

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

CA Writ 719/2010

1. Basthian Koralalage Charlet Rodrigoo,
No.70, Girithale Janapadaya,
Girithale.
2. Basthian Koralalage Shelton Rodrigoo,
No.70, Girithale Janapadaya,
Girithale

PETITIONER

1. Divisional Secretary,
Divisional Secretariat,
Hingurakgoda.
2. The Hon. Minister of Land and Land Development,
No.80/5, Rajamalwatta Avenue,
Battaramulla.
3. The Secretary,
Ministry of Land and Land Development,
No.80/5, Rajamalwatta Avenue,
Battaramulla.
4. Commissioner General of Lands.
No.7, Gregory's Avenue,
Land Commissioner General's Department,
Colombo 07.
5. K.P Heenmanike,
No.137, Yaya-05,
Aralaganwila.
6. K.P Chandrawathie Manike,
No.70/1, Girithale Janapadaya,
Girithale.
7. Rev.Aralaganwila Somawansa Thero,
Sri Purwarama Temple,
Thambalawewa,
Jayanthipura.
8. Hon. Attorney General,
Attorney General's Department,
Colombon 12.

RESPONDANTS

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

In the matter of an application for a
mandate in the nature of a writ of certiorari
under Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application No. 719/2010

BEFORE

: S. Sriskandarajah J. (P/CA)

Deepali Wijesundera J.

COUNSEL

: Razik Farook PC. With Rohana

Deshapriya and Miss

H.Kularathne for the 1st and
2nd Petitioners.

Mr. Neil Unamboowa DSG for the
1st to 4th and 8th Respondents.

Ms. T. Machado for the 5th to 7th
Respondents.

ARGUED ON

: 15th May, 2012.

DECIDED ON

: 09th July, 2012

Deepali Wijesundera J.

The petitioners have filed this action praying for a Writ of Certiorari against the 1st respondent to quash the nomination of the 7th respondent as the original permit holder in the Registry of state lands. And also for a Writ of Mandamus against the 1st to 5th respondents to take steps to grant a permit or succession to the petitioners to the land referred to, in the permit marked as **P1**.

Original owner of the land in dispute was Marshel Rodrigo who became the owner of the said land by the grant marked **P1** dated 20/05/1986. He died on 19/02/1988 and his wife died on 17/07/1997. After the death of the original permit holder the petitioners have made a request to the 1st respondent to grant the permit to the 1st petitioner. The 1st respondent after considering the application has given the permit to the 7th respondent who is the eldest son of the original permit holder. This permit is marked **P15** which the petitioners are challenging.

The petitioners challenging the permit given to the 7th respondent by the 1st respondent argued that **P15** was issued contrary to the directions of the Commissioner General of Lands and was issued in an illegal manner without complying the provisions of the Land Development Ordinance. Petitioners also argued that the 1st respondent has not taken into consideration the facts and material submitted by the petitioner during the inquiries held before him.

1st to 4th and 8th respondents stated that the relief prayed by the petitioners cannot be granted since P1 is not a permit but a grant under Sec 19 (4) and 19 (6) of the Land Development (amendment) Act No. 27 of 1981 by His Excellency the President. They also submitted that the 1st petitioner being a female is not entitled in terms of the 3rd schedule of the Land Development Ordinance to get rights of succession. The respondents marking 6R14 and 6R15 which are extracts from the Voters Register and 2nd petitioner's birth certificate marked P3b which indicated the date of birth as 09.01.1953 and Justin Rodrigo's Identity Card Number produced indicating number 521643469v states that it cannot be said that the 2nd petitioner was the 2nd child of the original owner and that in fact he is the 3rd child of the family. They stated that it shows that the petitioners have willfully misrepresented material facts to court. Therefore the petitioner's cannot sustain their application in law and cited the case of **Alponso Appuhamy vs. Hettiarachi 1977 NLR 131.**

On perusal of the above stated 6R14 and 6R15 it is clearly stated in the extracts that Justin Rodrigo's ID Number is 521643469v it shows that he was born in 1952. The 2nd petitioner who's birth certificate was marked as P3 (b) shows his date of birth as 09.01.1953. Therefore he cannot say that he is older to Justin Rodrigo whom he said is the 3rd oldest child in the family. Examination of these documents shows that the petitioners have willfully misrepresented facts to court.

In Alponso Appuhamy vs. Hettiarachi it was held;

"that when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the Court, before it

issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with uberrima fides”

Letters issued by the 1st respondent marked as **6R 4A** and **6R 4B** show that the eldest son of Lakshman the 7th respondent was named as the successor of both lands (High and low **6R2** and **6R3**) by the 1st respondent. 7th respondent's name has been entered in the Register of permits in respect of both lands (**6R5** and **6R6**).

According, to the respondents two permits were issued to Marshal Rodrigo the original owner. (**6R2** and **6R3**)

Grant bearing No. 9940 is for a high land and grant bearing No 2936 is for a low land. On perusal of **6R2** which is marked as **P1** by the petitioners it is stated as a grant by the His Excellency the President and not a permit. Under section 19 (6) the person holding a grant can only dispose the land with the prior approval of the Government Agent.

The 7th respondent who is the son of Lakshman was named as the successor of both lands by the 1st respondent by documents marked as **6R 4A** and **6R 4B** in the year 2009. Documents **6R5** and **6R6** shows that the 7th respondents name has been entered as the owner in the Register of grants issued under Land Development Ordinance. The 7th respondent after informing the 1st respondent by letter dated 20/12/09 (**6R8**) and after obtaining permission has divided the low land between 1st petitioner and 5th and 6th respondents, documents marked **6R9**, **6R10** and **6R11** were produced to show these transfers.

A grantee can dispose the land holding under the grant subject to the condition stipulated in the grant in terms of Sec. 19 (6) of the Land Development (amendment) Act no. 27 of 1981. The 7th respondent has fulfilled the condition stipulated in Sec. 19 (6) of the said Act by obtaining approval of the Divisional Secretary and also has not violated the conditions of the grant.

On perusal of all the documents marked and the submissions made it could be seen that the 1st respondent has rightfully entered the 7th respondent's name for both lands in the Register of permits.

The 1st and 2nd petitioners have misrepresented facts to mislead court in stating the 2nd petitioner is the next oldest son after the death of Lakshman Rodrigo 6R14 and 6R15 and P3 (b) shows that the next oldest child is not the petitioner.

Under Sec. 115 of the Evidence Ordinance the petitioners are estopped from disputing the grant to the 7th respondent since they have made a declaration to the 1st respondent.

The petitioners are also not entitled to a judgment in their favour in view of the undue delay in objecting to the determination made by the 1st and 4th respondents.

For the aforstated reasons I see no reason to grant the relief prayed for by the petitioners. Therefore I dismiss the petitioner application without costs.

JUDGE OF THE COURT OF APPEAL.

S.Sriskandarajah J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL