1976 *Present :* **Tennekoon, C. J., Thamotheram, J., and Wanasundera, J.**

V. RAMASAMY, Petitioner *and* CEYLON STATE MORTGAGE BANK and others, Respondents

S. C. 443/71—In the matter of an Application for a Mandate in the nature of a Writ of Certiorari

Certiorari—Principle of laches—Addition of Parties—Determination made by State Mortgage Bank under Section 70 B (6) of Finance Act No. 33 of 1968—Vesting Order made under Section 70 C (2) of the said Act.

An application for a Writ of Certiorari was filed in August 1971 against the Ceylon State Mortgage Bank and one 'A' to quash a determination made by the Bank under Section 70 B (6) of the Ceylon State Mortgage Bank and Finance (Amendment) Act No. 33 of 1968 in respect of the redemption of a land. The Minister who made the Vesting Order under Section 70 C (2) of the said Act was not a party to the application for the Writ of Certiorari. On objection being taken by the Respondents, that the application was not properly constituted in the absence of the Minister as a party respondent, the petitioner moved in 1975 to add the Minister as a party to the application. From 1971 till the end of 1974, the matter had been in abeyance and the record does not indicate the reasons for this delay. The Minister objected to being added as a party on the ground that the Vesting Order was made as far back as 1970 and the present application to amend the Petition by adding him as a party was belated. It was contended on behalf of the Petitioner that the Minister was not a necessary party but a useful party for the complete and effectual adjudication of the matter in issue, inasmuch as the application for certiorari is directed against the determination of the Bank and not against the Vesting Order as such and no prejudice would be caused by adding the Minister as a party at this stage.

Held—

(1) Although in the scheme of the Act the Minister is interposed merely for the making of the Vesting Order, it is however that order which affects the rights of parties and enables an aggrieved person to come into Court. Accordingly an attack on the determination of the Bank alone is insufficient without the presence of the Minister also as a party to the application for relief.

(2) The validity of a plea of delay must be tried on principles which are substantially of an equitable nature.

APPLICATION for a Writ of Certiorari.

C. Ranganathan with *S. Mahenthiran* for the Petitioner.

J. W. Subasinghe for the 1st Respondent.

C. Chellappah for the 2nd Respondent.

G. P. S. de Silva, Deputy Solicitor-General for the 3rd and 4th Respondents.

Cur. adv. vult.

March 12, 1976. WANASUNDERA, J.—

This application for a Writ of Certiorari was filed on 10th August 1971 against the Ceylon State Mortgage Bank and Selladurai Ariaranam *alias* Alagaratnam, seeking to quash a determination made by the State Mortgage Bank under section 70(B)(6) of the Finance Act, No. 33 of 1968, in respect of the redemption of a land.

The matter came up before this Court on 11th August 1971 and the Court directed the issue of notices on the respondents. It came up again on 17th September 1971 after the service of notice on the respondents and the respondents were given a month's time to file counter-affidavits. On 28th October 1971 the 2nd respondent filed his objections and on 15th November 1971 objections were filed by the 1st respondent.

Among the objections taken by the respondents was that the petitioner did not challenge the Vesting Order made by the Minister of Finance in respect of this property ; that the Minister had not been made a party to the application and accordingly the petition was not in due form. On 22nd December 1971 the petitioner filed a further affidavit, the contents of which are not material for the purpose of this Order.

The next entry in the record is dated 26th March 1974, when the Attorney-at-Law for the Peoples' Bank filed his proxy. By this time, Law No. 16 of 1973 had come into operation and the power of acquisition which had been vested in the State Mortgage Bank was now transferred to the Peoples' Bank.

There is no minute or entry in the record showing or indicating the reason for the inordinate delay from 1971 to 1974. It has been alleged by the respondents that prior to 1974 it has been the practice that a petitioner would take steps to have an application filed by him brought up for early hearing. It was their contention that this long delay was due entirely to remiss on the part of the petitioner. Mr. Ranganathan, however did not accept this position and stated that there has never been any clear-cut or uniform practice on this question as suggested by the petitioner.

The matter appears to have been listed again on the 22nd of November 1974, when it was postponed on an application made by counsel for the petitioner, Mr. Ranganathan, who had been retained in the case for the first time. A minute of the day's proceedings shows that the Court directed that this application be listed on a date convenient to counsel.

The matter came up again on 23rd January 1975 and what transpired on that date can be gathered from the order made by Samerawickrame J., which is as follows :—

> "Counsel for the respondent submits that the Minister of Finance should be a party to this application in as much as the petitioner is questioning the validity of the vesting order made by him. In view of this objection Mr. Ranganathan states that he will amend his petition by adding the Minister of Finance as a party and formally seeking the relief that the vesting order should be quashed. Counsel for the respondents have no objection to the amendment but learned Counsel for the 2nd respondent states that he has taken the objection in the papers filed by him and that he is entitled to costs. The question of an order for any costs in favour of the 2nd respondent by reason of the adjournment may be considered at the final stage when the order is made on the application.
>
> The application to stand out for papers to be filed by the petitioner."

