

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

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

C.A. (Writ) Application No. 16/2017

1. Denzil Pathmasiri Athukorala,  
No. 30/B, Kirigampamunuwa,  
Polgasowita.
2. Dayan Saminda Athukorala,  
No 30/A, Kirigampamunuwa,  
Polgasowita.

**PETITIONERS**

Vs.

1. K.A.K Ranjith Dharmapala,  
The Commissioner General of Land  
Title Settlement,  
Land Title Settlement Department,  
No.1200/6,  
Mihikatha Madura,  
Rajamalwatta Road, Battaramulla.
2. P.H.M. Priyadharshani,  
Commissioner- Bim Saviya,  
Land Title Settlement Department,  
No.1200/6,  
Mihikatha Madura,  
Rajamalwatta Road, Battaramulla
3. D.M. Dharmasena,  
Assistant Commissioner,  
Divisional Office,  
Land Title Settlement Department,

No. 06, 1<sup>st</sup> Lane, Station Road,  
Homagama.

4. S.W. Chithra Rohini,  
Assistant Commissioner,  
Divisional Office,  
Land Title Settlement Department,  
No. 06, 1<sup>st</sup> Lane, Station Road,  
Homagama.
5. S.V.A.N. Samanthi,  
Licensed Surveyor,  
186/2, Balika Niwasa Road,  
Rukmale, Pannipitiya.
6. P.M.P. Udayakantha,  
The Surveyor General of Sri Lanka,  
Surveyor Department of Sri Lanka,  
P.O. Box. 506,  
No. 150, Kirula Road,  
Narahenpita, Colombo 05.
7. R.W. Thanuja Dharshani,  
Registrar of Title Homagama,  
Land Registry of Homagama,  
High Level Road, Homagama
8. E.M. Gunasekara,  
Registrar General of Title,  
Registrar General's Department,  
No. 234/A3,  
Denzil Koabbekaduwa Mawatha,  
Battaramulla
9. Athukoralage Don Percy,  
Karunaratne Wijethunga,  
No.33, Kirigampamunuwa,  
Polgasowita.

**RESPONDENTS**

**Before** : L.T.B. Dehideniya J. (P/CA)

: Shiran Gooneratne J.

**Counsel** : Chinthaka Mendis instructed by Lanka R. Dharmasiri for  
the Petitioner.

: Vikum De Abrew DSG for the 1<sup>st</sup> to 7<sup>th</sup> Respondents

: Pubudu Alvis for the 8<sup>th</sup> Respondent.

**Argued on** : 20.09.2017

**Written submissions filed on** : 26.10.2017

**Decided on** : 22.11.2017

**L.T.B. Dehideniya J. (P/CA)**

This is an application for mandates in the nature of writ of certiorari and mandamus. The Petitioner seeks to quash the declaration of the 2<sup>st</sup> and 3<sup>rd</sup> Respondents that the 8<sup>th</sup> Respondent is eligible to be registered with a first class title of Absolute Ownership to the parcel of land and to quash the decision of the 6<sup>th</sup> and 7<sup>th</sup> Respondents to register such title. Further a writ of mandamus to compel the 6<sup>th</sup> and 7<sup>th</sup> Respondents delete or to effect necessary alteration to the registration of the Title Register.

Petitioner's contention is that the finding of the Commissioner made under the Registration of Title Act No. 21 of 1998 is factually incorrect and the procedure adopted is bad in law. The learned DSG raised several preliminary objections in maintainability of this application. The learned DSG submits that the Petitioner has failed to explain delay, has misrepresented material facts, a writ Court cannot decide factual disputes and the Petitioner has alternative remedy of appealing against the decision of the Commissioner to the District Court.

The learned DSG submitted the *Gazette* published by the Commissioner declaring the title of the 8<sup>th</sup> Respondent and argue that the Petitioner has failed to submit the said *Gazette* and it amounts to misrepresentation. The Petitioner in his reply refer to certain factual matters that he is contesting, but no proper explanation offered for not disclosing the *Gazette*.

*Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another [1996] 2 Sri L R 70*

*Per Jayasuriya, J.*

*"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 &#8209; are all valid impediments which stand against the grant of relief."*

*Dahanayake and others v Sri Lanka Insurance Corporation Ltd and others [2005] 1 Sri L R 67*

*(i) The grievance of the petitioners arose in November 1994, when the arrears of the enhanced cost of living allowance was paid to the employees in service at that time. The petitioners should have sought a writ of mandamus in 1994 and not in 2003. It is settled law that inordinate delay in invoking the jurisdiction of the Court does not entitle the petitioners to any relief under writ jurisdiction.*

*(ii) The petitioners have not produced a copy of the arbitral award which was made in respect of the identical claim as that which is presently before court, more so, as that 2nd respondent*

*Commissioner General of Labour has cited and relied upon the said award in his order. It is established that the petitioners have previously unsuccessfully canvassed the identical issue arising in this case in another forum.*

*(iii) If there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the application but will dismiss it without further examination.*

*Ratnayake v. Jayasinghe 78 NLR 35*

*Held, The delay of one year and three months which had not been satisfactorily explained by the petitioner barred the remedy. The Court has a discretion which it could exercise to refuse the application on the ground that there had been undue delay in bringing the proceedings.*

The said *Gazette* was issued in 2014 and this application was filed in 2017. The DSG submits that the delay is not explained. Unexplained delay is fatal to an application for a prerogative writ. It had been held by the superior courts in several occasions as such. The Petitioner's contention is that he was unaware of the *Gazette* and the wrong procedure adopted by the Respondent led to this situation. In paragraph 45 of his Petition he stated that the 8<sup>th</sup> Respondent entered in to the land on 17<sup>th</sup> January 2016 and after inquiring, he became aware that the certificate of title has been issued to the 8<sup>th</sup> Respondent. petitioner cannot say that he was unaware of the *Gazette* because the presses in title registration in the said area was in progress and the Petitioner has to be vigilant. In any case, the Petitioner became aware in January 2016 that the *Gazette* has been published. The petition of this application was drafted according to the date bearing in it, was 30<sup>th</sup> December 2016 and submitted to Court on 17<sup>th</sup> January 2017. One year's period has lapsed in between acquiring

knowledge on the publication of the *Gazette* and institution of this application. There is explanation for this delay.

According to the petition, the ownership of the block of land is in dispute. The identification is also challenged by the Petitioner. These factual matters cannot be decided in a writ application. It has to be decided in a proper forum where the evidence can be led because the factual matters have to be decided on evidence.

*Thajudeen V. Sri Lanka Tea Board and another [1981] 2 Sri L R 471*

*Where the major facts are in dispute and the legal result of the facts is subject to contro-versy 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.*

The Title Registration Act provides an opportunity for an aggrieved party to appeal to the District Court. the Petitioner states that he was unaware of the *Gazette* and he could not have appealed. As I pointed above, the Petitioner should have been vigilant.

Under these circumstances, I uphold the preliminary objections and dismiss the application without costs.

President of the Court of Appeal

**Shiran Gooneratne J.**

I agree.

Judge of the Court of Appeal