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

In the matter of an Application for a Mandate in the nature of Writ of Certiorari and/or a Writ of Prohibition in terms of Article 140 of the Constitution of the Republic of Sri Lanka.

Case No: Court of Appeal

Writ Application No: 312-18

1. Mohamed Anver Mohamed Akeel
   No. 7, Vettukulam Road,
   Puttalam.

2. Ahamed Nafeel Abdulla Ahamed Ali Simack
   No. 36 A, 2nd Cross Street,
   Puttalam.

3. Ahamed Nafeel Abdulla Ahamed Ali Ithaaf
   No. 36, 2nd Cross Street,
   Puttalam.

4. Mohamed Thaha Noorul Ameen
   19, Nedumkulam Road,
   Puttalam.

5. Puttalam Salt Producers Welfare Society Ltd
   Mannar Road, Puttalam.

PETITIONERS

Vs.

1. Commissioner General of Land Title
   Settlement/ Settlement Officer,
   "Mihikatha Medura",
   Lands Secretariat,
   No. 1200/6, Rajamalwatte Road,
   Battaramulla.

2. Assistant Commissioner of Land Title
   Settlement
   Divisional Office,
   No. 49, Service Road,
   Puttalam.

3. Land Commissioner General
   Land Commissioner General's
   Department,
   "Mihikatha Medura",
   No. 1200/6, Rajamalwatte Road,
   Battaramulla.

4. Provincial Land Commissioner of the
   North-Western Province
   Provincial Land Commissioner's
   Department,
   P. O. Box. 46, Provincial Council Complex,
   Kurunegala.

5. Hon. Minister of Lands
   Ministry of Lands,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatte Road,
   Battaramulla.

6. Hon. Provincial Minister of Land
   Ministry of Land, North-Western
   Province,

P. O. Box. 46,
Provincial Council Complex,
Kurunegala.

7. Divisional Secretary
Divisional Secretariat,
Puttalam.

8. Hon. Attorney-General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before	:	Dhammika Ganepola, J.
Counsel	:	Snjeewa Jayawardena PC with Riad Ameen and Charitha Rupasinghe for the 1st to 4th Petitioners. Navin Marapana, P.C. with Uchitha Wickremesinghe and Varuni Rathnayake for the 5th Petitioner. Manohara Jayasinghe DSG for the Respondents.
Argued on	:	2024.07.05, 2024.08.06, 2024.09.18, 2024.10.21, 2024.10.30, 19.11.2024, 13.12.2024
Written Submissions tendered on	:	5th Petitioner : 09.01.2025 1st to 4th Petitioners : 19.05.2025 Respondents : 06.01.2025
Decided on	:	17.07.2025

Dhammika Ganepola, J.

The Petitioners, in the instant application, seek to challenge the legality and the validity of the settlement notices dated 29.09.1996 issued under Section 4 of the Land Settlement Ordinance (hereinafter referred to as 'Ordinance') published in the Gazette No. 14733 dated 27.01.1967 and/or the settlement Order dated 09.08.1972 made under Section 5 of the Ordinance published in the Gazette No.43 dated 19.01.1973. The Petitioners state that the 1st to 4th Petitioners are members of the 5th Petitioner Society. It is claimed that the 5th Petitioner Society consists of 391 members who are claimed to be the lawful owners of salt pans (waikals) in issue situated in the District of Puttalam. The Petitioners claim that the Petitioners, as well as their predecessors who were in title, have owned and operated the said salt pans for a long period of time. It is stated that the said Petitioners possess a paper and prescriptive title to certain salt pans. The 1st to 4th Petitioners and the other members of the 5th Petitioner Society have been engaged in the production of industrial and edible solar salt for more than a century in the Puttalam private salterns.

Although the said Petitioners and the other members of the Society held ownership of the salt pans in issue, the lagoon waters, which is used for the salt production obtained through the outer and inner reservoirs, had been controlled by the National Salt Corporation established in 1966 under the Industrial Corporation Act No.49 of 1957. After that, the 5th Petitioner Society was able to freely use the lagoon water without making any payment. Later, in 2004, the 5th Petitioner Society had obtained an annual permit from the 7th Respondent to use the said outer and inner resources in order to uphold its members' rights.

By the letter dated 16.05.2018 (P10A), the 7th Respondent had informed the General Manager of the 5th Petitioner Society that steps will be taken to require the Kachcheri Surveyor to survey part of the Puttalam Saltern occupied by the members of the 5th Petitioner Society. Further, the 5th Petitioner Society had been informed that measures will be taken to permit the occupants of the salterns to use the same subject to an annual payment. By letter dated 02.07.2017 (P10C), the 4th Respondent had

brought to the notice of the 5th Petitioner Society that the purported Settlement Order pertaining to Lots except Lot No.246 1/2 in the Final Village Plan No. 3355 had been published in the Gazette Notification No.43 dated 19.01.1973(P14A). Thereafter, the 4th Respondent had called upon the 5th Petitioner Society and its landowning members to furnish their claims to the salt pans and had informed that the lands will be surveyed in order to issue permits, unless the members of the Society fail to establish their rights.

The Petitioners state that they were unaware of the alleged Settlement Notice published in Gazette Notification No. 14733 dated 27.01.1967 (P13A), and the settlement order published in Gazette Notification No.43 dated 19.01.1973 (P14A) until it was revealed for the first time on or about 21.05.2018 as the notice had not been duly published as required by the Ordinance. It is claimed that even though the relevant settlement order had been published on 19.01.1973, the State had not claimed its rights over the lands until July 2018, and the members of the Society have been in exclusive possession of the lands.

Accordingly, the Petitioners state that the Settlement Order published in Gazette Notification No. 43 dated 19.01.1973 (P14A) is ultra vires the provisions under the Land Settlement Ordinance, as it does not fall within the ambit of the Ordinance and has been made without due compliance with the statutory provisions of the law. Thus, Petitioners are seeking *inter alia* a Writs of Certiorari to quash the purported Settlement Notices dated 29.09.1966 published in the Gazette No.14733 dated 27.09.1966(P13A, P13B and P13C), and the Settlement Order dated 09.08.1972 published in the Gazette No.43 dated 19.01.1973(P14A, P14B and P14C), and the Writ of Prohibition prohibiting the Respondents from taking any steps under the purported Settlement Notice or Order.

Whether the Purported Settlement Notice Falls within the Purview of Section 4 of the Ordinance

The learned President's Counsel for the Petitioners argues that the impugned Settlement Notice and the Settlement Order are *ultra vires* as the Settlement Officer patently lacked the power to issue such Settlement

Notice or Settlement Order as per Section 4(1) of the Land Settlement Ordinance. It shall be lawful for the settlement officer to declare by a notice that, if no claim to a land or to any share of or interest in such land in the nature specified under the Section 4(2) is made to him within a period of three months from a notified date, such land, share or interest will be declared under section 5 (1) to be the property of the State and will be dealt with on account of the State. Said Section 4(1) is as follows:

> "*(1) Whenever it appears to the Settlement Officer that any land is of any of the following descriptions: -*
>
> *(a) forest, waste, unoccupied, or uncultivated land, or chena or other land which can only be cultivated after intervals of several years; or*
>
> *(b) cultivated or otherwise improved land which was, within the period of twenty-five years next preceding the date of the notice hereinafter in this subsection provided for, land of any of the descriptions specified in paragraph (a) of this subsection,*
>
> *it shall be lawful for him to declare by a notice signed and dated by him and published as hereinafter provided (in this Ordinance referred to as a "settlement notice ") that, if no claim to such land or to any share of or interest in such land is made to him within a period of three months from a date to be specified in such notice the land to which or to any share of or interest in which no claim has been made as aforesaid will be declared under section 5 (1) to be the property of the State and will be dealt with on account of the State:"*

There is no specific evidence before this Court to conclude under which description of Section 4(1), the Settlement Officer had decided to publish the notice in issue. However, it is on the common ground that the impugned lands, which have been settled in favour of the State, did not fall within the provisions specified under Subsection (a) of Section 4(1) above. The Respondents in their oral submission, as well as in their written submissions, conceded the impossibility of relying on Section 4(1)(a).

Nevertheless, the Respondents rely on the provisions under Section 4(1)(b) of the Ordinance, upon which it shall be lawful for the Settlement Officer to publish a Notice of Settlement in respect of the forest, waste, unoccupied, or uncultivated land, or chena or other land, which had been cultivated or otherwise improved within the period of twenty-five years next preceding the date of the notice which amount to a conditional publication. The submission of the Petitioners is that the Respondents need to provide clear and unequivocal evidence that the land in question falls within the criteria set out under Section 4(1)(b) during the required 25-year period. It should be noted that in the given instance, the Petitioners are attempting to obtain the reliefs sought from this Court by shifting the burden to the Respondents after more than half a century of sleeping over their rights.

