

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

*In the matter of an application for an
order in the nature of Writs of Certiorari
and Mandamus in terms of Article 140 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka*

C A (Writ) Application No. 359 / 2016

1. Thanthirimudalige Don Anton Saliya
Hemantha,
No. 530/14,
Negombo Road,
Wattala.
2. Karupaiah Rajasekaran
No. 530/15,
Negombo Road,
Wattala.

PETITIONERS

1. W.G. Premalal,

Divisional Secretary - Wattala,

Divisional Secretariat,

Welisara.

1 A W G Premalal,

Divisional Secretary - Wattala,

Divisional Secretariat,

Welisara.

2. Sri Lanka Land Reclamation and

Development corporation,

No. 03,

Sri Jayawardenapura Mawatha,

Welikada,

Rajagiriya.

3. M.A.S. Weerasinghe

Commissioner General of Agrarian
Development,
No. 42,
Sir Marcus Fernando Mawatha,
Colombo 07.

4. Central Environmental Authority

No. 104,
'Parisara Piyasa',
Robert Gunawardena Mawatha,
Battaramulla.

5. Vijith Vijithamuni Zoyza,

Minister of Irrigation and Water
Resources,
No. 500,
T. B. Jayah Mawatha,
Colombo 10.

6. Nawaloka Construction (Pvt) Ltd

No. 115,

Sir James Peiris Mawatha,

Colombo 02.

7. Hon. Attorney General

Attorney General's Department,

Hulftsdrop Street,

Colombo 12.

RESPONDENTS.

Before: P. Padman Surasena J (P/CA)

A L Shiran Goonaratne J

Counsel: Ravindranath Dabare for the Petitioner.

Sanjeewa Jayawardhana PC for the 6th Respondent.

Anusha Samaranayake DSG for the 1st -5th and 7th Respondents.

Decided on: 2018-05-24

JUDGMENT

P Padman Surasena J

The Petitioners in this application has prayed inter alia for the following reliefs.

- a) a writ of certiorari to quash the validity of the approval dated 9th August 2016 bearing No. LM/7176, given by the Land Reclamation and Development Corporation,
- b) a writ of certiorari to quash the validity of the approval dated 18th May 2016 bearing No 7/11/10/ GM/717, granted by the Department of Agrarian Development,
- c) a writ of mandamus to compel the 1st Respondent to act in terms of the State Lands Ordinance and specially to act under and in terms of the provisions of sections 3, 5, 6, 9, 18, 19, 20 of the Flood Protection Ordinance as amended, with regard to the land relevant to this case,
- d) a writ of mandamus to compel the 2nd Respondent to act under and in terms of the provisions of the sections 2, 2A, 2B, 4, 4A, 4C, 8, 9,

20A, 22, 22A of the Sri Lanka Land Reclamation and Development Corporation Act, with regard to the land in question,

- e) a writ of mandamus to compel the 3rd Respondent to act under and in term of the provisions of the sections 32, 33, 34, 74, 75, 76, 77, 79, 80, 96 of the Agrarian Development Act, with regard to the land in question,
- f) a writ of mandamus to compel the 4th Respondent to act under and in terms of the sections 10, 16, 17, 22, 23, 23 A, 23 B, 23 C, 23 D, 23 N, 23 AA, 23 BB, 23 CC, 24 A, 24 B, 24 C, 24 D of the National Environment Act, with regard to the land in question,
- g) a writ of mandamus to compel the 5th Respondent to act under and in terms of the sections 3, 5, 6, 9, 18, 19, 20 of the Flood Protection ordinance and to declare the land in question as a "flood area",
- h) a writ of mandamus to compel the 1st - 5th Respondents to act under the provisions of the respective laws in order to restore the "Parangiyathotanne" to its original status and claim the expenses from the 6th Respondent.

This case came up for inquiry on 2018-01-30 for this Court to decide whether it should grant an interim relief prayed for by the Petitioner. The said inquiry

was fixed by this Court pursuant to an application made by the learned counsel for the Petitioner.

At the conclusion of the said inquiry, it became manifest that this Court was in possession of all relevant material pertaining to the issues, this Court is called upon to decide in this case. Therefore, learned counsel for all the parties agreed to conclude their oral submissions with regard to the argument of the case. Therefore, this Court directed that the argument of this case should pro forma stand concluded.

The primary complaint made by the Petitioners against the Respondents is that the 6th Respondent has filled a land without obtaining necessary approvals from the relevant state agencies.

It is the position of the 6th Respondent that he had developed this land after obtaining all relevant approvals from all state agencies concerned.

Learned Deputy Solicitor General as well as the learned President's Counsel for the 6th Respondent brought to the notice of this Court, the document produced marked **6 R 1** which is a copy of the District Court Negambo case No. S P 2849/07. It is a case filed by the 1st Petitioner against the 6th Respondent and two others. Admittedly, the said case was filed for the same cause of action. The said District Court case has been concluded by arriving

at a settlement. The Petitioner in the instant case who is the Plaintiff in the said District Court Negambo case, has agreed that he cannot object if the 6th Respondent has developed this land according to the conditions laid down by the Sri Lanka Land Reclamation and Development Corporation which is the 3rd Respondent in this case. According to that settlement, it is still open for the Petitioner to re-open the District Court case in case the 6th Respondent fails to comply with the previously mentioned conditions. It was on that basis that the District Court had terminated the proceedings of that case. Thus, the Petitioner, as has been already done at one point time, has recourse to an alternative remedy. It is also necessary for this Court to observe that the said settlement has been recorded as far back as on 2009-09-23.

It was brought to the notice of this Court by the Respondents that the filling of this land has now been completed. The relevant authority has also issued a certificate of conformity.

This Court observes that the petition in the instant case is dated 2016-10-20. The Petitioner has been aware of the actions by the 6th Respondents regarding the filling of this land. The said actions date back to the year 2007. This is manifest from the plaint filed in the District Court of Negambo, which

is dated 2007-09-19. This shows that it was after seven years that the Petitioner has suddenly started thinking about the environmental hazards and decided to file the instant case before this Court.

The Petitioner had agreed before the District Court of Negambo in the year 2009 that the 6th Respondent is free to develop this land according to the conditions laid down by the 2nd Respondent (SLLRDC). The 6th Respondent has thereafter continued with his development activities. He would not have reasonably expected that the 1st Petitioner would maintain his objections thereafter. In these circumstances, it is the view of this Court that there is no justification for the 1st Petitioner to raise his concerns about the environment, 07 years after he had agreed that the 6th Respondent is free to develop this land, subject to the previously mentioned condition. If he raised these issues in the year 2009 itself, the 6th Respondent could have considered even halting his operations.

Time and again, this Court has held that undue delay is a factor upon which a writ application could be refused.

The Petitioners have not adduced any explanation as to why they have failed to take any steps to challenge the relevant issues at the proper time. Thus,

the Petitioner is guilty of inordinate delay, which calls for the dismissal of this application on that ground alone.

In view of this situation, it is the view of this Court that it would not be necessary for this Court to consider in detail the other issues raised on behalf of the Petitioner.

The jurisdiction to issue writs in the nature of certiorari and Mandamus which is vested in this Court by virtue of Article 140 of the constitution is a jurisdiction, which this Court could decide in its discretion to exercise only in a fit case. For the reasons set out above, this Court is of the view that this is not a fit case in which this Court should exercise its writ jurisdiction. Hence, this Court decides to dismiss this application without costs.

PRESIDENT OF THE COURT OF APPEAL

A L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL