

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

In the matter of an Application for Writs  
of Certiorari and Mandamus under  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka

**C.A (Writ) Application No. 381/2016**

Abeyweera Manage Thilakaratne,  
No. 30/2, Girilanda, Hungama.

**Petitioner**

Vs.

1. Sri Lanka Mahaweli Authority,  
No. 500, T.B. Jayah Mawatha, Colombo 10.
2. R.M.P.B. Dissanayake,  
Assistant Director (Land),  
Sri Lanka Mahaweli Authority,  
No. 500, T.B. Jayah Mawatha,  
Colombo 10.
3. C.S. Dahanayake,  
Divisional Manager,  
Sri Lanka Mahaweli Authority,  
Angunukolapalassa.
4. Abeyweera Manage Dharmasiri,  
Track 16, Kanuketiya, Hungama.
5. Abeyweera Manage Padmawathie,  
S. 2355, Track 16, Kanuketiya,  
Hungama.

**Respondents**

**Before:** P. Padman Surasena, J / President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Jacob Joseph with Ms. Sandamali Madurawela for the  
Petitioner

Indula Rathnayake, State Counsel for the 1<sup>st</sup> - 3<sup>rd</sup>  
Respondents

Hirosha Munasinghe with Ranjith Hettiarachchi for the 4<sup>th</sup>  
and 5<sup>th</sup> Respondents.

**Written submissions**

**tendered on:** 11<sup>th</sup> September 2018 by the Petitioner  
18<sup>th</sup> October 2018 by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents  
19<sup>th</sup> October 2018 by the 4<sup>th</sup> and 5<sup>th</sup> Respondent

**Decided on:** 02<sup>nd</sup> November 2018

**Arjuna Obeyesekere, J**

The Petitioner has filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the cancellation of the nomination of the Petitioner as successor to a permit issued to A.M. Methiyas Appuhamy<sup>1</sup>;
- b) A Writ of Mandamus directing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to grant the Petitioner the right to succeed to the said permit issued to A.M. Methiyas Appuhamy.

The facts of this case briefly are as follows.

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<sup>1</sup> A copy of the said permit has been annexed to the petition, marked 'P1'.

The Petitioner and the 4<sup>th</sup> and 5<sup>th</sup> Respondents are the children of Abeyweera Manage Methiyas Appuhamy and Samarasinghe Kankanamge Nonahamy. The Petitioner states that Methiyas Appuhamy had been issued a permit by the 1<sup>st</sup> Respondent Mahaweli Authority of Sri Lanka in respect of a land in extent of 1.067 hectares, under the provisions of the Land Development Ordinance. A copy of the said permit dated 8<sup>th</sup> September 1990 has been annexed to the petition, marked 'P1'.

The Petitioner states that in terms of Section 51 of the Land Development Ordinance, Methiyas Appuhamy had nominated the Petitioner as the successor under the said permit 'P1'. The said nomination had been duly registered on 20<sup>th</sup> September 1994, as borne out by the land ledger produced by the 1<sup>st</sup> Respondent marked '1R3'.

By letter dated 27<sup>th</sup> June 1997, produced by the 1<sup>st</sup> Respondent marked '1R2', Methiyas Appuhamy had informed the Divisional Manager of the 1<sup>st</sup> Respondent that the original permit issued to him had been misplaced and had requested that a new permit be issued to him and to cancel the said misplaced permit. Accordingly, the office copy of the original permit had been certified and issued to Methiyas Appuhamy. The 1<sup>st</sup> Respondent has submitted with his Statement of Objections a copy of the certified copy of the permit, marked '1R1'.

Methiyas Appuhamy had made an application at about the same time to cancel the nomination of the Petitioner as the successor to the permit 'P1'. This Court observes that in terms of Section 53 of the Land Development Ordinance, any nomination of a successor may at any time be cancelled by the permit-holder who made such nomination. It appears from '1R1' that the

cancellation of the nomination of the Petitioner had been duly effected. Thus, the cancellation by Methiyas Appuhamy of the nomination of the Petitioner is within the law.

It appears from the complaints made to the Hambantota Police Station by Nonahamy, produced by the 4<sup>th</sup> Respondent marked '4R5i' - '4R5iii' that the Petitioner had ill treated his parents at about this time and that this may have prompted Methiyas Appuhamy to cancel the nomination made in favour of the Petitioner. It also appears that the original of the permit 'P1' was in possession of the Petitioner and that his refusal to hand over 'P1' to Methiyas Appuhamy had prompted Methiyas Appuhamy to make a complaint that the permit had been misplaced. Having cancelled the nomination in favour of the Petitioner, Methiyas Appuhamy had nominated Nonahamy, his spouse as the successor. This nomination of Nonahamy as successor had been duly registered on 28<sup>th</sup> June 1997 and is reflected on the reverse of '1R1', as well as on the land ledger relating to this land, marked '1R3'.

By a letter dated 9<sup>th</sup> October 1997 produced by the 1<sup>st</sup> Respondent marked '1R4', Methiyas Appuhamy had nominated his daughter, 5<sup>th</sup> Respondent Abeyweera Manage Padmawathie as his successor. This nomination too had been duly registered on the reverse of the permit marked '1R1', as well as on the land ledger relating to this land, marked '1R3'.

Methiyas Appuhamy had passed away on 4<sup>th</sup> February 1998. On 10<sup>th</sup> June 1999, a grant had been issued to Nonahamy under Section 19(4) of the Land Development Ordinance, in respect of the land that was the subject matter of the permit. A copy of the said grant has been produced by the 4<sup>th</sup> Respondent, marked '4R7'.

On 6<sup>th</sup> June 2003, Nonahamy had nominated the 4<sup>th</sup> Respondent Abeyweera Manage Dharmasiri as her successor under the grant '4R7'. A certified copy of the said nomination has been annexed to the grant which has been produced with the petition, marked 'P8'. After the passing away of Nonahamy on 21<sup>st</sup> February 2008, the nomination of the 4<sup>th</sup> Respondent had been entered in the 'Register of Permits / Grants under the Land Development Ordinance', annexed to the petition marked 'P7'.

It is in the above factual circumstances that the Petitioner has filed this application seeking to quash the cancellation of his nomination as successor. The basis of the Petitioners' case *inter alia* is that the cancellation of his nomination as successor is contrary to Section 87 of the Land Development Ordinance and that as the original of the permit is still with him, the issuing of a certified copy of the permit and all steps taken thereafter, are invalid.

The Respondents have submitted that the Petitioner is guilty of laches, in that this application has been filed in 2016 seeking to quash the cancellation of a nomination effected in June 1997 – that is 19 years later. The Petitioner has not offered any explanation as to why he delayed until 2016 to file this application, except to state in paragraph 23 of the petition that, 'he is not guilty of unreasonable delay or acquiescence or laches'. The Petitioner has however not explained the basis of the said statement.

This Court observes that there have been two District Court cases between the Petitioner and the 4<sup>th</sup> Respondent and others relating to the nomination of a successor under the permit and the issuing of the grant. However, the filing of these two actions in the District Court has not been offered as an explanation

for the delay by the Petitioner nor can the filing of the said District Court actions be considered as an explanation for the delay in filing this application.

In these circumstances, this Court is of the view that the Petitioner has not only failed to invoke the jurisdiction of this Court within a reasonable time, but has also failed to offer a reasonable explanation for the delay.

Our superior Courts have consistently held that a petitioner seeking a discretionary remedy such as a Writ of Certiorari must do so without delay and that where a Petitioner is guilty of delay, such delay must be explained to the satisfaction of the Court. To put it differently, unexplained delay acts as a bar in obtaining relief in discretionary remedies, such as prerogative Writs.

In Biso Menika v. Cyril de Alwis<sup>2</sup> Sharvananda, J (as he then was) set out the rationale for the above proposition, in the following manner:

“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 disintitiled 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

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<sup>2</sup>1982 1 Sri LR 368; at pages 377 to 379.

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.”

In Seneviratne v. Tissa Dias Bandaranayake and another<sup>3</sup> Amerasinghe, J adverting to the question of long delay, commented as follows:

“If a person were negligent for a long and unreasonable time, the law refused 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 Issadeen v. The Commissioner of National Housing<sup>4</sup> Bandaranayake J, dealing with a belated application for a Writ of Certiorari held as follows:

“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 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”.

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<sup>3</sup>1999 2 SLR 341 at 351.

<sup>4</sup>2003 2 SLR 10 at page 15.

This Court must observe that since the cancellation of the said nomination, many events as explained above, including the cancellation of the very permit that the Petitioner is now seeking to resurrect, the issuing of a grant in lieu of the said permit and the registration of a successor under the said grant, have occurred. The Petitioner is not seeking to quash any of the above. Thus, equitable considerations will certainly not permit this Court to grant a Writ of Certiorari to quash the said cancellation of the nomination.

This Court therefore upholds the objection raised by the Respondents that the Petitioner is guilty of inordinate delay and therefore, is not entitled to the discretionary remedy of Writs of Certiorari and Mandamus. The Application of the Petitioner is accordingly dismissed, with costs fixed at Rs. 50,000 payable by the Petitioner to the 4<sup>th</sup> and 5<sup>th</sup> Respondents at the rate of Rs. 25,000 each.

Judge of the Court of Appeal

**P. Padman Surasena, J/ President of the Court of Appeal**

I agree.

**President of the Court of Appeal**