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

Galappththige Muditha Prasanna De Silva,
No, 126/1, Alen Avenue,
Dehiwala,

CA Writ application No: 123/2020

And also at,
No 2/157, Victoria Rd, West Pennant Hills,
New South Wales 2125, Australia.

PETITIONER

-Vs-

1. Commissioner General of Title Settlement,
   (Land Settlement Commissioner)
   Department of Land Settlement,
   No 1200/6,
   Mihikatha Medura,
   Rajamalwatta Road,
   Battaramulla.

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

3. The Chairman,
   Land Reform Commission,
   No. 475,
   Kaduwela Road,
   Battaramulla.

4. The Secretary,
   Ministry of Lands and Development,
   'Mihikatha Madura',
   Land Secretariat,
   No 1200/6,
   Rajamalwatta Road, Battaramulla

5. Kamala Deheragoda Punchinilame,
   No 42C,
   Dambugahawaththa Mw,
   Kalalgoda,
   Pannipitiya.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Sandamal Rajapaksha for the Petitioner.

H. Senanayake, SSC for the 1st and 4th Respondents.

Palitha Kumarasinghe, PC with Harith De Mel, instructed by Tharaka Jayasekara for the 2nd and 3rd Respondents.

Uditha Egalahewa, PC with Ranga Dayananda for the 5th Respondents.

Written submissions tendered on:

09.11.2023 by the Petitioner.

03.10.2023 by the 1st and 4th Respondents.

18.10.2023 by the 2nd and 3rd Respondents

Argued on: 27.06.2023, 03.08.2023

Decided on: 31.01.2024

S. U. B. Karalliyadde, J.

The Petitioner to this Writ Application became the owner of Lot A in Gangalagamuwa Estate Lot 1111 and Lot B in Gamaetigulanehena Lot 1126 2/2 in the Block Survey Village Plan (B.S.V.P.) No. 984 situated at Gangalagamuwa village in the District of Ratnapura by Deed of transfer bearing No. 638 dated 15.12.2008 (marked as P1). The entire Gangalagamuwa Estate was originally owned by the 5th Respondent and after the Land Reform Law, No. 1 of 1972 (as amended) came into force, in terms of Section 5(1)(a) of that Law, an extent of land 88 Acres 1 Rood and 2 Perches of it was vested in 1972 with the Land Reform Commission (the 2nd Respondent) as the 5th Respondent owned the land excess of the ceiling. In the Gazette notification bearing No. 3146 dated 11.09.1984 (marked as P3), the 2nd Respondent published a Notice in terms of Section 29 of the Land Reform Law, informing any person/persons who had a claim for compensation in respect of Gangalagamuwa Estate to make such claim to the 2nd Respondent within a month from 11.09,1984. Thereafter, by the Deed of transfer No. 4079 dated 25.08.1998 (marked as P4), the 2nd Respondent transferred Lots 1099, 1109 and 1111 in the plan B.S.V.P. No. 984 of Gangalagamuwa Estate and Lots 1126 2/2 of Gamaetigulanehena (part) in the extent of 56 Acres and 28 Perches to the two brothers of the Petitioner. They transferred by deed marked as P1, 7 Acres 2 Roods and 35 Acres 2 Roods and 37 Perches, the land referred to in the 2nd schedule to the P1 to the Petitioner which is the subject matter of this Writ Application. The Petitioner alleged that on or about December 2019, the 5th Respondent and her agents forcibly entered the

land belonging to him and started clearing the south/west side of the land. The Petitioner lodged a complaint to the Police on 31.12.2019 about the said forcible act of the 5th Respondent however, no action has been taken by the Police. Thereafter the Petitioner came to know that the 5th Respondent is claiming the ownership of the land of the Petitioner, by way of a land settlement order published in the Gazette bearing No. 1434/30 dated 02.03.2006 marked as P8 issued by the Commissioner General of Title Settlement (the 1st Respondent) purportedly acting under the provisions of the Land Settlement Ordinance, No. 31 of 1931 (the Ordinance) and that land settlement order had been registered in the Ratnapura Land Registry in folios No. 217/63 and 217/69 (marked as P8A and P8B). The Petitioner sent a letter of demand dated 25.01.2020 marked as P11 to the 1st Respondent demanding to cancel/quash the documents marked as P8, P8A and P8B. He also has filed a case against the 5th Respondent in the District Court of Ratnapura (P12) seeking substantive reliefs, *inter alia*, a declaration that the Petitioner is the lawful owner of the land, a permanent injunction preventing the 1st Respondent from entering into and disposing of the land, an order to cancel the land settlement order published in the Gazette notification bearing No. 1434/30 dated 02.03.2006 (P8) and an order cancelling the registration of the land settlement order at the Ratnapura Land Registry in folios No. 217/63 and 217/69 (P8A and P8B).