Thereafter this application has come up before Court on a number of occasions. The Minister of Finance, Dr. N. M. Perera, was then added as a party and on his vacating office, the present holder of that post was substituted in his place. Both these persons appear on the record as the 3rd and 4th added-respondents.

Objections were filed on behalf of the then Minister of Finance stating that he objected to being added a respondent on the ground that the Minister's Vesting Order was made as far back as 1970 and the present application to amend the petition by adding him as a party was belated. The present Minister of Finance has filed a statement to the effect that he abides by the objections already filed on behalf of his predecessor.

This application was listed before us for a discussion of the limited question of whether the addition of the Minister of Finance at this stage should be allowed. The Court does not intend to go into the merits of the petition at this preliminary hearing.

Counsel appearing for the Minister referred to a number of authorities and submitted that due to the excessive delay or laches of the petitioner, the Minister should not be added as a party. Apart from the normal principles relating to delayed applications, Mr. de Silva argued that certainty, associated with public and official acts, would be seriously affected if persons

who have slept over their rights are permitted to come and unsettle transactions after the lapse of a long period of time. He argued that the Minister was a necessary party to the application and he ought to have been on the record from its inception. The application to add him in 1975 in respect of an order he made in 1970 is too late and should be refused.

Mr. Ranganathan argued that the Minister was not a necessary party to the application, but would be a useful party for the complete and effectual adjudication of the matter in issue. He states that his application is directed against the determination made by the State Mortgage Bank and not against the Vesting Order as such. He further states that if the determination of the Bank is a nullity, owing to a want of jurisdiction over the subject-matter, all subsequent actions and orders founded and based on that determination are likewise nullities and would fall to the ground along with the determination. He stated that, since the attack is only on the determination made by the Bank, there is no contribution that the Minister can usefully make in disposing of the actual issue now before the Court.

I am unable to agree with Mr. Ranganathan in respect of some of these submissions. I am of the view that the Minister should properly have been a party to the application from the very outset. I cannot also agree with him when he says that the attack on the determination of the Bank is alone adequate to enable him to obtain the necessary relief in the case.

An examination of the scheme of the relevant law is helpful in placing these arguments in their correct perspective. It would appear that the State Mortgage Bank has taken over the powers that were at one time vested in the Government for redemption of lands under the Lands Redemption Ordinance. In a proceeding under these provisions, the relevant determination is made by the Bank. Once a determination is made, it is brought to the notice of the Minister of Finance, and it is the Minister who is vested with the power to make the actual Vesting Order. Although the Minister makes the order, the Vesting Order vests the property in the Bank and it is also the Bank that thereafter takes the necessary steps to obtain possession of the land. It will be apparent from this scheme that the Minister is interposed merely to make the Vesting Order, though he appears to have a discretion in making this Order. In my view,

once the stage of a Vesting Order is reached and a Vesting Order is made by the Minister, it is that order which will affect the rights of the parties and enable an aggrieved party to come into Court.

In this context the prior determination made by the Board—however important it may be—is a step in the proceedings and must be regarded, along with the Minister's Order, as two phases of one single operation. Although I take the view that the Minister's Vesting Order must also be brought up in this application, there is, however, much substance in Mr. Ranganathan's submissions that the real matter in issue in this application is the determination made by the Bank and not the Minister's Vesting Order. It may be true that the Minister can make little or no contribution to the issue now before the Court, but that would not, in my view, absolve the petitioner from making him a party and giving him notice of this application.

The next question I have to decide is whether due to laches on the part of the petitioner the Court should uphold the objection of the added-respondents to his being added as a party.

"Delay defeats equity" is one of the main principles of equity and constitutes the foundation of the defence of laches. This defence corresponds to the statutory law of limitations in the common law. It has been adopted by the common law courts, but it seems that the factors that should govern the application of this principle in the common law courts may be somewhat different from that under equity jurisdiction.

The principles of laches have not been applied automatically or arbitrarily or in a technical manner by Courts of Equity themselves. The Privy Council in the case of *Lindsay Petroleum Company vs. Hurd*, 1974 Law Reports, 5 P.C. 221 at 239, stated in the clearest terms the manner in which the Courts of Equity have applied this doctrine :

> "The doctrine of laches in Court of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it

would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise should be unjust, is founded upon mere delay, that delay of course not amounting to a bar by any Statute of Limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

It may be noted that where the Courts of Equity were concerned, one defeated in equity by reason of this defence, may still have his remedy in common law. As for the common law courts they have invariably taken into consideration such factors as the availability of an alternative remedy along with acquiescence and the existence of facts such as the conduct of the parties and any developments which may render it inequitable to grant relief, when applying this doctrine. In India, however, we find, since the inception of the Republican Constitution, laches has become a defence by itself to applications containing an element of delay.

The cases which have been cited to us show that the Courts have considered the question of delay and laches in a variety of situations. In the English case, *Rex vs. Stafford Justices,* (1940) 2 K. B. 33, relied on by Mr. de Silva, it is clear that delay was not the sole ground for the refusal of the application. The judgment shows that the property concerned had not only been built upon subsequent to the issue of the impugned certificate, but the houses so constructed had even been sold to third persons. In the local case of *Gunasekera vs. Weerakoon,* 73 N.L.R. at 262, the delay referred to in the judgment was not the sole ground for the refusal of writ. The Court stated that an alternative remedy was available to the petitioner. In the case of *Goonetileke vs. Government Agent, Galle,* reported in 47 N.L.R. 550, the petitioner applied for a Writ of Certiorari or Mandamus to declare void an election to a Village Committee. When the matter came up for hearing, the respondents took up a preliminary objection to the petition that the successful candidate had not been made a party to the application. It would appear that the petitioner then made an application to add the successful

candidate as a party-respondent. Keuneman, J. said that the application came at too late a stage in the proceedings. The delay in this case is of a different nature from that now under consideration. The delay there has no substantive element in it and seems purely procedural in kind. It is like a case where a judge would resist putting back the case to an earlier point in the proceedings when once the trial has commenced. Further, it is also a case where the objection was taken by the original parties to the application.

In *Vinnasithamby vs. Joseph*, reported in 65 N.L.R. 359, the Court purported to follow the above case. The facts of this case are similar to the present one. Here too, the parties noticed objected to their being added on the ground of delay. Weerasuriya, J. said:

> "If all the preliminary steps had already been taken (such as the filing of objections and affidavits by the respondents) and the matter was ready for inquiry into the substantive application before the Court, I would respectfully agree that it was too late for the petitioner to have moved that further parties be added."

With all respect to the learned Judge, it seems that he had not tried the validity of the defence on its own merits. The test he has adopted is one of maturity or ripeness of the case for hearing. It would have been more satisfactory if in these circumstances the question answered by him was formulated in terms of delay or laches and not as a narrow procedural matter.

In the case of *Wijegoonewardena vs. Kularatne*, reported in 51 N.L.R. 453, Swan, J. refused to grant a Writ of Quo Warranto which was brought five months after an election. There was no dispute in the case that the respondent had sat and voted as a member during this period. The Court held that the successful candidate had a right to expect that the issue of the validity of his election should be disposed of as quickly as possible. In coming to the conclusion, the learned Judge has not gone into a discussion of the law on this matter.

The facts of the present case are substantially different from these cases. As shown earlier, the main attack is on the determination made by the State Mortgage Bank. Once the determination of the Bank is put in issue, the Vesting Order is itself, from that point of time, put in jeopardy and the application to add the Minister at this stage should not therefore cause any

undue prejudice to him or anyone else. For the purpose of this order, I have assumed that there has been no delay in the original application filed in 1971.

Mr. Ranganathan has also stated that there is no material before Court to indicate that the property concerned has in any way undergone a change since the date of the determination which might make it inequitable for this Court to make an order in favour of the petitioner.

It is also a matter of some significance that the 1st and 2nd respondents, who are the parties most concerned in this matter, now have no objection to the addition of the Minister. In these circumstances the stand taken by the State is a little surprising, particularly when the matter in issue is whether or not there has been a usurpation of jurisdiction by a statutory body at the expense of the citizen. The argument that there should be certainty about official acts is a statement that a court readily understands, but such a principle cannot be applied indiscriminately, but should be done carefully and only in appropriate cases. The acts involved here do not have that public character generally associated with official acts. The present transaction relates to the redemption of a land for the benefit of an individual, namely the original mortgagor.

It may also be mentioned that the learned Deputy Solicitor-General has based all his arguments on the assumption that this long delay should be attributable to the petitioner, and the petitioner alone. I have referred in the early part of this judgment to the sequence of dates showing the progress of the application after it was filed in Court. According to these entries the petitioner may not be responsible or may not be entirely responsible for the present state of affairs.

Finally, it is my view that when we are dealing with a matter concerning the extent of the powers and jurisdiction, which is reposed in us, to be exercised for the public good, we should hesitate to fetter ourselves with arbitrary rules, unless such a course of action is absolutely necessary. The principles of laches must, in my view, be applied carefully and discriminatingly and not automatically and as a mere mechanical device.

For these reasons, I am of the view that, in the circumstances set out above, the Minister of Finance should be added as a party respondent. In coming to this conclusion, I have not in any way considered the merits of this application.

TENNEKOON, C.J.—I agree.

THAMOTHERAM, J.—I agree.

Application to add party allowed.