

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

S.C (FR) Application No.92/2016

In the matter of an Application under
and in terms of Article 126 of the
Constitution of the Republic

1. M. J. M. Faril
President of the Board of Trustees
Wekada Jumma Mosque,
Horana Road, Eluwila,
Panadura.
2. Moulavi M.B.M. Haris
Principal
Anas Ibnu Malik Hiflul Quran
Madrasa (Dhamma School)
147, Wella Road, Pinwala,
Eluwila, Panadura.

PETITIONERS

Vs.

1. Bandaragama Pradeshiya Sabha
Panadura Raod,
Bandaragama.
2. N.D.I. Swarna K. Perera
Secretary,
Bandaragama Pradeshiya Sabha
Panadura Road,
Bandaragama.
3. Menaka Priyantha Abeyratne
Divisional Secretary,
Bandaragama.
Divisional Secretariat,
Bandaragamna.

4. Urban Development Authority
6th & 7th Floor,
Sethsiripaya, Battaramulla.
5. The Director,
Department of Muslim Religious and
Cultural Affairs,
No. 180, T. B. Jaya Mawatha,
Colombo 10.
6. Ven. Bolgoda Seelarathana Thero
Patalirukkaramaya,
Pinwala, Panadura.
7. The Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

Ven. Pinwala Chandarathana Thero
Patalirukkaramaya Pinwala,
Panadura.

PARTY SEEKING SUBSTITUTION IN THE
ROOM OF THE DECEASED 6TH RESPONDENT

Vs.

3. M. J. M. Faril
President of the Board of Trustees
Wekada Jumma Mosque,
Horana Road, Eluwila,
Panadura.

4. Moulavi M.B.M. Haris
 Principal
 Anas Ibnu Malik Hiflul Quran
 Madrasa (Dhamma School)
 147, Wella Road, Pinwala,
 Eluwila, Panadura.

1ST & 2ND PETITIONERS-RESPONDENTS

AND

Vs.

1. Bandaragama Pradeshiya Sabha
 Panadura Raod,
 Bandaragama.
2. N.D.I. Swarna K. Perera
 Secretary,
 Bandaragama Pradeshiya Sabha
 Panadura Raod,
 Bandaragama.
3. Menaka Priyantha Aebyratne
 Divisional Secretary,
 Bandaragama.
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 Patalirukkaramaya,
 Pinwala, Panadura.

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 Attorney General's Department
 Colombo 12.

1ST TO 7TH RESPONDENT-RESPONDENTS

BEFORE: Sisira J. de. Abrew J.
 Anil Gooneratne J. &
 Vijith K. Malalgoda P.C. J

COUNSEL: Faiz Mustapha P.C. for Petitioners

Upul Kumarapperuma for 1st & 2nd Respondents

Manohara de Silva P.C. with Rajitha Hettiarachchi for 6A Respondent
 Rajitha Perera S.S.C for 3rd to 5th & 7th Respondents

ARGUED ON: 31.05.2017

DECIDED ON: 28.06.2017

WRITTEN SUBMISSIONS OF THE 3A, 4TH, 5TH & 7TH RESPONDENTS FILED ON:

15.06.2017

WRITTEN SUBMISSIONS OF THE PETITIONERS FILED ON:

23.06.2017

WRITTEN SUBMISSIONS OF THE 1ST & 2ND RESPONDENTS FILED ON:

27.06.2017

GOONERATNE J.

The two Petitioners to this Fundamental Rights Application are the President of the Board of Trustees of the Wekada, Jumma Mosque and the Principal of a Dhamma School respectively, as described in paragraph 2 of the Petition. The Petitioners state that by a deed of gift, (P1) became the owner of the land depicted as Lot B2 in plan 3084 of 01.11.2002. Thereafter an application

was made to the 1st Respondent, Pradheshiya Sabhawa for a development plan to put up a two storeyed school building on the said land on 21.01.2008. The 1st Respondent approved the said application to construct a two storeyed building for a school and issued a development permit dated 21.04.2008 (P2 & P3). Only the ground floor was completed and the construction work of the 1st floor was delayed due to financial constraints. On completion of the ground floor, the Petitioner commenced the school and 30 students were enrolled who are boarded. Name of the school is "Anas Bin Malih Quaran Madrasa" (P4).

The Petitioners aver in their petition that on or about 2015 Petitioners commenced the construction of the 1st floor. Thereafter the 2nd Respondent by her letter of 01.06.2015 (P5) informed the 1st Petitioner that development permit given earlier had lapsed and as such a fresh permit should be obtained. Letter marked P5 also refer to the fact that the Petitioners are constructing a slab instead of a roof, which is objectionable, and contrary to the building plan. The Petitioners plead by letter P6 of 18.09.2015 sent by the 2nd Respondent, that complaints were received from residents in the area. As such 2nd Respondent requested the Petitioners to attend a meeting at 2.30 p.m on 25.09.2015. On the said day of the meeting residents in the area were not present and as such the meeting was postponed for 14.10.2015. On that date Petitioners and a few other participants of the Jumma Mosque participated at

the discussion and two Priests were also present as stated in paragraphs 15 and 16 of the petition.

The main concern of the residents and the Priest was that the Petitioners were constructing a Mosque, instead of a school to be used as a Dhamma School. Petitioner's position was that the building would be used only for the school and not for a Mosque. The 2nd Respondent based on the discussion requested the Petitioner to address a letter to 2nd Respondent signed, stating that the purpose of construction was for the school only and to obtain approval for same. Petitioner's position was that the Petitioners had no alternative but to sign the said letter (P7). Petitioners as pleaded complain that the purported undertaking written letter also included certain clauses and thus take away the Petitioner's fundamental rights guaranteed under Articles 10 and 14(1)(e) of the constitution. The minutes of the meeting on 14.10.2015 was recorded by letters of 14.10.2015 (P8) & (P9). On 25.01.2016 amended plan (P16) was submitted to the 1st Respondent and on 25.01.2016 same was approved by 1st & 2nd Respondents (development plan).

On or about 12.02.2016 the concrete slab was to be laid, and the 2nd Respondent through Senior Police Officer served letter of 12.02.2016 on the 1st Petitioner directing the Petitioner to suspend the construction as the residents and Buddhists monks protested (P13). Thereafter on the request of

Petitioners a discussion was held at the office of the Headquarter Inspector of Police, Panadura, where the Petitioner and few others represented the Moseque and Buddhist Monks also participated at the discussion. The Senior Superintendent of Police of the area informed the participants that facts would have to be reported to the Magistrate to prevent a breach of peace.

In these circumstances proceedings in the Magistrate's Court, however, was not instituted as the residents were not present. The police on 12.02.2016 handed over to the 1st Petitioner letter P14 of 12.02.2016 to the effect that the construction was for the purpose of a place of worship and not for a school and it cannot be done without proper approval, and requested the Petitioner to stop construction works. (vide P14). Attempts were made by the Petitioners to go ahead with the construction works by having discussions with the authorities concerned but without success. The effect of P14 is considered in this Judgment at a subsequent point.

The learned President's Counsel argued *inter alia* that

- (1) In the above circumstances the direction to stop construction work is a violation of articles 10, 12(1) & 12(2), 14(1) (e) of the Constitution, and the decision to stop work is arbitrary, unreasonable or contrary to law.
- (2) Irreparable loss and damage caused to the Petitioners in view of stoppage of construction work.

(3) Notwithstanding P14, as aforesaid the Petitioners had a permit, to continue the construction works for a Dhamma School for Muslims in the Panadura area.

(4) There was no proper reasons adduced by those concerned Respondents to stop work.

(5) Learned President's Counsel also submitted that necessary approvals were obtained from 1st - 2nd Respondents and that it was a matter for the 1st – 3rd Respondents to obtain necessary approval from the 4th Respondent UDA. As such clear violation of Article 12 had been established, and he would rely on pursuing the case to obtain relief.

(6) That the Respondents failed to act or acted contrary to any law recognised by the Constitution and the direction to stop construction is contrary to law. No hearing given to Petitioner.

(7) Further there is no law to prevent the construction works by the police party, since the Petitioners have obtained necessary approvals from the 1st and 2nd Respondents.

On 16.05.2016 the Supreme Court granted Leave under Article 12(1) of the Constitution for an alleged violation of Article 12(1) of the Constitution.

The learned counsel for the 1st and 2nd Respondents submitted to court.

(a) Although approval was granted to construct a school, there were protests from the residents in the area and from Buddhist Monks. As such several

meetings had to be held with both parties. Vide 2R6 (a) to 2R6 (e), 2R 7(a) to 2R7 (f) and letter P13 had to be served on the Petitioners due to massive protests.

- (b) That the 1st and 2nd Respondents had to take steps directing the Petitioners to stop the construction works due to massive protest as aforesaid and to avoid a breach of peace. Even the villagers had participated in the protest.
- (c) All attempts made to avoid a breach of peace and bring about peace and harmony between the parties, If not in a way it could spread to other areas.
- (d) As such encouraged discussions between parties to ultimately resolve the dispute.
- (e) 1st and 2nd Respondents acted in terms of the relevant regulations prevalent at that point of time.

The learned President's Counsel for the intervenient party inter alia

Submitted that:

1. There is ample provisions in the law to take the steps taken by the Respondents.
2. Even during the colonial era laws were enacted with a view of maintaining peace in the community as even during that period the British Government enacted laws to maintain peace, being aware of tension between communities in the country, this being a pluralistic society.
3. Laws enacted then still prevails and steps were not taken by successive Governments to repeal same.

4. Our Constitution more particularly caters to the dispute in hand and the definition to the term 'law' as contemplated under Article 170 of the Constitution is wide enough and does not contemplate to repeal laws enacted in the yester years more particularly the colonial era as the then Government had to consider recurrent tension, dissensions etc. between communities.

5. He submitted to court the interpretation Article 170, which reads thus :

"law" means any Act of Parliament, and any law enacted by any legislature at any time prior to the commencement of the Constitution and includes an Order in Council;

The definition to 'law' does not cause any confusion and it could be easily understood. It is very simple and clear. The main question is whether the Respondents are responsible and liable as pleaded to deprive the Petitioners equal protection of the law. Facts presented by either party does not cause any confusion. Petitioners attempt to demonstrate their right to continue with the construction had been violated. Initially the Petitioners were given a permit to construct for a purpose. The material placed before court indicate that the real purpose of the Petitioners, seems to be to have a Mosque, instead of a school.

This seems to be the starting point for the dispute. The villagers, residents and Buddhist Monks vehemently protested for any further construction for a

different purpose. Our country had suffered over the years as a result of communal violence. History repeats and if one were to analyse as to what happened in the 1915 riots, though it was meaningless for the two communities to clash, lessons have not been learnt by a certain section of the community. Riots at that point of time resulted in loss of valuable life and property. Time and again incidents of such nature took place in our country. As such the official respondents had to take steps to avoid and avert any breach of peace.

In the context of the case in hand I cannot conclude that the Petitioners were denied equal protection of the law. Certainly I cannot fathom as to whether there was a violation of the Petitioner's fundamental rights. What is necessary should be done to avoid a crisis situation which could spread to other areas of our country. No further reasons need to be adduced in the circumstances of the case in hand by the Respondents.

The guarantee of equal protection of the law must mean protection of equal laws. Judicial decisions must of necessity depend on the facts and circumstances of each particular case, and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination.

Budhan Chowdhary V. State of Bihar 1955 AIR (SC) 191 per Das, CJ referring to American decisions.

I wish also to emphasise the fact that the Respondents acts do not suggest any form of discrimination based on race. On an examination of the material before court, I observe that Respondents have not violated Article 12(1) of the Constitution.

I have considered the documents 1R5 to 1R9 and the Agreement 1R10 between both parties whereby they agreed to have only a Dhamma School for Muslim children and not to have a place of worship. 1R13 confirms the contents of 1R10. The other important document 1R19(b) relates to setting up of place of worship. Material as aforesaid indicates a continuous protest, which the authorities considered and gave due consideration in arriving at a decision to suspend the construction works. Petitioners' party seems to have deliberately violated the agreement to put up a school. The prayer to the petition does not call upon the Buddha Sasana Ministry to quash the relevant circulars issued by the Ministry. Therefore I cannot conclude that the Respondents acted contrary to circulars.

One of the prayers of the Petition is to declare document marked P14 null and void.

The 3rd Respondent, by letter marked P14, directed the 1st Petitioner to stop constructions of the new building as he has not obtained approval of the Religious Affairs Ministry. The 3rd Respondent had, in the letter marked P14, referred to the Circular No. MBRA/2-SAD/10/Con.Gen/2013. The 3rd Respondent has produced this Circular as 3A R4 (e). According to this Circular (3A R4 (e) any person who constructs a Dharma School has to obtain the approval of the Ministry of Religious Affairs. The Petitioners had not obtained the approval of the Ministry of Religious Affairs. Learned President's Counsel for the Petitioner tried to contend that this Circular does not come within the interpretation of law. I now advert to this contention. In *Wickrematunga Vs. Anuruddha Ratwatte (1998) 1 SLR 201*

"Law" in Article 12 of the Constitution includes regulations, rules, directions, principles, guidelines and schemes that are designed to regulate public authorities in their conduct. In the context, whilst Article 12 erects no shield against merely private conduct, public authorities must conform to constitutional requirements, in particular to those set out in Article 12 even in the sphere of contract; and where there is a breach of contract and a violation of the provisions of Article 12 brought about by the same set of facts and circumstances, the aggrieved party cannot be confined to his remedy under the law of contract.

When I consider the above judicial decision I cannot agree with the above contention. I therefore reject it.

As the Petitioners have not obtained the approval of the Ministry of Religious Affairs to construct the proposed Dharma School, the stand taken

by the 3rd Respondent in P14 is correct. Therefore the application to declare P14 null and void should be rejected.

In all the above circumstances I hold that there is no merit in the application of the petitioners. This application stands dismissed with costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda P.C., J.

I agree.

JUDGE OF THE SUPREME COURT