

**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/0049/2021**

**Noordheen Adambawa,**  
No. 09 Thala Angunochchiya,  
Horowpothana.

**Petitioner**

**Vs.**

1. **R. Senthil,**  
The Divisional Secretary,  
Divisional Secretariat,  
Horowpothana.
2. **S. S. M. Sampath Rohana Dharmadasa,**  
The Provincial Land Commissioner,  
The Provincial Land Commissioner's  
Department,  
North Central Province Dharmapala Mawatha,  
Anuradhapura
3. **M. A. M. Rijas,**  
Ihala Angunochchiya,  
Horowpothana.

**Respondents**

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

Counsel: Raweendra Sumathipala for the Petitioner.

Ms. Awanthi Weerakoon, SC for the State.

Erusha Kalidasa with Ms. Lakshika Lenawala for the 3<sup>rd</sup>  
Respondent.

Argued on: Disposed by way of written submissions.

Written Submissions on: 25.05.2023 by the Petitioner  
14.05.2023 by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Decided on: 12.09.2024

**MOHAMMED LAFFAR, J.**

The Petitioner is seeking, *inter-alia*, a mandate in the nature of a Writ of *Certiorari* quashing the permit marked as **P5** issued to the 3<sup>rd</sup> Respondent and the decision made by the 2<sup>nd</sup> Respondent, the Provincial Land Commissioner, marked as **P18** directing the 1<sup>st</sup> Respondent, Divisional Secretary of Horowpothana to take necessary steps with regard to **P5** as it is issued within the purview of the law. The Petitioner is seeking a Writ of Mandamus directing the 1<sup>st</sup> Respondent to issue a permit under the provisions of the Land Development Ordinance, to the Petitioner in respect of the land in dispute.

In terms of the provisions of the Land Development Ordinance, one S.M. Noordeen was issued with a permit dated 04-07-1951 (**P2**) with regard to the land in suit. The said S.M. Noordeen had nominated his wife, Hachcha Umma as his successor in terms of Section 49 of the said Ordinance. S.M. Noordeen and his spouse demised on 25-12-

1975 and 18-01-1971 respectively. The said S.M. Noordeen had three children, namely Nauru Umma (born in 1924), Adambava (the Petitioner-born in 1935) and Sara Umma. The 3<sup>rd</sup> Respondent is the son of Nauru Umma who had married one Adambawage Sahirabi, a daughter of the Petitioner.

The contention of the Petitioner is that the original permit holder, S.M. Noordeen built a small house on the land and went into occupation thereon with his family including the Petitioner and the mother of the 3<sup>rd</sup> Respondent. In 1990, the Petitioner and his family moved into a new residential house constructed on a land belonging to his wife. However, the Petitioner possesses and cultivates the land in dispute. In February 2020, the 3<sup>rd</sup> Respondent forcibly entered into the land. Thereafter, the Petitioner came to know that the 3<sup>rd</sup> Respondent had obtained a permit in 1996 (P5). Upon the complaint made by the Petitioner, the 1<sup>st</sup> Respondent inquired into the matter and thereafter, on the instruction of the 2<sup>nd</sup> Respondent (P18) decided that the impugned permit issued to the 3<sup>rd</sup> Respondent was lawful. The Petitioner states that he had a legitimate expectation of a permit being issued to him in view of continued possession of the land in dispute. He further states that the Order made by the 2<sup>nd</sup> Respondent (P18) is *ultra vires* and the 1<sup>st</sup> Respondent is acting in breach of duty cast upon him under the said Ordinance.

The Respondents moved for a dismissal of the Application on the footing, *inter-alia*, that;

1. The impugned permit marked as P5 was issued to the 3<sup>rd</sup> Respondent in accordance with the provisions of the Land Development Ordinance.
2. The Petitioner is guilty of laches and inordinate delay.

In terms of Sections 68 and 72 of the said Ordinance, when the spouse of the deceased permit holder or nominated successor failed to enter into possession of the land within six months from the date of the death of such permit holder, the title devolves as set out in rule

I of the Third Schedule of the said Ordinance. The said provisions read as follows;

68 (1) *“The spouse of a deceased permit-holder, who at the time of his or her death was paying an annual installment by virtue of the provisions of section 19, or the spouse of an owner, fails to succeed to the land held by such permit-holder on the permit or to the holding of such owner, as the case may be-*

*(a) if such spouse refuses to succeed to that land or holding, or*

*(b) if such spouse does not enter into possession of that land or holding within a period of six months reckoned from the date of the death of such permit-holder or owner.*

*(2) A nominated successor fails to succeed to the land held on a permit by a permit-holder who at the time of his or her death was paying an annual installment by virtue of the provisions of section 19\* or to the holding of an owner if he refuses to succeed to that land or holding, or, if the nominated successor does not enter into possession of that land or holding within a period of six months reckoned-*

*(i) where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the death of such permit-holder or owner; or*

*(ii) where such permit-holder or owner dies leaving behind his or her spouse, from the date of the failure of such spouse to succeed, such date being reckoned according to the provisions of paragraph (b) of subsection (1), or of the death of such spouse, as the case may be. [• Section 19A is repealed by Law No. 43 of 1973]”*

72. *“If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual installment by virtue of the provisions of section 19 or to the*

*holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule. [ f Section 19A is repealed by Law No. 43 of 1973][• Sections 69, 70 and 71 are repealed by Act No. 16 of 1969]"*

THIRD SCHEDULE. Rules.

*"1. (a) The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.*

*(b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permit-holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group. Table*

<i>(i) Sons</i>	<i>(vi) Brothers</i>
<i>(ii) Daughters.</i>	<i>(vii) Sisters.</i>
<i>(iii) Grandsons</i>	<i>(ix) Uncles</i>
<i>(iv) Granddaughters</i>	<i>(x) Aunts.</i>
<i>(v) Father.</i>	<i>(xi) Nephews</i>
<i>(vi) Mother.</i>	<i>(xii) Nieces</i>

*In this rule, " relative means a relative by blood and not by marriage.*

*2. Where in any group of relatives mentioned in the table subjoined to rule 1 there are two or more persons of the same age who are equally entitled and willing to succeed, the Government Agent may nominate one of such persons to succeed to the holding. Such decision of the Government Agent shall be final.*

*\*\*4. If any relative on whom the title to a holding devolves under the provisions of these rules is unwilling to succeed to such holding, the title thereto shall devolve upon the relative who is next entitled to succeed under the provisions of rule 1.”*

In paragraphs 8 and 9 of the Petition, the Petitioner has admitted the fact that he and his family moved into a new residential house constructed on a state land belonging to his wife. It is borne out from the documents marked as **P7** and **P8** that the 1<sup>st</sup> Respondent had inquired into the dispute between the Petitioner and the 3<sup>rd</sup> Respondent pertaining to the permit in dispute, and thereafter, the 1<sup>st</sup> Respondent had informed the Petitioner by letter dated 25-08-2020 marked as **P10** that the Permit issued to the 3<sup>rd</sup> Respondent in 1996 was lawful as the 3<sup>rd</sup> Respondent had been in possession of the subject matter around 40 years. By letters dated 31-08-2020 (**P12**) and 22-09-2020 (**P13**), the Additional District Secretary of Anuradhapura and the Assistant Land Commissioner of North Central Province (**P13**) respectively requested the 1<sup>st</sup> Respondent to inquire into this matter. Accordingly, after inquiry, the 1<sup>st</sup> Respondent by letter dated 28-09-2020 informed the Assistant Land Commissioner of North Central Province (**P16**), that the permit in dispute had been issued to the 3<sup>rd</sup> Respondent in 1996 as he has been in possession for the last 40 years. Thereafter, by letter dated 27-10-2020, the Commissioner of Land, North Central Province (**P18**), informed the 1<sup>st</sup> Respondent that the permit in dispute had been issued to the 3<sup>rd</sup> Respondent in accordance with the third schedule of the said Ordinance. Having scrutinized the documents tendered, it is abundantly clear that the 3<sup>rd</sup> Respondent has been in possession of the land in dispute. The Petitioner failed to establish the fact that he is in possession. In this scenario, it appears to this Court that the impugned permit issued to the 3<sup>rd</sup> Respondent (Grandson of the original permit holder) is within the purview of the Land Development Ordinance.

It is to be noted that the impugned permit marked as **P5** was issued to the 3<sup>rd</sup> Respondent on 26-05-1996. The Petitioner is challenging the said permit by the instant Application after 25 years. The Petitioner has not justified and explained the delay in coming before this Court to the satisfaction of this Court.

In this regard, I refer to the observation made by the Supreme Court in the case of **D.D. Kaluarachchi Vs. Ceylon Petroleum Corporation (SC. Appeal No. 43/2013, SC Minute dated 19-06-2019)**. This is the case where five years after the retirement, four former employees of the Ceylon Petroleum Corporation filed an Application for Writs before the Court of Appeal and moved Court for Writs of Certiorari and Mandamus in respect of certain salary arrears. The Court of Appeal issued a Writ of Mandamus directing the Ceylon Petroleum Corporation to pay the Petitioners certain salary arrears. Murdu Ferdnando, J. agreeing with Sisira de Abrew and Vijith Malalgoda JJ., observed that;

*“.....I am inclined to accept the contention of the Appellants that the Court of Appeal should have dismissed this Application in-limine on the ground of laches which was a threshold issue. The Court of Appeal did not consider the ground of laches, which was raised as a preliminary objection. I observe this omission as a grave error in the Court of Appeal Judgment....”.*

**In Bisomenike Vs. C. R. de Alwis (1982-1SLR-368), 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 well accepted 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 disintitled 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 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 (1986-1 SLR-275)**, 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 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 not issue prerogative Writs.

For the foregoing reasons, I hold that the Petitioner is not entitled to the relief as prayed for in the prayers to the Petition. Thus, the Petition is dismissed without costs.

*Application dismissed. No costs.*

**JUDGE OF THE COURT OF APPEAL**