

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

In the matter of an appeal from the judgment of the High Court of the Central Province under Article 154G of the Constitution read with Provisions of the Provincial High Court (Special Provisions) Act No.10 of 1990.

Sundararajah Pushparaja,

No. 125, Kotmale Road,

Nawalapitiya.

**Petitioner**

**Case No: CA(PHC) 161/2008**

**P.H.C. Kandy Case No: Writ 26/2005**

**Vs.**

1. Urban Council,  
Nawalapitiya.
2. W.R.A.N Kumara Ranasinghe,  
Chairman,  
Urban Council,  
Nawalapitiya.

3. B.L.P Wasantha Kumara,  
Secretary,  
Urban Council,  
Nawalapitiya.

**Respondents**

**And now between**

Sundararajah Pushparajah,  
  
No.125, Kotmale Road,  
  
Nawalapitiya.

**Petitioner-Appellant**

**Vs.**

1. Urban Council,  
Nawalapitiya.
  
2. W.R.A.N Kumara Ranasinghe,  
Chairman,  
Urban Council,  
Nawalapitiya.
  
3. B.L.P Wasantha Kumara,  
Secretary,  
Urban Council,  
Nawalapitiya.

3A. Gamini Jeyawickrama,  
  
Secretary,

Urban Council,  
Nawalapitiya

3B. H.T Sarath Wickramasinghe,

Secretary,  
Municipal Council,  
Nawalapitiya.

3C. K.M.H.W Bandara,

Secretary,  
Municipal Council,  
Nawalapitiya.

**Respondents- Respondents**

**Before:** K.K. Wickremasinghe J.

Janak De Silva J.

**Counsel:**

Athula Perera with Vindya Divulwewa for Petitioner-Appellant

Neville Abeyratne P.C. with Kaushalya Abeyratne Dias for 1<sup>st</sup> to 3C Respondents-Respondents

**Written Submissions tendered on:**

Petitioner-Appellant on 26.06.2018

1<sup>st</sup> to 3C Respondents-Respondents on 26.06.2018

**Argued on:** 10.01.2019

**Decided on:** 15.03.2019

**Janak De Silva J.**

This is an appeal from an order dated 05.12.2008 made by the learned Civil Appellate High Court Judge of the Central Province holden in Kandy.

The Petitioner-Appellant (Appellant) in the above styled application filed in the Civil Appellate High Court of the Central Province holden in Kandy sought the following reliefs:

- (a) A writ of certiorari quashing the decisions ෧෧.24 and ෧෧.28 taken by the 1<sup>st</sup> Respondent-Respondent along with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents-Respondents (Respondents) at the meetings held on 12.09.2004 and 21.02.2005
- (b) A writ of mandamus directing the Respondents to restore the tenancy of the Appellant to the destroyed premises no. 30 or alternatively to provide him with an alternate place,
- (c) A stay order suspending the decisions ෧෧.24 and ෧෧.28

The Appellant was the tenant of premises no. 30, Gampola Road, Nawalapitiya for nearly 29 years and carried on fancy goods and aluminium business named Ambika & Co. The Appellant used the 1<sup>st</sup> floor of the said premises as his residence. The owner of the said premises was one N.M. Jayasuriya. During the 1983 communal violence the said premises were totally destroyed and the Appellant displaced. The Appellant submitted that he had a legitimate expectation that he will be restored to the same premises or alternatively provide with other accommodation. The Appellant relied on the provisions in the Rehabilitation of Persons, Properties and Industries Authority Act No. 29 of 1987 (REPIA Act).

The Respondents submitted that the former owner of the premises in dispute N.M. Jayasuriya had sold the premises to the 1<sup>st</sup> Respondent and that the 1<sup>st</sup> Respondent did not have an owner tenant relationship with the Appellant. The Respondents denied that the Appellant had a legitimate expectation to be restored to the same premises or alternatively to be provided with other accommodation.

### ***Legitimate Expectation***

The Appellant submits that the conduct of the Respondents gave rise to a legitimate expectation on his part that he will be restored to the tenancy of premises no. 30 Gampola Road, Nawalapitiya or alternatively to provide him with an alternate place.

In *Council of Civil Service Unions v. Minister for the Civil Service* [(1985) A.C. 374, 408-9] Lord Diplock stated that for a legitimate expectation to arise, the decision:

“must affect [the] other person ..... by depriving him of some benefit or advantage which either (i) he had in the past been **permitted by the decision maker to enjoy** and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has **received assurance** from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.” (emphasis added)

Such legitimate expectations may arise where a public authority has made a clear, unqualified and unambiguous representation to a particular individual that it will act in a particular way. The burden is on the individual to demonstrate that an unqualified, unambiguous and unqualified representation was made [Clive Lewis, *Judicial Remedies in Public Law*, 5<sup>th</sup> Ed., 248 (South Asian Edition)].

In so far as the alleged representation to restore the Appellant to the tenancy of premises no. 30 Gampola Road, Nawalapitiya, there is no such evidence. In any event there is no dispute that the premises in dispute at no. 30, Gampola Road, Nawalapitiya was totally destroyed. In *Saheed v. Gaiyoom and others* [(1998) 1 Sri.L.R. 144] the Supreme Court held that upon the destruction of the premises, the contract of tenancy came to an end, irrespective of the question whether it also came to an end by reason of the premises being automatically vested in the State as an "affected property" in terms of the REPIA Act.

In so far as the alleged representation to provide the Appellant with alternative accommodation, again there is no clear and unqualified representation. In *Tokyo Cement Company (Lanka) Ltd. vs. Director General of Customs* [(2005) BLR 24] the Supreme Court held that the representation must be intra vires for there to be a legitimate expectation. Hence the alleged representation on behalf of the 1<sup>st</sup> Respondent should have been made by a person or body empowered by law to do so.

Letter dated 11.07.1985 (ඔප.15) written by Chairman, REPIA to the Chairman of the 1<sup>st</sup> Respondent states that the Appellant had made him understand that "some person in authority in your council" had assured the Appellant that he would be provided with alternative accommodation. The Appellant also relies on letter dated 18.12.1985 (ඔප.18) purportedly signed by the then Chairman of the 2<sup>nd</sup> Respondent to establish a representation to provide alternative accommodation.

In the first place, the letter dated 18.12.1985 (ඔප.18) is not available in the original case record. In any event, in my view the Chairman of the 1<sup>st</sup> Respondent did not have the authority under the Urban Council Ordinance (as the 1<sup>st</sup> Respondent was an Urban Council at the material times) to make a binding representation on behalf of the 1<sup>st</sup> Respondent.

Hence none of the above alleged representations form the basis for a clear, unqualified and unambiguous representation made to the Appellant by a person or body empowered in law to do so. Hence, the Appellant has failed to establish a basis for him to entertain a valid legitimate expectation to be restored to the tenancy of premises no. 30 Gampola Road, Nawalapitiya or alternatively to provide him with an alternate accommodation.

**Decisions ෧෧.24 and ෧෧.28**

Although not raised before the High Court this Court is bound to consider another issue as otherwise any decision made by Court may impinge on the rights of a third party. The decisions marked ෧෧.24 and ෧෧.28 taken by the 1<sup>st</sup> Respondent was to permit the construction of a flight of steps through this property on the request of persons carrying on business in the adjoining premises bearing assessment nos. 32 and 34 and to give the land in dispute to three other persons respectively. It is these decisions which the Appellant seeks to quash by way of a writ of certiorari. However, the Appellant has failed to name the said persons as Respondents to this application.

In *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267] Amaratunga J. held that the first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. The second rule is that those who would be affected by the outcome of the writ application should be made respondents to the application {*Abeydeera vs. Dr. Stanley Wijesundara and another* [(1983) 2 Sri.L.R. 267], *Farook vs. Siriwardena*[(1997) 1 Sri.L.R. 145]}

In *Gregory Fernando and others v. Stanley Perera, Acting Principal, Christ The King National School and others* [(2004) 1 Sri.L.R. 346] the petitioners sought to quash the (temporary) list containing the names of the successful children published by the 1st respondent and further sought to compel the 1st respondent to constitute an interview board and to hold interviews afresh. A preliminary objection was raised that the successful children or their parents were not made parties to the application. In upholding the preliminary objection, the court held that It is

vital that fairness demands that a person whose rights would be adversely affected must be given an opportunity for a fair hearing. One would not go to the merits of a case without hearing necessary parties. Hence the prayer for a writ of certiorari to quash the decisions contained in පෙ.24 and පෙ.28 must be refused on that ground alone.

### ***Delay***

In *Sarath Hulangamuwa v. Siriwardena, Principal, Visakha Vidyalaya, Colombo 5 and 5 others* [(1986) 1 SLR 275] it was held that Certiorari being a discretionary remedy will not be granted where there was delay in seeking the remedy.

In *Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another* [(1996) 2 SLR 70] 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 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 that case relief was refused since there was a delay of over two and half years since making the order challenged.

In *Jayarathne v. Wickremaratne and Others* [(2003) 2 SLR 276] it was held that even when the Petitioner is entitled to the relief on grounds of error of law, the Petitioner is guilty of laches which stands against the grant of relief by way of writ of certiorari. In this case, the Court specifically came to a finding that the decision impugned in that application was irrational, arbitrary and unreasonable. Yet the relief was refused since the application was made to Court 7 years after the impugned decision.

Whether there is a delay which disentitles a party to a prerogative writ is a question of fact depending on the circumstances of each case. In the instant case the learned High Court Judge held that there has been a delay on the part of the Appellant in coming to court. The Appellant submits that the delay is explained by the documents marked පෙ.1 and පෙ.33.



I have no hesitation in rejecting this submission. Those documents show that the last time the Appellant made any representations prior to ෧෧.24 is somewhere in 1990. The application to the High Court was made in 2005.

Accordingly, I see no reasons to interfere with the order dated 05.12.2008 made by the learned Civil Appellate High Court Judge of the Central Province holden in Kandy.

Appeal is dismissed. No costs.

Judge of the Court of Appeal

**K.K. Wickremasinghe J.**

I agree.

Judge of the Court of Appeal