

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

In the matter of an Application for a Writ of *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0080/2020

Kalahe Palliye Guruge Laksri,
Kumara Dias Gunasekara,
Pinikahana,
Kahaduwa.

Petitioner

Vs

1. S. M. Chandrasena,
Ministry of Land and Land Development,
Environmental and Wild Life Resources,
Mihikata Medura,
Rajamal Watte Road,
Battaramulla.

1A. Harin Fernando,
Minister of Tourism and Lands,
Mihikata Medura,
Rajamal Watte Road,
Battaramulla.

2. Somarathna Widanapathirana,
District Secretary of Galle District,

District Secretariat,
Galle.

2A. Shantha Weerasinghe,
District Secretary of Galle District,
District Secretariat,
Galle.

3. Suseema Kariyawasam,
Land Acquisition Officer,
Divisional Secretary,
Divisional Secretariat,
Elpitiya.

3A. Chathuranga Gunasekara,
Land Acquisition Officer,
Divisional Secretary,
Divisional Secretariat,
Elpitiya

4. Y. Wickramasiri,
Secretary,
Department of Provincial Education
(Southern Province),
Dakshinapaya,
Labuduwa,
Galle.

4A. Ranjith Yapa,
Secretary,
Department of Provincial Education
(Southern Province),
Dakshinayapaya,
Labuduwa,
Galle.

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

Respondents

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

Counsel: Nimal Jayasinghe, instructed by E. M. P. H. K.
Ekanayake for the Petitioner.

Faiszer Musthapha, P.C. with Pulasthi Rajasinghe for
the intervenient Petitioner.

Maithri Amarasinghe Jayathilake, S.C. for the 1st to 5th
Respondents.

Supported on: 13.12.2022

Decided on: 14.02.2023

MOHAMMED LAFFAR, J.

I heard the learned President's Counsel for the Petitioner in support of this Application. I heard the learned State Counsel for the Respondents as well. The Petitioner in this Application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, the following reliefs:

1. A Writ of Mandamus to compel the 1st Respondent to revoke the vesting Order No. 269 dated 13-10-1978 acting under Section 39 (1) of the Land Acquisition Ordinance.
2. A Writ of Mandamus to compel the 1st Respondent to divest the lands which the Petitioner claims under Section 39 (A) of the Ordinance.

In terms of the amended Petition dated 22-05-2020, by virtue of the deed of transfer bearing No. 626 dated 17-06-1959 attested by D.E. Chandrawathi Jayasingha, Notary Public marked as P1, the Petitioner's father, namely Kalahe Palliya Guruge Gunadasa *alias* Gunasekera became the owner of the land called "Welipennagahahena" in extent of A0-R01-P20. By deed bearing No. 495 dated 06-10-2009 attested by S. S. C. De Silva, Notary Public marked P2, the said Kalahe Palliya Guruge Gunadasa *alias* Gunasekera gifted his right to the Petitioner. Subsequently, the said land had been acquired by the State for the expansion of the playground of the Junior School, Pinikahana. The vesting Order was published in the Government Gazette No. 269 dated 13-10-1978 marked as P11. Under section 38 (a) of the Land Acquisition Act, by the Gazette marked P11, the Land Officer of Galle District had been empowered by the Minister of Land to take possession of the same immediately on the ground of urgency. The Petitioner states that, however, the possession of the land has not been taken over by the State. The Petitioner further states that he is entitled to expect legitimately that the land will be divested, on the basis that by letter dated 04-12-2019 (P16), the Minister of Land requested the Divisional Secretary, Elpitiya, to stay taking possession of the land until the possibility of divesting would be considered, and the Governor of the Southern Province by letter dated 13-01-2020 (P20) requested the Secretary to the Ministry of Education, Southern Province to take steps to divest the said land to the Petitioner. It is averred in paragraph 38 of the amended Petition that, by letter dated 02-03-2020 (P21), the Divisional Secretary of Elpitiya had taken steps to take over the possession of the land in dispute, and therefore, the Petitioner is seeking a Writ of Mandamus to compel the 1st Respondent to revoke the vesting Order No. 269 dated 13-10-1978 acting under Section 39 (1) of the Land Acquisition Ordinance and Writ of Mandamus to compel the 1st Respondent to divest the land which the Petitioner claims under Section 39 (A) of the Ordinance.

As per the title deeds of the Petitioner marked as P1 and P2, the Petitioner is the owner of the land called “WELIPENNAGAHAHENA”. According to the vesting Order marked as P11, the land acquired by the State was “WELIPENNAGAHAWATTA”. As such, it is apparent that the land owned by the Petitioner had not been acquired, and therefore, the Petitioner is not entitled to the reliefs as prayed for in the prayers to the amended Petition.

In paragraph 9 (c) of the amended Petition, it is averred that a part of “WELIPENNAGAHAHENA” has been included in the acquired land. In such a situation, there is a duty cast upon the Petitioner to identify the portion of his land, purportedly, included in the acquired land. It is to be noted that the Petitioner in this Application failed to identify the said portion of his land to the satisfaction of this Court.

The Petitioner is seeking a Writ of Mandamus to revoke the vesting Order dated 13-10-1978, approximately after 42 years. 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 this 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 their retirement, four former employees of the Ceylon Petroleum Corporation filed an Application for Writs before the Court of Appeal and moved the 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 Fernando, 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 disintitiled 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 the 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 these respects, I am of the view that the instant Application is liable to be dismissed *in-limine* on the ground of unexplained long delay and laches of the Petitioner alone.

This Court is mindful of the fact that the acquisition took place in 1978 and the deed of gift marked as P2, by which the Petitioner claims title to the land was executed in 2009. After the acquisition, the land is vested with the State and the Original owner did not have the title to gift the land to the Petitioner by deed P2, therefore, it is well established that the Petitioner has no title to the land in dispute. In these circumstances, the Petitioner has no *locus-standi* to proceed with this Application.

Moreover, as per prayer (c), the Petitioner, under section 39 (1) of the Land Acquisition Act, is seeking to revoke the vesting Order marked P11, and in prayer (d), under section 39 (A) of the said Act, seeking a Mandamus to divest the land to the Petitioner. If the Court grants the relief in prayer (c), the relief in prayer (d) cannot be granted. Similarly, if relief in prayer (d) is granted, relief in prayer (c) cannot be granted. The said inconsistency in the prayers to the Petition is also an impediment to the instant Petition being proceeded with.

In these circumstances, I see that there is no basis to issue notices on the Respondents. Thus, I refuse to issue notices on the Respondents and dismiss the Application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL