

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

In the matter of an application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mrs. Mudaliperuge Manel Rupa Ranjani
Kulathunga,
No. 50 A, Dhambagolla Road,
Galewela.

PETITIONER

C.A. Case No. WRT/0475/19

Vs.

1. M.U. Nishantha,
The Divisional Secretary (Former),
Divisional Secretariat, Galewela.
- 1A.**M.P.K. Ariyaratne,
The Divisional Secretary,
Divisional Secretariat, Galewela.
2. Ajantha Wickremarathne,
The Provincial Land Commissioner (Former),
Provincial Land Commissioner's Department,
Central Province, Pallekale,
Kundasale.
- 2A.**Jagath Adhikari,
The Provincial Land Commissioner,
Provincial Land Commissioner's Department,
Central Province, Pallekale,
Kundasale.

3. The District Agent,
The Office of the District Agent,
Matale.
4. H.J. de Zoysa,
The Administration Officer,
Office of Divisional Secretariat,
Matale.
5. The Land Commissioner General,
Land Commissioner General's Department,
Mihikatha Medura, No. 1200/6,
Rajamalwatta Road, Battaramulla.
6. M. Sarath Asoka Makalanda
(Eldest son of late M.D.G Silva),
Hombawa, Bambaragaswewa,
Galewela.
7. Chandrika Manel
(daughter of late M.D.G. Silva),
Hombawa, Bambaragaswewa,
Galewela.
8. Samantha Silva
(Son of late M.D.G. Silva),
Hombawa, Bambaragaswewa,
Galewela.
9. L.K.G. Makalanda,
(Son of late S.W. Makalanda),
No. 133 D, Kandawatte,
Hombawa, Bambaragaswewa,
Galewela.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Hejaaz Hizbullah with Shifan Maharooof for the Petitioner.

Dilantha Sampath, SC, for the 1st, 3rd, 5th Respondents.

S. A. D. S. Suraweera for the 8th Respondent.

ARGUED ON : 18.07.2025 and 06.08.2025

WRITTEN SUBMISSIONS ON : 02.09.2025

DECIDED ON : 10.09.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

1. The petitioner by this application is seeking writs of mandamus on the 1st – 5th respondents to compel and direct the said respondents to give effect to the decisions made by P-7 and P-27 and to implement the decision of the 2nd respondent dated 20.07.2005.
2. The petitioner claims to be the granddaughter of one H. J. de Silva, who happened to be a grantee of the Land Development Ordinance (LDO) permit P-1. Upon the demise of the said H. J. de Silva, his daughter, Rupa Karunawathie Makalanda, the nominee is succeeded. The said Rupa Makalanda is the late mother of the petitioner. The petitioner claims to have been nominated as her mother's successor. The said permit is marked and produced as P-1, according to which Rupa Makalanda had succeeded and named as permit holder on 07.11.1980. This is also reflected in the land ledger P-2. The petitioner has been nominated as a successor in P-1. It is the position of the petitioner that she was earmarked to succeed her mother, Rupa Makalanda.

3. That being so, due to certain other persons, including family members, encroaching and entering the said land, there has been a dispute as to possession. The said land was 20 acres in extent as per the original permit P-1. It is admitted that due to various such claims by other persons, including the 6th–9th respondents, the petitioner’s mother was content to receive 5 acres of the said 20 acres. In view of the competing interests and disputes between the petitioner and others, the 1st respondent Divisional Secretary and his predecessors have held several enquiries and formulated a compromised distribution scheme of the 20 acres amongst the competing parties. This had happened as far back as 2005. The 1st respondent had, by letter P-7 dated 20.07.2005, informed the mother of the petitioner, R. K. Makalanda, and four others that, consequent upon the inquiry held by the Land Commissioner of the Central Province, it had been decided to allocate parcels of the said land, according to who each person was in occupation at that time. It was resolved thus;

“ඒ අනුව සියලු දෙනාම එකතු වී ඉඩම් භුක්ති විඳින ආකාරයට පහත සඳහන් ඉඩම් ප්‍රමාණයන් අනුව එක් එක් අයගේ කොටස් බලයලත් මිනින්දෝරුවරයෙකු ලවා වෙන වෙනම මැන අනුරේඛන පිළියෙල කර ඉදිරිපත් කරන ලෙස දන්වමි. ඉන්පසුව බලපත්‍ර පිළියෙල කිරීමේ කටයුතු සිදුකල හැකි බව වැඩිදුරටත් දන්වමි.”

It is specifically stated that R. K. Makalanda had agreed to the same. By paragraph 2 of the said letter, it was also conveyed that upon conducting a survey and the preparation of the subdivisions, based on the occupation, the processing of the permits may be notified, and the tentative allocation between the five persons therein also had been specified. That being so, the said proposed settlement had not materialised up until 2008. The permit granted to the petitioner’s mother, Rupa Makalanda, had been cancelled on 19.08.2008. Then, Rupa Makalanda had died in 2009. After the demise of Rupa Makalanda, the petitioner, being the daughter, had pursued this matter.

