

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

In the matter of an application for  
Mandates in the nature of writs of  
Certiorari and Mandamus under  
Article 140 of the Constitution of  
Sri Lanka.

Kariyawasam Haputhanthri Gamage  
Indika  
Pradeep,  
"Pradeepa" Arambawatte,  
Gonalanda,  
Thalgaswala.

**Petitioner**

C.A. (Writ) Application No.41/2010

Vs.

1. K.P.D. Sumith Shantha,  
Divisional Secretary,  
Divisional Secretariat,  
Niyagama,  
Thalgaswala  
And 03 others

**Respondents**

BEFORE : **S.SRISKANDARAJAH, J (P/ CA).**

COUNSEL : J.C.Weliamuna with Sanjeewa Ranaweera  
for the Petitioner.  
Yuresha de Silva, SC  
for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

Argument on : 30.05.2012

Decided on : 02.10.2012

**S.Sriskandarajah, J,**

The Petitioner submitted that the subject matter of this application is a plot of land called "Dandugahena" situated in Niyagama, Galle. It is in extent of 3 Roods and 26 Perches and described as Lot No.295E in Plan bearing No.1160 dated 15/03/2004, prepared by Victor Godahewa, a Licensed Surveyor. The said land was given to one Kariyawasam Haputhanthri Gamage Isan Appu on a permit bearing No.LL5500 dated 28/01/2009, issued under the provisions of the Land Development Ordinance. The 4<sup>th</sup> Respondent, who is the daughter of the permit holder, had been nominated as the successor.

The permit holder and the 4<sup>th</sup> Respondent handed over the possession of the said land to one Jani Nona Ranasinghe for a consideration of Rs.3,000/-. Jani Nona Ranasinghe in turn handed over the possession of the said land to her brother, viz., Alpenis Ranasinghe to occupy and develop the said land. The said Alpenis Ranasinghe developed the said land by cultivating tea. The said Ranasinghe continued to cultivate tea until the 6<sup>th</sup> of October 1980. On or about 6<sup>th</sup> October 1980, the 4<sup>th</sup> Respondent's husband, viz., Govipola Godage Vitanalage Premadasa, forcibly entered the land and commenced a house there on. In relation to the dispute for possession of the said land, between the 4<sup>th</sup> Respondent's husband and Ranasinghe, the Police filed a case in the Magistrates Court of Elpitiya bearing No.P1542 under Section 66 of the Primary Courts

Procedure Act No.44 of 1979. The learned Magistrate, after an inquiry, made order on 21/04/1983, that Alpenis Ranasinghe was entitled to the possession of the land and prohibited all disturbances thereon other than from an order of a competent court. A revision application filed by the 4<sup>th</sup> Respondent's husband against the said order of the learned Magistrate was dismissed by the Court of Appeal.

The Petitioner submits that in or about 23/06/1993, the said Alpenis Ranasinghe died. The son of the late Alpenis Ranasinghe handed over the possession of the land to the Petitioner in the latter portion of 1993. The Petitioner claimed that he has been in exclusive possession of the said land and was cultivating tea and the sole means of livelihood of the Petitioner and his family is the produce he obtained from the said land. The Petitioner, by his letter dated 7/01/1999 had made an application to the Divisional Secretary of Nayagama, to transfer the title to the land to him. In October 1999, the permit holder of the said land died and he claims that the successor nominated to succeed the said land failed to succeed and as the successor had not succeeded within a period of 6 months, reckoned from the date of the death of the permit holder, the Petitioner submitted it is deemed to be that such person shall have surrendered the said land to the Crown. On the 29<sup>th</sup> of November 2001, the 4<sup>th</sup> Respondent, the nominated successor of the said land instituted an action in the District Court of Elpitiya in an action bearing No.54/2001/land, seeking for a declaration that the 4<sup>th</sup> Respondent is entitled to the possession of the land and an order to evict the Petitioner there from. Upon the conclusion of the trial on 28/01/2009, the learned District Judge pronounced the judgment granting the relief sought by the 4<sup>th</sup> Respondent.

The Petitioner submitted by letter dated 8/01/2006, the Petitioner requested for a permit under the Land Development Ordinance for the occupation of the said land. The Petitioner claimed that he has been in exclusive possession of the land for 15 years continuously and he has developed the said land. In these circumstances the Petitioner

has sought in this application a Writ of Certiorari to quash the permit issued to Isan Appu under the Land Development Ordinance and a writ of Mandamus compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to issue a permit under the provisions of the Land Development Ordinance to the Petitioner. It is the position of the 1<sup>st</sup> Respondent, the Divisional Secretary, that the original permit holder had alienated the land in question given to him on permit in contravention of Section 46(2) of the Land Development Ordinance. As such, the dispossession of the land by Kariyawasam Haputantri Gamage Isan Appu to Jani Nona Ranasinaghe and all other transactions that followed thereafter are null and void. As the said transactions are null and void, it is the duty of the 1<sup>st</sup> Respondent to consider the circumstances that prevailed at that moment and to take steps to cancel the said permit issued to the original permit holder or to regularize the permit and to grant the permit to the relevant successors under the Land Development Ordinance. The Petitioner has no locus standi to seek a writ of Certiorari to quash the permit issued to the original permit holder as he has no right to the said land or has no right to seek a cancellation of the said permit issued to the original permit holder.

The Petitioner claims that he was occupying the said land for more than 15 years and he has developed the said land. In these circumstances he is entitled to make an application to the Divisional Secretary for the issuance of a permit, but whether the original permit should be cancelled and whether the said land could be given to the Petitioner on a fresh permit is a matter that has to be gone into by the Divisional Secretary, considering the facts and circumstances in relation to the cancellation of the permit of the original permit holder and also the entitlement of the Petitioner. As these are involving questions of fact and not based on questions of law, this court cannot issue the writ prayed for by the Petitioner in this application and, therefore, this court dismisses this application without costs.

President of the Court of Appeal