

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

***In the matter of an Application for  
Leave to Appeal, under and in terms  
of Section 5(2) and 6 of the High  
Court of the Provinces (Special  
provision) Act No. 10 of 1996 to be  
read together with the provisions in  
the Civil Procedure Code.***

**Case no.: SC/APPEAL/149/2016**

**Leave to Appeal No: SC/HCCA/LA/ 53/2013**

**HCCA (-): CIV/HCV/LA/02/2008**

**D.C (Vavuniya): TR/1097/05**

1. P. Shanthakumar of Kugan Motors,  
52, Second Cross Street,  
Vavuniya.
2. M. H. D. Mailvaganam  
65, Mill Road,  
Vavuniya.
3. M. Murugathas,  
Island Lodge,  
97, Bazaar Street,  
Vavuniya.
4. T. Thirunavukkarasu,  
Pillaiyar Stores,  
69, Mill Road,  
Vavuniya.

5. K. Nithiyanthan,  
Mala Distributors,  
No.113, Mill Road,  
Vavuniya.
6. S. Shanmugaratnam,  
No. 171, Kandasamy Kovil Road,  
Vavuniya.
7. B. Annalingam,  
Kugan's Honda House,  
No.110, Bazaar Street,  
Vavuniya.
8. A.Sabanathan,  
City Trade Corporation, Sathiya  
Building,  
12, 15, First Cross Street,  
Vavuniya.
9. S. Theiventhiran,  
New Mala Battery Trading Centre,  
87, Mill Road,  
Vavuniya.
10. S. N. Nathan,  
Second Cross Street,  
Vavuniya.
11. N. Suntharampillai,  
M. Kasipillai & Sons,  
Mill Road,

Vavuniya.

12. K.A. Senthilnathan,  
J.P, First Cross Street,  
Vavuniya.

**PLAINTIFFS**

**Vs**

1. Rasa Vijendranathan  
No.127,  
Kandasamy Kovil Road,  
Vavuniya.
2. Joy Mahil Mahadeva  
No.2, Foundation House Lane,  
Colombo 10.  
Presently at 79, Kandasamy Kovil  
Road, Vavuniya.
3. Senthini Dharmaseelan,  
Chinthamani, Lowton Road,  
Manipay.
4. Jeyaratnam Ravikumar,  
"Crown Villa" Naval South,  
Manipay
5. Sri Durga Jeyaratnam  
"Crown Villa" Naval South,  
Manipay
6. Jeyaratnam Gokhale.
7. Jayaratnam Veerasingam and

8. Jeyaratnam Ragavan  
All of "Crown Villa" Naval South,  
Manipay

**DEFENDANTS**

AND BETWEEN

In the matter of Leave to Appeal to set  
aside the order dated 15/05/2008 in  
D.C. Vavuniya Case No. TR/1097/05.

Rasa Vijendranathan  
No.127, Kandasamy Kovil Road,  
Vavuniya

**1<sup>ST</sup> DEFENDANT - PETITIONER**

**Vs**

1. P. Shanthakumar of Kugan Motors,  
52, Second Cross Street,  
Vavuniya.
2. M. H. D. Mailvaganam  
65, Mill Road,  
Vavuniya.
3. M. Murugathas,  
Island Lodge,  
97, Bazaar Street,  
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Pillaiyar Stores,  
69, Mill Road,  
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New Mala Battery Trading Centre,  
87, Mill Road,  
Vavuniya.
10. S. N. Nathan,  
Second Cross Street,

Vavuniya.

11. N. Suntharampillai,  
M. Kasipillai & Sons,  
Mill Road,  
Vavuniya.

12. K.A. Senthilnathan, J.P.,  
First Cross Street,  
Vavuniya.

**PLAINTIFFS- RESPONDENTS**

1. Joy Mahil Mahadeva  
No.2 Foundation House Lane,  
Colombo 10.  
Presently at 79, Kandasamy Kovil  
Road,  
Vavuniya.
2. Senthini Dharmaseelan,  
Chinthamani, Lowton Road,  
Manipay.
3. Jeyaratnam Ravikumar,  
"Crown Villa" Naval South,  
Manipay.
4. Sri Durga Jeyaratnam  
"Crown Villa" Naval South,  
Manipay.
5. Jeyaratnam Gokhale.
6. Jayaratnam Veerasingam and
7. Jeyaratnam Ragavan

All of "Crown Villa" Naval South,  
Manipay.

**DEFENDANTS- RESPONDENTS**

AND NOW BETWEEN

In the matter of an Application for Leave to  
Appeal in terms of Section 5 (c) (1) of the  
High Court of the Provinces (Special  
Provinces) (Amendment) Act No. 54 of 2006  
read together with Article 128 of the  
Constitution.

Rasa Vijendranathan  
No.127, Kandasamy Kovil Road,  
Vavuniya

**1<sup>ST</sup> DEFENDANT – APPELLANT- APPELLANT**

***Vs***

1. P. Shanthakumar of Kugan Motors,  
52, Second Cross Street,  
Vavuniya.
2. M. H. D. Mailvaganam  
65, Mill Road,  
Vavuniya.
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M. Kasipillai & Sons,  
Mill Road,  
Vavuniya.
12. K.A. Senthilnathan, J.P.,  
First Cross Street,  
Vavuniya.

**PLAINTIFFS- RESPONDENTS- RESPONDENTS**

1. Joy Mahil Mahadeva  
No.2 Foundation House Lane,  
Colombo 10.  
Presently at 79, Kandasamy Kovil  
Road,  
Vavuniya.
2. Senthini Dharmaseelan,  
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"Crown Villa" Naval South,  
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"Crown Villa" Naval South,  
Manipay.

5. Jeyaratnam Gokhale.
  6. Jayaratnam Veerasingam and
  7. Jeyaratnam Ragavan
- All of "Crown Villa" Navaly South,  
Manipay.

**DEFENDANTS- RESPONDENTS- RESPONDENT**

**BEFORE** : L.T.B. DEHIDENIYA, J.,  
S. THURAIRAJA, PC, J. and  
A.H.M.D. NAWAZ, J.

**COUNSEL** : Vivekanathan Puvitharan, PC with Anuja Rasanayakhan for 1<sup>st</sup>  
Defendant-Appellant-Appellant  
N.R Sivendran with Anusha Ratnam for Plaintiffs-Respondents-  
Respondents

**WRITTEN SUBMISSIONS** : Plaintiffs- Respondents- Respondents on 6<sup>th</sup> January 2021  
and Synopsis of Written Submissions on 5<sup>th</sup> November  
2021  
1<sup>st</sup> Defendant-Appellant-Appellant on 5<sup>th</sup> October 2016

**ARGUED ON** : 29<sup>th</sup> October 2021

**DECIDED ON** : 18<sup>th</sup> March 2022

## **S. THURAIRAJA, PC, J.**

### **The Facts**

This is an appeal filed by the 1st Defendant- Appellant-Appellant (namely one Rasa Vijendranathan, hereinafter referred to as the "Appellant") against the Judgement delivered in the High Court of Civil Appeal dated 20th December 2012.

This action is regarding the Puliady Pillaiyar Temple and its temporalities situated at Mill Road, Soosaipillaiyarkulam Road Junction. The Plaintiffs- Respondents- Respondents (hereinafter sometimes called and referred to as the 'Plaintiffs- Respondents') state that they are worshippers and members of the congregation of the said temple and have been in the habit of attending the performance of the worship and or services held at the said temple. The land on which the said temple is situated was originally owned by Annapillai Visvalingam by the Deed no.2171 dated 21.03.1927, attested by P.K. Pedurupillai Notary Public of Mullativu District. The second to the fifth Defendants are the descendants of the said Annapillai Visvalingam. A granite statue of Pillaiyar was installed in this land and worshipped by persons of Hindu religion and the temple was built with the consent of Muthurajah Jeyaratnam descendant of Annapillai Visvalingam in the said land by the worshippers as shrine.

In or about 1996, the people of Vavuniya were displaced due to the civil war and the temple was abandoned. After the people returned to their respective homes the worshippers including the Plaintiffs-Respondents started repairing the said temple at their expenses with the consent of late Muthurajah Jeyaratnam the descendant of Annapillai Visvalingam, the father of the 2<sup>nd</sup>-8<sup>th</sup> Defendant - Respondents- Respondents (hereinafter sometimes called and referred to as the '2<sup>nd</sup>-8<sup>th</sup> Defendants- Respondents') and poojas and services were held at the Temple.

The Plaintiff-Respondents state that the Appellant unlawfully ousted the worshippers and the 2<sup>nd</sup>-8<sup>th</sup> Defendants-Respondents and their father, late Muthurajah Jeyaratnam, from the management control and administration of the temple and their

powers and took control of the said temple and administers the said temple contrary to the interests of the 2<sup>nd</sup> – 8<sup>th</sup> Defendants and the worshippers. The Plaintiffs alleged that the Appellant wrongfully collects money from the worshippers and misappropriates the collection and the Appellant had never shown any account and he does not manage the temple properly. The Plaintiffs state there is a general dissatisfaction among the congregation with the way the Appellant manages the temple hence the Appellant is not a fit and proper person to be in charge of the Charitable trust and should be removed from office.

