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

In the matter of an application for Writ of Certiorari under and in terms of Article 140 of the Constitution.

COURT OF APPEAL
WRIT APPLICATION
NO: 802/2024

1. Masjid Al Abraar Grand
   Jummah Mosque,
   Maradana, Beruwela.

2. Mohamed Abubucker
   Mohamed Athaulla,
   No.41, Perera Road, China Fort,
   Beruwela.

3. Deshakeerthi Jabir Mohamed
   No.25, Perera Road, China Fort,
   Beruwela.

4. Dr. Ahamed Hussain
   Mohamed Marjan,
   N0.23, Buhari Thakkiya Road,
   Maradana, Beruwela.

5. Mohamed Masahir Mohamed
   34, Bakeer Markar Mawatha,
   Maradana, Beruwela.

6. Mohamed Hussain Mohamed Huzaif
   35, Yoosuf Avenue, China Fort, Beruwela.

Petitioners

Vs.

1. M.L.M. Mohideen Hussain
   Chairman,

Wakfs Board of Sri Lanka,
No.180, T.B. Jaya Mawatha,
Colombo 10.

2. M.A.Matheen
3. M. Mahil Dole
4. Mufty M.Z.M. Mustafa Raza
5. Moulavi M.I. Abdul Jabbar

All are members of Wakfs Board of Sri Lanka,
No.180, T.B. Jaya Mawatha,
Colombo 10.

6. Goraka Gahayatagedara Mohammadu Illyas Mohammadu Muneer
C/O Wakfs Board,
No.180, T.B. Jaya Mawatha,
Colombo 10.

7. Mohamed Moosin Mohamed Risan Raleen Mansil
Cinnamon Garden,
Beruwela.

8. Mohamed Rafi Mohamed Imitiyas
No.7, Bakeer Markar Avenue,
Beruwela.

9. Mohamed Yehiya Fathima Jeroosa
No. 53/4, Hanafi Mawatha, Maradana,
Beruwela.

10. Alhaj Mohamed Naim Mohamed Marzook
No. 191/198, Maradana Para,
Godawathamaala, Maradana,
Beruwela.

11. M.R.M. Azwer

No.59, Bakir Markar Avenue,
Maradana, Beruwela.

12. H.K.A. Sabir
No.61, Bakir Markar Avenue,
Maradana, Beruwela.

13. M.F.M. Basheer
No.77A, Bakir Markar Avenue,
Maradana, Beruwela.

14. M. Ansar
No.132/1, Maradana Road, Beruwela.

15. S.M. Riswan
No.133A, Maradana Road,
Beruwela.

16. M. Mulaffarr
No.133, Maradana Road,
Beruwela.

17. Hounourable Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Dhammika Ganepola, J.

Damith Thotawatta, J.

Counsel : Rushdie Habeeb with Waseemul Akram and Shahmy Fareed instructed by Sanjeewa Kaluarachchi for the Petitioners.

Ranmalee Meepagala Instructed by Shayamali Athukorala for the 1st to 5th Respondents.

Dilumi de Alwis with Yalinda Almeida instructed by K.M.G.M.A. Salman for the 7th to 13th, 15th and 16th Respondents.

Zuhri Zain, DSG for the 17th Respondent.

Supported on : 21.03.2025

Ordered on : 20.05.2025

Dhammika Ganepola, J.

The 2nd to 6th Petitioners are the trustees of the 1st Petitioner Mosque. The 1st Respondent is the Chairman of the Wakfs Board, and the 2nd to 5th Respondents are the members of the Wakfs Board. The 7th to 10th Respondents are tenants of premises relevant to the instant application which is owned by the 1st Petitioner Mosque.

The above premises, which belong to the 1st Petitioner, had been rented out to the 7th to 10th Respondents for a period of five years from 01.01.2013 to 31.12.2017 by the relevant lease agreements. After the lapse of the period of lease agreements on 31.12.2017, the Petitioners had made attempts to renew the relevant lease agreement on new terms and conditions with the 7th to 10th Respondents, yet, the parties have failed to arrive at an agreement.

As the 7th to 10th Respondents in violation of the terms and conditions of the relevant lease agreements, failed to hand over the vacant possession and continued to occupy the premises even after the lapse of the lease agreement period, the 2nd to 5th Petitioners instituted legal proceedings against 7th to 10th Respondent by filing cases bearing Nos. RE 573/2024, RE 574/2024,575/2024 and RE 577/2024 before the District Court of

Kalutara with the permission of the Wakfs Board as required by Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956.

While the said actions were pending before the District Court, upon a complaint made by the respective Respondents, the Wakfs Board summoned the trustees of the 1st Petitioner and the 7th to 10th Respondents before the Board on 03.12.2024. It is stated that the Petitioners have informed the Board that they are willing to execute lease agreements with the 7th to 10th Respondents on mutually agreeable terms and wish to settle the said cases before the District Court.

