1948 *Present :* **Dias J.**

BUDDHARAKKITHA THERO, Petitioner, *and* **THE PUBLIC TRUSTEE** *et al.*, Respondents.

S. C. 445—Application for a Writ of Mandamus on the Public Trustee.

Buddhist Temporalities—Nomination of trustee—Due nomination—Dispute as to right to nominate—Letter of Appointment—Provisional trustee—Chapter 222—Sections 9, 10 and 11.

Where two rival claimants to an incumbency purport to nominate trustees, the Public Trustee is not called upon to decide which of the two claimants has the right to make the nomination. If he honestly has a doubt on this point he is entitled under section 11 (3) to appoint a provisional trustee until the point is decided.

A legal nomination is a nomination by a *de jure* viharadhipathi.

APPLICATION for a writ of *Mandamus* on the Public Trustee.

H. V. Perera, K.C., with *E. B. Wikramanayake, B. H. Aluwihare*, and *Cyril Randunu*, for the petitioner.

Boyd Jayasuriya, Crown Counsel, for the first respondent.

F. A. Hayley, K.C., with *D. L. Edusuriya*, for the second respondent.

Cur. adv. vult.

March 4, 1948. DIAS J.—

The late Mapitigama Dhammarakkita Nayaka Thero was the *Viharadhipathi* and Trustee of the Kelaniya Vihare also known as the Sri Kalyani Rajamaha Vihare. This monk had two pupils—Mapitigama Sangharakkita Thero (admittedly the senior pupil) and Mapitigama Buddharakitta Thero, who is the petitioner to this application. It was assumed at the argument that this temple was governed by the rules of pupillary succession known as *Sissyana-sissya-paramparawa*. The succession to this famous Temple came before the Courts in 1908 in the case of *Sumangala Unnanse v. Dhammarakkita*[1] when Hutchinson C.J. said : "As to the *prima facie* right of the senior pupil to be the sole successor, that is what I should have expected the rule to be, and the evidence satisfies me that it is the rule". The general rule of succession to a Buddhist Temple is that known as *Sissyana-sissya-paramparawa, i.e.*, on the death of the incumbent or *Viharadhipathi*, his senior pupil or the deceased senior pupil's senior pupil succeeds—*Dhamma Joti v. Sobita*[2] ; *Gunaratne Unnanse v. Dharmananda*[3]. Therefore, on the death of Mapitigama Dhammarikkita Nayaka Thero on July 17, 1947, following the rule of pupillary succession, the senior pupil Sangharakkita would normally have become the *Viharadhipathi* of the Temple. It is, however, settled law that it is open to the *viharadhipathi* in his lifetime to appoint or nominate from amongst his pupils a junior monk to succeed him, to the exclusion of the

[1] *(1908) 11 N. L. R. 360.* [2] *(1913) 16 N. L. R. 408.*
[3] *(1921) 22 N. L. R. 276.*

senior pupil—see *Piyatissa Terunnanse v. Sarnapala Terunnanse.*[1] There is no legal requirement that such an appointment should be made by deed or will.

The Buddhist Temporalities Ordinance (Chap. 222) declares that the provisions of the Ordinance shall apply to every Buddhist Temple in the Island except such as have been exempted— Sec. 3. The Kelaniya Temple has not been exempted. The management of the property or temporalities belonging to every Temple which has not been exempted shall be vested in a person or persons "duly" appointed trustee under the provisions of the Ordinance—Section 4 (1). Section 10 (1) of the Ordinance provides that "the trustee of every temple which is not exempted from the operation of Section 4 (1) may, if no other special provision is made under this Ordinance for his appointment, be nominated by the *viharadhipathi* of such temple, who shall thereupon report such nomination forthwith to the Public Trustee. Whenever a vacancy occurs in the office of trustee for any such temple, a trustee shall be similarly nominated and reported within one month of the occurrence of the vacancy". Section 11 (1) provides that "whenever a person is entitled to nominate a trustee under sections 9 or 10 it shall be lawful for him to nominate himself as such trustee, unless he has been removed from the office of trustee under section 15 (2) or is disqualified from being a trustee by reason of section 14". Therefore, in the case of the Kelaniya Temple, after the death of the old *viharadhipathi*, it would be the duty of the new *viharadhipathi* (*a*) to nominate a trustee, or to nominate himself as trustee, and (*b*) to report such nomination forthwith to the Public Trustee in whom is vested the legal duty of appointing the trustee under Section 11 (2)—see *Punchi Appuhamy v. Appuhamy*[2].

Sections 11 (2) and (3) of the Buddhist Temporalities Ordinance read as follows :—

"(2) Whenever a nomination is duly made under sections 9 or 10 and reported to the Public Trustee, it shall be the duty of the Public Trustee to forthwith issue a letter of appointment to the person so nominated unless such appointment would contravene the provisions of this Ordinance.

(3) (*a*) Whenever no nomination is duly made under sections 9 and 10 within the periods specified in the said sections, or within any further period that the Public Trustee may allow for such purpose, or

(*b*) Whenever by reason of any disputes as to the person entitled to make such nomination, more than one person is reported to the Public Trustee as having been duly nominated trustee of any temple, the Public Trustee shall, pending a legal nomination, make any arrangement he thinks necessary for the safe management of the property of such temple, and if he thinks fit, provisionally appoint as trustee any person duly qualified".

The duty of the Public Trustee to issue the letter of appointment to a trustee arises :—(*a*) where a nomination of a trustee is "duly" made, *i.e.*, by the *de jure Viharadhipathi* of the Temple under section

[1] *(1938) 40 N. L. R. 262.* [2] *(1936) 39 N. L. R. 329.*

10 (1), (*b*) the nomination is "reported" to the Public Trustee and (*c*) where such appointment will not contravene the provisions of this Ordinance. When those conditions exist and the Public Trustee has no reason to believe that the appointment of the nominee would contravene the provisions of this Ordinance, *e.g.*, the provisions of section 11 (3) (*b*) or section 14, it is the duty of the Public Trustee "forthwith" to issue a letter of appointment in favour of the nominee of the *de jure Viharadhipathi*. If these requirements of the law do not exist, the duty of the Public Trustee to issue the letter of appointment does not arise. I cannot construe the word "forthwith" used in section 11 (2) to mean "immediately". The Public Trustee must be afforded time in which to make independent enquiries as to the qualifications of the nominee of whether there is a dispute as to the status of the person making the nomination.

In this proceeding the petitioner, alleging that the Public Trustee has failed to perform the legal duty cast upon him under section 11 (2) of the Ordinance, moves for a writ of *mandamus* on him to perform that duty.

The relevant facts are simple and uncontested. The deceased Mapitigama Dharmarakkita Nayaka Thero on June 26, 1947, while he was in hospital, executed deed 5038—exhibit A. He nominated the petitioner, his junior pupil, to be the *Viharadhipathi* of the Kelaniya Temple and the Lenagampola Temple. In that deed the deceased recited that he had decided to appoint his senior pupil Sangharakkita to be the *Viharadhipathi* of the Gangaramaya Temple by another deed of appointment. Whether such a deed was executed we do not know. This deed A was notarially attested by Proctor, D. F. J. Perera, Notary Public.

Dharmarakkita died on July 17, 1947. On the following day the Public Trustee says that one Don Charles Wijeywardene, "a chief dayakaya" of the Kelaniya Temple saw him and reported that a dispute had arisen between the two pupils of the deceased monk in regard to the appointment of the new *Viharadhipathi* for the temple, and that efforts were being made to effect a settlement. The petitioner wrote the letter marked B on July 19, 1947, to which he annexed a certified copy of deed 5038. The petitioner claimed to be the *de jure Viharadhipathi* under the deed, and intimated that he had nominated himself to be the trustee of the Temple and requested the Public Trustee to issue a letter of appointment in his favour. These papers were received by the Public Trustee on July 22, 1947. In the meantime, Sangharakkita, the senior pupil who is not a party to these proceedings, had written letter IR1 on July 21, to the Public Trustee where he stated that as senior pupil of the deceased monk he was the lawful successor of the deceased *Viharadhipathi*, and that he had assumed control and was functioning as *Viharadhipathi*. He nominated himself as trustee, and requested the Public Trustee to issue a letter of appointment in his favour.

On July 26, 1947, the Public Trustee wrote letter C to the petitioner stating "that the Viharadhipathiship of the vihare was in dispute, the other claimant being M. Sangharakkita Thero". He rightly

expressed no opinion on these conflicting claims. On July 28 a proctor on behalf of Sangharakkita saw the Public Trustee's chief clerk—see 1R 2. On August 2, counsel saw the Public Trustee on behalf of Sangharakkita and urged the Public Trustee in the interests of the Temple to make a provisional appointment without delay. On September 8, 1947, counsel on behalf of the petitioner saw the Public Trustee and urged him to recognize the petitioner as *Viharadhipathi*. It is, therefore, incorrect to say, as was argued for the petitioner, that the Public Trustee acted in this matter without bringing his mind to bear on the questions involved. Not only is it clear that the Public Trustee considered the matter, but his interviews with the lawyers of both parties must have brought his mind forcibly to bear on all the implications involved were he to issue a letter of appointment in favour of one of the disputants.

The Public Trustee says in paragraphs 9 and 10 of his affidavit that more than one person having been reported to him as having been duly nominated trustee of this Vihare, a dispute had, in his opinion, arisen as to the person entitled to make such nomination in terms of section 10 (3) (*b*). He, therefore, acting under section 11 (3) (*b*), appointed the 2nd respondent, a respectable neutral person, to act provisionally as trustee pending a legal nomination, so that the temporalities of the temple might be safeguarded while these priestly contestants had their legal claims settled.

I should have imagined that the action of the Public Trustee was the most convenient and sensible arrangement under the circumstances. Counsel for the petitioner, however, has strenuously argued that on the production of the deed 5038, which was on the face of it regular, it was the bounden and legal duty of the Public Trustee to have issued a letter of appointment in favour of the petitioner, in spite of the counter claim by the senior pupil, even if a Court of Law eventually held that the deed was for some reason invalid and that the senior pupil was entitled to succeed to the viharadhipathiship by right of seniority. I am unable to accept this contention.

The Public Trustee had before him two reports and two nominations by two rival claimants for the incumbency asking that letters of appointment be issued to two persons alleged to have been "duly" nominated to be trustee. Obviously, there cannot be two persons who are "duly" nominated to be trustees. "Duly" must mean "in the proper manner" or "regularly" or "properly"—see *Silva v. Weerasooriya*[1] where the phrase "duly stamped" was construed. The two persons nominated as trustees could not both have been "duly" nominated, *i.e.*, by two *de jure Viharadhipathis*. It was not possible for the Public Trustee, who is not a judicial officer, to adjudicate on the rival claims of the two persons who made the two nominations. It would have been improper for the Public Trustee to have adjudicated on the relative merits of those claims and to have placed the nominee of one disputant in possession. The duty of the Public Trustee to issue a letter of appointment can only arise "whenever a nomination is *duly* made" under sections 9 or 10. To decide which of the two nominations was "duly"

[1] *(1906) 10 N. L. R. 78.*

made, the Public Trustee must decide which of the two persons making the nomination was the Viharadhipathi, *i.e.*, the *de jure* incumbent of the Kelaniya Temple. If the Public Trustee honestly has a doubt on the point as to whether the nomination or nominations was or were "duly" made, I hold that his statutory duty to issue a letter of appointment does not arise until such doubt is resolved. Section 11 (3) makes special provision for such a situation. Pending a "legal nomination", *i.e.*, a nomination by a *de jure Viharadhipathi*, he can refuse to issue a letter of appointment, and if necessary appoint as a provisional trustee some person duly qualified "for the safe management of the property" of the Temple, while the priestly contestants have the question decided elsewhere as to who has the better right.

On the facts before me I find it impossible to hold that the Public Trustee should have upheld the nomination of the petitioner and rejected that of Sangharakkita or *vice versa*. Until some tribunal lay or ecclesiastical, decides whose right to be the *Viharadhipathi* is the better one, a layman like the Public Trustee cannot be expected to say which of the two monks had the right to make the nomination for the trusteeship of this temple under Sec. 10 (1) and which under section 11 (2) the Public Trustee was bound to accept as a "due" nomination.

I am, therefore, of opinion that there has been no failure on the part of the Public Trustee to perform a statutory duty which was incumbent on him to perform. The application for the writ, therefore, fails; and it is dismissed with costs.

Application dismissed.