

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

In the matter of an Appeal against the order dated 26/02/2018 in the Provincial High Court of the Southern Province in The Southern Province (Holden in Galle) Writ Application Number No. Writ 38/2018

Benthota Multi- Purpose Co- Operative Society Limited, Elpitiya Road, Bentota.

Petitioner

C.A. (PHC) Appeal No. 64/2018  
PHC Galle Application No. Writ 38/2018

-Vs-

1. Commissioner / Registrar of Cooperative Development, - Southern Province, No.147/3, Pettigalawata, Galle.
2. Assistant Commissioner of Co-operative Development - Galle, Cooperative Development Assistant Commissioner's Office, No. 111, Pettigalawata, Galle.
3. I.G Wimal Dharmasiri, Co-Operative Development Officer (Head Office) No. 147/3, Pettigalawata, Galle.
4. N.T. Thanuja Nilanthi, Cooperative Development Officer, Cooperative Development Assistant Commissioner's Office, No. 111, Pettigalawata, Galle.
5. Jeewanthi Gunasekara

Co-operative Development Officer,  
Cooperative Development Assistant  
Commissioner's Office,  
No. 111, Pettigalawata, Galle

Respondents

And now between

1. Benthota Multi-Purpose Co-Operative  
Society Limited, Elpitiya Road, Bentota.

Petitioner-Appellant

-Vs-

1. Commissioner / Registrar of Cooperative  
Development, - Southern Province, No.  
147/3, Pettigalawata, Galle.
2. Assistant Commissioner of Co-operative  
Development - Galle,  
Cooperative Development Assistant  
Commissioner's Office,  
No. 111, Pettigalawata, Galle.
3. I.G Wimal Dharmasiri,  
Co-operative Development Officer (Head  
Office),  
No. 147/3, Pettigalawata, Galle.
4. N.T. Thanuja Nilanthi, Cooperative  
Development Officer,  
Cooperative Development Assistant  
Commissioner's Office,  
No. 111, Pettigalawata, Galle
5. Jeewanthi Gunasekara  
Cooperative Development Officer,  
Cooperative Development Assistant  
Commissioner's Office,  
No. 111, Pettigalawata, Galle.

Before: **Damith Thotawatte, J.**

**Sarath Dissanayake, J.**

Counsels: Chandana Wijesooriya with Chavindya Weerasinghe, instructed by  
Wathsala Dulanjani for Petitioner-Appellant

Shemanthi Dunuwille SC for the Respondents-Respondents

Argued : 15-05-2025

Written submissions  
tendered on: 11-10-2024, 12-06-2025 By the Petitioner-Appellant

Judgment Delivered: 05-08-2025

**Thotawatte J.,**

This is an appeal filed by the Bentota Multi-Purpose Co-operative Society Limited (hereinafter sometimes referred to as the “Appellant Society”) against the order in High Court Writ Application No. 38/2018 of the learned High Court Judge of the Southern Province holden in Galle dated 26<sup>th</sup> February 2018.

Writ Application No. 38/2018 stems from a previous writ application No. 02/2009 filed by the same Appellant Society in the High Court regarding almost the same issue. writ application No. 02/2009 was filed seeking to quash the letter dated 16<sup>th</sup> January 2009 issued by Commissioner of Cooperative Development, authorizing a five-member team to inspect the books of the Appellant Society in terms of Section 46 (1) of the Co-operative Societies Law No. 5 of 1972 as amended (hereinafter sometimes referred to as the “The Act”) preventing the said team from carrying out the inspection.

On 13<sup>th</sup> January 2011, writ application No. 02/2009 was terminated (proceedings annexed marked Pe4a) by the learned High Court Judge as the parties came to a settlement on the 1<sup>st</sup> Respondent Commissioner agreeing to withdraw the letter dated 16<sup>th</sup> January 2009 and to appoint a new team of officers excluding the previous

appointees to inspect the books of the Co-operative Society in terms of Section 46 (1) of the Act.

Subsequent to the settlement dated 13<sup>th</sup> January 2011, the 2<sup>nd</sup> Respondent, Assistant Commissioner of Co-operative Development-Galle, acting under the power delegated by the 1<sup>st</sup> Respondent under gazette No. 1589/19, has issued a letter dated 15<sup>th</sup> December 2011 (annexed marked Pe7) authorizing the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to inspect the books of the Co-operative Society.

In response to the objections of the Chairman of the Co-operative Society to letter Pe7, the 2<sup>nd</sup> Respondent has sent letter dated 22<sup>nd</sup> February 2012 (annexed marked Pe9) retreating that she has received the power to authorize 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents under gazette No. 1589/19 and, also by the letter dated 16<sup>th</sup> November 2011 of the Commissioner of Co-operative Development.

However, it appears that after arrival at the office of the Appellant Society, due to the protests by the Chairman, the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents had departed without conducting the authorized inspection.

Thereafter, the Appellant Society has received a copy of a letter dated 1<sup>st</sup> November 2017 (annexed marked Pe12), which has been addressed to 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents by the 1<sup>st</sup> Respondent, authorizing them to conduct an inspection of the books of the Appellant Society and report their observations with regard to the specific areas mentioned in the said letter.

It appears that thereafter 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents had begun their inspection under the authorization given by letter Pe12 and the specified period for the inspection mentioned in the letter Pe12 has also been extended at the request of the 3<sup>rd</sup>–5<sup>th</sup> Respondents by the letter annexed marked Pe16.

On 17<sup>th</sup> November 2017, the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, making an entry in the log book of the Co-operative Society has specified the documents needed by them and also directed the office bearers of the Co-operative Society to hand over the said documents before the 30<sup>th</sup> November 2017 (annexed marked Pe14).

On 22<sup>nd</sup> January 2017 (should be 22<sup>nd</sup> January 2018), the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents had made another entry in the Co-operative Society's log book (annexed marked Pe18) and had requested additional documents whilst stating inter alia that the previous request had not been complied with properly.

It is unclear whether or not the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents had given their final observations to the 1<sup>st</sup> Respondent as per the assignment; however letter dated 30<sup>th</sup> January 2018 (marked as Pe24) indicates that the authorized inspection has failed due to activities of the Co-operative Society's chairman and its board of directors.

It is the position of the Co-operative Society inter alia that;

- The letter Pe12 is contrary to the terms of the settlement dated 13<sup>th</sup> January 2011.
- A letter such as Pe12 cannot be issued without withdrawing the previous letter Pe7 dated 15<sup>th</sup> December 2011
- The appointment (authorization) of 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents is ultra vires and contrary to the statute.
- The 1<sup>st</sup> Respondent in issuing Pe12 has acted arbitrarily, capriciously, without administrative fairness and purely out of malice towards the Co-operative Society.

The Appellant Society has filed Writ No. 38/2018 in the High Court of Galle on 06<sup>th</sup> February 2018, inter alia, seeking a writ of certiorari to quash the decisions reflected in Pe12 and its operation. Further, a Writ of Prohibition preventing the Respondents from taking any further steps to examine the books of the Co-operative Society under the decision taken by the 1<sup>st</sup> Respondent to examine them.

Upon the application being supported, the learned High Court Judge has dismissed the writ application No. 38/2018, refusing to issue notices on the Respondents.

Being dissatisfied by the refusal of the Provincial High Court to issue formal notices, the Co-operative Society has filed this instant appeal seeking inter alia the following reliefs;

- i) Set aside the said order dated 26/02/2018 of the learned Judge of the Provincial High Court of the Southern Province (holden in Galle)
- ii) Direct the learned Judge of the High Court to issue notice on the Respondent-Respondents  
or in the alternative  
grant reliefs as prayed for in the prayer to the Petitioner Appellant in the said PHC Galle Application No. Writ 38/2018

In determining that, the averments disclosed no sufficient grounds to issue notice on the Respondents, the Honorable High Court Judge has duly examined each ground advanced by the Appellant Society and rejected them, providing reasons for such rejection.

However, the assertion of the Appellant Society that the impugned letter Pe12 dated 01<sup>st</sup> November 2017 cannot be issued without withdrawing the previous letter Pe7 dated 15<sup>th</sup> December 2011 appears not to have been considered by the Honorable High Court Judge.

In the event the Appellant Society wanted to challenge the Pe12 on the grounds mentioned, they should have challenged it when the Appellant Society initially received notice of the issuance of the Pe12 letter. The Appellant Society, however much reluctant it may have been, has allowed inspections to commence and to proceed under the authority of the letter Pe12. An attempt to quash the Pe12 letter by way of a writ application had been made only after the 1<sup>st</sup> Respondent issued Pe24 dated 30<sup>th</sup> January 2018, informing all General Assembly representatives and Regional Committee representatives' violations and misconduct of the Co-operative Society.

The grounds upon which the Appellant Society has applied for Judicial review of the decision reflected in Pe12 are the same as those that existed at the time the Appellant Society received notice of Pe12 via a copy of the said letter. The Appellant Society could have promptly acted to quash the decision. However, for reasons that had not been explained, the Appellant Society has omitted to do so and has further complied with the decision reflected in the letter Pe12 to a certain extent. Although the period of the delay can be considered relatively short, it should be considered together with the circumstances and the conduct of the Appellant Society. Further, and most importantly, the fact that no explanation had been given for the delay.

In *Jayaweera Vs. Asst. Commissioner of Agrarian Services Ratnapura and another*<sup>1</sup> Jayasuriya, J. held that " A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

In *Issadeen V The Commissioner of National Housing and others*<sup>2</sup> where it was held that the appellant was guilty of laches as he had failed to adduce any acceptable reason to excuse the delay, Bandaranayake, J has stated;

"I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic

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<sup>1</sup> (1996) 2 SLR 70

<sup>2</sup> (2003) 2 Sri L.R 10

characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy. Prof. G.L. Peiris, in his book on *Essays on Administrative Law in Sri Lanka* (Lake House Investments iso Ltd., pg. 13 and 15) stated that,

“Where a discretion is available to the Court in regard to the grant or refusal of certiorari, the writ will generally not issue if there has been unjustifiable delay on the part of the applicant in seeking relief ... The relevant principle is that relief by way of certiorari must be sought punctually.”

A line of authorities *such as Dissanayake Vs. Fernando*<sup>3</sup>, *Sarath Hulangamuwa Vs. Siriwardane*<sup>4</sup> has held that undue delay stands against the grant of relief in a Writ Application, and as such, it is settled law that unexplained delay in invoking the jurisdiction of the Court does not entitle the petitioners to any relief under writ jurisdiction

Sections 46(1) & (2) of the Co-operative Societies Act No. 5 of 1972 clearly give power to the 1<sup>st</sup> Respondent to hold an inquiry into the constitution, working, and financial condition of a Co-operative society or to inspect the books of such society. Further, they empower the 1<sup>st</sup> Respondent to summon any past or present officer, agent, servant, or member of the society or any other person who can give material information regarding any transactions or management of the society. It is clear from Sections 46(1) & (2) that the 1<sup>st</sup> Respondent has acted upon the legitimate legal authority held by him.

The learned High Court Judge, in his order dated 26<sup>th</sup> February 2018, on perusal of the statutory provisions, had come to the same conclusion as above. Considering the fact that the 1<sup>st</sup> Respondent has legal authority to examine the books of the Appellant Society or to get them examined by authorized agents, a writ of prohibition is not available to prohibit what the 1<sup>st</sup> Respondent is statutorily empowered to do, acting within his legal authority.

As the extension given for the examination of books of the Appellant Society by the letter Pe16 was only up to 28<sup>th</sup> February 2018, at present there is no possibility of the date being extended or further action being taken based on the authority given by Pe12. As such the writ of Prohibition prayed for in Prayer (j) to (l) is redundant.

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<sup>3</sup> 71 NLR 356

<sup>4</sup> (1986) 1 SLR 275

In view of the foregoing reasons, I see no reason to interfere with the Order of the Learned High Court Judge of the Southern Province holden in Galle dated 26<sup>th</sup> February 2018. Hence, the appeal of the Appellant Society is dismissed without cost.

Judge of the Court of Appeal

Sarath Dissanayake, J

I agree

Judge of the Court of Appeal