

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

In the matter of an Application for the issue of a Mandate in the nature of a writ of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No. 85/2015

W. A. Mihindu Prathiba Karunaratne,
Wellahena Stores, Godawela,
Omalpe, Embilipitiya.

Petitioner.

Vs.

1. Land Commissioner General
Land Commissioner General's
Department,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.
2. Provincial Land Commissioner,
Sabaragamuwa Provincial Council,
Provincial Land Commissioner's Office,
Ratnapura.

3. Divisional Secretary,
Divisional Secretariat,
Embilipitiya.
4. W. Karunawathie,
Walalgoda Panamaure.
5. M. T.N. Priyadharshana,
Walalgoda, Panamure.
6. Hon. Attorney-General,
Attorney General's Department,
Colombo 12.

Respondents.

C.A. Writ Application No. 85/2015

Before : Vijith K. Malalgoda, P.C. J (P/CA) &
S. Thurai Raja, P.C., J

Counsel : Gamini Premathilake for the Petitioner.
N. Dayananda for the 5th and 6th Respondents.

Argued on : 26.01.2017.

Written submissions
Of the Petitioner : 09.02.2016.

Order delivered on : 24.03.2017.

Order

S. Thurairaja, P.C., J.

The petitioner above named submitted this petition to quash a determination bearing No. 3/4/ 1 /කබ / රත් /ඇඹි/ලොටි) 731 dated 01.09.2015 made by the 1st Respondent Land Commissioner General which is marked as P7 and attached to the petition.

The P7 above mentioned was issued by the 1st Respondent on the 01.09.2014 regarding a State land situated at Walagoda village, Embilipitiya district. According to the said P7 the 1st Respondent decided that the relevant file had been lost and unable to identify the real person who is entitle for the permit. But the investigation conducted on the 13th January 2014 is relevant, both parties named M.T.N. Priyadharshana, and G.D. Chandralatha were in occupation in the land in dispute then the land is divided in equal half share i.e. half an acre to be given to each party.

The Petitioner submits that this land was originally given to one Menika (who was an unmarried male). The petitioner's father Weeratunga Arachchige Karunaratne claims to be a close relative of Menika was given the permit of the said land after the demise of Menika. The permit No. 114/955 dated 21.02.2002, it is claimed by the petitioner that his father was occupying the entire land and recently the 4th and 5th Respondents encroached 15 perches of the said land, when the dispute arose the Commissioner General of land had given 15 perches

to the 4th and 5th Respondents and balance to the father of the petitioner.

The Petitioner submits his father W.A. Karunaratne died in 2009. The death certificate is marked as P10. It is further submitted that the 4th and 5th Respondents had encroached the land after the death of W.A. Karunaratne. The 4th and 5th Respondents filed objections took up preliminary objection to the effect that the petitioner has no *locus standi* and the petitioner is guilty of laches.

According to the Petitioner the permit was given to Weeratunga Arachchige Karunaratne, his mother and 3 children (including the Petitioner) were the legal heirs. There is no nomination or issuance of new permit is before the Court. The 4th and 5th Respondents raises objection that the petitioner is not legally permitted to hold the permit, the only material before the Court is the affidavit, affirmed by G.D. Chandralatha Perera, Weeratung Arachchige Duminda Prabha Karunaratne, Weeratunga Arachchige Karunaratne Nimansala Prabani Karunaratne had stated that they give consent of their Rights of the Property to the Petitioner.

The objection taken by the Respondent appears to be noteworthy and the Court takes serious note of the said objection. Anyhow for the purpose of completeness the Court proceeds further to consider all material before taking final decision.

The Petitioner seek to quash P7 dated 01.09.2014 and the petition of the petitioner was filed on the 15th of May 2015. There is delay more

than 8 months, this Court take serious note of the delay. The petitioner has not explained the delay in the petition. Therefore I find that the petitioner is liable and guilty of laches.

Anyhow, I wish to consider all materials before I conclude this matter finally. It is submitted to the Court that the mother of the Petitioner and wife of the original permit holder, G.D. Chandralatha was employed at the Divisional Secretariat of Embilipitiya. The 1st Respondent had concluded that the relevant file is presently missing. I do not hold any one responsible because there is no material how the file went missing.

The petitioner submits that the 4th and 5th Respondents encroached of the said land after the death of his father's i.e. after 2009.

4th and 5th Respondents submits that they were in occupation since 1976 and they were cultivating crops such as pepper and coconut and claims that they were occupying the entire land. The 5th Respondent submits that he had constructed a house in 2001, well before 2009. They have submitted documents to support their claim, including a letter from Death Welfare Society (මරණධර සමිතිය) where there are more than 40 members signed.

The Court is of the view there are substantial material to suggest that the 4th and 5th Respondents were living or occupying the said land or part of the land much before 2009.

I peruse the determination made by the 1st Respondent dated 01.09.2014 which is marked P7. The land is clearly identified and there is no doubt in the identification of the land. The second paragraph of the letter reveals that there is dispute between W. Karunawathie and G.D. Chandralatha and held an investigation on the 13.01.2014 and decided to act in the following manner.

The file relating to the said land had been misplaced therefore he is unable to identify the correct owner. Anyhow it is proved that both parties had possessed the land, therefore 0.0419 hectares to be divided into two and given as follows. First lot to be given to T.C. Priyadahrshanie half an acre and the second lot to be given to G.D. Chandralatha (each will get ½ acre).

Considering the objection taken by the 4th and 5th Respondents regarding the *locus standi*, the Court holds in favour of the Respondent.

The petitioner had not explained the delay in filing this application, therefore he is guilty of laches.

Considering all available material, this Court is not satisfied with the submission of the petitioner to issue a Writ of Certiorari to quash the said P7.

Anyhow considering the entire material before this Court, this Court is of the view that this is not a fit and proper case for the Court to issue

a Writ against the 1st, 2nd and 3rd Respondents to quashing the P7.
Hence the Court refuse to grant any relief prayed by the petitioner.

Application dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda, P.C., J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL

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