The position of the Petitioner is that the 1st Respondent, without taking into consideration the fact that the land had already been vested with the 2nd Respondent in 1972 erroneously issued the settlement order published in the Gazette marked as P8 on

02.03.2006. Further, as mentioned in P8, the settlement notice has been published in the Gazette as far back as 1956 and the 1st Respondent had not issued the settlement order within a reasonable period. The position of the Petitioner is that the settlement order is *ultra vires*, bad in law, tainted with *mala fide* and abuse of power. The learned Counsel for the Petitioner drew the attention of Court to the fact that in terms of Section 64 of the Land Reform Law, the provisions of that Law prevail over other law, custom or usage. Therefore, he argued that the settlement order has no force or avail in law. The learned Counsel submitted to Court that the Petitioner, upon inquiring from the 2nd Respondent came to know that the land had been vested with the 2nd Respondent and the 5th Respondent had been paid compensation.

The substantive reliefs the Petitioner has sought in this Application are as follows;

(b) Issue a mandate in the nature of a Writ of Certiorari quashing the purported Gazette notification bearing No. 1434/30 dated 02.03.2006 (P8) the land settlement order made only in respect of the 5th Respondent the Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 948;

(c) Issue a mandate in the nature of a Writ of Certiorari quashing the purported Registration of the land registry of Ratnapura in the folio bearing No. 217/63 217/69 in respect of the 5th Respondent the Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 948 cancelling the registration of the land which was in the land registry of Ratnapura (P8A and P8B).

(d) Issue a mandate in the nature of a Writ of Mandamus compelling the 1st Respondent and 4th Respondents to cancel and or revoke the settlement order dated 02.03.2006 (P8) only in respect of the 5th Respondent the Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 984

(e) Issue a mandate in the nature of a Writ of Mandamus compelling the 1st and 4th Respondents to cancel and or revoke the settlement order dated 02.03.2006 (P8) only in respect of the 5th Respondent the Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 948.

(f) Issue a mandate in the nature of a Writ of Mandamus compelling 2nd and 3rd Respondents to submit decisions and or relevant papers and or payment of Compensation pertaining to the vesting Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 948 to the 2nd Respondent.

(g) Issue a mandate in the nature of a Writ of Mandamus compelling 2nd and 3rd Respondents to submit the decision/s award compensation to the 5th Respondents and or her predecessors in title in respect of land of Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 948.

The learned President's Counsel appearing for the 2nd and 3rd Respondents submitted to Court that, in terms of Section 3(2), after the enactment of Land Reform Law, the agricultural land owned by any person above the stipulated ceiling was deemed to be vested with the Land Reform Commission. Accordingly, the lands which is the subject

matter of this Application was so vested with the 2nd Respondent. In terms of Section 18 of the Land Reform Law, the 5th Respondent by her agent made a statutory declaration dated 20.11.1972 (marked as 2R1) in respect of land in extent of 88 Acres claiming the title to that land by virtue of Deed No. 5682 dated 10.04.1958 and the said statutory declaration did not disclose the alleged settlement notice. Considering the said statutory declaration, under Section 19 of the Land Reform Law the 2nd Respondent made a statutory determination marked as 2R2 and on 09.08.1974 the 2nd Respondent acquired possession of that land (2R3). Thereafter the 2nd Respondent issued the Gazette bearing No. 314/6 dated 11.09.1984 (2R4/P3) giving Notice to persons entitled to make claims for the compensation payable under the Land Reform Law in respect of the land vested in the Land Reform Commission. Further, the learned President's Counsel appearing for the 2nd and 3rd Respondents submitted to Court that the 5th Respondent had been duly paid compensation for the land which was owned by her and subsequently vested with the 2nd Respondent however the records of payment of compensation have been lost/destroyed from the records of the 2nd Respondent. The 2nd Respondent having absolute title to the land which is the subject matter of this Application executed the Deed marked as P4 in favour of the two brothers of the Petitioner. The learned President's Counsel appearing for the 2nd and 3rd Respondents argues that the 1st Respondent cannot act under Section 5(5) of the Ordinance and issue the settlement order marked as P8 on 02.03.2006 based on a settlement notice published in the Gazette on 14.09.1956 as such notice expires and cannot be acted upon after the

