

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

In the matter of an Application in the nature of Writ of *Certiorari, Mandamus & Prohibition* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Ramya Kumari Tilakaratne,**  
29/10, Atthanakadawala,  
Polonnaruwa.

**PETITIONER**

**Court of Appeal**

**CA (Writ) Application No: 158/2014 -Vs.-**

1. Mahaweli Authority of Sri Lanka,  
Mahaweli Economic Agency,  
500,  
T.B. Jaya Mawatha,  
Colombo 10.
2. Resident Project Manager,  
Resident Project Office,  
Mahaweli Authority of Sri Lanka,  
Morgahakanda Block,  
Bakamoona.
3. Commissioner General of Lands,  
Mihikatha Medura,  
1200/6,  
Rajamalwatta Road,  
Battaramulla.

4. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
5. D.M. Punchi Banda,  
25/10,  
Atthanakadawala,  
Polonnaruwa.

**RESPONDENTS**

**Before** : A.L. Shiran Gooneratne J.

**Counsel** : A. Weerasekara for the Petitioner.  
Vikum de Abrew, DSG for the Respondents.

**Argued on** : 11/09/2017

**Written Submission on:** 09/03/2018

**Judgment on** : 21/05/2018

**A.L. Shiran Gooneratne J.**

The Petitioner has invoked the jurisdiction of this Court, inter alia, seeking a writ of Certiorari to quash the determination made by letter dated 5/10/2012, under reference No. RPM/P/L/T/29/10 and registration marked X11C and X11B, and a writ of Mandamus to compel the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to approve and to register the right of the Petitioner, of his half share of lot 61 and lot 85 in Final Colony Plan, (FCP) No. 29.

The facts of the case in brief are as follows;

The original permit holder D.M. Punch Tikiribanda received three permits, one permit in respect of a high land, ie. Lot No. 164 of FC Plan No. 29 and two permits in respect of paddy land, ie. Lot No 61 and 85 in FC plan No. 29, in terms of the Land Development Ordinance. The original permit holder passed away in 1990, nominating a half share each of all three lands to his wife H.M. Palingu Menike and to the eldest son D.M Punchi Banda, (5<sup>th</sup> Respondent) as successes, and the said nominations were duly registered. The wife of the original permit holder passed away in 1997. It is the contention of the Petitioner that the said H.M. Palingu Menike left a last will and bequeathed half share in all three lands to the Petitioner, the granddaughter of H.M. Palingu Menike.

The instant application is in relation to lot 85, marked X11C. Case No. CA/writ/177/2014, has been filed in relation to lot 61, marked X11B, the two paddy lands in the said plan. The subject matter in both cases are the same except for the numerical identification of the lot numbers. Therefore, both Petitions were taken up for argument, and the parties agreed to abide by the judgment delivered in this case.

It is observed that, several cases have been filed in the District Court in order to resolve the said dispute. The Petitioner refers to the impugned letter under reference No. RPM/P/L/T/291/10, issued by the 2<sup>nd</sup> Respondent dated 05/10/2012, in order to quash the registration marked X11C and X11B. The said letter under reference No. RPM/P/L/T/29/10, dated 05/10/2012, relied upon by the Petitioner

has not been tendered to this court, nor has it been produced in the District Court. Plaints filed in the District Court, have been produced marked X11 and X12. What has been produced in the said actions are extracts of the registry folio 1/1/184/A and folio 1/1/314, of registration, marked X11C and X11B.

In the case of *Jayawardena Vs. Silva (1969) 72NLR 25*, refusing a writ of certiorari, the court held that;

*“...it cannot be too clearly understood that the remedy by way of Certiorari only lies to bring up to this court to and quash something which is a determination or a decision...”*

As contended in paragraph 35(x), the Petitioner is aggrieved that the 2<sup>nd</sup> Respondent could not in law inter alia, make a decision to approve or register the remaining half share of the paddy land to the 5<sup>th</sup> Respondent, without having a proper inquiry. Therefore, the Petitioner prays to quash the determination made by letter dated 05/10/2012, which has direct reference to the subsequent registration marked X11C and X11B, dated 12/10/2012. However, the Petitioner has failed to produce the impugned letter dated 05/10/2012, by the 3<sup>rd</sup> Respondent, which is the decision under challenge. Therefore, in the absence of the impugned letter dated 05/10/2012, this court is unable to decide on the vires of the act performed by the statutory functionary in arriving at the said decision. In the circumstances this court is deprived of making a suitable order exercising its discretion by way of judicial review.

The Respondents have drawn attention of court to the unexplained delay in filling this application. The Petitioner has filed this action on or about 30/15/2014, subsequent to the registration, which took place on 12/10/2012. It is well settled law that “unexplained delay” in seeking an order in the nature of a writ is by it self is fatal to the application. In the instant case the court observes delay in filling this action, which has not been explained by the Petitioner.

In *Jayawardena Vs. Assistant Commissioner of Agrarian Services (1996) 2SLR 70 at page 73*, a case in point referred to by the Respondents, the court has held,

*“Petitioner seeking a prerogative writ is not entitled to relief as a matter of course or as a matter of right or as a routine. Even he is entitled to relief still court has discretion 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”.*

For the reasons set out above, the Petition is dismissed without costs.

Parties in C.A. (Writ) 177/2014 have agreed to abide by the Judgment delivered in this case.

JUDGE OF THE COURT OF APPEAL