

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

In the matter of an Application for mandates
in the nature of Writs of *Certiorari* and
Mandamus under and in terms of Article 140
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0291/2020

Nihal Munasinghe,
Sampath Mawatha,
Hidallana, Ratnapura

Petitioner

Vs.

1. **P. M. H. Priyadharshani,**
Commissioner General of Land
Title Settlement,
No. 1200/6, Mihikatha Medura,
Rajamalwatta Road,
Battaramulla.
2. **Nilmini U. Nawarathna,**
Registrar of Title,
Registrar General's Department,
Land and District Registry,
Rathnapura.
3. **A. L. S. C. Perera,**
Surveyor General, Sri Lanka Survey
Department No 150, Kirula Road,
Narahenpita,
Colombo-05.
4. **Rajapaksha Gedara Salika Malinda**
Rajapaksha,
Manikdiwela, Doluwagama,
Nugamale.

5. **Sunethra Abeywardhana,**
No 56/31, Baddeggedara Watta,
Kospelawaththa Road,
Rathnapura.

6. **Jayatunga Arachchilage Buddisha
Thamaranath Jayatunga,**
No 136/2, Edandawala,
Kuruwita.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Keerthi Thilakaratne with Chanuka Ekanayake and
K. Samaratunga for the Petitioner.

R. D. M. Bandara with Ms. Lilanthi De Silva for the 5th
Respondent.

Anuruddha Dharmaratne with F.Z. Hassim for the 6th
Respondent.

Ms. Shemanthi Dunuwille, SC for the 1st to 3rd Respondents.

Argued on: 14.02.2024

Written Submissions on: 29.05.2024 by the Petitioner
29.05.2024 by the 5th Respondent
29.04.2024 by the 6th Respondent

Decided on: 29.08.2024

MOHAMMED LAFFAR, J.

The Petitioner in the instant application is seeking for Writs in the nature of a Writ of *Certiorari* quashing the decision of the 1st and 2nd Respondents granting a 1st class title certificate, a Writ of *Mandamus* against the 1st and

2nd Respondents to grant a fresh 1st class title certificate in the name of the Petitioner after holding a fresh inquiry, a Writ of *Mandamus* against the 1st and 2nd Respondents to hold a fresh inquiry to ascertain the owner of the land parcel in dispute

As contended by the Petitioner, the subject property of the matter at hand was bequeathed to the Petitioner via a deed of transfer bearing no.703, dated 11th July 1967 attested by Benjamin Leon Abeyaratne Notary Public, Marked P1. Furthermore, it is stated by the Petitioner that on 21st of October 2016, the Petitioner transferred an undivided 1 Rood share of the said property to the 4th Respondent by virtue of a deed of transfer bearing number 161 attested by Janaka Ratnayaka Notary Public.

It is the Petitioners position that although the Petitioner was in possession of the said land for nearly 50 years, the 1st class title certificate (marked P6a) has been capriciously issued to a person namely Ananda Sarath Abeywardhana pertaining to the land depicted as lot no 55 in the cadastral map bearing number 620283 dated 31st October 2014 marked P 5(a). The said Ananda Sarath Abeywardhana has passed away on 26th of April 2016 and his testamentary case bearing number 2292 is pending before the District Court of Rathnapura and the 5th respondent is the Administrator of the estate of the deceased. Furthermore, the land to which the Petitioner lays claim upon has been named is part of the deceased estate. It is averred by the Petitioner that even though he had expressed his objections (marked P8 to P12) pertaining to the decision of the 1st and 2nd Respondents for the issuance of the 1st class title certificate to a 3rd party, the 1st and 2nd Respondents have failed to consider the said objections raised by the petitioner.

It is the contention of the Petitioner that the 1st Respondent, Commissioner General of Land Title Settlement and the 2nd Respondent, Registrar of Title, Registrar General's Department has failed to perform a proper inquiry prior

to the issuing of the 1st class title certificate to the 3rd party namely Ananda Sarath Abeywardhana.

However, this Court is mindful to the fact that the due process in granting a 1st class title certificate has been followed by the 1st and 2nd Respondents where after the preparation of the cadastral map, the Commissioner general has published a notice in the gazette in accordance to Section 12 of the Title Registration Act No. 21 of 1998 calling for claims to land parcels.

Section 12 of the Title Registration Act reads as follows;

The Commissioner of Title Settlement shall, on receipt of such certified copies of cadastral maps publish a Notice in the Gazette, calling for any claimants to the land parcel specified in such Notice to submit their claims to him within a prescribed period from the date of publication of such Notice.

Accordingly, such notice has been published calling for claims from the public to the land parcels depicted in cadastral map No 620283 in the gazette extraordinary No 1892 /18 dated 09/12/2014 (vide Annexure 1 to the written submissions of the 5th Respondent).

And as per the gazette notification copies of the cadastral map were available at the Grama Niladhari office, Divisional secretariat, District Survey office of the Commissioner of Title Settlement or the Surveyor General's office. Furthermore, the notice directed the people to make claims before the 8th January 2015 and in the event of failure to make a claim before 8th January 2015, inquiry will be made *ex parte* to determine the title and the determination will be published in the government gazette in terms of the Section 14 of the Act.

Thereafter, commissioner has carried out a title investigation and published in the gazette dated 19th June 2015 names of the owners and the said Ananada Sarath Abeywardena was given as the name of the owner

of parcel no 55 in terms of the Section 14 of the title registration Act. Therefore, it could be concluded that the Commissioner and his officers have conducted the procedure of title settlement in accordance to the law.

Without prejudice to the above, this Court is mindful of the fact that this application has been filed 6 years after the Commissioner of Title Settlement published his determination in 2015. It is manifestly evident that there is substantial delay in invoking the jurisdiction of this Court and that the Petitioner has failed to duly explain the delay.

In this regard, I refer to the observation made In **Bisomenike Vs. C. R. de Alwis**¹, Sharvananda, J., (as he then was) observed that;

“A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain wellaccepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver. The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time.”

In **Sarath Hulangamuwa Sriwardena Vs. The Principal Vishaka Vidyalaya**², the Court of Appeal held that;

“The Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the

¹ [1982] 1 SLR, 368.

² [1986] 1 SLR, 275.

Application.... The laches of the Petitioner must necessarily be a determining factor in deciding the Application for Writ as the Court will not lend itself to making a stultifying order which cannot be carried out.”

The foregoing line of authorities are united in deciding that the delay and laches are the most significant aspects to be considered in Writ Applications. If there is a delay and laches on the part of the Petitioner, which has not been explained to the satisfaction of the Court, the Court will refuse to issue prerogative Writs. For the above reasons the Application is dismissed without costs.

Application dismissed. No costs.

JUDGE OF THE COURT OF APPEAL