

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 the Writ of Certiorari under
and in terms of Article 140 of the
Constitution.

Abdul Azeez Mohomad Thaj,
No. 20, Hunukotuwa Road,
Opposite Y.M.C.A.
Badulla.

C.A. (Writ) Application No. 618/2011

PETITIONER

Vs

1. S.M.D.C. Samarasekara,
Assistant Commissioner of Agrarian
Development of Badulla,
Agrarian Development Office,
Keppetipola Road, Badulla.
2. D.M. Thilakarathna,
Agrarian Development Officer
Rambukpotha,
Agrarian Services Center,
Rambukpotha, Badulla.

3. Agrarian Development Council of
Rambukpotha,
Agrarian Services Center, Badulla.
4. Ravindra Hewawitharana,
Commissioner General of Agrarian
Development,
Department of Agrarian
Development,
No 42, Sir Marcus Fernando Mw,
Colombo 07.
5. Hemantha Gamage,
Assistant Commissioner
(Products/Sales) of Agrarian
Development, Department of
Agrarian Development,
No.42, Sir Marcus Fernando Mw,
Colombo 07.
6. W.A. Karunathilake,
Deputy Commissioner (Industrial)
Development of Agrarian
Development, Department of
Agrarian Development,
No.42, Sir Marcus Fernando Mw,
Colombo 07.
7. Secretary to the Ministry of
Agrarian Services and Wildlife,
"Govijana Mandiraya"
No.80/5, Rajamalwatta Avenue,
Battaramulla.
And another

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Asthika Devendra for the

Petitioner.

Neel Unamboowa, D.S.G. for the

Respondents.

ARGUED ON

: 28th February, 2014

DECIDED ON

: 20th June, 2014

Deepali Wijesundera J.

The petitioner has filed this application for writ of certiorari to quash the decision of the 2nd respondent in document marked **P4** and to quash the documents **P8A** and **P8B** of the 1st and 4th respondents.

Document marked **P4** which the petitioner seek to quash is dated 31st March 2003 and is addressed to the petitioner issued in terms of *Sec. 32(1) and (3) of the Agrarian Development Act no.46 of 2000* and states that he is filling a paddy land and to refrain from doing so if not action will be taken against him under the said act.

P8A and **P8B** the other documents the petitioner is seeking to quash are an affidavit and a notice filed in the Magistrates Court of Badulla on 5th June 2008 under the said act to be served on the petitioner by the Magistrate.

The petitioner without making an application before the Magistrate against the said notice has made an application against it to the High Court of Badulla to quash the said notice. This application was refused by the learned High Court Judge and he has appealed to the Supreme Court, which was later withdrawn. The instant application has been filed in October 2011 over three years after the said notices were filed in the Magistrates Court.

P4 the other document the petitioner is seeking to quash is dated March 2003 which was made eight years prior to this application

The learned High Court Judge's order (marked **P9J**) refusing the petitioner's application has been delivered on 27/10/2009. The petitioner has filed this application two years after the said finding.

The petitioner's argument was that the land in issue is not a paddy land and that by P11 and P3 the land has not been registered as a paddy land. On perusal of P3 it is evident that this document states about the change of ownership and nothing about a paddy land. P11 is a building permit issued by the Urban Development Authority. Before going into the merits of this case to decide whether it is a paddy land or not this court has to decide whether the relief prayed by the petitioner can be granted by this court. It appears that the petitioner has sought to quash two different notices issued by two different persons. The notice issued to the petitioner under the said act is not an unlawful or *ultra vires* act by the respondents, the duty on the petitioner under the said act is to appear before the Magistrate and show cause.

The petitioner had an alternative remedy, he had the opportunity to show cause at the Magistrates Courts of Badulla to establish or to prove that the subject matter is not a paddy land and he has failed to do so. Under Sec. 33 (5) of the said act when a case has been filed by the Commissioner General of Agrarian Services against a person for violating the provisions of the act that person has an opportunity to show cause. The petitioner has disregarded to accept the summons and instituted a writ application in the High Court which the learned High Court Judge quite correctly refused for want of jurisdiction.

Paragraph 30 of the petition states the appeal filed in the Supreme Court against the High Court order was withdrawn on the 25th of November 2011 on which date it has been fixed for support. The instant case has been filed on 17th October 2011 that is before the withdrawal of the Supreme Court appeal, which is contrary to the Court of Appeal and Supreme Court Rules. In ***Jayaweera vs Assistant Commissioner of Agrarian Services Ratnapura and another 1996 2SLR 60*** it has been held:-

(1) There is a presumption that official and legal Acts are regularly and correctly performed.

(2) It is not open to the Petitioner to file a convenient and self-serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi-judicial act or judicial act.

(3) If a litigant wishes to contradict the record he must file necessary papers before the Court of first instance, initiate an inquiry before the Court and thereafter raise the matter before the Appellate Court so that the Appellate Court would be in a

position on the material to make an adjudication on the issues with the benefit of the Order of the Court.

“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.”

Notice P4 has been sent in order to prevent harm being caused to the public at large therefore the duty of informing by way of a notice is not *ultra vires* or arbitrary. The lawful function and judicial process of issuance of summons can not be subject to a writ of certiorari in the absence of any credible reason against such lawful act. Therefore a writ of certiorari can not be issued.

There is a delay of over two years in making this application a writ of certiorari will not be issued where there has been undue delay in applying for the writ.

For the afore stated reasons the application of the petitioner is dismissed with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL.