IN THE COURT OF APPEAL OF THE DEMOCRAIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an Appeal under Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/65/2006

H.C. Hambanthota case no. HCA/ 1/2003

Wilfred Raffa

Petitioner Appellant

Vs.

1. A.R.A. Naeem.
2. Agrarian Officer,
   Yodakandiya, Tissamaharama.
3. Assistant Commissioner of Agrarian Service,
   Hambanthta.
4. Udaya Kumara Abeysinghe.

Respondent Respondents.

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : S.C.B. Walgampaya PC with Shantha Jayawardane and Upendra Walgampaya for the Petitioner Appellant.

: H.P. Ekanayake SC for the 2nd and 3rd Respondent Respondents.

Argued on : 08.11.2016

Written submissions filed on : 29.11.2016 and 05.12.2017

Decided on : 08. 03.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Hambanthota.

The Petitioner Appellant (the Appellant) was the tenant cultivator of the paddy land called "Galaboda Kumbura Lot 3" under the landlord, the 1st Respondent Respondent. (the 1st Respondent) By letter dated 09.08.2000, (P2) the 1st Respondent under the Agrarian Services (Amendment) Act informed the Appellant with copies to the 2nd Respondent Respondent Agrarian Officer of the area and the 3rd Respondent Respondent Assistant Commissioner of Agrarian Services (hereinafter sometime called and referred as the 2nd or 3rd Respondent respectively) that he has decided to sell the paddy land at the rate of Rs. 60,000/- per acre. The Appellant by letter dated 20.08.2000 (P3) informed the 1st Respondent that he is willing to purchase at the rate of Rs. 25,000/- per acre. Thereafter, the 2nd Respondent informed the Appellant by the letter dated 15.11.2000 (P4) that the Agrarian service committee acting under section 12 A (3) of the Agrarian Services Act has determined that the price of the paddy land shall be Rs. 40,000/- per acre. The Appellant, on receipt of the said determination, informed the 3rd Respondent by the letter marked P5 that he is willing to purchase the paddy land at the price determined and requested four seasons i.e. two years time to pay the money. The 2nd Respondent by letter dated 19.01.2001 (P6) informed the Appellant to purchase the paddy land before 05.02.2001 and in default a certificate will be issued permitting the 1st Respondent to sell the land to

outsider. Since the Appellant failed to purchase the paddy land before the specified date a certificate dated 09.04.2001 (P11) was issued permitting the 1st Respondent to sell the land to an outsider. Accordingly the 1st Respondent has sold the land to the 4th Respondent by deed no 2237 dated 09.09.2002 attested by Y.M.Faruk N.P.

The Appellant being dissatisfied with the decision of the 3rd Respondent filed an application for a mandate in the nature of a writ of certiorari to quash the certificate dated 09.04.2001 marked P11 and a writ of mandamus to compel the 2nd & 3rd Respondent to decide that the land shall be sold to the Appellant.

The learned High Court Judge after inquiry dismissed the application. This appeal is from the said dismissal.

The 2nd and 3rd Respondents raised a preliminary objection that there is an un due delay in making the application and therefore the application shall be rejected in limine. On merits the Respondents argument is that the decision of the 3rd Respondent is not ultra vires and therefore no writ of certiorari lies. The Appellant in response argue that the order was made under a repealed law and therefore the decision is bad in law. There contention is notwithstanding the delay a decision *ab initio* void cannot stand.

Before going in to the aspect of delay, I will first consider whether the decision of the 3rd Respondent is *ab initio* void.

The 1st Respondent acting under section 12 of the Agrarian Services Act informed the Appellant about his wiliness to sell the paddy land. The law prevailed at that time was the Agrarian services Act No 56 of 1979 as amended. This Act was repealed by the Agrarian Development Act No. 46 of 2000. The new Act came into operation on 18th August

2000. From that date onwards the old Act stand repealed. The inquiry concluded after the new Act.

Section 12 A of the old law as amended by Act No. 4 of 1991 has provided for the landlord to offer the land first to the tenant cultivator when transferring the paddy land. The section reads thus;

12A. (1) Where the landlord of an extent of paddy land in respect of which there is a tenant cultivator intends to sell such extent, he shall, in the first instance, communicate in writing his intention and the price at which he intends to sell such extent, to the tenant cultivator. A copy of such communication shall be sent by the landlord by registered post to the Agrarian Services Committee within whose area of authority such extent of paddy land is situate.

(2) If the tenant cultivator is willing to purchase such extent of paddy land at the price nominated by the landlord, he shall indicate his willingness to the Agrarian Services Committee which shall fix a period within which the transfer is to be completed.

(3) If the tenant cultivator is willing to purchase such extent of paddy land but states that the price nominated by the landlord is excessive, the Agrarian Services Committee may, in consultation with the landlord, determine a price which in its opinion is reasonable and fix a period within which the transfer is to be completed.

(4) Where the tenant cultivator is not willing to purchase such extent of paddy land or is not willing to purchase it at the price determined by the Agrarian Services Committee, or where such

tenant cultivator having agreed to purchase such extent at the price nominated by the landlord or determined by the Agrarian Services Committee as the case may be does not complete the transfer within the period fixed therefor, the Agrarian Services Committee shall issue a certificate to that effect and thereupon the landlord may proceed to sell such extent to any other person,

(5) Any transfer by the owner of an extent of paddy land in contravention of the provisions of this section shall be null and void and shall render the person in occupation of such extent liable to be evicted in accordance with the provisions of section 6 section (3) of section 4 shall apply.

The new law I.e. the Agrarian Development Act No. 46 of 2000, provide for the same but with a different outcome. Section 2 of the Act reads thus;

2. (1) The owner of an extent of paddy land in respect of which there is a tenant cultivator, who intends to sell such extent, shall in the first instance make an offer to sell such extent to the tenant cultivator. Such offer shall be made to the tenant Cultivator by communication in writing, and sent by registered post, stating the price at which he offers to sell such extent. The owner shall cause a copy of such communication to be sent by registered post to the Agrarian Development Council within whose area of authority such paddy land is situated.

(2) If upon receipt of the communication under subsection (1). the tenant cultivator is willing to purchase such extent of paddy land at the price offered by the owner, he shall indicate his willingness to the owner and the Agrarian Development

Council by communication in writing sent by registered post and the Council shall fix a period within which the transfer shall be completed.

(3) (a) Where the tenant cultivator is willing to purchase such extent of paddy land but states that the price offered by the owner is excessive, the Agrarian Development Council may in consultation with the owner determine a price which in its opinion is reasonable, having regard to the market value of paddy lands in the area and proceed to fix a period within which the transfer shall be completed.

(b) On the price being fixed, the tenant cultivator shall thereupon purchase such extent of paddy land either at the price offered by the owner or as determined by the Agrarian Development Council, as the case may be and shall complete the transfer within the period fixed.

(4) Where the Commissioner-General is satisfied, after inquiry, that a tenant cultivator has failed and neglected to act in accordance with the provisions of subsection (2) or (3), the Commissioner-General shall take action to evict such tenant cultivator in accordance with the provisions of section 8.

(5) Any transfer by the owner of any extent of paddy land in contravention of the provisions of this section shall after inquiry be declared null and void by the Commissioner- General and shall render the person in occupation of such extent under such transfer, liable to be evicted in accordance with the provisions of section 8.

(6) Where a transfer of any extent of paddy land is declared null and void by the Commissioner-General a copy of such declaration shall be transmitted under section 5 to the Registrar of Lands of the District in which such extent of paddy land is situated.

Subsections 1,2 and 3 of the section 12A of the previous Act is same as the sub sections 1,2 and 3 of the new Act except for the Agrarian Service Committee in the old law, the Agrarian Development Council was inserted in the new law. Under section 99 (2) (c) of the new Act there is a transitional provision that the Agrarian Service Committee to funcition until the Agrarian Development Council is established the section reads;

(c) (i) the Agrarian Services Committees established under the Agrarian Services Act, No. 58 of 1979. shall continue to function till the Agrarian Development Councils are established under this Act;

Therefore, the Agrarian Service Committee can make a determination on the price of the paddy land.

The repealed Act provided for a certificate to be issued to the landlord permitting him selling the land to outsider in case of the tenant cultivator not buying the land within the prescribed time period. In the new legislation instead of the certificate, the tenancy right of the tenant cultivator has been terminated. The law made that the tenant cultivator liable to be evicted. A tenant cultivator can be evicted only on the termination of his tenancy rights. Therefore it is obvious that the Legislature has intended that the tenancy should come to an end with the refusal/failure to buy the land after indicating his wiliness to buy the land under section 2 (2) or (3) of the Act. Once the tenancy rights have been terminated, a certificate is issued or not is not material, the owner can

exercise his ownership rights without any encumbrance. Disposing his land to a person of his choice is a right of an owner of a property.

The document marked P 11 is only to inform the 1st Respondent to sell the land to someone else on the basis that the tenant cultivator Appellant is not buying the same. Under these circumstances, issuing of the document marked P 11 is not ultra vires and is not ab initio void.

The Appellant filed this application to quash the order of the 2nd Respondent dated 09.04.2001 marked P11. The application was filed in the High Court of Hambanthota on 07.01.2003; that is one year and nine months after the order. The Appellant has not explained the delay. The Counsel for the Respondents argues that it is an inordinate delay and the application shall be dismissed in limine. He has cited several authorities in support.

In the case of K. A. Gunasekera v. T. B. Weerakoon (Assistant Government Agent, Kurunegala), 73 NLR 262 at 263 it was held that 7 months is a too long period without any explanation.

In the case of Hopman and others v. Minister of Lands and Land Development and others [1994] 2 Sri L R 240 it has been held that "the appellants have failed to give a satisfactory explanation for their conduct and the delay in making their application to the Court of Appeal and hence that Court cannot be faulted for exercising its discretion against the issue of the writ."

Sarath Hulangamuwa v. Siriwardena, Principal, Visakha Vidyalaya, Colombo 5 and others [1986] 1 Sri L R 275 is a case filed in challenging the refusal to admit a child to the school. The Court held in that case that the application has been made more than 10 months later.

Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the application.

In the case of Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another [1996] 2 Sri L R 70 Per Jayasuriya, J. held that " 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 case of P. B. Dissanayake v. I. O. K. G. Fernando and another 71 NLR 356 it has been held that where the extraordinary process of this Court is sought alter such a long lapse of time, it is essential that the reasons for the delay in seeking relief should be set out in the papers filed in this Court.

In the present case the application has been made after a long delay of one year and nine months. There is no explanation given in the Application for the delay. Appellant 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. The delay has to be explained as the time is of the essence of the application.

In the case of Biso Menika vs. Cyril de Alwis and Others [1982] 1 Sri L R 368 Sharvananda, J. (as he was then) held that a Writ of Certiorari lies at the discretion of Court and will not be denied if the proceedings were a nullity; even if there is delay, especially where denial

of the Writ is likely to cause great injustice, it will be issued. In the present case there is on nullity of the proceedings. On the other hand there is no injustice done to the Appellant because the 1st Respondent, even he had the opportunity to evict the Appellant, has not done so. Instead the Appellant was offered to be the tenant cultivator of the new owner, the 4th Respondent. Therefore denial of the writ will not cause injustice to the Appellant.

Under these circumstances I see no reason to interfere with the finding of the learned High Court Judge.

Accordingly the appeal is dismissed. No costs.

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal