

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

B.D.M. Wijethunga,  
502, Kuruppu Handiya,  
Polonnaruwa.  
Petitioner

**CASE NO: CA/214/2016/WRIT**

Vs.

1. Hon. John Amaratunga,  
Minister of Lands,  
Mihikatha Medura,  
1200/6, Rajamalwatte Road,  
Battaramulla.
- 1A. Hon. Gayantha Karunathilake,  
Minister of Lands,  
Mihikatha Medura,  
1200/6, Rajamalwatte Road,  
Battaramulla.
2. R.P.R. Rajapaksha,  
Commissioner General of Lands,  
1200/6, Rajamalwatte Road,  
Battaramulla.
3. N.A.S. Nissankaarachchi,  
Divisional Secretary,

Thamankaduwa Divisional  
Secretariat,  
New Town,  
Polonnaruwa.

4. E.M.M. Ekanayake,  
Deputy Commissioner of Lands,  
District Secretariat,  
Polonnaruwa.
5. K.P. Chaminda,  
Assistant Commissioner of Lands,  
District Secretariat,  
Polonnaruwa.
6. B.D.M. Anulawathie,  
No. 189,  
Palugasdamana,  
Polonnaruwa.
7. B.D.M. Bandara Menike,  
No. 189/1,  
R.B. 3 Ela,  
Palugasdamana,  
Polonnaruwa.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Rasika Dissanayake for the Petitioner.

Anusha Fernando, D.S.G., for the 1<sup>st</sup>-5<sup>th</sup>  
Respondents.

Vishva Vimukthi for the 6<sup>th</sup> and 7<sup>th</sup> Respondents.

Decided on: 25.10.2018

Samayawardhena, J.

The petitioner filed this application seeking to quash the decisions contained in P21-P23 by way of certiorari and to compel the respondents to hold an independent inquiry into the matter in dispute by way of mandamus.

There is no dispute that the petitioner's father was originally issued with the Permit P1 in 1954 under the Land Development Ordinance in respect of the land relevant to this matter wherein the petitioner was the nominated successor.

Thereafter, this Permit, according to the respondents, was cancelled in 1996 in terms of section 109 of the said Ordinance *inter alia* for non-cultivation and alienation. Then after a land kachcheri being held, it has been decided to divide the land among the petitioner, and the 6<sup>th</sup> and 7<sup>th</sup> respondents who are sisters of the petitioner. The impugned documents reflect the said decision.

The petitioner came before this Court in 2016 stating that he has been cultivating this land from the very beginning and he never knew that the Permit P1 was cancelled until he was told verbally by the 3<sup>rd</sup> respondent in 2013. The petitioner further says that the respondents have not followed the procedure laid down in the Land Development Ordinance to cancel the said Permit.

I think there is no necessity for this Court to go into finer details of the case as this can be disposed of on a threshold matter.

Writ is a discretionary remedy, and therefore, a party applying for writ must *inter alia* act with promptitude and utmost good faith (*uberrima fide*). The petitioner has done neither.

According to the petitioner he has come to know about cancellation in 1996 and then he has complained it to the Human Rights Commission in 2013 and got the reply also in the same year—vide P18 and P19. Then at least by 2013 the petitioner knew by P19 the position of the 3<sup>rd</sup> respondent on this matter. According to P19, the land is being cultivated not by the petitioner but by the other sisters of the petitioner including the 6<sup>th</sup> respondent. However, he has come to Court in 2016.

The fact that he came to know about the cancellation of the Permit and dividing the land among three of them only in 2013 is also wrong. This is borne out by 3R1(a) tendered by the 3<sup>rd</sup> respondent with his statement of objections. That is a letter admittedly written by the petitioner to the 3<sup>rd</sup> respondent in 2010 stating that the cancellation of the Permit is wrong and also asking the 3<sup>rd</sup> respondent to divide the land among the petitioner and his two sisters who are the 6<sup>th</sup> and 7<sup>th</sup> respondents to this case. This is exactly what the 3<sup>rd</sup> respondent is going to do now. The petitioner now wants the entire land to him!

The application of the petitioner is dismissed with costs.

Judge of the Court of Appeal