IN THE COURT OF APPEAL OF THE DEMOCFRATIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an Appeal from the Judgment of the Provincial High Court exercising Writ jurisdiction in terms and the High Court of the Provinces Article 154 P (4)(b) of the Constitution and the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Case No. Writ 443/2005 HCW

CA No. (PHC) 144/2005

Kangarage Nimal Gamini,
Kelagedera,
Kotadeniyawa.

Petitioner

Vs.

1. Sunilchandra Waddussuriya,
   Kelagedera,
   Kotadeniyawa.

2. Heeralu Pathirannahalage Gamini Gunawardene,
   "Kumudu"
   Kelagedera,
   Kotadeniyawa.

3. W.M.S. Hemamala,
   Agrarian Development Officer,
   Agrarian Centre,
   Walpita.

4. K.A.P. Jayawardene,
   Assistant Commissioner of Agrarian Development,
   Agrarian Development District Office,
   Gampaha.

5. Officer – in – Charge,
   Kotadeniyawa Police Station.

6. Commissioner – General of Agrarian Development,
   Department of Agrarian Development,
   421, Sir Marcus Fernando Mawatha,
   Colombo 07.

Respondents

AND NOW BETWEEN

Kangarage Nimal Gamini,
Kelagedera,
Kotadeniyawa.

Petitioner

Vs.

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   Kelagedera,
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   Department of Agrarian Development,
   421, Sir Marcus Fernando Mawatha,
   Colombo 07.

Respondents – Respondents

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

Counsel : B.Gamage for the Appellant.

: M.D. Wickramanayake for 3rd, 4th & 6th Respondent on the instruction, of S.A. Shanmuganathen.

Argued on : 16.09.2015

Decided on: 15.12.2015

CASE – NO – CA (PHC) 144/2005 – JUDGMENT – 15.12.2015

P.R.Walgama, J

The instant appeal lodged by the Petitioner – Appellant (in short the Appellant) is sequent to an order made by the Learned High Court Judge by refusing to issue a writ of Certiorari quashing the order of the 4th Respondent.

The facts stated herein below has emerged from the Petition of the Petitioner lodged in the Provincial High Court holden at Negombo.

That the father of the Petitioner became entitled to the land more fully described in the schedule to the Petition by virtue of Deed No. 323 dated 16th June 1956.

That the Petitioner became entitled to the said land by virtue of Deed No. 1547, dated 27.04.1994 and deed bearing No. 583, dated 26 of January 1999.

The dispute pertaining to the instant appeal arose due to a complaint made by the 1st Respondent, of an obstruction caused by the Petitioner by not allowing the 1st Respondent to use the path which leads to the thrashing floor.

The 4th Respondent having inquired in to the complaint made by the 1st Respondent had made order, that the Petitioner should remove all the obstructions to the path leading to the threshing floor. The said order has been marked as P5.

The Petitioner appealed against the said order, to the Commissioner General of Agrarian Development, and the said

order was stayed by the said Commissioner General. However no inquiry was held in respect of the appeal by Petitioner, but the 4th Respondent acting in terms of Section 90 of the Agrarian Development Act had ordered the 5th Respondent to enforce the alleged order marked P5.

The above said order of the 4th Respondent is marked as P5.

Being aggrieved by the above said order marked as P5 the Petitioner moved for a mandate in the of a writ of Certiorari, to quash the decision of the 4th Respondent, and to issue a writ of Prohibition to stay the enforcement of order marked as P16.

In addition to the afore said the Petitioner stated, that the disputed threshing floor has not been used for threshing paddy for the last ten years, and in the subject land he had cultivated vegetables. Further it is said that the 1st Respondent has an alternative path to go to the threshing floor.

Further it is asserted by the Petitioner that the disputed land is a private land, and not a State land.

The 3, 4 & 5th Respondents has stated in their objections that investigation notes reveals the existence of a roadway to the threshing floor.

The Learned High Court Judge after considering the facts placed before Court has dismissed the Petitioners application moving for the said reliefs.

In considering the issuance of a Writ of Certiorari the Learned High Court Judge had adverted to the case of JAYAWERA .VS. ASSISTANT COMMISSIONER OF AGRARIAN SERVICES - 1996 - 2 SLR - 70.

It was held thus;

"A Petitioner who is seeking relief in an application for issue of Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction – are all valid impediments which stand against the relief."

The Learned High Court Judge , in dealing with allegation made by the Petitioner as to the , failure on the part of the 4th Respondent for not affording an opportunity for the Petitioner to place his case , was of the view, that Petitioner was given on two occasions to participate in the inquiry, which he has failed to do so. In addition it is said that the Petitioner was aware of the fact that a determination will be reached on 25.06.2002 by document marked P6(E) and by document marked P5 the 4th Respondent has conveyed his determination, to the Petitioner on 29.01.2003.

It is salient to note that the Petitioner has applied to the Provincial High Court for reliefs stated above only on 30.01.2004, expiration of 1 year after the said determination. Therefore the Learned High Court Judge was of the view that the Petitioner has come before the High Court with

an undue delay, and had failed to give reasonable explanation to the said delay.

The above principle was enshrined in the case of DISSANAYAKE .VS. FERNANDO – 71 –NLR – 356 which has held thus;

"Where there has been delay in seeking relief by way of Certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court."

Hence the Petitioner is guilty of laches and the Learned High Court Judge was of the view that the Petitioner is not entitled to this discretionary remedy.

To fortify the said proposition the Learned High Court has also considered the case of PRESIDENT OF MALALGODAPITIYA CO – OPERATIVE SOCIETY .VS. ARBITRATOR OF CO – OPERATIVE SOCIETIES , GALLE – 51 – NLR – 167 it was held that;

"A writ of Certiorari will not be issued where there has been undue delay in applying for the writ."

In the said back drop the Leaned High Court Judge was of the view that the Petitioner has not taken necessary action against the decision as per document marked P5 with due diligence and without an inordinate delay.

Hence in the above setting the Learned High Court Judge, hand down an order dated 29.01.2003, dismissing the application of the Petitioner.

Being aggrieved by the said order the Petitioner – Appellant (in short the Appellant) lodged the instant appeal and sought for the reliefs inter alia;

To have the order of the Learned High Court Judge to be set aside, and for the same reliefs, claimed in the High Court of Negambo.

The counsel for the 3rd, 4th & 6th Respondents had tendered written submissions and asserted the following.

That the 4th Respondent had given adequate notice to the Petitioner to be present at the inquiry, but had failed to do so. Therefore the Petitioner cannot now alleged that the 4th Respondent has not observed the rules of natural Justice, by Petitioner not being heard in the afore said inquiry.

The Counsel for the Respondents has adverted Court to the case of APPUHAMY .VS. HETTIARACHCHI – 77 NLR – 131 which has expressed thus;

"the necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down......"

Therefore it is abundantly clear that the Petitioner has misrepresented the material facts, and there by had disqualified her self for this discretionary remedy.

Further the Respondents had stressed the fact that Petitioner is guilty of laches and as such is not entitled to the reliefs claimed in the prayer to the petition.

It is being observed that an undue delay will be a ground for dismissal of a writ application. It was so held, in the case of HULANGAMUWA .VS. SIRIWARDENE - (1986) 1 SLR – 275.

Hence for the reasons stated herein before this Court is of the view that the Petitioner – Appellant's appeal is devoid of merits and should stand dismissed.

Accordingly appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL