

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 read with
Article 17 of the Constitution.*

1. **Ven. Aturupalayagama Pragna
Surinda Thero**
2. **Ven. Nikawewa Pragna Asitha
Thero**

Both of the,
Sri Sambodhi Aranya Senasanaya,
Sudukanda,
Nikawewa.

Presently at,
Sri Sambodhi Aranya Senasanaya,
Wellewewa,
Nawagaththegama.

Petitioners

Supreme Court (FR) Application
No. SC FR 382/2013

Vs.

1. **Officer-in-Charge**
Police Station,
Minneriya.
2. **Divisional Secretary**
Divisional Secretariat,
Hingurakgoda.
3. **Ven. Galporuyaye
Pradeepawansa Thero**
Sri Jinendraramaya,

Thambalawewa,
Jayanthipura.

4. Susantha Gnanarathna

Chairman,
Pradeshiya Sabha,
Hingurakgoda.

5. Hon. Attorney General

Attorney General's Department,
Colombo 12.

Respondents

Before: **Vijith K. Malalgoda, P.C., J.**
E.A.G.R. Amarasekara, J.
Yasantha Kodagoda, P.C., J.

Counsel: Mr. Widura Ranawaka with Ms. Menaka Warnapura
for the Petitioners.
Ms. Viveka Siriwardena, P.C., ASG with Ms. Hasini
Opatha, SSC for the 1st, 2nd, and 5th Respondents.

Written Submissions filed on: 28th February 2024 - 1st, 2nd and 5th Respondents.
25th March 2024 - Petitioners.

Argued on: 28th September 2020 and 4th April 2024.

Judgment delivered on: 22nd August 2024

Yasantha Kodagoda, P.C., J.

Introduction

- 1) This Judgment relates to a Fundamental Rights Application filed invoking the jurisdiction vested in this Court by Article 126 read with 17 of the Constitution. Following the Application being supported, Court had previously granted *Leave to Proceed* under Article 12(1) of the Constitution.

- 2) The two Petitioners [Venerable Aturupalayagama Pragna Surinda Thero and Venerable Nikawewa Pragna Asitha Thero] have in their Petition to this Court asserted that both of them are *Buddhist Monks* who had been in permanent residence at a temple (place of Buddhist worship) called the *Sri Sambodi Aranya Senasanaya* in Sudukanda, Nikawewa for a period of thirteen (13) years prior to the incidents referred to in this Judgment. However, at the time of filing the instant Application, due to the circumstances more-fully described in this Judgment, they had to temporarily move out of the premises of the temple, and reside at the *Sri Sambodhi Aranya Senasanaya* in Wellewewa, Nawagaththegama.
- 3) The core controversy relates to the circumstances under which the two Petitioner - Monks had to move out from the premises referred to by them as the "*Sri Sambodhi Aranya Senasanaya*" in Sudukanda, Nikawewa, and their dispossession from the premises. However, the complaint to this Court relates to the manner in which the 1st Respondent (Officer-in-Charge, Minneriya Police Station) is said to have discharged his official duties.
- 4) The *Buddhist Monk* who subsequently moved into occupation at the "*Sri Sambodhi Aranya Senasanaya*" in Sudukanda, Nikawewa, Venerable Galporuyaye Pradeepawansa Thero is the 3rd Respondent to this Application. Though he was represented during the early stages of this matter, since 2017, he had been unrepresented in Court. Therefore, this Court issued Notice on the 3rd Respondent and his Registered Attorney-at-Law. On the second date of hearing, Ms. Rathnalanka Mudannayake - the Registered Attorney-at-Law for the 3rd Respondent appeared before this Court, and informed Court that she had not received instructions from the 3rd Respondent (though he originally gave instructions), and submitted to Court for scrutiny, a copy of a letter sent by her to the 3rd Respondent, for which she did not receive any response. In the circumstances, she submitted that she has no objection for the Court proceeding to hear the matter in the absence of representation on behalf of the 3rd Respondent. Thereafter, she withdrew from the proceedings.
- 5) The 1st, 2nd and 4th Respondents are the Officer-in-Charge of the Minneriya Police Station, the Divisional Secretary of the Hingurakgoda Divisional Secretariat, and the Chairman of the Hingurakgoda Pradeshiya Sabha. The 5th Respondent is the Honorable Attorney-General, who has been cited in compliance with the requirements contained in the Rules of this Court.

Case of the Petitioners

- 6) The Petitioners claim that both of them and their Tutor Monk had been in possession of the premises referred to as the *Sri Sambodhi Aranya Senasanaya* in Sudukanda, Nikawewa (hereinafter for convenience sometimes referred to as the "*Nikawewa, Sri Sambodhi Aranya Senasanaya*") for thirteen (13) years. The infrastructural components of the temple such as the shrine room (*Viharaya*), preaching hall (*Dharmashalawa*), and the place of residence of the Monks in occupation of the temple (*Awasaya*) had been built by the Petitioners and their Tutor Monks with the assistance of the devotees of the temples of the area in which the temple is situated.
- 7) The Petitioners claim that on or about the 10th January 2013, a group of people led by the 3rd Respondent forcibly entered the premises of the temple, damaged its properties, and threatened the Petitioners, demanding that they leave the temple. The Petitioners have not averred causes or specific reasons which prompted or caused this upheaval.
- 8) On 12th January 2013, the 1st Respondent who is in-charge of the Police Station of the area of the temple, filed a Report ("P2(a)") in the Magistrate's Court of Hingurakgoda (B Report No. 40/2013) notifying the learned Magistrate of this incident. The Police had also briefed the learned Magistrate that with the intervention of the 2nd Respondent (Divisional Secretary of Hingurakgoda), a meeting was held with the disputants including the Petitioners participating, and the dispute between the two groups had been settled. They have also informed the learned Magistrate that if the two Petitioners do not forthwith vacate the premises of the temple, there remains to be a possibility of another public disquiet. In the circumstances, the 1st Respondent moved Court to issue an order under section 106(1) of the Code of Criminal Procedure Act, No. 15 of 1979 (hereinafter referred to as the "CCPA") on the disputants.
- 9) On 23rd January 2013, the 1st Respondent had filed a further Report ("P2b"), citing the 1st and 2nd Petitioners and the 2nd and 3rd Respondents along with twelve (12) others as parties to the case, and moved Court once again for the issuance of an order under section 106(1) of the CCPA. Following an inquiry conducted by the learned Magistrate, on 31st January 2013, a 'temporary order' ("P2(c)") was pronounced directing the Petitioners and their devotees to handover possession

of the “*Nikawewa, Sri Sambodhi Aranya Senasanaya*” to the 2nd Respondent, and leave the premises of the temple. The learned Magistrate also directed the 1st Respondent to provide necessary security to the temple until the 2nd Respondent hands-over possession of the temple to an ‘appropriate party’ after taking necessary legal steps.

- 10) The Petitioners complied with the order made by the learned Magistrate, and handed-over the possession of the temple to the 2nd Respondent with its movable and immovable properties. However, the Petitioners filed an Application (No. 05/2013) in the High Court of the North Central Province holden in Polonnaruwa seeking a Revision of the afore-stated order of the learned Magistrate dated 31st January 2013. Later, the Application was withdrawn by the Petitioners. The Petitioners have not themselves stated to this Court the reasons for the withdrawal of the said Application.
- 11) Later, the Petitioners moved the Magistrate’s Court of Hingurakgoda for vacation of the ‘temporary order’ dated 31st January 2013. Following inquiry, by order dated 16th September 2013 (“P2(d)”), the learned Magistrate rejected the said Application.
- 12) Aggrieved by the learned Magistrate’s Order dated 16th September 2013, the Petitioners filed another Application (No. 12/2013 - “P4”) in the afore-stated High Court seeking revision of that order. At the time of filing this Application in the Supreme Court, that Application filed in the High Court was pending. Even at the hearing stage of this matter, this Court was not informed of the outcome of this second Revision Application.
- 13) The Petitioners alleged before this Court that the 2nd Respondent – Divisional Secretary has not conducted an inquiry and determined to whom the possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya* should be handed-over.
- 14) On or about 2nd October 2013, at a time when the 1st Respondent was providing security to the *Nikawewa Sri Sambodhi Aranya Senasanaya*, the 3rd Respondent with the assistance of the 4th Respondent – Chairman of the Pradeshiya Sabha, Hingurakgoda entered the premises of the temple and took possession of the temple. The Petitioners allege that the 1st Respondent did not take any action to prevent such entry by the 3rd Respondent and his taking-over possession of the

temple. A devotee of the Petitioners named S.P. Karunawathie had lodged a complaint at the Minneriya Police Station (“P5(a)”) regarding this incident. Nevertheless, the 1st Respondent failed to take any legal action against the 3rd and 4th Respondents.

- 15) On 13th October 2013, the Petitioners received a message from the police (“P6”) calling upon them to arrive at the Minneriya Police Station on 15th October 2013 and collect their movable properties which had been at the *Nikawewa Sri Sambodhi Aranya Senasanaya*. The message indicated that the 2nd Respondent had taken steps to collect them from the temple and hand them over to the police station.
- 16) The Petitioners alleged that the 2nd Respondent - Divisional Secretary has not conducted an inquiry and determined to whom in the long-term the possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya* should be handed-over. When the Petitioners made inquiries from the 2nd Respondent, she had responded that she did not hand-over possession of the temple to the 3rd Respondent.
- 17) During the hearing of this Application, it transpired that the Petitioners had moved the Court of Appeal against the order dated 25th September 2024 made by the learned High Court Judge, and in that matter too, the Petitioners had been unsuccessful.
- 18) In view of the foregoing sequence of events and associated circumstances, the Petitioners complained to this Court that, by;
 - (i) allowing the 3rd Respondent to enter into possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya*,
 - (ii) failing to take necessary action to prevent the 3rd Respondent from entering the premises of the said temple,
 - (iii) failing to take necessary action against the 3rd and 4th Respondents in response to the complaint made by S.P. Karunawathie, and
 - (iv) removing some of the movable properties of the Petitioners from the said temple and thereby facilitating the 3rd Respondent to remain at the temple and establish his possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya*,the 1st Respondent had denied the fundamental right of the Petitioners to the equal protection of the law guaranteed under Article 12(1) of the Constitution. The

Petitioners did not level any allegation of infringement of their fundamental rights against any of the other Respondents.

Position of the 1st and 2nd Respondents

- 19) The 1st and 2nd Respondents assert that both Petitioners are not full-fledged Bhikkus (though they are *Samanera* Bhikkus, they have not attained the *Upasampadhawa*). During the course of the inquiry conducted by the 2nd Respondent, the Petitioners have only tendered declarations dated 1st May 2013 (“2R1” and “2R2”), depicting that they were ordained as *Samanera* Bhikku.

- 20) The *Nikawewa Sri Sambodhi Aranya Senasanaya* is situated on State land within the Sudukanda Nikawewa Grama Niladhari Division (No. 46) of the area of the Hingurakgoda Divisional Secretariat.

- 21) Around 2.27 a.m. on 10th January 2013, a person who identified himself as being the 2nd Petitioner called the Police Emergency (Line ‘119’) and notified that a group of persons were threatening the monks at the *Nikawewa Sri Sambodhi Aranya Senasanaya* and that damage was being caused to the property of the temple. Upon receiving that information, a team of police officers of the Minneriya Police Station who were on mobile patrol, proceeded immediately to the temple and conducted investigations into the complaint. Following the conduct of investigations, on 12th January 2013, the 1st Respondent reported facts relating to the incident to the Hingurakgoda Magistrate’s Court (“B Report - “1R3” which is also document marked “P2(b)” by the Petitioners). Investigations did not reveal the participation of the 3rd Respondent in the incident complained of. Therefore, the Report makes no reference to the 3rd Respondent having participated in the incident.

- 22) As the temple in issue was situated on State land, the 1st Respondent informed the 2nd Respondent (Divisional Secretary) of the incident. In the circumstances, the 2nd Respondent convened a meeting of the parties to the dispute (which included the Petitioners, the senior members of the Buddhist clergy of the area, the 4th Respondents and other members of the Hingurakgoda Pradeshiya Sabha, representatives of the community and senior Police officers). The meeting was held on 10th January 2023.

- 23) At the said meeting, upon being inquired, the Petitioners admitted *inter-alia* that they were not ordained as *Upasampadha* Monks. They also admitted that though

they had a 'Tutor Monk', they did not have an *Upaddhaya* Thero. They did not belong to one of the several *Nikaya* or a Chapter thereof of Sri Lanka's Buddhist Order of Priests. They also admitted that, they did not administer *Pancha-seela*, officiate at *Paansakula*, or partake in the conduct of *Bodhi-pooja*.

- 24) Investigations conducted by the 2nd Respondent revealed that, a Buddhist temple by the name *Sri Sambodhi Aranya Senasanaya* situated in *Sudukanda, Nikaweve* has not been declared or registered in terms of the Buddhist Temporalities Ordinance with the Commissioner General of Buddhist Affairs as a 'Buddhist Temple'. However, in 1975, Venerable Kumbukkandawela Sri Dheerananda Nayake Thero had established a dhamma school (*Dhaham Paasala*) on the State land on which the present *de-facto* temple is situated. The dhamma school was named "*Sri Abhayagiri Dhaham Pasala*". Due to terrorist activities in that part of the country, activities of this dhamma school had ceased.
- 25) Investigations had also revealed that, in 1999, the Petitioners and their predecessors had come into possession of the temple premises without any lawful authority. The predecessor of the 2nd Respondent had in 2001 initiated action to evict those who were in possession of the land ("2R3" and "2R3A"). However, that action had not been taken to a successful end.
- 26) By letters dated 16th February 2013 ("2R4") and 17th April 2013 ("2R5"), the Commissioner General of Buddhist Affairs had informed the 2nd Respondent that he had been informed by the Chief Registrar of the *Asgiriya Chapter* of the *Siyam Nikaya* Venerable Anamaduwe Sri Dhammadassi Nayaka Thero that the *Sri Abhayagiri Viharaya* was a temple belonging to the *Asgiriya Chapter* and that Venerable Katugampolagama Piyarathana Nayake Thero was the present *Viharadhipathi* of the temple. Furthermore, sequel to an application made to the Commissioner General of Buddhist Affairs, on 17th May 2013, the *Sri Abhayagiri Viharaya* had been registered under the Buddhist Temporalities Ordinance ("2R6", "2R7" and "2R8"). In view of the foregoing, the 2nd Respondent had concluded that the Petitioners have no right to the *Nikaweve Sri Sambodhi Aranya Senasanaya*.
- 27) As recorded in the Minutes of the meeting held on 10th January 2013 ("1R2"), the 2nd Respondent considered the views expressed by all parties. It transpired that, a vast majority of the villagers of the area were opposed to the 1st and 2nd Petitioners, as they were not performing religious rites and Buddhist activities that are

routinely performed at a Buddhist temple. Whereas, the Petitioners were performing certain other activities which were not compatible with the practices of *Theravada Buddhism*. Out of a very large number of villagers of the area, only five (5) villagers were supportive of the activities of the two Petitioners. In the circumstances, as there was an imminence of a breach of the peace (should the Petitioners remain at the temple), an agreement was reached between the parties, wherein the Petitioners would move out of the temple within three (3) days. It is the incident that occurred on the night of the 10th January 2013, investigations conducted into that incident and the conduct of this meeting and developments associated with that meeting, which was reported to the learned Magistrate on 12th January 2013.

28) Though the two Petitioners temporarily vacated the temple, on 22nd January 2013, they returned to the temple. That was in breach of the afore-stated agreement that was reached between the parties. This development once again escalated tension in the area. There was a group of monks who had a counter-claim to the temple. In the circumstances, on 23rd January 2013, the 1st Respondent tendered to the Magistrate's Court of Hingurakgoda a further Report ("1R4" - "P2(b)") and an application was made for the issuance of an order under section 106(1) of the CCPA. The learned Magistrate issued Notice on the rival fractions, following their approval before Court conducted an inquiry, and on 31st January 2013 made order as contained in "P2(c)".

29) In compliance with the order made by the learned Magistrate, the possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya* was taken-over by officials of the Divisional Secretariat who were subordinate to the 2nd Respondents. Movable properties were inventoried and handed-over to the Minneriya Police Station. Thereafter, as per the order made by the learned Magistrate and the request made by the 2nd Respondent, officers of the Minneriya Police Station provided security to the *Nikawewa Sri Sambodhi Aranya Senasanaya*.

30) On 2nd October 2013, S.G. Karunawathie made a complaint to the Minneriya Police Station alleging that the 3rd Respondent and two other monks had unlawfully entered the *Nikawewa Sri Sambodhi Aranya Senasanaya* ("1R6"). The complaint did not contain any reference to the 4th Respondent alleging his participation. A team of Police officers of the Minneriya Police Station conducted investigations into the complaint. During the course of the investigation, the 3rd Respondent was

interviewed and his statement (“1R7”) was recorded. He (the 3rd Respondent) denied the allegation that he entered the *Nikawewa Sri Sambodhi Aranya Senasanaya*, and took up the position that during the entirety of the day (2nd October 2013), he was at the *Sri Jinendraramaya*, a Buddhist temple of which he is the priest in-charge (*Viharadhipathi*) situated in Thambalawa, Jayanthipura. As there was a robing ceremony at the temple, he was at the temple the entire day. Two other priests, namely Venerable Panahaduwe Piyarathana Thero and Venerable Jayanthipura Gunarathana Thero were also interviewed and their statements were recorded. They admitted having entered the *Nikawewa Sri Sambodhi Aranya Senasanaya*, and took up the position that they stayed in the preaching hall. The 1st Respondent directed the said monks to immediately vacate the premises, and they complied with the directive forthwith.

31) Furthermore, the 1st Respondent called upon both fractions to appear at the Minneriya Police Station on 4th October 2013, and when they arrived, were warned to refrain from entering the premises of the *Nikawewa Sri Sambodhi Aranya Senasanaya*, and advised all parties to maintain peace until the dispute is resolved. The 2nd Respondent was informed of the latest developments.

32) The position of the 1st and 2nd Respondents is that, as at the time of filing the instant Application (12th December 2013), the possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya* has not been permanently handed over to any party.

Analysis of evidence and conclusions of Court

33) It is evident from “2R1” and “2R2” that both Petitioners had entered Buddhist monkhood and thereby attained the *Samanera* status on 25th April 2013. Thus, prior to the said date, both Petitioners have been laymen. Therefore, even if one were to give a charitable construction to what was intended by the Petitioners to convey to this Court, by the contents of paragraph 3 of the Petition and the corresponding paragraph in the joint affidavit of the Petitioners (paragraph 2) which states that the Petitioners and their tutors were in ‘possession’ of the *Nikawewa Sri Sambodhi Aranya Senasanaya* for a long period of time, the said assertion is misleading, to say the least. This is evident by the fact that, even in the counter-affidavit of the Petitioners, they have not revealed the exact date on which both of them entered monkhood and thereby attained *Samanera* status.

34) Furthermore, no evidence has been placed before this Court as regards the circumstances under which the Petitioners (as laymen) or their respective Tutors entered the *Nikawewa Sri Sambodhi Aranya Senasanaya* in 1999. The motive for such suppression is evident by the material placed before this Court by the 1st and 2nd Respondents and the submissions made by the learned Additional Solicitor General. That being, neither the Petitioners, nor their Tutors had any legitimate basis to enter the premises of the *Sri Abhayagiri Dhaham Pasala* (as the premises was called then) and take possession and residence therein. That the dhamma school (*Dhaham Pasala*) situated on State land which had been temporarily vacated due to terrorist activities in the area, does not provide a legal basis or entitlement to enter such premises and take residence therein, and thereafter convert it into a Buddhist temple of sorts. The situation is compounded by the fact that, the premises had not been registered and declared by the Commissioner General of Buddhist Affairs under the Buddhist Temporalities Ordinance as being a 'Buddhist Temple'. That the practices of those who later became *Samanera Monks* of such *de-facto* temple being a significant departure from the practices of Buddhist Monks of the Theravada tradition of the Buddha Sasana appears to have been an additional factor.

35) Furthermore, the Petitioners who obviously knew only too well that a predominant number of villagers in the surrounding area (possibly excluding only five (5) families) were perturbed over the ostensibly unusual practices being followed by them and their deviation from routine practices of *Theravada Buddhist Monks* such as (i) administering *pancha-seela* to lay disciples of Buddhism, (ii) officiating at *Bodhi-pooja*, and (iii) accepting *paansakuula* and performing other Buddhist rituals following the death of a person, wanted them to leave the premises of this supposedly Buddhist temple, withheld such highly pertinent background information from this Court. Furthermore, they attempted to give to this Court the impression that, the incident on the night of the 10th January 2013 was a totally unprovoked, isolated incident without any background. That is clearly far from the truth.

36) Thus, this Court at the very outset itself conclude that the Petitioners have attempted to suppress relevant facts and mislead Court to believe that both of them along with their respective tutors had been in lawful possession of the premises referred to as the *Nikawewa Sri Sambodhi Aranya Senasanaya* for a very long time. This is of particular relevance to the instant Application as

dispossession from what the Petitioners call the “*Nikawewa Sri Sambodhi Aranya Senasanaya*” is the core grievance of the Petitioners. Therefore, this Court must conclude, which it does in an unhesitant manner, that the Petitioners narrative placed before this Court lack *uberima-fides*.

- 37) Any person who seeks relief from a Court of law must be unconditionally truthful, place before Court all relevant facts (without filtering out what is unfavourable to him), and refrain from concealing or suppressing any fact or circumstances which may be relevant to the adjudication of the matter placed before Court. The Court must be presented with a truthful and comprehensive narrative of the factual scenario which the Petitioner claims was associated with the alleged infringement of his fundamental rights. In this regard, learned Additional Solicitor General rightly brought to the attention of this Court, the observations of this Court in *Liyanage and Another v. Ratnasiri, Divisional Secretary, Gampaha and Others* (2013) 1 Sri L.R. 14.
- 38) This Court has on several occasions concluded that the absence or lack of *uberima-fides* on the part of a person who seeks relief by invoking the jurisdiction of this Court under and in terms of Article 126 read with 17 of the Constitution is a *sue-generis* ground on which the Petition could be dismissed *in-limine*. In this regard, learned Additional Solicitor General drew the attention of this Court to the *dicta* in *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others* (2002) 1 Sri L.R. 287, where this Court has held that the lack of *uberima-fides* is a fatal error which operates against the Court granting any relief. Therefore, learned Additional Solicitor General’s plea that this Application be dismissed *in-limine* was quite justified.
- 39) However, dismissal of an Application on the ground that the Petitioner’s case lacks *uberima-fides* is at the discretion of Court, particularly since it is the paramount judicial duty of this Court to protect the fundamental rights guaranteed by the Constitution. Therefore, in the interests of justice, notwithstanding the afore-stated finding that the narrative placed before this Court by the Petitioners lack *uberima-fides*, this Court wishes to proceed to consider the merits of the complaint of the Petitioners.
- 40) It is necessary to observe that in view of the formulation of the factual basis on which the Petitioners claim that their fundamental right to the equal protection of

the law has been infringed (paragraph 25 of the Petition), the allegation amounting to the infringement of a fundamental right has been made only against the 1st Respondent. Therefore, what is necessary to consider and decide is the lawfulness or otherwise of the four (4) grounds on which the Petitioners claim that the 1st Respondent infringed their fundamental right to the equal protection of the law. The conduct of the 2nd Respondent and decisions made by her have not been impugned by the Petitioners as having amounted to an infringement of their fundamental rights.

41) **Grounds 1 and 2:** Allowing the 3rd Respondent to enter into possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya* and failing to prevent his entry into the premises:

The incident being complained of by the Petitioners had taken place on the night of 2nd October 2013. It is to be noted that by Order dated 31st January 2013, the learned Magistrate had temporarily vested possession of the premises of the temple (*Nikawewa Sri Sambodhi Aranya Senasanaya*) in the 2nd Respondent. The duty of the 1st Respondent was to provide security to the premises to prevent a possible breach of the peace. The Petitioners attempted to have the order made by the learned Magistrate set-aside, and had on the 25th September 2013, failed in that attempt, since the learned Judge of the High Court refused the application of the Petitioners. Material placed before this Court does not reveal that the 1st Respondent exercising his discretion permitted the 3rd Respondent to enter into possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya* or failed to prevent his entry into the premises. The Petitioners have failed to prove that allegation, in the backdrop of the Petitioners making such allegation against the 1st Respondent, and him denying it. In that backdrop with conflicting narratives, to accept the version of the Petitioners over the version of the 1st Respondent, the Petitioners have a duty of presenting corroborative evidence before this Court. There is no such corroboration. It is necessary to note that S.P. Karunawathie who has made a complaint to the Minneriya Police Station with regard to this incident, does not appear to be an eye-witness. In the circumstances, it is not possible to act on the allegation of the Petitioners and find the 1st Respondent culpable for the accusation made against him.

42) **Ground 3:** Failing to take necessary action against the 3rd and 4th Respondents in response to the complaint made by S.P. Karunawathie:

As stated above, indeed, on 2nd October 2013 at 6.05 p.m., S.P. Karunawathie had made a complaint to the Minneriya Police Station regarding the incident that is said to have occurred earlier that day. Her complaint (“1R6”) was that she and several other villagers have become destitute as a result of the 3rd Respondent and two other monks having entered the temple without lawful authority. Her complaint provides no clarification as to how such unlawful act has placed herself and some other villagers in a destitute situation. The position of the 1st Respondent is that, following the receipt of the said complaint, a team of Police officers visited the temple and conducted investigations. As stated previously, the 3rd Respondent had been interviewed and his statement (“1R7”) had been recorded. He had denied the allegation against him and claimed an *alibi* position. The two monks who had entered the premises had also been interviewed and their statements were also recorded. On a direction issued by the 1st Respondent, they had vacated the premises. On 4th October 2013, all parties concerned were required to come to the Police Station, and warned not to re-enter the premises in issue and maintain peace until the dispute is resolved by the 2nd Respondent. It is thus seen that the 1st Respondent has taken action as would be reasonably required to investigate into the complaint of S.P. Karunawathie. In the circumstances, it is not possible to agree with the submission made by the learned Counsel for the Petitioners that the 1st Respondent had not taken necessary action with regard to the complaint made by S.P. Karunawathie and had been partial towards the 3rd Respondent. Thus, I conclude that the allegation against the 1st Respondent that he failed to take action against the 3rd and 4th Respondents is ill-founded.

43) **Ground 4:** Removing some of the movable properties of the Petitioners from the temple and thereby facilitating the 3rd Respondent to remain at the temple and establish his possession of the *Nikawewa Sri Sambodhi Aranya Senasanaya*:

The position of the 1st Respondent is that, following the Order made by the learned Magistrate on 16th September 2013 refusing the return of possession of the premises of the temple to the Petitioners, steps were taken to handover possession of movable properties to the Petitioners. Accordingly, on 8th October 2013 a message was dispatched to the Petitioners to call over at the Minneriya Police Station and take away their property. It is this message that the Petitioners had received on 13th October 2013 (“P6”). As stated in the said message, the 2nd Respondent had taken steps to collect the relevant items from the temple and hand them over to the Minneriya Police Station. Thus, it is evident that it was the 2nd Respondent (to whom the learned Magistrate had vested custody of the temple)

who had collected the property from the premises of the temple and handed them over to the Minneriya Police Station. Therefore, I cannot agree with the submission of the learned Counsel for the Petitioners that the 1st Respondent is responsible for taking away their property to the Police Station. In any event, as at the time of the filing of this Application, the possession of the temple had not been vested in either the 3rd Respondent or in anyone else. Nor is there any evidence that the 3rd Respondent had moved into the temple. The 2nd Respondent (Divisional Secretary) remained in-charge of the premises. Thus, it is not logical to assert that the conduct of the 1st Respondent in taking away the property resulted in facilitating the 3rd Respondent to remain in the temple and establish his possession.

44) In view of the foregoing, I conclude that, there is no legal or factual basis to arrive at a finding that the 1st Respondent has acted contrary to law. In fact, it is necessary to observe that, from the time of the commencement of the dispute relating to the two Petitioners, the 1st Respondent has acted in terms of the law, conducted affairs in a prudent manner, and had taken necessary steps to prevent a breach of the peace. He has supported the resolution of the dispute between the parties by taking timely law enforcement action and by initiating necessary judicial proceedings before the learned Magistrate.

Findings and outcome

45) Due to the reasons enumerated above, I hold that the fundamental right of the Petitioners to the equal protection of the law guaranteed by Article 12(1) of the Constitution has not been infringed by the 1st Respondent.

46) Accordingly, I dismiss this Application.

47) As this is an Application which sans any merit or justification of filing, I direct the Petitioners to jointly pay a sum of One Hundred Thousand Rupees (Rs. 100,000/=) as costs to the State. The said sum of money shall be paid to the account of the 5th Respondent – Honorable Attorney-General within one month of this Judgment.

48) The Petitioners shall also jointly pay a sum of One Hundred Thousand Rupees (Rs. 100,000/=) to Court. The said sum of money shall be paid to the account of the Registrar of the Supreme Court within one month of this Judgment.

Judge of the Supreme Court

Vijith K. Malalgoda, P.C., J.

I agree.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.

I agree.

Judge of the Supreme Court