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

Muththusami Loganathan,
No.118/14,
Kadugannawa Road,
Gampola.

PETITIONER

C.A. Case No.WRT-243/23

Vs.

1. P.C.D. Sigera
   The Title Settlement Commissioner General,
   Land Title Settlement Department,
   No.1200/6,
   Mihikatha Medura,
   Rajamalwatta Road,
   Battaramulla.

2. The Assistant Commissioner of Title Settlement,
   Gampola Divisional Office,
   Land Title Settlement Department,
   No 32/3, Keerapane,
   Gampola.

3. The Registrar General,
   The Registrar General's Department,
   No.234/A3,
   Denzil Kobbekaduwa Mawatha,
   Battaramulla.

4. The Registrar of Title,
   Gampola District Land/Title Registry,
   89/1, Mahara,
   Nawalapitiya Road,
   Gampola.

5. The Surveyor General,
   Sri Lanka Survey Department,
   No. 150, Bernard Soysa Road,
   Narahenpita,
   Colombo 05.

6. Walipalle Gedara Malani Mangalika,
   No. 370,
   Elpitiya,
   Waligalla.

7. Muramudali Gedara Hirantha Kolitha Bandara Muramudali,
   No. 266/60/A, 2nd Lane,
   Jayamalapura,
   Gampola.

RESPONDENTS

BEFORE : **N. BANDULA KARUNARATHNA, J (P/CA)**

WICKUM A. KALUARACHCHI, J

COUNSEL : Lasantha Garusinghe instructed by Hashini Rathnayake.

N. De Soysa, S.C. for the 1st – 5th Respondents.

Vimukthi Bandara instructed by Dinesh de Silva for the 6th Respondent.

SUPPORTED ON : 09.11.2023

DECIDED ON : 13.12.2023

ORDER

WICKUM A. KALUARACHCHI, J.

The petitioner seeks in this application;

I. A writ of certiorari quashing the Gazette Extraordinary No. 1405/6 dated 12.08.2005 in a limited manner in respect of the statutory determination concerning land Parcel No.85.

II. A writ of mandamus directing the 1st and/or 2nd respondents to make a determination in terms of Registration of Title Act No. 21 of 1998 to the effect that Land Parcel No. 85 (access roadway) is owned by the petitioner and to issue a certificate of title accordingly.

III. A writ of mandamus directing the 5th respondent to amend the Cadastral Map No. 320122 (marked P-2) depicting the access roadway physically available on land to access Land Parcel Nos. 54 and 46.

The issue relating to this application is Parcel No.85 (access roadway depicted in the aforesaid Cadastral Map marked P-2). The petitioner states that the said access road is private and owned by the petitioner. The said roadway had been gazetted as a land belonging to the State by the Gazette Extraordinary No.1405/6 dated 12.08.2005 marked P-1. Accordingly, the petitioner requests to amend the Cadastral Map and to make a determination to the effect that land Parcel No.85 is owned by the petitioner.

Balapu Waduge Wickramasinghe was the previous owner of land parcel Nos. 49 and 50, depicted in the said Cadastral Map. Presently, the

petitioner is the owner of the said two parcels of land bearing numbers 49 and 50. The petitioner had been issued first-class title certificates (P-3 and P-4) in 2011 to the said Land Parcel Nos. 49 and 50. The previous owner of the said two allotments of land, Wickramasinghe entered into an agreement with the petitioner to sell those two allotments of land by attesting the agreement to sell bearing No. 766 dated 05.09.2010 (marked P-12). However, in the agreement bearing No. 766, nowhere, it is mentioned to sell a right of way over land parcel No.85 but only the servitudal right of way in respect of Lot 5 of plan No.2067 is mentioned in the said agreement.

The learned State Counsel appearing for the 1st to 5th respondents contended that the title certificates P-3 and P-4 have been given to the petitioner only with regard to the land Parcel Nos. 49 and 50 and therefore, the petitioner is not entitled to claim Land Parcel No.85 as a roadway owned by him. The learned State Counsel contended further, under any circumstances, the petitioner cannot maintain this application because the roadway in question was gazetted as a State Land in 2005 based on the Cadastral Plan prepared in 2004 and the petitioner filed this writ application to quash the said Gazette and to amend the Cadastral Plan in 2023. She contended that after 18 years of unexplained, prolonged delay, the petitioner cannot maintain this application.

Petitioner's predecessor in title of the allotments 49 and 50, Wickramasinghe subdivided the larger land into five allotments by Plan No.2067 dated 11.03.2000 and created for the first time a private access road inside the land. According to the petitioner, the said plan is the plan marked as P-9 and the Lot 5 of P-9 is the purported private roadway. In the Plan No.2067, it is mentioned that the land depicted therein is the Lot 1 in Plan No.4197. The Plan No.4197 has been marked as P-8. It is

mentioned in P-8 that the land depicted therein is Lot 1 in Plan No.15 dated 20.04.1934. That is why the petitioner says that his predecessor agreed to convey by the sales agreement No. 766, the right of way depicted as Lot 5 in Plan No. 2067.

It is to be noted that in this writ application, this court cannot examine the correctness of plans, compare plans and determine whether the roadway in question is a private road or a roadway owned by the State. The aforesaid Cadastral Map (P-2) was prepared by the Surveyor General in 2004. If the right of way in question was a private land, the petitioner's predecessor could have made representations to the Surveyor General when the Cadastral Map was prepared. But no such representation was made by the petitioner's predecessor, Wickramasinghe.

It is also vital to note that plans No. 4197 and 2067 have been prepared by a private survey taken by the said Wickramasinghe according to paragraph 7 of the petition. There is no proof whatsoever that the correctness of those plans was examined by any Court of law. Therefore, there is no basis to argue that the Surveyor General mistakenly depicted the said roadway as State Land because the said argument was based on plans prepared as a result of a private survey taken by the petitioner's predecessor, the correctness of which has not been examined. As stated previously, the correctness of the plans could not be determined by a writ application. That has to be done in a District Court.

The learned State Counsel raised the argument that the petitioner cannot claim a right more than his predecessor had. The most important matter to take into consideration is that the petitioner's predecessor, Wickramasinghe has never claimed this roadway in question as a private road. After 2005, throughout the period Wickremasinghe owned these two allotments 49 and 50, he used allotment 85, not disputing the fact that it

is a state-owned land. However, the petitioner now asks to declare this roadway as a private roadway and to amend the Cadastral Map prepared by the Surveyor General based on the plan taken by the said Wickremesinghe.

It is also vital to note that in 2011, when the petitioner obtained a first-class title certificate for allotments 49 and 50, even the petitioner had not claimed this roadway as a private roadway. Paragraph 15 of the petition states that there was a dispute between the 6th respondent and the petitioner over the land parcel No. 85 and it was reported to the Magistrate Court of Gampola under Section 66 of the Primary Courts Procedure Act. P-14 is the order of the Primary Court delivered on 21.02.2019 wherein it was ordered to remove the fence erected by the petitioner of this case obstructing the right of way of the other respondent of that case and ordered further to allow the other respondent to use this roadway freely. The petitioner of this application filed a revision application against the said order in the Court of Appeal (P-15), but the said order was affirmed and the revision application was dismissed. The said Court of Appeal judgment has been delivered on 04.04.2023. Only after that, the petitioner has filed this writ application on 10.05.2023. If this is a private roadway and mistakenly the Surveyor General has prepared the Cadastral Plan depicting this roadway as land owned by the State, the petitioner could have taken steps at least when he obtained title to allotments 49 and 50 in 2011. It is apparent that until a dispute arose with the 6th respondent in 2017 (It is stated in the order of the Primary Court that the information report pertaining to the dispute was filed in 2017.11.22), the petitioner also used this roadway as state-owned land. After the said dispute has arisen between the petitioner and the 6th and 7th respondents in 2017 only, the petitioner sought an order from this Court to amend the Cadastral Map prepared by the Surveyor General in 2004 and to quash the Extraordinary Gazette notification published in 2005.

There could be a mistake in preparing the Surveyor General's plan. On one hand, it is not proved that plans P-8, P-9 prepared by the petitioner's predecessor, Wickramasinghe, are correct or not; on the other hand, it is not proved whether Surveyor General's plan is correct or not although the Surveyor General prepares plans on behalf of the State. As stated previously, this court cannot ascertain in this writ application which plan is correct because disputed questions of facts cannot be adjudicated in a writ application.

In ***Thajudeen v. Sri Lanka Tea Board***- **[1981] 2 Sri L.R. 471**, following the decisions of the Indian cases of ***Parraju v. General Manager, B.N. Rly***- **AIR 1952 Cal 610** and ***Ghosh v. Damodar Valley Corporation A. I. R. 1953 Cal. 581,*** it was held by the Court of Appeal that "the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct"

In ***Public Interest Law Foundation v. Central Environmental Authority***- **[2001] 3 Sri L.R. 330** it was observed that "the review procedure is not well suited to determination of disputed facts"

Further, in ***Office Equipment Ltd v. Urban Development Authority*** - **CA Application No. 1062/2000, decided on 05.09.2003**, it was held that one of the grounds on which the Court ruled that the Petitioner's claim could not be decided in a writ application was the contradicting claims made by the petitioner and the respondent.

Similarly, in ***Hettiarachchige Jayasooriya v. N.M. Gunawathie and others*- C.A.Writ Application 63/2015, decided on 26.09.2019** it was held: "The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct."

Therefore, even if there is no delay on the part of the petitioner, the petitioner cannot maintain this application to amend the Surveyor General's plan based on the private plan taken by his predecessor. This must be the reason why Wickremesinghe, who has taken plans P-8 and P-9, has never claimed the roadway in question as a private roadway after gazetting it as a state land in 2005.

It is needless to state that exercising writ jurisdiction is a discretionary remedy. There is a line of judicial authorities to the effect that if the party seeks a relief by way of writ application he must come without a delay.

In the case of ***Biso Menika vs. Cyril de Alwis and Others- (1982) 1 Sri L.R 368,*** it was held 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. But exercise of this discretion by 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 the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver."

Further, the Supreme Court was of the view 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."

In the case of ***Seneviratna v. Tissa Bandaranayake and another (S.C.) (1999) 2 Sri L. R. 341 at p.351,*** it was observed 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…'.

It was held in ***Issadeen v. The Commissioner of National Housing and others (S.C.) (2003) 2 Sri L. R. 10 At pp.15,16*** that '…Although there is no statutory provision in this country restricting the time limit in filling 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 valid reason for allowing late application, I am of the view that there should be proper justification given and explained in the delay in filling such belated application…'.

In ***Paramalingam v. Sirisena and Another (C.A.) (2001) 2 Sri. L. R. 239 at p.248,*** following observations were made regarding laches; "Laches means negligence or unreasonable delay in asserting or enforcing a right. There are two equitable principles which come into play when a statute refers to a party being guilty of laches. The first doctrine is that delay defeats equities. The second is that equity aids the vigilant and not the indolent. Lord Camden said "Nothing can call for forth this Court into

activity but conscience, good faith, and reasonable diligence; when these are wanting the Court is passive and does nothing".

The crux of the aforesaid judicial authorities is that if there is a delay, the party who seeks a relief should be able to give an acceptable explanation for the delay. The petitioner has not given any acceptable explanation for his prolonged delay. Therefore, the instant application must be dismissed for the unexplained prolonged delay alone.

In summarizing, after gazetting this roadway as state-owned land, the petitioner's predecessor has possessed the two allotments 49 and 50 owned by him accepting this as a state land. When the petitioner obtained title to allotments 49 and 50 in 2011 by the title certificates marked P-3 and P-4, up to 2017, the petitioner also used this roadway as state-owned land without challenging the ownership of the State. It is also vital to note that when the petitioner got title to the land parcel Nos. 49 and 50 by the title certificates marked P-3 and P-4, the petitioner did not get title to the land parcel No. 85 as a right of way. The petitioner obtained first-class title certificates to the land parcel Nos. 49 and 50 based upon the said Surveyor General's Cadastral Map. When the petitioner obtained the title to the aforesaid two allotments of land, he had not claimed that the parcel No. 85 as a private road. As depicted in the Surveyor General's Cadastral Plan, the petitioner accepted Parcel No. 85 as a State Land and obtained the title to the said two allotments. Therefore, it is apparent that the petitioner's predecessor has never claimed this roadway as a private roadway and even the petitioner has not claimed this roadway as private from 2011 to 2017. In addition, no explanation has been given by the petitioner for the aforesaid prolonged delay in filing this application.

Furthermore, as previously stated, there is no basis for requesting that the Survey General's plan be amended based on plans P-8 and P-9, the correctness of which has not been proved in a court of competent jurisdiction. As such, even if this application is filed without delay, it cannot be maintained for the aforesaid reason.

For the reasons stated above, I refuse to issue notices to the respondents, and the Writ application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna, J (P/CA)

I agree.

JUDGE OF THE COURT OF APPEAL