

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

In the matter of an Application for Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 190/2018**

Madappuliarachchige Oliver Gregory  
Ernest Fernando,  
No. 38/5, Peiris Mawatha, Idama,  
Moratuwa.

**PETITIONER**

Vs.

1. Commissioner of Title Settlement,  
Land Title Settlement Department,  
1200/6, Mihikatha Medura,  
Rajamalwatta Road,  
Battaramulla.
2. Deputy Commissioner of Title Settlement,  
Land Title Settlement Department,  
Divisional Office, 22, Peiris Mawatha,  
Idama, Moratuwa.
3. Registrar of Title,  
Land and District Registry,  
Title Registration Office,  
Delkanda Nugegoda.
4. Municipal Council of Moratuwa,  
Old Galle Road, Moratuwa.
5. Surveyor General,  
Sri Lanka Survey Department,  
Narahenpita, Colombo 5.

6. Registrar General of Title,  
Registrar General's Department,  
234/A3, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

### **RESPONDENTS**

**Before:** **Arjuna Obeyesekere, J / President of the Court of Appeal**

Petitioner appeared in person

**Counsel:** Suranga Wimalasena, Senior State Counsel for the 1<sup>st</sup> – 3<sup>rd</sup>,  
5<sup>th</sup> and 6<sup>th</sup> Respondents

Naamiq Nafath for the 4<sup>th</sup> Respondent

**Argued on:** 28<sup>th</sup> September 2020

**Written Submissions:** Tendered by the Petitioner on 19<sup>th</sup> June 2019, 2<sup>nd</sup>  
September 2019 and 17<sup>th</sup> November 2020

Tendered on behalf of the 1<sup>st</sup> – 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents  
on 21<sup>st</sup> September 2020

Tendered on behalf of the 4<sup>th</sup> Respondent on 2<sup>nd</sup> August  
2019 and 23<sup>rd</sup> October 2020

**Decided on:** 5<sup>th</sup> May 2021

#### **Arjuna Obeyesekere, J., P/CA**

The Petitioner is a 72 year old Science graduate who states that he has worked both in the Public and Private sectors. The Petitioner states that in April 2016, he *purchased* a property in extent of 8P situated in the “*Bolgoda Siripura Janawasaya*” from W.A. Dona Damayanthi. It is not in dispute that the said property is depicted as Lot Nos. 269 and 270 in Cadastral Map No. 520206 prepared by the Surveyor General, marked ‘**P2a**’ and ‘**P2b**’.

Although the Petitioner claims that he has *purchased* this property, he has not produced any title deed by which the said property was transferred to him, nor has he produced any title deeds by which the said Dona Damayanthi became the owner of the said property. What the Petitioner has produced instead is a document the Petitioner himself refers to as a Conditional Agreement (භවරොක්ක ගිවිසුම) executed on 4<sup>th</sup> April 2016 marked 'P3a' in terms of which the Petitioner is said to have paid a sum of Rs. 2.4 million to the said Dona Damayanthi. In paragraph 3 of 'P3a', Dona Damayanthi had agreed to obtain the *Bim Saviya* certificate from the 4<sup>th</sup> Respondent, the Municipal Council, Moratuwa in respect of the said property and hand it over to the Petitioner.

The Petitioner has admitted in paragraph 10 of the amended petition that he *purchased* the said property as he did not have a place to live, even though he was aware that a *Bim Saviya* Certificate was yet to be issued in respect of the said property. Thus, at the time the Conditional Agreement was signed, the Petitioner was aware that the *Bim Saviya* certificate and thereby the title to the said land, was with the 4<sup>th</sup> Respondent. The Petitioner has admitted in his written submissions that, '*I have not stated in my petition that either me or Dona Damayanthi have any title ownership for the two land parcels in question.*'<sup>1</sup> The position therefore is that the Petitioner, even though he may be in possession of the two lots of land referred to above, has no claim to the ownership or title thereto.

The Petitioner admits further in paragraph 11 of the amended petition that, '*this property is one of the 44 blocks of a Janawasaya named as Bolgoda Siripura that had been erected on Crown land*' in 1992 under the then Government's housing programme. This position has been reiterated by the Petitioner in his written submissions.<sup>2</sup>

Having come into occupation of the said State land, the Petitioner states he made inquiries relating to the title of the said property, where the following transpired:

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<sup>1</sup> Vide paragraph C(1)(xiii)(d) of the written submissions dated 17<sup>th</sup> November 2020.

<sup>2</sup> Vide paragraph C(1)(v) of the written submissions dated 17<sup>th</sup> November 2020.

- (a) The 1<sup>st</sup> Respondent, the Commissioner of Title Settlement, acting in terms of the provisions of the Title Registration Act No. 21 of 1998 (the Act) had called for claims in respect of the said property as far back as 2010;
- (b) In 2012, the 1<sup>st</sup> Respondent, acting in terms of the Act, had declared the 4<sup>th</sup> Respondent as the absolute owner of the said property with first class title.

The Petitioner claims that even though the 4<sup>th</sup> Respondent has been recognized as being the absolute owner of the said land, the 4<sup>th</sup> Respondent had failed to substantiate its title at the inquiry before the 1<sup>st</sup> Respondent.

Aggrieved by the decision of the 1<sup>st</sup> Respondent taken in 2012 to confer first class title in respect of the said property to the 4<sup>th</sup> Respondent, the Petitioner filed this application in June 2018, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the said decision of the 1<sup>st</sup> Respondent;
- b) A Writ of Certiorari to quash the decision of the 3<sup>rd</sup> Respondent to issue *Bimsaviya* Certificate Nos. 2523517 and 2523518 to the 4<sup>th</sup> Respondent;
- c) A Writ of Mandamus to compel the 1<sup>st</sup> Respondent to name the Petitioner as the person entitled to first class title in respect of the said property;
- d) A Writ of Mandamus to compel the 3<sup>rd</sup> Respondent to issue the *Bimsaviya* Certificate in respect of the said property to the Petitioner.

In essence, the Petitioner is seeking an order from this Court to cancel the title of the 4<sup>th</sup> Respondent and declare the Petitioner as being the owner of the said land. This relief is being sought in spite of the Petitioner admitting that he has no title to the said land or even a claim to the title of the said land. Be that as it may, this Court, in the exercise of its jurisdiction in terms of Article 140 of the Constitution cannot go into questions of title. What this Court can consider is whether the 1<sup>st</sup> Respondent followed the procedure laid down in the Act in arriving at the decision recognising the 4<sup>th</sup> Respondent as having first class title to the said property or whether the said

decision of the 1<sup>st</sup> Respondent is illegal or *ultra vires* the powers conferred on the 1<sup>st</sup> Respondent by the Act.<sup>3</sup>

The Respondents have raised several legal objections including the fact that the Petitioner has no *locus standi* to have and maintain this application, and that the Petitioner is guilty of delay in invoking the jurisdiction of this Court. In order to consider the said objections as well as the purported grievance of the Petitioner, it would be required to consider at the outset the provisions of the Act.

The Registration of Title Act was introduced in 1998 to make provision *inter alia* for the investigation and registration of title to a land. The Registration of Title Regulations No. 1 of 1998, made by the Minister of Agriculture and Lands in terms of Section 67 of the Act, has been published in Extraordinary Gazette No. 1050/10 dated 21<sup>st</sup> October 1998. The Petitioner has produced marked '**P17**' the said Regulations.

Section 1 of the Act provides that the Act shall apply to such Province, Administrative District or Administrative Division as the Minister may from time to time, by Order published in the Gazette, specify as an area to which the said Act shall apply.

In terms of Section 11, upon the publication of an Order under Section 1:

*'the Commissioner of Title Settlement shall request the Surveyor-General to prepare cadastral maps for the areas specified in such Order and upon such request the Surveyor-General shall cause such cadastral maps to be prepared and certified copies of the same to be issued to the Commissioner of Title Settlement'.*

Section 10 provides that, *'The registration of title to every land parcel under this Act shall be in accordance with the cadastral map prepared for that purpose.'*

Section 12 requires the Commissioner of Title Settlement, on receipt of such certified copies of cadastral maps, to publish a Notice in the Gazette, calling for any claimants

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<sup>3</sup> See Council of Civil Service Unions vs Minister for the Civil Service [1985 AC 374]

to the land parcel specified in such Notice to submit their claims to him within a prescribed period from the date of publication of such Notice.

Section 13 of the Act requires the Commissioner of Title Settlement to thereafter cause an investigation to be conducted in order to determine the genuineness or otherwise of claims made in response to a Notice under section 12.

*In terms of Section 21, 'If, during the course of investigations, the Commissioner of Title Settlement forms the opinion that, due to the disputed nature of the claims, it would be more appropriate for the investigations to be carried out by the District Court, the Commissioner of Title Settlement may refer such claims for investigation and determination to the District Court having jurisdiction over the area where the land is situate.'*

Unless a reference is made in terms of Section 21 of the Act to the District Court, Section 14 requires the Commissioner of Title Settlement upon the conclusion of the investigation in terms of Section 13, to publish in the Gazette his determination thereon, as follows:

- “(a) where the Commissioner of Title Settlement is of the view that a claimant to a land parcel has a title of Absolute Ownership, he shall declare such claimant eligible to be registered with a First Class Title of Absolute Ownership;*
- (b) where the Commissioner of Title Settlement is of the view that a claimant does not qualify for a First Class Title of Absolute Ownership but the claimant is in bonafide possession of the land parcel, he may declare the claimant eligible to be registered with a Second Class Title of Ownership with the right, at the end of a period of uninterrupted and unchallenged possession of ten years from the date of registration in such capacity, to have such Second Class Title converted to a registration with First Class Title of Absolute Ownership;*
- (c) where the Commissioner of Title Settlement is of the view that the claimant has established a claim to a part of the land parcel claimed he*

*shall declare the claimant eligible to be registered with a First Class Title of Absolute Ownership or a Second Class Title of Ownership, as the case may be, to a divided portion of such parcel;*

*(d) where the Commissioner of Title Settlement is of the view that it is not possible to recognise one or more of such claims without reducing the extent of a divided portion of a land parcel below the prescribed economic unit, he shall declare all such claimants who have a valid claim to such parcel, eligible for registration as co-owners of such parcel with a title of co-ownership to the extent of the individual claimant's co-ownership."*

I shall now consider if the above provisions of the Act have been followed by the 1<sup>st</sup> Respondent.

It is admitted between the parties that the Minister has made an Order under Section 1 of the Act, and that the provisions of the Act apply to the land that is the subject matter of this application.

The first step that must be taken by the 1<sup>st</sup> Respondent is to act under Section 11 and have the Surveyor General prepare cadastral maps for the area specified in the Order. It is admitted that the 1<sup>st</sup> Respondent has complied with Section 11. Cadastral Map No. 520206 depicting Lot Nos. 269 and 270 has been marked 'P2a'. In terms of the Tenement List marked 'P2b', while the Claimant for both lots is the State, Dona Damayanthi's name has been given as the person in possession of the two lots.

The next step is for the 1<sup>st</sup> Respondent to act in terms of Section 12 and publish a Notice in the Gazette, calling for any claimants to the land parcel specified in such Notice to submit their claims. It is admitted that this too has been complied with, with the 1<sup>st</sup> Respondent publishing the said notice in Extraordinary Gazette No. 1666/19 dated 11<sup>th</sup> August 2010, marked 'P18'. In terms of 'P18', all claims had to be submitted by 15<sup>th</sup> September 2010.

Section 13 of the Act requires the Commissioner of Title Settlement to thereafter cause an investigation to be conducted in order to determine the genuineness or otherwise of claims made in response to a Notice under section 12. The 1<sup>st</sup>

Respondent has annexed marked 'R3' a statement from W.W.K.J. Fernando who, having conducted the investigation had determined that the 4<sup>th</sup> Respondent has a first class title to the said land. In 'R3', he had explained the following:

- a) Lot Nos. 269 and 270 of the cadastral map had referred to the State as being the claimant;
- b) Due publicity was given of the notice under Section 12;
- c) Clarifications were sought from the Divisional Secretary, Moratuwa with regard to the ownership of the said land;
- d) Only after inquiries were made from the 4<sup>th</sup> Respondent did the 4<sup>th</sup> Respondent by a letter dated 17<sup>th</sup> December 2010 make a claim for the said land;
- e) It is only after he was satisfied of the claim of the 4<sup>th</sup> Respondent that he made a recommendation that the title of the 4<sup>th</sup> Respondent be accepted.

It is admitted by the Petitioner that Dona Damayanthi did not respond to 'R3' and make a claim for the land. It is apparent that Dona Damayanthi did not make a claim as she knew that she does not have title to the said land, a fact that has been admitted by the Petitioner in his written submissions. Dona Damayanthi however appears to have had an expectation that she could enter into a formal arrangement with the 4<sup>th</sup> Respondent with regard to the land, as borne out by paragraph 3 of 'P3a'.

In terms of Section 14, the 1<sup>st</sup> Respondent has published his determination in Extraordinary Gazette No. 1767/19 dated 19<sup>th</sup> July 2012, marked 'P5a', declaring the 4<sup>th</sup> Respondent as having first class title to *inter alia* Lot Nos. 269 and 270 and conferring absolute ownership in respect of the said lots to the 4<sup>th</sup> Respondent.

Thus, it is clear that:

- a) The 1<sup>st</sup> Respondent has acted in accordance with the provisions laid down in the Act;



- b) The decision of the 1<sup>st</sup> Respondent to recognize the 4<sup>th</sup> Respondent has been taken on the material that was presented to him, and is not illegal;
- c) There has not been any procedural irregularity in the determination of the title of the 4<sup>th</sup> Respondent.

Section 22 of the Act provides a remedy to a person who is dissatisfied with a declaration made under Section 14. Section 22 of the Act reads as follows:

*“Any claimant aggrieved by any Declaration of the Commissioner of Title Settlement under section 14 may prefer an appeal against such declaration within the prescribed period to the District Court having jurisdiction over the area where the land parcel is situate.”*

The period that has been prescribed by Regulation 8(1) of **‘P17’** is six months from the date of publication of the Section 14 notice in the Gazette. Admittedly, there has not been an appeal against the declaration in favour of the 4<sup>th</sup> Respondent.

The declaration made by the 1<sup>st</sup> Respondent in favour of the 4<sup>th</sup> Respondent has been registered in the Title Register – vide **‘P6a’** and **‘P6b’**.

The effect of registration is set out in Section 32 of the Act and reads as follows:

*“(1) The registration of a person with a First Class Title of Absolute Ownership to a land parcel, shall vest in that person absolute ownership of such land parcel together with all rights and privileges belonging or appurtenant thereto, subject to any subsisting interests as registered in the Encumbrances Section of the Title Register.*

*(2) The registration of a person under the provisions of this Act as a person having ownership or an interest in a land parcel or a charge or encumbrance on or over such land parcel, or as a Manager or beneficiary shall vest in that person the rights so registered together with all rights and privileges belonging or appurtenant there to, whether express or implied and subject to any express agreements relating thereto.”*

Section 33 of the Act reads as follows:

- (1) *Entries in the Title Register maintained under the provisions of this Act, shall be conclusive evidence of the existence of the ownership or interest specified in such entries and shall not be questioned in a Court of law except as provided for in this Act.*
- (2) *The interests of a person whose name appears in the Title Register may be assailed only as provided for in this Act and shall be held by such person together with all rights and privileges belonging or appurtenant thereto free from all interests and claims other than those appearing in the Title Register.*

Section 58 of the Act provides for the rectification of the Registers, and reads as follows:

*“The Registrar of Title may rectify the Registers and other records maintained under this Act in the following instances:*

- (1) *On an order from the Registrar-General of Title where*
  - (a) *errors or omissions not materially affecting the interests of any proprietor, have been detected;*
  - (b) *upon a resurvey as certified by the Surveyor- General, particulars contained in the register require amendment, on the Registrar-General of Title giving notice to all shown by such Register to have an interest in or likely to be affected by such amendment and calling for written representations thereon.*
  - (c) *upon proof of change of name of the registered owner under the provisions of the Births and Deaths Registration Act.*
- (2) *On an order of Court to rectify such Register made under section 59.”*

Any rectification in favour of the Petitioner would materially affect the interests of the 4<sup>th</sup> Respondent. Therefore, rectification under Section 58(1) is not possible.

Section 59 provides as follows:

*“Subject to section 60, a Court may order rectification of the Register where it is satisfied that any registration has been obtained by fraud*

*Provided however, that a Court shall not order the rectification of a register so as to affect the title of a registered owner who is in possession and who has acquired the land parcel or interest therein for valuable consideration, unless such owner was a party to such fraud.”*

The Petitioner has conceded that he is not alleging fraud, and therefore rectification of the register in terms of Section 58(2) is not possible.

The resultant position is that:

- a) with the publication of the determination in terms of Section 14 – vide ‘P5a’;  
and
- b) the registration of the declaration – vide ‘P6a’ and ‘P6b’,

and in the absence of any challenge to any of the above documents as provided by the Act, the absolute title to the said two allotments of land remains with the 4<sup>th</sup> Respondent.

It is in these factual circumstances that the learned Counsel for the Respondents raised their objections that the Petitioner does not have the *locus standi* to have and maintain this application, that the Petitioner is guilty of delay, and that it would be futile to proceed with this application. The facts relating to these three objections are common and the issues are inter-related but for purposes of clarity, I shall address them separately.

I shall start with the question of futility. The complaint of the Petitioner is that the officials of the 4<sup>th</sup> Respondent misrepresented facts to the 1<sup>st</sup> Respondent and his

officials and that the determination that the 4<sup>th</sup> Respondent has title is erroneous, a fact which has been disputed by the 4<sup>th</sup> Respondent. The Petitioner has also complained that the procedure followed in selecting the 4<sup>th</sup> Respondent as the absolute owner is irregular. The Petitioner however has very clearly admitted that neither Dona Damayanthi nor he has title to the said land. Thus, even if the arguments of the Petitioner are accepted, the fact remains that the Petitioner will not stand to benefit from an order by this Court. Thus, proceeding with this application is futile.

It is trite law that a person invoking the Writ jurisdiction of this Court must be aggrieved by the order that is sought to be impugned. It is clear from the documents filed by the Petitioner that he did not have any connection with the said land until 2016. The Petitioner came into occupation four years after the registration of title in favour of the 4<sup>th</sup> Respondent. By the time the *Conditional Agreement* was signed in 2016, the title registers in respect of the said land had been replaced by the Title Registers provided for in the Act. The consequence thereof is set out in Sections 28, 38 and 39 of the Act, which are reproduced below.

#### Section 28

*“From the date of opening of Title registers under this Act, no entries shall be made in respect of transactions relating to land parcels registered under this Act in the Land Registers maintained under the Registration of Documents Ordinance (Chapter 117) but such Register shall bear a cross reference to the Title Registers relating to such land parcels and maintained under the provisions of this Act.”*

#### Section 38

*“No person acquiring an interest in any land parcel registered under the provisions of this Act shall be entitled to such title or interest unless such title or interest is registered under the provisions of this Act.”*

#### Section 39

*“No land parcel, title to which has been registered under this Act, or any interest therein shall be transferred or dealt with except in accordance with the provisions of this Act, and every disposition otherwise effected shall be void.”*

Thus, the *Conditional Agreement* that the Petitioner has entered into with Dona Damayanthi is void. It is admitted by the Petitioner that neither Dona Damayanthi nor he has title over the said land. Even if it is accepted that the person in occupation of the said land was Dona Damayanthi, it is she, if at all, who had to challenge the above process. I am therefore in agreement with the submission of the learned Counsel for the 4<sup>th</sup> Respondent that the Petitioner does not have *locus standi* to have and maintain this application.

The next submission of the learned Counsel for the 4<sup>th</sup> Respondent was that in any event, the Petitioner is guilty of inordinate delay. The Superior Courts of this country have consistently held that a petitioner seeking a discretionary remedy such as a Writ of Certiorari must do so without delay, and where a petitioner is guilty of delay, such delay must be explained to the satisfaction of Court. In other words, unexplained delay acts as a bar in obtaining relief in discretionary remedies, such as Writs of Certiorari and Mandamus.

In **Biso Menika v. Cyril de Alwis**<sup>4</sup> Sharvananda, J (as he then was) set out the rationale for the above proposition, in the following manner:

*“A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver..... The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success*

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<sup>4</sup>[1982] 1 Sri LR 368; at pages 377 to 379. This case has been followed by the Supreme Court in Ceylon Petroleum Corporation v. Kaluarachchi and others [SC Appeal No. 43/2013; SC Minutes of 19<sup>th</sup> June 2019].

*in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay..... An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed."*

In **Seneviratne v. Tissa Dias Bandaranayake and another**<sup>5</sup>, the Supreme Court, advertent to the question of long delay, held as follows:

*"If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, nam leges vigilantibus, non dormientibus subveniunt,<sup>6</sup> and for other reasons refuses to assist those who sleep over their rights and are not vigilant."*

I have already referred to the fact that the notice under Section 12 '**P18**' was published in 2010, the determination under Section 14 '**P5a**' was made in 2012 and the declaration had been registered in 2012 - vide '**P6a**' and '**P6b**'. Even if the Petitioner had the *locus standi* to file this action, there has been inordinate delay in doing so. This application is therefore liable to be dismissed on this ground, too.

In the above circumstances, I am of the view that the Petitioner is not entitled to any of the relief prayed for. This application is accordingly dismissed, without costs.

**President of the Court of Appeal**

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<sup>5</sup> [1999] 2 Sri LR 341 at 351.

<sup>6</sup> For the law assists the watchful, (but) not the slothful.