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

*In the matter of an application for writs of **Certiorari,**
Prohibition & Mandamus under Article 140 of the
Constitution of the Republic*

1. **Wanninayaka Mudiyansele Dhanapala,**
Pahe Kanuwa, Nakolagane,
Ataragalla,
Ehetuwewa.
2. **Wanninayaka Mudiyansele Wijey
Kumarapala,**
Pahe Kanuwa, Nakolagane,
Ataragalla,
Ehetuwewa.
3. **Environmental Foundation
(Guarantee) Limited,**
3A, 1st Lane, Highlevel Road
Kirulapone,
Colombo 05.
- **Petitioners**

CA (Writ) App. No: 243/2017

Vs

1. **Mr. Nimal Kotawalagedara**
Commissioner of Buddhist Affairs
Department of Buddhist Affairs
"Dahampaya",
No.135, Srimath Anagarika Dharmapala
Mawatha,
Colombo 07.
2. **Professor Lal Mervyn Dharmasiri**
Chairman
Central Environmental Authority,
"Parisara Piyasa",
No.104, Denzil Kobbekaduwa Mawatha
Battaramulla.
3. **Central Environmental Authority**
"Parisara Piyasa",
No.104, Denzil Kobbekaduwa Mawatha
Battaramulla.

4. **Mr. Saman Kumara Lenaduwa**
Acting Director
North Western Provincial Environmental
Authority (NWPEA)
1st Floor, Provincial Office Complex,
Kurunegala.
 5. **North Western Provincial Environmental
Authority (NWPEA)**
1st Floor, Provincial Office Complex,
Kurunegala.
 6. **Mr. W.S.K. Pathirathne**
Director General,
Department of Wildlife Conservation
811A, Jayanthipura,
Battaramulla.
 7. **Mr. Welipitiya,**
Divisional Secretary,
Galgamuwa-Nikawewa Road,
Ehetuwewa.
 8. **Dr. Senarath Dissanayake,**
Director General,
Department of Archaeology,
Sir Marcus Fernando Mawatha,
Colombo 07.
 9. **Eng. Anura Wijapala,**
Chairman,
Ceylon Electricity Board,
50, Sri Chittampalam A Gardnier Mawatha,
Colombo 02.
 10. **Ven. Walathwawe Rahula Thero.,**
Chief Incumbent,
Nakolagane Purana Rajamaha Viharaya,
Vijaya Shri Sumangaramaya,
Ataragalla
Galgamuwa.
 11. **Hon. Attorney General,**
Attorney General's Department,
Hulftsdorp,
Colombo 12.
- Respondents

**TO: HIS LORDSHIP THE PRESIDENT AND THEIR LORDSHIPS THE OTHER
HONOURABLE JUDGES OF THE COURT OF APPEAL OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this 19th day of September 2017

The petition of the Petitioners appearing by their registered Attorney - at - Law,
Gayani Hewawasan, states as follows.

THE PARTIES

1. The Petitioners state that

- a. The **1st Petitioner** above named is a citizen of the Republic, 64 years old and of married civil status with 5 children, a resident of the village of Nakolagane, whose residence is located **adjacent** to the Nakolagane Purana Raja Maha Viharaya. The 1st Petitioner is a farmer by profession and is a member of the "Parisara Surakum Ekamuthuwa" and states that this application is filed on behalf of himself and the 229 members of the said Association from Nakolagane and Athinimole villages who are aggrieved by the acts/omissions of the 1st to 10th Respondents which are causing danger and adverse impacts to their personal safety and irreparable loss and damage to their livelihoods by the human elephant conflict created by the subject matter hereto.
- b. The **2nd Petitioner** abovenamed is a citizen of the Republic, 57 years old and of married civil status with 3 children, a resident of the village of Nakolagane, residing in close proximity to the Nakolagane Purana Raja Maha Viharaya. The 2nd Petitioner is a farmer by profession and is the Secretary of the "Parisara Surakum Ekamuthuwa" and states that this application is filed on behalf of himself and the 229 members of the said Association from Nakolagane and Athinimole villages who are aggrieved by the acts/omissions of the 1st to 10th Respondents which are causing danger and adverse impacts to their personal safety and irreparable loss and damage to their livelihoods by the human elephant conflict created by the subject matter hereto.
- c. The **3rd Petitioner** is a non-profit making limited liability company incorporated under Laws of Sri Lanka having its registered office at the address given above. The objects of the 3rd Petitioner includes *inter alia* monitoring State Departments and Regulatory Agencies and ensuring that the public interest in protecting the environment is fully considered in their administrative activities and enforcing laws relating to the conservation of nature and protection of the environment through legal means.

A copy of the certificate of incorporation and Articles of Association of the 3rd Petitioner are annexed hereto respectively marked P1 & P2 and are pleaded as part and parcel hereof.

- d. The 3rd Petitioner has instituted cases before Courts of First Instance as well as filed applications before Your Lordship's Court and the Supreme Court in the pursuit of its objectives.
- e. The 3rd Petitioner has been registered with the Central Environment Authority (*hereinafter referred as the CEA*) as a national level non-governmental organization engaged in environmental activities since 1981.

A copy of the letter of registration of the 3rd Petitioner is annexed hereto marked P3 and is pleaded as part and parcel hereof.

- f. The 3rd Petitioner is genuinely concerned with the implementation and enforcement of the laws relating to the protection of the environment and also in performing the fundamental duty cast on every person under Article 28(f) of the Constitution of the Republic to protect nature and conserve its riches. The 3rd Petitioner has invoked the jurisdiction of your Lordships' Court and other courts on several matters relating to the environment and has obtained relief in pursuance of its aims.
- g. In addition to the above, the Petitioners also beg the leave of Your Lordships' Court to plead this Petition "in the public interest" particularly *inter alia* to ensure compliance with environmental protection laws, regulations and procedures and wildlife protection laws and regulations and to ensure performance of the Respondents' entrusted duties and obligations thereto, as contemplated in Articles 27(14), 28(d) and 28(f) of the Constitution of this Republic; for and on behalf of the citizenry of this Republic upon whom all such powers of government are absolutely and inalienably vested by virtue of their sovereign entitlement.

2. The Petitioners state that

- a. The 1st Respondent above-named is the Commissioner of Buddhist Affairs providing necessary supervision of the trustees and of controlling Viharadhipatis in terms of the Buddhist Temporalities Ordinance (as amended) and of the Buddhist Affairs Department which has been instituted in terms of the said Ordinance for the propagation of Buddha Sasana and for the maintenance of a righteous Buddhist society. The Buddhist Affairs Department as a State institution is subject to the State obligation to "protect, preserve and

improve the environment for the benefit of the community” as provided for in *Sub Article 27(14)* of the Constitution.

- b. The 2nd Respondent above named is the Chairman of the Central Environmental Authority (hereinafter sometimes referred to as the "CEA") which has been statutorily constituted under the National Environmental Act No. 47 of 1980 as amended (hereinafter at times referred to as “the NEA”) and its public duties include the implementation and administration of the NEA and Regulations made thereunder, including approval for the prescribed projects as "Project Approving Agency" and CEA is the sole authority mandated under the in terms of Part IV of the NEA in respect of environmental protection and environmental quality as morefully elaborated hereinafter, a principal subject matter in the instant Application.
- c. The 3rd Respondent is the Central Environmental Authority drawing its mandate from the National Environmental Act referred to above.
- d. The 4th Respondent above named is the Director of the North Western Province Environmental Authority (hereinafter referred to as the “NWPEA”) established under the North Western Province Environmental Statute No. 12 of 1990 (hereinafter at time referred to as ‘NWP Environmental Statute’).
- e. The 5th Respondent above named is the North Western Province Environmental Authority (hereinafter referred to as the “NWPEA”) which has been established under the North Western Province Environmental Statute No. 12 of 1990 which statute indicates that its statutory duties include the protection, management, enhancement of the environment and the regulation, maintenance and control of the quality of the environment of the North Western Province including approval of prescribed projects as morefully elaborated hereinafter.
- f. The 6th Respondent above named is the Director-General of the Department of Wildlife Conservation (hereinafter sometimes referred as the DWC), appointed in terms of Section 68 (1) of the Fauna and Flora Protection Ordinance No. 2 of 1937 as amended (hereinafter at times referred to as FFPO), who exercises general purview, authority and supervision in respect of the protection of wildlife in Sri Lanka, whose statutory duties as morefully elaborated hereinafter become a principal subject matter in this application;
In terms of the Part II of the FFPO as amended the 6th Respondent is the sole authority mandated to protect elephants in areas within and outside National Reserves and Sanctuaries.

- g. The 7th Respondent above named is Divisional Secretary of Ehetuwewa within whose area of authority the matters hereinafter complained have taken place.
- h. The 8th Respondent is the Director General of Archaeology mandated to implement and to enforce the provisions of the Antiquities Ordinance No.9 of 1940 as amended.
- i. The 9th Respondent is the Chairman of the Ceylon Electricity Board which is supplying power in respect of the electric fence referred to below.
- j. The 10th Respondent above named is the Chief Incumbent of the Lankawiriduwigama Nakologane Purana Raja Maha Viharaya and therefore the Trustee and/or the controlling Viharadhipati of the said Temple and the Project Proponent of the activities which are morefully elaborated hereinafter.
- k. The 11th Respondent above named is the Hon. Attorney General who has been made a party, *inter alia*, in order to give notice of this application.

FACTS:

- 3. The Petitioners state that the village of Nakalogane and the Nakoalgane Purana Raja Maha Vihara is situated in the Ehetuwewa Divisional Secretariat Division of Ehetuwewa of Galgmuwa, Kurunegala in the North Western Province.
- 4. The Nakoalgane Purana Raja Maha Vihara is a significant religious place of worship where several "Archaeological Protected Monuments in Kurunegala District" were declared and gazetted in June 2008.

*A copy of the **Government Gazettes bearing No. 1553 dated 6th June 2008**, declaring the five monuments as Archaeological Protected Monuments in Kurunegala District, is annexed hereto marked as **P4** and is pleaded as part and parcel hereto.*

- 5. The Gazette P4 indicates that the gazetting has been carried out after notice was given in terms of Section 19 of the Antiquities Ordinance.
- 6. The Ehetuwewa and Galgamuwa Divisional Secretariat areas have some of the highest amount of human elephant conflicts in the North-West of Sri Lanka. The area which is the subject matter of this application is a forest which has a rich flora and fauna diversity with the majority of dry zone mammals found in the region including four large herds of elephants

consisting over 200 individuals that frequent the forest and catchment of the Palukadawala and Atharagalla Wewa as a habitat and source of food.

7. The Petitioners state that an area of approximately 15 – 20 acres of forest in the immediate vicinity of the Nakolagane Purana Raja Maha Viharaya has been cleared by the 10th Respondent and/or his servants and/or agents contrary to and in violation of the provisions of the law as more fully set out herein after. Although the Petitioners have been made to understand that such activities are being carried out in collaboration with and/or with the funding of private investors, the Petitioners are not possessed of full information in this regard, even after due inquiry. The Petitioners move that they be permitted to bring in such private investors as Respondents upon the Petitioners being made aware of same.
8. The Petitioners state that an electric fence has also been erected surrounding the cleared area contrary to the instructions of the Department of Wildlife Conservation and the provisions of the law.
9. The cleared and fenced area was one of few natural forest patches that formed a refuge for the elephants that regularly traverse this area and is a critical part of their home-range. Clearing and blocking areas such as these results in the decrease in access to natural forest areas for the elephants thereby compelling them to use areas inhabited by humans more and more thus leading to the escalation of the human – elephant conflict in the area.

A copy of the report “Elephant use of the Nakolagane area and the impact of large-scale land clearance” prepared by Dr. Prithviraj Fernando, PhD, of the Center for Conservation and Research in Sri Lanka is annexed hereto marked as P5 and is pleaded as part and parcel hereto.

10. The said report inter alia states that the clearing /developing of this area will result in blocking of the seasonal movement of the Elephants as well as the loss of critical resources and habitat. This will lead to elephants having to move through villages and cultivations during their seasonal movements and increased crop raiding by elephants to survive. Therefore, it will cause severe escalation of human-elephant conflict in the area.
11. The Petitioners state that the fact that this forest area is one of the prime elephant habitats is confirmed by a google earth map of the area superimposed with GPS tracking data of radio collared elephants that was available for the years 2013 and 2015. This area falls within the home-range of over 200 elephants using the natural contiguous forest areas for movement.

A true copy the said map indicating the elephants’ movement data and the approximate location of the electric fence surrounding the cleared forest patch, is annexed hereto marked as P6 and is pleaded as part and parcel hereto.

12. The Petitioners state that in or around 2015, in recognition of the high incidence of Human Elephant conflict in the area, the 7th Respondent (Divisional Secretary of Ehetuwewa) requested from the Centre for Conservation and Research (CCR) [founded by Dr. Prithviraj Fernando, PhD, author of report marked P5] to provide technical and partial financial assistance to study the matter and erect electric fences surrounding the villages of Nakolagane Pahe Kanuwa and Athinimole. Therefore, with the recommendations of and under the supervision of the Department of Wildlife Conservation, electric fences were erected around the houses of villagers most affected including the 1st and 2nd Petitioners, allowing the free movement of the elephant herds in the area using the forest covers. These fences are presently being maintained by the villagers. They have been erected surrounding the human habitation so that elephant movement is not restricted. Since the erection of these fences the human elephant conflict in the area reduced considerably.
13. On the other hand, the fences erected by the 10th Respondent encompasses the forest areas inhabited by elephants restricting their access to such areas and leading to the imminent threat of escalation of the conflict.
14. The Petitioners state that as soon as they became aware of the forest destruction, the 3rd Petitioner met with the Commissioner General of the Department of Buddhist Affairs and also informed him in writing regarding these matters.

*Copies of letters dated 31.08.2016, 26.10.2016 and 16.01.2017 are annexed hereto marked **P7(a)** **P7(b)** and **P7(c)** respectively and are pleaded as part and parcel of this Petition.*

*A copy of a response from the Department of Wildlife Conservation dated September 2016 regarding the letter dated 31.08.2016 which was also copied to the said Department is annexed hereto marked **P7(d)** and is pleaded as part and parcel of this Petition.*

*A copy of a letter from the Divisional Secretary, Ehetuwewa to the 10th Respondent is annexed hereto marked **P7(e)** and is pleaded as part and parcel of this Petition. The said letter inter alia seeks information on whether the clearing of the forest has been properly approved and if not that the forest clearing be stopped until proper assessments are carried out of the environmental impacts. Notwithstanding the above, the forest clearing continued and an electric fence was put up surrounding the clearing.*

*Copies of Site Inspection Reports dated 21.09.2016 and 05.01.2017 are annexed hereto marked **P8(a)** and **P8(b)** respectively and are pleaded as part and parcel of this Petition.*

A copy of a letter dated 21.12.2016 from the 3rd Petitioner to the Divisional Secretary Ehetuwewa is annexed hereto marked P9 and is pleaded as part as part and parcel of this Petition.

15. The 3rd Petitioner also wrote directly to the Department of Wildlife Conservation in this regard. The correspondence with the Department of Wildlife Conservation indicate that the said temple had sought permission to erect an electric fence surrounding the forest lands too and that the Department of Wildlife Conservation had, after due consideration of the matter, categorically indicated that such permission cannot be given. The letters further indicate that the said electric fence would obstruct the migratory route of the elephants thus leading to an escalation of the human elephant conflict.

A copy of a letter dated 16.01.2017 from the 3rd Petitioner to the Department of Wildlife Conservation, a copy of a letter dated 25.01.2017 from the Department of Wildlife Conservation and a copy of a letter dated 09.02.2017 from the 3rd Petitioner to the Department of Wildlife Conservation are annexed hereto marked P10(a), P10(b) and P10(c) and are pleaded as part and parcel of this Petition.

Copies of letters dated 06.02.2017 received by the 3rd Petitioner from the Department of Wildlife Conservation together with the annexure thereto dated 22.11.2016 is annexed hereto marked P11 and is pleaded as part and parcel of this Petition.

16. The said letters indicate, inter alia the following:
- a) That the temple had sought permission to erect an electric fence for protection from wild elephants in the forests surrounding the temple;
 - b) That the electric fence surrounding the Nakolagane village would protect the temple too;
 - c) That the permission sought indicates that forest areas are also to be included within the area to be fenced;
 - d) That under the circumstances, the permission sought cannot be recommended.
17. The Petitioners state that notwithstanding the above, the 10th Respondent has proceeded to erect the electric fence surrounding the forest areas.
18. In terms of section 20 (1) (a) of the Fauna and Flora Protection Ordinance as amended, any person who, in contravention of the said Part of the Ordinance or contrary to the tenor of any license issued to him, hunts, shoots, kills, injures, takes, follows, or pursues an elephant or uses any electric wire to kill, injure or take any elephant or uses any device of any description to harm any elephant is guilty of an offence.
19. The Petitioners state that after the said electric fence was erected by or on behalf of the 10th Respondent, it has been brought down several times by the elephants and the last such occasion was during the month of June, 2017.

20. Accordingly, the 3rd Petitioner has, by letter addressing the Commissioner General of Buddhist Affairs, sought information as to whether the said clearing of forest has been approved by the Department of Buddhist Affairs and if so, the details pertaining to same. By the said letter the 3rd Petitioner also sought information as to whether the said clearing of forests had been approved by the Central Environmental Authority, the Department of Wildlife Conservation, the Irrigation Department, and the Department of Archaeology.

A copy of the letter dated 08.03.2017 from the 3rd Petitioner to the Commissioner General of Buddhist Affairs is annexed hereto marked P12 and is pleaded as part and parcel of this Petition.

21. The Department of Buddhist Affairs has, by its letter dated 29.03.2017, inter alia, informed the Petitioners that the said clearing of land approximately 15 acres in extent and the conversion of use of the said land to a non-forest purpose has not been approved by the Department of Buddhist Affairs.

A copy of the letter dated 29.03.2017 from the 1st Respondent to the 3rd Petitioner is annexed hereto marked P12 (a) and is pleaded as part and parcel of this Petition.

22. The Petitioners state that this is contrary to the provisions of the Buddhist Temporalities Ordinance and the regulations thereunder in that in terms of the law, the 10th Respondent is required to manage the properties of a temple coming within the jurisdiction of the said law with the sanction of the Commissioner of Buddhist Affairs which the said Respondent has failed to do.

23. The Petitioners state that Part IVC of the National Environmental Act (NEA) relates to the Approval of Projects. In terms of the Section 23BB (1) of the NEA (as amended) project proponents are required to obtain approval for 'prescribed projects' prior to implementation.

24. The National Environmental (Procedure for Approval of Projects) Regulation (Gazette No. 772/22 of 24.06.1993) sets out the 'prescribed projects' for which approval is necessary under the provisions of Part IVC of the NEA.

a) Part I, clause **(4) of the** National Environmental (Procedure for Approval of Projects) Regulation **reads as follows:**

Conversion of forest covering an area exceeding 1 hectare into non-forest uses

25. In the present instance, the activities of the 10th Respondent as set out above has resulted in the 'conversion of forest covering an area exceeding 1 hectare into non-forest uses' thus requiring approval in terms of Part IVC of the National Environmental Act.

26. Inquiries made by the Petitioners indicate that the 10th Respondent has failed to adhere to such requirement and has failed to obtain approval in terms of the law.
27. In terms of Section 24B (1) of the NEA, the Central Environmental Authority has 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 to prevent or abate such damage or detriment, and it shall be the duty of such person to comply with such directive.
28. The 3rd Petitioner has accordingly brought these matters to the attention of the 2nd and 4th Respondents by letters dated 17.05.2017. Although sufficient time has elapsed, the Petitioners have not even received an acknowledgement in response to these letters.

Copies of the letters dated 17.05.2017 are annexed hereto marked P13 (a) and P13(b) and are pleaded as part and parcel of this Petition.

29. Section 43A of the Antiquities Ordinance provides that whenever any development or industrial scheme or project is proposed by the Government or other institution or person entailing the use, encroachment or submergence of any land falling within the inventory prepared under section 40(b), or any land as may be prescribed, such scheme or project shall not be approved or permitted until after a report is submitted by the Director-General of Archaeology, as to the effects the implementation of such scheme, or project may have upon such land or any antiquities within it; which survey is to be undertaken at the expense of the sponsors of such project or scheme.
30. The Petitioners state that the said forest clearance and erecting of the electric fence by the 10th Respondent has been proceeded with; without the required approvals and/or clearances for such activities under the NEA and Regulations made thereunder, and/or the Buddhist Temporalities Ordinance and Regulations made thereunder and/or the Antiquities Ordinance and regulations made thereunder and/or the North Western Provincial Environmental Statute and Regulations thereunder and/or the other provisions of the law including the Fauna and Flora Protection Ordinance and/or contrary to the express instruction of the relevant authorities including the Department of Wildlife Conservation. However, despite such irregularities/unlawfulness and/or defects, the land has been cleared and the electric fence has been put up to the knowledge of the 1st to the 8th Respondents and electricity supply to power the said electric fence is being supplied by the 9th Respondent.

31. As stated above, even in the Month of June, 2017 and on several occasions before, the said electric fence erected by the 10th Respondent has been brought down by elephants whose migratory paths have been obstructed by same. The Petitioners state that in the circumstances, the escalation of the human elephant conflict is precipitated leading to grave consequences with the elephants damaging even the electric fences surrounding the villages.

Previous Incidents

32. The Petitioners further state that the following previous incidents also took place:

- a. In or around the year 2015, the 10th Respondent attempted to lease a large extent of land (at a distance of about 1 km from the present location) for an agricultural project.
- b. On or about June 2015, the 3rd Petitioner was informed of the commencement of a large scale deforestation of forest cover extending over 1000 acres in close proximity to the Palukadawela Tank. The forest land purported to belong to the Lankawiriduwigama Nakolagama Purana Rajamaha Viharaya, and was to be leased to multinational corporations.
- c. The 3rd Petitioner conducted a Site Visit to the said area on the 2nd of July 2015 to investigate this report and to estimate the environmental impacts to the forests land, the adjoining catchment of the Palukadawela Wewa & Attaragalle Wewa and the wildlife dependent on it, as well as any significant threats to the archaeological sites present within the land.
- d. During the site visit, discussions were held with the “Parisara Surakeeme Ekamuthuwa”, of which the 2nd Petitioner is the Secretary, the Divisional Secretary of the Ehetuwewa DS Division, as well as the Deputy Engineer of the Irrigation Department, Galgamuwa which revealed that approximately 1,050 villagers depend on agriculture as their primary source of income. While many householders claimed to have deeds the Nakolagama Purana Viharaya had claimed ownership of the land.
- e. Further inquiries revealed that approval had been given by the Ministry of Buddhist Affairs only for the purpose of land demarcations and survey and that no approvals had been sought for the commencement of development.
- f. No approvals had been sought from the Department of Archaeology, Department of Wildlife, Department of Irrigation or the Forest Department.
- g. Deforestation was taking place using heavy machinery and a vast road network within the forest had already been established with

further deforestation occurring on a daily basis. Deep water wells had been proposed which would have affected the adjoining water catchment and the underground water aquifers.

- h. The Department of Archaeology, Department of Wildlife, Department of Irrigation, Forest Department, Ministry of Buddhist Affairs, The Divisional Secretary, Ehutuwewa and Geological Survey and Mines Bureau were duly informed by the 3rd Petitioner in writing by letters dated 06.07.2015 and urged to take immediate steps to halt the deforestation.

*A copy of the letter dated 06.07.2015 sent to the 1st Respondent is annexed hereto marked as **P14** and is pleaded as part and parcel hereof.*

- i. The said project posed serious adverse impacts to the lives and livelihoods of the members of the "Parisaraya Surakeeme Ekamuthuwa" represented by the 1st and 2nd Petitioners. A letter had been written to His Excellency the President of Sri Lanka signed by 229 members of the Association from Nakolagane and Athinimole villages.

*A copy of the letter dated 17.06.2015 to His Excellency the President of Sri Lanka, sent by the Parisaraya Surakeeme Ekamuthuwa (with the attachments) is annexed hereto marked as **P15** and is pleaded as part and parcel hereof.*

- j. Upon intervention by the 3rd Petitioner, on or about the 22nd of July 2015, the former Commissioner of Buddhist Affairs Mr. Chandraprema Gamage, facilitated a meeting between the 3rd Petitioner and the 10th Respondent, which resulted in a communication from the 10th Respondent requesting assistance in identifying suitable land to carry out this proposed project. The 3rd Petitioner submitted recommendations clearly stating the basic requirement of conducting Environmental Impact Assessments (EIAs) as provided for by law and regulations.

*Copies of a letter dated 12/11/2015 from the 10th Respondent to the 3rd Petitioner and the letter dated 08.12.2015 from the 3rd Petitioner to the 10th Respondent in this regard are annexed hereto marked as **P16 (a)** and **P16 (b)** respectively and are pleaded as part and parcel hereof.*

- k. A site inspection carried out by the officers of the 3rd Petitioner towards the end of July, 2015 indicated that the forest clearing activities had ceased.

*A copy of a letter dated 10.08.2015 from the 4th Respondent to the Commissioner General of Buddhist Affairs in this regard is produced marked **P17** and is pleaded as part and parcel of this Petition.*

- l. In the meantime, the 3rd Petitioner received several letters from the related authorities regarding the said previous incident including the following:

Letter dated 10.08.2015 from the Provincial Environmental Authority (North Western Province) inter alia stating that the clearing of the land had been stopped at the moment.

*A copy of the said letter is annexed hereto marked **P17** and is pleaded as part and parcel of this Petition.*

- a. Letter dated 03.09.2015 from the Central Environmental Authority inter alia stating that consequent to the initial meeting, since title to the said lands had not been established, no permission or recommendations had been given for the project in question or for the other activities on the said land.

*A copy of the said letter is annexed hereto marked **P18** and is pleaded as part and parcel of this Petition.*

- b. Letter dated 23.09.2015 from the 3rd Petitioner to the Commissioner General of Buddhist Affairs and a copy of a letter dated 24.09.2015 from the 3rd Petitioner to the Director Provincial Environmental Authority and a copy of a letter dated 01.10.2015 from the 3rd Petitioner to the Director General of the Department of Wildlife Conservation *are annexed hereto marked **P19(a)**, **P19(b)** and **P19(c)** respectively and is pleaded as part and parcel of this Petition.*

- m. It is thereafter that the present activities relating to the clearing of land and the erection of an electric fence have taken place in a different location.

- n. The Petitioners also state that during the previous incident of forest destruction in or around the year 2015 as described above, the District Secretary, by letter dated July, 2015 informed the Commissioner General of Buddhist Affairs to inter alia obtain a certificate from the Commissioner of Land Settlement regarding the lands in question.

*A copy of the said letter is annexed hereto marked **P20** and is pleaded as part and parcel of this Petition.*

- o. No agricultural cultivation has taken place on the land, which is the subject matter of this application, although some holes have also been dug for planting.

- p. The Petitioners further state that this is an area with scarcity of water and any large scale agricultural activity would impact the delicate water balance in the area.

FALIURE TO CARRY OUT STATUTORY DUTIES

33. The Petitioners state that there has been a failure on the part of the Respondents in carrying out their statutory duties/obligations contained in the provisions of the law.
34. There is a failure on the part of the 1st to the 9th Respondent to take adequate steps to make necessary inquiries and investigations to ascertain the title to the land, the legality of the forest clearance and the putting up of the electric fence and to enforce the provisions of the law.
35. The Petitioner states that in addition to the statutory duty cast upon on the Respondents, there is a fundamental duty cast on every person under the Article **28(f)** of the Constitution to protect nature and to conserve its riches. It is the duty of the Respondents to take necessary steps under the law to protect environmentally sensitive areas and to prevent violations of the law in this regard.
36. The Petitioners most respectfully state that especially the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Respondents have a public duty under the Article **27(1)** of the Constitution - the Directive Principles of State Policy and specially the Article **27(14)** and the relevant laws referred to herein, to protect and preserve the environmentally sensitive ecological areas and the elephant habitat and to take adequate measures to prevent human-elephant conflict which the Respondents have failed to do.
37. In the circumstances aforesaid, the actions and the omissions and the decisions of the 1st to 9th Respondents are:
- a) arbitrary and/or capricious;
 - b) Unwarranted and manifestly irregular;
 - c) Illegal and/or ultra vires their powers;
 - d) Unreasonable and/or irrational and/or contrary to the principles of Fairness and Proportionality;
 - e) Procedurally flawed;
 - f) Contrary to the legitimate expectation of the citizens of the Republic;
 - g) Contrary to the Principles of Natural Justice;
 - h) Contrary to Sri Lanka's international obligations for the protection of the environment and of wildlife;
 - i) Manifestly unjust,

- j) Are indicative of a failure to implement the provisions of the law and the public duties cast upon them in terms of the said law.
38. The Petitioners further state that the activities of the 1st to the 9th Respondents are also contrary to the public trust.
39. In the circumstances the Petitioners respectfully state that they are entitled to the following:
- a) An Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law in respect of the several violations of the provisions of the law;
 - b) An Order in the nature of a Mandamus directing the 1st to the 9th Respondents to take necessary measures within the law to stop the aforesaid destruction of the forest and the environment in violation of the provisions of the law;
 - c) An Order in the nature of a Mandamus directing the 1st to the 9th Respondents to take necessary measures within the law to prevent the escalation of the human elephant conflict in the area in question and in particular in the Ehetuwewa Divisional Secretariat Division of Ehetuwewa of Galgmuwa, Kurunegala in the North Western Province;
 - d) An Order in the nature of a Mandamus directing the 1st to the 9th Respondents to take necessary measures within the law to have the site restored;
 - e) An Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law preventing the unlawful obstruction of the migration/movement of elephants in the Ehetuwewa area;
 - f) An Order in the nature of a Certiorari quashing the decision of the 9th Respondent to supply electricity to power the electric fence established by the 10th Respondent as aforesaid;
 - g) An Order in the nature of a Prohibition, prohibiting the 9th Respondent from supplying electricity to power the electric fence established by the 10th Respondent as aforesaid;
 - h) An Order in the nature of a Prohibition prohibiting the 1st to 9th Respondents from facilitating the illegal and/or unauthorized and/or unapproved destruction of the forest and obstruction of the migratory routes of the elephants of the Ehetuwewa area.
40. The Petitioners further state that unless an Order is made in the nature of an interim order/stay order staying the 9th Respondent from supplying electricity to power the electric fence established/erected by/or on behalf of the 10th Respondent pending the final determination of this application, irremediable, irreparable and irretrievable damage, loss and harm will be caused to the Petitioners and in particular the 1st and 2nd Petitioners and other affected villagers who are members of the "Parisara Surakum Ekamuthuwa" and would render the final relief sought in this application nugatory.

41. In the circumstances, the Petitioners respectfully state that they are entitled to the relief prayed for and to the prerogative remedies set out in the prayer to the Petition.
42. The Petitioners have not invoked the jurisdiction of Your Lordship's Court in this regard previously.

WHEREFORE, the Petitioners respectfully pray that Your Lordship's Court be pleased to:

- a) Issue notice on the Respondents in the first instance;
- b) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law in respect of the several violations of the provisions of the law;
- c) Make Order in the nature of a Mandamus directing the 1st to the 9th Respondents to take necessary measures within the law to stop the aforesaid destruction of the forest and the environment in violation of the provisions of the law;
- d) Make Order in the nature of a Mandamus directing the 1st to the 9th Respondents to take necessary measures within the law to prevent the escalation of the human elephant conflict in the area in question and in particular in the Ehetuwewa Divisional Secretariat Division of Ehetuwewa of Galgmuwa, Kurunegala in the North Western Province;
- e) Make Order in the nature of a Mandamus directing the 1st to the 9th Respondents to take necessary measures within the law to have the site restored;
- f) Make Order in the nature of a Mandamus directing the 1st to 9th Respondents to take necessary measures within the law preventing the unlawful obstruction of the migration/movement of elephants in the Ehetuwewa area;
- g) Make Order in the nature of a Certiorari quashing the decision of the 9th Respondent to supply electricity to power the electric fence established by the 10th Respondent as aforesaid;
- h) Make Order in the nature of a Prohibition, prohibiting the 9th Respondent from supplying electricity to power the electric fence established by the 10th Respondent as aforesaid;
- i) Make Order in the nature of a Prohibition prohibiting the 1st to 9th Respondents from facilitating the illegal and/or unauthorized and/or unapproved destruction of the forest and obstruction of the migratory routes of the elephants of the Ehetuwewa area;
- j) Make Order in the nature of an interim order/stay order staying the 9th Respondent from supplying electricity to power the electric fence established/erected by/or on behalf of the 10th Respondent pending the final determination of this application;
- k) Grant costs; and
- l) Make Order for such other and further relief as to Your Lordship's Court shall seem meet.

Attorney-at-Law for the Petitioners

Settled By:

Gayani Hewawasan, *Attorney-at-Law*

Sashikala Wijesiriwardena, *Attorney-at-Law*

Anandalal Nanayakkara, *Attorney-at-Law*