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

In the matter of an application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Centre for the Environmental Justice (Gte) Ltd.,
   No. 20A, Kuruppu Road,
   Colombo 08.

S.C.F.R. Application No. 351/2022

2. Withanage Don Hemantha Ranjith Sisira Kumara,
   Director and Senior Advisor,
   Centre for Environmental Justice,
   No. 20A, Kuruppu Road,
   Colombo 08.

3. Pathragoda Kankanamge Dilena,
   Executive Director,
   Centre for Environmental Justice,
   No. 20A, Kuruppu Road,
   Colombo 08.

Petitioners

Vs.

1. Director General of Wildlife Conservation,
   Department of Wildlife Conservation, No. 811A,
   Jayanthipura, Battaramulla.

2. Central Environmental Authority,
   No. 104, Denzil Kobbekaduwa Mw.,
   Battaramulla.

2A. Hemantha Jayasinghe,
   Director General,
   Central Environmental Authority,
   No. 104, Denzil Kobbekaduwa Mw.,
   Battaramulla.

3. Conservator General of Forests
   Department of Forest Conservation,
   Sampathpaya,
   No. 82, Rajamalwatte Road,
   Sri Jayawardanepura Kotte.

4. Commissioner of Buddhist Affairs,
   Department of Buddhist Affairs,
   Dahampaya,
   No. 135, Srimath Anagarika
   Dharmapala Mw., Colombo 07.

5. Divisional Secretary,
   Galgamuwa-Nikawewa Road,
   Ehetuwewa.

6. Inspector General of Police,
   Police Headquarters, Colombo 01.

7. Director General,
   Department of Archaeology,
   Sir Marcus Fernando Mawatha,
   Colombo 07.

8. North Western Provincial
   Environmental Authority (NWPEA),
   1st Floor, Provincial Office Complex,
   Kurunegala.

9. Chairman,
   Ceylon Electricity Board,
   50, Sri Chittampalam A. Gardiner
   Mawatha,
   Colombo 02.

10. Ven. Walathwawe Rahula Thero,
    Chief Incumbent,
    Nakolagane Purana Rajamaha
    Viharaya,
    Vijaya Sri Sumangaramaya,
    Ataragalla,
    Galgamuwa

11. Hon. Attorney General,
    Attorney General's Department,
    Colombo 12.

Respondents

Before:	**Hon. Janak De Silva, J.**
	Hon. K. Priyantha Fernando, J.
	Hon. Dr. Sobhitha Rajakaruna, J.
Counsel:	Dr. Ravindranath Dabare with Savanthi Ponnamperuma for the Petitioners
	Ganga Wakishta Arachchi, Deputy Solicitor General for 1st to 9th and 11th Respondents
	Hemaka Senanayake with Manohara de Silva and Ms Nethmi Muthunika for the 10th Respondent
Written Submissions:	15.09.2025 by the Petitioners
	15.09.2025 by the 1st to 9th and 11th Respondents
Argued on:	05.08.2025
Decided on:	06.05.2026

Janak De Silva, J.

The 1st Petitioner is a non-profit organisation engaged in advocating for the "protection, preservation, conservation of nature and environment, promotion and advancement of the concepts of environmental justice and good governance in the interest of the general public…". The 2nd and 3rd Respondents are respectively a Director and Executive Director of the 1st Petitioner.

The gravamen of the complaint of the Petitioners is that an area of approximately 1,500 acres of forest in the immediate vicinity of the Nakolagane Purana Rajamaha Viharaya is being illegally cleared by the Viharadhipathi of the said Viharaya (10th Respondent) and/or his servants or agents.

Petitioners allege the 10th Respondent to claim the lands in the extent of approximately 4,500 acres as having been granted to the temple under a *Sannasa* and that he is therefore entitled "to possess the said extent of land in the way he wants."

According to the Petitioners, the *corpus* includes forests, which are being cleared as a consequence of the 10th Respondent "distributing" temple lands among various "influential individuals and companies". The forests are "being destroyed using backhoe machines", for "commercial agriculture, to establish granite quarries," and "soil excavation."

The Petitioners further allege that, around these commercial activities, unauthorised "electric fences have also been set up," which has caused "a spike in human-elephant conflict," because parts of the lands in question are "a key elephant home range in the area." The electric fences, according to the Petitioners, cause elephants "to move through villages and cultivations during their seasonal movements", which in turn results in increased elephant raids on villagers' crops.

The Petitioners claim that "the majority of the villagers depend on agriculture as their primary source of income…" Accordingly, because the areas being cleared are in the catchment of the Palukadawala tank, the Petitioners say the clearing of the forest has led to the erosion in the catchment and filling up of the reservoir with sediment. According to them, the commercial agricultural activities by the third parties also threaten the farmers' cultivations around the tank as it creates shortages of water for paddy, which is the villagers' main source of livelihood.

In sum, the Petitioners' claim is that the commercial agricultural activity, including the clearing of forests and the setting up of unauthorised electric fences, that the 10th Respondent has allowed on the lands in issue by "distributing" portions of them out to various parties, has resulted in a sharpened human-elephant conflict and a threat to the agricultural livelihoods of the villagers.

The Petitioners allege that the 1st to 9th and 11th Respondents (State Respondents) have failed to discharge their statutory and regulatory duties with respect to the conduct of the 10th Respondent.

These actions of the 10th Respondent and the omissions of the State Respondents, according to the petition, "had caused a severe escalation of the human-elephant conflict in the area and posed serious adverse impacts to the lives and livelihoods of the people at Nakolagane, thereby constituting the infringement and/or continuous infringement of the fundamental rights guaranteed to the villagers of the aforementioned areas and the Petitioners under Article 12(1), 14(1)(g) and 14(1)(h) of the Constitution of the Republic."

Leave to proceed has been granted under Articles 12(1) and 14(1)(g).

Position of the State Respondents

Several of the State Respondents, namely, the 1st to 5th and 7th to 9th Respondents have filed objections and each of their positions are summarised below.

In addition to their objections, several additional reports have also been filed of record. The circumstances in which these additional reports have been filed are as follows. When this matter was first taken up for hearing on 20.11.2023, Court directed the State to tender to Court plans if any, prepared by the Surveyor General under the Temple Lands Ordinance pertaining to the temple lands claimed by the 10th Respondent by virtue of the purported *Sannasa*. The State was further directed to tender a map of the area authenticated by the Surveyor General, on which—

a. The land described in paragraphs 10, 11, and 14 of the Petition have been clearly identified and marked;

b. The land claimed by the 10th Respondent by virtue of the purported *Sannasa* is shown; and

c. The land depicted in the relevant map if any prepared in terms of the Temple Lands Ordinance.

At that stage, the learned Counsel for the 10th Respondent gave an undertaking that, *"the 10th Respondent will not be clearing the land that is the matter in issue in the application and that if there is any power source that is injurious to either human beings or animals that it will be removed in the presence of the authorised representatives of the 1st Respondent and with the assistance of the 6th Respondent."*

However, when the matter was mentioned on 14.02.2024, learned Counsel for the Petitioner brought to the notice of Court that the undertaking given by the 10th Respondent had not been given effect to as far as the removal of the power source is concerned. He moved that the assistance of the 9th Respondent also be obtained in giving effect to the undertaking, and that application was allowed. The learned DSG was directed *"to liaison the said actions and to file of record, a report from the relevant persons with regard to the steps taken."*

When this matter was resumed for hearing on 20.05.2024, learned Counsel for the Petitioners informed Court that the undertaking given by the State had still not been implemented. Learned DSG for the State Respondents informed Court that a motion dated 03.05.2025 has been filed indicating the steps taken. However, Court observed that the direction of Court has not been complied with. The report of steps taken filed with that motion is the **Joint Inspection Report** referred to in this judgment.

In addition to this Report, two other documents were filed of record on behalf of the State Respondents. They are i) a report on the electric fences erected on the lands in issue (hereafter, the **Fence Report**), and ii) a report containing the maps authenticated by the Surveyor General (hereafter, the **Surveyor General's Maps**). Summaries of these reports have been adverted to below after the summation of the position of the State Respondents.

Position of the 1st Respondent

The 1st Respondent has admitted "the clearance of a forest" in the vicinity of the Nakolagane Purana Rajamaha Viharaya and the "ongoing human elephant conflict

persisting within the area." He states that, "several discussions have taken place with stakeholders" on the situation. It has also been "suggested to prosecute … persons who are involved in **the clearance of the forest reservation owned by the State** and to identify the metes and bounds of the land of the [temple], demarcate the boundaries of the land of the temple and to take protective measures to protect the forests situated within the [temple land]" (emphasis added). The 1st Respondent states further, "it was also considered whether the lands which are subjected to clearance could be declared as a sanctuary upon receiving recommendations of the subordinates of [his] department."

The 1st Respondent has annexed 1R1, which is a letter dated 15.09.2021 from a Wildlife Ranger of the Galgamuwa Elephant Control Unit to the Asst. Director, Regional Office, Kurunegala indicating the findings of an inspection carried out after a complaint was made to the Ministry hotline number. According to the report, the inspection revealed that, "පන්සල ආශ්‍රිත ප්‍රදේශය හා පාලුකඩවල වැව් ඉස්මත්ත ප්‍රදේශය **ජලාශය පෙනෙනතෙක්ම වනාන්තර එළි කර ඇති [බවත්]** … ගල්ගමුව වනජීවී පාලන බල ප්‍රදේශය තුළ දිගින් දිගටම වනාන්තර එළි පෙහෙලි වීම සිදු වන අතර මේ හේතුවෙන් අලි මිනිස් ගැටුම තව තවත් උග්‍ර වෙමින් පවතී" (emphasis added). The officer recognises that some of the lands thus cleared include "රජයේ වනාන්තර භූමි කොටස්" and recommends establishing clear demarcations between such lands and lands belonging to the temple, and "නාකොලගනේ පන්සලට අයත් භූමිය … සඳහා වනාන්තර ආරක්ෂාවන් ලෙස සුදුසු ක්‍රියාමාර්ගයක් සිදු කිරීම."

The 1st Respondent has also annexed 1R2, which is a letter dated 18.09.2021 from the 5th Respondent (Divisional Secretary, Ehetuwewa) to the representatives of 1st to 3rd and 7th and 8th Respondents. There, the 5th Respondent observes, "මෙකී සියලු ඉඩම්වල ප්‍රවේණි අයිතිය නාකොළගනේ රජමහා විහාරය සතු වුවද මෙම ඉඩම් එළි කිරීම හේතුවෙන් මෙකී ඉඩම් වලට පහළින් ඇති පාලුකඩවල ජලාශය හා ඒ ආශ්‍රිත වැව් වල පෝෂක කලාපයන් හානියට පත්වන බවත් දැනට මෙම ඉඩම් තුළ තම වාසභූමි පවත්වාගෙන යන අලි ඇතුන් සහ වෙනත් වන ජීවීන් සඳහා වාසභූමි අහිමිව යාම තුළ පරිසර ගැටළු රැසක් ඇතිවිය හැකි බවත් නිරීක්ෂණය වේ." Accordingly, the 5th Respondent requests the recipients of 1R2 to take

necessary action.

The 1st Respondent has annexed 1R3, letter dated 01.10.2021 from Asst. Director (Northwestern Province) of his Department to the District Secretary, Kurunegala. There, the Asst. Director identifies the lands in question as, "වනාන්තර ස්වරූපයේ ඇති වන සතුන් බහුලව, විශේෂයෙන් වන අලීන් භාවිතා කරන වනාන්තරයක්," which was at that time subjected to large-scale and rapid destruction ("මහා පරිමාණයෙන් ශීඝ්‍රයෙන් එළි පෙහෙළි කිරීම"). The Asst. Director goes on to inform the District Secretary that, though Kurunegala is one of the districts with the lowest forest cover (amounting to about 14% of the district), about 5%-8% of the nation's elephant population live there, indicating that its forests were densely populated by elephants.

The Asst. Director then notes that the elephants habitually use several of the lands in the area, including those adjacent to the Palukadawala tank, with no distinction as to whether such lands are declared by law as being for their use [para. 5, 1R3]. Accordingly, he notes, "මේ වන විට වනජීවී සංරක්ෂණ දෙපාර්තමේන්තුවට කළමනාකරණය කළ හැකි ඉඩම් දෙපාර්තමේන්තුව සතුව නොතිබීම හා රජයේ අනෙකුත් ආයතනයන් සතු රක්ෂිතයන් ද ඉතා අල්ප බැවින් මේතාක් කාලයක් වන අලීන් විසින් පරිහරණය කළ භූමිය පාරිසරික අවශ්‍යතාවයන් පිළිබඳ කිසිදු සැළකිල්ලකින් තොරව එළි කිරීම මඟින් වන අලීන්ට මෙන්ම මිනිසුන්ටද අනාගතයේදී ඉතා බරපතල තත්ත්වයන්ට මුහුණ දීමට සිදු වීම නොවැළැක්විය හැක … පසුගිය වසර 05 ක කාලය තුල අහිමි වූ මිනිස් ජීවිත වලින් 40% ක් ද අහිමි වූ වනඅලි ජීවිත වලින් 40% ක් ද ඉහත ප්‍රාදේශීය ලේකම් කොට්ඨාශ තුළ බව තහවුරු කරගෙන ඇත."

He further notes that the lands have been identified as reflecting a high level of biodiversity in general. However, the Asst. Director concludes by noting that the 2nd Respondent has the capacity to act under the National Environmental Act No. 47 of 1980 as amended (NEA) while his department does not, on the basis that the Fauna and Flora Protection Ordinance No. 2 of 1937 as amended (FFPO) does not contain sufficient provisions for that purpose.

The 1st Respondent has also annexed 1R4, in which the 5th Respondent requests Secretary, Ministry of Wildlife and Forest Conservation, to take steps to acquire the lands in question to either the Department of Wildlife Conservation or another suitable state agency. In 1R6, the Director of Irrigation, Kurunegala, informs the Asst. Director (Northwestern Province) of the Department of Wildlife Conservation that inspections carried out by his officers had revealed that the reservations of the Palukadawala tank had been cleared and subjected to cultivation, but he faced difficulties in taking action against those responsible without the reservations being properly demarcated.

In 1R7, the Asst. Director (Northwestern Province) of 1st Respondent's Department writes to the 5th Respondent, requesting her to authorise and carry out a survey of the lands in question for the purpose of demarcating the reservations and taking protective measures with respect to them.

In 1R9, the Secretary, Ministry of Wildlife and Forest Conservation, refers to the 1st and 3rd Respondents a complaint by a local environmentalist group made to the Ministry, for necessary action. 1R10 is a letter from the 1st Respondent to the Asst. Director (Northwestern Province) of his Department, seeking his observations and recommendations.

1R11 is a letter from that Asst. Director to the Galgamuwa Wildlife Ranger, seeking observations on the possibility of linking the lands in question to "Wildlife Reservations" or converting them into a sanctuary. From this point, correspondence on the matter seems to have stopped until, 8th Respondent sends 1R13 about six months later and 1R12 another six months later to several of the State Respondents named in this application, among others, to meet and discuss the matter of the unauthorised forest clearing taking place in the lands in question. No minutes of those meetings are attached.

Position of the 2nd Respondent

On behalf of the 2nd Respondent, 2A Respondent has admitted that Environment Officers of the 2nd Respondent conducted inspections on the lands on 17.09.2021 and 07.10.2021, after receiving a complaint from a local environmentalist group called the Haritha Udaya Jathika Vyaparaya. According to the affidavit filed by 2A Respondent, these inspections only revealed "that several areas had been cleared, burnt and farming activities had commenced," and that "small trees and bushes were cut and burnt except for the larger trees and that a contractor has caused the preliminary work to erect an elephant fence around the land." According to the affidavit, a discussion was held at the Ambanpola Police Station with the participation of the Complainants, government officials and the 10th Respondent, but does not specify the outcomes of that discussion [2R3].

The reports of the Environment Officers carrying out the inspections on the other hand [2R1 and 2R2] reveal more adverse findings than what is implied by the affidavit of the 2A Respondent. To wit, both 2R1 and 2R2 report that about 20 acres of land cumulatively, some of it adjacent to the Palukadawala tank, were found on inspection to have been burnt and subjected to cultivation.

The reporting Officer in 2R1, one D.M. Premarathne, has specifically noted, "ජාතික පාරිසරික පනත යටතේ ... මෙම සංවේදී ඉඩම් එලිපෙහෙලි කිරීම පාරිසරික බලපෑම් ඇගයීමේ ක්‍රියාවලියට යටත්ව පාරිසරික අනුමැතිය ලබා ගත යුතු ක්‍රියාකාරකමක් වේ. <u>ඒ අනුව මේ සඳහා නීතිමය පියවර ගත යුතු වේ</u>**. නමුත් වයඹ පළාත තුළ ජාතික පාරිසරික පනත යටතේ නීතිමය පියවර ගැනීමෙදී ඇතිවන ගැටළුකාරී තත්ත්වය හේතුවෙන් මේ සම්බන්ධයෙන් ඉදිරි කටයුතු සඳහා ඉහළ කළමණාකාරීත්වයේ හා නීති අංශයේ උපදෙස් ලබා ගැනීම සුදුසු වේ**" (emphasis added).

The reporting Officer in 2R2, who is a Senior Environment Officer, has observed, "මෙම ඉඩම නාකොලගනේ පුරාණ රාජමහා විහාරස්ථානයට අයත් වන අතර **2018 වසරේ සිට මේ දක්වා ඉඩම්වල සිදු කල සංවර්ධන කටයුතු** සම්බන්ධයෙන් බෞද්ධ කටයුතු දෙපාර්තමේන්තුවේ පූර්ව අනුමැතියක් ලබාගෙන නොමැත. විහාර දේවාලගම් පනත යටතේ ඊට අදාල ඉඩම්වල

සංවර්ධන කටයුතු සිදු කිරීමේදී බෞද්ධ කටයුතු දෙපාර්තමේන්තුවේ අනුමැතිය හා නිර්දේශ ලබාගත යුතු බැවින් මේ සම්බන්ධව **ඉදිරි පියවර ගැනීම සඳහා බෞද්ධ කටයුතු කොමසාරිස් වෙත දැනුම් දීමට නිර්දේශ කරමි**" (emphasis added).

The 2A Respondent has also annexed 2R3, namely, the minutes of the discussion held on 22.10.2021 at the Ambanpola Police Station regarding the abovementioned complaint.

Position of the 3rd Respondent

The 3rd Respondent has taken the position that none of the lands in question constitute State land and therefore do not fall under his purview.

Position of the 4th Respondent

The 4th Respondent has taken the position that the temple in question is governed by Section 4(1) of the Buddhist Temporalities Ordinance, No. 19 of 1931 as amended (BTO), and that, in terms of Section 5 therein, "every trustee and controlling Viharadhipathi is subjected to the general supervision" of the 4th Respondent. He has also appointed the 10th Respondent as the trustee of the temple by letter dated 19.01.2021, with effect from 23.08.2020 (4R2). In his objections, the 4th Respondent does not specifically state that the 10th Respondent has leased out temple property without his approval, or indeed whether he has leased out property at all.

In 4R5, however, the Deputy Commissioner of Buddhist Affairs for Kurunegala is seen reporting to the 4th Respondent the findings of yet another field inspection carried out, this time on 21.09.2022 (that is, about one year since the previous series of inspections mentioned above). In this inspection report, the Deputy Commissioner informs the 4th Respondent that ***several parcels of land within the temple property had been leased out to various parties on single- or five-year lease agreements by the 10th Respondent, and that he informed the 10th Respondent to ensure that temple lands are leased out only in accordance with the law***. He also reports observing a mango cultivation of about 16 acres within temple property and that he informed the 10th

Respondent to report the annual earnings from the cultivation to the Department of Buddhist Affairs.

With regard to the clearing of the forests, the Deputy informs the 4th Respondent that clearing activity about a year old was visible in the property. He further mentions several commercial enterprises including a chicken meat factory started by a private company that the 10th Respondent had claimed to have bought the land from unspecified third parties who had forged deeds to the said lands without his knowledge, and that he had complained about this to the Ambanpola Police Station. Based on this, the Deputy Commissioner seeks the 4th Respondent's directives on how to proceed with respect to the leasing out of temple property. The 4th Respondent replies, by 4R6, requesting his Deputy to act in accordance with the provisions of the Ordinance.

It is apposite therefore to consider at this point of time, the provisions in the BTO.

Under Section 20, "All property, movable and immovable, belonging … to … any temple … *shall vest in the trustee* …" (emphasis added). In terms of Section 4(1), the management of the property belonging to every temple is also vested in the trustee, unless the temple in question is specifically exempted from that section by order of the Minister published in the *Gazette*. For all temples (other than the temples for which the Ordinance provides otherwise by name[1]), a trustee must be nominated by the Viharadhipathi of the temple and appointed by the Commissioner [Sections 10(1) and 11(2)].

