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 154(G) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with Section 7 of the Provincial High Court (Special Provisions) Act, No. 19 of 1999.

CASE NO: CA/CPA/0104/2020

Buddhi Suranjaya Kaluthanthri.
No. 8/5,
Samudra Mawatha,
Panadura.

PETITIONER

VS.

1. Urban Council.
   Panadura.

2. Nandana Gunathilaka.
   Chairman,
   Urban Council,
   Panadura.

3. P. H. Wilmon.
   Vice Chairman,
   Urban Council,
   Panadura.

4. Manel Siyambalagoda.
   Secretary,
   Urban Council,
   Panadura.

5. Provincial Commissioner.
   Western Provincial Council,
   No. 204, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

6. T. Somawathie Fernando.
   No. 14/5,
   Samudra Mawatha,
   Panadura.

7. Hon. Attorney General.
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

AND NOW BETWEEN

In the matter of an Application for Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Buddhi Suranjaya Kaluthanthri.
No. 8/5,
Samudra Mawatha,
Panadura.

PETITIONER - PETITIONER

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   Panadura.

7. Hon. Attorney General.
   Attorney General's Department,
   Colombo 12.

RESPONDENT – RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J.**

S. U. B. Karalliyadde, J.

Counsel: Nihal Jayawardane, P.C. with A. R. P. Bandara and Gamunu Chandrasekara for the Petitioner.

Mahinda Nanayakkara with Sudharma instructed by Manoj Sanjeewa for the 6th Respondent.

Tharaka Liyanarachchi for the 1st, 2nd, 3rd and 4th Respondents.

Written Submissions on:

14.03.2022 (by the 6th Respondent).
10.03.2022 (by the 1st to 4th Respondents).
09.03.2022 (by the Petitioner).

Decided on: 20.07.2022

MOHAMMED LAFFAR, J.

This is an Application filed by the Petitioner-Petitioner (hereinafter referred to as the Petitioner) seeking to revise and set aside the Order of the Learned Provincial High Court Judge of Panadura dated 09-07-2020, marked as X7. The paramount reliefs sought by the Petitioner are as follows;

1. Issue notices of this Application on the Respondent-Respondents (hereinafter referred to as respective Respondents).
2. Revise the Order of the learned Provincial High Court Judge of Panadura dated 09-07-2020.
3. Set aside and/or declare null and void the Order dated 09-07-2020 delivered by the learned Provincial High Court Judge of Panadura.

4. Grant all relief as prayed for in the Petition of the Petitioner dated 19-12-2-19, marked as X1.

On 08-10-2020, having heard the learned President's Counsel for the Petitioner, this Court issued notices on the Respondents.

The Petitioner filed the Writ Application bearing No. 04/2019 in the Provincial High Court of the Western Province holden at Panadura seeking the following reliefs;

a. Issue a Writ of Certiorari quashing the decision of the 1st Respondent, marked as P16.
b. Issue a Writ of Mandamus directing the 1st Respondent to construct a drainage system, as described in the sketch marked as P15 in the Petition, to drain out the rainwater collected within the Petitioner's land through the 1st by-road as depicted in the Petition. Or in the alternative; issue a Writ of Mandamus to the 1st Respondent compelling the said Respondent to provide a permanent solution to drain the rainwater from the Petitioner's land and the adjoining lands by erecting a proper drainage system.
c. Issue a Writ of Mandamus directing and/or compelling the 1st Respondent to take necessary steps to acquire the land described in the 3rd schedule of the Petition which has unlawfully been sold to the 6th Respondent by deed No. 1071 attested by Owen de Mel, Notary Public, by the 1st Respondent.
d. Issue an Order to the 1st Respondent to produce the documents marked as P16 and P17 in the Petition to the Court.
e. Issue an Order restraining the 6th Respondent from causing any obstructions and/or in any way halt and/or stop the water flow of the Petitioner's land.

On 08-01-2020, the learned Counsel for the 6th Respondent had raised several preliminary legal objections as to the maintainability of the Application. On 09-07-2020, the learned Provincial High Court Judge, having accepted the preliminary legal objections, dismissed the Application of the Petitioner. Being aggrieved by the said Order, the Petitioner has preferred the instant Revision Application to have the said impugned Order revised and set aside.

The only question before this Court is as to whether the impugned Order dismissing the Writ Application of the Petitioner by the Provincial High Court of Panadura is liable to be revised and set aside.

The learned High Court Judge has rightly drawn his attention to the Rule No. 3 (1) (a) of the Court of Appeal (Appellate) Procedure Rules 1990, which reads thus;

> *"Every Application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Article 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such Application (or duly certified copies thereof) in the form of exhibits. Where a Petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a Petitioner fails to comply with the provisions of this rule the Court may, ex- mero motu or at the instance of any party, dismiss such Application."*

The title deeds and the title plan in respect of the premises of the Petitioner are marked and produced before the High Court as P1 (1), P 1 (2) and P2. The disputed deed bearing No. 1071 dated 19-06-1998 attested by Owen de Mel, Notary Public upon which the disputed portion of the land has been alienated by the 1st Respondent to the 6th Respondent is marked as P4. The learned High Court Judge has observed the fact that the Petitioner has not tendered either the original or certified copies of the said material documents to the High Court. The Petitioner has not sought the leave of the Court to furnish those documents later as well. As such, the observation of the learned High Court Judge that the Petitioner has failed to comply with Rule No. 3 (1) (a) of the Court of Appeal (Appellate) Procedure Rules 1990, is not erroneous.

In **Shanmugavadivu vs. Kulathilake (2003-1SLR-215),** the Supreme Court held that

> *"the requirements of Rules 3 (1) (a) and 3 (1) (b) are imperative. In the circumstances of the case, the Court of Appeal had no discretion to excuse the failure of the plaintiff to comply with the Rules."*

In the case of **Urban Development Authority Vs. Ceylon Entertainment Limited (2004-1SLR-95),** the Supreme Court observed that;

> *"the appellant failed to file in the Court of Appeal duly certified copies of material documents as required by Rules 3 (b) read with Rule 3 (a) of the Supreme Court Rules. It is settled law that Rule 3 of the Supreme Court Rules must be adhered to"*

The Court of Appeal, in the case of **Caderamanpulle Vs. Ceylon Paper sacks Ltd. (2001-3SLR-p1),** decided that;

"It is manifest that while the compliance of the Supreme Court Rules is mandatory, discretion is granted to Court to consider default. In the instant case, no Application was forthcoming to consider the party's default. Violation of S.C. Rules is fatal to this Application."

In **Gita Fonseka Vs. The Monetary Board of the Central Bank of Sri-Lanka (2004-1SLR-149),** the Court of Appeal observed that;

"Gravity of the burden of the Court is no reason to dispense with or ignore Rules of Court. The discretion of the Court considered in Kiriwanthe's case does not exist any longer after the promulgation of the Court of Appeal (Appellate Rules) 1990. The Court has no discretion to dispense with the requirement of a state-ment of objections to be filed by a Respondent, in terms of the Rules of Court.

Per Wijayaratne, J.

There is no cursus curiae or the practice of the Court to permit noncompliance by a Respondent of Rules requiring him to file a statement of objections, and a practice specially of the Attorney-General's Department cannot over-ride or supersede the provisions of the Rules of Court which are held to be mandatory by the Supreme Court as well as this Court."

In the light of the above decisions, it is the view of this Court that the Application made by the Petitioner before the Provincial High Court of Panadura is liable to be dismissed *in- limine* on the ground of non-compliance of the Rule No. 3 (1) (a) of the Court of Appeal (Appellate) Procedure Rules 1990.

Be that as it may, the Petitioner contends that the 6th Respondent has obstructed the hole created in the western boundary wall of the Petitioner's land to drain the rainwater from his land, across the tiny strip of the adjoining land that has unlawfully been sold to the 6th Respondent by the 1st Respondent, Urban Council, to the drainage system already been constructed by the 1st Respondent towards the seashore. Due to the said obstruction done by the 6th Respondent and with the heavy rainfall the entire land, the house of the Petitioner, together with the road to enter into that premises and the adjoining lands located in the said road were flooded and the stagnant rain water remained in the said premises for more than a week, thereby causing an immense threat to the health of the family of the Petitioner and residencies of the adjoining lands located adjacent to the said road. The Petitioner contends that the 1st Respondent has unlawfully conveyed the above-mentioned tiny strip of land (adjoining to

the Petitioner's land) to the 6th Respondent by deed bearing No. 1071 dated 19-06-1998 attested by Owen de Mel, Notary Public marked P4. The decision of the 1st Respondent Council made on 12-06-1981 to transfer the said strip of land to the 6th Respondent is produced as P16. In these respects, the Petitioner had sought the aforesaid reliefs in the Provincial High Court of Panadura by way of Writs.

It is pertinent to be noted that the substantial reliefs sought by the Petitioner before the Provincial High Court of Panadura should be established with oral and documentary evidence. The alleged unlawful alienation of the said strip of land by the 1st Respondent to the 6th Respondent cannot be substantiated only with the evidence by affidavits. The original civil jurisdiction to revoke the deed in dispute marked P4 is vested with the District Court.

Similarly, the Court cannot issue a Writ of Mandamus directing the 1st Respondent to construct a drainage system, as described in the sketch marked as P15 in the Petition, to drain out the rainwater collected within the Petitioner's land through the 1st by-road as depicted in the Petition, without establishing the same with adequate oral and documentary evidence. These facts too should be established before the District Court which exercises original civil jurisdiction.

In this regard, I refer to the judgment of **Thajudeen Vs. Sri-Lanka Tea Board (1981-2SLR-471)** where the Court of Appeal held that;

> *"Where the major facts are in dispute and the legal result of the facts is subject to contro-versy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtai-ning justice. Even though all other requirements for securing the remedy have been satis-fied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effec-tive is available."*

Having scrutinized the Application made by the Petitioner before the Provincial High Court of Panadura and the reliefs sought, it is the considered view of this Court that the major facts stated therein are in dispute, and therefore, these questions have to be decided in the District Court where the parties will be able to lead oral and documentary evidence

to establish their contentions. As such, I do agree with the findings of the learned High Court Judge of Panadura that the Petitioner is not entitled to invoke the Writ jurisdiction of the High Court as the relevant facts are in dispute.

Furthermore, the learned High Court Judge has properly drawn his attention to the fact that the document marked as P15, upon which a Writ of Mandamus was sought to direct the 1st Respondent to construct a drainage system, was a sketch and not an approved plan admissible in law. As such, the Court cannot act upon that document.

Besides, the Petitioner is seeking to quash the decision of the 1st Respondent Council dated 12-06-1981 marked P16, transferring the land in dispute to the 6th Respondent, and disputing the deed of transfer dated 19-06-1998 marked P4. It is pertinent to be noted that the Petitioner is seeking a Writ of Certiorari to quash the said decision marked P16 after 38 years and disputing the deed of transfer marked P4 after 21 years from the date of execution. Moreover, the learned High Court Judge has rightly observed the fact that the Petitioner had become the owner of his land five years before filing the Application in the High Court. If there was an immense threat, he need not wait for such a long period to come before Court. Thus, it is an undisputed fact that there is a long delay on the part of the Petitioner in invoking the Writ jurisdiction of the High Court. In this regard, I refer to the observation made by the Supreme Court in the case of **D.D. Kaluarachchi Vs. Ceylon Petroleum Corporation (SC. Appeal No. 43/2013, SC Minute dated 19-06-2019).** This is the case where five years after the retirement, four former employees of the Ceylon Petroleum Corporation filed an Application for Writs before the Court of Appeal and moved Court for Writs of Certiorari and Mandamus in respect of certain salary arrears. The Court of Appeal issued a Writ of Mandamus directing the Ceylon Petroleum Corporation to pay the Petitioners certain salary arrears. Murdu Ferdnando, J. agreeing with Sisira de Abrew and Vijith Malalgoda JJ., observed that;

"……I am inclined to accept the contention of the Appellants that the Court of Appeal should have dismissed this Application in-limine on the ground of laches which was a threshold issue. The Court of Appeal did not consider the ground of laches, which was raised as a preliminary objection. I observe this omission as a grave error in the Court of Appeal Judgment…."

In **Bisomenike Vs. C. R. de Alwis (1982-1SLR-368), Sharvananda, J.,** (as he then was) observed that;

> *"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. The exercise of this discretion by Court is governed by certain well accepted principles. The Court is bound to issue it 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, 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 chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time"*

In **Sarath Hulangamuwa Sriwardena Vs. The Principal Vishaka Vidyalaya (1986-1 SLR-275)**, the Court of Appeal held that;

> "The Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the Application…. The laches of the Petitioner must necessarily be a determining factor in deciding the Application for Writ as the Court will not lend itself to making a stultifying order which cannot be carried out."

The foregoing line of authorities are united in deciding that the delay and laches are the most significant aspects to be considered in Writ Applications. If there is a delay and laches on the part of the Petitioner, which has not been explained to the satisfaction of the Court, the Court will not issue prerogative Writs.

In this scenario, this is the view of this Court that the determination of the learned provincial High Court Judge dismissing the Petitioner's Application on the ground of delay and laches is in accordance with the settled law.

Besides, it is trite law that a quasi-judicial decision can be reviewed only on the grounds of ultra-vires, illegality, irrationality, violation of the Principles of Natural Justice, unreasonableness, arbitrary, bias and malice. Having considered the totality of the averments of the petition of the Petitioner filed before the High Court of Panadura, it is manifest that the said Application was not based on the foregoing grounds. The learned

High Court Judge has considered all these requirements in his impugned judgment.

In these circumstances, I am of the view that the impugned judgment of the learned Provincial High Court Judge of Panadura dated 09-07-2020, dismissing the Petitioner's Application on the aforesaid preliminary legal objection is not erroneous. As I see no basis to interfere with the impugned judgment, the revision Application is dismissed without costs, and the impugned judgment of the learned Provincial High Court Judge of Panadura dated 09-07-2020 is affirmed.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL