

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

An application for writs of certiorari and Mandamus made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No: C.A.(Writ) Application No: 197/2019

1. Mohammed Saheed Hadjiar Sitti
Raleena
2. Mohammed Abdul Cader Sitti
Nurul Kuloob
3. Mohammed Adul Cader
Mohammed Ismath Wazeer

All of No. 33,
Sri Razik Fareed Road,
Thotawatta, Panadura

Petitioners

-VS-

1. The Attorney General
Attorney General's Department,
Hulfsdorp,
Colombo.
2. Divisional Secretary,
Divisional Secretariat,
Beruwala.
3. A.Y.S.D. Gunaratne
No 12, Ashoka place,
Katubadda, Moratuwa.

4. Sareguhewage Manel Mangalika
No. 35, Galle Road,
Aluthgama.
5. Nirmani Chathurika Pieris
No. 35, Galle Road,
Aluthgama.
6. Amayaru Upanath Pieris
No. 35, Galle Road,
Aluthgama.
7. Lokukankanamge Roweena Pieris
No. 10, Fife Road, Colombo 05.
8. Ramani Priyanthi Pieris
No 20, Gunatilake Road,
Ettabagoda, Panadura

Respondents

Before : **Hon. Justice Janak De Silva**
Hon. Justice N. Bandula Karunarathna

Counsel : Nadvi Bahaudeen with M.N. Jayawardhane instructed by
Ahamed Sahran for the Petitioner.

Riad Ameen with Warana Wijayanayake instructed by Lanka
Dharmasiri for the 4th, 5th, 6th, 7th and 8th Respondent.

Suranga Wimalasena, SSC for the Hon. Attorney General.

Argued and

Decided on : 01/11/2019

Hon. Justice Janak De Silva

Learned counsel for the Petitioner heard in Support of the averments in the Petition. Learned counsel for the 4th-8th Respondents raises several preliminary objections to the maintainability of the application. Learned Senior State Counsel also heard.

Petitioner in this case is seeking a Writ of Certiorari to quash the Section 17 Award made under the Land Acquisition Act marked as “P 15” to the Petition. A further Writ of Mandamus is sought compelling to re inquire into the ownership claim of the land known as “Kalawila Watta”.

It appears that the document marked “P15” which is an award made under the Section 17 of the Land Acquisition Act was made in 2003 (Page 61 of P 12). The prayer to the Petition refers to this document as an undated order. Learned counsel for the 4th-8th Respondents in his preliminary objections submitted that this was a conscious effort on the part of the Petitioner to overcome any objection based on delay since, at least by 2007 the Petitioner became aware that P 15 was made in 2003 in view of document marked P3 which is a letter dated 04/08/2007 sent by the Divisional Secretary, Beruwala to B.D.K. Yamuna Kumari, Attorney at Law and Notary Public who had communicated with the said Divisional Secretary on behalf of the Petitioners by “P 2”.

Learned counsel for the 4th – 8th Respondents accordingly submitted that this application has been filed more that 12 years after the Petitioners became aware of “P15” and that Court should refuse notice due to delay. It is an established position that delay is a ground on which discretionary relief can be refused.

Learned counsel for the Petitioner in response submitted, that in terms of *Biso Menika vs. De Alwis and others* [(1982) 1 Sri.L.R.368] delay does not per se prevent the Petitioner from obtaining relief if the order impugned is a nullity and the reasons for the delay has been explained. In that case the Supreme Court held that if the Petitioner can explain that he has sought legal remedies before invoking the Writ jurisdiction as supposed to extra-legal remedies that can be considered in favor of the Petitioner. The learned counsel for the Petitioner refers to the fact that he sought to intervene in LA 05/2011 which is the application made in terms of Section 10(1) of the Land Acquisition Act by the Divisional Secretary.

The learned counsel for the Petitioners further submits that he also moved the High Court of the Western Province Holden in Kalutara against P 15 in Application No. 30/2007 in which case the learned High Court Judge issued a Writ of Mandamus which order was set aside by this Court in CA (PHC)178/2008 on 13/06/2016.

Even if this Court, accepts the proposition formulated by the learned counsel for the Petitioners there is at least another three years delay from the order of this Court in CA (PHC) 178/2008 prior to filing this application.

It is also established law that suppression and/or misrepresentation of material facts is a matter that a Court exercising Writ jurisdiction should consider in deciding whether to intervene by way of judicial review (*Alponso Appuhamy vs. Hettiarachchi* 77 N.L.R. 131). The learned counsel for the 4th- 8th Respondents submits that the Petitioner is guilty of suppression and /or misrepresentation of material facts in that when referring to the order in LA 05/2011-District Court, Kalutara reference is made that the intervention of the Petitioners which was sought in that case was refused on the basis of laches when in fact the judgment marked "P 12(a)" by the Petitioners shows that the application was refused on the basis that the Petitioners in that case had not established their pedigree.

The learned Senior State counsel further submitted that Section 57 of the Land Acquisition Act gives an alternative remedy to the Petitioners if as claimed by them compensation that is lawfully due to them are being paid to the 4th-8th Respondents who according to the Petitioners are not lawfully entitled to such compensation.

The learned counsel for the 4th-8th Respondents further submitted that the final order in District Court, Kalutara LA 05/2011 was delivered on 30/04/2019 by which the learned District Judge identified the entitlements of the parties before that Court to the compensation payable for the land acquired by the State which order the Petitioner intentionally kept away from this Court. He further submitted that being well aware that the 4th -8th Respondents were the beneficiaries of the Section 17 order made under the Land Acquisition Act, the Petitioners in this case sought in the first instance to support the matter without making the 4th – 8th Respondents parties to this application.

Learned counsel for the 4th – 8th Respondents submits, that its only when two parties sought to intervene in this case that the Petitioners brought in all four respondents who are now identified as 4th-8th Respondents in this application.

Having considered the material and the submissions made by all counsel in this case, this Court is of the view, that there is a merit in the submissions that there has been delay and suppression and /or misrepresentation of material facts by the Petitioner.

However, this Court is troubled by the submissions made by the learned counsel for the Petitioner that the land acquired and the deeds produced by the parties to whom compensation has been awarded in terms of “P 15” differ at least in relation to two boundaries namely the North and South boundaries between the Section 38(a) proviso order and the deeds.

Learned counsel for the Petitioner further submits that he has received instructions from his clients that they intend to make a complaint to the Police on that issue. In the event the Petitioner is correct it will mean that public funds are being paid to a party who is not entitled in terms of the law for the said compensation.

Accordingly, this Court directs the Hon. Attorney General to consider whether any offence has been disclosed in terms of any such complaint made by the Petitioner.

For the forgoing reasons, but subject to the direction made to the Hon. Attorney General this Court refuses notice on grounds of delay, suppression and/or misrepresentation of material facts and due to the Petitioners having an adequate and efficacious remedy in terms of the law.

Notice refused. No costs.

Judge of the Court of Appeal

Hon. Justice N. Bandula Karunaratna

I agree.

Judge of the Court of Appeal

Tns/-