

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

In the matter of an application for a mandate in the nature of a *writ of certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. WRIT/ 529/2019

Wadduwa Gurunanselge Erandi Anushka Senanayaka

D-5, Vithanage Mawatha,
Colombo-02.

PETITIONER

-Vs-

1. **G.W. Nandasena Silva**
No.302, Rajagiriya Road,
Rajagiriya.
2. **Commissioner of National Housing**
Sir Chitampalam A. Gardiner Mawatha,
Colombo 02.
3. **National Housing Development Authority**
Sir Chitampalam A. Gardiner Mawatha,
Colombo 02.
4. **The Chairman**
National Housing Development Authority
Sir Chitampalam A. Gardiner Mawatha,
Colombo 02.
5. **Hon. Mahinda Rajapaksa**
Minister of Urban Development,
Water Supply & Housing Facilities,
2nd Floor, "Sethsiripaya",
Battaramulla.

6. Secretary

Ministry of Urban Development,
Water Supply & Housing Facilities,
2nd Floor, "Sethsiripaya",
Battaramulla.

RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J. (P/CA) &
Sobhitha Rajakaruna J.

COUNSEL : Thanuka Nandasiri for the Petitioner.

Thishya Weragoda with Meinusha Gamage
for the 1st Respondent instructed by
Niluka Dissanayake.

Madubashini Sri Meththa, SC., for the 2nd, 3rd,
4th, 5th and 6th Respondents.

K.P.N. Jayawardana for the 3rd and 4th
Respondents.

Supported and

Decided on : 06.07.2020

A.H.M.D. Nawaz, J. (P/CA)

We have heard learned Counsel for the Petitioner, the learned Counsel for the 1st Respondent and the learned State Counsel who appears for the 2nd to 6th Respondents. This is an application to quash a Deed of Transfer which has been executed in favour of the 1st Respondent on 12.10.2007. This Deed of Transfer effects a transfer of a unit in a condominium property to the 1st Respondent and the National Housing Development

Authority (the 3rd Respondent) by its Deed of Transfer bearing No.4103 has transferred this subject matter in question for a consideration of Rs.500,000/-. Even though the Petitioner pleads in her petition that she came to know of the paper title of the 1st Respondent only in the year 2017, this application before this Court for Writs of Certiorari and Mandamus has been filed only in December 2019. In other words, a period of less than two years has elapsed before the Petitioner came before this Court.

Both the learned Counsel Mr. Thishya Weragoda who appears for the 1st Respondent and the learned State Counsel Ms. Madubashini Sri Meththa for 2nd to 6th Respondents raise the plea that this writ application must be dismissed on the discretionary bar of laches.

It is true that in the case of *Bisso Menike vs. Cyril de Alwis and others*¹ Sharvananda, J. (as His Lordship then was) took the view that inordinate delay cannot be raised against a Petitioner if the decision maker has acted totally without jurisdiction. This Court can hold the Petitioner's case to fall within this exceptional situation only after having looked at the immanent circumstances in the case.

Upon a careful perusal of the deed of transfer which is sought to be impugned by *certiorari*, I find that the approval of the Minister in charge of housing has been specifically referred to in the said deed as having been granted prior to the execution of the Deed of Transfer in favor of the 1st Respondent. The learned Counsel for the Petitioner Mr. Thanuka Nandasiri mounted his argument of illegality on the basis that the approval of the Minister had not been obtained nor was there evidence of any such approval before the deed was executed. This is the basis on which the learned Counsel for the Petitioner contended that the deed was one executed without jurisdiction.

Assuming without conceding that the Deed of Transfer executed by a State authority is amenable to the writ jurisdiction of this Court, I find that the pre-condition to the execution of the deed namely ministerial approval has been complied with and the deed itself quite specifically refers to the approval of the Minister. In my view the appearance

¹ (1982) 1 Sri.LR 368.

of the words “approval of the Minister” in the said deed raises the presumption that official acts have been regularly performed-see Illustration (d) to Section 114 of the Evidence Ordinance.

The rule embodied in the illustration flows from the maxim *omnia praesumuntur rite et solemniter esse acta*, i.e. all acts are presumed to have been correctly and solemnly done-see Nawaz, J. on this maxim in cases such as CA 477/2000 (F) (CA minutes of 12.09.2017), CA 765/2006 (CA minutes of 30.05.2018) and CA 651-653/97 (CA minutes of 22.06.2018).

This would establish that the authorized signatories who executed the deed on behalf of the National Housing Development Authority have acted with jurisdiction and as such the Deed of Transfer (P17) that is sought to be quashed appears to be one effected with jurisdiction.

So this Court takes the view that the delay of not less than two years, albeit unexplained, in instituting this application cannot be excused as the Respondents have acted within jurisdiction and even on the merits of the application there is no illegality or procedural impropriety in the execution of the impugned deed of transfer.

All Counsel admit that there is a pending case in the District Court of Colombo bearing No. DLN 114/2017 where the 1st Respondent is asserting a *Rei Vindicatio* claim against the Petitioner in respect of the subject matter of this case. In other words, the right to occupy the house in the condominium is being asserted by the Petitioner in the *Rei Vindicatio* action instituted by the 1st Respondent to vindicate his title.

There is a prospect that the District Court may hold in favour of either party on the basis of the evidence to be led in the case. Therefore, it will amount to an abuse of process for this Court to adjudicate on a matter when evidence is being led on conflicting questions of fact in the District Court-see *Thajudeen v. Sri Lanka Tea Board & another*², *Mohamed Shafie Raheem & another v. Dayananda Dissanayake Commissioner*

²1982(2) Sri.LR 472

*General of Elections & Others*³, *W.M. Karunawathie & 2 others v. Arachchi Hamilage Premawathie & 5 others of Mahaweli Authority of Sri Lanka*⁴ and *M.B.N. Peiris nee Perera v. Wattala Pradeshya Sabha*⁵.

The lack of promptitude in invoking the writ jurisdiction will disentitle the Petitioner to notice on the threshold. In addition the grounds on which *certiorari* issues are also not made out.

In the circumstances, this Court takes the view that the Petitioner has not made out an arguable case or a *prima facie* case for this Court to issue notice. Therefore, we refuse notice and dismiss this application.

PRESIDENT OF THE COURT OF APPEAL

Sobhitha Rajakaruna J.

I agree

JUDGE OF THE COURT OF APPEAL

³ CA Writ No 126/2011 (decided on 12.05.2011)

⁴ CA Writ application No 452/2008 decided on 06.03.2013 (per Anil Gooneratne, J.)

⁵ CA Writ 546/2011 (decided on 6.6.2013 (per Sriskandarajah, J.)