

JAYAWEERA
V.
ASST. COMMISSIONER OF AGRARIAN SERVICES
RATNAPURA AND ANOTHER.

COURT OF APPEAL
F. N. D. JAYASURIYA J.,
CA. 849/80
AT/21/16/AT/C/124.
February 22, 1996.

Agrarian Services Act 58 of 1979 – Eviction under S. 5(3) and Notice under S. 5(7) (b) (11) Eviction Inquiry – Not summoned – Delay – Filing of self serving affidavit to contradict the Record. – Not filing all exhibits – consequences.

The Petitioner complained that he was not summoned by the Assistant Commissioner for an Inquiry under S.5(3) and sought to quash the Notice of Eviction issued under S. 5(7) (b) (11) of Act 58 of 1979.

Held:

(1) There is a presumption that official and legal Acts are regularly and correctly performed.

(2) It is not open to the Petitioner to file a convenient and self-serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi judicial act or judicial act.

(3) If a litigant wishes to contradict the record he must file necessary papers before the Court of first instance, initiate an inquiry before the Court and thereafter raise the matter before the Appellate Court so that the Appellate Court would be in a position on the material to make an adjudication on the issues with the benefit of the Order of that Court.

Per Jayasuriya, J.

" 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 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."

(4) There is a delay of over two and half years since making the order challenged.

AN APPLICATION for Writ of Certiorari.

Cases referred to:

1. *K v Jayawardane*, 48 NLR 503.
2. *Dissanayake v IOKG Fernando* - 71 NLR 356.
3. *Biso Menika v Cyril de Alwis* - 1982 - 2SLR 368
4. *Sarath Hulangamuwa v Siriwardene*, 1986 1 SLR 276 at 278.

D. R. P. Goonatilaka with *S. Suraweera* for Petitioner.

W. Dayaratne with *Ms. Ranjika Jayawardena* for Respondent.

Cur. adv. vult.

February 22, 1996.

JAYASURIYA, J.

There are two hurdles which the Petitioner has to surmount before this court could investigate into the merits of this application. The Petitioner seeks a quashing of an alleged notice of eviction issued by the Assistant Commissioner of Agrarian Services which has been produced marked P2 which is dated 11.11.87. On a perusal of P2, it is manifest that this is an order made by the Assistant Commissioner under section 5 (7)(b)(ii) of the Agrarian Services Act No: 58 of 1979. This order stems from an earlier order made by the Commissioner upon an application referred to him under Section 5(3) of the said Act which order is the operative and substantive order. The Petitioner has not claimed any relief in respect of that order; he is only seeking relief in regard to the subsequent order which emanates and stems from the earlier effective order.

The Petitioner states that he has not been summoned by the Assistant Commissioner for the inquiry which was held on the complaint bearing no. 21/16/A.T./C/124. There is only his *ipse dixit* and bare assertion in support of that statement. If actually no notice was actually served, it was open to the Petitioner, to file a certified copy of the entire proceedings with the journal entries with a view to substantiate his assertion so that this court would be in a position to exercise its

supervisory jurisdiction. It appears that the Petitioner has with deliberate design and ingeniously resorted to the practise of not filing these exhibits which are necessary for the exercise of supervisory jurisdiction by this court. There is a presumption that official and legal acts are regularly and correctly performed. It is not open to the Petitioner to file a convenient and self serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi judicial act or judicial record. Justice Dias having considered a *cursus curiae*, which he has collated for the benefit of the legal profession, has set down the principle that if a litigant wishes to contradict the record, he must file the necessary papers before the Court of first instance initiate an inquiry before the Court of first instance and thereafter raise the matter before the appellate court so that the appellate court would be in a position on the material to make an adjudication on the issues with the benefit of the order of the Court of first instance. The Petitioner has filed a convenient and self serving affidavit and is now seeking to contradict the record that notice or summons issued on him. The law does not permit him to do so. Vide the long line of cases collated by Justice Dias in *King v. Jayawardena* ⁽¹⁾. In the circumstances I hold that the Petitioner has culpably failed to comply with his imperative and mandatory duty to file with his application certified copies of the entire proceedings before the Assistant Commissioner to enable this court to exercise its supervisory jurisdiction. In the result, the application is required to be dismissed in limine. Secondly, the Petitioner is seeking by an application filed in the Court of Appeal Registry on the 5th September, 1990 to claim from this court discretionary relief in respect of an alleged order made on the 1st of November, 1987. The operative and substantive order has necessarily to be made at even an anterior point of time. Proceeding on the basis of the date in P2, which is 11.11.87, there was a delay of over two and half years since the making of the order for these papers to be filed, in the Court of Appeal Registry, Justice Weeramantri has observed that a delay of eighteen months is fatal to the prosecution of an application for a writ of certiorari where the Petitioner claims discretionary relief and where the court would scrupulously look into his conduct before it decrees relief in his favour - *Dissanayake v. I.O.K.G. Fernando* ⁽²⁾. In the instant case the delay exceeds that period. There is no ground urged for such delay. The principles laid down in the English Courts in this context have all been collated in the judgment of Justice Sharvananda in *Biso Menika v. Cyril*

de Alwis,⁽³⁾ and in the judgment of Justice Siva Selliah in *Sarath Hulangamuwa v. Siriwardena*⁽⁴⁾.

I hold that the 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 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. Applying these principles, I hold that this court is not disposed to grant the Petitioner discretionary relief upon this application in view of inordinate delay and laches in filing the application in Court.

For the aforesaid reasons, I proceed to dismiss the application with costs in a sum of Rs.1050/- payable by the Petitioner to the second Respondent.

Application dismissed.