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 Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. CASE NO. WRT/0051/24

1. Balakrishnan Puvanenthirarasa,
   Sopalapuliyankulam,
   Salambaikulam,
   Vavuniya.

2. Puvanenthirarasa Nirojeni,
   Sopalapuliyankulam,
   Salambaikulam,
   Vavuniya.

PETITIONERS

Vs.

1. Mr. K.D. Bandula Jayasinghe,
   The Land Commissioner General,
   Land Commissioner General's Department,
   "Mihikatha Medura", No. 1200/6,
   Rajamalwatta Road, Battaramulla.

1A. Mr. Chandana Ranaweera Arachchi,
   The Land Commissioner General,
   Land Commissioner General's Department,
   "Mihikatha Medura", No. 1200/6,
   Rajamalwatta Road, Battaramulla.

2. Mr. M.A. Sothinathan,
   Commissioner of Land,
   Department of Provincial Land Commissioner,
   Northern Province,
   No. 59, Temple Road, Jaffna.

3. Mr. N. Kamalathasan,
   Divisional Secretary,
   Divisional Secretariat,
   Vavuniya.

3A.I. Prathaban,
   Divisional Secretary,
   Divisional Secretariat,
   Vavuniya.

4. Ms. S. Pathmalogini,
   Puliyankulam, Vavuniya.

5. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Sri Ranganathan Ragul, instructed by S. A. Kifsiya Banu, for the Petitioners.
Dr. Peshan Gunaratne, SC, for the 1st - 3rd and 5th Respondents.

ARGUED ON : 10.11.2025

WRITTEN SUBMISSIONS ON : 17.11.2025 and 27.11.2025

DECIDED ON : 02.12.2025

JUDGEMENT

K. M. G. H. KULATUNGA, J.

1. The petitioners are husband and wife. By this joint application, the two petitioners are primarily seeking a writ of *mandamus* directing the 1st, 2nd and/or 3rd respondent/s to issue a permit under the Land Development Ordinance or a long-term lease in respect of Lot No. 140 depicted in the Cadastral Map No. 950061, in favour of the 1st and/or the 2nd petitioner/s. The said relief is prayed for by prayer *(b)*.

2. The petitioners have also sought further substantive relief by prayers *(c)*, *(g)*, *(h)*, *(q)*, *(r)*, *(s)*, and *(t),* as follows:

> *c.* issue a mandate in the nature of writ of *prohibition* prohibiting the 1st and/or 2nd and/or 3rd respondents from issuing any permit or lease to any person other than the 1st and/or 2nd petitioners to the subject land bearing lot No. 140 depicted in Cadastral Map No. 950061;
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> *g.* issue a mandate in the nature of a writ of *certiorari* quashing the decision contained in the document marked "P-31";
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> *h.* issue a mandate in the nature of writ of *prohibition* prohibiting the 1st and/or 2nd and/or 3rd respondents from taking any steps on the basis of the decision contained in the said document marked "P-31";
>
> *q.* issue a mandate in the nature of writ of *mandamus* directing the 1st and/or 2nd and/or 3rd respondents to issue/release the permit bearing No. VSTD/217C/Sobala/LDO/400, which was already made in the name of the 1st petitioner pertaining to the part of the subject land;
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> *r.* issue a mandate in the nature of writ of *mandamus* directing the 1st and/or 2nd and/or 3rd respondents to release the compensation of the 1st and/or 2nd petitioners which has been deposited by the 1st and/or 2nd petitioners in the Bank of Ceylon Account bearing No. 7041970 maintained in the name of the Divisional Secretary, Vavuniya, on the request of the Divisional Secretariat of Vavuniya to the 1st and/or 2nd petitioners;
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> *s.* issue a mandate in the nature of writ of *mandamus* directing the 1st and/or 2nd and/or 3rd respondents to act on the basis of the decision contained in the document marked "P-23"; and

t. issue a mandate in the nature of writ of *mandamus* directing the 1st and/or 2nd and/or 3rd respondents to carry out a proper inquiry pertaining to the subject land bearing Lot No. 140 depicted in Cadastral Map No. 950061.

3. The said Lot No. 140 is State Land. A large number of persons appear to have been in unauthorised occupation of certain State Lands in this area in Vavuniya. The petitioners submit that lands have been alienated on permits to those who have been in such unauthorised occupation and claim that the petitioners were occupying Lot No. 140, and thus, the same be granted to them. The respondents do not dispute the petitioners being in possession of some portions of Lot No. 140. In fact, on one occasion, the Electricity Board has also deposited compensation for trees damaged or cut in this land due to the installation of high-tension electricity towers and wires. A part payment of the said compensation is now being withheld due to the 4th respondent disputing and claiming a part of the said compensation on the basis that the 4th respondent was also in occupation of a part of the said land. The respondents admit that permits under the Land Development Ordinance ("LDO") were issued to others in such occupation in that area; however, as there was a dispute between the 4th respondent and the petitioners, the issue of the LDO permit could not be proceeded with.

4. The 1st, 2nd, and 3rd respondents have then conducted an inquiry and decided to allot and grant permits to the two petitioners, as well as the 4th respondent, in certain proportions as depicted in P-30, the inquiry notes and conclusion. This inquiry was so held by the 1st, 2nd, and 3rd respondents or their respective agents on 07.06.2018 (*vide* P-30). Thereafter, the then Divisional Secretary (the 3rd respondent's predecessor) has formally communicated this decision to the 1st petitioner as well as the 4th respondent. The petitioners are now seeking to quash the said decision communicated by P-31.

5. According to P-31, the said land was proposed to be subdivided into three lots depicted as A, B, and C of the sketch in P-31. The petitioners are now challenging this decision on the basis that the petitioners, by themselves, were in actual possession and occupation and that the 4th respondent was not in physical possession as claimed at the said inquiry. The said Lot No. 140 is 3 acres and 14.4 perches in extent (R-10). The petitioners are seeking a writ of *mandamus* to direct the 1st, 2nd, and 3rd respondents to issue a permit in respect of the entirety of the said Lot No. 140. The relief so sought should be considered in accordance with the legal regime and provisions of law prevalent as at today.

6. According to the respondents, the maximum extent of state land that may be alienated to an individual, in accordance with the prevalent circulars, is one acre, in proof of which circulars R-4 and R-5 have been tendered. R-4, issued by the Land Commissioner General, prescribes matters to be considered when state land is alienated, especially to unauthorised occupiers, and there are certain matters required to be considered and followed. They are provided for by R-4. Then, R-5, issued by the Governor's Secretariat of the Northern Province, makes provisions "*Regarding the Extension of the Alienation of Government Land.*" The said Circular is dated 26.10.2020, according to which the Governor of the Northern Province has specified certain limitations on alienation of State Land, of which high land for agricultural purposes is 1 acre, or if paddy land, it may be up to 1 acre and 2 roods.

   The said limitation is provided for by the following schedule:

S.N.	**Purpose**	**Area**	**Extension**
1	Residential	Urban areas	06-20 Perches
2		Areas outside urban limits	01 Rood

3	Residence with home gardening	Areas outside urban limits	02 Roods
4	Livelihood	High land	01 Acre
5	Paddy field	Wet zone (rainy regions)	01 Acre and 02 Roods
6		Irrigation	01 Acre
7	Trading	Urban areas	20 Perches
8		Areas outside urban limits	01 Rood

7. At this juncture, it is relevant to note that the 1st petitioner has been earmarked to be issued with permit No. VSTD/217C/Sobala/LDO/400 but not issued due to the dispute with the 4th respondent. Similarly, the respondents also reveal that the 1st petitioner has already been issued with another permit previously bearing No. VSTD/217D/Kovil/P/LDO/562 (R-6), in respect of 1 acre from a different land. It is the position of the respondents that a person who had already received land on an LDO permit is not entitled to receive a second allotment or alienation of State Land on a similar permit, in view of paragraph 3.4 of Circular R-4.

8. It is also averred on behalf of the respondents that the Sopalapuliyankulam Rural Development Society has, by letter R-8, confirmed that the 4th respondent's mother has been maintaining a portion of the said land since 1980. This has also been further confirmed by the report, dated 26.12.2016 (R-9), issued by the relevant Colonisation Officer.

9. The petitioner, on the other hand, claims that the petitioners together were in occupation of the said Lot No. 140 for over 15 years. The petitioners also claim that in 2013, the 1st petitioner was earmarked for an LDO permit in respect of a part of the said land. Then, the petitioners

have also constructed a house and obtained permission to so construct on 1.5 acres of the land in question. He also claims that the Electricity Board awarded compensation in 2016; however, the 4th respondent has then made a claim pertaining to a portion of the said compensation, and the matter is still pending.

10. Similarly, in respect of Lot No. 140 too, the petitioners admit that the 4th respondent has made certain claims. But the petitioners' position is that the 4th respondent was not in possession of any part of this land, and as such, submit that the decision to apportion the said land as depicted in P-31 is unreasonable and not lawful.

11. The respondents did take up the preliminary objection that the petitioners are guilty of laches. The petitioners are primarily challenging and seeking a writ to quash P-31 dated 07.06.2018. This application was filed on 23.01.2024. It is almost four years after the impugned decision that the petitioners have moved this Court. No doubt, the petitioners claim that after P-31, as parties did not agree, further inquiries were scheduled for 30.06.2020. Then, the 1st petitioner claims to have received the quit notice P-47, dated 20.10.2020, under the State Lands (Recovery of Possession) Act. The petitioners claim that they made subsequent representations and believe that the authorities would look into the same. The petitioners also admit that upon the issuing of the quit notice, an application to evict the petitioners was made and action was instituted on 24.06.2022 in the Magistrate's Court of Vavuniya under Case No. 51664/22. This application for eviction is in respect of only 1 acre as described by the Schedule to the affidavit annexed and tendered to the said Magistrate's Court (*vide* page 362 of the petitioners' documents, annexed to P-49). The respondents have thus only sought the eviction of the first petitioner from 1 acre of the 3 acres, and not the entirety of Lot No. 140 of the Cadastral Map.

12. Accordingly, the sum total is that the petitioners, upon a delay of four years, are attempting to impugn and quash the decision conveyed by P-

31. Several other steps, including the issuing of a quit notice and the subsequent institution of the Magistrate's Court application for ejectment, have also been taken. Even if one assumes that P-31 is the substantive decision and the other decisions are consequential, yet for all, one cannot absolve himself of being guilty of laches or delay for not coming within a reasonable time of the first-mentioned substantive decision, where the unlawfulness alleged is.

13. It is trite law that unexplained delay is reason for a Court to reject granting of the discretionary relief of writs. In ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR 368, Sharvananda, J. (as His Lordship then was), observed as follows:

> *"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."*

I find the following dicta cited by Rajakaruna, J., in ***K. G. D. Walter Abeysundera and another vs. Mr. S. Hettiarachchi, Secretary, Ministry of Tourism and others*** (CA/Writ/371/2021, decided on 22.09.2021), also relevant:

> *"Now it is important to examine as to whether such conduct of the Petitioner and the delayed application for judicial review is reasonable.* ***Lewis in Judicial Remedies & Public Law*** *(4th ed.) says, at para. 9-17, that:*
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> > *'The claimant should challenge the decision which brings about the legal situation of which complaint is made. There*

> *are occasions when a claimant does not challenge that decision but waits until some consequential or ancillary decision is taken and then challenges that later decision on the ground that the earlier decision is unlawful. If the substance of the dispute relates to the lawfulness of that earlier decision and if it is that earlier decision which is, in reality, determinative of the legal position, and* ***the later decision does not, in fact, produce any change in the legal position, then the courts may rule that the time-limit runs from that earlier decision****'"* (at page 8) (emphasis added).

> *"I am of the view that where the impugned action takes place in stages, the challenge should be launched against the earliest stage rather than the final and decisive stage. See* ***R v Secretary of State for Trade and Industry ex p. Greenpeace)*** *[1998] COD 59 and* ***R (Burkett) v Hammersmith & Fulham LWC*** *[2002] 1 WLR 1593 (HL)"* (at pages 8-9).

14. In determining issues of this nature, what is relevant and critical is the making of the operative order or determination; if a person aggrieved so desires, such party should immediately take action to assail the same. If such party allows time to lapse, and during such time certain other consequential steps are taken which are independent of the making of the first-mentioned determination, then the running of time as regards the first decision cannot be stalled and would not be a valid excuse or be explained thereby, so to say. Consequential action taken thereon will not absolve the petitioners from being guilty of laches. In this instance, the decision in P-31 is not directly connected or referable to the issuing of a quit notice and filing for eviction in the Magistrate's Court. In these circumstances, the petitioners cannot rely on the subsequent unrelated acts to justify the delay. Accordingly, I find that the petitioners are guilty of laches or unexplained delay, which disentitles the petitioners to the discretionary relief by way of writ.

