

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

CA/WRIT/304/2014

In the matter of Application
in the nature of *Writ of
Mandamus* and *Prohibition*
in terms of Article 140 of
the Constitution

Ekanayaka Mudiyansele
Kanthi Ekanayake,

No. 1, Matala Watta,
Palapathawala, Matala.

PETITIONER

VS.

1. Commissioner General,
Department of Lands,
1200/6, Minikatha
Medura,
Rajamalwatta Road,
Battaramulla.
2. Mahaweli Authority of
Sri Lanka,
No. 500, T. B. Jaya
Mawatha, Colombo 10
3. Resident Project
Manager,
Resident Project Office,
Mahaweli Economic
Agency,
Mahaweli Authority of
Sri Lanka,
Bakamoona.
4. Divisional Secretary,
Divisional Secretariat,
Bakamoona.

5. Ratnayake
Mudiyanselage
Wickremasinghe Banda,
Yaya, 19/10,
Kottapitiya.

RESPONDENTS

BEFORE : **M. M. A. GAFFOOR, J.**

COUNSEL : A. Weerasekara with A. Kasturiarachi for the
Petitioner
S. Wimalasena SSC for the 1st to 4th
Respondents
Sampath Perera for the 5th Respondent

WRITTEN SUBMISSION

FILED ON : 19.11.2018 (2nd and 3rd Respondents)
16.11.2018 (5th Respondent)

DECIDED ON : **22.03.2019**

M. M. A. GAFFOOR, J.

The Petitioner above named has filed this application praying *inter alia* for following orders among other relief:

- a) Mandate in the nature of writ of *Prohibition* to restrain the 1st to 4th Respondents from approving and/or transferring any rights to the Respondent in respect of the lands lot 193 and 210 depicted in Final Colony Plan No. 27;
- b) Grant and issue writ of *Mandamus* to mandate the 1st to 4th Respondents to take steps to issue, transfer rights in respect of the lands lot 193 and 210 depicted in Final Colony Plan No. 27 to the Petitioner and/or successor (i. e. children).

This application relates to alienation of State Lands in terms of the Land Development Ordinance, No. 19 of 1935 as amended more specifically in respect of two allotments of land,

- a) High Land having an extent of 2A-2R-33P depicted in Final Colony Plan No. 27 as lot 193 and;
- b) Paddy Field having an extent of 5A-1R-08P depicted in the said Plan No. 27 as lot 210.

It is common ground that on or around 10.10.1952, permit bearing No. 396 dated 10.10.1952 was issued in terms of the Provisions of the Land Development Ordinance to one Wellangahapitiya Gedera Ranhamy for the aforesaid two lands situated in *Bakamoona* and this original permit-holder Ranhamy died on or around 25.10.1971 and his wife, Wijesuriya Arachchige Tikiri Menike was succeeded to the land alienated to deceased Ranhamy.

The Petitioner submitted that her husband W. G. Rathnayake Wijesuriya is the youngest Son as well as the nominated successor of the Arachchige Tikiri Menike after her demise. On 14.04.1987 the permit holder (successor) died at the age of 34 leaving his wife, the Petitioner and two minor children. Therefore, in the absence of a nomination, the Petitioner succeeded to the life interest and therefore, on 02.05.1987 made an application to amend the permit under her name, and/or a child's name

It is revealed from the facts that, on or around 22.09.1989 the said Tikiri Menike was issued two grants bearing Nos. පො/ජ/ය19/ප්/මා/765 and පො/ජ/ය19/ප්/මා/766 by the then Excellency President of the Democratic Socialist Republic of Sri Lanka under the hand of the said President alienating the paddy field and the high land respectively for which said Tikiri Menike was succeeded to after her husband's demise.

The 5th Respondent submitted that the said Tikiri Menike had executed a Last Will bearing No. 189 dated 26.11.1993 attested by M. R. Ranathunga, Notary Public and under such Last Will Tikiri Menika had nominated the 5th Respondent as the successor to the above mentioned properties. However, the Petitioner's strong position is that the purported Last Will is a fabricated document.

The 5th Respondent further submitted that the said Tikiri Menike passed away on or around 25.10.2002 and after her demise, the 5th Respondent had filed a Testamentary Case bearing No. T/74/2002 on or around 03.12.2002 in the District Court of Polonnaruwa seeking inter alia for a declaration to the effect that the Last Will is duly proved, a declaration that the 5th Respondent is the executor of the said Last Will and to grant a Probate with regard to the above mentioned properties.

In the said Testamentary case, the judgment was not in favour to the 5th Respondent, since he made an appeal to the Civil Appellate High Court of the North Central Province. After having heard the parties, their lordships held with the 5th Respondent granting all relives prayed for in the Plaint in the case bearing No. T/74/2002.

Being aggrieved by the said judgment, the Petitioner (who was the Respondent of the said case) filed a leave to appeal application to the Supreme Court bearing Case No. SC/HC/CA/LA/No. 84/2011 and having heard the submissions of the Counsels, the Supreme Court decided that there is no reason to grant leave and refused the leave by dismissing the application by upholding the judgment delivered by the Civil Appellate High Court of the North Central Province. Therefore, it's clear that both High Court and the Supreme Court had granted the Probate to the 5th Respondent depend on the facts and circumstances of the Case.

Therefore, Counsel for the 5th Respondent submitted that the Petitioner by refusing the fact that the 5th Respondent is the lawful owner/successor of the subject matter had filed this writ application to this Court with malicious intention to harass the 5th Respondent.

Further, both Counsels for the 2nd, 3rd, and the 5th Respondents conjointly submitted that the Petitioner having had the knowledge about the two grants which were issued to Tikiri Menike did not take any action against the officers of the local authorities at that time and now only the Petitioner is stopped from being invoking the jurisdiction of this Court and she is guilty of laches.

At this juncture, I wish to recall the findings in **JAYAWEERA VS. ASSISTANT COMMISSIONER OF AGRARIAN SERVICES RATNAPURA AND ANOTHER** [(1996) 2 SLR 70], the Court of Appeal 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."

Furthermore, I am of the considered view that the Petitioner's issues regarding the legality of the nomination of the successors, permits and the Probate are promptly decided by Court of laws in several occasions namely in the High Court and the Supreme Court. Therefore, I don't think that the Petitioner has a legitimate ground to seek the discretionary-intervention of this Court.

In the Case of **MENDIS VS. LAND REFORM COMMISSION AND OTHERS** [S.C. Appeal No. 90/2009, S.C Minutes dated 12.02.2016],
Gooneratne, J. held that:

“Even if such grounds to issue a Writ of Certiorari and Mandamus could be established, court has also to consider whether the Petitioners-Petitioners are disentitled to the relief prayed for even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative writs if it could be established and Petitioners are guilty of/and or disentitled to the remedy, based on (a) Laches/undue delay (b) Willful suppression/misrepresentation of material facts (c) Acquiescence (d) Grave public/administrative inconvenience (e) Futility (f) Availability of alternative remedy (g) Locus standi.”

In the circumstance, I see no effective ground to grant any relief to the Petitioner. Therefore, application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL