

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

**In the matter of an application under Article 140
of the Constitution of the Democratic Socialist
Republic of Sri Lanka for a mandate in the
nature of Writs of *Mandamus***

Pathinayaka Wijesekara Arachchige Lamdiya
alias Lendiyas,
Thalamporuwa,
Dhaamuwa.

CA/Writ /43/2013

PETITIONER

Vs,

1. The Divisional Secretary,
The Divisional Secretariat,
Agunakolapalassa.
 2. The Commissioner of Lands,
Land Commissioner's Office,
Town Council Building,
Galle.
 3. Dona Karalina Rathnayake.
 4. Weerakoon Rathnayake Vidana Gamage
Siripala.
 5. Weerakoon Rathnayake Vidana Gamage
Nandasena.
- All of,
Heenbunnegedara,
Jadura,

Agunakolapalassa.

6. Weerakoon Rathnayake Vidana Gamage
Senaka.

7. Weerakoon Rathnayake Vidana Gamage
Chandralatha.

Both of,

Jadura,

Agunakolapalassa.

RESPONDENTS

**Before : Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

**Counsel : A.M.L.Amarasinghe with N.Malkumara for the Petitioner
Manohara Jayasinghe SC and Surange Wimalasena SSC for the Respondents**

Argument On : **28.05.2015**

Written Submissions On : **15.07.2015, 07.09.2015**

Order On : **23.10.2015**

Order

Vijith K. Malalgoda PC J

Petitioner to this application Pathinayaka Wijesekara Arachchige Lamdiyas alias Lendiyas has come before this court seeking inter alia,

- c. Grant a mandate in the nature of Writ of *Mandamus* directing of 1st and 2nd Respondents to issue permits to the Petitioner for the respective land where the Petitioner is in occupation

When the above matter was taken up for the argument before us the Learned State Counsel appearing for the 1st and 2nd Respondents raised a preliminary objection to the maintainability of this application. The Petitioner has 1st instituted a Rei- vindicatio action in the District Court of Walasmulla against one Weerakoon Rathnayake Vidana Gamage Don Andrayas.

While the said action was pending before the District Court the said Weerakoon Rathnayake Vidana Gamage Don Andrayas passed away and thereafter his wife and children were substituted as 3rd to 7th Respondents.

At the conclusion of the said trial the Learned Trial Judge held in favour of the Petitioner and granted relief as prayed by the Petition.

3rd to 7th Respondents preferred an appeal against the said order to the Court of Appeal and when the said appeal was taken up before the Court of Appeal the parties to the said appeal agreed to set aside the said Judgment and agreed for a settlement as proposed by the Divisional Secretary at the initial stages, where the each party would be entitled to a half share of the property and the settlement to said effect was recorded by the Court of Appeal and the District Judges Judgment was set aside.

However after recording the settlement the Petitioner sought to set aside the settlement reach in the Court of Appeal, by filling a Restitutio in intergrum application in the Court of Appeal. The said application was dismissed by the Court of Appeal on 24th May 2010. Preliminary objection taken up by the Learned State Counsel was twofold. His first argument was the failure by the Petitioner to follow the proper course of action by appealing against the said decision to the Supreme Court either with the leave obtained from the Court of Appeal or with the leave of the Supreme Court.

The Petitioner has failed to appeal against the said order but instead decide to file the present application seeking a mandate in the nature of Writ of *Mandamus* directing the 1st and 2nd Respondents to issue permits to the Petitioner for the respective land where the Petitioner is in occupation.

The argument of the State Counsel before this court was that this court cannot grant the relief as prayed by Petitioner since it will be inconsistent with ruling of this court in the Restitutio in intergrum action.

We agree with the position taken up by the Learned State Counsel on this point. In the said Restitutio in intergrum action this court refused to set aside a settlement reach before this court. While the said judicially sanctioned settlement is in force, it is not correct for this court to issue a Writ directing the 1st and the 2nd Respondents to issue a permit to the Petitioner for the entire land referred to in document marked P-1.

The second argument raised by the Learned State Counsel was that, the Petitioner is guilty of laches. In the case of *Biso Menika V. Cyril de Alwis and Others (1982) 1 Sri LR 368* Sharvananda CJ observed. "the proposition that the application for Writ must be sought as soon as 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 chances of his success in a Writ application dwindle and the court may reject a Writ application on the ground of unexplained delay."

As pointed out by me earlier, this court had made order dismissing the Restitutio in intergrum action on 24th May 2010. Present application was filed before this court on 22nd February 2013. The Petitioner has waited for 3 years to file the present application. He has failed to explain his delay before this court.

I have no reason to reject the above preliminary objection raised by the Learned State Counsel. The Petitioner could not meet the said argument but instead had submitted that the said settlement was reached without the consent of the Petitioner.

However in the absence of any judicial announcement to that effect this court cannot agree with the contention of the Petitioner.

For the reason adducted above I decide to up hold the preliminary objection raised by the Learned State Counsel and to dismiss the present application.

Application is accordingly dismissed without cost.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala

I agree,

JUDGE OF THE CUORT OF APPEAL

Application is dismissed without cost.