

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

In the mater of an Application for Writs of *Certiorari* and *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0001/2019**

1. Konara Mudiyanseelage Sudu Banda  
Kesel Kotuwa,  
Kalugahawadiya,  
Nannapurawa.

(Through his Power of Attorney holder)

Konara Mudiyanseelage Gnanaratne  
Kalugahawadiya,  
Nannapurawa.

**Petitioner**

1. Simon Fernando Gamini Harischandra,  
Kendawinna,  
Kinnarabowa,  
Ranminigama.
2. The Commissioner of Lands  
Land Commissioner's Department  
Colombo 07.
3. K. N. G, Kapila Bandara  
The Divisional Secretary,  
Medagama.
4. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**S. U. B. KARALLIYADDE, J.**

Counsel: Pradeep Fernando for the Petitioner.

N.K. Ashokbharan, instructed by Ms. Piyumi Kumari Samarasinghe of the Legal Aid Commission for the 1<sup>st</sup> Respondent.

Suranga Wimalasena, D.S.G. for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Supported on: 06.10.2022

Decided on: 06.02.2022

**MOHAMMED LAFFAR, J.**

The Petitioner, by his Petition dated 02-01-2019 is seeking *inter alia*, to quash the Grant issued in favour of the 1<sup>st</sup> Respondent in terms of the provisions of the Land Development Ordinance marked as X1 in respect of the land described in schedule of the Petition, and a Writ of Mandamus compelling the 2<sup>nd</sup> Respondent (Commissioner of Lands) to issue a Grant in favour of the Petitioner.

We heard the Learned Counsel for the Petitioner in support of this Application. We heard the Learned Deputy Solicitor General who appears on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as well.

As per the Petitioner, the Petitioner has been in possession of the State Land in dispute from 1970. From 1975, the 1<sup>st</sup> Respondent has been living with the Petitioner. The Petitioner saw to the wellbeing of the 1<sup>st</sup> Respondent as his own child and provided for him with food and shelter. It is averred that in 1994, the 1<sup>st</sup> Respondent left the residence of Petitioner and lived separately by himself. As per paragraph 9 of the Petition, the Petitioner became aware

that on 23-07-1997 a Grant, marked as X1, had been given to the 1<sup>st</sup> Respondent in terms of the provisions of the Land Development Ordinance in respect of the subject matter. The contention of the Petitioner in summary is that the Grant marked as X1 cannot be issued to the 1<sup>st</sup> Respondent as he is not in possession of the subject matter. On the contrary the Petitioner argues that he is entitled for the same, as he has been in possession from 1970.

It is pertinent to be noted that the Petitioner is seeking reliefs in the nature of Prerogative Writs to quash the Grant issued in 1997, after approximately 22 years. Admittedly there is lengthy delay in seeking reliefs. It appears to this Court that there is an unexplained delay and laches on the part of the Petitioner in seeking relief from this Court.

The doctrine of laches is based on the Latin maxim '*Vigilantibus Non Dormientibus Aequitas Subvenit*' which means that Equity aids the vigilant, not the ones who sleep over their rights. The doctrine of laches is one of the few defences available to the defendant.

The doctrine of laches is used by the Courts to deal with an inordinate delay that occurs in filing a Petition or complaint. It means if you have any legal claim, you have to approach the Court promptly. Laches is a fair doctrine or an equitable defense. The Courts will not help the person who sleeps over their rights but will help those who are aware of their rights. A person is said to be liable for laches when he comes to the Court to affirm their rights after a reasonable delay. In many matters, a delay in filing a case has the effect of blocking the opposing party from putting on a fair defense.

Some elements must be satisfied to consider this doctrine to bar the Petitioner from the cause of action:

- Delay must be unreasonable at the time of bringing the matter;
- Negligence in asserting a claim or right;
- Knowledge of a claim by the Petitioner in advance.

In the case of **Dissanayake Vs. Fernando** (71 NLR 356), it was held that "*where there has been delay in seeking relief by way of Certiorari, it is essential that the reasons for the delay should be set out in the papers filed in Court.*" It is to be noted that the Petitioner in this Application has not averred reasons for the delay and laches.

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."*

**K. A. Gunasekera v. T. B. Weerakoon (assistant government agent, kurunegala) (73-NLR-262)**

The Petitioner applied for Writs of Certiorari and Mandamus to enhance the compensation awarded to him seven months earlier by an Acquiring Officer under the Land Acquisition Act. *Held, "the application should be refused because (a) the petitioner was guilty of undue delay in making the application."*

Further as per Sunil. F. A. Cooray<sup>1</sup> *"undue delay which is unexplained will put the Petitioner for a prerogative writ in laches and his application could be dismissed for laches.... Unexplained delay in seeking an order in the nature of a writ is by itself fatal to the application"*

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<sup>1</sup> Principles of Administrative Law in Sri Lanka, 4th Edition, volume 2, page 1155

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.

For the foregoing reasons, it appears to this Court that there is no necessity arising to issue formal notices to the Respondents, and accordingly the notices are refused and the Application is dismissed without costs.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**