The material before Court demonstrated that the Petitioner entered into a Lease Agreement dated 30.12.2010 with the said Respondents for a period of two years. The dispute between the parties appears to have arisen due to allegations of arrears of rent, misuse of the premises, and the subsequent disconnection of electricity to the premises.

In this regard, it is well settled that disputes arising out of contractual relationships such as landlord-tenant arrangements are essentially matters falling within the domain of private law and are ordinarily required to be resolved before the appropriate civil courts. The jurisdiction of this Court under Article 126(1) of the Constitution of Sri Lanka is concerned with the infringement of fundamental rights by executive or administrative action, and not with the adjudication of private disputes unless there is clear involvement of state actors resulting in a violation of constitutionally guaranteed rights.

Therefore, the primary question that arises for determination is whether the conduct of the 1st to 6th Respondents, who are police officers, amounts to executive or administrative action that infringed the Petitioner's fundamental rights.

### **Alleged Violation of Fundamental Rights**

In the case of ***Velmurugu v. The Attorney General and Another [1981] 1 SLR 406***, it was held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement of fundamental rights is proof by a preponderance of probabilities as in a civil case and not proof beyond reasonable doubt.

It was further held in ***Gunawardene v. Perera and Others [1983] 1 SLR 305 at 313 by Soza J.*** that:

*"...It is generally accepted that within this standard there could be varying degrees of probability. The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of 9 probability as for instance a court having to decide a question of fraud in a civil suit would. The conscience of the court must be satisfied that there has been an infringement."*

### **Alleged violation of Article 11**

Article 11 of the Constitution of Sri Lanka states:

*"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*

As observed by the Supreme Court in **Janidhu Charuka Daham Seneviratne v. Sub Inspector Nelumdeniya & Others [SC (FR) Application No. 402/2015; SC Minutes of 21.05.2021]**,

*“Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torturous, cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restrictions or limitations whatsoever. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. The police force being an organ of the State is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances.”*

In the case of **Mery Ruwan Kumara v Prasan Fernando and Others [SC (FR) Application No. 265/12; SC Minutes of 24.07.2025]**, it was observed that:

*“This provision is absolute and non-derogable and as such, any claim made under it must be examined with the utmost judicial seriousness. However, the evidential burden to establish a violation lies squarely with the Petitioner. In **Aranagalle Samantha v OIC Biyagama and Others [SC (FR) No. 458/2012 SC Minutes of 28.01.2020]**, Aluwihare J, PC observed that ‘In proceedings of this nature, the court has very limited avenues to test the veracity of these assertions and necessarily have to depend on the affidavits and other documents filed. In the circumstances, in arriving at a just and equitable decision in the realm of the fundamental rights*

*jurisdiction, the court necessarily has to apply the test of probability to the factual matters placed before us.”*

This principle underscores that, while allegations of fundamental rights violations must be taken seriously, the Court’s determination is necessarily guided by the **preponderance of probabilities**, giving due consideration to the evidence actually placed before the Court.

The prohibition contained in Article 11 is absolute and admits of no exception.

In ***Velmurugu v. Attorney General and another* [1981] 1 SLR 406**, the Court held that

*“...the standard of proof is a preponderance of probabilities as in a civil case, qualified with the requirement for a high degree of certainty to tilt in favor of the Petitioner.”*

It is well settled that a petitioner alleging an infringement of Article 11 bears the burden of proof on a balance of probabilities, with a high degree of probability commensurate with the gravity of the allegation. The scope of this protection extends not only to acts committed directly by state agents but also to omissions or failures to act where such failure results in physical or mental suffering of the individual under the care or protection of the state.

In ***Goonewardene v Perera and others* [(1983) 1 Sri LR 305 at page 313]**, Soza, J observed thus:

*“Before I deal with the facts a word about the burden of proof. There can be no doubt that the burden is on the petitioner to establish the facts on which she invites the court to grant her the relief she seeks. This leads to the next question. What is the standard of proof expected of her? Wanasundera, J. considered*

*the question in the case of Velmurugu v. The Attorney-General and another and held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement of fundamental rights is proof by a preponderance of probabilities as in a civil case and not proof beyond reasonable doubt. I agree with Wanasundera, J. that the standard of proof should be preponderance of probabilities as in a civil case. It is generally accepted that within this standard there could be varying degrees of probability. The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of probability as for instance a court having to decide a question of fraud in a civil suit would. The conscience of the court must be satisfied that there has been an infringement.”*

Similarly, in ***Kapugeekiyana v Hettiarachchi and Two Others*** [(1984) 2 Sri LR 153 at page 165], Wimalaratne, J stated that,

*“In deciding whether any particular fundamental right has been infringed I would apply the test laid down in Velmurugu that the civil, and not the criminal standard of persuasion applies, with this observation, that the nature and gravity of an issue must necessarily determine the manner of attaining reasonable satisfaction of the truth of that issue.”*

The Supreme Court further emphasized the seriousness with which allegations under Article 11 of the Constitution must be evaluated. In ***Channa Pieris and Others v Attorney General and Others (Ratawesi Peramuna Case)*** [1994] 1 Sri LR 1 at page 1, Amerasinghe, J observed as follows:

*“... having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a Petitioner endeavouring to discharge his burden of proving that he was subjected to torture or to cruel, inhuman or degrading treatment or punishment; and unless the Petitioner has adduced sufficient evidence to satisfy the Court that an act in violation of Article 11 took place, it will not make a declaration that (a violation of) Article 11 of the Constitution did take place.”*

*“Would ‘the guarded discretion of a reasonable and just man lead him to the conclusion’? is the test I would apply in deciding the matter. If I am in real and substantial doubt, that is if there is a degree of doubt that would prevent a reasonable and just man from coming to the conclusion, I would hold that the allegation has not been established.”*

This position has been reaffirmed in several subsequent decisions of this Court including *Ratnayaka Weerakoong Sandya Kumari v Weerasinghe, Sub Inspector of Police* [SC (FR) Application No. 75/2012; SC Minutes of 18.12.2019] and *Edward Sivalingam v Sub Inspector Jayasekara & Others* [SC (FR) Application No. 326/2008; SC Minutes of 10.11.2010].

The Petitioner alleges that she and her husband were threatened and assaulted on 10.07.2011 by the 8th Respondent and unidentified individuals; however, these acts were carried out by private persons, not by the 1st to 6th Respondents.

The Petitioner submitted a Medico-Legal Report dated 11.07.2011, issued by Dr. K.K. Joosar, Assistant Judicial Medical Officer of the National Hospital, which records that she and her assistant sustained

multiple injuries allegedly caused by blunt and sharp objects. The records of the Hospital treatment from the National Hospital emergency unit were also submitted to corroborate that medical attention was required following the incident. While these documents establish that the Petitioner and her assistant suffered injuries, the evidence does not link the injuries directly to the actions or omissions of the 1st to 6th Respondents. In the absence of such a causal connection, the requisite high degree of probability to establish a violation of Article 11 of the Constitution has not been satisfied.

The material before Court demonstrates that the Petitioner did in fact lodge complaints with the Cinnamon Gardens Police and that the police recorded the complaints and initiated investigations. It is further evident that the 8th Respondent was arrested on 11.07.2011 and produced before the Magistrate's Court of Colombo under B Report No. 575/18 where he was subsequently released on bail. These facts clearly indicate that the police did not remain inactive in the face of the Petitioner's complaint.

The proceedings of the learned Magistrate further indicate the nature of the incident and the action taken by the Court. The relevant extract reads as follows:

දිනය:-

**2011.07.11**

සැකකරු - සිවපාදම් වාකින්සන්

“..... දෙපාර්ශවය අතර වූ දේපළ ආරවුලක් හේතුවෙන් වූ සිදුවීමක් බව කියා සිටී. බරපතළ තුවාල නොමැති බවද කියා සිටී. එම වරද සලකා රුපියල් ලක්ෂ 05 ක පුද්ගලික ඇප දෙක බැගින් නියම කරමි. නැවත පැමිණිලි ලදහොත් ඇප අවලංගු කරන බවට තරයේ අවවාද කරමි.” (marked as **P27**)

This extract clearly demonstrated that the learned Magistrate considered the incident to have arisen from a dispute relating to

property between the parties and further noted that no serious injuries had been reported. The suspect was released on bail upon the imposition of appropriate conditions together with a warning that the bail would be cancelled if further complaints were received.

