

**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 a Writ of *Certiorari*,
Mandamus and Prohibition under Article 140
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0520/2023

Nandana Padmalal Lokubarana,
No. 532 E, Galedanda Road,
Gonawala,
Kelaniya.

Petitioner

Vs

1. **K.D. Bandula Jayasinghe,**
Land Commissioner General,
Land Commissioner General's
Department,
No. 1200/ 6, Mihikatha Madura
Rajamalwatta Road,
Battaramulla.
2. **W.M.C.K. Wanninayake,**
Provincial Commissioner of Lands,
North Central Province,
North Central Provincial Council,
Anuradhapura

3. **Sampath Dharmadasa,**
Divisional Secretary,
Divisional Secretariat Office,
Nagenahira Nuwaragam Palatha,
Anuradhapura.
4. **R.K.S.S. Wijesinghe,**
Former Provincial Commissioner of
Lands,
Bulankulama Disawa Mawatha,
Anuradhapura.
5. **P.R. Thilakarathne,**
Former Divisional Secretary,
Ella Kattu Road,
Isurumuniya,
Anuradhapura.
6. **Bandara Sarath Ilangasinghe,**
Land Officer,
Divisional Secretariat Office,
Nagenahira Nuwaragam Palatha,
Anuradhapura.
7. **Urban Development Authority,**
6th and 7th Floors, Sethsiripaya,
Battaramulla.
8. **H.W. Somarathna,**
Provincial Director,
Urban Development Authority,
North Central Province,
Dahiyagama Junction,
Anuradhapura.

9. **Ruwan Wijesinghe**,
Municipal Commissioner,
Anuradhapura Municipal Council,
Maithreepala Senanayake Mawatha,
Anuradhapura.
10. **Sherlly Kumarage**,
Dupity General Manager,
Ceylon Electricity Board,
Divisional Office,
Anuradhapura.
11. **Padma Gunawardhana**,
Deputy General Manager,
Water Supply and Drainage Board
Divisional Service Centre
Godage Mawatha,
Anuradhapura.
12. **Ranjith Jayasinghe**,
Anuradhapura United Traders
Association,
No. 741/17, Stage I
Anuradhapura.
13. **Anura Wijaya Bandara**,
President,
Anuradhapura United Traders
Association,
Unicon Finance Ltd,
Rex Building, Main Street,
Anuradhapura.

14. **Senith Abeywardhena,**
Secretary
Anuradhapura United Traders
Association,
Bevary Hotel,
No. 277, Godage Mawatha,
Anuradhapura.
15. **Wasantha Rathnapala,**
Treasurer
Anuradhapura United Traders
Association,
Wasantha Motors,
Bank Side,
Anuradhapura.
16. **Harin Fernando,**
Minister of Tourism and Lands,
“Mihikatha Medura”
No. 1200/ 6, Rajamalwatta Road,
Battaramulla.

Respondents

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

Counsel: U. Kumarapperuma with K. Maddumage and R. Kuruwitabandara for the Petitioner.

T. Nandasiri, for the 13th, 14th and 15th Respondents.

Ms. Z. Zain DSG for the 7th, 10th & 16th Respondents.

Supported on: 06.10.2023

Decided on: 26.02.2024

MOHAMMED LAFFAR, J.

The main relief sought by the Petitioner is prayer “N”, seeking *inter alia* a Writ of *Certiorari* quashing the letters marked **P8C** and **P8D** and the decisions of the 5th and 6th Respondents to grant the possession of and allocate the subject land situated in Stage II, Grama Niladhari Division 251 of Negenahira Nuwaragam Palatha, Anuradhapura bearing the Assessment Number 525/A to Anuradhapura United Traders Association.

We heard the learned Counsel for the Petitioner in support of this Application. We also heard the learned DSG for the Respondent as well. The contention of the Petitioner is mainly that, somewhere in the mid 1990’s, the Petitioner submitted an application to the Provincial Land Commissioner of North Central Province in order to obtain a permit in respect of the subject land. The Petitioner states further, that thereafter a Land Kachcheri was held by the then Provincial Land Commissioner of North Central Province in 1998 and the Petitioner was selected to be allocated the Subject land, the name of the Petitioner was listed in the Preliminary list marked **P4A** and the Final list marked **P4B** of the selected allottees of the said Land Kachcheri. The Petitioner states that the Petitioner came into possession of the subject land in or around 2004 and continued to be in possession as the Petitioner used to reside in his ancestral home bearing the Assessment Number 525/39 which is located in front of the subject land. The Petitioner is in possession pursuant to an alleged permit issued marked **P6**.

However, it is the Respondent’s submission that **P6** is not a permit but a temporary lease. Since there is a disagreement as to the facts of this case the Petitioners cannot invoke the Jurisdiction of this Court. In this regard I refer to the judgement of **Thajudeen Vs. Sri-Lanka Tea Board**¹ where the Court of Appeal held that;

¹ [1981] 2 SLR, 471.

“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.”.

Additionally, the Respondents raised two legal objections. Firstly, with regard to laches, the Respondents submitted that the immediate Application has been subject to an inordinate delay. The impugned decisions **P8C** & **P8D** are dated 04/11/2009 & 05/11/2009 respectively, whereas this Application is filed after the lapse of 13 years. 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**², 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

² [1982] 1 SLR, 368.

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**³, 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 refuse to issue prerogative Writs.

Secondly, the Respondents submit, according to paragraph 16 of the Petition there is a fundamental rights application numbered SCFR 647-2010, filed with the Supreme Court in regards to the same subject which is currently pending. In particular **P8C** is submitted to that case as well. Hence the legal issues pertaining to the issues raised in this Writ Application will be decided by the Supreme Court in the said Fundamental Rights Application. According to our procedural law a decision of the Supreme Court as the final appellate court and

³ [1986] 1 SLR, 275.

the superior court of the land will be conclusive and final. Therefore, the Petitioner cannot invoke the jurisdiction of this Court when the matter has already been taken up and is pending before the Supreme Court.

In those circumstances, it is the considered view of this Court that the Petitioner is precluded from invoking the Prerogative Writs jurisdiction of this Court as he had already invoked the Fundamental Rights jurisdiction of the Supreme Court in respect of the same grievances. Thus, the instant Writ Application is liable to be dismissed *in-limine*.

For the foregoing reasons, I refuse to issue notices on the Respondents and dismiss the Application. No costs.

Application dismissed, no costs.

JUDGE OF THE COURT OF APPEAL