

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

Court of Appeal Case No.
CA/WRT/264/19

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

1. Center for Environmental Justice
No. 20/ A, KuruppuRoad, Borella.

2. R.A Anith Senanayake
Secretary- Hantana Surekime
Sanvidhanaya,
No.18(469), Bowalawàtte Road,
Heerassagala, Kandy.

3. Dr. Lakmini Priyakanthi Ilangasingne,
62 B 1, 4th Lane, Hantana, Kandy.

4. Cecil Kalinga Doolwela,
65 B 2, Hantana Housing Scheme,
Kandy.

5. Yapa Bandara Mudiyansele
Chandrani Yapa,
11 B 2/12A1, Hantana Housing
Scheme,
Kandy.

PETITIONERS

1. National Housing Development Authority (NHDA),

1(A) L.S. Palansuriya,
Chairman- NHDA

Both 1st & 1(A) above of:
Sri Chittampalam A Gardiner
Mawatha,
Colombo 02
2. Central Environmental Authority (CEA)

2(A) A. J. M. Muzamnil
Chairman – CEA

Both 2nd & 2A above of:
Central Environmental Authority,
No. 104, Denzil Kobbekaduwa
Mawatha,Battaramulla.
3. Urban Development Authority (UDA)
6th and 7th Floors,
Sethsiripaya,Battaramulla.
4. Subash, Yatawara,
Chairman – Four Gravets and
Gangawata Korale Pradeshiya Sabha,
Udabowala Road, Kandy.
5. Hon. Attorney General
Attorney General's Department
Hulftsdorp Street, Colombo 12.

RESPONDENTS

6. Millennium Distributors & Traders
(Pvt) Ltd,
No. 351, Pannipitiya Road,
Thalawathugoda.

ADDED RESPONDENT

Before: M. T. MOHAMMED LAFFAR, J.

Counsel:

Chrishmal Warnesuriya, instructed by Samadhi H. Premasiri for the 1st Petitioners

Ranga Dayananda for the 2nd and 2A Respondents

Dr. Romesh de Silva PC, instructed by Samanthi Gunawardana for the 3rd Respondent

Bharatha Abeynayake, instructed by Dhammika Jiminige for the 4th Respondent.

Sanjeewa Jayawardana P. C., with Manoj Bandara, Ranmalee Meegapola and Thivanka Hettiarachchi for the 6th Respondent.

Argument by way of written submissions:

Written Submissions on:

31.08.2022 (by the Petitioner)

04.10.2022 (by the 2nd, 2A Respondents)

06.09.2022 (by the 3rd Respondent)

02.09.2022 (by the 6th Respondent)

Decided on: 23.02.2022

MOHAMMED LAFFAR, J.

The Petitioners in this Application in the form of 'Public Interest Litigation', are seeking, *inter alia*, orders in the nature of writs of *Certiorari* quashing the Initial Environmental Examination (IEE) Report No, 403 dated 22.10.2014 and purported approvals granted by the 1st, 2nd and 3rd Respondents dated 03.12.2014 and 24.01.2018 marked P10(a) and P10(b) permitting the development of the 'Hanthana Residencies Housing Project'. They have also prayed for mandates in the nature of Writs of *Mandamus* on a direction to conduct a fully comprehensive Environmental Impact Assessment (EIA), a direction on the 1st and 1(a) Respondents to act in compliance with the National Environmental Act No. 47 of 1980 as amended and a direction on the 2nd and 2(a) Respondents to declare that the said land is located within an environmentally sensitive area and as a conservation area under the provisions of the National Environmental Act No. 47 of 1980 (as amended).

In addition, the Petitioners have also sought directions in terms of Article 140, to the 1st to 4th Respondents and any one or more of them to restore the environment located in and around 'Hanthana Residencies Housing Project' site situated in Kandy to its original state and to prosecute those responsible for omitting to perform their statutory duty.

The Petitioners have in the first instance sought an Interim Order preventing the 1st Respondent and/or the 6th Respondent or their agents, servants and contractors from engaging in, permitting or facilitating development and/or

construction of the 'Hanthana Residencies Housing Project' until the hearing and final determination of this Application.

This matter is now considered on whether the Petitioners are entitled to the issue of notices and grant of the aforesaid interim reliefs prayed for, by this Court.

The subject matter of this action is the construction and development of 'Hanthana Residencies Housing Project'; a residential housing project, which is being carried out by the 1st Respondent and the 6th Respondent. The 1st Respondent had obtained the approval of the Cabinet by Cabinet Memorandum Number 13/0092/517/002 dated 17.01.2013. Thereafter, the 1st Respondent as the project proponent has prepared the Initial Environmental Examination Report (IEE) No. 403 dated 22nd October 2014 (marked 'P8'). By letter dated 03.12.2014 (CEA/CPO/KY/HP/15/2012) the 2nd Respondent being the Project Approving Agency had granted approval for the said project based on the aforesaid IEE Report (letters dated 03.12.2014 and 24.01.2018 marked "P10(a)" and "P10(b)").

The primary question before Court is whether the land on which the construction and development of 'Hanthana Residencies Housing Project' is being carried out on is an Environmental Protected Area, Forest and/or Forest reserve. However, I see no appropriate and sufficient documentation before Court to identify the said land as an Environmental Protected Area, Forest and/or Forest reserve.

The said land is identified as an agricultural land, named 'Hanthana Estate' and has been vested with the 1st Respondent by virtue of the Gazette No. 456/4 dated 01.06.1987 (marked "P4", "R5"). The agricultural land has been distinctly depicted in the survey Plan No. 2155 and Plan No. 2129 and the said Gazette. The fact that the said land is an agricultural land is not identified as an issue for consideration by this Court. Further, in paragraph 46 of the Petition, the Petitioners themselves state that the proposed project is not situated in a protected area but is only bordered or surrounded by Environmental Protected Areas declared as such i.e. the Hanthana Forest Reserve and Dunumadalawa Forest Reserve within the municipal limits of Kandy. In addition, various reports and letters (marked "2R3", "2R4(a)", "2R4(b)", "R9(a)", "R10(a)", "R12(a)") clearly establish that the said land has already been developed with various structures that have been established within the area for use by the community therein.

Attention of Court is drawn to ***Public Interest Law Foundation vs. Central Environmental Authority & Another***¹:

"The Court is ill equipped to form an opinion on environmental matters - being best left to people who have specialised knowledge and skills in such spheres. Even if a matter may seem to be preeminently one of public law, the Courts may decline to exercise review because it is felt that the matter is not justiciable, i.e. not suitable to judicial determination."

¹ 2001 (3) Sri LR 330

In view of the above, this Court observes that while the administrative acts have been carried out in terms of the law, at this juncture; necessity does not arise for this Court to inquire and analyze the technical intricacies of the matter. However, at the outset, there is no specific material to establish that the land is within a protected area or that it can be considered a forest/forest reserve.

Further, the Petitioners have sought a direction on the 2nd Respondent to declare the project site as a 'conservation area' under the provisions of National Environmental Act. However, this Court observes that it cannot conclude on such finding without sufficient material. Notwithstanding the aforesaid, it is also noted that the power to declare an area as a conservation area under the National Environmental Act is vested with the Minister in terms of Section 24C (1) of the said Act. As only the Minister is authorized to make such declarations, the rightful authority has not been made a party to this action.

Having perused all pleadings, written submissions and documents produced before Court, I am of the view that the Petitioners are guilty of severe laches in instituting this action to invoke the Writ jurisdiction of this Court. This action has been instituted on 19.06.2019 with no justifiable explanation for the delay. In particular, the Initial Environmental Assessment (IEE) No. 403 dated 22.10.2014 (marked "P8") sought to be quashed by prayer (c) to the petition, has been made available to the Petitioners on 22.06.2016 wherein

the Court observes a delay of approximately 3 years. Environmental approvals sought to be quashed by prayer (d) to the petition, are dated 03.12.2014 and 24.01.2018 (marked “P10(a)” and “P10(b)”) respectively wherein the Court observes a delay of over 4 years and 1 year respectively. The Petitioners have invoked the jurisdiction of this Court only several years later despite being well aware of the project and activities being carried since inception.

In ***Biso Menike v. Cyril de Alwis***², Sharvananda J held that:

“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.”

In ***Sarath Hulangamuwa v. Siriwardena, Principal, Visaks Vidyalaaya. Colombo 5 and others***³:

“It must be mentioned that a person cannot sleep over his rights but must seek his legal remedy with expedition-particularly where he seeks a writ which is an extraordinary remedy granted under exceptional circumstances”

² 1982 (1) Sri LR 368

³ 1986 (1) Sri LR 275

In **Seneviratne v. Tissa Bandaranayake and another**⁴, Amerasinghe J. adverting to the question of long delay, commented that:

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

In **Issadeen v. the Commissioner of National Housing and others**⁵, Amerasinghe J held that:

"although there is no statutory provision in this country restricting the time limit in filling an application for judicial review and the case law of this country is indicative of the inclination of the Court to be generous in finding a good and valid reason for allowing late applications, I am of the view that there should be proper justification given and explained in the delay in filling such belated application."

In **Ceylon Petroleum Corporation and others V. Dayanthi Dias Kaluarachchi**⁶, Murdu N.B. Fernando J observed as follows:

⁴ 1999 (2) Sri LR 341

⁵ 2003 (2) SLR 10 at page 15

⁶ SC/Appeal 43/2013 minutes dated 19.06.2019

“Thus, on the face of the record four years had lapsed prior to the respondents seeking the discretionary remedy of a writ and no good and valid reasons have been given by the respondents in the petition filed in the Court of Appeal pertaining to same. In the written submission filed before this Court the respondents make an attempt to give reasons for its delay but such belated reasons given before this Court cannot be considered as good and valid reasons to justify delay in seeking a review of an administrative decision. Reasons should have been given when the application was filed in the Court of Appeal and not now. Thus, there is merit in the argument of the appellant, that the respondents were guilty of delay and the writ application filed before the Court of Appeal should have been dismissed in limine.”

In this context, I observe that the Petitioners have been negligent in not addressing the Court in a timely manner and that they have slept over their rights, if any, without any reasonable excuse whatsoever. Therefore, as identified above, the Petitioners’ prayer for grant of Writs by prayers (c) and (d) being substantial relief sought in their Petition, cannot be granted due to severe laches. This Court also observes that the rest of the relief sought by the Petitioners are consequential to the said relief thereto and thus will not be entitled to such.

As such, I hold that the decisions challenged by the Petitioners are in line with established principles of law. The Respondents have not acted *ultra vires*

or in an arbitrary, capricious, or illegal manner. In this respect, I hold that the impugned reports and decisions are not liable to be quashed and that the Petitioners are not entitled for Writs of *Certiorari* or *Mandamus* and/or a direction in terms of Article 140.

For the above reasons, I refuse to issue notice and grant the interim relief prayed for. I dismiss the Application of the Petitioners and make no Order as to the costs of this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL