

**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/0175/2020**

1. **Matarage Hemantha De Silva**  
(Deceased)  
No. 20, Kabalana, Kathaluwa  
Ahangama 80650.
- 1A. **Ravinda De Silva Matarage**,  
No. 12A, Kabalana cross road,  
Kabalana, Kathaluwa  
Ahangama 80650.
2. **A. W. G. Punchihewa** (Deceased),  
'Anandavimana' Welhengoda,  
Ahangama 80650.
- 2A. **Rasika Ruvini Gardiye Punchihewa**  
No.06, Udukumbura Road, Ahangama.
3. **Ilanga Erin Keerthisoma**,  
'Jayamal'  
Kabalana Kathaluwa, Ahangama  
80650
4. **Matarage Ranmal De Silva**,  
Kabalana Kathaluwa, Ahangama  
80650.
5. **Matarage Isuru Malinga De Silva**,  
Kabalana Kathaluwa, Ahangama  
80650.

By his Attorney  
Ilanga Crin Kerthisoma,  
'Jayamal' Kabalana Kathaluwa,

Ahangama 80650.

**Petitioner**

**Vs.**

1. **Divisional Secretary,**  
Divisional Secretariat,  
Habaraduwa 80630.
2. **District Secretary,**  
District Secretariat,  
Galle 80000.
3. **Commissioner General of  
Buddhist Affairs,**  
Ministry of Buddha Sasana  
135, Srimath Anagarika  
Dharmapala Mawatha,  
Colombo 07.
4. **Secretary,**  
Ministry of Buddha Sasana  
135, Srimath Anagarika  
Dharmapala Mawatha,  
Colombo 07.
5. **Hon. Minister of Buddha Sasana,**  
Ministry of Buddha Sasana  
135, Srimath Anagarika  
Dharmapala Mawatha,  
Colombo 07.
6. **Hon. Attorney General,**  
Attorney General's Department  
Colombo 12.
7. **The Director,**  
Pooja Bhoomi Ministry of Buddha  
Sasana, 135, Srimath Anagarika  
Dharmapala Mawatha,  
Colombo 07.

8. **Rev. Elle Indrashobhana Thero**  
**Viharadhipathi Aranya Seenansana,**  
Thalathuduwa,  
Koggala, Habaraduwa.

**Respondents**

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

Counsel: Rohan Sahabandu, PC with S. Senanayake for the 1A, 2A to 5<sup>th</sup> Petitioners.

J. P. Gamage with Chamara Fernando and Theekshana Ranaweera for the 8<sup>th</sup> Respondent.

Ms. Amasara Gajadeera, SC for the State.

Argued on: 03.07.2024

Written Submissions on: 24.09.2024 by the 1A, 3<sup>rd</sup> to 5<sup>th</sup> Petitioners.  
10.10.2024 by the 8<sup>th</sup> Respondent.

Decided on: 23.10.2024

**MOHAMMED LAFFAR, J.**

The Petitioners are seeking a mandate, *inter-alia*, in the nature of a Writ of Certiorari quashing the Gazette Extraordinary No. 1877/68 dated 29-08-2914 marked as P11. The facts to this Application in brief are as follows;

The Petitioners contend that in accordance with the devolution of title averred in the amended Petition, they are the co-owners of the land called “Thalathuduwa *alias* Thadladuwa” surrounded by Koggala Lake. Under section 66 of the Primary Court Proceedings, the OIC of the Habaraduwa instituted proceedings before the Magistrate’s Court of Galle in case No. 7732 against the Petitioners and the 8<sup>th</sup> Respondent, the Chief Incumbent monk of the adjoining temple. After inquiry, the learned Magistrate held infavour of the 8<sup>th</sup> Respondent (P10). Thereupon, the Petitioners instituted a partition action in the District Court of Galle in case bearing No. 15504/P seeking to partition the subject matter among the co-owners, namely the Petitioners wherein the 8<sup>th</sup> Respondent was also added as a party upon his application.

After trial, the learned District Judge on 28-10-2019 dismissed the said partition action. Being aggrieved by the said judgment the Petitioners have preferred an appeal to the Civil Appellate High Court of the Southern Province (Galle) which is pending. The Petitioners averred that during the pendency of the said partition action, the aforesaid Gazette, marked P11 was issued by the 3<sup>rd</sup> Respondent, declaring that the land in dispute is a Sacred Land. In this scenario, the Petitioners averred that they are the sole owners of the land in suite, and therefore, declaring the same as Sacred Land by P11 is illegal, capricious, unreasonable and arbitrary.

It is settled law that when the facts are in dispute the Writ Court will not exercise its Writ jurisdiction. The disputed facts are to be established with oral and documentary evidence before the trial Court, which can not be proved in Writ courts.

In this regard, I refer to the judgment of **Thajudeen Vs. Sri-Lanka Tea Board (1981-2SLR-471)** where the Court of Appeal held that;

*“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”*

Furthermore, **A.S. CHOUDRI** in his book on the law of Writs and Fundamental Rights (2nd Edition) Vol-2. At page 449) states that;

*“Where facts are in dispute and in order to get at the truth, it is necessary that the question should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a Writ will not issue.”*

The Supreme Court in **Francis Kulasooriya Vs. OIC- Police Station-Kirindiwela (SC Appeal No. 52/2021. SC Minute of 14-07-2023)** observed that;

*“Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute.”*

In **Dr. Puvanendran Vs. Premasiri (2009-2SLR-p107)** the Supreme Court held that;

*“The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”*

Having scrutinized the totality of the averments contained in the amended Petition, it appears to this Court that the substantial issues raised by the Petitioners, *inter-alia*, are as follows;

1. The ownership of the subject matter. Whether the subject matter is owned by the Petitioners or the 8<sup>th</sup> Respondent.
2. Identification of the subject matter. The land in dispute has to be identified with physical metes and bounds.
3. The common boundary between the subject matter purportedly owned by the Petitioners and the land owned by the 8<sup>th</sup> Respondent is to be identified and demarcated.
4. Moreover, in paragraph 26 (i) of the amended Petition, it is averred that the subject matter has not been identified as a place or an area used by a Temple or used as a religious place for any religious activities at any time.
5. In paragraph 33 of the amended Petition, it is pleaded that the position of the 8<sup>th</sup> Respondent stating that the subject matter is a protected land (Sacred) is wrong on facts.

In those circumstances, it is abundantly clear that the facts pleaded in the amended Petition are in dispute and those facts are to be established with strong and cogent evidence by oral and documentary testimonies. Hence, in light of the foregoing authorities, the Petitioners are not entitled to invoke the supervisory jurisdiction of this Court by way of Writs.

Furthermore, It is pertinent to note that the Petitioners had instituted a partition action pertaining to the subject matter in the District Court of Galle to partition the same amongst the co-owners. A partition action is a very appropriate suit to identify the corpus and the ownership of the parties. The said partition action is dismissed by the learned District Judge of Galle and the appeal preferred against the said judgment is pending before the Civil Appellate High Court of Galle. In this premise, it appears to this Court that the aforesaid disputed facts could rightly be considered and determined in the said partition action, and therefore, necessity does not arise to proceed with this Application.

A Petitioner who is seeking relief in an application for Writ 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 the discretion to deny him relief

having regard to his conduct, delay, laches, waiver, and submission to jurisdiction - which are all valid impediments that stand against the grant of relief. (Vide: **Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another** [1996] 2 SLR 70).

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 disintitiled 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** (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 that cannot be carried out.*

In the instant Application, the Petitioners are seeking to quash the impugned Gazette marked as P11 that was issued on 29-08-2014, six years before the institution of this Application. The inordinate delay is not explained in the amended Petition to the satisfaction of this Court. As such, in light of the above authorities, the instant application is liable to be dismissed on this ground as well.

For the foregoing reasons, the Application is dismissed without costs.

*Application dismissed. No costs.*

**JUDGE OF THE COURT OF APPEAL**