

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

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

J. M. Kusumawathi
No. 23/A, Pahalalanda, Ampara.

Petitioner

Case No. C. A. (Writ) Application 30/2016 Vs.

1. Minister of Lands
Ministry of Lands,
Rajamalwatta Road, Battaramulla.
2. R. B. R. Rajapakshe
Commissioner General of Lands,
Department of Commissioner General of Lands,
No. 07, Gregory Road, Colombo 07.
3. Thusitha P. Wanigasinghe
District Secretary,
District Secretariat, Ampara.
4. D. D. S. T. Gunarathna
Deputy Commissioner of Lands,
Department of Commissioner General of Lands,
Ampara.
5. S. Kumari Kulathungamudali
Divisional Secretary,
Divisional Secretariat, Damana.
6. Gamage Don Ariyadasa
Pahalalanda, Kalugolla, Ampara.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Gamini Hettiarachchi for the Petitioner

Maithree Amerasinghe SC for 1st to 5th Respondents

Thushani Machado for the 6th Respondent

Written Submissions tendered on:

Petitioner on 23.07.2019

1st to 5th Respondents on 06.08.2019

6th Respondent on 22.07.2019

Argued on: 13.06.2019

Decided on: 26.09.2019

Janak De Silva J.

The paddy land depicted as lot 37 in plan no. PP/Am/1415 prepared by the Surveyor General containing 0.918 hectares in extent (Corpus) was given to Dissanayake Mudiyanseelaga Kirimenika (Kirimenika) under the Land Development Ordinance (P1). She had two children namely D.M. Jayasekera, the deceased husband of the Petitioner, and D.M. Sudumenika, deceased wife of the 6th Respondent. It is not in dispute that Kirimenika nominated the daughter Sudumenika as the successor.

Kirimenika died on 15.10. 1981 (P2). On 14.01.1982 D.M. Jayasekera and D.M. Sudumenika agreed to divide equally the high land 1 Acre in extent and the paddy land 3 Acres in extent held by Kirimenika (P3/R2). It is to be noted that the 6th Respondent was given another 2 Acres of high land at that point of time (P3/R2).

The Petitioner claims that on 05.05.2010 the 5th Respondent has issued a permit in terms of section 19(2) of the Land Development Ordinance for the Corpus by which the life interest in the Corpus has been given to the 6th Respondent.

The Petitioner has sought the following relief:

- (a) Writ of certiorari to quash and to declare nullity the permit issued to the 6th Respondent marked P7;
- (b) Writ of mandamus compelling and directing one or more or all the 1st to 5th Respondents to grant a permit to the Petitioner in terms of section 19(2) of the Land Development Ordinance for a defined half share of the said paddy land depicted in the plan marked "P1".

The Petitioner claims that the relevant State officers has given a promise that the State will grant the said paddy land to the Petitioner (Deceased husband of the Petitioner) and the 6th Respondent equally and that this legitimate expectation was breached by the issue of P7.

In *Council of Civil Service Unions v. Minister for the Civil Service* [(1985) A.C. 374, 408-9] Lord Diplock stated that for a legitimate expectation to arise, the decision:

"must affect [the] other person by depriving him of some benefit or advantage which either (i) he had in the past been **permitted by the decision maker to enjoy** and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has **received assurance** from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn." (emphasis added)

Such legitimate expectations may arise where a public authority has made a clear, unqualified and unambiguous representation to a particular individual that it will act in a particular way. The burden is on the individual to demonstrate that an unqualified, unambiguous and unqualified representation was made [Clive Lewis, *Judicial Remedies in Public Law*, 5th Ed., 248 (South Asian Edition)].

The terms of the representation by the decision-maker must entitle the party to whom it is addressed to expect, legitimately, one of two things:

- (a) That a hearing or other appropriate procedure will be afforded before the decision is made. (Procedural Legitimate Expectation); or
- (b) That a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied. (Substantive Legitimate Expectation)

The Petitioner is not complaining of a breach of a procedural legitimate expectation since P8 written by her deceased husband indicates that he took part in an inquiry on 22.12.2008. The Petitioner is seeking to establish a substantive legitimate expectation namely the promise that the State will grant the said paddy land to the Petitioner (Deceased husband of the Petitioner) and the 6th Respondent equally.

However, it is difficult to accept that the Petitioner entertained a legitimate expectation as she did not receive any assurance. The assurance if at all was given to her deceased husband D.M. Jayasekera. The representation or assurance forming the basis of a claim of legitimate expectation must have been made to the party claiming to entertain the legitimate expectation.

In any event the deceased husband of the Petitioner D.M. Jayasekera did not seek to protect any legitimate expectation he may have entertained. It is true that he sought administrative relief in 2010 itself after P7 was issued on 05.05.2010. This is clear by the documents P8 to P11(c). Thereafter no evidence has been placed before Court to show the steps taken by D.M. Jayasekera to vindicate his legitimate expectation until his death in November 2014 [P13(a)]. This application was filed on 28.01.2016. There is clearly an unexplained delay on the part of the Petitioner.

In *Sarath Hulangamuwa v. Siriwardena, Principal, Visakha Vidyalaya, Colombo 5 and 5 others* [(1986) 1 Sri.L.R. 275] it was held that Certiorari being a discretionary remedy will not be granted where there was delay in seeking the remedy.

In *Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another* [(1996) 2 Sri.L.R. 70] Jayasuriya J. held:

" A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

In that case relief was refused since there was a delay of over two and half years since making the order challenged.

In *Jayarathne v. Wickremaratne and Others* [(2003) 2 Sri.L.R. 276] it was held that even when the Petitioner is entitled to the relief on grounds of error of law, the Petitioner is guilty of laches which stands against the grant of relief by way of Writ of Certiorari. In this case, the Court specifically came to a finding that the decision impugned in that application was irrational, arbitrary and unreasonable. Yet the relief was refused since the application was made to Court 7 years after the impugned decision.

For all the foregoing reasons, Court dismisses the application without costs.

Judge of the Court of Appeal

N. Bandula Karunaratna J.

I agree.

Judge of the Court of Appeal