

UDUGODA JINAWANSA THERO
v.
GAMMULLE SUMANASARA THERO

COURT OF APPEAL
WEERASURIYA, J.
DISSANAYAKE, J.
CA NO. 551/86 (F)
DC KEGALLE NO. 2620/L
OCTOBER 04, 2000
NOVEMBER 03 AND 24, 2000
JANUARY 10 AND 29, 2001

Buddhist Temporalities Ordinance s. 4 (1) and s. 10 (1) Sisyanu sisya paramparawa – Abandonment of rights – Question of fact – Office of Adhikari and Viharadhipathy?

The plaintiff-respondent instituted action seeking a declaration that he is the lawful Viharadhipathy of 3 temples, and sought to eject the defendant-appellant. The defendant-appellant claimed that he is the Viharadhipathy, and prayed for the dismissal of the plaintiff's action.

The plaintiff-respondent contended that upon the death of Pethiyagoda Vipassi, Gammulle Sumana succeeded and upon his death the plaintiff-respondent the senior most pupil became the Viharadhipathy.

The defendant-appellant claimed that Gammulle Sumana abandoned his rights to the Viharadhipathship and Medagama Gunaratana the next senior pupil succeeded to the Viharadhipathship and upon his death Hapugoda Siddhartha succeeded and after his death in 1966 the defendant-appellant became the Viharadhipathy.

Held:

- (1) The principal document relied upon by the defendant-appellant was a letter (04. 01. 1932) written by the pupils of Vipassi to the Public Trustee that by their unanimous decision they have selected Medagama Gunaratana Thero for the අධිකාරී මුරුවා තෝරාගත් ප්‍රධාන පාලක මුරුවා of the vihares.

One cannot say that word "අධිකාරිධුරා" is one office and "තලක ධුරා" is a different office. It would be clear that the two terms mean one and the same thing.

Therefore "අධිකාරිධුරා නාමයේ ප්‍රධාන තලක ධුරා" have been used in contradistinction to Viharadhipathy.

- (2) There is a strong presumption against abandonment, abandonment means desertion of the temple coupled with a clear manifestation of a decision not to attend to the functions and duties of such office. If the facts and circumstances leave the matter in doubt then the inference to be drawn is that there is no renunciation.
- (3) The defendant-appellant had failed to prove that Gammulle Sumana/ Gammulle Sumanasara had abandoned their rights to the Viharadhipathiship.

APPEAL from the judgment of the District Court of Kegalle.

Cases referred to:

1. *Baddegama Sri Kalansuriya Thera v. M. H. M. Basheer* – 66 NLR 433 at 436.
2. *Saranankara Unnanse v. Indrajothi Unnanse* – 20 NLR 398.
3. *Jayananda Therunnanse v. Ratnapala Therunnanse* – 61 NLR 273, 275.
4. *Welivitiye Sobitha Thero v. Werapitiye Anomadassi Thero* – SC 79/94 – SCM 23. 08. 1995
5. *Punnaananda v. Welivitiye Soratha* – 51 NLR 372.
6. *Jinaratane Thero v. Dhammaratana Thero* – 57 NLR 374.
7. *Kalegama Ananda Thero v. Makkula Gnanassara Thero* – 1999 2 SLR 218.
8. *Dhammadaasa Thero v. Wimalajothi Thero* – 79 NLR (1) at 162.

T. B. Dissanayake, PC with *B. Coswatte* and *Nihal Samarasinghe* for defendant-appellant.

L. C. Seneviratne, PC with *M. B. Peramuna* for plaintiff-respondent.

Cur. adv. vult.

June 15, 2001

WEERASURIYA, J.

The plaintiff-respondent instituted this action against the defendant-appellant seeking, a declaration that he is the lawful Viharadhipathy of Talawa Rajamaha Viharaya, Galmaduwe Rajamaha Viharaya and Wattarama Rajamaha Viharaya, and ejection of the defendant-appellant therefrom. 1

The defendant-appellant in his answer, whilst claiming that he was the lawful Viharadhipathy as the sole pupil of Hapugoda Siddartha, prayed for dismissal of the action.

This case proceeded to trial on 17 issues and the learned District Judge at the conclusion of the case, by his judgment dated 18. 12. 1986, entered judgment for the plaintiff-respondent. It is from the aforesaid judgment that this appeal has been preferred. 10

The following admissions were recorded at the commencement of the trial :

- (1) That the dispute was in respect of Talawa Rajamaha Viharaya, Galmaduwe Rajamaha Viharaya and Wattarama Rajamaha Viharaya;
- (2) That the succession to the Viharadhipathiship of these three temples is governed by the rule of Sisyanu Sisya Paramparawa; 20
- (3) That Pethiyagoda Vipassi was the Viharadhipathy of these three temples in 1920's;
- (4) That Pethiyagoda Vipassi died in 1924;

- (5) That Pethiyagoda Vipassi had five pupils namely, Gammulle Sumana, Medagama Gunaratana, Polgahaange Dammasiddi, Abanwela Sumangala and Abuwangala Dhammapala;
- (6) That Polgahaange Dammasiddi died leaving no pupils;
- (7) That Abuwangala Dhammapala disrobed leaving no pupils;
- (8) That Gammulle Sumana, Medagama Gunaratana and Hapugoda Siddartha died in 1938, 1949 and 1966, respectively; 30
- (9) That Hapugoda Siddartha was the pupil of Medagama Gunaratana; and
- (10) That Talawe Rajamaha Viharaya, Galmaduwe Rajamaha Viharaya and Wattarama Rajamaha Viharaya have not been exempted under the provisions of section 4 (1) of the Buddhist Temporalities Ordinance and therefore administered by a trustee appointed by the Public Trustee.

In addition to the above admissions, it was also common ground that Gammulle Sumana was the senior pupil of Pethiyagoda Vipassi. 40

The case of the plaintiff-respondent was that upon the death of Pethiyagoda Vipassi in 1924, Gammulle Sumana succeeded to the Viharadhipathiship of the three temples and upon his death (Gammulle Sumana's) the plaintiff-respondent being the senior pupil became the Viharadhipathy of the said temples.

On the other hand the defendant-appellant claimed that Gammulle Sumana abandoned or renounced his rights to the Viharadhipathiship and Medagama Gunaratana who was the next senior pupil succeeded to the Viharadhipathiship and upon the death of Medagama Gunaratana, Hapugoda Siddartha succeeded to the Viharadhipathiship of the afore- 50

said three temples. It was asserted that Hapugoda Siddartha died in 1966, whereupon the defendant-appellant became the Viharadhipathy.

Thus, the main question that arose for consideration was as to who became the Viharadhipathy of the aforesaid three temples after the death of Pethiyagoda Vipassi. In terms of the rule of Sisyanu Sisya Paramparawa succession, upon the death of Pethiyagoda Vipassi in 1924, his senior pupil Gammulle Sumana should succeed him as the Viharadhipathy.

If the defendant-appellant is to succeed in this action, he must establish that Gammulle Sumana, the lawful Viharadhipathy had abandoned his rights to the Viharadhipathiship and therefore the next senior pupil of Pethiyagoda Vipassi namely, Medagama Gunaratana became Viharadhipathy of the three temples. 60

At the hearing of this appeal, the main submission of learned President's Counsel for the defendant-appellant was that learned District Judge has erred in his perception and evaluation of the meaning and effect of the documents tendered by the defendant-appellant and thereby arrived at a wrong conclusion on the issue relating to abandonment.

At the outset, it would be necessary to state that two stages could be identified when dealing with the question of abandonment. The initial stage of the purported abandonment of the incumbency is by Gammulle Sumana and the second stage is the alleged abandonment by Gammulle Sumanasara the senior pupil of Gammulle Sumana, the plaintiff-respondent. 70

In regard to the question of abandonment by Gammulle Sumana, the principal document relied upon by the defendant-appellant was a letter written by pupils of Vipassi to the Public Trustee that by their unanimous decision they have selected Medagama Gunaratana for the අධිකාරී මුරයට තෝරාගත් ප්‍රධාන පාලක මුරයට of the Viharas therein mentioned. 80

Learned President's Counsel for the defendant-appellant contended that the office referred to therein is the office of lawful Viharadhipathy. This document was produced in evidence by both the defendant-appellant and the plaintiff-respondent marked D8 and P6, respectively.

It would be appropriate at this stage to make reference to the meaning of the term අධිකාරී ඉංග්‍රීසි with reference to case law.

In *Baddegama Sri Kalansuriya Thera v. M. H. M. Basheer*⁽¹⁾ at 436 T. S. Fernando, J. observed as follows :

"Bertram, CJ. in *Saranankara Unnanse v. Indrajothi Unnanse*⁽²⁾ in the course of discussing at great length the different kinds of pupilage adverts also to the expression "Adikari" thus. The officer who in Ceylon Decisions and Ordinances is referred to as the "incumbent" is an officer of a different nature. The term by which he is described as "Adikari" (a person in authority) a word derived from the Sanskrit word meaning "authority".

In the case of *Jayananda Therunnanse v. Ratanapala Therunnanse*⁽³⁾ at 275 Basnayake, CJ. observed that it is well-established that the offices of Viharadhipathy and Viharadhikari are not the same.

In the unreported case of *Welivitiye Sobitha Thera v. Werapitiye Anomadassi Thera*⁽⁴⁾ G. P. S. de Silva, CJ. observed that the question^{100 4} whether the terms of Viharadhipathy and Adikari refer to two distinct officers or to one and the same officer has to be determined on an interpretation of the document itself.

Before proceeding to examine this document, it would be useful to ascertain the nature of relationship of the parties during the relevant period. The defendant-appellant admitted in his evidence that the five pupils of Pethiyagoda Vipassi were closely attached to each other and had no disputes among them. It was also common ground that even

the next generation of the surviving three pupils were well-disposed towards each other and had no disputes among them.

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It was also revealed that both Medagama Gunaratana and his pupil Hapugoda Siddartha were the most educated priests.

Document marked D8 or P6 came to be executed on 04. 01. 1932 signed by four pupils addressed to the Public Trustee. The 3rd paragraph of this letter states that four pupils by their unanimous consent have appointed Medagama Gunaratana to the අධිකාරී ධුරයට නොහොත් ප්‍රධාන පාලක ධුරයට of the three temples in question. The language used is explicit and clear. It is to be noted that in construing the word අධිකාරී ධුරය the word පාලක ධුරය must be taken into consideration. It is not possible to separate one word from another. Thus, it is not open for one to say that word අධිකාරී ධුරය is one office and පාලක ධුරය is a different office, since the connecting word නොහොත් clearly means 'or' and not 'and'. Therefore, it would be clear that the two terms අධිකාරී ධුරය and පාලක ධුරය mean one and the same thing. Therefore, the conclusion is irresistible that අධිකාරී ධුරය නොහොත් පාලක ධුරය have been used in contradistinction to විභාජන ධුරය.

120

Before I proceed to discuss the evidence relating to the question of abandonment, it would be necessary to refer to the decisions in the following cases to ascertain the principles that would be applicable on the issue.

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In *Punnaananda v. Welivitiye Soratha*⁽⁵⁾ it was held that the abandonment by a priest of his right to the incumbency of a Buddhist temple does not require any notarial deed or other prescribed formality, but is a question of fact and the intention to abandon may be inferred from the circumstances.

In *Jinaratana Thero v. Dhammaratana Thero*⁽⁶⁾ at 374 it was observed that an intention to renounce will not be inferred unless that intention clearly appears therefrom upon a strict interpretation of

the facts and circumstances of the case and if the facts and circumstances leave the matter in doubt then the inference to be drawn is that there is no renunciation. Thus, there being no presumption in favour of renunciation of a right the onus is on the party who assert it to prove facts and circumstances from which it can be inferred.¹⁴⁰

In *Kalegama Ananda Thero v. Makkule Gnanassara Thero*¹⁴¹ it was held that there is strong presumption against abandonment of the legal right of a lawful Viharadhipathy. Abandonment means desertion of the temple coupled with a clear manifestation of a decision not to attend to the functions and duties of such office.

The basis on which the defendant-appellant made his claim the abandonment of Vihardahipathiship by Gammulle Sumana, was grounded solely on writing marked D8 (P6) as referred to earlier. This writing being effected on 04. 01. 1932 the question arose as to how it would be possible to claim to abandonment of the Viharadhipathiship as from the death of Vipassi in 1924. The defendant-appellant when confronted with this proposition came out with the incredible proposition that abandonment in 1924 could be inferred upon the writing (D8) effected in 1932. That this proposition is fanciful need not be emphasized.¹⁵⁰

Admittedly, letter D8 (P6) had been written in 1932 shortly after coming into force of the provisions of the Buddhist Temporalities Ordinance of 1931. Having considered the cordial relationship of the four pupils and the expression used in the document, it would be justifiable to come to the conclusion that Medagama Gunaratana was appointed by other pupils, to be the person in charge of three temples and not as Viharadhipathy by designedly using the word අධිකාරී ධුරයට නොහඳුන් ප්‍රධාන පාලක ධුරයට.¹⁶⁰

Much emphasis was laid on the document produced marked D14. This is a letter dated 08. 02. 1932 by the Mahanayake Priest of Asgiriya to the public Trustee in reply to his letter dated 27. 01. 1930, inquiring

whether Medagama Sri Gunaratana was the Viharadhipathy of Talawe Viharaya. The Mahanayake of the Asgiriya Chapter by the aforesaid letter informed the Public Trustee that Medagama Gunaratana was the අධිපති භික්ෂුව of the Talawe Viharaya. It is to be noted that, this letter from the Public Trustee has come, immediately after the letter by the four pupils of Vipassi, addressed to the Public Trustee consenting to the appointment of Medagama Gunaratana to the අධිකාරී ධුරය or පාලක ධුරය of three temples. Therefore, the reference to අධිපති භික්ෂුව must be understood to mean in the context of what was intended in the letter marked D8 or P6. Since the office of *de facto* Viharadhipathy has been recognized one may be justified in describing a priest as අධිපති භික්ෂුව when the Public Trustee made inquiries as to who was the Viharadhathy of the temple. ¹⁷⁰

The several documents produced by the defendant-appellant relating to the appointment of trustees would reveal that trustees were appointed by the Public Trustee to Talawa, Wattarama and Galmaduwa temples acting on nominations by Medagama Gunaratana and Hapugoda Siddartha. Learned President's Counsel for the defendant-appellant stressed the significance of these nominations as a manifestation of exercise of the powers and functions of *de jure* Viharadhipathy. It would be correct to state that nomination of trustees in terms of section 10 (1) of the Buddhist Temporalities Ordinance would be effected by a *de jure* Viharadhipathy⁽⁶⁾ (*vide* 79 NLR vol. 1-145 at page 162). ¹⁸⁰

The documents marked D10, D17, D19 which cover a period from 1932-1939, were letters by Medagama Gunaratana addressed to Public Trustee, requesting him to appoint the persons mentioned therein as trustees of Talawe Viharaya. It would be interest to note that in none of these letters, has Medagama Gunaratana described himself as Viharadhipathy of Talawa. In fact, in D10 he has described himself as residing at Asgiriya Viharaya; D17 he has described himself as trustee of Talawe Viharaya residing at Asgiriya; while in D19 which has been written in English merely gives his address as Asgiriya Viharaya. ²⁰⁰

Despite Medagama Gunaratana describing himself as Viharadhipathy and Viharadhipathy (trustee) in statements of accounts of Wattarama Viharaya (D47 – D51), it is inconceivable as to why he has chosen, in letters marked D56 and D57 addressed to the Public Trustee to describe himself merely as trustee of Wattarama Viharaya. D56 and D57 were letters addressed to the Public Trustee tendering his resignation from the office of trustee and requesting him to appoint ²¹⁰ Hapugoda Siddartha in his place as trustee.

Therefore, it would be appropriate to state that Medagama Gunaratana has acted within the scope of his nomination by the co-pupils of Gammulle Sumana as අධිකාරී හෝ ප්‍රධාන පාලක of the temples mentioned therein.

Hapugoda Siddartha who was said to have succeeded to the Viharadhipathiship after the demise of Medagama Gunaratana, nominated several individuals for appointment as trustees as evident from letters marked D20, D22, D23, D44, D46 describing himself as Viharadhipathy. However, in statements of accounts produced marked ²²⁰ D52 and D53, he has been referred to as Viharadhipathy (trustee) of Wattarama Viharaya. The plaintiff-respondent sought to explain this phenomenon that Hapugoda Siddartha as having been allowed to continue as trustee after the demise of Medagama Gunaratana, being the most educated of the second set of pupils.

Learned President's Counsel highlighted the absence of any document by the plaintiff-respondent making any nomination for the appointment of trustees to the temples in suit. It is vital to note that apart from the nomination of trustees and the forwarding of statements of accounts, which would establish the management of temporalities ²³⁰ belonging to the temple by Medagama Gunaratana and Hapugoda Siddartha, no document was tendered to establish that the said priests performed any acts pertaining to the religious activities of the temple. It would be unnecessary to emphasise that indulgence in religious activities relating to the spiritual well-being of the Sangha and layman from an essential and integral part of a temple.

In the circumstances, it would be pertinent to note that it is only from the nomination of trustees and production of statements of accounts that the defendant-appellant is seeking to establish that Gammulle Sumana and thereafter Gammulle Sumanasara had abandoned the rights of Viharadhipathiship of these temples. It is hardly necessary to reiterate that management of temporalities belonging to the temple is not the sole function of a lawful Viharadhipathy. ²⁴⁰

The defendant-appellant has conceded that Gammulle Sumana was resident at the Galmaduwe Rajamaha Viharaya and the income of the temple was appropriated by him. It was also admitted that plaintiff-respondent was resident at Galmaduwe Rajamaha Viharaya from the time he was robed and continued to appropriate the income from the temple.

The communication by the Public Trustee dated 24. 02. 1954 ²⁵⁰ marked P7 assumes much significance in the light of the above facts. By this letter, Public Trustee had informed the plaintiff-respondent that Galmaduwe Rajamaha Viharaya has been brought under the provisions of section 4 (1) of the Buddhist Temporalities Ordinance and requested him to nominate a trustee in terms of section 10 (1) of the Ordinance. By letter dated 02. 04. 1954, the plaintiff-respondent nominated himself as the trustee, but later withdrew the nomination as evident from letter dated 11. 05. 1954, marked P9. In the circumstances, the letter dated 02. 05. 1954, marked D7 purporting to inform that Hapugoda Siddartha is the lawful Viharadhipathy of ²⁶⁰ Galmaduwe Viharaya is open to doubt. The plaintiff-respondent denied the writing of this letter. In fact, this letter refers to a letter dated 26. 04. 1954 bearing reference No. BT 144 KD. However, no such letter had been produced by the officer who produced the documents which were in the custody of the Public Trustee. The contention of learned President's Counsel that this letter was in reply to the letter dated 24. 02. 1954 marked P7 is therefore unacceptable.

Learned President's Counsel for the defendant-appellant contended that in documents D1-D6, the description of the plaintiff-respondent

as residing at Asgiriya would counter his assertion that he was the 270 Viharadhipathy. It is no doubt correct that in documents D1 – D6, the plaintiff-respondent has not described himself as Viharadhipathy, but preferred to state as resident at Asgiriya. Inasmuch as those documents do not afford any assistance to the plaintiff-respondent's contention, the documents marked D10, D17, D19, D47, D48, D49, D50 and D51 do not lend any assistance to establish Medagama Gunaratana was the Viharadhipathy. In the same manner documents marked D52 and D53 would be of little or no assistance to assert that Hapugoda Siddartha was the Viharadhipathy.

Learned President's Counsel for the defendant-appellant laid much 280 emphasis on the significance of the decision of the case bearing No. L/91 of the District Court of Kegalle on the issue of abandonment. The above case was instituted by Yatawara Piyaratana, a pupil of Abanwala Sumangala (pupil of Pethiyagoda Vipassi) against the defendant-appellant of Wattarama temple. The position taken up by both parties in that case was that upon Vipassi's death, Medagama Gunaratana became Viharadhipathy as Gammulle Sumana had abandoned his rights.

The plaintiff-respondent maintained that despite his presence in Court once for the said case he did not intervene as a party in that 290 case on legal advice. Since the parties had admitted in that case Gammulle Sumana had abandoned his rights, it has no effect on the claim of the plaintiff-respondent for the office of Viharadhipathy in this case.

For the foregoing reasons, it seems to me that defendant-appellant had failed to prove that Gammulle Sumana or Gammulle Sumanasara had abandoned their rights to the Viharadhipathship of these three temples.

In the circumstances, I dismiss this appeal with costs.

DISSANAYAKE, J. – I agree.

Appeal dismissed.