The Plaintiffs-Respondents instituted action at the District Court of Vavuniya against the Appellant and 2<sup>nd</sup> to 8<sup>th</sup> Defendants-Respondents-Respondents (hereinafter referred to as the "Defendants-Respondents") stating inter-alia that the Plaintiffs-Respondents are worshippers and members of the congregation of the Puliady Pillaiyar Temple and are interested in the said Temple and its temporalities within the meaning of Section 102 of the Trusts Ordinance No. 9 of 1917 (as amended). They further stated that the said Temple is a place of Hindu Religious worship and is a charitable trust within the meaning of Section 102 of the Trusts Ordinance, while also stating that the Appellant has unlawfully ousted the worshipers and the Defendants-Respondents, took control of the said Temple.

The Plaintiffs further stated that it had become necessary for the Plaintiffs to apply for an order declaring that the temple and its temporalities a charitable trust, setting up a new scheme of management and removing the Appellant from the Board of trustees.

The Plaintiffs further stated in their Plaint that they have presented a Petition to the Government Agent through the Divisional Secretary, Vavuniya for the appointment of a Commissioner to inquire into the subject matter of the Petition under Section 102 of the Trusts Ordinance and that the Commissioner has issued a letter to the effect that an inquiry has been held regarding the matters mentioned in the Petition filed, that it was not possible to reach an amicable settlement due to the objections of the

Respondents. The letter advises the parties to refer the matter to court if they wish to take further action regarding the same.

The Appellant purports that the above matters pertaining to the response by the Divisional Secretary to be incorrect and misleading and alleges that the purported letter issued by the Government Agent dated 06.06.2005, marked P-01 does not on the face of it convey any such matters as referred to by the Plaintiffs-Respondents.

The Appellant filed his answer and raised preliminary objections to the effect that the said action was filed without compliance with the condition precedent to filing of the action, that no certificate under and in terms of the Trusts Ordinance had been obtained from the Government Agent, that the letter dated 06/06/2005 was not issued upon an inquiry held in terms of the requirements of the Trusts Ordinance, more specifically in compliance with Section 102 of the same, and that therefore the Respondents do not have locus standi to have and maintain this action.

The Appellant substantiates his interest in the temple and the Land owing to the fact that his Grandfather's Uncle had consecrated a Pillaiyar Statute under a Tamarind tree (referred to as "Pulia Maram" in Tamil) and had worshipped in the 19<sup>th</sup> Century, thus leading to the Temple eventually being named "Puliyady Pillaiyar" (this can be interpreted to mean "Pillaiyar under a Tamarind tree"). The Appellant claims that thereafter his grandfather, subsequently his son and presently himself managed, maintained, expanded and developed the temple. The Appellant claims that the Respondents are not worshipers of the temple and have filed this action at the instigation of the 2<sup>nd</sup> Defendant- Respondent.

Nevertheless, subsequent to the letter dated 06/06/2005 by the Divisional Secretary, the Plaintiffs-Respondents filed a Complaint dated 10/06/2005 at the District Court of Vavuniya where the Appellant raised the issues regarding compliance with Section 102 as preliminary objections. The Learned District Court Judge had held the following by Order dated 15/05/2008:

- a) The Action is said to have been filed under and in terms of Section 102 of the Trusts ordinance. But the Objection taken the 1<sup>st</sup> Defendant that the said action has not been instituted under Section 102 of the Trusts Ordinance becomes a question of law
- b) The fact that the document dated 06/06/2005 marked P-01 filed by the Plaintiffs along with the Plaint has complied with the Trusts Ordinance can only be decided at the end of the trial in as much as the Plaintiffs' Attorney-at-law replied to the objection raised by the Appellant. Therefore, the said document can be accepted or not can be decided only after the leading of evidence
- c) Similarly, 17,18,19 and 20<sup>th</sup> Issues are also issues of law and thus they also can be decided only upon leading evidence.
- d) The Court has decided to record the full evidence before deciding the said issues.

Being aggrieved by the said Order the Appellant filed application for Leave to Appeal to the High Court of Vavuniya, whereupon the High Court delivered Order dated 20/12/2012 dismissing the Appeal with costs.

The Appellant has filed Petition dated 31<sup>st</sup> January 2013 before this Court, and was granted leave on the following question of law as found in Paragraph 25(b) of the Petition as follows:

*"25 b) Have the District Court Judge and the Judges of the High Court erred in law that there was a valid action when the Plaintiff has not disclosed the condition precedent to entertain an action by Court under and in terms of Section 102(3) of the Trusts Ordinance?"*

In answering this question of law, I find it pertinent to lay out the facts of the case followed by an examination of the relevant provisions of law, namely Section 102 of the Trusts Ordinance.

### **Compliance with Section 102(3) of the Trusts Ordinance.**

The facts in contention of the instant case are surrounding two specific documents, namely the Petition filed at the Divisional Secretary and the document marked P-01 which was issued by the Divisional Secretary advising the parties to take this matter to court.

The Appellant avers that these documents are not in compliance with the requirements of Section 102(3) of the Trusts Ordinance.

Section 102 (3) states as follows:

*“(3) No action shall be entertained under this section unless the plaintiffs **shall have previously presented a petition** to the \*Divisional Secretary of the Divisional Secretary's Division in which such place or establishment is situate praying for the appointment of a commissioner or commissioners to inquire into the **subject-matter** of the plaint, and unless the \*Divisional Secretary of the Divisional Secretary's Division shall have certified that an **inquiry has been held** in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported –*

*(a) that the subject-matter of the plaint is one that **calls for the consideration of the court**; and*

*(b) either that it has not proved possible to bring about an **amicable settlement** of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at.*

*(\*See section 4 of the Transfer of Powers (Divisional Secretaries) Act, No. 58 of 1992.) “*

(Emphasis Added)

The above provision makes it apparent that the Legislators intended for parties to seek resolution of dispute through amicable means prior to seeking redress at courts. For this purpose, Section 102 (3) mandates that persons with concerns pertaining to religious trusts present their concern to the Divisional Secretary whereupon the Divisional Secretary will adequately inquire into said matter and communicating the results of such inquiry to the parties. The Divisional Secretary may find that the parties are amenable to come to an amicable solution or may find that there is a scheme discussed regarding which the parties may seek the advice of courts or may certify that such amicable solution is not achievable and thus advise parties to seek redress at the relevant District Court.

Religious Trusts and disputes arising thereof are extremely sensitive in nature given the nature of communities and their bonds, individual and ancestral, with the community in itself and the place of worship. As such, the Trusts Ordinance referred to a Government Agent as they were meant to be in a position to be inquire into and be more sensitive to the intricacies of religious and social communities concerned with the place of worship, more so than the court system. The Divisional Secretary is in a position to resolve such dispute through inquiry and amicable settlement in order to ensure minimal displeasure and resentment within such community. This allows minor disputes to be settled expeditiously without referring to courts.

As such the above mechanism requires, in essence, that prior to calling upon the advice of the Courts, the concerned parties communicate the raised concerns in a written form to the Divisional Secretary, the conducting of an inquiry by the Divisional Secretary, and finally the communication of results of such inquiry via written form by the Divisional Secretary. The purpose of the Petition and certification by the Divisional Secretary is in order for these goals to be met. However, the Trusts Ordinance does not specify a format for either document.

In interpreting the format required of documents under the above provision, the Appellant states that the learned District Court Judge and High Court Judge have



failed to apply the *stare decisis* held in the cases of **Sivaguru v Alagaratnam 48 NLR 369**, **Siththiravelu v Ramalingam and Others 61 CLW 31**, **Velautham v Velauther 61 NLR 230** and **Ramesh and another v Chettiar (2004) 1 SLR 355**.

The case of **Sivaguru v Alagaratnam** (*Supra*) concerned five persons interested in a temple, who brought an action under section 102 of the Trusts Ordinance praying that the defendants, who were the trustees, be held unfit to hold office. The certificate of the Government Agent was filed with their plaint and the only question in issue was whether the certificate sufficiently complied with Section 102 (3) (a) and (b) of the Trusts Ordinance. In this case, the contents of the certificate are said to have stated as follows:

*" I certify that Mr. A. Alagaratnam and others presented a petition on January 24, 1945, praying for the appointment of a Commission to inquire into the accounts and the management of the Mamangapillaiyar Temple. The Commissioners duly appointed by me have reported that an inquiry has been held into these matters which form the subject-matter of the plaint and that the assistance of the Court may be obtained to Implement the scheme adopted by the members of the congregation ".*

The Learned Judge Hon. Keuneman A.C.J noted that the above did not amount to a certificate fulfilling the criteria prerequisite of Section 102 (3) given that,

*" under section 102 (3), the Government Agent's certificate must contain the statement " that an inquiry has been held in pursuance of the said petition and that the Commissioner or Commissioners or a majority of them has reported (a) that the subject-matter of the plaint is one that calls for the consideration of the Court and (b) **either that it has not proved possible to bring about an amicable settlement of the questions involved or that the assistance of the Court is required for the purpose of giving effect to any amicable settlement which has been***

**arrived at.** *The document P 1 certainly does not show that Commissioners have held categorically that " the subject-matter of the plaint is one that calls for the consideration of the Court". I think it is advisable that all Commissioners should make specific reference to that fact as required by section 102 (3) (a). But even if we can assume for the purposes of the argument that such an allegation is to foe implied in P 1, it is not possible for us to hold that there has been a compliance with section 102 (3) (b) for the simple reason that **it is impossible for us to say from P 1 whether there has or has not been an amicable settlement of the questions involved. There should have been a statement that there either was or was not an amicable settlement.** The words in, P 1 " the assistance of the Court may be obtained to implement the scheme adopted by the members of the congregation " do not necessarily convey the idea that there was an amicable settlement between the plaintiffs in this case and other parties possibly interested in the temple or with the trustees in the case **we do not know what the scheme adopted was, whether it related to the subject-matter of the plaint or not and we do not know who were the members of the congregation "**.*

(Emphasis Added)

In examining the above, I find that the concern of the learned Judge was a lack of clarity in the said certificate in regard to the success or failure of reaching an amicable settlement. As such, the Divisional Secretary is expected to indicate the outcome of the inquiry, especially given the vague terms referring to a "scheme adopted by the members of the congregation". I believe that the facts of the instant case are not akin to the facts of the above case as there is no reference to a vague scheme to be adopted nor is there a lack of clarity in terms of the outcome of the inquiry in the instant case.

Secondly, In the case of **Velautham v Velauther 61 NLR 230**, The certificate by the Division Secretary stated as follows:

*"I do hereby certify under sub-section (3) of Section 102 of the Trusts Ordinance (Cap. 72) that in pursuance of a petition presented to me by Mr. S. Velautham and nine others of Analaitivu regarding the management of the Sangaramoorthy Murugamoorthy Temple, Analaitivu, in the Divisional Revenue Officer's division of Islands, I appointed .... by an act of appointment dated 3rd January, 1955 commission to enquire into the subject matter of the said petition and*

*2. That the enquiry had been held in pursuance of the said petition and that the said commissioners have reported:*

*(a) That the subject- matter of the said petition is one that calls for consideration of the Court;*

*(b) That it has not been proved possible to bring about an amicable settlement of the questions involved. "*

Whereupon objection was taken up to the effect that there was no plaint presented along with the petition to the Government Agent. Hon. Basnayake, C. J. agreed with the District Court and stated that the decision was taken in accordance with the case of **Sivaguru v. Alagaratnam** (*Supra*), In that:

*"as section 102 (3) declares that no action shall be entertained unless the Government Agent shall have certified that the commissioners have reported that the subject matter of the plaint is one that calls for the consideration of the Court. Clearly the commissioners cannot make such a report unless the plaint is annexed to the petition presented to the Government Agent and he cannot certify that they have so reported unless the commissioners have done so. "*

Thereafter, in the case of **Siththiravelu v Ramalingam and Others 61 CLW 31**, Basnayake C.J states as follows"

*“ It has been held by this Court in the case of Velautham and others v Velauther and Another, that the certificate should be in terms of the sub-section (3) and that to enable the Government Agent to issue the prescribed certificate the petitioners should submit the plaint they propose to file in the Court upon receiving the certificate. Unless that is done the Commissioner cannot report that the subject matter of the plaint is one that calls for the consideration of the Court and the Government Agent cannot certify that they have so reported. In the instant case it would appear that the plaint which was filed was not submitted to the Government Agent....”*

Finally in the case of **Ramesh and another v Chettiar (2004) 1 SLR 355**, the cases mentioned above have been re-examined by the Court of Appeal.

However, in terms of the interpretations afforded by the above cases, I am inclined to only agree with the case of **Sivaguru v Alagaratnam** as the purpose was in regard to the clarity of the certificate. The Court in that instance decided that the certificate did not conform to Section 102 since there was an ambiguity pertaining to the “Scheme adopted by the members of the congregation” and did not refer to a requirement of a plaint being submitted to the Government Agent.

In the instant case, the letter by the Government Agent of Vavuniya is reproduced hereof easy reference:

**அரசாங்க அதிபர் பணிமனை, வவுனியா**

எனது இல

உமது இல

Date: 06.06.2005

திரு. சி சண்முகரத்தினம்

171, கந்தசாமி கோவில் ரோட்,

வவுனியா

அன்புள்ள ஐயா

**வவுனியா புளியடி சித்திவிநாயகர் ஆலயம் தொடர்பான பிணக்கு**

மேற்படி விடயம் தொடர்பாக தங்களாலும் இன்னும் பலராலும் ஒப்பமிடப்பட்டு 2005.05.26 ஆந் திகதி எனக்கு அனுப்பிவைக்கப்பட்ட கடிதம் தொடர்பானது.

தாங்கள் உட்பட இன்னும் பலரால் ஒப்பமிடப்பட்டு 2003 ஜூலை மாதம் (திகதி இடப்படாமல்) எனக்கும் வவுனியா பிரதேச செயலாளருக்கும் அனுப்பி வைக்கப்பட்ட மேற்படி ஆலயப் பிணக்கு சம்பந்தப்பட்ட முறைப்பாடு தொடர்பாக எனது அறிவுறுத்தலின் படி வவுனியா பிரதேச செயலாளர் இப்பிணக்கைச் சுமுகமாகத் தீர்த்து வைப்பதற்கான முயற்சிகளை எடுத்திருந்தும், கூட்டங்களை நடாத்தியிருந்தும் எதிராளி தரப்பாருடைய எதிர்ப்புகள் காரணமாக இப்பிணக்கை சுமுகமாகத் தீர்த்து வைக்க முடியாமல் உள்ளது என்பதை அறியத்தருகின்றேன்.

எனவே, இவ்விடயம் தொடர்பாக மேற்கொண்டு நடவடிக்கை எடுக்கத் தாங்கள் விரும்பினால் நீதிமன்றத்தின் மூலமே இப்பிணக்குக்கான தீர்வைக்காணலாம் எனவும் ஆலோசனை கூறுகின்றேன்.

தங்கள் சேவையிலுள்ள

(சி. சண்முகம்)

அரசு அதிபர்

வவுனியா மாவட்டம்

பிரதி : பிரதேச செயலாளர் வவுனியா -தகவலுக்காக

The English translation of the above is also reproduced as follows:

## KACHCHERI, VAVUNIYA

My No: GA/ADM/CO/T

Your No:.....

Date: 06.06.2005

Mr.S.Shanmugarathnam,  
171, Kanthasamy Kovil Road,  
Vavuniya.

Dear Sir,

## **Dispute regarding the Siththivinayagar Temple, Puliyady, Vavuniya**

This is with regarding to the letter signed by you and by several others and sent to me on 26.05.2005 regarding the above matter.

I inform you that even though measures were taken and meetings held by the Divisional Secretary of Vavuniya on my instruction to settle amicably the above dispute regarding the temple according to the complaint signed by you and by several others on July 2003 (without dated) and sent to me and the Divisional Secretary of Vavuniya, the dispute couldn't be settled amicably due to the protests of the Defendants.

Therefore, if you wish to take further action regarding this, I recommended you to refer this matter to the court and the dispute could be settled.

In your service,  
Sgd illegibly  
(S.Shanmugam)  
Government Agent  
Vavuniya District

CC: Divisional Secretary, Vavuniya:- for information

The above is signed by one S. Shanmugan, Government Agent of Vavuniya District and copied to the Divisional Secretary of Vavuniya.

As such, the above clearly indicated that this letter has been written in reference to the dispute directed to the Divisional Secretary by the parties, that an inquiry has been conducted regarding the same, that the dispute cannot be settled amicable, and recommends that the parties refer this dispute to the court if they wish to take further action. Given that no set template or requirements beyond those enumerated within the provision itself dictates the format of the certification by the Government Agent, I find this letter to be sufficient for the purposes of Section 102(3).

In applying the requirements of Section 102(3) of the Trusts Ordinance to the instant case, I find that as required, the Plaintiffs have previously presented a Petition to the Government Agent, this document is in the required form as it does not leave any ambiguity to the effect that it is a Petition by stating "The Petition of the Petitioners abovementioned appearing by their Attorney-at-Law..." and thereafter clearly stating the claims. As such I find no discrepancies in the document found in page 270 of the brief for the purposes of Section 102(3).

Section 102(3) requires that the Commissioner appointed inquire into the "subject matter of the plaint" as opposed to a plaint in itself. The plaint stands as a document to be submitted and assessed before the court and not before the Government Agent. The subject matter of the Plaint is extremely similar to the Petition in the instant case. Paragraph 15 of the Petition and the Prayer in the Plaint both pray for the declaration of the said temple and its temporalities as a charitable trust, settlement of a scheme of management for the proper administration of the said temple and its temporalities, removing the Appellant from the Management of the temple, appointment of a Board of Trustees and ordering of any other costs and reliefs the court may deem suitable. Therefore, by reference to the Petition submitted by the Plaintiffs, the Divisional Secretary has inquired into the prayers of the same and thus adequately addressed the subject matter of the plaint prior to arriving at the conclusion that the solution. This is sufficient as Section 102 (3) does not require the Plaint itself to be forwarded but that the subject matter of the plaint be inquired. As such, the reference of plaintiff and plaint is not for the Purpose of the Divisional Secretary but the District Court in the context of this provision.

### **Stare Decisis in Sri Lanka**

Keeping the above facts and interpretation in mind I find that the cases subsequent to **Sivaguru v. Alagaratnam** are not correct according to the law as a requirement of submitting the plaint, which is to be submitted before the court, to the Government Agent is not found within Section 102(3) itself and has been read into the

same through the cases as enumerated above. I find that in order for the Plaintiffs to be in compliance with Section 102(3), it is sufficient for the Petition and the certification to fulfil certain criteria in its content as no strict prescribed format has been provided by the Trusts Ordinance for the same. As such, I find that the interpretations in the cases **Siththiravelu v Ramalingam and Others 61 CLW 31, Velautham v Velauther 61 NLR 230** and **Ramesh and another v Chettiar (2004) 1 SLR 355** are based upon a misconception of the relevant provisions. As these judgements have been followed by the Court of Appeal in the case of **Ramesh and another v Chettiar (2004) 1 SLR 355**. The views in this decision are not correct according to law and are not accepted by the Supreme Court based on the aforementioned reasoning.

At this juncture I find it pertinent to discuss the concept of *Stare Decisis* as followed in Sri Lanka in order to ascertain whether the abovementioned dicta have any binding force upon the present Court. In order to do so, one must identify the particulars of the above cases. The case of **Sivaguru v. Alagaratnam** was decided by the Supreme Court in the year 1947 by Hon. Keuneman, A.C.J. and Hon. Jayetileke, J. The case **Velautham v Velauther** was decided by the Supreme Court in the year 1957 by Hon. Basnayake, C.J., and Hon. Sinnetamby, J. The case **Siththiravelu v Ramalingam and Others** was decided by the Supreme Court in the year 1961 by Hon. Basnayake, C.J. and Hon. H. N. G Fernando, J. Finally, the case of **Ramesh and another v Chettiar** was decided by the Court of Appeal in the year 2004 by Hon. Amaratunga, J. and Hon. Wimalachandra, J.

As has long been accepted and as was discussed by Hon. Basnayake C.J himself in **Bandahamy v. Senanayake 62 NLR 313**, the principle or doctrine of stare decisis has been received and adopted in this country, with modifications, during the colonial period. As stated in this decision:

*"The decision of an ultimate or appellate court has a dual aspect. The decision of the dispute between the parties and the principles of law which the court lays down in deciding that dispute. The actual decision of the*



*dispute binds the parties. About that there is no question. The principles of law guide the court in deciding similar disputes and most courts of appeal and of ultimate jurisdiction regard themselves as bound by the principles enunciated by them in their decisions. The first aspect concerns the parties, the second the public, the profession and the subordinate courts and tribunals bound or influenced by those decisions. "*

It was further recognized that the doctrine limited this precedent to the *ratio decidendi* of a case and does not include the *obiter dicta* as found in a judgement. It was recognized that:

*"The principle of law which guides a court of ultimate or appellate Jurisdiction in arriving at its decision in the case before it, is for convenience called the ratio decidendi of the case (the reason of or for decision). The expression may be taken as meaning " the reason for the order that the court makes" or " the reason or ground on which a judgment is rested" "*

In the above cases of **Siththiravelu v Ramalingam and Others** and **Ramesh and another v Chettiar**, the ratio decidendi of **Velautham v Velauther** was followed in arriving at both decisions, as was apt at the time, while the latter case interpreted the ratio decidendi in the case of **Sivaguru v. Alagaratnam**.

However, it must be noted that the Sri Lankan Courts have recognized the necessity and value of a flexible approach to the doctrine of *Stare Decisis* as in the case of **Unique Gemstones LTD. v. W. Karunadasa and Others (1995) 2 SLR 357**, which quoted **Bandahamy v. Senanayake** to the effect that:

*"The very strength of judgment law lies in his flexibility and capability of development by judicial exposition by generation of Judges. A Rigid Adherence to 'Stare Decisis' would rob our system of its virtues and hamper its development. We should strive to strike a mean between the one*

*extreme of too frequent changes in the law without sound and compelling reasons for them and the other extreme of slavish adherence to precedent merely because it has been decided before."*

In deciding the binding effect of the *ratio decidendi* in the above cases, I find it pertinent to establish three key elements.

Firstly, it is pertinent to examine the established law regarding the binding effect of judgements based on the number of judges constituting a bench. In the case of **Bandahamy v. Senanayake**, the binding effect of decisions based on the number of number of judges constituting the bench was rather extensively discussed along with the *cursus curiae* established by Basnayake C.J. with importance to the instant scenario, the *cursus curiae* as outline stated that a bench of two judges sitting together regard themselves bound by a decision of three or more judges. The same is accepted by English courts as mentioned by Lord Goddard in **Edwards v. Jones [1947] 1 All E. R. 830, 833** by stating that;

*"I should have no hesitation, if necessary, in differing from the decision in that case, not merely because we are sitting now as a court of three, and that was a court of two, but also because the case was not argued for the defendants, who did not appear, and when a case has been argued only on one side, it has not the authority of a case which has been fully argued".*

In the above benches, as enumerated above, all judgements have been delivered by a bench constituting of only two Judges. As such, the decisions in the above referred cases do not have absolute binding effect upon the present bench,

Secondly, as discussed in length in the case of **Bandahamy v. Senanayake** it must be noted that between 1833 to 1971 the Privy Council was the highest Court or the Court of last resort followed by the Supreme Court as established by the Charter of 1833 and continued thereafter. In 1971 with the abolition of the right of appeal to the Privy Council and the establishment of the Court of Appeal, this latter Court as

then constituted became the highest Court in the land which was in turn abolished in 1974 by the Administration of Justice Law and a new System of Courts was established by this law. The new Supreme Court as established under the Administration of Justice Law became the highest Court in the country. This position continued till 1978 when the new Constitution of the Democratic Socialist Republic of Sri Lanka abolished the Supreme Court established under the Administration of Justice Law and much of its jurisdiction was conferred on the Court of Appeal which was made a Court of subordinate jurisdiction by the creation of the present Supreme Court with supreme power in all matters of law at the apex of the Judicial system in the country.

Due to this development of law the question arises as to whether the Supreme Court as established following the abolition of the right to appeal to the Privy Council is bound by decisions made by a Supreme Court which was not of the last resort prior to such development.

In the case of **Costa v. Jayatilleke SC 265/74-D.C. Mt. Lavinia 47641 /A**, Hon. Vythialingam J held that the Supreme Court under the Administration of Justice Law being the highest Court under that system was not bound by a decision of the Supreme Court which preceded it as the latter was a Court subordinate to the Privy Council. This was cited by Hon. Thamotheram, J in **Walker Sons & Co. (U.K.) Ltd. V. Gunatilake and Others (1979) 1 SLR 231** to the effect that:

*"The relevant question is which is the court vested with final authority in any system. The ratio decidendi of cases decided by the Court becomes a rule for the future binding all courts which are not the courts of last resort whether it be under the same system or under a different system. It is always open to the legislature to alter the rule as declared."*

As such, it is apparent that only decisions by a court of last resort are binding upon subsequent court within the same or a different system. Given this clear approach opted for within the Sri Lankan judicial system, it suffices to say that the present

Supreme Court is not bound by the decisions given in **Sivaguru v. Alagaratnam**, **Siththiravelu v Ramalingam and Others**, and **Velautham v Velauther** as they were decided during the period when the Supreme Court was not the Court of last instance.

Considering all the above facts and circumstances and upon examining Section 102 of the Trust Ordinance and cited cases, I find that the Plaintiffs are in compliance with Section 102 and that the requirements later imposed by the aforementioned cases are not required by the Trust Ordinance. As such, I hold that this application is dismissed as there is no merit in this application. The Plaintiffs are entitled to costs for proceeding at this Court and the Civil Appellate High Court of Vavuniya.

***Appeal Dismissed.***

**JUDGE OF THE SUPREME COURT**

**L.T.B. DEHIDENIYA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**A.H.M.D. NAWAZ, J.**

I agree.

**JUDGE OF THE SUPREME COURT**