

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 Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Maturata Plantations Limited,
No. 19, Dudley Senanayake Mawatha,
Colombo 08.

PETITIONER

Case No: CA (Writ)/125/2018

-Vs-

1. Land Reform Commission
No. 475,
Kaduwela Road,
Battaramulla.

2. Sampath Subasinghe Arachchi
Chairman,
Land Reform Commission,
No. 475,
Kaduwela Road,
Battaramulla.

- 2A. Nilantha Wijesinghe
Chairman,
Land Reform Commission,

No. 475,
Kaduwela Road,
Battaramulla.

- 2C. R.K. Nihal
Chairman,
Land Reform Commission,
No. 475,
Kaduwela Road,
Battaramulla.
3. Sri Lanka State Plantations Corporation
No. 11,
Duke Street,
Colombo 01.
4. A. Wijerathne
Divisional Secretary,
Kolonna Pradeshiya Sabha,
Kolonna.
- 4A. S. T. Priyanka Weerasingha
Divisional Secretary,
Kolonna Divisional Secretariat,
Kolonna.
5. M.A.L.S.N.K. Mantrinayake
Director-Ministry of Plantations
Industries,
11th Floor,
Sethsiripaya,
Stage 11,
Battaramulla.
6. Hon. Gayantha Karunathilaka

Minister of Lands,
Ministry of Lands,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

6A. Hon. S.M. Chandrasena
Minister of Lands,
Ministry of Lands,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

6B. Hon. Harin Fernando
Minister of Lands,
Ministry of Lands,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

6C. Hon. K. D. Lal Kantha
Minister of Agriculture, Livestock, Lands
and Irrigation,
Ministry of Agriculture, Livestock, Lands
and Irrigation,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

7. K.P. Chamara
Director,

District Land Reform Board-Embilipitiya,
No. 134/2,
Pallegama,
Embilipitiya.

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

RESPONDENTS

9. Wickramaratne Arachchige Jayaratna
Saman Kumara
10. Wickramaratne Arachchige Kithsiri
Sanjeewa

Both of Erandumandiyage Hena Watta
Godawela Omalpe.

ADDED-RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Saliya Peiris, PC with Pasindu Silva and
Andrea for the Petitioner.
Thisath Wijegunawardane, PC with Gihan
Liyanage for the 1st & 2nd Respondents.
Ganga Wakishtaarachchi, DSG for the
State.

Manohara De Silva, PC with Dilmini de
Silva for the 9th and 10th Respondents.

Argued on : 04.03.2026

Written Submissions : Petitioner : 31.03.2026
tendered on 1st and 2C Respondents : 02.04.2026
9th and 10th Added
Respondents : 31.03.2026
3rd to 6th and 8th
Respondents : 20.04.2026

Decided on : 06.05.2026

Dhammika Ganepola, J.

Factual Matrix of the Application

In the present application, the Petitioner Company, *inter alia*, impugns the arbitrary Divesting Order and taking possession of parts of the Hayes Estate from the Petitioner Company. The Hayes Estate, originally vested with the 1st Respondent, Land Reform Commission (hereinafter sometimes referred to as “LRC”) had been transferred to the 3rd Respondent, Sri Lanka State Plantations Corporation (hereinafter sometimes referred to as “SPC”), by an Order of the Minister published in the Government Gazette bearing No. 815/10 dated 21.04.1994, marked P2. Thereafter, the Hayes Estate had been leased out, and its possession had been handed over to the Petitioner, Maturata Plantation Limited (hereinafter sometimes referred to as the “Petitioner Company”), by an Indenture of Lease bearing No. 169 dated 27.11.1995, marked P3(a). The said Lease Agreement had been subsequently amended by Amendment of Lease No. 1564 dated 11.12.1995, marked P3(b). The Petitioner

Company states that it was empowered to manage and operate the business of the Estate on behalf of the SPC in view of the Power of Attorney bearing No. 170 dated 27.11.1995, marked P4.

The Petitioner Company states that while the matters remained as such, the LRC, by its letter dated 21.05.2010 marked P5, has informed the SPC with a copy to the Petitioner, that:

- a. The said land had been irregularly vested with the 3rd Respondent by the Extraordinary Gazette No.181/12 dated 27.02.1982 and No. 815/10 dated 21.04.1994;
- b. The said lands are still barren, and SPC has violated the objectives of vesting the said lands in SPC;
- c. Hence, action will be taken in terms of section 27(a)(4) of the Land Reform Law in the future; and
- d. Further, that in terms of section 44 of the said Act, LRC will take steps to obtain possession of the lands since LRC is the absolute owner of the respective lands.

Thereafter, the Minister of Lands, by the Extraordinary Gazette No. 1695/16 dated 01.03.2011, marked P8, had amended the said Order P2 issued under Section 27A(2) of the Land Reform Law revoking the original vesting of certain portions of the impugned land. The Petitioner Company states that the beneficiary of the Lease, the Petitioner Company, was neither consulted nor given prior notice before the Revesting Order was issued. Additionally, it is claimed that the Order does not specify the particular terms and conditions that the SPC failed to comply with. The Petitioner Company further claims that at the time of the issuance of the Gazette P8, the LRC was not the absolute owner of the land in dispute, and there was no reference to any survey plan in the divesting order identifying the said parts of the impugned land. When the purported Gazette Notification P8 was issued, the Petitioner Company sought legal advice and was advised not to challenge the same, avoiding reprisals at that stage due to the prevailing political situation of the country. Accordingly, the Petitioner Company has not taken steps to challenge the said Divesting Order at that time. While the matters remained as such, by

the letter dated 30.09.2015 marked P18, the Petitioner Company had been requested to hand over the possession of Hayes Estate in the extent of 1000 acres to the 1st Respondent.

Further, in July 2017, three Quit Notices, marked P23(a), (b), and (c), had been sent by the LRC to the Petitioner Company in terms of the State Land (Recovery of Possession) Act No. 7 of 1979. The Quit Notices cover different portions of the lands comprising a total of 363 Acres, 3 Roods, and 13 Perches of the Hayes Estate. Said Quit Notices are the subject matter of the application bearing No.CA/WRIT/124/2018 of this Court.

The Petitioner Company contends that the purported Gazette Notification P8 is void *ab initio* and *ultra vires inter alia* on the grounds that:

- i. No justifiable reasons have been given for the re-vesting;
- ii. The manner in which the re-vesting is made in P8 cannot sustain in terms of the law;
- iii. Purported re-vesting had been done in violation of the rules of natural justice;
- iv. The LRC did not have any authority to invoke the provisions of Section 27 of the Land Reform Law; and
- v. The purported Order had been made for a collateral purpose, which fact is borne out from the fact that the purported re-vesting is done on identified lands and the re-vesting is based on the original vesting.

In view of the above circumstances, the Petitioner Company invoke the Writ Jurisdiction of this Court *inter alia* seeking in the nature of the Writs of Certiorari, to quash the part of the decision in P8 to divest 1000 acres of the Hayes Estate to LRC and quash P8 in so far as it relates to the Hayes Estate. Further, the Petitioner Company also seeks a Writ of Prohibition restraining Respondents from issuing Permits or executing any deeds or agreements in respect of the lands depicted in the Lease Agreements marked P3(a), (b) and(c), a Writ of Prohibition restraining Respondents from interfering with the possession of the lands in dispute by the Petitioner Company, and a Writ of Prohibition restraining the

Respondents from acquiring and vesting any lands belongs to Hayes Estate without the consent of the Petitioner Company and the SPC.

Responding to the Application of the Petitioner, the 1st and 2nd Respondents have taken up a preliminary objection based on laches. Further, the 1st and 2nd Respondents claim that the Petitioner have suppressed the fact that the absolute ownership of the subject lands is vested with the 1st Respondent Commission and the legal effect of Section 27A (1) and 27(4). Further, the Respondents claim that the subject lands were not utilized productively as per the directions given. Respondents claim that the Gazette Notification P2 is subject to Sections 22, 23, and 42H of the Land Reform Law and that it may be revoked on the ground of violating the statutory terms other than a violation of a condition relating to consideration. Additionally, the Respondents submit that the revocation Gazette Notification No.1695/16 dated 01.03.2011, marked P8, had been lawfully made under the powers vested with the Minister under Section 27A(4) of the Land Reform Law, after giving sufficient notice to the Petitioner and the 3rd Respondent. The 1st and 2nd Respondents also contend that there is no need to carry out a new survey to identify the portion of the land forming part of the Hayes Estate which forms the subject matter of the Gazette P8.

The 3rd Respondent states that the lands in issue were originally vested with the LRC and subsequently were vested with the SPC by virtue of Gazette Notification P2 and categorically denies that the 1st Respondent has any title to the lands in issue. It is submitted that the management of the lands vested with the SPC, including the lands in issue, was handed over to the Petitioner Company upon the Indenture of lease P3(a) and P3(b) entered into between the Petitioner and the 3rd Respondent. The 3rd Respondent further states that the said lease agreement is still valid in law.

The 9th and 10th Added Respondents state that, after the revocation of Gazette Notification P2 by Gazette Notification P8, the LRC transferred 1000 acres of land from the Hayes Estate to five Persons by Deed of Exchange No. 6613 dated 20.06.2015. The Added Respondents claim rights through the above transaction and state that they have developed

and cultivated the land. Further, the Added Respondent also claims that the Petitioner is guilty of laches in initiating these proceedings.

When this matter was taken up for argument, the parties agreed and sought permission of the Court to dispose of the application by way of written submission. Accordingly, the parties tendered their respective written submissions.

Whether the LRC has the Authority to Invoke Provisions of Section 27 of the Land Reform Law.

As per the Gazette Notification P8, the revocation has been made on the grounds of non-compliance with the terms or conditions relating to provision of consideration for the vesting of the land by SPC. However, the Petitioner claims that the LRC did not have any authority to invoke provisions under Section 27 of the Land Reform Law. The 1st and 2nd Respondents contend that the Gazette Notification No.1695/16 P8 was one lawfully made. Said Divesting Order specifies that:

“ BY VIRTUE of the powers vested in me by Sub-section 4 of section 27A of the Land Reform Law No. 1 of 1972, as amended by the Land Reform (Special Positions) Act No.39 of 1981, read with paragraph (2) of Article 44 of the Constitution of the Democratic Socialist Republic of Sri Lanka, I, Mahindra Rajapaksa, President, do hereby -

(a) amend the Orders made under subsection 2 of section 27A of the aforesaid Act, and published in Gazette Extraordinary No.181/12 of February 27, 1982 and No. 815/10 of April 21, 1994 relating to the lands called and known as Ensal Watta, Hanford Watta, Haize Watta and Panikanda Watta morefully described in the 1st Schedule to this Order and which had vested in the Sri Lanka State Plantation Corporation, established by the Sri Lanka State Plantation Corporation Act No.4 of 1958 by revoking on grounds of non-compliance with such terms or conditions relating to consideration for the vesting in such Corporation, such portion of the

said Orders as relates to the extent of land specified in the Second Schedule here to which are part of the lands called and known as Ensal Watta, Hanford Watta, Hanford Watta, Haize Watta and Panilkanda Watta;

(b) State that upon revocation, such extents of lands shall re-vest in the Land Reform Commission.”

The said Divesting Order had been issued under Section 27A(4) of the Land Reform Law, amending the previous Orders made under Section 27A(1) of the Land Reform Law and had been published in the Gazette dated 01.03.2011. The said section empowers the Minister to make revocation orders made under Section 27A(1) in defined circumstances.

Section 27A(4) of the Land Reform Law is as follows:

27A(4). Where any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any such State Corporation by an Order under subsection (1) is not complied with, the Minister may, by Order published in the Gazette, revoke the Order under subsection (1) relating to that land and thereupon that land shall revert in the Commission.

The 1st and 2nd Respondents submit that even though the Vesting Order P2 was made in 1994, the 3rd Respondent failed to pay the consideration as per the said Vesting Order P2. The Vesting Order P2 specifies that the 3rd Respondent SPC is obliged to pay the nominal valuation of the lands to the LRC. It is observed that neither the 3rd Respondent nor the Petitioner has taken steps to place any evidence before this Court to demonstrate compliance with the condition for consideration. Therefore, the Divesting Order P8 is well within the ambit of Section 27A(4).

Further, The Petitioner states that the LRC was not the absolute owner of the land and the ownership has been transferred to the SPC by an Order of the Minister published in the Gazette Notification P2. Therefore, the Minister of Land is estopped from making such an Order divesting portion of the Hayes Estate. However, the authority given to the Minister under

Section 27A(4) of the Act to reverse land vested cannot be challenged. Section 27(4) of the Land Reform Law clearly grants the Minister the powers to divest the land where *any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any such State Corporation by an Order under subsection (1) is not complied with*. As such, as long as such terms and conditions are not complied with, no absolute right in relation to the land shall pass on the SPC. Hence, this Court is not inclined to accept the position of the Petitioner that the LRC was not the absolute owner of the land and the ownership has been transferred to the SPC by an Order of the Minister published in the Gazette Notification P2. Hence, in light of the above, it is my view that in the given instance the LRC is authorized to make a divesting order acting within the ambit of Section 27A(4).

Whether the Impugned Gazette Notification P8 is Void ab Initio.

The Petitioner contends that the impugned Divesting Order published in Gazette Notification No. 1695/16 P8 is void ab initio as the Petitioner Company has not been given a fair hearing prior to its issuance. Thus, it is claimed that any subsequent transactions emanating from the same are void *ab initio*. Nevertheless, upon the legal advice received, and with the knowledge that the purported Gazette Notification P8 was published, the Petitioner has chosen not to challenge the same. Hence, the Petitioner is now estopped from taking up a contrary position that the LRC has not given the Petitioner a fair hearing. Further, in order to substantiate its position that the Gazette Notification P8 is *ab initio* void, the Petitioner relies on the statement made by **Lord Denning in Mac Foy v. United Africa Company (1961) 3All ER 1169 at p.1172**, which is as follows:

“If an act is void, then it is, in law, a nullity. It is incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

In this regard, it is important to consider the judgement in **Kelani Valley Plantations PLC (formerly Kelani Valley Plantations Limited) v. Chairman of the National Housing Development Authority and Others S.C. Appeal No. 70/2015, decided on 03.04.2024**, where the Court of Appeal considered the effect of the above statement made by Lord Denning in the Sri Lankan context. His Lordship Justice Janak De Silva (concurring with their Lordships Justice Vijith K. Malalgoda, P.C. and Justice Arjuna Obeyesekere) in the said case has referred to the cases of **Rajakulendran v. Wijesundera (1 Sriskantha's Law Reports 164 at 168)** and **Bandahamy v. Senanayake (62 NLR 313)** in which cases, the statement referred above made by Lord Denning in **Macfoy v. United Africa Company Limited [(1961) 3 All E.R. 1169 at 1172]**, had been adopted. Accordingly, his Lordship Justice Janak De Silva had observed that:

"Nevertheless, the position in English law is different. This was examined by a divisional bench of 5 judges in the Colombo Port City Economic Commission Bill Special Determination [Decisions of the Supreme Court on Parliamentary Bills, 2021, Vol. XVI, page 23 at 33] where it was held:

"However, the Court observes that Clive Lewis, Judicial Remedies in Public Law, 5th ed., South Asian Edition (2017), in discussing the meaning of null and void in Administrative Law states (page 185):

"The primary concern here is the meaning of nullity or voidness solely in the context of the remedies granted by courts. The concept of nullity has been used to solve other problems arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects. Once its illegality is established, and if the courts are prepared to grant a remedy, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as incapable of ever having produced legal effects." (emphasis added)

.....In fact, Wade and Forsyth (*supra*, page 305) state that the statement of Lord Denning in *MacFoy v. United Africa Co. Ltd.*(*supra*) is not the correct position of the law. Wade and Forsyth, *Administrative Law*, (*supra*, page 304), after restating the above statement of Lord Radcliffe, state as follows:

"This must be equally true even where the brand of invalidity is plainly visible, for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly [F Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295 at 366], saying that;

It leads to confusion to use such terms as 'voidable', 'voidable ab initio', 'void', or 'a nullity', as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction."

This approach is consistent with the presumption of validity, according to which administrative action is presumed to be valid unless or until it is set aside by a court [Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295]. However, this presumption of validity exists pending a final decision by the court [Lord Hoffmann in R v. Wicks (1998) AC 92 at 115, Lords Irvine LC and Steyn in Boddington v. British Transport Police (1999) 2 AC 143 at 156 and 161, and 173-4]."

In view of the rationale upheld in the above case, I opine that the purported divesting does not become *ab initio* void automatically. Hence, I am not inclined to accept the stance of the Petitioner that the purported divesting Order published in the Gazette Notification No. 1695/16 dated

March 1, 2011, is *ab initio* void. The validity of such Divesting Order will stand until set aside by a competent court.

Laches / Undue delay

Since several Respondents have raised the preliminary objection that the Petitioner are guilty of laches in initiating the instant proceedings, I will now consider the said preliminary objection. The Petitioner primarily seeks Writs of Certiorari to quash the part of the decision in P8 to divest 1000 acres of the Hayes Estate to LRC and quash the Gazette Notification P8 so far as it relates to the Hayes Estate. Accordingly, the center point of this application is the issuance of Extraordinary Gazette No. 1695/16 P8, which amends the said Vesting Order by Gazette P2. The said Gazette Notification P8 has been issued on 01.03.2011. However, when the said Gazette was issued, the Petitioner preferred not to challenge the same on legal advice it had received. The Petitioner has filed this application challenging the said Gazette P8, approximately seven years after the publication of the same on 20.03.2018. The circumstances themselves assert the delay in filing the application. Therefore, the burden is on the Petitioner who seeks prerogative relief to justify the delay.

In **Seneviratna V. Tissa Bandaranayake and another (1999) 2 SLR 341 at 351**, it was held 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.”

Further, in **Issadeen v. The Commissioner of National Housing 2003(2) SriLR 10 at page15, Bandaranayake J.**, dealing with a belated application for a Writ of Certiorari, observed,

“It is, however, to be noted that delay could defeat equity. Although there is no statutory provision in this country restricting the time limits 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 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” (page 15 of the judgement)

In **Biso Menika v. C. R. de Alwis and Others [1982] 1SLR 368, Sharvananda, J** (as he then was) observed that-

“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 the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver..... 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..... 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.” (pages 377 to 379 of the judgement).

In the instant application, the reason specified in the Petition for not challenging the Gazette P8 was that, at the time of its publication, the Petitioner Company had received legal advice not to challenge it due to the prevailing political situation in the country and further, to avoid any reprisals in the circumstances. It is my view that such a proposition

cannot be considered as a valid, acceptable or as an adequate ground to justify the delay. The Petitioner has not provided any evidence to this Court to demonstrate whether the prevailing political situation at that time negatively impacted them or not. Furthermore, it is unclear if such a situation existed for the extended period of seven years that would justify challenging Gazette P8 after the lapse of a considerable period of time. There should be a proper justification for the delay in filing such a belated application. In this regard, I am inclined to accept the submission made on behalf of the Added Respondent that an explanation rooted in political inconvenience, rather than legal impossibility, is not a reasonable excuse for laches.

A Petitioner who seeks relief in an application for the issue of the Writ of Certiorari or Mandamus is not entitled to such relief as a matter of course or as a matter of right, even if the grounds for issuing a Writ are satisfied due to the discretionary nature of the remedy.

In the case of **Mendis v. Land Reform Commission and Others SC Appeal No.90/2009, SC Mts 12.02.2006**, the Supreme Court commented on the discretionary nature of the writ jurisdiction as follows:

“Even if such grounds to issue a Writ of Certiorari and Mandamus could be established, the Court has also to consider whether the Petitioner are disentitled to the reliefs prayed for even if the grounds of issuing a writ are satisfied. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative writs if it could be established and Petitioner are guilty of/and or disentitled to the remedy, based on (a) Laches/undue delay (b) Willful suppression/ misrepresentation of material facts (c) Acquiescence (d) Grave public/administrative inconvenience (e) Futility (f) Availability of alternative remedy (G) Locus standi.”

In the backdrop where the Petitioner is guilty of laches and have failed to provide an acceptable justification for such delay, I am of the view that the Petitioner are disentitled to the remedies sought. In light of the

above, I uphold the preliminary objection taken up by the Respondents on the laches/undue delay.

Conclusion

For the reasons given above and considering the totality of the preliminary objection based on laches, I am not inclined to grant any of the reliefs prayed for in the Petition by the Petitioner. Accordingly, the application of the Petitioner is dismissed without cost.

Application dismissed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal