

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

In the matter of an application for mandate in the nature of a Writ of Certiorari and Writ of Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No.CA/WRIT/71/2016

Appuhamige Heenamanike
12 Ela,
Pahala Thuruwila
Hidogama

Petitioner

- Vs. -

1. J.W.S.Kithsiri
Divisional Secretary
Divisional Secretariat
Nachchaduwa
Srawasthipura.
2. Provincial Land Commissioner
North Central Land Commissioner's Dept.
Anuradhapura.
3. Land Commissioner
Land Commissioner's Department
Colombo 7.
4. Churtha Kumari Gunarathna
12 Ela
Kaluarachchiyagama
Hidogama.
5. Hon. Attorney General
Attorney General's Department
Colombo.

Respondent

Before: Janak De Silva J.
&
N. Bandula Karunarathna J.

Counsel: K.P. Thisa Karunanayaka for the Petitioner
Kapila Sooriyaarchchi for the 4th Respondent
M. Jayasinghe, SSC for the 1st, 2nd, 3rd and 5th Respondents

Written Submissions: By the Petitioner filed on 02.10.2019
by the 4th Respondent filed on 26.09.2019
By the 1st 3rd and 5th Respondents on 29.01.2019

Argued on: 02/08/2019

Judgment on: 18/11/2020

N. Bandula Karunarathna J.

The Petitioner filed this Writ Application seeking inter- alia a mandate in the nature of Writ of Mandamus directing the 1st Respondent to accelerate the decision taken by him marked P12 with the Petition and to obtain the reliefs prayed in the Petition thereby.

The Petitioner states that as per P8 document issued on 02-03-2003 the Petitioner is in possession of this property over 40 years. He has further stated in P8 that 4th Respondent has received a fraudulent Grant for the Land which belongs to the Petitioner even at a situation where the Petitioner has also requested a Permit for the same land. The Petitioner states that as per document P5B and P6B, the Petitioner has taken steps to protect her rights and the Land from year 2002, which was the Year on which the 4th Respondent informed the Petitioner that they have a Deed of Grant for the Land of the Petitioner and had requested to handover the possession of the Land to him.

Further as per Paragraph 26 of the Petition the Petitioner revealed the filing of the case CA PHC 97/2006 which is the appeal of the case 43/2003 (Writ) filed in the High Court of Anuradhapura during 2003 to quash the Fraudulent Grant Issued to the 4th Respondent's father. But this case was withdrawn at the Court of Appeal, at the end of the year 2015, reserving the rights to file a fresh action. The Petitioner states that the reason to withdraw this action is that the Provincial High Courts do not have the Jurisdiction to hear matters regarding State Lands.

This dispute was not solved until very recent Judgment issued by the Supreme Court confirming that the State Land Powers are vested with the Central Government. The Petitioner further claims that the Petitioner had immediately filed this case in this Court requesting to amend one

boundary of the 4th Respondents' Grant so that it will exclude the Land belonging to the Petitioner. The Land Commissioner has given a written direction to the Divisional Secretaries to make such amendments, if necessary.

The Petitioner states that as per P17 and P18 that even during 2015, the Government Officers are still holding inquiries with regard to this dispute, and the Petitioner has first and immediately taken steps and filed an action during 2002, when it was revealed that the 4th Respondent had received a Grant for her Land.

The Petitioner states that as per 4 R 8 document submitted by the 4th Respondent, the 4th Respondent had filed a case in 2009, to eject the Petitioner from the questioned Land. The Petitioner questions as to why such a long time was taken to eject the Petitioner if they received the Grant in the Year 1997.

In the case of M/S Bibile Kotagama Multi-Purpose Corporative Society Vs Uva Palath Samupakara Sewaka Commission Sabawa CA/PHC/APN/186/2013; C.A.M. dated 07/12/2016 the Court explained the delay by the Law.

"If the Delay can be reasonably explained the Court will not decline to interfere. The delay on which a Court can excuse one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. One satisfactory way to explain the delay is for the Petitioner to show that he has been seeking relief elsewhere in a manner provided by the Law."

The Petitioner states that on the exact day that it was revealed that the 4th Respondent's father has received a Land Grant for the Petitioner's Land, the Petitioner has taken steps. The Petitioner states that she has filed P5 complaint to the Divisional Secretary, P7 to the Land Minister and then she filed the Case 43/2003(writ) in the year 2003. The Petitioner further states that she withdrew the Appeal of that case from Court of Appeal in 2015 reserving the rights to file a fresh action.

The 1st, 2nd, 3rd and 5th Respondents state that, although the Petitioner claims that she and her predecessor occupied for around 40 years the land that is the subject matter of this application, a Grant made by His Excellency the President pursuant to the provisions of the Land Development Ordinance has been made in favor of the 4th Respondent's predecessor which encompasses the land claimed by the Petitioner.

The Respondents state that what the Petitioner is seeking is essentially an amendment of the Presidential Grant in favor of the 4th Respondent's predecessor marked P4 to exclude the property she claims to be in occupation of. The difficulty faced by the Respondents is that there is no provision in the Land Development Ordinance to amend a Presidential Grant.

The Petitioner submits that she came to be aware of the 4th Respondent's claim of ownership by virtue of P4 in 2002. The Respondents contradict this by stating that there is no explanation as to why the Petitioner waited for some 14 years before filing this case. Consequently, the Respondents submit that this application cannot be maintained on account of the unexplained delay.

Further, the Respondents state that the Petitioner is effectively reviewing the legality of a Grant made by the President of the Republic. In terms of Article 35 of the Constitution the President enjoys immunity from legal action with respect to anything done or omitted to be done in his official or private capacity. An exception is laid down in the proviso. This Writ Application clearly does not come within this exception.

The 4th Respondent states inter-alia that the Grant was made by Her Excellency the President of Sri Lanka and therefore the matters arising from this application are not amenable to the Writ jurisdiction of this Court. The 4th Respondent took up the position that the Petitioner is delayed to file this action before this Court whereas the Petitioner had denied such objection stating that by the time the Court of Appeal case was instituted the Supreme Court had not decided on whom the power to decide over State Lands are vested. The 4th Respondent states that Constitution clearly explains with whom the state lands shall be vested.

Subsequent to a thorough analysis of the facts of the case, it could be revealed that in the Petition of the Petitioner she had stated that delay occurred due to the inquiries held by the Land Commissioner and the inquiries held at the Land Ministry.

In the case Biso Menike Vs. Cyril de Alwis 1982 (1) SLR 368 His Lordship Justice Sharvananda explains the delay which a court can excuse as follows:

"What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However, the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained the court will not decline to interfere. The delay which a court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal."

As per the aforesaid case law it could be noted that the reason given by the Petitioner for her delay is not valid because the same has been occurred due to applicant pursuing an extra-legal remedy and not a legal remedy.

It is also pertinent to note that neither the Petitioner nor her father is having a paper title to the land in issue. Therefore, it is obvious that the Petitioner has no right whatsoever to the land she is claiming and she is merely an illegal trespasser.

It is clear that the petitioner has no locus standi to make this application before this court as she is an illegal trespasser. In the case Chandrasena Vs. Dahanayaka 1985(1) SLR 151 it was held that Certiorari will not lie at the instance of a avowed trespasser and therefore not an aggrieved person with a locus standi to make such application.

On the other hand, if the Petitioner has any title to the land in issue, she must sue the 4th Respondent for unlawful occupation because in such situation the 4th Respondent will be the illegal trespasser. But contradictorily the Petitioner is seeking the assistance of Court to correct someone else's boundaries without suing her for such unlawful act. Such conduct of the Petitioner also clearly shows that she has no right at all to the land in issue.

The only document the Petitioner produces to court to prove that she was in the possession of the land in issue is the acreage tax receipt which is marked as P2 and a letter given by the Samurdhi Development Officer as P3.

I further note that in the document marked P2, the date of the said receipt is 25.11.2003. Accordingly said receipt does not prove that the Petitioner or her predecessors were in the possession of the land in issue for more than 40 years. The dispute over the property in issue was arisen between the parties in the year 2002. The Petitioner has failed to annex any other tax receipt pertaining to past 40 years. Accordingly, an inference can be drawn that the petitioner had paid acreage tax in 2003 and obtained a receipt only with the ulterior motive of using the same in case of a law suit to show that she was in the possession.

Also, the document marked P3 dated 06-01-2006 which was given by the Samurdhi Development Officer does not prove that the Petitioner was in the possession of the land in issue for more than 40 years. Clear perusal of the said letter shows that it was written by the Samurdhi Development Officer addressing the 1st Respondent. In such situation this letter should be with the 1st Respondent and not with the Petitioner. Accordingly, a serious doubt arises as to how the Petitioner obtained the letter marked P3 from the custody of the 1st Respondent.

The Petitioner states in her Written Submission that she seeks to amend the boundaries of the Grant issued to the father of the 4th Respondent by Her Excellency the President. But the Petitioner does not have any paper title to prove her rights. In such situation it is doubtful on what ground the boundaries can be amended. If there is a boundary dispute regarding the lands, the parties shall go to the District Court. To go to the District Court and get remedies, the Petitioner must have the title to that land. If not, she can't get a remedy from the District Court regarding the boundary dispute. That is the very reason why the Petitioner has come before this court rather than going to district court. If the Petitioner institutes an action in the district court that action could be dismissed in limine.

The Petitioner further states that under section 13 of the Land Grants (special provisions) Act any clerical or other error can be corrected by a government agent. However, it is pertinent to note that the state land in issue was granted under the provisions of the Land Development Ordinance and not under the Land Grants Act. Therefore, under the provisions of the Land Development Ordinance no amendment can be made once the Grant is made by the President.

In the light of the aforesaid circumstances this application is dismissed with cost.

Judge of the Court of Appeal

Janak De Silva, J

I agree.

Judge of the Court of Appeal