4. The petitioner is now seeking a writ to implement the intimation made by P-7 and reflected also in P-27. P-27 is a summary of certain decisions taken by the 1st – 4th respondents reiterating P-7. Under item 22 of P-27, a decision has been taken to distribute the said land, as per the decision made on 20.07.2007 by P-7. The said decision in P-27 reads as follows:

“මෙය කොන්දේසි කඩකිරීමකට අදාළව අවලංගු කරන ලද දැනට රජය සන්නකයේ පවතින ඉඩමකි. ඒ අනුව පළාත් ඉඩම් කොමසාරිස් 1999.07.21 උපදෙස් අනුව 2005.07.20 අදාළ පාර්ශවකරුවන් වෙත ඉඩම බෙදී යන ආකාරය දැනුම් දුන් ආකාරයටම බෙදා වෙන්කිරීමට තීරණය විය.”

It is these decisions that the petitioner is seeking to have implemented on the basis that it had created a legitimate expectation in the petitioner, who is the successor to her late mother, R. K. Makalanda.

5. The position taken up by the learned State Counsel on behalf of the respondents is that the petitioner has objected to the implementation of P-7 and P-27, which is reflected in the letter dated 14.03.2019 (marked P-29). It specifically states that the decision arrived at during the mobile service held on 26.08.2018, P-27 could not be implemented as the petitioner and L.K.G. Makalanda (the 9th respondent) objected in writing. The State Counsel also objects to this application on the basis of delay or laches and the facts being in dispute. Further thereto, the petitioner being a retired government servant is not entitled to a permit under this category, and also the petitioner is admittedly not in possession.
6. The petitioner pegs her entitlement to the relief primarily on the basis of legitimate expectation. According to Mr. Hejaaz Hisbullah, as public officers have held out repeatedly by P-7 and P-27 that a permit would be granted in respect of 12 acres 3 Roods and 1 Perch to the petitioner's mother, has created a legitimate expectation, in her late mother to start with, and in the petitioner as being the nominated successor and heir who was present at the inquiry on 26.08.2018. It was his argument that

the alleged cancellation of the permit in 2009, is a sham, and as such, petitioner's legitimate expectation continues up until this day. In support of his contention Mr. Hisbullah relied on the decision of **Chandrasena vs. Divisional Secretary of Ampara** (2020) 2 SLR 23, and also that of **Ariyaratne vs. Illankagoon** SC/FR/444/2019 (SCM 30.07.2019). doubt, in the said decision of **Ariyaratne vs. Illankagoon** at page 53, citing the dicta of the case of Chandrasena, the Court held as follows:

“To be more specific, when doing so: the court should weigh the character and substance of the expectation and the prejudice caused to the petitioner by its frustration, on the one hand; against the importance of the public interest which led to the public authority's change of heart, on the other hand; and then decide whether that exercise of weighing the competing interests leads to the conclusion that the petitioner's expectation is of such weight and the consequences of its frustration are so prejudicial to him when compared to the public interest relied on by the public authority, that the public authority's decision to change its policy and negate the expectation was disproportionate or unfair or unjust and amounted to an abuse of power which should be quashed; or whether the decision to change the policy should stand because the public authority has acted proportionately, fairly and justly when it decided that the petitioner's substantive legitimate expectation could not be granted since public interest demanded a change of policy.”

7. No doubt, legitimate expectation is a ground which is accepted and well entrenched in our law. When such an expectation is created by a representation, it correspondingly creates a right in such person to have the same enforced. This right, in such person, would thus create a corresponding duty upon such public official who is statutorily empowered and authorised to give effect to the same. Legitimate expectation may be procedural or substantive. I will now endeavour to consider the legal position and the principle of legitimate expectation as is relevant to this application. Prof. Craig in Administrative Law 7th ed. at p.677, defines procedural and substantive legitimate expectation as follows:

*“The phrase ‘**procedural legitimate expectation**’ denotes the existence of some process right the applicant claims to possess as the result of a promise or behaviour by the public body that generates the expectation The phrase ‘**substantive legitimate expectation**’ captures the situation in which the applicant seeks a particular benefit or commodity, such as a welfare benefit or a license, as the result of some promise, behaviour or representation made by the public body.”*

8. The ideology of ‘substantive legitimate expectation’ originated in the landmark case of **R vs. Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd.** [1995] 2 All ER 714 where Sedley, J., held as follows:

*“Legitimacy in this sense is not an absolute. It is a function of expectations induced by government and of policy considerations which militate against their fulfilment. The balance must in the first instance be for the policy maker to strike; but if the outcome is challenged by way of judicial review, I do not consider that the Court's criterion is the bare rationality of the policy maker's conclusion. While policy is for the policy-maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern (as of course the lawfulness of the policy). **To postulate this is not to place the judge in the seat of the Minister...but it is equally the court's duty to protect the interests of those individuals whose expectation of different treatment has a legitimacy which in fairness outtops the policy choice which threatens to frustrate it.**” [emphasis added].*

9. The abovementioned dictum has been cited with approval in **Dayaratne v. Minister of Health and Indigenous Medicine** (1999) 1 SLR 393, **Nimalsiri vs. Fernando** (SC/FR/256/2010, decided on 17th September 2015), and in **M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others** (SC/FR/444/2012, decided on 30th July 2019). In **M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others** (supra), Prasanna Jayawardena, PC, J., after an extensive and all-encompassing analysis on the doctrine of legitimate expectation, cited with approval the

following dicta of Dehideniya, J.,’s decision in **Zamrath vs. Sri Lanka Medical Council** (SC/FR/119/2019, decided on 23.07.2019), as the rationale underlying the doctrine of legitimate expectation:

“The legitimate expectation of a person further ensures legal certainty which is imperative as the people ought to plan their lives, secure in the knowledge of the consequences of their actions. The perception of legal certainty deserves protection, as a basic tenet of the rule of law which this court attempts to uphold as the apex court of the country. The public perception of legal certainty becomes negative when the authorities by their own undertakings and assurances have generated legitimate expectations of people and subsequently by their own conduct, infringe the so generated expectations.”

Further, in **Siriwardane vs. Seneviratne** and four others [2011] 2 SLR 1, Dr. Shirani Bandaranayake, J. (as she was then) held that,

“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.”

10. The petitioner, is claiming that by letter P-7, the Divisional Secretary has held out that land would be distributed or allotted to the five persons named therein in the extents correspondingly mentioned. According to which, the mother of the petitioners R. K. Makalanda was earmarked to be allotted 12 acres, 3 roods and 1 perch, corresponding to the actual occupation of the said land. It is this allocation that the respondents have reiterated by P-27. The petitioner is now seeking a mandamus to direct the respondents to give effect to the proposed allocation as made by P-7. This application is made almost 14 years after the said decision was initially made and conveyed by P-7. According to the respondents, the inability and the delay in giving effect to the said proposal as made by P-7 was due to a multiplicity of decisions, which also include objections raised by R. K. Makalanda, the mother of the petitioner (Vide P-21 and P-29). In the interim, the

permit issued to the said R. K. Makalanda had also been cancelled on 19.08.2008, by R-2. Then, the said R. K. Makalanda had died on 12.05.2009. The petitioner was never nominated as a successor prior to the cancellation of the said permit.

11. Thus, if at all, it is the petitioner's mother who may have had a legitimate expectation arising out of P-7. This legitimate expectation is based on the actual possession and occupation of the said portion of land. Even if it is assumed that as the heir and subsequent participation inquiry the said expectation could accrue to the petitioner, it is now necessary to consider if the proposed scheme of distribution and allocation could be given effect to in that form after the lapse of 14 years. The respondents, with their objections, has tendered to Court details of the present occupiers of the land in question. The said parcel of land is depicted in the village plan No. 335 and they are Lots 910, 911, and 912, depicted in the said plan marked R-1. As for the persons possessing these lots, are depicted in R-10 and R-10 (a). According to R-10 (a), the petitioner appears to be in possession of a portion of Lot 912, which, according to the objections, is an extent of 7 acres, 3 roods, and 33 perches (vide para 13 (ii) of the objections of the 1st, 3rd, and 5th respondents). Further, there is a detailed breakdown of the proportionate parcels of land as presently occupied by several persons. The current occupation and possession of the said land, when considered along with P-7, clearly establishes that during the intervening period of 14 years, the actual occupiers and occupation had undergone significant changes. Apart from the said changes as to the occupants and the occupancy, there has also been a cancellation of the permit issued to the mother of the petitioner, R. K. Makalanda. Thus, the petitioner's only status is her occupation and possession.

12. In these circumstances, in the absence of any permit or succession thereon, the only basis on which the land may be distributed is based on the actual possession and occupation. This is now different from what

it was in 2007 as it appears in P-7. Accordingly, the respondents cannot lawfully give effect or implement the recommendation or the proposal made by P-7. This is a direct consequence and a result of the inordinate delay of 14 years. Even if there be a legitimate expectation, with change of circumstances, it is now not lawfully possible to implement the decision made by P-7.

13. The petitioner is also guilty of laches or delay. In ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR 368, Sharvananda, J. (as he then was), observed that:

“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.”

Similarly, in ***Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and another*** [1996] 2 SLR 70) it was held as follows:

“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 the absence of any plausible explanation, it appears that the petitioners are guilty of laches, which warrants the dismissal of this application *per se*. Then, also it is not lawfully possible to enforce P-7 in view of the supervening and change of circumstances.

14. On a perusal of the objections of the 1st, 3rd and 5th respondents, I observe that the respondents, whilst stating the details of the occupants and their respective possession of the said Lots 910, 911, and 912, have also stated that the State may grant permits to those in possession

where they have not alternate land etc, and it is possible to regularise the land as set out above. Accordingly, the only legitimate course of action that may be available to the respondents is to consider to allocate and alienate the land as proposed above. However, such relief cannot be granted in this application.

15. Accordingly, the petitioner is not entitled to seek a writ to implement P-7 read with P-27. In these circumstance, I hold that the petitioner is not entitled to the writs as prayed for and this application is accordingly refused and dismissed.

JUDGE OF THE COURT OF APPEAL