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

Janatha Estates Development
Board,
No.55/75,
Vauxhall Street,
Colombo 02.
Petitioner

CASE NO: CA/WRIT/334/2017

Vs.

1. S. M. Chandrasena,
   Minister of Lands and
   Parliamentary Reforms,
   Ministry of Lands,
   "Mihikatha Medura",
   Land Secretariat,
   No.1200/6,
   Rajamalwatta Road,
   Battaramulla.
2. Attorney General,
   Attorney General's Department,
   Hulftsdorp,
   Colombo 12.

3. Land Reform Commission,
C82, Hector Kobbekaduwa
Mawatha,
Gregory's Road,
Colombo 07.
4. Ramya Nirmali Illeperuma,
5. Ajith Bathiya Illeperuma,
both of No.141,
Ketawalamulla,
Colombo 09.
Respondents

6. Santak Power (Pvt) Ltd.,
No.132,
Old Kottawa Road,
Nawinna,
Maharagama.
7. Bowhill Hydro Power Ltd.,
No.382/7,
Vidyaloka Mawatha,
Hokaranda South.
Intervenient-Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Ikram Mohamed, P.C., with M.S.A. Wadood and Charitha Jayawickreme for the Petitioner.
Nirmalan Wigneshwaran, S.S.C., for the 1st and 2nd Respondents.

Vijaya Gamage for the 3rd Respondent.
Ranjan Gunarathna for the 4th and 5th Respondents.
Mahesh Senaratne for the 6th Intervenient-Respondent.
Anura Ranawaka with Dhanishka Dissanayake for the 7th Intervenient-Respondent.

Argued on: 03.07.2020

Decided on: 25.08.2020

Mahinda Samayawardhena, J.

The father of the 4th and 5th Respondents was the owner of the land known as Bowhill Estate in Nawalapitiya when the said land was deemed to vest in the 3rd Respondent, the Land Reform Commission, in terms of section 3(2) of the Land Reform Law, No.1 of 1972, as amended.

The Land Reform Commission then vested the said land of approximately 247 acres in extent in the Petitioner, Janatha Estates Development Board, by the Gazette marked X2 dated 31.05.1982.

Thereafter, the 1st Respondent, the Minister of Lands, by the Gazette marked B dated 11.08.2006, revoked the earlier Gazette marked X2 in respect of 100 acres of the land, and alienated the said 100 acres to the 4th and 5th Respondents by the Deed marked C dated 14.12.2006.

The 4th and 5th Respondents filed case No.21371/L in the District Court of Colombo against the Petitioner and its Chairman in 2007, seeking declaration of title to the land, ejectment of the Petitioner and its Chairman therefrom, and damages.

The Petitioner in paragraph 18 of the petition states "*The Petitioner and its Chairman filed answer dated 5th December 2007 in which they have wrongfully and/or mistakenly admitted that after the purported Gazette No.1457/22 marked B the Land Reform Commission became the owner of the said extent of 100 acres.*"

After the trial, the District Court entered Judgment in favour of the 4th and 5th Respondents.

The appeal filed against the said Judgment was dismissed by the High Court of Civil Appeal on 27.09.2013, due to want of appearance by the Appellant who is the Petitioner in this application.

The Petitioner did not file a relisting application in the High Court of Civil Appeal against the said dismissal, as the Petitioner was entitled in law to do, in order to have the appeal relisted. As seen from paragraph 21 of the petition, this was intentional.

In paragraph 21 of the petition, the Petitioner states "*pending the said appeal, an application was made by the 4th and 5th Respondents for the execution of the decree entered in the said District Court of Colombo No.21371/L and the Petitioner has agreed on 7th of September 2011 to handover the said extent of*

100 acres to the 4th and 5th Respondents and the application for the execution of the money decree to be considered thereafter."

The 4th and 5th Respondents have taken steps for the execution of the money decree entered in the said District Court case. In this process, the 4th and 5th Respondents sought to seize premises No.175, Vauxhall Street, Colombo 2, which the Petitioner says is a State-owned property.

The application of the 2nd Respondent, the Attorney General, to release the property from seizure was dismissed by the District Court, and, on appeal, the High Court of Civil Appeal affirmed the said Order.

The appeal filed before the Supreme Court in 2015 against the said Judgment of the High Court of Civil Appeal is now pending before the Supreme Court.

It is significant to note that the said appeal to the Supreme Court is in respect of the execution proceedings and not against the District Court Judgment or the Judgment of the High Court of Civil Appeal dismissing the appeal for want of appearance.

It may be recalled that revocation of the Gazette marked A in respect of 100 acres by the Gazette marked B was done on 11.08.2006. The Petitioner has come before this Court more than 11 years after the said revocation, invoking the writ jurisdiction of this Court to (a) quash the Gazette marked B by way of a writ of certiorari, and (b) prohibit by way of a writ of prohibition the 4th and 5th Respondents from taking over possession of the said 100 acres and taking any steps to dispose

of the property in Colombo 2 seized in the execution of the decree of the Colombo District Court case No.21374/L.

The pivotal argument of learned President's Counsel for the Petitioner before this Court is the said revocation of the vesting Order in respect of 100 acres of the land by the Minister is a nullity, because the basis of the said revocation is unsustainable in law, in that, although the Minister has done so in terms of section 27A(4) of the Land Reform Law, the Minister could not have invoked the said provision, as the vesting of the land in the Petitioner by the Gazette marked A was not subject to any terms or conditions relating to consideration.

If this is the position of the Petitioner, why did the Petitioner admit in the District Court case No.21371/L that after the said revocation of the 100 acres by the Gazette marked B, the Land Reform Commission became the owner of the said extent of land? The Petitioner could have simply taken up this position at that time. How can the present Chairman of the Petitioner now say in his supporting affidavit to this Court that the former Chairman "*mistakenly admitted*" this fact? The Petitioner did not take up this position not only in the said District Court case but even in subsequent litigations, until it was taken up 11 years later for the first time in this application.

As I said earlier, the Petitioner in the petition itself admits that after the District Court Judgment, when execution proceedings were set in motion, the Petitioner agreed to hand over the said extent of 100 acres to the 4th and 5th Respondents. The present Chairman of the Petitioner does not say this is also a mistake.

Learned President's Counsel for the Petitioner also submits that the Judgment of the High Court of Civil Appeal dismissing the appeal filed against the District Court Judgment on the ground of want of appearance is null and void, as it is contrary to section 769(2) of the Civil Procedure Code, citing *Suweyal v. Podinona [2017] BLR 100* in support.

In the first place, the Petitioner does not seek such a relief in the prayer to the petition. However, this shall not be taken to mean that had such relief been sought in the prayer, this Court could have considered it in this writ application.

A Judgment entered by a competent Court cannot be attacked collaterally. There is a procedure laid down by law to have a Judgment set aside. If this submission of the Petitioner is entertained, the losing party need not prefer an appeal against the Judgment within the prescribed time but can challenge it at the execution of the decree or in another proceedings. This is not possible.

In *Suweyal v. Podinona* (*supra*), the appeal was dismissed by the High Court of Civil Appeal for want of appearance of the Appellant, as in the instant case. Thereafter, the Appellant in that case rightly filed a relisting application before the same Court, which was also dismissed. Then, the Appellant filed an appeal before the Supreme Court against the said dismissal. The Supreme Court set aside the Order of dismissal and directed the High Court of Civil Appeal to relist the appeal, as the High Court of Civil Appeal had failed to comply with section 769(2) of the Civil Procedure Code in dismissing the appeal.

The facts and circumstances of *Suweyal's case* and this case are totally different. In *Suweyal's* case, due procedure was followed by the Appellant in order to have the dismissal of the appeal set aside. In the instant case, evidently, no such procedure has been followed.

I reject this submission made on behalf of the Petitioner.

Learned President's Counsel for the Petitioner only makes a collateral attack against the Order of dismissal made by the Appellate Court. Going one step further, learned Senior State Counsel appearing for the 1st and 2nd Respondents submits that a collateral attack on the District Court Judgment is possible, as the District Court could not have gone into the matter presented by the Petitioner in this application. The question is not whether the District Court could have decided the matter but whether the Petitioner took up the matter before the District Court, and why the Petitioner did not challenge the impugned Order made by the Minister by way of a writ application at that time? At the argument, learned Senior State Counsel supported the application of the Petitioner. However, contrary to this position, in the statement of objections of the 1st Respondent Minister dated 08.08.2018, the Minister's action is fully defended and dismissal of the Petitioner's application is sought. The 2nd Respondent, the Attorney General, has not filed a separate statement of objections. I reject the submission of learned Senior State Counsel.

It is clear a lot of water has passed under the bridge since the revesting of the said 100 acres and the filing of this application. The Petitioner is manifestly guilty of laches.

Writ is a discretionary remedy. The party who invokes the writ jurisdiction of this Court shall act with promptitude. The Petitioner cannot wait 11 long years to come before this Court to challenge a decision.

This is not a case of the Petitioner not knowing of the *alleged* unauthorised act committed by the Minister at the time it was committed. The Petitioner knew of it from the very outset and acknowledged and acquiesced to it. This, the Petitioner did, not before its subordinates or friends, but before the District Court through its lawyers. The District Court, after the trial, recognised the 4th and 5th Respondents' entitlement to the land in suit, which was affirmed on appeal, and the Petitioner accepted this or at least did not challenge it at that time.

Learned President's Counsel for the Petitioner submits that delay shall not be an absolute bar when the impugned decision is a nullity, and draws the attention of the Court particularly to the Judgment in *Bogawanthalawa Plantation Ltd. v. Minister of Public Administration, Home Affairs and Plantation Industries [2004] 2 Sri LR 329*, where an identical Order was successfully challenged before this Court in a writ application despite delay.

If the writ jurisdiction of this Court is invoked after an inordinate delay, the Petitioner shall explain the delay in his petition. That is a threshold requirement. The Petitioner in the

instant matter has not done so. Nor does it do so even at this stage of the case.

In the abovementioned *Bogawanthalawa Plantation Ltd.* case, the delay was only 9 months whereas in the present case the delay is 11 years. Still the Petitioner in the said case explained the delay. The impugned revesting Order in that case was gazetted on 19.11.1999 and the Petitioner convinced the Court that it became aware of the Order for the first time by letter dated 13.06.2000, by which the Petitioner was requested to hand over the property. The explanation was accepted by the Court to hold that the Petitioner was not guilty of laches. It is on this basis the objection to delay was overruled – *vide* page 334 of the said Judgment.

There are two intervenient Respondents in this case.

The 6th (intervenient) Respondent in its plaint filed in the District Court of Nawalapitiya case No.387/2013/L stated the land it occupies is different to the land which is the subject matter of the District Court of Colombo case No.31371/L.

The Lease Agreement between the Petitioner and the 7th (intervenient) Respondent was entered into after the revesting Order had been made.

There are a number of pending cases among the parties before different Courts stemming from this dispute. The parties shall resolve their outstanding issues in those Courts.

In the unique facts and circumstances of this case, the Petitioner cannot succeed in this application.

I dismiss the Petitioner's application with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.
I agree.

Judge of the Court of Appeal