15. The 1st petitioner has been the recipient of another permit under the LDO, which was received by way of a permit bearing No.

VSTD/217D/Kovil/P/LDO/562 (R-6), 1 acre in extent. In view of circular R-4, a person is not entitled to a second permit under the State Lands Ordinance. It provides thus: "එම දිනයෙන් පසු දැනට අනවසරයෙන් ඉඩමක පදිංචි වී සිටින පුද්ගලයෙකු ඉඩම් කච්චේරියකදී තෝරා ගත හැක්කේ ඔහුට කිසිඳු ඉඩමක් නැති පුද්ගලයෙකු නම් පමණි." This disentitles the 1st petitioner to seek another permit in respect of State Land. In view of the serious consequence of being so disentitled, the suppression and non-disclosure of the previous permit certainly amounts to a deliberate non-disclosure and a suppression of a material fact.

16. It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to refer to the following passage from the judgment of Pathirana, J., in ***W. S. Alphonso Appuhamy v. Hettiarachchi*** (77 N.L.R. 131, at pages 135-136), where His Lordship held as follows:

> *"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the* ***King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington — Ex-parte Princess Edmond de Poignac — (1917)****. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words,* ***so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination.****"* [emphasis added].

Saleem Marsoof, P.C., J., in ***Namunukula Plantations Limited vs. Minister of Lands and others*** (2012) 1 SLR 376, held as follows:

> *"It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence."*

His Lordship further held that,

> ***"If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person****."*

Accordingly, I hold that the 1st petitioner is also guilty of suppression of a very material fact and is not entitled to relief as prayed for.

17. The petitioners may have been in occupation of the land in question, but there is material coming forth from the Land Settlement Officer, as well as the Sopalapuliyankulam Rural Development Society, that the 4th respondent and/or her mother had also been in occupation, at least of a portion of this land. When considering the submissions and averments of the petitioners, it is apparent that they have, at various times, for various purposes, held out that they were in occupation of different extents of land. At one point, it is said to be 1.5 acres, then 2 or 3 acres, and now they are seeking a permit for the entirety of this land. This clearly shows that the petitioners have not been in possession of the entirety of Lot No. 140, as is claimed today; the 4th respondent has certainly, either by herself or through her mother, also been in occupation of at least a portion thereof.

18. In these circumstances, the decision of the 1st, 2nd, and 3rd respondents to apportion and alienate the land between the petitioners and the 4th

respondent is neither unreasonable nor contrary to the available material. This decision has been made upon hearing all the parties and considering the reports and other information from the relevant authorities and persons, and thus has followed the rules of natural justice and considered the relevant material. Accordingly, I see no lawful basis to disturb the findings conveyed by P-31 in the exercise of the writ jurisdiction of this Court.

19. As the regulations stand today, there is an upper cap, or a ceiling, of 1 acre (high land) prescribed for alienation of State Land. The petitioners together are seeking a permit/s, either jointly or separately, for land exceeding the said limitation. Accordingly, neither are the petitioners lawfully entitled to receive nor are the respondents under a duty to issue permits in violation of the said circulars.

20. In the above premises, I find that the petitioners are guilty of laches and that the 1st petitioner is guilty of suppression of a material fact. The impugned decision P-31 is lawful and reasonable. Therefore, the petitioners have failed to satisfy this Court of any lawful basis which entitles them to the relief as prayed for.

21. The petitioners are also seeking a directive to release certain monies paid by the Ceylon Electricity Board, which is now deposited with the Divisional Secretary. As to the entitlement of the said sum, there is a dispute between the 4th respondent and the petitioners. This is a matter to be determined in relation to the entitlement of the land over which the said high-tension wires have been drawn. To that extent, the entitlement is in serious issue. Accordingly, when the facts are in issue and are disputed, the petitioners are not entitled to relief by way of writ. In the above circumstances, I see no basis in law or otherwise which entitles the petitioners for any of the relief prayed for in this application. Further, as it appears that the quit notice is in respect of the portion earmarked to be allotted to the 4th respondent, there is no prejudice caused to the petitioners either.

22. Accordingly, the application is refused and dismissed. However, I make no order as to costs.

Application refused.

JUDGE OF THE COURT OF APPEAL