The impugned Settlement Notice had been issued in 1967. The Settlement Officer would not have issued the Settlement Notice unless he had been satisfied himself that the land to be settled had been cultivated or improved within the period specified in Section. In the instance where the Settlement Officer had taken steps to publish a Settlement Notice, it could be presumed that the Settlement Officer published such notice only because such conditions precedent have been fulfilled at the time of the publication of the same, until the contrary is proved. (All things are presumed to have been done according to law until the contrary is proved/ *Omnia praesumuntur legitimate facta donec probetur in contrarium*).

However, the Petitioners submit that most of the land lots described in the Settlement Notice are identified as salterns and have been continuously used for generations for the manufacture of solar salt since time immemorial. I am of the view that a mere submission does not enable this Court to come to a conclusion contrary to the opinion formed by the Settlement Officer owing to the absence of any clear evidence to support the stance of the Petitioner that the lands in concern did not fall under the purview of Section 4(1)(b) of the Ordinance. Further, the Petitioners' contention that the Petitioners were unaware of the relevant Gazette is not tenable as it was an accessible public document.

Accordingly, I view that the Petitioners' argument that the impugned Settlement Notice is *ultra vires*, as the alleged lands do not fall within the purview of Section 4(1) of the Ordinance, cannot be upheld.

Further, it is observed that a period of three months from a date to be specified in the settlement notice is given to the persons who have any interest or share in the relevant land to make their claims under Section 4(1) of the Ordinance. In the instant application, it appears that no claim had been made by the Petitioners during the said specified period of three months. Such failure of the Petitioners to submit their alleged claims within the period of three months further supports the above presumption that the Settlement Officer took steps to publish the impugned Settlement Notice only because he was satisfied of the conditions specified in Section 4(1)(b) of the Ordinance. Since the relevant stakeholders had been given the opportunity (three months) to make their alleged claims, no allegations could be advanced that the Petitioners had not been offered a fair hearing.

Procedural Impropriety

The Petitioners claim that certain procedural steps, which are set out in Section 4 of the Ordinance, have been violated by the Respondents during the publication of the impugned Settlement Notice. Section 4 stipulates the requirements such as publishing the settlement notice in the Gazette in three languages, posting copies of the notice within the village in which the land is situated, affixed to the walls of several Kachcheris and several courts and beating of tom-tom on or near the land within six weeks from the date of the publication of the notice, etc in order to give the due publicity to the relevant settlement notice. The Petitioners submit that the said prerequisites were not complied with by the Settlement Officer prior to publishing the impugned Settlement Order.

There are certain facts which need not be proved by either party, as the Court can take judicial notice of the same. As provided under Section 81 of the Evidence Ordinance, genuineness of a Gazette Notification is one such matter. The impugned settlement notices and the order had been

published in a Gazette Notification, of which the Court can take judicial notice without calling for any evidence. Additionally, as per Section 4(5) of the Ordinance, the Gazette in which such settlement notice is published, if produced in any Court in Sri Lanka the same should be received as prima facie evidence of such requirements specified under the Ordinance have been duly complied with in issuing such notice. Further, it is observed that a certain lot bearing No.274 has been settled to one Pitchai Thamby Marikkar Zeynambu Netchiya of 5th Cross Street, Puttalam, by Settlement Order No.146 (page 46 of the Gazette marked P14B). It means that there had been at least one claimant. The inference that could be reached by such observation is that a notification has been duly published as prescribed in Section 4 of the Ordinance, and that the relevant statutory prerequisites have been complied with.

As mentioned above, in terms of the Land Settlement Ordinance, publication of the aforesaid gazette notifications in respect of the impugned settlement notices and settlement orders should be preceded and succeeded by certain official acts of the settlement officers. In the given instance such official acts include publishing the settlement notice in the Gazette in three languages, posting copies of the notice within the village in which the land is situated, affixed to the walls of several Kachcheris and several courts and beating of tom-tom on or near the land within six weeks from the date of the publication of the notice, etc. At this juncture, it is prudent for me to advert to Illustration (d) under Section 114 of the Evidence Ordinance, which provides that the Court may presume that the official acts have been regularly performed.

Since the Petitioners claim that statutory procedural steps have been violated, the burden of proof of proving the same shifts to the Petitioners, requiring them to prove the alleged non-compliance with the statutory steps. In order to prove such non-compliance, the Petitioners have filed several affidavits sworn by several villagers who lived around Salterns [P15(A), P15(B), P15(C), P15(D) and P15(E)], in which such villagers have stated that they were unaware of any such publications. Since the Petitioners are challenging the Gazette of the Settlement Notice after more than five decades, to rebut the presumption, there should be very

strong and convincing evidence in support of the alleged non-compliance. I am of the view that the contents of the above affidavits do not satisfy such an onus. The declarant of the affidavit marked P15(A) stated that he, as a government servant, was unaware that any notice was published in any Gazette in 1966 or 1967. It is observed that even some of the other declarants of the respective affidavits were not notified of the notice published in the Gazette. However, the publication of the impugned Gazette is not disputed by the Petitioners. Accordingly, ignorance or failure of the Petitioner to take notice of the relevant publications of notice cannot be considered as procedural defects.In view of the illustration (d) of the Evidence Ordinance and in the absence of any cogent evidence produced by the Petitioners to prove that said official acts have not been regularly performed, I am of the view that this is a fit case to adopt the said presumption under Section 114.

Owing to the foregoing reasons, this Court could arrive at the inference that all procedures have been duly complied with in the usual manner as prescribed by the maxim *omnia praesumuntur rite et solemniter acta esse* (all things are presumed to have been done correctly and solemnly), which covers generally all official acts. Therefore, this Court is satisfied that the relevant statutory procedural steps were duly followed during the publication of the settlement notice. I am also mindful of the learned DSG's attempts during his oral submissions to submit the original record containing documents confirming the displacing of the notice in a conspicuous place and the beating of 'tom toms'. However, such an attempt was prevented by the learned President's Counsel for the Petitioners stating that the Petitioners were not given any prior reasonable opportunity to peruse such records as it was not produced to the Court at the appropriate stage. Hence, this Court had not the opportunity to peruse such documents.

Delay/Laches

The Respondents further claim that the instant application of the Petitioner is a belated one. The Petitioners challenge the settlement notice issued under Section 4 of the Land Settlement Ordinance published in the Gazette No.14733 dated 27.09.1966, after more than 52

years and the Settlement Order dated 09.08.1972 published in the Gazette No.43 dated 19.01.1973, after more than 45 years. Additionally, Section 4(1) of the Ordinance stipulates that, if no claim to such land is made to the settlement officer within three months from a date to be specified in settlement notice, the land to which no claim has been made, will be declared under section 5 (1) to be the property of the State and will be dealt with on account of the State. Once the statute gives specific time limits, no further claims could be made or received by the settlement officer after the lapse of the statutorily specified time limit, especially after a long delay of 45 years. The Respondents argue that the application of the Petitioners should be dismissed *in limine* as the Petitioners failed to provide a satisfactory explanation for the above-mentioned delay or laches. Therefore, the fundamental issue to be determined in this application is whether the settlement notice issued in 1967 and the settlement order issued in 1973 could be challenged after such a lengthy period of time.

It is a well-established principle that an application for a Writ of Certiorari must be filed within a reasonable time from the decision or order which the applicant is challenging. In the case of *Biso Menika v. Cyril de Alwis and Others* (1982) 1 Sri LR 368, the Supreme Court stated that,

> *"The proposition that the application for Writ must be sought as soon as 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 chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay.*
>
> *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. But exercise of this discretion by the Court is governed by certain well-accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver.*

An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However, the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere."

However, in the instant application, the Petitioners have raised an argument that the issue of laches cannot be considered at this stage, as the Supreme Court has already determined such delay and laches in the application bearing No. SC/SPL/LA/398/2018. Hence, before considering the issue of laches, I would deal with the above argument. When this application was taken up for support on 15.10.2018 in the first instant, having heard the submissions made by the learned President's Counsel for the Petitioners, as well as the learned State Counsel, this Court had refused to issue notices on the Respondents as the Court was of the view that this is not a fit case in which the Court should exercise it's discretionary writ jurisdiction. In the above numbered application Supreme Court dismissed the judgement of this Court dated 15.10.2018, determining that this is a matter where the Court of Appeal should have issued notices on the Respondents and referred back with the direction that notices be issued on the Respondents (see document marked CA-22). The Petitioners submit that the Supreme Court, having heard the submissions made by both parties on the identical objection regarding laches, overruled the said objection and therefore, the Respondents cannot be allowed to re-agitate the same issue of laches.

The Petitioners argue that the issue of laches was determined by the Supreme Court. However, upon careful perusal of the Supreme Court's judgment marked CA-22, this Court cannot conclude that the Supreme Court determined the issue of laches, as the said judgment does not indicate any determination on laches. This Court must adhere to the contents of the Supreme Court judgement. The Supreme Court has sent back the application for hearing with a direction to issue formal notices on the Respondents. The only inference that could be drawn by the

Supreme Court judgement is that, in the instant application, there is a matter to be looked into at the stage of argument without dismissing at the preliminary stage. The matter is remitted to this Court for full hearing with the direction "…the Court of Appeal to complete all pleadings..." without imposing any restrictions based on lashes. Hence, no inference could be drawn by this Court to the extent that the Respondents are not entitled to raise the objection based on laches. Accordingly, I do not agree with the argument advanced on behalf of the Petitioners that the Respondents are not entitled to raise the objection based on laches at the argument.

The main argument that the Respondents repeatedly raised in this application is whether the impugned Gazette No.14733 dated 27.01.1967, after more than 52 years, and the Gazette No.43 dated 19.01.1973, after more than 45 years, could be challenged before this Court. The only reason that the Petitioners submit to justify the long delay to make the application is that they were not aware of the above Gazettes until the Settlement Notice was brought to their notice for the first time on or about 21.05.2018 and the Settlement Order was disclosed by the 4th Respondent by his letter dated 02.07.2018(see paragraph 52 of the Petition).

Section 81 of the Evidence Ordinance stipulates that the Court shall presume the genuineness of every document purporting to be the Gazette of Ceylon or Sri Lanka. Accordingly, the existence of the above Gazettes could be presumed. Nevertheless, the existence of the above Gazette Notifications is not in dispute. A Gazette is an official publication that notifies of the actions and decisions of the government. Notices published in government Gazettes encompass all aspects of governmental concern and regulation, and most are published due to legal requirements.

The Government Gazette serves as an authorized legal document and vital tool that provides access to official/public notifications, ensuring transparency and public awareness. As commonly known, ignorance of the law is not an excuse. Likewise, sometimes ignorance of facts pertaining to official acts cannot be considered as an excuse. Thus, the

matters published in the Gazette, which provide awareness of official acts to the public, cannot be merely ignored by the public. As such, ignorance of such Gazettes cannot be pleaded in excuse. Because, accommodating such an excuse will impede the statutorily defined functioning of the State. The Latin maxim *Ignorantia eorum quae quis scire tenetur non-excusat* provides that Ignorance affords no excuse in reference to those things (Gazettes) which one is bound to know. Since the Gazettes are public and official documents, ignorance of what they ought to know in the impugned Gazette Notifications will not excuse the Petitioners from knowing the effect of the impugned Gazette.

It is the duty of the Petitioners who are seeking judicial review by way of Writ of Certiorari to explain the delay to make the application to the satisfaction of the Court. Therefore, the Petitioners' so-called lack of awareness, which amounts to negligence regarding the Government Gazette for over fifty years, cannot be considered a valid or acceptable justification for the alleged excessive delay.

In *Issadeen v. The Commissioner of National Housing* 2003(2) Sri LR 10 at p15, Bandaranayake J., dealing with a belated application for a Writ of Certiorari, observed that,

> *"It is, however, to be noted that delay could defeat equity. Although there is no statutory provision in this country restricting the time limit in filing an application for judicial review and the case law of this country is indicative of the inclination of the Court to be generous in finding 'a good and a valid reason' for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy."*

Gunasekara and another v Abdul Lathief (1995) 1SLR 225, at p235, Ranaraja J, states that laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. It also means that unreasonable delay in pursuing a legal remedy rare by a party

forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt.

> *"The word "laches" is a derivative of the French verb Lacher, which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. (Stroud's Judicial Dictionary 5th Ed Pg 1403.) It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt. The neglect to assert one's rights or the acquiescence in the assertion or adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg 260). When it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material."*

In *Seneviratne v. Tissa Dias Bandaranayake and Another*(1999)2 Sri LR 341 at 351, Amerasinghe, J. decided that, *if a person were negligent for a long and unreasonable time, the law refuses afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.*

Considering the absence of satisfactory and justifiable explanation being provided to justify the delay in making the application, negligence or omission on the part of the Petitioners to assert their rights at the appropriate time and the other hardship and inconvenience that would be caused to the State and the other stake holders who compiled with the relevant statutory provisions referred, this Court refuse to invoke its Writ Jurisdiction in the given instance. I am mindful of the fact that there are instances in which the Court should not follow a rigid but a flexible

measure of delay depending upon the circumstances of the case. However, in the instant case, unjustifiable delay and the circumstances do not appear to warrant this Court exercising discretion in favour of the Petitioners.

Conclusion

In view of the above circumstances and the reasons given, the application of the petitioners is dismissed without cost.

Judge of the Court of Appeal