Accordingly, the Wakfs Board had directed (as per the proceedings dated 03.12.2024 before the Board marked as P13) the Petitioners to execute the lease agreements on the same day itself before the Board and submit a copy of the said lease agreements to the District Court, informing that the matter has been settled. Further, the Petitioners and the 7th to 10th Respondents were directed to appear before the Board at 3.30 p.m. on the same date to execute the lease agreement.

However, the Petitioners state that although the Petitioners informed their willingness to execute lease agreements on mutually agreeable terms, the parties were unable to reach an agreement or to execute the lease agreement as the terms suggested by the 7th to 10th Respondents were contrary to the discussions.

The Wakfs Board had called the case at 3.30 p.m. on the same date and had revoked the authority given to the Petitioners to recover the properties in the respective District Court cases and reserved the order to appoint a suitable person at the next hearing, alleging that the Petitioners are abusing the provisions of the Wakfs Act to achieve certain collateral purposes before the District Court. Further, the Wakfs Board appointed the 6th Respondent as an authorized officer as per Section 29(1) of the Wakfs Act to hold an inquiry against the Petitioners and to submit a report on their conduct in respect of the litigation before the District Court. The Board also appointed the 6th Respondent as an authorized officer to sign the lease agreement with the tenants. (See the proceedings dated 03.12.2024 before the Board marked as P14)

The Petitioners state that the decision taken by the Wakfs Board as reflected in the P13 and P14 to appoint an authorized officer is arbitrary, ultra vires, capricious, unreasonable, manifestly irregular and contrary to

law. In view of the above, the Petitioners *inter alia* seek a mandate in the nature of Writs of Certiorari to quash the decision of the Wakfs Board reflected in P13 directing the Petitioners to execute lease agreements on the same day before the Wakfs Board and to settle the pending cases before the District Court and the decision reflected in P14 appointing the 6th Respondent as an authorized officer with directions to hold an inquiry against the Petitioners and to submit a report and sign lease agreements.

Section 29(1) of the Wakfs Act stipulates the power conferred upon the Wakfs Board to appoint an authorized person to either inquire or to hold an inquiry into the alleged conduct of a trustee. Said Section 29(1) is as follows;

> *29(1) The Board may, of its own motion or upon a complaint made by any five members of the jamaath of any mosque registered mosque, either inquire, or direct the Director or any person authorized in that behalf by the board to hold an inquiry, into any alleged misfeasance, breach of trust or neglect of duty committed by a trustee of that mosque in respect of any property vested in that trustee or into any failure on the part of a trustee of that mosque to comply with the provisions of this Act, or into the inability of a trustee of that mosque to perform the duties imposed by or under this Act or to administer efficiently the general affairs of that mosque.*

However, as per the document marked P14, in addition to the appointment of an authorized person, the Wakfs Board has also appointed the 6th Respondent as an authorized officer to sign the lease agreement with the 7th to 10th Respondents. The learned DSG who appeared for the 17th Respondent brought to the notice of this Court the lack of a specific provision under the Wakfs Act on the appointment of an authorized person to sign a deed or lease agreement while an inquiry is pending. Accordingly, a question of law arises as to whether the Wakfs Board is empowered to appoint a person to sign a lease agreement where he has also been appointed to conduct an inquiry under Section 29(1) of the Wakfs Act. In the circumstances, this Court is of the view that the Petitioners have established an arguable case which warrants this Court to issue formal notices on the Respondents. Accordingly, this Court decides to issue formal notices on the Respondents.

The learned Counsel for the Respondents have taken up several preliminary objections such as suppression and misrepresentation of fact and availability of alternative remedies. The Court is of the view that such aspects should be dealt with after offering a full hearing to all parties.

The learned Counsel for the Petitioners submitted that grave and irremediable loss and damage would be caused to the Petitioners unless this Court issued an interim order as prayed for in the prayer of the Petition. I am of the view that a grave and irremediable loss and damage shall be caused to the Petitioners, and the final relief sought by the Petitioner shall become nugatory unless the interim relief prayed for by the Petitioners is not granted by this Court. However, considering the circumstances and the submissions made by the parties, this Court wishes to issue an interim order preventing the 1st to 5th Respondents from giving effect to the decision reflected in the document marked P14 to the extent that the 6th Respondent be prevented from signing any lease agreements with the 7th to 10th Respondents and implementing any such agreements as contained in P14 until the final determination of this Application. However, this order should not impede the 6th Respondent from holding an inquiry and submitting a report as per the decision reflected in document P14.

The registrar is directed to issue formal notices on the Respondents.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal