

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

In the matter of an Application for Writs of *Certiorari*, *Mandamus* and *Prohibition* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

01. Aitken Spence PLC,
No.315, Vauxhall Street, Colombo 02.

02. Aitken Spence Hotel Managements (Pvt)
Ltd.,
No.315, Vauxhall Street, Colombo 02.

CA (Writ) application No: 577/23

PETITIONERS

-Vs-

01. Land Reform Commission,
No. 475, Kaduwela Road, Battaramulla.

02. Nilantha Wijesinghe,
Chairman,
Land Reform Commission,
No.475, Kaduwela Road, Battaramulla.

03. Harishke Samaranayake,
Executive Director,
Land Reform Commission,
No. 475, Kaduwela Road, Battaramulla.

04. Liyanage Pathmasiri,
Director General,
Land Reform Commission,
No.475, Kaduwela Road, Battaramulla.

05. Ms.Kusum Herath,
Board Secretary,
Land Reform Commission,
No.475, Kaduwela Road, Battaramulla.

06. Ms. P. Malathi,
Board Member,
Land Reform Commission,
Director General of Agriculture -
Department of Agriculture,
P.O. Box 01, Peradeniya.
07. K.D. Bandula Jayasinghe,
Board Member,
Land Reform Commission,
Commissioner General-Land
Commissioner General's Department,
"Mihikatha Medura", Land Secretariat,
No.1200/6, Rajanalwatta Road,
Battaramulla.
08. A.H.M.L. Aberatna,
Board Member,
Land Reform Commission,
Commissioner General - Department of
Agrarian Development,
No.42, Sir Marcus Fernando Mawatha,
P.O. Box 537, Colombo 07.
09. Ms.S.A. Batagoda,
Board Member,
Land Reform Commission,
Additional Director General (Acting)
Department of National Budget,
Ministry of Finance,
Room No.231, 2nd Floor, The
Secretariat, Colombo 01.
10. K.S. Wijayakeerthi,
Board Member,
Land Reform Commission,
Senior Assistant Secretary Ministry of
Plantation,
11th Floor, Sethsiripaya 2nd Stage,
Battaramulla.

11. Ms. D.K. Wijesinghe,
Board Member,
Land Reform Commission,
Additional Director General - Ministry of
Finance, Economic Stabilization and
National Policies,
Ministry of Finance,
The Secretariat,
Colombo 01.
12. Pandukabaya Harsha Keerthinanda,
Board Member,
Land Reform Commission,
No.475, Kaduwela Road,
Battaramulla.
13. Suriyakumary Devasenapathy,
No.37, Lady Manning Drive, Batticaloa.
By her Power of Attorney, Anandam
Devasenapathy, No.37, Lady Manning
Drive, Batticaloa.
14. Suriyakumaran Devasenapathy,
No.37, Lady Manning Drive, Batticaloa.
By his Power of Attorney, Anandam
Devasenapathy, No.37, Lady Manning
Drive, Batticaloa.
15. Liyanaarachchi Ashoka Priyantha
Jayawardena,
No.26/1, Kalagedihena Road, Veyangoda.
16. Karuppaiah Selvanayagam,
No.6, Arunagiri Lane, Batticaloa.
17. Selvanayagam Sathiyendra,
No.2A, Huludagoda Lane,
Mount Lavinia.
18. Susaimuthu Rekri Brinthakumar or Brintha,
No.112, Trincomalee Road, Batticaloa.

19. Yogarasa Arun,
No.246/75, Hospital Road, Batticaloa.

20. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Mayadunne Corea, J.

Counsel: S. A. Parathalingam, PC with N. R. Sivendran and Nishkan Parathalingam
for the Petitioners.

Supported on: 17.10.2023

Order delivered on: 19.01.2024

S. U. B. Karalliyadde, J.

This Order is on the issuance of notices of this Writ Application to the Respondents. The Court heard the learned President's Counsel in support of the Application. The facts of the Application briefly as follows; the Petitioners are Companies duly incorporated under the Companies Act, No. 7 of 2007. By the Deeds of Transfer No. 660 dated 04.04.1995, No. 526 dated 11.04.1995 and No. 31 dated 01.11.2010 (marked P3A - P3C respectively), the Petitioners became the owners of land in the extent of 113 Acres, 1 Rood and 1 Perch. The said Deeds were duly registered under Folio No.

C/39/150 in the Trincomalee Land Registry (P5). Since purchasing the land, the Petitioners have been in possession and control of the land by cultivating various crops in some portions of the land. The Petitioners hired security officers to guard the premises and placed display boards in and around the land to show that the Petitioners are the owners of the said land. On or about 03.09.2020, Batticaloa District Office of the Land Reform Commission, the 1st Respondent purported to survey a part of the land and the Petitioners objected to the survey being carried out by letter dated 03.09.2020 addressed to the Director of the District Land Reform Commission and letter dated 15.09.2020 addressed to the Chairman of the Land Reform Commission, the 2nd Respondent marked as P11 and P13 respectively. By letter dated 28.09.2020 marked P14, the District Land Reform Commission Office informed the 2nd Respondent that the Petitioners raised objections in carrying out the survey and they tendered the objections by the letter dated 15.09.2020 and requested the 2nd Respondent to take necessary action. By the letter dated 16.10.2020 addressed to the Director of the District Land Reform Commission marked as P15, the Petitioners reiterated their objection to carrying out the survey. However, no action has been taken in this regard.

On or about 21.06.2021, an attempt was made by the 15th Respondent and an agent/nominee of the 16th Respondent, to enter into the Petitioner's land claiming that they are the owners of land in extent of 18 Acres 2 Roods and 38.37 Perches. The agent/nominee of the 16th Respondent made a statement to the police (P18) and in that statement, he has stated that he bought the land from a person making a payment of Rs.

29 Lakhs to the Land Reform Commission, and he went with a surveyor to survey the land, however, the Watcher did not allow them to enter into the land to carry out the survey. The Petitioners subsequently came to know that the 1st Respondent had entered into a Deed of Exchange No. 13918 on 09.03.2021 marked as P22 to exchange a plot of land in the extent of 18 Acres 2 Roods and 38.37 Perches with the 13th and 14th Respondents. The Petitioners allege that the 1st Respondent did not own the land mentioned in the Deed of Exchange marked as P22 and the 1st Respondent has no right or entitlement to deal with the same.

By the Petition dated 24.10.2019 to this Application, the Petitioner seeks reliefs, *inter alia*, Writs of Certiorari quashing the purported decision of the 1st Respondent and/or 2nd to 12th Respondents and/or their predecessors in office to enter into the purported Deed of Exchange marked as P22. However, the Petitioners neither specifically pleaded a document containing the decision of the 1st Respondent to enter into the said Deed of Exchange marked as P22 nor have produced any document containing such decision of the 1st Respondent.

In *Weerasooriya v. The Chairman, National Housing Development Authority and Others*¹ Sripavan J. (as he then was) held that the Court will not set aside a document unless it is specifically pleaded and identified in express language in the prayer to the Petition. This position was followed in; *Navaratnamany Sriramachandran Vs. Mr.*

¹ CA. Application No. 866/98, CA Minutes 08.03.2004.

*Vethanayagam and Others*², *Hatton National Bank PLC Vs. Commissioner General of Labour and Others*³, *Binthi Huzaima Nizar and Others Vs. Minister of Lands and Others*⁴, *H.K.D. Amarasinghe and Others Vs. Central Environmental Authority and Others*⁵. In view of the above-stated authorities, the relief sought in prayer (b) for Writ of Certiorari quashing the purported decision of the 1st Respondent to enter into the purported Deed of Exchange marked P22 must fail.

In prayer (c) to the Petition the Petitioners seek a mandate in the nature of Writ of Certiorari quashing the execution and/or entering into the Deed of Exchange marked as P22 by the 1st Respondent and in prayer (d) a Writ of Mandamus directing the 1st and/or the 2nd to the 12th Respondents to cancel and set aside the Deed of Exchange marked as P22. It should be noted that, in the Petition the Petitioners have not mentioned a date which they came to know about the execution of the purported deed marked as P22. P22 had been executed on 09.03.2021 and this action was instituted on 04.10.2023 after laps of more than 2 years from the date of execution of P22. The Petitioners have not explained the delay in filling this Application.

In the case of *Hopman and others Vs. Minister of Lands and Land Development and others*,⁶ it was held that,

² CA (Writ) Application No. 369/2017; CA Minutes of 16.12.2019.

³ CA (Writ) Application No. 457/2011; CA Minutes of 31.01.2020.

⁴ CA (Writ) Application No. 141/2002; CA Minutes of 29.05.2020.

⁵ CA (Writ) Application No. 132/2018; CA Minutes of 03.06.2021.

⁶ [1994] 2 Sri L.R. 240.

"The appellants have failed to give a satisfactory explanation for their conduct and the delay in making their application to the Court of Appeal and hence that Court cannot be faulted for exercising its discretion against the issue of the writ."

In *Jayaweera Vs. Asst. Commissioner of Agrarian Services Ratnapura and another*⁷ 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 *Dissanayake Vs. Fernando*⁸ and *Sarath Hulangamuwa Vs. Siriwardane*,⁹ it was also held that undue delay stands against the grant of relief in a Writ Application.

By the Prayer (e) to the Petitioners seek a Writ of Prohibition preventing the 1st to 12th Respondents and/or their successors in office from taking any step against the Petitioners in consequent to the purported decision of the 1st Respondent to enter into the Deed of Exchange marked as P22. The relief sought in that prayer is ambiguous and

⁷ (1996) 2 SLR 70.

⁸ 71 NLR 356.

⁹ (1986) 1 SLR 275.

the Court cannot understand about the relief sought in prayer (e). In such a situation the Court cannot exercise its Writ Jurisdiction.

This Court is of the view that the Petitioners have a Civil law remedy concerning the matter involved in the instant Application. Prerogative Writs are discretionary remedies, and therefore, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available.

In the case of *Linus Silva Vs. The University Council of the Vidyodaya University*¹⁰ it was held that,

“The remedy by way of certiorari is not available where an alternative remedy is open to the petitioner subject to the limitation that the alternative remedy must be an adequate remedy”

It was held in the case of *Tennakoon Vs. Director General of Customs*¹¹ that,

“the petitioner has an alternative remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction”

Under the above-stated circumstances, I hold that the Petitioners are not entitled to the reliefs sought in the Petition dated 07.11.2019. Therefore, the Court refuses to issue

¹⁰ 64 NLR 104.

¹¹ (2004) 1 SLR 53.

notices formally on the Respondents. Accordingly, the Application is dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Mayadunne Corea, J.

I agree.

JUDGE OF THE COURT OF APPEAL