

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

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

**Court of Appeal Case No.  
CA/WRT/0304/2019**

Kolambage Udara Sudarshani Silva,  
No. 120/3, Bobabila, Makuldeniya.

**Petitioner**

1. Subasinghe Arachchige Dona Mariya Reeta  
Pilaminahami,  
No.42, Pathimawaththa,  
Bandirippuwa,  
Lunuwila.
2. Horathal Pedige Manjula Pradeep Kumara,  
No. B 24/8, Kubalgama,  
Dewanagala,  
Mawanalla.
3. W. M. T. S. Wijesundara,  
Assistant Title Investigating Officer,  
Additional Registrar of Title Registration,  
Department of Title Registration,  
Regional office,  
Wennappuwa.
4. P.D.C. Gratian,  
Assistant Commissioner,  
Department of Land Settlement,  
Regional Office,  
Wennappuwa.

5. Commissioner General of Land Settlement,  
Department of Land Settlement,  
No. 160, Kirula Road,  
Colombo 05

6. National Savings Bank,  
Head Office - National Savings Bank,  
Colombo 03

7. N. A. D. T. Bandara,  
Registrar of Title Registration,  
Land Registry,  
Marawila

### **Respondents**

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

Counsel: Dr. Sunil Cooray with Nilanga Perera for the Petitioner.  
Hilary Livera with Gamini Livera for the 1<sup>st</sup>, and 2<sup>nd</sup>,  
Respondents.  
Eraj De Silva with J. Sundaramurthy for the 6<sup>th</sup> Respondent.  
R. Bandara with Hashini De Silva for the 4<sup>th</sup> Respondent.  
Sumathi Dharmawardena PC. ASG. for 3<sup>rd</sup>, 5<sup>th</sup> and 7<sup>th</sup>  
Respondents.

Written Submissions on: 12.09.2022 by the Petitioner  
1<sup>st</sup> and 2<sup>nd</sup>, Respondents have submitted  
undated submissions.  
26.09.2022 by the 4<sup>th</sup> Respondent  
26.09.2022 by the 6<sup>th</sup> Respondent

Delivered on: 20.01.2023

**MOHAMMED LAFFAR, J.**

The Petitioner by her Petition dated 23-07-2019 is seeking the following reliefs, *inter-alia*,

1. The Investigation Report marked P11 and Report on Lot 15, in Zone 3 of the Cadastral Plan No. 410002 marked P12 be quashed by Orders in the nature of Writs of Certiorari,
2. The 1<sup>st</sup> Class title Reports issued in favour of the 1<sup>st</sup> Respondent marked P13 and thereafter the first-class title issued on the 2<sup>nd</sup> Respondent is marked as P14 be quashed by Orders in the nature of Writs of Certiorari.

The Respondents, having filed their respective objections, raised preliminary legal objections as to the maintainability of the Petition. The 4<sup>th</sup> Respondent has formulated the principal legal objection as follows;

*“The Petitioner is barred from merely seeking to quash P13 without seeking to quash the Gazette marked P10 which enables the 7<sup>th</sup> Respondent (Registrar of Title Registration) to issue P13 to the 1<sup>st</sup> Respondent. Accordingly, the Petitioner is also barred from seeking to quash P14”*

Thereafter, the matter was fixed for argument on 15-11-2021. By motion dated 10-11-2021, the Petitioner sought permission to amend the Petition. The amended Petition dated 13-02-2022 has been filed subject to objections by the Respondents. The Respondents are objecting to the said amended Petition being accepted.

Admittedly, as per the pleadings;

- Under section 14 of the Act, No. 21 of 1998, the ownership of Lot 15 in Cadastral Plan No. 410002 has been published by Gazette No. 1854/11 dated 19-03-2014, marked as **P10**, in respect of the land in dispute.
- The Investigation Report is marked as **P11**.
- The Report on Lot 15, in Zone 3 of the Cadastral Plan No. 410002 marked **P12**.
- The 1<sup>st</sup> Class title Reports issued in favour of the 1<sup>st</sup> Respondent marked **P13**.
- The first-class title issued on the 2<sup>nd</sup> Respondent is marked as **P14**.

In these respects, it is apparent that the aforesaid documents marked P11, P12, P13 and P14 have originated from the Gazette marked P10. As such, the Petitioner is precluded from seeking to quash P11 to P14 without seeking to quash P10. This is a substantial and strong objection taken up by the Respondents.

In this scenario, the Petitioner is seeking to amend the Petition, particularly to quash the Gazette marked as P10.

It is to be noted that P10 has been pleaded in the Petition, and therefore, the Petitioner had full knowledge of the same at the time of the institution of this proceeding. As such, it appears to this Court that the Petitioner has not sought to quash P10 in the original Petition due to laches.

The doctrine of laches is based on the Latin maxim '*Vigilantibus Non Dormientius Aequitas Subventil*' 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 instant Application, the Petitioner is moving to amend the Petition after 2 years and 5 months from the date of the institution of this Application, and the delay is not explained to the satisfaction of the Court. The Petitioner was well aware of the Gazette notification marked P10 which was pleaded in the original Petition as well. In this context, it is apparent that the Petitioner failed to seek to quash P10 due to laches. 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 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 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.

For the foregoing reasons, I refuse to accept the amended Petition. Accordingly, the Application made by the learned Counsel for the Petitioner to amend the Petition is refused. No costs.

*Application for amendment refused.*

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**