VEN. OMARE DHAMMAPALA THERO
v
RAJAPAKSHAGE PEIRIS AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
ISMAIL, J. AND
YAPA, J.
SC APPEAL NO 41/1999
CA NO 321/88(F)
D.C.TANGALLE CASE NO 1818/L
20 JUNE, 11 JULY,13 NOVEMBER AND 03 DECEMBER, 2002 AND 04 APRIL, 2003

Buddhist Ecclesiastical Law – Acquisition of property by a temple – Sangika property, temple property and pudgalika property – Buddhist Temporalities Ordinance, sections 20 and 23.

The plaintiff instituted action in the District Court for a declaration of title to the land in dispute viz, an undivided 2/3 of the land as the Trustee of Sri Nagarama temple, Kandebedda and for the ejectment of the original 1st defendant. The said land had been sold by a Crown Grant dated 06.02.1921 to the then incumbent of the temple Medhankara Therunnanse in trust for the Kandebedda temple. The original 1st defendant claimed the land by prescription.

By a deed dated 1.2.1923 Medhankara Therrunnanse sold the land to one Hanifa. After getting the land planted with coconut, the said Hanifa sold it to Owitigama Dhammananda Therunnanse by deed dated 06.01.1941.

The plaint was filed on the basis that the said land was temple property. Section 20 of the Buddhist Temporalities Ordinance ("the Ordinance") provides that all property appertaining to or appropriated to the use of any temple and all offerings made other than *pudgalika* property offered to the exclusive use of an individual *Bhikku* shall vest in the Trustee or controlling *Viharadhpathi* for the time being, of such temple.

Section 23 of the Ordinance provides that *pudgalika* property if not alienated by the owning *Bhikku* during his life time be deemed to be property of the temple to which and *Bhikku* belonged unless such property has been inherited by such *Bhikku*.

The District Judge dismissed the action on the ground that the land in suit was not *sangika* property i.e. gifted after a ceremony according to *Vinaya*.

Held:

1. A temple could possess *sangika* property, *pudgalika* property and property which is neither *sangika* nor *pudgalika* property but could be treated as temple property.
2. A temple is an institution *sui generis* which is capable in law of receiving and holding property. It has the attributes of a corporation for the purpose of acquiring and holding property.
3. A temple could acquire property by the ordinary civil modes of acquisition without a ceremony conducted according to *Vinaya*..
4. The property in suit was in any event temple property purchased or granted for and on behalf of the temple and the title to the said property devolved and vested in the temple on the death of Owitigama Dhammananda.

Cases referred to:

1. *Wickramasinghe* v *Unnanse* (1921)23 NLR 236
2. *Wijewardane* v *Buddharakkita Thero* (1957) 59 NLR 121
3. *Rev. Mapitigama Buddharakkita Thero* v *Wijewardane* (1960) 62 NLR 49
4. *Kampane Gunaratne Thero* v *Mawadawila Pannasena Thero* (1998) 2 Sri LR 196
5. *Rev. Oluwawatte Dharmakeerthi Thero* v *Rev. Keviitiyagala Jinasiri Thero* (1978) 79 (2) NLR 86
6. *Charles* v *Appu* (1914) 19 NLR 242
7. *Ratnapala Unnanse* v *Kevitigala Unnanse* (1879) 2 SCC 29
8. *Sedhananda Therunnanse* v *Sumanatissa* (1934) 36 NLR 422
9. *Pavisthinahamy* v *Akurala Seelawansa Thero* (1985) 2 Sri LR 197
10. *Kosgoda Pangnaseela and Another* v *Gamage Pavisthinahamy* (1986) 3 CALR 48

APPEAL from the judgment of the Court of Appeal.

P.A.D. Samarasekera. P.C. with *J.C.Boange* and *Kumudini Wijetunga* for appellant

*L.C.Seneviratne.*P.C. with *N.H.K.Wickramasinghe* and *A. Dharmaratne* for 1st substituted-respondent.

Cur.adv.vult

September 17,2003

BANDARANAYAKE, J.

This is an appeal from the judgment of the Court of Appeal dated 17.08.1998. By that judgment the Court of Appeal dismissed the appellant's appeal and affirmed the judgment of the learned District Judge, Tangalle. The appellant appealed to this Court and the Supreme Court granted special leave to appeal on the following questions.

1. Were the learned District Judge's answers to issues 2 and 6 erroneous?
2. Were the said answers inconsistent with his answer to issue No.1?
3. In any event is the property described in paragraph 2 of the plaint temple property because -
   (a) it was property purchased or granted for and on behalf of the temple;
   (b) title to the said property devolved and vested in the temple on the death of Rev.Ovitigamuwe Dammanande.

The facts of this case are briefly as follows:

The plaintiff-appellant-appellant (hereinafter referred to as the appellant) instituted action in the District Court of Tangalle seeking for a declaration of title to a 2/3 share of the land known as "Parahena" alias "Kekunahena" as the Trustee of the Sri Nagarama Temple and the ejectment of the deceased 1st defendant-respondent-respondent (hereinafter referred to as the 1st respondent). The 1st respondent claimed prescriptive rights to the said land. The appellant submitted that 2/3 shares of the land was obtained for the Temple by the then Trustee of the Sri Nagarama Temple, Ven.Medhankara Thero and the balance 1/3 share was given to one Dona Ciciliyana Abeywardane. The 2nd and 3rd defendants-respondents- respondents (hereinafter referred to as the 2nd and 3rd respondents) are co-owners of the balance 1/3 share of the land in suit and the 1st respondent and the appellant have no dispute with the 2nd and 3rd respondents in respect of the undivided 1/3 share claimed by them.

The 1st respondent submitted that the said 2/3 share claimed by the appellant has been prescribed by him and that the appellant cannot have any claim on that land. The appellant however based his case on the ground that the said land was the property of the Sri Nagarama Viharaya of Kandabedda.

The question at issue therefore is whether the undivided 2/3 share of the said land was temple property or *'pudgalika'* property (private property) as claimed by the 1st respondent.

Learned District Judge dismissed the plaintiff's action on the ground that the appellant had failed to prove that the said land was *sanghika* property. It would appear that in the Court of Appeal, the appellant, for the first time contended that the original deed P1 constituted a trust in respect of the property in question and the Court of Appeal held that the question of whether there was a trust created by the said deed P1 was a question of mixed fact and law and cannot be raised for the first time in appeal and dismissed the appellant's appeal. Admittedly, the claim of the appellant was based entirely on a crown grant dated 06.02.1921 marked P1, which conveyed a 2/3 share of the property to Rev.Medhankara and the balance 1/3 to one Dona Ciciliyana Abeywardane Wickramasinghe. The said deed P1 clearly recited that,

> "Whereas it has been represented to us by (1) Medhankara Therunnanse as incumbent of Kandebedda Temple and (2) Dona Ciciliyana Abeywardane Wickramasinghe both of Karumuldeniya that the said (1) Medhankara Therunnanse and (2) Dona Ciciliyana Abeywardane Wickramasinghe are entitled to a grant in the following shares and proportions, to wit the said, (1) Medhankara Therunnanse in trust for Kandebedda Temple to an undivided 2/3 share and the said Dona Ciciliyana Abeywardane Wickramasinghe to an undivided 1/3 share of the property belonging to His Majesty..."

Learned President's Counsel for the respondent contended that although there is no dispute as to the purchase of the property from the crown, there is no evidence that the said deed P1 was accompanied by a *sanghika* dedication. Moreover, learned President's

Counsel further contended that the said Medhankara Therunnanse by deed No.16171 dated 01.02.1923(P7) had sold the said undivided 2/3 share of the said land to one Mohommadu Hanifa. The said Mohommadu Hanifa had given this land to 3 persons for the purpose of planting coconut within a period of 9 years from the date of the agreement No.1679 dated 20.11.1930. However, in 1941, by deed No. 11770 dated 16.01.1941, Mohommadu Hanifa sold the said property to Ovitigamuwe Dhammananda Therunnanse. Referring to the aforementioned events, relating to the land in question, learned President's Counsel for the respondent submitted that it is important to examine the said transfer deed marked as P7. According to the learned President's Counsel for the respondent, there are 3 important points that should be taken into consideration regarding the transfer deed P7. Firstly, the learned President's Counsel submitted that, there is no reference to the said land being subject to a trust and the endorsement made by the Notary in deed marked as P7 is that the title of Medhankara Therunnanse to the said property has been sold by deed No.16171 (P7). Secondly, in deed No.16171(P7) Medhankara Therunnanse is described as "*Viharavasi*" and not as "*Viharadhipathi*". Learned President's Counsel further submitted that in this particular deed (P7), there is specific mention that Medhankara Therunnanse or the temple did not become entitled to the said property on the deed given by the crown dated 06.02.1921 (P1). Thirdly, and more importantly, learned President's Counsel contended that, the contents of the aforesaid deed (P7) indicate that Medhankara Therunnanse had accepted the property and acted on the basis that the property was not *sanghika*, but property that belonged to him.

Considering the contention of the learned President's Counsel for the respondent, the question at issue is that whether the undivided 2/3 share given by the crown grant to Medhankara Therunnanse in 1921, is to be treated as property belonging to the said temple or whether it was given to Medhankara Therunnanse for his personal benefit. Learned President's Counsel for the respondent took up the position that, it is necessary for the property to be *sanghika* property, for it to become property belonging to the temple.

It is therefore relevant and necessary to examine firstly the concept of *sanghika* property.

During the course of hearing, learned President's Counsel for the appellant as well as the learned President's Counsel for the respondent referred to temple property, and *sanghika* property. Whereas the learned President's Counsel for the appellant contended that the plaint in this case had not used the word '*sanghika*', the learned President's Counsel for the respondent submitted that the deeds clearly indicate that the property in question was not *sanghika*, but property belonged to the priest (*pudgalika* property).

The concept of '*sanghika*' property and '*gihi santhaka*' (lay property) was considered from the beginning of the 20th century in *Wickramasinghe* v *Unnanse*(1). In this case it was decided that it is by a gift that a temple or any other property can become *sanghika* and the very conception of a gift requires that there should be an offering or dedication. Until a dedication takes place, the temple property remains '*gihi santhaka*' (lay property). This dedication may take the form of a writing or may be verbal, but in either case it is a formal act, accompanied by a solemn ceremony in the presence of four or more priests who represent the '*sarva sangha*', or the entire priesthood. A dedication may be presumed in the case of a temple whose origin is lost in the dim past. This view was accepted and followed in *Wijewardane* v *Buddharakkita Thero* (2) where it was held that a Buddhist Vihara or temple is not a juristic person and cannot therefore receive or hold property. Any property given to the *sangha* must be dedicated in the manner prescribed in the *Vinaya*. Then and then only can it become *sanghika* property. Although property can be given to the *sangha* it would be done only as *sanghika* property and also in accordance with the customary mode of dedication. In the Privy Council decision in *Rev.Mapitigama Buddharakkita Thero* v *Wijewardane* (3), it was held that section 20 of the Buddhist Temporalities Ordinance, which vests all property belonging to a temple in the trustee or controlling Viharadhipathi of that temple, applies only to *sanghika* property which has been dedicated to the priesthood as a whole with all the ceremonies and forms necessary to effect dedication. A similar view was taken in the case of *Kampane Gunaratne Thero* v *Mawadawila Pannasena Thero* (4).

In that case the plaintiff sued the defendants for a declaration that he is the lawful Viharadhipathi of the temple known as Mahagama Rajaramaya, for ejectment of the defendants from the temple premises and for recovery of possession of the same. The temple was constituted on an allotment of crown land which had been leased to the trustees of a Buddhist Association for the purpose of constructing a Buddhist temple and dedicating it to the *sangha* after which it was stipulated that the lessor will issue a fresh lease of the land for 99 years in favour of the trustee or the controlling Viharadhipathi of the temple. The temple was constructed and a deed "of dedication" was executed with the approval of the Government Agent and the Commissioner of Buddhist Affairs. The deed appointed the plaintiff as the Viharadhipathi of the temple. It was held that the fact that a deed 'of dedication' was executed with the full authority of the state did not by itself, render the temple a *sanghika viharaya* which was the basis of the plaintiff's action. The Court took the view that a mere claim to the office of Viharadhipathi independently of the title to the temple and temporalities is untenable. Moreover it was held that as the deed 'of dedication' had not been accompanied by a solemn ceremony in the presence of four or more monks representing the '*sarva sangha*' or 'entire priesthood' as prescribed in *Vinaya*, the temple and its property did not become *sanghika* property and that the title to the property remained with the state. In other words the property remains '*gihi santhaka*'. G.P.S. De Silva, CJ. after considering the aforementioned aspects stated that,

> "The essence of a valid dedication is that the property must cease to be '*gihi santhaka*', the dedication must be in terms of the *vinaya*".

Learned President's Counsel for the respondent placed heavy reliance on the decision in *Rev.Oluwawatte Dharmakeerthi Thero* v *Rev.Kevitiyagala Jinasiri Thero* (5) where it was held that, the plaintiff could not succeed in this case unless he proved that the premises in question was *sanghika* as he could not claim to be the Viharadhipathi of *gihi santhaka* lands. It was also held that the dedication is a *sine qua non* for premises to become *sanghika* and the mere fact that a temple has been given to the *sangha* does not make it *sanghika*. It must be dedicated in the manner prescribed by

the *Vinaya* to become *sanghika*. Learned President's Counsel for the respondent drew our attention to the fact that in this case the premises in question were first acquired by one Suriyagoda Sonuththara Thero on a crown grant No.9503, of 30th March 1883 for Rs.75/-.

Learned President's Counsel for the appellant submitted that the discussion on *sanghika* property had brought about confusion in this appeal. He submitted that the plaint did not use the word *sanghika,* but went entirely on the basis that it was property of the temple.

In support of his contention, learned President's Counsel for the respondent drew our attention to the provisions in the Buddhist Temporalities Ordinance. His contention was that, the Buddhist Temporalities Ordinance did not make any reference to *sanghika* property, but it refers only to temple property. Learned President's Counsel submitted that the word *sanghika* refers to a broader concept which includes property of all *sangha* from the times of Arahat Sariputta and Moggallana and is virtually still continuing.

The Buddhist Temporalities Ordinance, which came into force in 1931 was an Ordinance to amend and consolidate the law relating to Buddhist Temporalities in Sri Lanka. Part III of the present Ordinance deals with the subject of property. Section 20, which refers to all temple property and all offerings reads as follows:

> "All property, movable and immovable, belonging or in anywise appertaining to or appropriated to the use of any temple, together with all the issues, rents, moneys and profits of the same, and all offerings made for the use of such temple other than the *pudgalika* offerings which are offered for the exclusive personal use of any individual *bhikku*, shall vest in the trustee or the controlling Viharadhipathi for the time being of such temple, subject, however, to any leases and other tenancies, charges and encumbrances already affecting any such immovable property."

A close examination of this section reveals that although reference is made to *pudgalika* property belonging to a *bhikku*, there is no mention of *sanghika* property of a temple. Also it should be

noted that the said section refers to the property, movable and immovable belonging or in anywise appertaining to or appropriated for the use of any temple. In fact according to issue No.1 the question was whether the property referred to in the plaint came under the administration of the trustee of the temple.

1. පැමිණිල්ලේ 2 වන ඡේදයේ පෙන්වා ඇති ඉඩමෙන් 2/3 ක් කන්දෙබැද්දේ ශ්‍රී නාගාරාමයේ භාරකාර හිමියන්ට හිමි ද?

It is to be noted that learned District Judge had answered this issue in the affirmative. (ඔව්, පැ1 ඔප්පුව මත පමණය)

However, notwithstanding the said answer given to issue No.1, learned District Judge had answered issue No.6, namely,

6. මෙම දේපල සාංඝික දේපලක් නොවේ ද?

in the negative, stating that there is no evidence to hold that the property in question is *sanghika* property. On a consideration of the totality of the aforementioned circumstances, I am of the view that, a temple could possess *sanghika* property, *pudglika* property and property which is neither *sanghika* nor *pudgalika* property, but could be termed as temple property for the following reasons.

In *Charles* v *Appu* (6) the legal aspects pertaining to *sanghika* property was discussed in detail. Discussing the position of *sanghika* property, De Sampayo, J. stated that,

> "'*Sanghika*' property is inalienable in the sense that the trustee has no power to dispose of it....'*Sanghika*' means no more than property belonging to the entire priesthood, that is to say, to the temple, as distinguished from the private property of the priestly incumbent. In this connection it may be remembered that a temple is a corporation, and often acquires property by the ordinary civil modes of acquisition, subject only as regards immovables to a certain rule of *mortmain*."

According to the Concise Oxford Dictionary *mortmain* means "(condition of) lands or tenements held inalienably by ecclesiastical or other corporation".

Taking into consideration the meaning given to property in the Buddhist Temporalities Ordinance and the position taken up by De

Sampayo, J., in *Charles* v *Appu (supra)* that "'*sanghika*' means no more than property belonging to the entire priesthood, that is to say, to the temple", I am in agreement with the submission made by learned President's Counsel for the appellant that a temple could acquire property by the ordinary civil modes of acquisition.

Considering the submissions made by both learned President's Counsel for the appellant and the respondent it is apparent that the question to be decided here is whether the 2/3 share given by a grant to Medhankara Therunnanse as incumbent of Kandebedde Temple could be treated as *sanghika* property, temple property or *pudgalika* property.

In *Wickremesinghe* v *Unnanse (supra)*, it was held that it is by a gift that a temple or any other property can become *sanghika*, and the very conception of a gift requires that there should be an offering or dedication. Referring to the decision in *Wickremesinghe* v *Unnanse (supra)* in *Wijewardene* v *Buddharakkita Thero* (2) it was stated that,

> "It would appear from the case of *Wickremesinghe* v *Unnanse* that for a dedication to the *sangha* there must be a donor, a donee, and a gift. There must be an assembly of four or more *bhikkus*. The property must be shown; the donor and donee must appear before the assembly and recite three times the formula generally used in giving property to the *sangha* with the necessary variation accordingly as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The *sangha* is entitled to possess the property from that time onwards. No property can become *sanghika* without such a ceremony."

It was stated that the procedure laid down in Wickremesinghe's case for giving property to the *sangha* is in accord with the *Vinaya* (*Kullawagga*, Sixth *Khandhaka* sections 2,4 and 5).

However, although repetitively it has been mentioned that, the property acquired by a temple must be *sanghika* property and that essentially there should be a dedication to the *sangha* with a ceremony which included pouring water, this ritual seems to be flawed in certain instances. Referring to such instances, Dr.H.W.Thambiah

(*Buddhist Ecclesiastical Law*, Reprinted from the Journal of the Ceylon Branch of the Royal Asiatic Society, New Series, Vol.VII, Part I pp.82-83) stated that,

> "in the Sinhalese inscription at Periya Pulliyankulam a dedication to the *sangha* is recorded. There is no mention of the ceremony of pouring water, although it is mentioned in later inscriptions, such as the one at Dimbulagala, where King Abaya, grandson of the King Devanampiya Tissa dedicated a canal to the *sangha* by pouring water from a golden vase....
>
> Much later, in the time of King Kirti Sri, the Asgiri Vihara, which is the second largest of the Buddhist establishments in the Kandyan Kingdom, was dedicated by the King and this dedication is inscribed on a stone. In 1766 Adigar Pilimatalawa dedicated the Parana Vihara in the Asgiri Vihare premises to the priesthood and the inscription there sets out the ceremony that was performed by the King. All that it says is that the King caused Ehelepola to read the contents of an *ola* dedicating Kahawala and Udasgiri to the new vihara and **he offered the writing by laying it on the table before the image. In both these grants, there is no mention of the pouring of water at these ceremonies.** Much earlier than that, the Mahavamsa records the ceremony of planting a branch of the original *Bo* tree under which the Buddha sat and achieved enlightenment, which is illustrated by a stone sculpture on the lower and middle architraves of the East Gate of the Sanchi Tope. **The sculptures do not depict, and the Mahawamsa does not refer to, the pouring of any water.** (emphasis added)"

The aforementioned description depicts that there are two methods of making a dedication to the *sangha* one with a ceremony which includes pouring of water and the other without such a ceremony.

It is also worthy of note that the Buddhist Temporalities Ordinance refers to *pudgalika* property belonging to a priest, which could later become the property of the temple. Section 23 of the

Ordinance, which refers to *pudgalika* property acquired by a *bhikku* for own use, reads as follows:

> "All *pudgalika* property that is acquired by any individual *bhikku* for his exclusive personal use, shall, if not alienated by such *bhikku* during his lifetime, be deemed to be the property of the temple to which such *bhikku* belonged unless such property had been inherited by such *bhikku*".

There is no reference made in the Buddhist Temporalities Ordinance, that the *pudgalika* property, of a *bhikku* must be acquired, in terms of the *Vinaya*.

This clearly enunciates the principle that the property dedicated with a ceremony to make the offering '*sanghika*' is not the only way for a temple to acquire property.

Learned President's Counsel for the respondent strenuously argued that there cannot be a category known as temple property as opposed to *sanghika* property because that would reduce the concept of *sanghika* property to a nullity. On the basis of that submission it is necessary to examine, whether there is a category of property known as 'temple property' which a temple can own without such property being termed '*sanghika*'. The contention of the learned President's Counsel for the respondent was that, a Buddhist temple is not a juristic person that can receive or hold property and has no legal personality. Several decisions dating from 1879 were cited to demonstrate that although a Buddhist temple may be an institution, that it cannot be regarded as a juristic person. This position had been accepted by the Supreme Court for over a hundred years and that now it is well settled law. [*Ratnapala Unnanse* v *Kewitigala Unnanse* (7), *Sedhananda Therunnanse* v *Sumanatissa* (8), *Wijewardane* v *Buddharakkita Thero (supra)* *Buddharakkita Thero* v *Wijewardane (supra)*, *Pavisthinahamy* v *Akurala Seelawansa Thero* (9).

Much emphasis was placed on the decision in *Kampane Gunaratne Thero* v *Mawadawila Pannasena Thero (supra)* by the learned President's Counsel for the respondent to show that the decision in *Kosgoda Pangnaseela and another* v *Gamage Pavisthinahamy* (10) was not followed by the Supreme Court in

Kampane Gunaratne Thero's case *(supra)*. Learned President's Counsel contended that the Supreme Court in the Kampane Gunaratne Thero's case expressly rejected the submission that a temple can own property without a dedication as prescribed in the *Vinaya*. In Kampane Gunaratna Thero's case the plaintiff sued the defendants for a declaration that he is the lawful Viharadhipathi of the temple known as Mahagama Rajaramaya, for ejectment of the defendants from the temple premises and for recovery of possession of the same. The temple was constructed on an allotment of crown land which had been leased to the trustees of a Buddhist Association for the purpose of constructing a Buddhist Temple and dedicating it to the *sangha* after which it was stipulated that the lessor will issue a fresh lease of the land for 99 years in favour of the trustee or the controlling Viharadhipathi of the temple. The temple was constructed and a deed 'of dedication' was executed with the approval of the Govenment Agent and the Commissioner of Buddhist Affairs. The deed appointed the plaintiff as the Viharadhipathi of the temple. The Supreme Court held that the fact that a deed 'of dedication' was executed with the full authority of the State did not by itself, render the temple a *sanghika viharaya* which was the basis of the plaintiff's action and a mere claim to the office of Viharadhipathi independently of the title to the temple and temproralities is untenable. It also held that as the deed 'of dedication' had not been accompanied by a solemn ceremony in the presence of four or more monks representing the '*sarva sangha*' or 'entire priesthood' as prescribed in *vinaya*, the temple and its property did not become *sanghika* property. Therefore, it was decided that the title to the property remained with the State. In other words the property remained '*gihi santhaka*'.

The decision taken in Kampane Gunaratne Thero's case could be clearly distinguished form the present appeal, for the followning reasons. It is to be noted that in Kampane Gunaratne Thero's case the land in which the temple was built was on a lease agreement where the lessees were to hold the property until the dedication of the temple in the manner provided in clause 11 of the 6th schedule to the agreement. According to clause 14 of the lease agreement, upon dedication of the temple in the manner provided in clause 11 the lessor was to issue a fresh lease of the land for 99 years in

favour of the trustee or the controlling Viharadhipathi, in time for the temple so dedicated. These clauses expressly disclose that the title to the temple in question was to remain in the State. Furthermore, as described in the preceding paragraphs, I am unable to agree with the view that the only mode of dedicating a property to a temple is through the procedure described in the *Vinaya*. I am therefore, with respect, unable to subscribe to the view taken in Kampane Gunaratne Thero's case that a temple can own property only if such property is dedicated in the manner prescribed in the *Vinaya*. The decision in *Kosgoda Pangnaseela and another* v *Gamage Pavisthinahamy (supra)* on the other hand, has clearly analysed the position with regard to a temple in owning property. After an intensive examination of the past and present enactments dealing with Buddhist Temporalities, the relevant provisions and the decided cases with specific reference to the requisite capacity of a temple to receive property, Atukorale, J. was of the view that,

> "There is therefore legislative sanction for the proposition that a temple can acquire property otherwise than by way of a *sanghika* dedication. I am therefore with respect, unable to subscribe to the view taken by the Privy Council in *Buddharakkita Thero* v *Wijewardene* (62 NLR 49) that section 20 of the Buddhist Temporalities Ordinance (Cap. 318) deals only with *sanghika* property, that is, property dedicated to the priesthood as a whole with the customary ceremonies appurtenant to such a dedication.

Contrary to the position taken by the learned President's Counsel for the respondent, there are other decisions where there are certain *dicta* to the effect that a temple is a corporation and can acquire property. If I may reiterate. the position in *Charles* v *Appu (supra)*, a case decided in 1914, De Sampayo, J. stated that,

> ".... it may be remembered that a temple is a corporation, and often acquires property by the ordinary civil mode of acquistion."

This view was cited with approval by Atukorale, J. in *Kosgoda Pangnaseela and another* v *Gamage Pavisthinahamy (supra)*. In that case, it was further stated that,

"On a consideration.... there appears to me.... that a Buddhist Vihara or temple is an institution *sui generis* which is capable in law of receiving and holding property. The view I have formed is that in the context of past legislation the Buddhist Temporalities Ordinance (Cap. 318) recognises a Buddhist temple or *vihara* as an institution with the attributes of a corporation for the purpose of acquiring and holding property, both movable and immovable".

On a consideration of the totality of the material available, which includes not only the case law, but the relevant past and present legislation, I am of the view that the present Buddhist Temporalites Ordinance recognises a Buddhist temple as an institution with the characteristics of a corporation which **could acquire and hold movable and immovable property by the ordinary civil modes of acquisition**.

A temple, according to the Buddhist Temporalities Ordinance, means a place of Buddhist worship and would include the community of the *sangha*, viz. the entire priesthood. As contended by learned President's Counsel for the appellant, offerings to a temple could include a rupee coin put into a till box or offerings such as bed sheets, plates, cups etc. for the use of the priests. In each of these instances, the dedication may not be accompanied by a solemn ceremony in the presence of four or more priests who represent the '*sarva sangha*' or entire priesthood with the ceremony of pouring water. Does this mean that, purely because of the absence of such a ceremony, the dedication to the temple by a devotee would remain as '*gihi santhaka*', depriving him of his devotion and acquiring the merits of his benefaction? I do not think so. Such an interpretation would deprive the good intentions of a devotee who has no intention of retaining the ownership of what he has already donated to the temple. In terms of section 20 of the Buddhist Temporalities Ordinance "all offerings made for the use of such temple.... shall vest in the trustee or the controlling Viharadhipathi for the time being of such temple". Furthermore, the Buddhist Temporalities Ordinance provides for situations where an individual *bhikku* could acquire property for his exclusive personal use. However, as referred to earlier, section 23 of the Ordinance pro-

vides that, such *pudgalika* property if not alienated by such *bhikku* during his life time be deemed to be the property of the temple to which such *bhikku* belonged unless such property has been inherited by such *bhikku*. In terms of section 23 of the Ordinance, in a situation where an individual *bhikku* departs from this world, without alienating his '*pudgalika* property' acquired by him during his life time, such property would deem to be the property of the temple even though such property had been acquired without ceremony and dedication in the manner prescribed in the *Vinaya*. Therefore it is a conclusive surmise that in addition to *sanghika* and *pudgalika* property belonging to a temple, there could be other property which belongs to the temple, but acquired without a ceremony and a dedication in the manner prescribed in the *vinaya*.

In the present case, it is common ground that the land in question was purchased on a crown grant dated 06.02.1921 which conveyed a 2/3 share to Medhankara Therunnanse. On a careful consideration of the said grant, it is abundantly clear that the crown grant (P1) given to Rev.Medhankara is not a personal grant allotted to him, but a grant given to him as the trustee of the temple known as Kandebedde Viharaya. When this case is examined in the light of the aforementioned facts and circumstances, it is clear that there is no material to indicate that at the time the property was purchased on behalf of the temple, there was no such ceremony to dedicate the said property to the '*sarva sangha*' according to the *Vinaya*. However, *sanghika* dedication is not the only mode of acquisition of property by a temple. A temple could acquire property by the ordinary civil modes of acquisition without a ceremony conducted according to the *Vinaya as happened in this case*. On a consideration of the circumstances of the instant case, the property in question becomes temple property belonging to the temple known as Kandebedde Viharaya. Hence, the questions on which special leave to appeal was granted should be answered in the following terms:

(a) the answer of the learned District Judge to issue No.2 is erroneous and the answer to issue No.6 is incomplete.

(b) the answers of the learned District Judge to issues No.2 and 6 are inconsistent with his answer to issue No.1.

(c) The property described in paragraph 2 of the plaint in any event is temple property as it was property purchased or granted for and on behalf of the temple and title to the said property devolved and vested in the temple on the death of Rev.Ovitigamuve Dammananda.

For the aforementioned reasons this appeal is allowed and the judgment of the Court of Appeal dated 17.08.1998 and the judg- 520
ment of the District Court dated 25.08.1988 are set aside. The District Court is directed to enter judgment in favour of the appellant.

On a consideration of the totality of the circumstances in this case, there will be no costs in this Court.

ISMAIL, J. - I agree.

YAPA, J. - I agree.

Appeal allowed.