expiration of 3 months or a reasonable time. Therefore, argues that the 1st Respondent has acted arbitrarily and illegally by not publishing the settlement notice afresh 3 months prior to the publication of the settlement order marked as P8. Further, if the settlement notice was published according to the law as stated above, the 2nd Respondent could have put forward its claim and the 1st Respondent had acted in abuse of power of the Ordinance. Further, the learned President's Counsel appearing for the 2nd and 3rd Respondents argues that in terms of Section 5(6) of the Ordinance, no settlement in respect of any land exceeding 10 acres could be entered without the express consent of the Minister embedded in the settlement order. However, the Gazette marked as 1R5/P8 does not embed the certificate of consent of the Minister. Therefore, it is illegal, and no force or avail in law in terms of Section 5(6) of the Ordinance.

The contention of the learned SSC appearing for the 1st and 4th Respondents is that the settlement notice which was issued under and in terms of the Ordinance was published in the Gazette on 14.09.1956 (marked as 1R1) and claim to the title was received on 14.11.1956 (marked as 1R2). The learned SSC submitted that upon issuance of a notice of settlement, the village in respect of such notice attains the status of ‘closed’ village in terms of the Regulation marked 1R4 and the execution of deeds in respect of land situated in such village is prohibited unless the approval of the authorised officer is obtained. The 2nd Respondent has not complied with that regulation when surveying and disposing of the subject matter of the instant Application and the 1st and 4th Respondents had not been informed of any such survey or transfer that has been

executed by the 2nd Respondent. Further, the title of the land in a 'closed' village settles only after the resolution of all disputes relevant to all land and the Gazette marked as P8 was issued in 2006 only after the resolution of all disputes. However, the learned President's Counsel appearing for the 2nd and 3rd Respondents argues that if the contention of the 1st and 4th Respondents is correct with regard to the law which prohibits the transfer of land in a 'closed' village, the 5th Respondent's Deed No. 5682 dated 10.04.1958 which was executed after issuance of the settlement notice dated 14.11.1956 is void. The learned SSC further argues that even though the Petitioner has based this Writ Application on Gangalagamuwa Estate Lot 1111 and Gamaetigulanehena 1126, 2/2 in BSVP 948, the settlement order published in the Gazette marked 1R5/P8 only refers to Gangalagamuwa. He further argues that the Petitioner has failed to identify whether Lot 1126, 2/2 is a part of Gamaetigulanehena or Gangalagamuwa and therefore, the reliefs sought by the Petitioner in this Application are vague and ambiguous.

The learned SSC appearing for the 1st and 4th Respondents argues that the Petitioner has failed to avail the remedy available under Section 26 of the Ordinance by submitting a claim for consideration of the Minister and the question whether the Petitioner still has valid title to the land is a matter which should be decided in the action already filed by the Petitioner in the District Court for a declaration of title. Further, the learned President's Counsel appearing for the 2nd and 3rd Respondents drew the attention of Court that the land claimed under the Land Reform Law is shown in the Block Village

Plan No. B.V.S.P. 948 and the 2nd and 3rd Respondents were aware that those lands that were vested with the 2nd Respondent by operation of the Land Reform Law were the subject matter of a land settlement and they should have made a claim at that time. The learned President's Counsel argued that the Petitioner had several alternative remedies for which he was able to claim relief without invoking the Writ jurisdiction of this Court.

The position of the 5th Respondent is that she is the lawful owner of the land which is the subject matter of this Application and the settlement order was issued concerning that the said land was registered in the Land Registry of Ratnapura in 1993 and only the final order was published in the Gazette in 2006 after settling all the claims made. Further, she was not paid compensation as required under the law as the Petitioner alleges in the Petition to this Application. The 5th Respondent states that Lots 1126 2/2, 1109, 1111, 1101, 1097, 1099, 1096, 1093, 1070 and 1071 were settled in favour of her by the settlement order published in the Gazette marked P8 however, it was in fact settled in favour of her in 1990, which she was informed by the 1st Respondent by way of the letter dated 28.08.1990 marked as 5R2. The 5th Respondent further states that she has instituted an action in the District Court of Ratnapura (5R3a) against the Power of Attorney holder of the Petitioner, one Rita Hettiarachchi and Waddagala Estate (Pvt) Ltd, for unlawful occupation of a portion of land settled in her favour by the Gazette marked P8.

When considering the above-stated facts, it is apparent that this Application is regarding the title of a land, particularly a declaration of title and the actions had already been instituted in the District Court of Ratnapura by the Petitioner as well as the 5th Respondent for declarations of title for the land in dispute (P12 and 5R3(a)). Furthermore, it is apparent that the material facts concerning this Writ Application are in dispute and therefore unable to decide only on affidavit evidence.

A.S. Choudri in his book titled "Law of Writs and Fundamental Rights" (2nd edn, Vol.2) on page 449 states thus;

> *"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 parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."*

In the case of *Thajudeen Vs. Sri Lanka Tea Board and Another*[1], referring to the above-stated quotation Ranasinghe, J. (as he then was) has held that,

> *"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially 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 examining their witnesses and the Court would be better able to judge which version is correct, has been*

[1] (1981) 2 Sri LR 471 at page 474.

laid down in the Indian cases of Ghosh v. Damodar Valley Corporation, Porraju v. General Manager B. N. Rly."

Vijith K. Malalgoda, PC J. in *Francis Kulasooriya Vs. OIC-Police Station-Kirindiwela*[2] observed that,

"Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute."

Moreover, the Petitioner has a Civil law remedy to which he has already recourse.

In the case of *Linus Silva Vs. The University Council of the Vidyodaya University*[3], it was held that,

"The remedy by way of certiorari is not available where an alternative remedy is open to the petitioner subject to the limitation that the alternative remedy must be an adequate remedy"

It was held in the case of *Tennakoon Vs. Director General of Customs*[4] that,

[2] SC Appeal No. 52/2021, SC Minute of 14.07.2023.

[3] 64 NLR 104.

[4] (2004) 1 SLR 53.

"the petitioner has an alternative remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction"

Shirani Thilakawardena J. in the case of *Ishak Vs. Lakshman Perera Director of Customs and Others*[5] held as follows;

"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a discretionary decision." Where there is a choice of another separate process outside the Courts, a true question for the exercise of discretion exists. For the Court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with the judicial review being properly regarded as being a remedy of last resort. It is important that the process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing an alternative procedure, indicated either expressly or by implication that it intends that procedure to be used, in exercising its discretion the Court will attach importance to the indication of Parliament intention."

[5] (2003) 3 Sri LR 18.

Since the prerogative Writs are discretionary remedies, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court as there is an alternative remedy available to him.

The learned SSC appearing for the 1st and 4th Respondents argues that the Petitioner is guilty of laches. The argument of the learned SSC is that the Gazette marked as P8 was published on 02.03.2006 and the Gazette being a public document, the Petitioner has failed to challenge the settlement order published in the said Gazette until 2020, i.e., for 12 years which the Petitioner alleged that he became entitled to the property and 14 years since the Gazette was published.

In this regard, in the case of *Seneviratne Vs. Tissa Bandaranayake and another*[6] Amerasinghe, J. adverting to the question of long delay, 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."*

In the case of *Biso Menike Vs. Cyril de Alwis*[7] Sharvananda, J. (as he then was) has held that,

[6] 1999 (2) SLR 341.

[7] 1982 (1) SLR 368.

"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 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 Order which the applicant seeks to have quashed."

In *Jayaweera Vs. Asst. Commissioner of Agrarian Services Ratnapura and another*[8] Jayasuriya, J. held that,

" A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion

[8] [1996] 2 Sri L. R. 70.

to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.

Considering the decisions of the above-stated cases and the circumstances of the Application at hand, this Court agrees with the learned SSC's argument that the Petitioner is guilty of laches when filing this Application for the reasons that the settlement order published in the Gazette notification marked P8/1R5 being a public document the Petitioner has failed to seek Court intervention within a reasonable time from the date of publication of the Gazette and failed to explain the delay.

Considering all the above-stated facts and circumstances, I hold that the Petitioner is not entitled to the Writs sought in the Petition. Therefore, the Court dismisses the Writ Application. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J.

I agree.

JUDGE OF THE COURT OF APPEAL