The Viharadhipathi may nominate himself as the trustee [Section 11(1)]. In assuming duties, a trustee must give "such security for the due exercise and performance of their powers, duties, and responsibilities under [the] BTO as the Commissioner of Buddhist Affairs shall … require" [Section 13(1)]. If the trustee is a bhikku he is required

[1] Those are the Dalada Maligawa, Sripadasthane, and Atamasthane.

to provide one or more sureties in place of security. A trustee holds office for five years at a time [Section 1], and whenever a vacancy occurs in the office of the trustee, a new trustee shall be nominated within a month of that occurrence [Section 10(1)].

A trustee has several duties under the BTO. Prime among these are those cast by Part IV to keep accounts and make up biannual statements of accounts [Sections 35 and 36]. Within thirty days of the end of each half-year, he must submit his accounts to the Commissioner (*ibid*.). All moneys etc. received by a trustee for or on behalf of the temple shall (with the Commissioner's sanction) only be appropriated by the trustee for certain purposes prescribed in the Ordinance [Section 25].

Section 39 explains the duty of the Commissioner to ensure, after inquiry held, that ***criminal*** proceedings are instituted against a trustee who fails to duly account for temple moneys. The Commissioner has the power to hold an inquiry into any alleged "misfeasance, breach of trust or neglect of duty" committed by a trustee in respect of property belonging to the temple, either on his own motion or on the complaint of any person interested [Section 15(1)]. A trustee alleged of such "misfeasance, breach of trust or neglect of duty" may also be sued in court, either by the Commissioner or by any person interested [Section 15(2)]. Any trustee who "wilfully refuses or neglects to perform any of the duties imposed on him under the BTO shall be guilty of an offence," in addition to any other liability he may incur with respect to such refusal or neglect [Section 19].

Additionally, the BTO imposes several other restrictions regarding temple property. There is an absolute prohibition against "mortgage, sale, or other alienation of immovable property belonging to any temple" [Section 26], and if ever such mortgage, sale or other alienation takes place, it is the duty of the Commissioner to direct the trustee to institute legal proceedings to set aside such alienation [Section 28].

While it is lawful for the trustee to lease all or parts of the temple property, there are significant restrictions to be observed. Chiefly, leases above a certain threshold ["a lease for … more than one year of land worth … more than five hundred rupees or …

more than five acres", Section 29(1)] may only be made with the previous sanction of the Commissioner, and after calling for tenders.

Moreover, "No land belonging to a temple which is leased under the provisions of [the] Ordinance shall be used for any purpose which is opposed to the principles of Buddhism" [Section 29(2)]. Where the sanction of the Commissioner is not required for the leasing out of temple property, "…the name and extent of the land leased, together with the amount of the rent and conditions, shall be reported within one month of the granting of the lease by the trustee … to the Commissioner" [Section 29(5)]. Finally, "All leases made in contravention of any of the provisions of [the] Ordinance shall be null and void and of no effect whatsoever in law" [Section 29(6)].

Position of the 5th Respondent

The 5th Respondent has annexed two Final Village Plans depicting about 700 acres of land cumulatively, stating them to be the lands constituting the property of the temple [5R1 and 5R2]. Beyond these, she has not made any further specific averments. However, as summarised earlier, the predecessor in office of the 5th Respondent has authored 1R2 and 1R4, in which she notes the environmental destruction taking place on the lands in question and requests the recipients to take necessary action.

Position of the 6th Respondent

The 6th Respondent has not filed and objections.

However, in the Joint Inspection Report, the Officer in Charge of the Ambanpola Police Station claims that their Police Station never received any complaints with regard to the elephant fence or the human-elephant conflict.

At the same time, according to 2R3, a meeting of some twenty-eight stakeholders, including local villagers, had been convened at his Station wherein the matter was discussed at length. 2R3 constitutes the minutes of that meeting.

Position of the 7th Respondent

The 7th Respondent has admitted that four archaeological monument caves are situated within the temple lands in question, and that they have been gazetted by order of the then Acting Minister of National Heritage under Section 18 of the Antiquities Ordinance. She further states in her affidavit that, "through the expertise of the officers of my Department it has already been verified that the '*Sannasa*' possessed by the [temple] is genuine and refers to 4,500 acres of land conferred on the said temple by King Sri Wickrama Rajasinghe"(emphasis in original).

Annexed to her affidavit, from 7R1 to 7R7, are a series of archaeological approvals granted by her Department to various activities carried out within temple lands, dated between 10.02.2021 and 12.10.2023, both dates inclusive. All the approvals are granted on the condition that the archaeological monuments are protected from the activities. Annexed as 7R8a to 7R8c are a series of documents purporting to establish the authenticity of the *Sannasa*, of which 7R8c is an extract of "අභිලේඛන පර්යේෂණ සංග්‍රහය" published by the Department of Archaeology in 2013, wherein the *Sannasa* granted to the Nakolagane Temple is transcribed, translated, and discussed at length.

Position of the 8th Respondent

In his affidavit filed on behalf of the 8th Respondent, one Saman Kumara Lenaduwa, Director of the 8th Respondent Authority has stated that, "a direction was forwarded to the 10th Respondent by way of letter dated 07.09.2022 to refrain from clearing lands in the area of land in issue. Further the said directive states that action will be taken in terms of the said statute if the 10th Respondent fails to adhere to the said directive." A copy of the directive has been annexed as 8R1.

Position of the 9th Respondent

The 9th Respondent has stated in his objections that, during the field inspection carried out by the Electrical Superintendent, Galgamuwa, it was observed that an electrical fence had been erected by the 10th Respondent for the purpose of protecting crops

and cultivation, powered by a solar power project with the aid of battery. He states "specifically … that the said Electrical Fence was not supplied with Electricity generated through the National Grid".

Joint Inspection Report

This Report was tendered by way of motion dated 03.05.2024. It details the findings made by representatives of several of the State Respondents. However, the contents of the Report do not alter my conclusions set forth below.

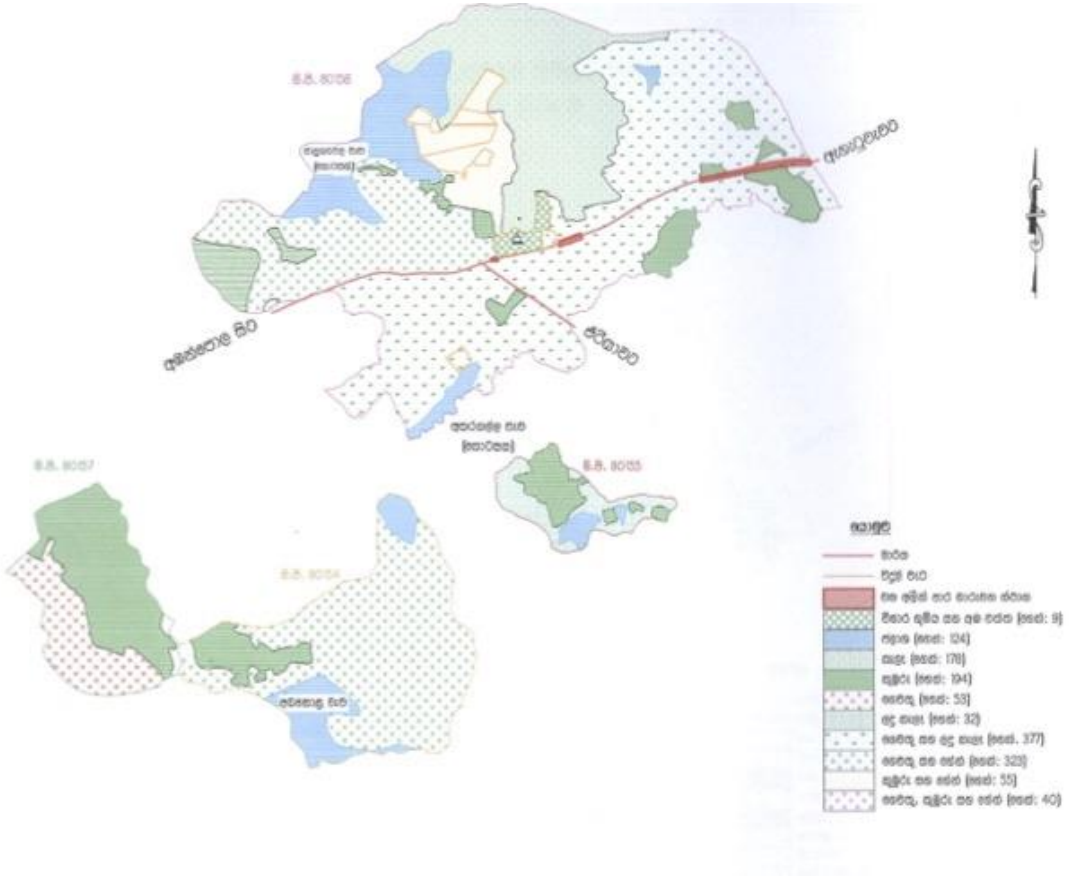
Maps of the Surveyor General

These maps show a cumulative extent of well over 3,402 acres of land as belonging to the Nakolagane Purana Rajamaha Viharaya. In the 'main map', these lands belonging to the temple do not possess a single, monolithic character—some parts are paddy fields, some parts chena, some parts scrubland, some parts forests. The map distinguishes between lands that are of a single character (forest, paddy, chena, households, scrubland, reservoir), from lands that are of a mixed character (indicating which characteristics are mixed). Vast tracts of land are thus characterized as mixed, consisting in some combination of households, paddy, chena, and scrub lands, at the same time.

However, a significant area abutting the Palukadawala tank north of the temple is marked as forest. Within this area, surrounded by the tank, forests, and temple, is a large area identified as 'paddy and chena' in the map's legend (no other area in the map is identified as such); but relative to its surroundings, the area is very clearly unique, and looks to represent recently deforested areas. The area is crisscrossed with yellow lines identified in the legend to be elephant fences, and amounts to 55 hectares, or about 136 acres.

In addition to the fences crisscrossing this area, additional fences also surround a smaller area immediately south of it, which is identified in the legend as "විහාර භූමිය සහ අඹ වත්ත". The report attached to the Surveyor General's Maps states that the

maps do not depict the elephant fences constructed around some of the households, but it is clear from the maps' structure that the area marked as paddy and chena do not include any households.



Another map marks the routes elephants follow in moving through these lands; the segments that look to be cleared forest areas are clearly in the way of the elephant routes.

The Fence Report

The Fence Report contains the findings of an inspection of the electrical fences found in and around the vicinity of the temple property by local representatives of the 1st, 6th, and 9th Respondents. It details seven such fences, and the fence indicating the lowest voltage among them indicates a voltage of 7 KV, while the highest indicates a voltage of 10 KV. All the fences emitted an electric current at least once per second, some of them less frequently. All of them transmitted a direct current. Contrary to the 9th Respondent's averments in his affidavit, three of the fences were powered by main

electricity, while three of them of them were powered by solar power, while the details of one fence does not specify how it is powered. The report concludes by stating that the fences do not pose any harm to wild animals and that they also pose no harm to humans "in ordinary course".

Position of the Non-State Actor (10th Respondent)

The 10th Respondent has, by rote as it were, denied all averments of the Petitioners and taken up the position that the "activities" carried out by him are "completely within the area of the private property belonging to the Nakolagane Purana Rajamaha Viharaya under the grant of *Sannasa*…" (para. 15(a), Affidavit by 10th Respondent).

However, he has not explained the nature of these "activities".

He further takes the position that, "the [State Respondents] have no authority to interfere with … my activities which is complained [*sic*], since there is no declaration under the Law as a forest land or catchment areas of reservoirs or reservations of tanks or prime elephant habits [*sic*] area or any other restricted or prohibited area relating to the questioned area" (para. 6, Affidavit of the 10th Respondent).

The 10th Respondent has annexed a transcript, translation to modern Sinhala, and photo images of the said *Sannasa*, marked 10R1, along with a letter from the Department of Archaeology (7th Respondent) purporting to confirm its authenticity.

Jurisdiction of the Court

This Court's jurisdiction in terms of Article 126(1) requires the dual finding that there has been an infringement or imminent infringement of a fundamental right and that infringement has been by executive or administrative action.

Protection of the Environment

The importance of the need to protect the environment and the notion of trusteeship over natural resources is found in ancient canonical texts and religious teachings. Perhaps this is an indication that early civilizations appreciated the importance of a

clean and healthy environment much more than we do.

Buddhism places a premium on the importance of the environment and emphasizes the need to protect and conserve its riches.

The Kutadanta Sutta [Diga Nikaya, Ch. 5] explains how Lord Buddha was able to stop Kutadanta Brahmin from performing a Yaga involving the destruction of flora and fauna and killing of animals by explaining its consequences. The sutta encapsulates the responsibility of the government to protect trees and other organic life and that government should take active measures to provide protection to flora and fauna.

Vahropa Sutta [Samyutta Nikaya] expounds that cultivating forests and growing flowers are righteous acts that brings blessings day and night.

Agganya Sutta [Diga Nikaya, Chap. 27] explains how greed and misuse of the environment led to societal weaknesses and exploitations such as theft, deceitfulness, envy, abhorrence and selfishness.

In *Encyclical Letter Laudato Si' Praise be to you* by Pope Francis it is stated (at para 66):

> "*The creation accounts in the book of Genesis contain, in their own symbolic and narrative language, profound teachings about human existence and its historical reality. They suggest that human life is grounded in three fundamental and closely intertwined relationships: with God, with our neighbour and with the earth itself. According to the Bible, these three vital relationships have been broken, both outwardly and within us. This rupture is sin. The harmony between the Creator, humanity and creation as a whole was disrupted by our presuming to take the place of God and refusing to acknowledge our creaturely limitations. This in turn distorted our mandate to "have dominion" over the earth (cf. Gen 1:28), to "till it and keep it" (Gen 2:15). As a result, the originally harmonious relationship between human beings and nature became conflictual (cf. Gen 3:17–19). It is significant that the harmony which Saint Francis of Assisi experienced with all creatures was seen as a healing of that rupture. Saint*

Bonaventure held that, through universal reconciliation with every creature, Saint Francis in some way returned to the state of original innocence. This is a far cry from our situation today, where sin is manifest in all its destructive power in wars, the various forms of violence and abuse, the abandonment of the most vulnerable, and attacks on nature."

According to Hinduism, when a person is engaged in killing creatures, polluting wells, and ponds and tanks, and destroying gardens he goes to hell [Padmapurana, Bhoomikhanda 96.7–8].

Judge Weeramantry in *Tread Lightly on the Earth, Religion, The Environment and the Human Future* (2014) cite various religious texts to emphasise that many religions speak of the need to protect the environment and follow sustainable development. He states [at p. 228] that:

"trusteeship of the universe is recognized in Islam and any violation of it by man is accountable and subject to punishment as the Qur'an states "It is He who made you trustees of the earth … Indeed your Lord's retribution is swift, yet He is forgiving and kind (6:165)."

The Romans appear to have appreciated the importance of protecting the environment and the guardianship over natural resources. According to Justinian:

"By the law of nature these things are common to mankind – the air, running water, the sea and consequently the shores of the sea. No one, therefore is forbidden to approach the sea-shore, provided that he respects habitations, monuments, and buildings, which are not, like the sea, subject only to the law of nations … The particular people or nation in whose territory public things lie may permit all the world to make use of them, but exercise a special jurisdiction to prevent anyone from injuring them. In this light even the shore of the sea was said, though not very strictly, to be a res public: it is not the property of the particular people whose territory is adjacent to the shore, but it belongs to them

to see that none of the uses of the shore are lost by the act of individuals … with the opinions of other jurists, we must understand populi Romani esse to mean "are subject to the guardianship of the Roman people"." [Sandars, Thomas Collett, *The Institutes of Justinian* (3rd ed., 1865), pp. 167–168]

According to Samararatne [Dinesha Samararatne, *Public Trust Doctrine, The Sri Lanka Version*, Democracy and Equality Programme Occasional Papers No 1, International Center for Ethnic Studies, pp. 13–14] there was a notion in Roman Law that certain natural resources must be held in trust for the public.

In a speech attributed to Red Indian Chief Seattle [Speech of Chief Seattle, Si'ahl (1786 – 7 June 1866)], it is said *"This we know-the earth does not belong to man-man belongs to the earth. This we know. All things are connected like the blood which unites one family."*

In ***Ministry of Environment, Energy and Climate Change and others v. Woodlands Holdings Ltd and Another*** **[(2024) 2 Law Reports of the Commonwealth 449]**, I held (at paragraph 15) that:

"Although the right to live and enjoy a clean and healthy environment is referred to in academic discourses as a 'third generation right', it is in my view one of the fundamental, if not the most fundamental right of a human being. None of the myriads of other fundamental rights, including civil and political rights, can be meaningfully exercised by a human being in the absence of a clean and healthy environment which can sustain life. Man must live to exercise any of the fundamental or human rights bestowed upon him. A clean and healthy environment is a sine qua non for the meaningful expression of any other fundamental right or human right."

The right to a clean, healthy and sustainable environment is now firmly established in international law. The International Court of Justice in its ***Advisory Opinion on Obligations of States in Respect of Climate Change*** dated 23.07.2025 held [at para.

393] that:

> *"[…] a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that,* ***under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights****."* (emphasis added)

The recognition of the right to the protection of the environment is well established in our jurisprudence. As Tilakawardane, J. held in ***Watte Gedera Wijebanda v. Conservator General of Forests and Others*** **[(2009) 1 Sri.L.R. 337 at 356]**:

> *"The right of all persons to the useful and proper use of the environment and the conservation thereof has been recognized universally and also under the national laws of Sri Lanka. While environmental rights are not specifically alluded to under the fundamental rights chapter of the Constitution, the right to a clean environment and the principle of intergenerational equity with respect to the protection and preservation of the environment are inherent in a meaningful reading of Article 12(1) of the Constitution."*

In ***Ravindra Gunewardena Kariyawasam v. Central Environmental Authority and Others*** **[S.C.F.R. Application No. 141/2015, S.C.M. 04.04.2019, at page 52]** Jayawardena, J. held:

> *"…in my view, when Article 12(1) of the Constitution is read in the light of Article 27(14) of the Constitution, it vests in the citizens of Sri Lanka* ***a fundamental right to be free from unlawful, arbitrary or unreasonable executive or administrative acts or omissions which cause or permit the causing of pollution or degradation of the environment****."* (emphasis added)

Several of the State Respondents have admitted before this Court the Petitioners' averments that forests within temple property have been cleared and unauthorised electric fences have been erected therein. That this has exacerbated the human-elephant conflict in the area is also well established in the material before us. It is also clear from the same material that, while this environmental destruction was ongoing, several of the State Respondents whose statutory duty it was to either ensure the protection of the environment or the proper disposal of temple property, failed to take adequate steps to discharge those statutory duties. The details of the omissions on the part of the relevant State Respondents have been fully expounded below in discussing their liability. Accordingly, I hold that our jurisdiction in terms of Article 126(1) is engaged by the Petitioners' application.

Before proceeding with my analysis, I must examine the two preliminary objections raised by the Respondents.

Time Bar

The 10th Respondent claims that the application is time barred. He relies on the date the Petitioners had conducted a site visit to the temple property, that is, on 27.08.2022, as well as the fact that they had made complaints and representations to 1st and 9th Respondents "over the years".

Accordingly, the 10th Respondent contends that the petition dated 24.10.2022 is not in compliance with the one-month time limitation provided in Article 126(2) of the Constitution. In countering these submissions, the Petitioners have taken up the position that the infringement complained of amounts to a violation both continuing and imminent in nature.

Continuing Violation

In ***Wijesekera and Others v. Attorney-General*** **[(2007) 1 Sri.L.R. 38 at page 40]**, it was held that, "The right to have a Provincial Council constituted by an election of the members of such Council pertains to the franchise being part of the sovereignty of the People and its denial is a continuing infringement of the right to the equal protection..." In ***Sugathapala Mendis and Another v. Chandrika Kumaratunga and Others*** **[(2008) 2 Sri.L.R. 339]** and ***Wijesekera and 14 Others v. Gamini Lokuge, Minister of Sports and Public Recreation and 20 Others*** **[(2011) 2 Sri.L.R. 329]**, the large-scale, continuing nature of the impugned development projects was held to justify the characterisation of the State's failure to conduct adequate public consultations as a continuing violation of the petitioners' fundamental rights.

The notion of a continuing violation was discussed at length by Marsoof, J. in ***Lake House Employees' Union v. Associated Newspapers of Ceylon*** **[S.C.F.R. Application No. 637/2009, S.C.M. 17.12.2014]**. While Court held the application to be time barred, it borrowed language from the United States' Supreme Court in defining a continuing violation as "a series of separate acts that collectively constitute" a single, continuing violation, and accordingly held that in such cases, the "cause of action accrues on the day on which the last component act occurred".

In ***Demuni Sriyani de Soyza v. Dharmasena Dissanayake, Chairman, PSC,*** **[S.C.F.R. Application No. 206/2008, S.C.M. 09.12.2016, at p. 15]**, Prasanna Jayawardena, P.C., J., held that, with respect to a continuing violation, it should be asked till when did the alleged violation continue, and if the petition had been filed after more than one month from that date, whether the petitioner had "established that, they were unable

to invoke the jurisdiction of this Court due to circumstances which were beyond their control and that, there has been no lapse, fault or delay on their part."

Accordingly, in both these judgments, the identifiability of a date of last occurrence is taken as a given, which may be justified when a series of discrete actions are considered as a continuing violation. However, an important distinction must be made with regard to continuing violations in terms of whether they relate to a series of discrete actions or to a single, continuing *omission*. In the former case, a last date is easily and concretely identifiable as the 'critical date' from which to compute the running of time.

Not so, in cases of *omissions*. When a continuing violation is complained of by virtue of an *omission*, the violation continues for as long as the omission continues. Starting from the moment the obligation *to act* accrues upon a party, until that party so acts, the would-be beneficiaries of that action can be said to be in continued deprivation of the benefits of that action. When the time between the accrual of the obligation to act and the action itself is of a reasonable duration, such as the time reasonably necessary to put into motion the relevant machinery of the State, there would invariably be no basis for a complaint of a violation of fundamental rights.

But, on the other hand, when an obligation to act has accrued, and time continues to elapse *ad infinitum* with no action in sight on the part of the party who is obliged to act, the violation of fundamental rights arising from that failure or omission can be said to be in continuance. Indeed, it may be that, in some instances, a petitioner sleeps on their rights for months or years while the inaction continues, and in such instances it would be relevant to consider whether the time elapsed between the accrual of the original obligation to act (or the date the petitioner became aware of such accrual) and the filing of a petition invoking our jurisdiction under Article 126 is of a reasonable duration. So long as the time taken to come to Court is not unreasonable in the circumstances of each case, the day the petition is filed would be within the time bar, because the violation continues for as long as the omission continues.

In the present case, the material clearly establishes that deforestation has been done and is continuing on a large scale. With respect to every such act, the failure on the part of any of the State Respondents to take action in terms of the law constitutes an omission. Accordingly it is not possible to specify an exact date to compute the time bar in this case. Nevertheless, even accepting the date proposed by the 10th Respondent, i.e. 27.08.2022, this application has been filed within two months thereof. I am of the view that in the circumstances of this case, there has been no unreasonable delay on the part of the Petitioners in invoking our jurisdiction.

Accordingly, on the basis that the violation complained of is continuing in nature, I overrule the 10th Respondent's preliminary objection that the application is time barred.

Necessary Parties

The learned Deputy Solicitor General appearing for the State Respondents has raised a preliminary objection in her post-hearing written submissions that the petition must fail for non-joinder. The basis for this objection is that the Petitioners have failed to name the Department of Irrigation as a respondent in this application.

However, as I held in ***Centre for Environmental Justice and Others v. Hon. Mahinda Rajapaksa and Others*** **[S.C.F.R. Application No. 109/2021, S.C.M. 01.12.2021]**, non-joinder of parties is not, in itself, fatal, especially when the application raises serious issues of public law. Procedural defects such as non-joinder should not be permitted to shackle the Court's constitutional duty to inquire into alleged violations of fundamental rights, especially where the omission is *bona fide* and does not impede the effective adjudication of the dispute.

In this application, the lack of observations of the Department of Irrigation does not detract from the material that has been produced to Court by the other State Respondents, which on their own establish the core averments made by the Petitioners. Accordingly, I overrule this objection.

I shall now proceed to discuss the liability of the relevant Respondents.

Liability of the 10th Respondent

The core grievance of the Petitioners' application is the 10th Respondent's proprietary claim that temple property is private property by virtue of the *Sannasa.* The Petitioners disputed the authenticity of the *Sannasa*, while the 7th Respondent has affirmed it. In any case, the pleadings of the State Respondents, too, raise questions about the true extent of the temple property, its metes and bounds, its overlap with forest reserves, its character as "nindagam" and "paraveni", etc.

On the other hand, the Surveyor General's Maps tendered to Court appears to depict an area of 55 hectares immediately north of the temple and abutting the Palukadawala tank marked as "paddy and chena land" with elephant fences crisscrossing through them, which looks to be, by their context, recently cleared forests.

In his objections, the 10th Respondent has taken exactly the position the Petitioners attributed to him, that his activities have been on private property belonging to the temple granted to it by a *Sannasa*, and that the lands in question had not been declared as forest lands or elephant habitats by law.

He does not explain this position any further and, in the absence of written submissions tendered by him, it is difficult to ascertain whether his claim is that the scope of the fundamental right to the protection of the environment claimed by the Petitioners is somehow extinguished or in any other way limited within private property, or that, as an owner of private property, he himself is entitled to certain rights on the property which override the fundamental right claimed by the Petitioners. In any case, he has never called himself the "owner" of the property; nor mentioned that he is its trustee. The entirety of his position amounts to the claim that temple property is private property because of the *Sannasa* and that it had not been declared by law to be forest land or elephant habitat.

Accordingly, this dispute hinges on the 10th Respondent's claim that the lands in question constitute private property by virtue of the *Sannasa*, and in any event, what rights attach to him as regards the property either as the temple's chief incumbent or trustee.

The answer to this question rests, in turn, on the nature and extent of the tenure enjoyed by the property, by virtue of the *Sannasa.*

Rights under the Sannasa

The 10th Respondent's premise seems to isolate the *Sannasa* as the sole source of law determining the status of the temple's property. As such, to test the validity of his broader premise, I will first consider the terms of the *Sannasa* itself.

Before doing so, however, there is first the matter of the *Sannasa's* registration to be considered. Under section 7 of the *Sannas* and Old Deeds Ordinance, No. 6 of 1866 (Ordinance), "… no *Sannas* … shall be received in evidence in any civil proceeding in any Court of Justice for the purposes of creating, transferring, or extinguishing any right or obligation, unless such … *Sannas* … shall have been previously registered in the manner hereinbefore directed." A proviso to this section provides that a party may claim under an unregistered *Sannasa* if he establishes to the Court's satisfaction that the non-registration is owing to, *inter alia*, some cause "utterly beyond the control" of the party producing it.

In ***Cooke v. Freeman*** **[8 N.L.R. 265 at 271**] it was held by Pereira, J., as follows:

> *"My reading of section 7 of the [Sannas and Old Deeds] Ordinance is that an unregistered Sannas, whether genuine or not, cannot be received in evidence in any civil proceedings in any Court of Justice for the purposes mentioned in that section; but if it is registered, while the bar in limine created by the Ordinance to its reception in evidence is removed, its validity or effect or claim of any party to have it received in evidence may be questioned on any ground other than that of lack of registration."*

Thus, when setting up a plea based on even a genuine *Sannasa*, the first requirement is to accompany it with evidence of its registration under the Ordinance. The 10th Respondent has not placed such evidence before Court, nor has he produced any material to avail himself of the proviso to Section 7. It is observed that with respect to that proviso, this Court's ruling in ***Goonetilleke v. Government Agent, S.P.*** **[29 N.L.R. 337**] was that, *inter alia*, being born after the stipulated deadline for registration was not a sufficient cause under which the claimant could avail himself of the proviso's exception.

As such, in the absence of any material amounting either to evidence of the registration of the *Sannasa*, or to an explanation of its non-registration, I hold that it is not open for the 10th Respondent to plead the *Sannasa* in connection with this application.

In any event, even if such evidence of registration or a countervailing explanation for the lack of it had been produced, the question remains whether the *Sannasa* has the effect of conferring on the 10th Respondent any property rights of the extent that he pleads in his objections.

The starting point in ascertaining the property rights of the 10th Respondent to the land in issue are the terms contained in the *Sannasa* itself. As such, I reproduce here the translation (to modern Sinhala) of the *Sannasa* tendered to Court by the 7th Respondent as 7R8c, where it says, in relevant part:

> "...විහාර සන්තක මේ කොටස්වලට රජ, මැති, ඇමතිවරුන් යන කිසිවෙකු විසින් අවුලක් නොකර මේ කොටස්වලින් නාගල **<u>විහාරෙට බත්, මල්, පහනින් යුතු බුදුන් වහන්සේට කරනු ලබන පුද සිරිත් පවත්වා වටනාපසයෙන් ප්‍රයෝජන පිණිස</u>** ධම්මානාන්ද ස්ථවිරයන් වහන්සේගේ ශිෂ්‍යානු ශිෂ්‍ය ඥාති පරම්පරාවට බොහෝ කාලයක් ඉතා ස්ථීර ව මතු පවත්නා ලෙසට මේ තඹ පත්‍රය ලියා දෙන්නේ [ය]..." (emphasis added).

However, the *Sannasa* ends with the following words: "බුදුන් වහන්සේ සන්තක දෙයින් තෘණ කාශ්ඨ (දර ලී) ආදිය මල් පල යනාදී (දෙයින්) ස්වල්ප මාත්‍රයක් හෝ වඤ්චාවෙන්, බලහත්කාරයෙන්, තමන්ගේ ප්‍රයෝජනයට හෝ අනුන්ගේ ප්‍රයෝජනයට පැහැර

ගැනීමක් කළ කෙනෙක් වේ නම් මහා ප්‍රේතව උපදින්නේ ය."

Thus, it is evident that, according to the terms of the *Sannasa*, the grant of land was made for the purpose of worship of Lord Buddha, and the upkeep of the temple, and that *it specifically condemned using the land for personal gain, as well as its alienation for others' personal gain*.

In ***Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others*** **[(2000) 3 Sri.L.R. 243 at 255-56]** Amerasinghe, J., held that:

> *"The subject of land tenure in Sri Lanka, including the status, claims, and rights of the Monarch with regard to the soil, is an extremely complex one … there is justification in looking at the concept of tenure, not as a thing in itself, but rather a way of thinking about rights and usages about land. … the King was bhupati or bhupala – 'lord of the earth', 'protector of the earth' – lord – 'adhipati' – of the fields of all … at first, the question of 'ownership' was of little or no significance. Moreland wrote as follows: 'Traditionally there were two parties, and only two, to be taken into account; these parties were the ruler and the subject, and if a subject occupied land, he was required to pay a share of its gross produce to the ruler in return for the protection he was entitled to receive. It will be observed that under this system the question of ownership of land does not arise: the system is in fact antecedent to that process of disentangling the conception of private right from political allegiance which has made so much progress during the last century, but is not even now fully accomplished…' Later, grantees, in general, it seems were given the enjoyment of lands for services rendered or to be rendered in consideration of their holdings, or lands were given for pious and public purposes unrelated to any return. For their part,* ***grantees were under an obligation to make proper use of the lands consistent with the grant or, in default, suffer their loss or incur penalties****."* (emphasis added)

In addition to the terms of the Sannasa, because the lands in question amount to temple property, the BTO also applies to define the extent of the proprietary rights of the 10th Respondent.

Rights under the BTO

The BTO prohibits the alienation of temple property [Section 26], and temple property shall not be leased out for purposes contrary to Buddhist principles [Section 29(2)].

In other words, both the *Sannasa* and the BTO condemns the misappropriation of temple property in a manner that is contrary to Buddhist values, and the protection of the environment is a core value of Buddhism.

As I have explained earlier, the Kutadanta Sutta, Vahropa Sutta and Agganya Sutta emphasises the importance of protecting flora and fauna and the ill-effects of harming them.

In his Separate Opinion in ***Gabcikovo-Nagimaros Project (Hungary/Slovakia), Judgment*** **[I.C.J. Reports 1997, p. 7]** the then Vice-President of the International Court of Justice, Judge C.G. Weeramantry had the opportunity to explain the relationship between environmental protection and Buddhism. Citing the *Mahavamsa*, he recalled, at p. 102, the sermon preached by Arahant Mahinda to King Devanampiya Tissa, saying,

> *"O great King, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it."*

Accordingly, the 10th Respondent has by his actions violated both the terms of the *Sannasa* and Section 29(2) of the BTO.

It bears mentioning at this point, that under the BTO, temple property belongs, verily, to the temple [See ***Ven. Omare Dhammapala Thero v. Rajapakshage Pieris and others*** **(2004) 1 Sri.L.R. 1 at 15**, per Bandaranayake, J., and reaffirmed in ***Ampitiye Wimalagnana Thero v. Kader Mohideen*** **[S.C. Appeal 119/2014, S.C.M. 05.08.2024]**,

per K. Priyantha Fernando, J.].

In no way can it be said that temple property is "private property," it is *sui generis*, and its handling and use is subject to special, specific legal requirements aimed at protecting temple property for the benefit of the Buddhist community, in line with Buddhist principles.

The BTO does not contemplate any paradigm in which the Chief Incumbent of a temple is the owner of the temple property. He may not even maintain an action for the recovery of temple property [See ***Terunnanse v. Don Aron et al.*** **(34 N.L.R. 348)**]. It is true that he may nominate himself the trustee of the temple, but where he does so, all the duties and liabilities that appertain to the trustee applies to him, and all acts he carries out with respect to the property which the BTO has provided for, he performs *qua* trustee, subject to the supervision of the Commissioner, and as provided for by the BTO.

Constitutional protection afforded to Buddhist temporalities

The Constitution affords, in Article 9, special protection to Buddhism and the Buddha Sasana.

In ***Ayurveda (Amendment) Bill Determination*** **[S.C.S.D. 22-24, 34, 35, 52, 55 and 57/2023, at page 26]**, it was held that the term *"Buddha Sasana in Article 9 of the Constitution includes the Dhamma (principles and teachings of Buddhism including in particular recognized and undisputed codifications of the teachings of Lord Buddha), the Sangha (ordained disciples of Buddha), the preachings, rituals, and practices recognised by Buddhism, codifications of the teachings of Lord Buddha and associated preachings, the institutional mechanisms such as Piriven, Temples, and Sanghadhikarana, and organisational mechanisms and structures such as Nikaya, and other systems such as ordainment to priesthood and Upasampada, positions such as Viharadhipathi and Viharaadhikari, Buddhist lay organisations such as Dayaka Sabha of Temples, and the property of the sasana such as Sangika Depala, all of which are*

collectively called the Buddha Sasana which are in place in Buddhism to preach, practice, retain, maintain, promote, foster and protect that Buddhism" (emphasis in original).

We also held, at page 28, that while the constitutional duty to protect the Buddha Sasana includes both positive and negative dimensions, ***"The positive element requires the State**, inter alia, **to take active steps to keep safe, defend and guard the Buddha Sasana against any harm, damages or injury from any source and take active steps to prevent its erosion from within and without."*** (emphasis added)

This Constitutional duty of the State encompasses the executive, legislature, and the judiciary, and this Court is accordingly bound by this duty in disposing of this application.

The environmental impact of the activities within temple property

The 10th Respondent's position has not only been that his activities took place within the confines of private property, but also that such lands had not been declared as forests or elephant habitats by law.

On the other hand, the Petitioners' position has been, throughout, not that the activities took place on lands specially protected by law, but of the effect they were having on the natural environment, its resources, and the living beings who called it home.

A perusal of the record, especially the papers annexed to their pleadings by the State Respondents, establishes the accuracy of the Petitioners' position, insofar as the effects on the environment are concerned.

The question that arises, then, is whether it is open for the 10th Respondent to claim that the activities which caused such effects took place on lands that had not been declared as protected by law. Such a position presumes that personal responsibility towards the environment applies only within specially protected areas, and that a person may do anything they wish on their own private property without

consideration of its consequences on the environment.

Article 28(f) of the Constitution provides that, "The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka … to protect nature and conserve its riches."

Though the provisions found in our Constitution's chapter on Directive Principles of State Policy are non-justiciable, Article 28 constitutes the clearest constitutional articulation of the most fundamental duties expected of those in Sri Lanka, and it is no coincidence that it includes an obligation towards nature and its riches.

In light of this obligation, it is immaterial that the lands in question had not been declared as forests or elephant habitats by law. Forests are forests, *de facto*. The legal protection afforded to them is the duty articulated in Article 28(f) of our Constitution, and that duty extends to every person in Sri Lanka, and to every corner of our Island. Any reasonable person would have thought twice before visiting such violence on so sensitive a place as the lands in question in this application, but the 10th Respondent's position has been that such circumspection was unnecessary, based on a spurious claim of privacy of ownership.

It is true that, under existing law, certain special protections are afforded to certain prescribed areas, by virtue of, e.g., the Forests Ordinance, No. 16 of 1907 or the FFPO. However, that does not mean that all other areas of the Island are denuded of even the most basic protection owed to them. The 10th Respondent, by nominating himself as the trustee of the temple, has taken on the custodianship of nearly 3,500 acres of land, land that he had enough reason to know was environmentally sensitive. However, he chose to disregard the duty that that trusteeship entailed, based on the misconceived notion that temple property was private property, and that one could do as they pleased with private property.

Duty under the NEA

Indeed, not all protections afforded by environmental law are predicated on special designations as such of the lands in question. Under section 23AA of the NEA, the implementation of any 'prescribed project' requires prior environmental approval from the appropriate agency. In the relevant regulations promulgated under that Act, namely, those published in *Gazette* Extra Ordinary No. 772/22 dated 24.06.1993, "Conversion of forests covering an area exceeding 1 hectare into non-forest uses" is defined as a prescribed project requiring such approval.

There is no question whether the forests in the temple lands constitute forests within the meaning of the regulations. The Asst. Director (Northwestern Province) of the 1st Respondent's Department has described the lands in question as, "වනාන්තර ස්වරූපයේ ඇති වන සතුන් බහුලව, විශේෂයෙන් වන අලීන් භාවිතා කරන වනාන්තරයක්...", which aligns with the claim of the Petitioner that the lands constituted forests. The 10th Respondent has not made any specific averments disputing this claim, except to say that they had not been declared as forests by law.

As I stated earlier, forests are forests, *de facto*. Living beings other than humans move through them and benefit from their bounty, much in the way that humans do, independently of their legal designation as such. No person could stand amidst a forest and claim it was not a forest because the Government had not said so yet. The duty imposed by our Constitution on every person in Sri Lanka, to conserve nature and its riches, presumes every person's ability to know nature when they see it.

For this reason alone would the regulator have refrained from defining the term 'forests' with any more specificity, leaving it the duty of the person contemplating the clearance of a forest to consider whether his conduct may attract liability under the NEA. Such is the circumspection that the regulatory framework of the NEA imposes on all government departments, corporations, statutory boards, local authorities, companies, firms or individuals [Section 23AA], and so imposes on the 10th Respondent, too.

As such, I hold that, in purporting to clear the forests, or allowing others to clear forests in lands which were under his custodianship, the 10th Respondent has failed to fulfil his duty to seek prior approval for a prescribed project under the NEA.

Duty under the FFPO

Several of the protections afforded to the environment under the FFPO, too, are not restricted in applicability to specially designated areas. The protection afforded to elephants under Section 12 applies specifically in any area *outside* a National Reserve or Sanctuary ("Save as is hereinafter provided, no person shall ***in any area outside*** a National Reserve or Sanctuary hunt, shoot, kill, injure or take any elephant…") (emphasis added).

Moreover, Section 20(1)(a) provides, "Any person who … hunts, shoots, kills, ***injures***, takes, follows, or pursues any elephant or ***uses any electric wire to kill, injure*** or take any elephant or uses any device of any description to harm any elephant … shall be guilty of an offence…" (emphasis added). Section 53A provides, "No person shall use any poison, explosive or ***stupefying substance*** for the purpose of poisoning, killing or ***stupefying any animal***" (emphasis added).

Neither of these offences are restricted in their applicability to acts committed within a specially designated area. In terms of the *locus* of the offences, they are of general applicability. Nor does the FFPO, when it prohibits any injury to elephants or the stupefaction of animals in general, admit of any degree of injury or stupefaction, and all manner of such injuries and stupefaction are prohibited. Indeed, not all animals are the same, and an electric shock that could pass through one animal without injuring it may not necessarily leave another animal unhurt—especially if its age or size or the thickness of its skin is considered. Indeed, an animal may hurt itself in the aftermath of the delirium caused by an electric shock, no matter how small the potency of the current.

The 10th Respondent has not specifically denied the construction of electric fences within temple property. Their existence, in fact, is well established, both by the 1st Respondent and 2A Respondent in their affidavits, and by virtue of the Surveyor General's Maps and the Fence Report.

The construction of such fences is not absolutely prohibited by the FFPO, for it provides, in Section 55 that, "The Director may by a writing under his hand authorize any person to do any act otherwise prohibited or penalized under this Ordinance…" provided certain criteria are met. On the other hand, under Section 59, "Any person who ***attempts*** to commit ***or abets*** the commission of any offence under this Ordinance or any regulation made thereunder shall himself be guilty of the same offence" (emphasis added). Between these two provisions, the illegality lies in the fact that constructing or allowing others to construct such fences without prior authorisation constitutes, *prima facie*, an attempt, or an abetment of an attempt, to injure an elephant or stupefy an animal.

As such, the conclusion recorded in the Fence Report, that the fences did not pose any harm to animals or humans in ordinary course, does not have the effect of displacing this illegality. That Report is the product of 1st, 6th and 9th Respondents' attempt to comply with the interim order of Court to remove "any power source that is injurious to either human beings or animals". To that extent, the Report has found that the fences in question do not pose the harm to humans or elephants indicated in the Order. It does not, however, and cannot, speak to the legality of the fences, and indeed, the legality of the activities of the 10th Respondent within the lands in question.

The explicit terms of the order made by Court to the 1st Respondent dated 20.11.2023 was not to assess the fences' capacity to injure humans or animals, *ex ante*. In any case, no such assessment could preclude, on its own, an accused's criminal liability for having attempted or abetted an attempt to a) injure an elephant or b) use an electric wire to injure an elephant or c) use a stupefying substance to stupefy an animal. That

question may only be determined through the due course of criminal procedure, which allows for a prosecutor to make their case as regards charges framed, for the defendant to set up their defence, and a trial judge to render a verdict.

I make no finding here as to the 10th Respondent's liability at criminal law except to state that there is sufficient material for a criminal investigation to be conducted in terms of the Code of Criminal Procedure Act, No. 15 of 1979, as amended (CCPA).

As far as this application is concerned, I hold that the 10th Respondent has failed to comply with his obligations under the FFPO to seek prior authorisation from the 1st Respondent for the elephant fences.

Summation of the 10th Respondent's Liability

The extent to which the BTO has been observed in breach by both 10th Respondent and the 4th Respondent is self-evident in the aspects of the record I have recapitulated above. The appointment of the 10th Respondent as trustee in early 2021 is backdated to take effect from August 2020. There is no material to show who was the previous trustee, and whether the period the position stood vacant was within the statutory time limit.

Temple property has been cultivated without accounts, leased without sanction, and sold illegally. While temple property is not to be alienated and not to be leased out for purposes contrary to Buddhist principles, it is clear that temple property has been both sold and leased out, to various commercial enterprises, including a chicken meat factory.

With respect to the portions of temple property that have been leased and sold, the 10th Respondent has produced no material whatsoever to demonstrate i) their legality or ii) the due discharge of his duties as trustee. Given the facts of their occurrence were only disclosed to us through the annexures of the State Respondents, it is evident the 10th Respondent has suppressed them in these proceedings. Though it has not been conclusively proved that the properties sold were so sold with his knowledge or

on his initiative, it seems highly likely that it was. With respect to the leases, on the other hand, it is clear from the record that they have been given out either by him or with his knowledge, and either way in contravention of the provisions of the BTO and the *Sannasa*.

In addition to the obligations under the *Sannasa* and the BTO, the Constitutional duty founded upon Article 28(f) calls upon the conscientiousness of every person in Sri Lanka to act reasonably, to tread gently, and to seek balance between one's own interests and the interests of all, including those of living beings other than humans.

The 10th Respondent has failed, abjectly, to demonstrate any such conscientiousness, and has as a result run afoul of several statutory obligations. To wit,

a. He has failed to recognise that the lands in question were forests, and from this failure has resulted the clear violation of his statutory duty to ensure that the clearance of any forest area exceeding 1 hectare was preceded by an environmental impact assessment under the NEA, in accordance with the regulations promulgated thereunder; and

b. He has failed to appreciate the protection afforded to elephants and other animals, particularly from electric wires and all stupefying substances in general, which has resulted in the clear violation of his statutory duty to seek prior authorisation from the 1st Respondent before constructing or allowing the construction of electric fences within temple property.

The Petitioners' position has been that the 10th Respondent's conduct, as allowed to continue unchecked by the State Respondents, has had ***the effect of*** violating their fundamental rights as well as the fundamental rights of those on whose behalf the Petitioners have come to Court (that is, the villagers of Nakolagane, the entire citizenry of the Republic, and future generations). They have not prayed for a declaration against the 10th Respondent that he has violated their fundamental rights, granting

which would have been beyond our competence in this application. The jurisdiction founded upon Article 126(1) is restricted to determining allegations of fundamental rights violations arising from *executive or administrative action*.

However, as was held by a Divisional Bench of this Court in ***Centre for Environmental Justice v. Marine Environment Protection Authority and Others (The X-Press Pearl Case)*** **[S.C.F.R. Application No. 168, 176, 184, 277/2021, S.C.M. 24.07.2025]**, without entering upon the question whether the 10th Respondent has violated the fundamental rights of the Petitioners, we may nonetheless issue any just and equitable direction upon him *"to secure respect, advancement and protection and the full enjoyment of the Fundamental rights of the People"* [See, para. 583].

My reading of that decision is that, Her Ladyship the then Chief Justice and Their Lordships found that the liability imputed to a non-State actor in the course of making such a direction *"need not be necessarily confined or limited to conventional civil delictual liability or to statutorily imposed liability … It can be liability sui generis under Public law for which both State and Non-State actors shall stand liable"* [See, para. 586].

Upon the material placed before us, I find that the 10th Respondent has fallen short of his Constitutional duty towards the environment founded upon Article 28(f) read together with several of his statutory duties under the BTO, FFPO and NEA.

These breaches have had the effect of impeding the full enjoyment of fundamental rights by the groups represented by the Petitioners, in terms of their right to the protection of the environment.

Moreover, these breaches have also facilitated the destruction of the environment by third parties, particularly by the alienation and leasing of temple land.

The *Polluter Pays Principle* is now firmly entrenched in international environmental law as well as many domestic laws.

The polluter pays principle enshrined in Principle 16 of the Rio De Janeiro Declaration has been recognized and applied by our Courts [***Bulankulama* (supra), *Wijebanda* (supra), *Kariyawasam* (supra), *The X-Press Pearl Case* (supra)**].

In ***Bulankulama* [supra. at 305]** Amerasinghe J. held that the costs of environmental damage should be borne by the party that causes such harm rather than being allowed to fall on the general community to be paid through reduced environmental quality or increased taxation in order to mitigate the environmentally degrading effects of a project.

In my view there is justification in extending this principle to persons who aided and abetted environmental pollution by failing to exercise one's proprietary rights to arrest such pollution. In the present case, there is clear evidence on the inaction and at times of positive facilitation of the 10th Respondent leading to environmental destruction.

The directions I make in conclusion are based on these principles.

Liability of the State Respondents

The infringement of the fundamental rights of the Petitioners and others as expounded above, could have been avoided or removed by the several State Respondents named in this application had they acted in accordance with, and fully discharged, their own statutory duties.

Article 4(d) of our Constitution provides that "the fundamental rights which are by the Constitution declared and recognized **shall be respected, secured and advanced by all the organs of government**" (emphasis added).

In ***Wijebanda* (supra)**, it was held that:

> *"The Constitution in Article 27(4) of the directive principles of state policy enjoins the state to protect, preserve and improve the environment. Article 28 refers to the fundamental duty upon every person in Sri Lanka to protect nature and conserve its riches …"* (page 356)

"Correspondingly, courts in Sri Lanka, have long since recognized that the organs of state are guardians to whom the people have committed the care and preservation of the resources of the people. This recognition of the doctrine of 'public trust', accords a great responsibility upon the government to preserve and protect the environment and its resources … " (page 357)

"The power of the state and public servants to … take suitable action for the protection and conservation of both the environment and natural resources is derived from its status as a public trustee. In this capacity state officials have a paramount duty to serve as a safeguard against … the degeneration of the environment due to private acts. The principle of inter-generational equity and the long-term sustainability of our delicate eco-system and biological diversity vests mainly in the hands of such officials." (pages 361 and 362)

In the instant application, that the State Respondents were aware of the ongoing destruction of the natural environment and its adverse consequences is established beyond a doubt. Several of them are reflected in the record corresponding with each other about the said destruction, the consequences it was having on the elephant population living in the vicinity of the temple, and the imminence of a catastrophe threatening both human and elephant lives. However, the record discloses very little by way of concrete action taken by them to rein in this situation.

I will consider each of the relevant Respondents' liability in turn.

Liability of the 1st Respondent

The 1st Respondent had notice of forest clearing and the threat of an impending, exacerbated human-elephant conflict as of 10.9.2021, when a complaint was received to his Department's hotline and a field visit was conducted as a result [1R1]. The 5th Respondent had also informed, among others, the 1st Respondent that destruction of the forests within temple property harms elephant habitats and threatens to exacerbate the human-elephant conflict [1R2]. The 1st Respondent has characterised

the land as a forest and an elephant habitat, and informed the District Secretary, Kurunegala, that it is being cleared at a large scale [1R3]. He had knowledge of the electric fences being used in the property, though he has taken no action about the fact that they had been constructed without his prior authorisation.

In terms of Part II of the FFPO, the 1st Respondent bears the clear duty to ensure the safety of humans and elephants from each other, especially in areas where they live in close proximity to each other. It is also his general duty under the FFPO to "develop plans and programmes for the conservation of wildlife, their habitats and the biological diversity" in consultation with his Minister [Section 68A].

More specifically, the FFPO provides for the declaration of "any specified area of land within Sri Lanka … [as] a Sanctuary or a Managed Elephant Reserve" and it specifically provides that, "An area declared to be a Sanctuary or a Managed Elephant Reserve may include both State land and land other than State land" [Sections 2(2) and 2(3)]. Once so declared, the 1st Respondent would have had the statutory power to develop five-year management plans in relation to such areas, which are also liable to periodic evaluations and amendments.

In other words, the FFPO provides an adequately flexible mechanism through which the 1st Respondent's Department could have imposed a system of management within the temple property in the context of the ongoing destruction and the resulting human-elephant conflict. Indeed, in his affidavit, the 1st Respondent states that it was "…considered whether the lands which are subjected to clearance could be declared as a sanctuary upon receiving recommendations of the subordinates of [his] department." However, inexplicably, he has failed to take any meaningful step in this direction.

Accordingly, not only has the 1st Respondent allowed the illegal construction of electric fences within temple property, he has also failed to put into motion the machinery provided for in the FFPO to address precisely the sort of situation that both the humans and elephants of Nakolagane found themselves in. I find no satisfactory

explanation for this failure in the material presented to Court. Though it has been mentioned, in various places, that the reasons for his inaction were a) the lack of adequate legal provisions in the FFPO and b) the fact that the lands in question were not State lands, as seen above, both of these claims are untrue. There is adequate provision in the FFPO for the 1st Respondent to have imposed a system of management on the relevant areas, and the relevant provisions of the FFPO are applicable to "lands other than State lands".

In addition to the above, the 1st Respondent has also failed to enforce the FFPO in terms of the provisions protecting elephants and animals from unauthorised electric fences. The protection afforded to elephants in Section 12 of the FFPO applies to all areas outside a National Reserve or Sanctuary, thus encompassing even non-State lands, or lands held to be private or temple property. That section provides, "Save as is hereinafter provided, no person shall *in any area outside* a National Reserve or Sanctuary hunt, shoot, kill, injure or take any elephant…" As already mentioned, Section 20(1)(a) of the FFPO specifically makes it an offence to use any electric wire to kill or injure an elephant, and Section 53A makes it an offence to use any stupefying substance for the purpose of stupefying an animal.

In terms of Section 67B(1), "…every offence under [the] Ordinance shall be a cognizable offence … within the meaning" of the CCPA, and under Section 67A of the FFPO, "The Director and every prescribed officer shall be deemed to be a ***peace officer*** within the meaning of the Code of Criminal Procedure Act for exercising, for the purposes of this Ordinance, any power conferred on peace officers by that Act" (emphasis added). Under Section 32 of the CCPA, peace officers have the power to arrest without warrant any person concerned in a cognizable offence, and under Section 107, peace officers may take preventive action against the commission of cognizable offences, including arrest.

Accordingly, I hold that the 1st Respondent's failure to take steps to address the damage being done to the environment in general and to elephant habitats within

temple property in particular, and the intensifying human-elephant conflict resulting from it, has violated the fundamental rights of those whom the Petitioners represent, including themselves, in terms of their right to the protection of the environment under Article 12(1) of the Constitution.

Liability of the 6th Respondent

The 6th Respondent is the Inspector General of Police. There is no material to hold him accountable for the impugned infringements. Had the Petitioners produced any material to establish that the omissions of the Officer-in-Charge of the Ambanpola Police Station was brought to his attention and that he failed to take any further steps, it may have been possible to hold him accountable for such omissions.

The Petitioners have not made the Officer-in-Charge of the Ambanpola Police Station a party to this application. Had they done so, there is sufficient material to have held him accountable for the omissions specified above.

Liability of the 2nd and 8th Respondents

Both the 2nd and 8th Respondents were aware of the clearing of the forests taking place within the temple property. Environment Officers of the 2nd Respondent had conducted inspections on the lands on 17.09.2021 and 07.10.2021, after receiving a complaint from a local environmentalist group. The first such inspection had resulted in the conclusion that the clearing of forests taking place on the lands in question were liable for environmental approval and the failure to obtain such approval necessitated legal action.

The only reason adduced on behalf of the 2nd Respondent to explain the failure to take such action is the reference in 2R1 to the applicability of a Provincial statute on the subject within the North Western Province. The 8th Respondent Authority, established under the said statute, has stated that, “a direction was forwarded to the 10th Respondent by way of letter dated 07.09.2022 to refrain from clearing lands in the area of land in issue. Further the said directive states that action will be taken in terms

of the said statute if the 10th Respondent fails to adhere to the said directive." Despite this warning, no material has been produced before us to demonstrate neither the taking of such action, nor any reasons explaining the failure to do so.

Considering the NEA, and its provincial counterpart, the North Western Province Environmental Statute, No. 12 of 1990 (Statute), both instruments provide its respective Authority the statutory power to issue directives to third parties. Section 24B(1) of the NEA provides, "The Authority shall have the power to issue directives to any person engaged in or about to engage in any development project or scheme which is causing or is likely to cause, damage, or detriment to the environment, regarding the measures to be taken in order to prevent or abate such damage or detriment, and it shall be the duty of such person to comply with such directive."

Section 51(1) of the Statute contains the same power. In terms of section 24B(2) of the NEA and Section 51(2) of the Statute, the respective Authority is afforded the power to seek an order from the relevant Magistrate to have a project or scheme suspended until the person complies with a directive that has been issued under Section 24B(1) or Section 51(1), respectively.

The 2nd Respondent appears to have refrained from intervening in the forest clearing taking place within the temple property, despite having notice of the same, because of the fact that a provincial environmental authority existed in the North Western Province. However, this position has not been pleaded as such before us.

In his affidavit, 2A Respondent has only taken the position that the activities in the temple property were of not such a scale as to warrant intervention on the part of the 2nd Respondent. That position is clearly contradicted in the material placed before us, and indeed the observations of his own field officer as reflected in 2R1 ("ජාතික පාරිසරික පනත යටතේ ... මෙම සංවේදී ඉඩම් එලිපෙහෙලි කිරීම පාරිසරික බලපෑම් ඇගයීමේ ක්‍රියාවලියට යටත්ව පාරිසරික අනුමැතිය ලබා ගත යුතු ක්‍රියාකාරකමක් වේ. **ඒ අනුව මේ සඳහා නීතිමය පියවර ගත යුතු වේ.**")

In the 13th Amendment to the Constitution, the protection of environment is included in both the Provincial List as well as the Concurrent List. Item 37 of List I (Provincial List) in the Ninth Schedule is "Protection of environment within the Province to the extent permitted by or under any law made by Parliament." Likewise, Item 33 of List III (Concurrent List) is "Protection of the environment."

Nothing in the 13th Amendment provides for the suspension of an environmental law made by Parliament by virtue of the mere fact that a Provincial Council has also legislated on the same subject, especially where there is no inconsistency between the two. Both laws continue to be in force. Nothing in the record indicates any correspondence between the 2nd Respondent and 8th Respondent to show that the 2nd Respondent has satisfied itself that the 8th Respondent was adequately seized of the matter to warrant such deference.

On the other hand, the 8th Respondent has only issued a directive to the 10th Respondent in September 2022, a full year after the field inspection reported in 2R1. Moreover, even though the 8th Respondent has issued the said directive, nothing in the record shows that the 10th Respondent complied with the directive, or that the 8th Respondent took any further step to compel compliance, such as by making the relevant application in the Magistrate's court.

Accordingly, I hold that both the 2nd and 8th Respondents have failed to take steps to address the damage being done to the forests and elephant habitats within temple property, which has violated the fundamental rights of those whom the Petitioners represent, including themselves, in terms of their right to the protection of the environment under Article 12(1) of the Constitution.

Liability of the 4th Respondent

The entire scheme of the BTO is premised on the supervision of temple trustees by the Commissioner of Buddhist Affairs. In the instant application, it is well established that the 4th Respondent was aware of not only the various commercial activities going on

the temple property without his sanction, but also of the forest clearing being carried out. Had the 4th Respondent adopted a more proactive approach in supervising the 10th Respondent as the appointed trustee under the BTO, much of the environmental destruction could have been averted, including by referring the 10th Respondent to the 2nd or 8th Respondent prior to the clearing of the forests. Again, for no explicable reason, the 4th Respondent too has failed to act according to his statutory obligations under the BTO.

Accordingly, I hold that the 4th Respondent's failure to exert appropriate supervision of the 10th Respondent and thus failing to avert the environmental destruction resulting from it, has violated the fundamental rights of those whom the Petitioners represents, including themselves, in terms of their right to the protection of the environment under Article 12(1) of the Constitution.

Declaratory Relief

Leave to proceed has been granted only under Articles 12(1) and 14(1)(g).

For all the foregoing reasons, I declare that the omissions more fully expounded earlier of the 1st, 2nd, 4th and 8th Respondents have resulted in the infringement of the fundamental right to the protection of the environment guaranteed to the Petitioners under Article 12(1) of the Constitution.

With respect to the violation of fundamental rights under Article 14(1)(g), it is my view that the material before us is insufficient to adjudicate upon the claim. The freedom to engage in the occupation of farming in an environmentally sensitive area as the lands which form the subject matter of this application calls for a delicate balance to be struck between that freedom and the right to the protection of the environment. In principle, there is no doubt that the native farming and chena cultivation practices prevalent in this Island since time immemorial are capable of sensitivity to the principles of balance that govern our ancestors' relationship with the lands they inhabited. However, those views have not been represented in Court in this

application. Accordingly, I hold that the material placed before us does not disclose a violation of the rights recognised under Article 14(1)(g) of the Constitution.

Other Reliefs

(1) The 4th Respondent is directed to appoint and authorise under Section 28(2) of the BTO, a fit and proper person with no demonstrable conflicts of interest, to institute legal proceedings under that section to have any mortgage, sale, or alienation of the temple property made in contravention of the provisions of the BTO, set aside and to recover possession of such property, for the benefit of the temple.

(2) The 4th Respondent is further directed to authorise the same person appointed above to institute legal proceedings under Section 31 of the BTO to have any lease of the temple property made in contravention of the provisions of the BTO set aside and to have possession of such property restored for the benefit of the temple.

(3) The 11th Respondent, Hon. Attorney-General is directed to establish a dedicated unit headed by a Senior Deputy Solicitor General or a Deputy Solicitor General to provide legal advice to all State Respondents on the action to be taken to comply with this judgment, as well as to appear in all legal proceedings instituted pursuant to the directions made by Court in these proceedings.

(4) The 1st Respondent is hereby directed to recommend to his Minister, following adequate consultations with the local village communities, the declaration of the areas labelled as "forest (කැළෑ)" and the area of 55 hectares labelled as "paddy and chena (කුඹුරු සහ හේන්)", depicted in the map of the Survey-General included in this judgment, as a Sanctuary or Managed Elephant Reserve in terms of Section 2(2) of the FFPO.

(5) The 1st Respondent shall, within the areas described in the direction above, initiate a programme of replantation to restore the cleared forests, as far as

practicable, to their original state, including by demolishing any and all electric fences and any other constructions.

(6) The 1st Respondent shall, within three months of the date of this judgment, communicate to the 10th Respondent the cost of replanting and restoring the described areas, and the 10th Respondent is hereby directed to pay the said sum to the 1st Respondent within 3 months of such communication.

(7) The Petitioners are directed to make a complaint to the relevant Police Station of the criminal acts referred to in the petition within one month of this judgment. The 6th Respondent shall direct the relevant Officer-in-Charge to expeditiously conduct investigations into the said complaint and take steps to prosecute the offenders.

(8) The 1st, 2nd, and 8th Respondents are hereby directed to publish a notice addressed to the public of Sri Lanka in all three languages in a national newspaper published on a Sunday, within two months from the date of this order, apologising for their failure to take action to prevent the destruction of the environment described in this judgment. The notice must also specify the measures that will be implemented by them in the future to guarantee the non-recurrence of such inactions.

Application partly allowed.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT