

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

In the matter of an application under  
and in terms of Article 17 and 126 of  
the Constitution.

1. Ahamed Lebbe Mohamed  
Saleem,  
No. 96, Kalyana Road,  
Sainthamaruthu 11.

2. Abdul Raheem Mohamed  
Aseem,  
No. 27, Hospital Road,  
Sainthamaruthu 09.

**PETITIONERS**

**S.C.(F/R) Case No.**

Vs.

1. Nimal G. Punchihewa,  
Chairman, Elections Commission

2. S.B. Diwarathne  
Member, Elections Commission.

3. M.M. Mohamed  
Member, Elections Commission

4. K.P.P. Pathirana  
Member, Elections Commission

5. P.S.M. Charles  
Member, Elections Commission.

6. Mr. Saman Sri Ratnayake,  
Commissioner-General of  
Elections.

1st to 6th Respondents all at the  
Election Commission of Sri Lanka,  
Elections Secretariat,  
Sarana Mawatha,  
Rajagiriya.

7. Mr. Mahinda Deshapriya  
Chairman,  
National Delimitation Committee  
on Demarcation of Wards for  
Local Authorities

8. Mr. Jayalath Dissanayake  
Member

9. Mrs. W.M.M.R Adikari  
Member

10. Mr. K. Thavalingam  
Member

11. Mr. I.A. Hameed  
Member

7th to 11th Respondents  
abovenamed all of the  
National Delimitation Committee  
on Demarcation of Wards for  
Local Authorities,  
Surveyor General's Office  
Building,  
Colombo 05.

12. Hon. Dinesh Gunawardena,  
Prime Minister,  
Minister of Public  
Administration, Home Affairs,  
Provincial Councils and Local  
Government,  
Ministry of Public  
Administration, Home Affairs,  
Provincial Councils and Local  
Government,  
Independence Square,  
Colombo 07.

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

14. Mr. J.M.A Douglas  
Ampara District Returning  
Officer,  
District Secretary,  
District Secretariat,  
Ampara.

15. Mr. A.M.K.S. Aththanayake  
Ampara District Assistant  
Returning Officer,  
Assistant Commissioner of  
Elections,  
District Elections Office,  
Ampara.

16. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

RESPONDENTS

**TO HIS LORDSHIP THE CHIEF JUSTICE, AND THEIR LORDSHIPS; THE OTHER HONOURABLE  
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI  
LANKA.**

The Petition of the above-named Petitioners appearing by Ms. Shyamali Liyanage, their  
Registered Attorney-at-Law, state as follows:

**THE PETITIONERS**

1. The Petitioners are citizens of Sri Lanka, and are residents of Sainthamaruthu, a town situated in the Eastern Province within the Ampara District.
2. The Petitioners state that the 1st Petitioner is a Member of the Public Service Commission, and has previously held positions including, Additional Secretary of the Ministry of Law & Order, and University Council Member of the South Eastern University of Sri Lanka. The 1st Petitioner has also served as a Divisional Secretary of Sainthamaruthu, on a special assignment to resettle 815 families who were affected by the tsunami in 2004, where he assisted in establishing the Bolivarian village consisting of approximately 589 housing units for over 650 families.
3. The Petitioners state that the 2nd Petitioner was elected to the Kalmunai Municipal Council in the Local Authorities Elections held in 2018, having secured the highest votes in Ward No. 22 in the Sainthamaruthu Divisional Secretariat Division. The 2nd Petitioner intends to stand for election as a member to the Sainthamaruthu Urban Council.

*True copies of the Petitioners National Identity Cards are annexed hereto marked **P1(a) - (b)** and are pleaded as part and parcel hereof.*

4. The Petitioners state that they are registered voters resident in Sainthamaruthu.

*True copies of the Petitioner's name as contained in the Electoral Register published in the website of the Election Commission is annexed hereto marked **P2(a) and (b)** and is pleaded as part and parcel hereof.*

5. In this application, the Petitioners impugn the decisions of one or more of the Respondents not to call for nominations and to conduct an election of members to the newly constituted Sainthamaruthu Urban Council, in blatant violation of the Petitioners fundamental rights guaranteed under Articles 10, 12(1), 12(2) and 14(1)(a) of the Constitution and the Sovereignty of the People of Sri Lanka which includes Franchise as guaranteed under Article 3 of the Constitution.

6. The Petitioners state that they make this application to Your Lordships' Court for themselves as citizens of Sri Lanka and on behalf of the residents of Sainthamaruthu and in the public interest as this matter relates directly to the Sovereignty of the People and their franchise.

### **THE RESPONDENTS**

7. The 1st Respondent is the Chairman and the 2nd to 5th Respondents are Members of the Election Commission, who are mandated by law *inter alia* to hold free and fair elections for all Local Authorities in Sri Lanka in terms of Articles 103(2), 104(B)(1) and 104 B(2) of the Constitution read with provisions of the Local Authorities Elections Ordinance as amended and the Urban Councils Ordinance as amended.
8. The 6th Respondent is the Commissioner General of Elections appointed by the Election Commission.
9. The 7th Respondent is the Chairman and the 8th to 11th Respondents are members of the National Delimitation Committee on Demarcation of Wards for Local Authorities appointed in terms of Section 3A of the Local Authorities Elections Ordinance as amended.
10. The 12th Respondent is the Honourable Prime Minister and Minister in Charge of Public Administration, Home Affairs, Provincial Councils and Local Government.
11. The 13th Respondent is the Hon. Attorney General, named in accordance with the proviso to Article 35(3) of the Constitution as representative of His Excellency, the President, who is authorised in terms of Section 3C of the Local Authorities Elections Ordinance to publish an Order setting out the number of Wards, the boundaries and names of Wards for each Local Authority.
12. The 14th Respondent is the Ampara District Returning Officer and the 15th Respondent is the Ampara District Assistant Returning Officer and the Returning Officer for 20 of the Local Authorities in the Ampara District including the Kalmunai

Municipal Council for which elections are to be held. The Sainthamaruthu Urban Council falls within the ambit of the Ampara district. However, no Returning officer has been appointed for the said Urban Council.

13. The 15th Respondent is the Hon. Attorney General who is named as a Respondent in terms of Article 134(1) of the Constitution and the Rules of Your Lordship's Court.

#### **THE ESTABLISHMENT OF THE SAINTHAMARUTHU URBAN COUNCIL**

14. The Petitioners state that Sainthamaruthu is a coastal town situated in the Eastern Province, in the Administrative District of Ampara having a population of over 25,000 people. The Sainthamaruthu Divisional Secretariat Division consists of 17 Grama Niladhari Divisions.

15. The Petitioners state that as far back as 1897, the town of Sainthamaruthu was considered by the State as a separate village with clearly demarcated boundaries, as contained in Ceylon Government Gazette No. 5459 of 19th February 1897.

*A true copy of the Ceylon Government Gazette No. 5459 of 19th February 1897 is annexed hereto marked as **P3** and is pleaded as part and parcel hereof.*

16. The Petitioners state that subsequently, in terms of Ceylon Government Gazette No. 8210 dated 27th March 1936, Sainthamaruthu was declared a Village Council area and remained so until 1987. The Petitioners state further that a sub-office of District Development Council was established in Sainthamaruthu in 1978.

*A true copy of the Ceylon Government Gazette No. 8210 dated 27th March 1936 is annexed hereto marked as **P4** and is pleaded as part and parcel hereof.*

17. The Petitioners state that in 1987, through the enactment of the Pradeshiya Sabha Act, No. 15 of 1987 consequent to the 13th Amendment to the Constitution, Sainthamaruthu was amalgamated with other villages of the Kalmunai Town Council

area in order to establish the Kalmunai Pradeshiya Sabha by Notice published in Extraordinary Gazette No. 453/19 dated 12th May 1987.

*A true copy of the Extraordinary Gazette No. 453/19 dated 12th May 1987 is annexed hereto marked as **P5** and is pleaded as part and parcel hereof.*

18. The Petitioners state that Sainthamaruthu was therefore previously under the local authority limits of the Kalmunai Pradeshiya Sabha, which was later upgraded to become the Kalmunai Municipal Council on or about 15th April 2002.

19. The Petitioners however state that the public services expected of a local authority were not adequately delivered to the people of Sainthamaruthu by the Kalmunai Municipal Council and therefore there was a growing need to establish a separate local authority comprising of representatives from Sainthamaruthu to fulfil the needs and aspirations of the local people.

20. The Petitioners state that as an initial step, the Government took steps to establish a Divisional Secretariat for Sainthamaruthu with effect from 4th February 2001 by way of Extraordinary Gazette No. 1466/18 dated 13th October 2006.

*A true copy of the Extraordinary Gazette No. 1466/18 dated 13th October 2006 is annexed hereto marked as **P6** and is pleaded as part and parcel hereof.*

21. The Petitioners state that in terms of Article 27(4) of the Constitution, the State was obliged to strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralising the administration and by affording all possible opportunities to the People to participate at every level in national life and in government.

22. The Petitioners accordingly state that in the year 2017, two residents of Sainthamaruthu filed a Fundamental Rights Application bearing case no. SCFR 437/2017 in the Supreme Court seeking *inter alia* for a direction on the Minister of



Provincial Councils and Local Government to establish a new Local Authority for Sainthamaruthu.

*A certified copy of the Petition and annexures in SCFR 437/2017 is annexed hereto and compendiously marked as **P7** and is pleaded as part and parcel hereof.*

23. The Petitioners state that pursuant to the institution of the said case and extensive lobbying by residents of Sainthamaruthu, the Minister of Public Administration, Home Affairs, Provincial Councils and Local Government issued an Order published in Gazette Extraordinary 2162/50 dated 14th February 2020, under and in terms of sub sections (a), (b) and (d) of Section 284 of the Municipal Councils Ordinance (Chapter 252), dissolving the Kalmunai Municipal Council in order to vary the limits of the Kalmunai Municipal Council for the purpose of constituting new Local Authorities with effect from 19th March 2022.

*A true copy of the Gazette Extraordinary 2162/50 dated 14th February 2020 issued under Section 284 of the Municipal Council Ordinance is annexed herewith marked **P8** and is pleaded as part and parcel hereof.*

24. The Petitioners state that the Minister of Public Administration, Home Affairs, Provincial Councils and Local Government in the same Order made under Gazette Extraordinary 2162/50 dated 14th February 2020, under and in terms of Sections 2, 3 and 9 of the Urban Councils Ordinance (Chapter 255) declared the administrative limits of the Sainthamaruthu Town and constituted the town as the “Sainthamaruthu Urban Council”. The Minister also appointed the 20th of March 2022 as the date on which the term of office of the Urban Council will commence.

25. The Petitioners state that on the 18th of February 2020, the Hon. Attorney General informed the Supreme Court in case No. SCFR 437/2017 that a Gazette Notification had been issued making Sainthamaruthu a Local Authority. In view of the same, the

Petitioners in that case moved Your Lordship's Court to terminate proceedings as the said Petitioners had been given the substantive relief prayed for in the Petition.

*A true copy of the Order of Your Lordships' Court in SCFR 437/2017 dated 18.02.2020 is annexed herewith marked **P9** and is pleaded as part and parcel hereof.*

26. For purposes of full disclosure, the Petitioners state that they were made aware through news reports soon thereafter that the Cabinet of Ministers had taken a decision not to proceed with the constitution of the Sainthamaruthu Urban Council. However, to the best of the Petitioners knowledge, there was no subsequent Order made by the Minister of Local Government revoking the Order to constitute the Sainthamaruthu Urban Council which was published in Gazette Extraordinary No. 2162/50 dated 14th February 2020 marked **P8**.

*A true copy of a news report dated 20th February 2020 is annexed hereto marked **P10** and a true copy of extracts from a Cabinet Memorandum and Cabinet decision is compendiously marked **P11** and is pleaded as part and parcel hereof.*

27. The Petitioners therefore state that the Order constituting the Sainthamaruthu Urban Council, published in Gazette Extraordinary No. 2162/50 dated 14th February 2020 is valid and operative to date and the said Urban Council had commenced its term on 20th March 2022 in terms of Section 9 of the Urban Councils Ordinance (as amended).

28. The Petitioners thus had a legitimate expectation to participate in the democratic structure of local government through the exercise of their franchise and to duly elect their representatives to the Sainthamaruthu Urban Council.

#### **FAILURE TO ASSIGN WARDS TO THE SAINTHAMARUTHU URBAN COUNCIL**

29. The Petitioners state that in terms of Section 3B of the Local Authorities Elections Ordinance as amended, the National Delimitation Committee, was required to make

recommendations to the Minister for the division of each local authority area into wards, to determine the boundaries of each ward and assign a name and number to each such ward.

30. The Petitioners state that in terms of Section 3C of the Local Authorities Ordinance, upon receipt of the report by the National Delimitation Committee, the Minister was required to submit this report with his recommendation to the President. The President was thereafter required by Order published in the Gazette to publish the number of wards, the boundaries, names, number assigned to each ward so created in respect of each local authority.

31. The Petitioners state that no wards have been designated for the Sainthamaruthu Urban Council area to date notwithstanding the same having been duly constituted.

32. The Petitioners state that the President, in terms of Section 3C of the Local Authorities Elections Ordinance, by Order published in Gazette Extraordinary No. 1928/26 dated 21st August 2015, had previously assigned Wards for Local Authorities including the Kalmunai Municipal Council. In terms of the said Order, the 17 Grama Niladhari divisions of Sainthamaruthu had been included as Wards No. 18, 19, 20, 21, 22 and 23 of the Kalmunai Municipal Council.

*A true copy of Order of the President published in Gazette Extraordinary No. 1928/26 dated 21st August 2015 is annexed hereto marked as **P12** and the relevant Order relating to the Kalmunai Municipal Council area is marked as **P12(a)** and pleaded as part and parcel hereof.*

33. The Petitioners state that the Ward Map for the Kalmunai Municipal Council also shows how the Sainthamaruthu Grama Niladhari divisions have been included in the Kalmunai Municipal Council area as Wards 18 to 23.

*A true copy of the Ward Map for the Kalmunai Municipal Council is annexed hereto marked **P12(b)** and **P12(c)** and is pleaded as part and parcel hereof.*

34. The Petitioners state that the National Delimitation Committee therefore have a duty to submit a report recommending the assignment of wards to the Sainthamaruthu Urban Council and the Kalmunai Municipal Council.
35. The Petitioners state that upon the recommendation of the Minister, His Excellency the President is required to publish an Order setting out the number of wards, the boundaries, the name and number assigned to each ward in respect of the Sainthamaruthu Urban Council and the Kalmunai Municipal Council.
36. The Petitioners state that the failure of the State, including one or more of the Respondents, to ensure the division of the Sainthamaruthu Urban Council area into Wards and to exclude the 17 Grama Niladari divisions of Sainthamaruthu as Wards 18 to 23 from the Kalmunai Municipal Council and redesignate the Wards for the said Municipal Council amounts to a violation of the Petitioners fundamental rights guaranteed under Articles 10, 12(1), 12(2), and 14(1)(a) of the Constitution.

**FAILURE AND NEGLECT TO HOLD AN ELECTION OF MEMBERS TO THE SAINTHAMARUTHU URBAN COUNCIL**

37. The Petitioners state that on the 21st of December 2022, the Election Commission appointed Returning Officers and Assistant Returning Officers for each Administrative District for the purposes of conducting the Local Authorities election.

*A true copy of Gazette Extraordinary No. 2311/26 dated 21st December 2022 is annexed hereto marked **P13** and is pleaded as part and parcel hereof.*

38. The Petitioners state that on the 4th of January 2023, the Election Commission announced that Notices had been published calling for Nominations to elect members to 340 Local Authorities (excluding the Elpitiya Pradeshiya Sabha) under and in terms of Section 26 of the Local Authorities Elections Ordinance, as amended.

The Petitioners state that to the best of their knowledge the term of the Elpitiya Pradeshiya Sabha is yet to expire.

*True copies of the Notice and Press Release of the Election Commission dated 4th January 2023 are annexed hereto marked **P14(a)** and **P14(b)** respectively and are pleaded as part and parcel hereof.*

39. The Petitioners state that in terms of the said Notice, cash deposits were to be accepted between 4th January and 20th January 2023 and Nominations for elections to the 340 Local Authorities were to be accepted from 18th January to 12 noon on the 21st of January 2023.

40. The Petitioners state that by Gazette Extraordinary No. 2312/44 dated 29th December 2022, the Election Commission had also published a Notice under Sections 27(E), 28(2), 28(2)(A), 28(2)(B), and 29(1)(A)(I)(II) of the Local Authorities Elections Ordinance as amended, setting out *inter alia* the number of candidates including the number of women candidates to be nominated for each ward of each Local Authority in the first Nomination paper and the Supplementary Nomination Paper and the sum of money to be deposited for the purpose of election to each Local Authority.

*A true copy of Gazette Extraordinary No. 2312/44 dated 29th December 2022, is annexed hereto marked **P15** and is pleaded as part and parcel hereof.*

41. The Petitioners state that to their utter shock and dismay, the Sainthamaruthu Urban Council had been excluded from the list of Local Authorities in the Ampara District for which elections were to be held.

42. The Petitioners state that they also became aware that in terms of the Gazette Notification marked **P15**, the Election Commission was to proceed to hold an election for the Kalmunai Municipal Council based on the Wards declared for the said Municipal Council by the President under Section 3C of the Local Authorities

Elections Ordinance as amended and published in the Gazette Extraordinary dated 21st August 2015 marked **P12**.

43. This was notwithstanding the fact that pursuant to the Order made by the Minister in charge of the subject of Local Government in terms of sub sections (a), (b) and (d) of Section 284 of the Municipal Councils Ordinance and published in the Gazette Extraordinary on 14th February 2020 marked **P8**, the Kalmunai Municipal Council was dissolved for the purposes of re-designating its boundaries to exclude Sainthamaruthu and by a further Order made under Sections 2,3 and 9 of the Urban Councils Ordinance, the Sainthamaruthu Urban Council was constituted declaring the 17 Grama Niladaris Divisions of Sainthamaruthu, as the Sainthamaruthu Urban Council area.

44. The Petitioners therefore state that the decision of the Election Commission to hold an election to elect members to the Kalmunai Municipal Council with the inclusion of Wards No. 18 to 23, which are Wards comprising of the 17 Grama Niladari Divisions of Sainthamaruthu which now form part of the Sainthamaruthu Urban Council area is arbitrary, illegal, ultra vires, capricious and in complete violation of the legitimate expectation of the Petitioners and other residents of Sainthamaruthu to elect their representatives to the Sainthamaruthu Urban Council.

45. The Petitioners state that they have also become aware that the Election Commission had failed and neglected to appoint a Returning Officer for the Sainthamaruthu Urban Council to elect members to the said Urban Council, even though the Election Commission had appointed a Returning Officer for all other Local Authorities excluding the Elpitiya Pradeshiya Sabha.

*A true copy of Gazette Extraordinary No. 2311/27 dated 21st December 2022 is annexed hereto marked **P16** and is pleaded as part and parcel hereof.*

46. The Petitioners state that the establishment and existence of the Sainthamaruthu Urban Council has been recognised by Your Lordships' Court in S.C.(F/R) No.

437/2017 and thus there is no legitimate or other plausible reason for the Elections Commission to have decided not to call for nominations and hold elections to elect members to the Sainthamaruthu Urban Council.

47. The Petitioners state that the decision of the 1st to 5th Respondents as the Election Commission and the 14th Respondent as the Ampara District Returning Officer not to call for nominations and hold an election to elect members to the Sainthamaruthu Urban Council but instead to call for elections for the Kalmunai Municipal Council and include all 17 Grama Niladari Divisions of Sainthamaruthu as Wards 18 to 23 notwithstanding that the said Wards now fall within the Sainthamaruthu Urban Council area is arbitrary, illegal, capricious, discriminatory and amounts *inter alia* to a violation of the Petitioners fundamental rights and their legitimate expectation to elect their representatives to the Sainthamaruthu Urban Council .

#### **VIOLATION OF THE FUNDAMENTAL RIGHTS OF THE PETITIONERS**

48. The Petitioners state that one or more or all of the Respondents have failed and neglected to respect, secure and advance the fundamental rights of the Petitioners as guaranteed under Articles 10, 12(1), 12(2) and 14(1)(a) of the Constitution and have also acted in complete breach of the public trust reposed in them and in violation of the Directive Principles of State Policy to strengthen and broaden the democratic rights of the People by affording all possible opportunities for People to participate at every level in national life and in Government.

49. The Petitioners state Your Lordship's Court has held in **Mohamed Hussain Hajjar Muhammad and others v. Election Commission of Sri Lanka [SCFR 35/2016; SC Minutes of 15th December 2017, that:**

*"Franchise is a fundamental right enjoyed by people. According to Article 3 of the Constitution "In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of the government, fundamental rights and the franchise". Franchise is a fundamental right recognized under Article 10 and*

*14(1) of the Constitution. The failure to hold elections on the due date or postponing is a violation of a fundamental rights of the people. Under Article 4(d) of the Constitution the fundamental rights which are by Constitution declared and recognized shall be respected, secured and advanced by all organs of the Government and shall not be abridged, restricted or denied save in the manner and to the extent hereinafter provided. In the present case the legislature as well as the executive had violated this Article. Local authorities has a long history and it plays an important role at the grassroot level. Its functions are regulation, control and administration of all matters relating to the public health, public utility services and public thoroughfares and generally with the protection and promotion of comfort, convenience and welfare of the people and the amenities of the town/village. It is stated that its activities covers from the cradle to the grave. Some local authorities have maternity clinics and burial grounds/ cemeteries are controlled and administered by the Local Authorities. By delay in holding elections people are deprived of representatives who could have addressed their grievances and attend to their welfare needs. According to the Local Authorities Ordinance, the Election Commissioner/Commission is duty to bound to hold elections and it is his or its statutory duty. “*

*A copy of the judgment of Your Lordships’ Court **SCFR 35/2016; SC Minutes of 15th December 2017** is annexed hereto marked as **P17** and is pleaded as part and parcel hereof.*

50. The Petitioners state that Your Lordships’ Court has also held in **Karunathilake and another v. Dayananda Dissanayake, Commissioner of Elections and others [1999] 1 Sri LR 157 at 174** that:

*“the silent and secret expression of a citizen’s preference as between one candidate and another by casting his vote is no less an exercise of the freedom of speech and expression, than the most eloquent speech from a political platform. To hold otherwise is to undermine the very foun-dations of the Constitution. The petitioners are citizens and registered voters, and the 1st respondent's conduct has resulted in a*



*grossly unjustified delay in the exercise of their right to vote, in violation of Article 14(1)(a)."*

51. The Petitioners therefore state that:

- (a) The failure to publish the number of wards, the boundaries, names and number for each ward for the Sainthamaruthu Urban Council under and in terms of Sections 3B and 3C of the Local Authorities Elections Ordinance as amended;
  - (b) The failure to publish the new number of wards, the boundaries, names and number assigned to each ward for the Kalmunai Municipal Council, excluding the 17 Grama Niladari Divisions of Sainthamaruthu which constitute the Sainthamaruthu Urban Council area, under and in terms of Sections 3B and 3C of the Local Authorities Elections Ordinance as amended;
  - (c) The failure to take steps according to law to call for nominations and hold an election to elect members to the Sainthamaruthu Urban Council despite having taken steps to call for nominations and hold Local Authority elections for 340 local bodies excluding the Elpitiya Pradeshiya Sabha;
  - (d) The decision to call for nominations and hold an election for the Kalmunai Municipal Council in the Ampara District based on the Wards declared for the said Municipal Council by the President under Section 3C of the Local Authorities Elections Ordinance as amended and published in the Gazette Extraordinary dated 21st August 2015 marked **P12**, which includes 17 Grama Niladari Divisions of Sainthamaruthu which now falls within the Sainthamaruthu Urban Council area; and
  - (e) The decision not to appoint a Returning Officer for the Sainthamaruthu Urban Council or the failure to do so,
- by one or more or all of the Respondents, has infringed and is also a continuing infringement of the Fundamental Rights of the citizens of Sri Lanka, including that of

the Petitioners, guaranteed under Articles 10, 12(1), 12(2) and 14(1)(a) of the Constitution.

52. The Petitioners state that Article 4(d) of the Constitution specifically requires that the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all organs of Government and shall not be abridged, restricted or denied save in the manner and to the extent provided in the Constitution. However, the Petitioners state that the Respondents have failed and neglected to respect, secure and advance the fundamental rights of the Petitioners and their franchise.

53. The Petitioners state that thus and otherwise, when exercising Your Lordships' jurisdiction under Article 126, Your Lordships have always granted equitable relief in the best interest of the People.

54. The Petitioners state that Your Lordships' Court is empowered to take judicial notice of all matters of fact pleaded, and that Your Lordships' Court has always upheld its duty to protect the Rule of Law by making appropriate and timely orders that as and where necessary, to guide the direction of all organs of State in a manner that protects and advances the Rule of Law [*vide – Noble Resources International Pte Limited v. Minister of Power and Renewable Energy [SCFR 394/2015; SC Minutes of 24<sup>th</sup> June 2016]*].

55. The Petitioners further state that the 1st - 5th Respondents have a legal duty to take all necessary steps under the Constitution and the Local Authorities Elections Ordinance as amended to hold the Local Authorities Elections in a lawful manner for all local bodies without discrimination. In the present circumstances, a cause of action has arisen in favour of the Petitioners to seek the immediate intervention of Your Lordship's Court to compel the Respondents to perform their duties as required by law and ensure that the franchise of the people is safeguarded.

56. The Petitioners state that they have become aware through news reports that the date for the conduct of the Local Authorities Election is to be scheduled to a date prior to the 15th of March 2023 and is to be held on a single date throughout the Country in order to reduce the overall expenditure of conducting the said elections due to the present financial crisis.

*A true copy of a newspaper report in relation to the estimated cost of conducting the Local Authorities election is annexed hereto marked **P18** and is pleaded as part and parcel hereof.*

57. The Petitioners therefore respectfully seek an urgent direction from Your Lordship's Court for a direction on the members of the Election Commission to hold the election for the Sainthamaruthu Urban Council also on the same date as the election of the other 340 local bodies.

58. The Petitioners state that grave and irremediable harm would be caused to the Petitioners, the electors of Sainthamaruthu and the citizens of Sri Lanka unless Your Lordship's Court grants interim relief immediately suspending the operation of the Gazette Notification No. 2312/44 dated 29th December 2022 marked **P15**, the Notice calling for Nominations to the Kalmunai Municipal Council, and the decision to call for nominations and hold elections for 340 Local Authorities excluding the Elpitiya Pradeshiya Sabha without calling for nominations for the election of members to the Sainthamaruthu Urban Council until the final hearing and determination of this application.

59. The Petitioners are advised to state that the aforesaid actions of the Respondents amount to *executive and/or administrative* action within the meaning of *Articles 17 and 126* of the Constitution.

60. The Petitioners state that they have not invoked the jurisdiction of Your Lordships' Court previously in respect of matters pleaded herein.

61. The Petitioners also respectfully seek the indulgence of Your Lordship's Court to reserve their rights, considering the grave urgency of the instant application, the limited material readily available in the public domain and the severe time restraints, to:

- (a) Amend pleadings, add any person/persons as parties to this application in the event further material revealing their complicity of the actions complained in the preceding paragraphs;
- (b) Tender any further evidence or affidavits and documents as necessary substantiating the averments contained above.

62. The Petitioners tender the affidavit of the **Petitioners** in support of the matters set out in this Petition.

**WHEREFORE The Petitioners Most Respectfully Pray That Your Lordships' Court Be Pleas**

**To:**

- a) Grant the Petitioners *leave to proceed* with this application in the first instance;
- b) Declare that the Petitioners' Fundamental Rights guaranteed under Articles 10, 12(1), 12(2) and 14(1)(a) of the Constitution have been infringed and are continuing to be infringed by one or more or all of the Respondents;
- c) Grant and issue the following interim orders until the final hearing and determination of this application;
  - i) Suspend the operation of the decision as contained in the Gazette Extraordinary No. 2312/44 dated 29th December 2022 marked **P15** hereto;

OR IN THE ALTERNATIVE

Partially suspend the operation of the decision as contained in the Gazette Extraordinary No. 2312/44 dated 29th December 2022 marked **P15** hereto relating to Local Authorities in the Ampara District;

ii) Call for and suspend the Notice and the decision to call for Nominations and Cash deposits for all Local Authorities in the Administrative District of Ampara until the publication of the number of Wards, the boundaries, names and numbers assigned to such Wards created for the Kalmunai Municipal Council and the Sainthamaruthu Urban Council under and in terms of Section 3C of the Local Authorities Elections Ordinance as amended;

OR IN THE ALTERNATIVE

Call for and suspend the Notice and the decision to call for Nominations and Cash deposits for the Kalmunai Municipal Council until the publication of the number of Wards, the boundaries, names and numbers assigned to such Wards created for the Kalmunai Municipal Council and the Sainthamaruthu Urban Council under and in terms of Section 3C of the Local Authorities Elections Ordinance as amended;

iii) Suspend the acceptance of Nominations and Cash Deposits in relation to the election of members to the 20 Local Authorities from the Ampara District referred to in the Gazette marked **P15** ;

iv) Call for and suspend the Notice and decision to call for Nominations and Cash deposits from 340 Local Authorities in 25 Administrative Districts as referred to in the Notice published on 4th January 2023 marked **P14(a) and (b)**;

v) Make order directing the 14th and 15th Respondent not to take any steps whatsoever to accept nominations or cash deposits or from publishing a notice for the date of the poll for the election of members to all Local Authorities within the Ampara Administrative District;

d) Call for and set aside the decision of the 1st to 5th Respondents as borne out by the document marked **P15** to hold elections for 340 Local Authorities (excluding the Elpitiya Pradeshiya Sabha) without holding elections for the Sainthamaruthu Urban Council;

OR IN THE ALTERNATIVE

Call for and set aside the decision of the 1st - 5th Respondents as borne out in the document marked **P15** to hold elections for 20 Local Authorities in the Ampara District without holding elections for the Sainthamaruthu Urban Council;

e) Set aside the decision as contained in the Gazette Extraordinary No. 2312/44 dated 29th December 2022 marked **P15** hereto;

OR IN THE ALTERNATIVE

Partially set aside the decision as contained in the Gazette Extraordinary No. 2312/44 dated 29th December 2022 marked **P15** hereto in respect of all Local Authorities in the Ampara District;

f) Call for and set aside the Notice and the decision to call for Nominations and Cash deposits for all Local Authorities in the Administrative District of Ampara;

OR IN THE ALTERNATIVE

Call for and set aside the Notice and the decision to call for Nominations and Cash deposits for the Kalmunai Municipal Council;

- g) Direct the 7th to 11th Respondents to prepare a report and recommend to the 12th Respondent the division of the Sainthamaruthu Urban Council area and the Kalmunai Municipal Council area into Wards in terms of Section 3B of the Local Authorities Elections Ordinance;
- h) Direct the 12th Respondent upon receipt of the report of the 7th to 11th Respondent, to recommend to His Excellency the President that wards be assigned to the Sainthamaruthu Urban Council and the Kalmunai Municipal Council in terms of Section 3C(1) of the Local Authorities Elections Ordinance;
- i) Direct the 13th Respondent to advise His Excellency the President, upon receipt of the recommendation of the 12th Respondent, to publish the number of wards, the boundaries, names, number assigned to each ward so created in respect of the Sainthamaruthu Urban Council and the Kalmunai Municipal Council in terms of Section 3C(2) of the Local Authorities Election Ordinance;
- j) Direct the 1st - 5th Respondents to publish a new Notice under Sections 27E, 28(2), 28(2)(A), 28(2) (B) and 29(1)(A)(I)(II) of the Local Authorities Elections Ordinance applicable to all Local Authorities for which elections are to be held including the Sainthamaruthu Urban Council and the Kalmunai Municipal Council specifying the number of candidates and the number of women candidates to be included in the first and supplementary list, the total number of candidates to be nominated and the amount of cash to be deposited;
- k) Direct the 1st to 5th Respondents to appoint a Returning Officer for the Sainthamaruthu Urban Council;
- l) Direct the 1st to 5th Respondents to take all necessary steps according to law to expeditiously ensure that Nominations and Cash deposits for elections to all Local Authorities are called after the publication of the number of Wards, the boundaries, names and numbers assigned to such Wards created for the Kalmunai Municipal

Council and the Sainthamaruthu Urban Council under and in terms of Section 3C of the Local Authorities Elections Ordinance as amended;

- m) Subject to prayer (i) above, direct the 1st to 5th Respondents, their agents and authorised representative to take all steps necessary according to law to expeditiously conduct a free and fair election for all Local Authorities including the Sainthamaruthu Urban Council and the Kalmunai Municipal Council with the exception of the Elpitiya Pradeshiya Sabha on one single day;
- n) Subject to prayer (i) above, direct the 14th and 15th Respondents to take all steps necessary according to law to call for nominations and expeditiously conduct a free and fair election for all Local Authorities in the Ampara administrative district including the Sainthamaruthu Urban Council and the Kalmunai Municipal Council;
- o) For Costs; and
- p) For such other and further relief as shall seem meet to Your Lordship's Court.

**Attorney-at-Law for the Petitioners**



## **Annexures to the Petition**

P1(a): Petitioners' National Identity Cards

P2(a): Petitioners' name as contained in the Electoral Register published in the website of the Election Commission

P3: Ceylon Government Gazette No. 5459 of 19th February 1897

P4: Ceylon Government Gazette No. 8210 dated 27th March 1936

P5: Extraordinary Gazette No. 453/19 dated 12th May 1987.

P6: Extraordinary Gazette No. 1466/18 dated 13th October 2006

P7: Petition and annexures in SCFR 437/2017.

P8: Gazette 2162/50 dated 14th February 2020

P9: Order of Your Lordships' Court in SCFR 437/2017 dated 18.02.2020

P10: News report dated 20th February 2020 (rumours on suspension of gazette)

P11: Cabinet Memorandum and Decisions

P12: Gazette Extraordinary No. 1928/26 dated 21st August 2015

P12(a) : Order relating to Kalmunai

P12(b): Ward Map for the Kalmunai Municipal Council

P12(c): Ward Map for the Kalmunai Municipal Council

P13: Gazette Extraordinary No. 2311/26 dated 21st December 2022

P14 (a) and (b) : Notice and Press Release of the Election Commission dated 4th January 2023

P15: Gazette Extraordinary No. 2312/44 dated 29th December 2022

P16: Gazette Extraordinary No. 2311/27 dated 21st December 2022

P17: Judgement of Your Lordships' Court SCFR 35/2016; SC Minutes of 15th December 2017

P18: Daily Mirror Article dated 5th January 2023 titled "EC to restrict cost of LG Polls"