

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

Namunukula Plantations PLC  
(Previously of known as Namunukula  
Plantations Limited)  
310, High Level Road, Navinna.  
Maharagama.

**PETITIONER**

C.A. 836/2008 (Writ)

Vs.

1. D. M. Jayaratne  
Minister of Plantation Industries  
Ministry of Plantation Industries  
No. 55/75, Vauxhall Lane,  
Colombo 2.
- 1A. Mahinda Samarasinghe  
Minister of Plantation Industries  
Ministry of Plantation Industries  
No. 55/75, Vauxhall Lane,  
Colombo 2.
2. U. G. Vidura Kariyawasam  
Divisional Secretary,  
Hikkaduwa.
- 2A. Damayanthi Paranagama  
Divisional Secretary  
Divisional Secretary,  
Hikkaduwa.

3. Sri Lanka State Plantations Corporation.  
No. 28, Mudalige Mawatha,  
No. 28, Mudalige Mawatha.  
Colombo 1.
4. S. A. D. Suraweera  
Director (Lands)  
Ministry of Agriculture Development  
"Govijanamandiraya"  
80/5, Rajamal Watte Patumaga,  
Battaramulla.
5. The Land Reform Commission  
No. C 82,  
Hector Kobbekaduwa Mawatha,  
(Gregory's Avenue),  
Colombo 7.

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Deepali Wijesundera J.

**COUNSEL:** Kushan de Alwis P.C. with Ayendra Wickremasinghe  
For the Petitioner  
Milinda Gunatilleke D.S.G., for the 1<sup>st</sup> – 4<sup>th</sup> Respondents  
Dr. Cooray for the 5<sup>th</sup> Respondent

**ARGUED ON:** 19.07.2013

**DECIDED ON:** 08.11.2013

**GOONERATNE J.**

The Petitioner, Namunukula Plantation PLC has sought a Writ of Mandamus as per sub paragraph 'b' of the prayer to the petition. i.e to regularize the procedure set out in document P7A (Cabinet Memorandum of 1/2/2005) and P7B (letter of Plantation Ministry to several Government Officials and Chairman LRC dated February 2005 and to pay compensation). This application for a Writ of Mandamus was filed on or about October 2008. In the petition it is pleaded that land called 'Galagodawatte' in extent of 244 Hectares had been acquired by P1 (Section 38 notice under the Land Acquisition Act issued on or about 28.7.1972). It is pleaded that the said land was not used for a public purpose and ownership transferred to the 5<sup>th</sup> Respondent Commission which vested the management in the Janawasama Corporation, and by 3.3.1980 Janawasama Corporation transferred the management to the 3<sup>rd</sup> Respondent Corporation who amalgamated Galgodawatte division with the adjacent Monrovia estate(P2 & P3).

The Petitioner Company along with other plantation companies in the year 1992, were incorporated to carry on managerial functions of several of 3<sup>rd</sup> Respondent Corporation estates, and by P4 management of Monrovia Estate

including Galagodawatte was conferred on the Petitioner Company. Thereafter the 3<sup>rd</sup> Respondent was vested with ownership (P5). The 3<sup>rd</sup> Respondent entered into a lease agreement of the above mentioned estates and Petitioner Company continued to remain in possession (P6A & P6B).

There is emphasis by the Petitioner Company to clause 3(d) of the indenture of lease (enclosed in P6A) and thereby attempt to demonstrate that Petitioner would be entitled to compensation in the event of acquisition or the lease property being released. This seems to be the grievance of the Petitioner who relies on documents P7A & P7B to get compensation. In this regard I would refer to paragraphs 9(a) to (c) and 10/11 of the Petition as follows:

- (a) On or about 01.02.2005, a Cabinet paper bearing number No: 8/2005 was presented to the Cabinet of Ministers by the 1<sup>st</sup> Respondent for approval, proposing to take possession of, inter alia, certain lands which were vested in the Land Reform Commission and have been leased out to regional plantation companies for the purpose of resettling families who were affected by the Tsunami.
- (b) The Petitioner states that the said Cabinet paper submitted by the 1<sup>st</sup> Respondent specified clearly that the aforesaid plantation companies ought to be compensated in respect of their lease hold rights and also specifies in detail the manner and procedure in which the said compensation is to be assessed and paid to the said plantation companies.
- (c) The Petitioner states that these proposals were approved by the Cabinet of Ministers on or about 10.02.2005 and was duly communicated to all the District Secretaries by the 1<sup>st</sup> Respondent specifying the aforesaid manner in which compensation is to be paid to the

plantation companies in respect of the lease hold rights which they have over the land in question.

- (d) Prior to this on or about 20.01.2005, the Petitioner was requested to attempt a meeting at the Galle District Secretariat Office, which was chaired by the 1<sup>st</sup> Respondent. At the said meeting, the representatives of the Petitioner Company were requested to release the aforesaid Galagodawatte Division for the purpose of resettling families who were affected by the Tsunami and it was stated that the Petitioner in return will be duly compensated upon a claim being made for the same.
- (e) The Petitioner states that considering the fact the aforesaid Tsunami which prevailed upon the coastal regions of the country in December 2004, left a vast number of families homeless, and caused a national crisis which was in urgent need to resolution, the Petitioner in order play its part to aid the Country in resolving this crisis, accordingly without making any objection with regard to the same, handed over the possession of the land in question to the 2<sup>nd</sup> Respondent on or about 07.03.2005 in terms of the aforesaid Cabinet decision and in accordance with the aforesaid understanding entered into with the 1<sup>st</sup> Respondent.

Petitioner complains that no compensation was paid as aforesaid and in compliance with P7A & P7B. Attention of this court is drawn to several correspondence on the question of payment of compensation. P10A to P10B, P11, P12, P13, P14A, P14B, P15 & P16, P17 & P18.

The Petitioner pleads and learned counsel for the Petitioner proceed to argue the case of the petition on the basis of legitimate expectation as in P7a & P7B, that the matters contained in document P11 is unreasonable and or irrelevant. Petitioner also state that in 1972 Chettinad corporation was paid on or

about 1972 upon Galagodawatte being acquired in terms of the Land Acquisition Act and the Petitioner by letter P12, P15 & P16 explains that compensation paid as above is different since the Petitioner is claiming compensation for the leasehold rights. The other matter is the Petitioner attempt to demonstrate that Galagodawatte is clearly amalgamated with Monrovia estate. In this regard based on letter P3, Gazette P5, X1B, X1D with X2 are produced with petition and support the position with Petitioner's views as in the Written submissions. We are mindful of all those matters contained therein. The question is whether a Writ of Mandamus could be granted as prayed for by the Petitioner?

The Respondents vehemently object to the relief sought by the Petitioner. In the several pleadings filed by the Respondents inter alia suggest something vital. That is to say that the said Galagodawatte was not amalgamated with the adjacent Monrovia estate by the 5<sup>th</sup> Respondent or any other Respondent. P2 & P3 does not give any proof of incorporation at Galagodawatte into Monrovia estate. P1 Gazette gives the extent of Galagodawatte acquired as 244 acres and 38 perches and not 244 hectares. Documents P4, P5, P6A or P6B does not refer to Galagodawatte. Further by R1 & R2 shows the payment of compensation paid under the Land Acquisition Act. It is further argued that Galagodawatte Estate is not a part of the Monrovia estate. P5 Gazette

Notification cannot pass title to the 3<sup>rd</sup> Respondent. Monrovia estate is a separate land vested in the Respondent Commission (5<sup>th</sup> Respondent). Document 5R1 has been submitted in proof of same. 5<sup>th</sup> Respondent takes up the position that Galagodawtta Estate is a different land which vested in the 5<sup>th</sup> Respondent by operation of law.

This court observes that there is a very clear difference of opinion between the Petitioner and the other Respondents as regards identify of the subject matter, extent, i.e Galagodawattea Estate is not amalgamated with Monrovia. Petitioner argue otherwise. This is a disputed fact which cannot be subject of review. On the available material this court cannot rule on disputed facts. If the identity is in doubt or its extent, the methods adopted in the original court for a survey etc. cannot be adopted in a superior court. Those matters are better understood and decided in the Original Court whether the land is separated or amalgamated is better handled and decided elsewhere.

In Thajudeen Vs. Sri Lanka Tea Board & Another 181(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 supplementary remedy to be granted only when there is 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.

I would also fortify my views as per the following decided cases.

In P. K. Banerjee Vs. L. T. Symond AIR (1947) Cal 307...

Whether the facts show the existence of any or all prerequisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question but according to a sound and reasonable interpretation. The court will not grant a Mandamus to enforce a right, not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.

This court further observe that the purported Cabinet Memorandum at P7A and the letter P7B are suggestions. P7B refer to the Memorandum P7A and merely states the Cabinet approved same by the decision taken at a Cabinet meeting. However the Petitioner has not placed before this court the Cabinet decision referred to therein. Both P7A & P7B does not give rise to the required statutory force or an existence of a legal right in the absence of the Cabinet decision being produced. Even otherwise P7A & P7B does not confer enforceable rights. In any event it would be a futile exercise to grant the remedy prayed for



after so many years from the dates reflected in P7A and P7B. On the other hand with the lapse of time the authorities concerned will have to be saddled with certain administrative inconvenience and problems. As such this court takes the view that an issue of a writ at this stage is a futile exercise and would cause administrative inconvenience to the Respondents. Writ will not be issued where the Respondents has no power to perform the act sought to be mandated.

In the P.S. Bus Co. Vs. Members and Secretary of CeylonTransport Board 61 NLR 491..

In the above case it was held that a prerogative writ would not be issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal; it would not issue when it is vexatious or futile. The same view was taken in Amarakoon and Others V. University Grants Commission and Others. It was held that '... the issue of a Writ of Mandamus is a discretionary remedy and the Court ought to exercise discretion and decline the issue of a Writ of Mandamus when it would be practically impossible to comply with the order.'

On the other hand the Respondent at the hearing submitted that the Petitioner is guilty of laches. Position of the Petitioner is that there had been continuous correspondence with the parties concerned and certain assurance given by the authorities concerned and as such would not attract the defence of laches. The initial documents relied upon by the Petitioner are P7A & P7B. If one examines P7A (though not a legally enforceable document) it contemplates of a survey and valuation by the Chief Government Valuer which also contemplate of

an appeal to the persons named therein by office. Document P7B is correspondence between the Secretary, Ministry of Plantation Industries and the Chairman Land Reform Commission which in a way incorporate the contents of P7A. Definitely one cannot surmise any legal rights to flow from both P7A & P7B. Petitioner has filed this application before this court at least after a lapse of 3 years from the dates reflected in P7A & P7B. On that alone there is an unexplained delay, although Petitioner maintains that there is continued correspondence, which in my view will not be a counter argument for inordinate delay.

Petitioner could have at the least filed this application immediately or within a reasonable time after receipt of document P11. The document P11 is a reply to the request made by P10F & P10G. By P11 a definite reply rejecting the views in P10F and P10G has been conveyed. As such Petitioner's delay is apparent and unexcusable.

Delay delects equity. In all the above circumstances and facts of the case we are not inclined to grant relief. Application dismissed with costs.

  
JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

  
JUDGE OF THE COURT OF APPEAL