Although the Petitioner contended that the police failed to take adequate preventive measures prior to the assault, the material placed before Court does not establish that the police had prior knowledge of an imminent threat of such gravity that would have required immediate preventive action.

In these circumstances, while the assault alleged by the Petitioner is undoubtedly serious, the evidence before this Court does not demonstrate that the conduct of the police officers amounted to torture or cruel, inhuman or degrading treatment within the meaning of Article 11. The Petitioner has therefore failed to satisfy the high degree of probability required to establish a violation of Article 11 of the Constitution.

**Alleged violation of Article 12(1)**

Article 12(1) of the Constitution guarantees that all persons are equal before the law and are entitled to the equal protection of the law. This provision imposes a duty on State authorities to act fairly, reasonably and without arbitrariness in the exercise of their powers.

The guarantee of equal protection is violated where executive action is arbitrary, capricious, or devoid of lawful justification. An arrest or detention carried out without adherence to lawful procedure, or accompanied by selective or abusive treatment, falls within the scope of such arbitrariness.

The fundamental aim of Article 12(1) is to protect individuals from arbitrary, capricious, irrational, unreasonable, discriminatory, or vexatious actions by executive or administrative bodies. In its Full Bench decision in ***Sampanthan et al. v. Attorney-General et al.* [SC FR 351-356 & 358-361/19, SC Minutes of 13.12.2018]**, this Court affirmed that the right guaranteed by Article 12(1) also includes the protection of the 'Rule of Law,' referencing jurisprudence established in ***Jayanetti v. Land Reform Commission* [1984] 2 Sri LR 172** and ***Shanmugam Sivarajah v. OIC Terrorist Investigation Division and others* [SC FR 15/2010, SC Minutes of 27.07.2017]**.

In the case of ***Warnakuwatthawaduge Surani Lakshika Fernando v Police Sergeant Attapattu and Others No. 221/2015; SC Minutes of 24.10.2023*** Aluwihare, PC,J has observed as follows:-

*In this regard, I wish to cite with approval the opinion expressed by His Lordship Justice Wanasundera in the case of ***Velmurugu v The Attorney General and Others* [1981] 1 SLR 406**, where his Lordship stated that the test applicable is a “preponderance of probability” adopted in civil cases. It was stated that although the standard is not as high as that required in criminal cases, there can be different standards of probability within that standard and the degree applicable would depend on the subject-matter. Further, His Lordship Justice Soza in ***Vivienne Goonewardene v Hector Perera* [1983] SLR 1 V 305** stated; “The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of probability as for instance a Court having to decide a question of fraud in a civil suit would. The*

*conscience of the court must be satisfied that there has been an infringement.”*

However, the present case does not involve any arrest, detention, or direct exercise of coercive police power against the Petitioner. The grievance raised by the Petitioner is that the police officers allegedly failed to take adequate action against the 8th Respondent and acted in a manner favourable to him.

Upon a careful examination of the documents produced before Court, it is evident that the police recorded the complaints made by the Petitioner and initiated investigations into the alleged assault. The arrest and production of the 8th Respondent before the Magistrate’s Court further proved that the police did not disregard the Petitioner’s complaint.

The Petitioner has also alleged that the police attempted to pressure her to vacate the premises. However, these allegations are supported only by the affidavits of the Petitioner, Petitioner’s husband, her assistant. They are not corroborated by independent or contemporaneous evidence.

This Court has consistently held that mere dissatisfaction with the manner in which a police investigation has been conducted is insufficient to establish a violation of Article 12(1). In order to succeed, the Petitioner must prove that the conduct of the police was arbitrary, discriminatory or actuated by mala fides.

Having regard to the totality of the material before Court, I am unable to conclude that the conduct of the 1st to 6th Respondents reached the threshold of arbitrariness required to constitute a violation of Article 12(1). At most, the facts disclose a dispute between private parties in which the police intervened to the extent necessary to investigate the complaints made to them.

Accordingly, the Petitioner has failed to establish that the conduct of the 1st to 6th Respondents amounted to a denial of equal protection of the law guaranteed under Article 12(1) of the Constitution.

**Alleged violation of Article 14 (1) (g)**

The Petitioner alleges that her right under Article 14(1)(g) of the Constitution, which provides that *“Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise”*, has been violated. While this right is fundamental, it is not absolute and is subject to the limitations prescribed in Articles 15(5), 15(7), and 15(8).

Article 15(5) provides that the exercise of the right guaranteed under Article 14(1)(g) *“shall be subject to such restrictions as may be prescribed by law in the interests of national economy or in relation to – (a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise and the licensing and disciplinary control of the person entitled to such fundamental right; and (b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of citizens or otherwise.”*

Further, Article 15(7) provides that the exercise of all fundamental rights under Articles 12, 13(1), 13(2), and 14 *“shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph ‘law’*

*includes regulations made under the law for the time being relating to public security.”*

Similarly, Article 15(8) provides that the exercise of the fundamental rights under Articles 12(1), 13, and 14 “*shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them.*”

The right to a profession or occupation goes hand in hand with the corresponding duty of every person to work conscientiously in their chosen occupation, as articulated in Article 28 of the Constitution.

In the context of the present matter, it is important to note the guidance of the Supreme Court in ***Vasudewa Nanayakkara v. Choksy, Minister of Finance and others (SC/FR/209/2007, SC Minutes of 13.10.2009)***, where Bandaranayake, J. (later C.J.) quoted Lord Denning in *Nagle v. Feilden and others* ([1966] 1 All E.R. 689 at page 694) that:

*“...a man’s right to work at his trade or profession is just as important to him as, perhaps more important than, his rights of property. Just as the courts will intervene to protect his rights of property, so they will also intervene to protect his right to work.”*

The Court held that it is therefore the paramount duty of the Courts to ensure that a citizen’s right to work is protected and emphasized that the right to employment, being a fundamental right guaranteed by the Constitution, must be safeguarded in the interest of the individual and the general public.

This fundamental right ensures that individuals are able to carry out their lawful work without unlawful interference, obstruction, or intimidation by State authorities or private actors acting with State complicity.

The Petitioner also alleged that the actions of the Respondents interfered with her right to carry on her profession as an Ayurvedic practitioner.

The freedom to engage in any lawful occupation, profession, trade or business guaranteed under Article 14(1)(g) of the Constitution of Sri Lanka is an important constitutional safeguard that enables individuals to pursue their livelihood without arbitrary interference.

The Petitioner contends that the actions of the Respondents interfered with her ability to carry on her profession as an Ayurvedic practitioner.

While the Petitioner has produced the lease agreement relating to the premises from which she conducted her clinic, it is evident that the difficulties encountered by the Petitioner arose primarily from the dispute between herself and the 8th and 9th Respondents concerning the lease of the premises and the disconnection of electricity.

Such matters arise from a contractual relationship between private parties and fall within the domain of private law. The appropriate remedies in respect of such disputes lie before the civil courts.

In assessing whether a violation of Article 14(1)(g) has occurred, the Court must determine whether there has been direct interference by State authorities or whether the State has acted in a manner that facilitates, condones, or colludes with private actors to obstruct the exercise of a lawful occupation. Mere difficulties arising from disputes between private parties, without State involvement or deliberate

obstruction, are insufficient to constitute a breach of this fundamental right.

Applying the preponderance of probabilities, it cannot be concluded that the actions or omissions of the 1st to 6th Respondents amounted to interference with the Petitioner's right to engage in a lawful profession. The issues she faced arose from a contractual dispute between private parties, and the appropriate remedies for such matters lie within the civil courts. Accordingly, the Petitioner has not discharged the burden of proof required to establish a violation of Article 14(1)(g) of the Constitution.

### **State Liability**

In **Faiz v Attorney General and others [1995] 1 Sri LR 372, at page 376**, Mark Fernando J emphasised that,

*“Article 126 speaks of an infringement by executive or administrative action; it does not impose a further requirement that such action must be by an executive officer. It follows that the act of a private individual would render him liable, if in the circumstances that act is “executive or administrative”. The act of a private individual would be executive if such act is done with the authority of the executive: such authority, transforms an otherwise purely private act into executive or administrative action; authority may be express, or implied from prior or concurrent acts manifesting approval, instigation, connivance, acquiescence, participation, and the like (including inaction in circumstances where there is a duty to act); and from subsequent acts which manifest ratification or adoption. While I use concepts and terminology of the law relating to agency, and vicarious liability in delict, in my view responsibility under Article 126 would extend to all situations in which the nexus*

*between the individual and the executive makes it equitable to attribute such responsibility. The executive, and the executive officers from whom such authority flows would all be responsible for the infringement. Conversely, when an infringement by an executive officer, by executive or administrative action, is directly and effectively the consequence of the act of a private individual (whether by reason of instigation, connivance, participation or otherwise) such individual is also responsible for the executive or administrative action and the infringement caused thereby. In any event this court would have power under Article 126(4) to make orders and directions against such an individual in order to afford relief to the victim.”*

Considering the liability of the State, the Police force is an organ of the State and the State should respect the duty and responsibility to protect the fundamental rights of the citizens. In ***Amal Sudath Silva v Kodituwakku Inspector of Police and Others [1987] 2 Sri LR, at page 119*** stated that,

*“The police force, being an organ of the State, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances.”*

The State is liable for all the violations of the Petitioner's fundamental rights, as they resulted from actions taken by the state authorities. In ***Landage Ishara Anjali (Minor) and another v. Waruni Bogahawatte and Others [SC (FR) No.677/2012 SC Minutes of 12.06.2019], at page 21***, Justice Aluwihare, PC,J stated that,

*“This Court also takes an opportunity to note with concern the increasing number of incidents of abuse of power by law enforcement authorities. There is no doubt that what is brought before Courts is a fragment of the totality of incidents taking place across the country...”*

Furthermore, in **Rannula Sugath Mohana Mendis v D.K.A.Sanath Kumara and others [SC (FR) No 100/2022 decided on 06.10.2023], at page 14**, Thurairaja, PC, J emphasised that,

*“If this Court were to criticise the actions of the Police Force, it need not look further than the police motto itself; “ධම්මෝ භවේ රක්කති ධම්මවාචී” which states “those who live by the Dhamma are protected by the Dhamma”. One would expect that the Police force of Sri Lanka would follow this motto when carrying out their duties, without mala fide. However, we observe, they have failed to stick to the basics of their code of conduct and the principles of natural justice.”*

The law clearly recognises that the State, through its agencies and authorities, including the Police, bears a primary duty to protect and uphold the fundamental rights of its citizens. When State authorities fail to act in accordance with the law, or exercise their powers arbitrarily, capriciously, or mala fide, the State may be held liable for infringement of fundamental rights. However, this liability is not automatic. The burden rests on the Petitioner to establish, on a balance of probabilities, that the acts or omissions of the State authorities directly caused a violation of her rights. In the present case, the evidence before Court does not demonstrate, to the high degree of probability required in fundamental rights litigation, that the conduct of the 1st to 6th Respondents resulted in any such infringement.

For the reasons set out above, this Court finds that the Petitioner has failed to establish, on a balance of probabilities, that the acts or omissions of the 1st to 6th Respondents resulted in violations of her fundamental rights. In addition, the Court notes that the high degree of certainty required in fundamental rights litigation has not been satisfied. Accordingly, the Petitioner has not established that her rights under Articles 11, 12(1), and 14(1)(g) of the Constitution were infringed by the 1st to 6th Respondents.

***Application Dismissed.***

**JUDGE OF THE SUPREME COURT**

**Yasantha Kodagoda,PC J**

**I agree.**

**JUDGE OF THE SUPREME COURT**

**Achala Wengappuli, J**

**I agree.**

**JUDGE OF THE SUPREME COURT**