

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

In the matter of an application for an Order in the nature of writ of certiorari and Mandamus under article 140 of the Constitution of the Republic of Sri Lanka.

Ankumbura Watte Samarasena,
No.1/209, Palugasdamana,
2nd Canal, Polonnaruwa.

Petitioner

C.A. (Writ) Application No.239/10.

Vs.

1. N.G. Panditharathna,
Divisional Secretariat of
Thamnkaduwa,
New Town,
Polonnaruwa.
And 10 others.

Respondents.

BEFORE

:

S.SRISKANDARAJAH, J (P/ CA).

DEEPALI WIJESUNDERA, J

COUNSEL : Shiminda Fernando
for the Petitioners.
Chaya Sri Nammuni
for the 1st to 6th Respondents
C.Nilanduwa.
for the 10th Respondent

Argued on : 08.02.2012

Written Submission : 28.03.2012 (Petitioner)
26.06.2012 (7th and 10th Respondent)
30.08.2012 (1st and 2nd Respondents)

Decided on : 20.09.2012

S.Sriskandarajah, J.

The father of the Petitioner was the original owner of the land which is the subject matter of this application. This land was given to the 1st Petitioner's father, one A.W. Muttiah, on a permit and includes a paddy and an agricultural land. The said lands were depicted as Lot 209 in Survey-General's Plan No. BOP 272 and Lot 49 in Survey-General's Plan No.62. The 1st Petitioner's father lived, possessed and developed the said land from 1954. He received a land grant for the agricultural land on the 26th of January 1983.

The Petitioner submitted that the Petitioner's father was married to one T.G. Kaluarachchi and there were four children, including the Petitioner, from the said marriage. The children are, viz., A.W. Piyasena, now deceased, and the father of the

10th Respondent, A.W. Samarasena (the Petitioner), A.W. Weerasena, (8th Respondent) and A.W. Kamalawathie (9th Respondent). The 7th Respondent is the wife of the said A.W. Piyasena, and the 10th Respondent is the son of the said A.W. Piyasena. A.W. Piyasena died in 1996.

The Petitioner's father died in the year 1983. The Petitioner's mother also died in the same year. The Petitioner submitted that his brother and sisters along with him were in possession of the land described above. The Petitioner contended that after the Petitioner's brother's death in the year 1996, dispute arose between the Petitioner's deceased brother's wife and the children, and the Petitioner and his sisters. As the deceased Petitioner's brother's wife and children were claiming the ownership of the land, on the request of the parties, the 1st Respondent, the Divisional Secretary of Thamankaduwa, held an inquiry, and after the inquiry the 1st Respondent, by his letter dated 6/03/2006, informed the Petitioner that the successor to the land was the Petitioner's brother and that since he is dead, his wife, the 2nd Respondent would be entitled to the life interest and thereafter the children of the Petitioner's brother and they agreed that the land would be divided among them. The Petitioner contended that the 7th and 10th Respondents are not entitled to succeed to the said land and also objected to the division of the said land. The Petitioner's position is that he was nominated as a successor and that the Petitioner is now the eldest son of the original owner and hence he succeeds the original owner. The Petitioner's position is that, he was nominated as successor to his father, the original owner, and according to his knowledge, there was no cancellation of the said nomination by the original owner, but he admits that in the original permit, his name had been struck off by drawing several lines over it. The Petitioner submitted that the said act of deletion had been done in contravention of the provisions of the Land Development Law, as amended, and hence it is invalid, but the 1st Respondent submitted that from the inquiries held by the 1st Respondent that the Petitioner was initially named by the permit holder as his successor

by entry made in the permit marked P1. Subsequently, the same had been cancelled on the 30th May 1978 by crossing over the name of the Petitioner, as appeared on the document marked P1, and there was a corresponding entry duly made in the Land Register, of such cancellation and, therefore, the 1st Respondent contended that there is evidence to show that the nomination of the Petitioner as successor was cancelled by the permit holder in the year 1978.

In the year 1983, the original permit holder, i.e., the father of the Petitioner, was issued with a grant marked P2 to this application. In the same year, the original permit holder and his wife passed away. Under the Land Development Ordinance, the 10th Respondent, the eldest son of the deceased permit holder, was the legal successor to the land issued under permit/grant by virtue of the provisions of the Third Schedule to the Land Development Ordinance and, hence, the name of the 10th Respondent was entered in the Land Register. In these circumstances the Petitioner's claim that the decision of the 1st Respondent that naming the 10th Respondent as the successor to the said land, and entering his name in the Register of Lands, is unlawful and arbitrary, has no merit. The 10th Respondent, as the eldest son of the original permit holder, Muttiah, is entitled to succeed the land under the Land Development Ordinance after the demise of Muttiah and his wife in the year 1983, and once the eldest son succeeds the land, after his demise, his wife is entitled to succeed as she has a life interest in the land and could possess the land until her demise. It is the contention of the Petitioner that after the death of the eldest son of the original permit holder, i.e., A.W. Piyasena, the petitioner being the 2nd eldest son of the original permit holder Muttiah, is entitled to succeed the said land, but this submission cannot be substantiated by the provisions of the Land Development Ordinance. Under the Land Development Ordinance, in view of the provisions of the Third Schedule, the eldest son is entitled to succeed the permit and/or the grant and, after his death, his wife is entitled to possess the said land as successor. The wife of the eldest son of the original permit holder is entitled to possess the said

land until her demise and, therefore, the Petitioner's claim that the Petitioner should be nominated as the successor to the said land, has no basis.

In the above circumstances, this court cannot grant the relief prayed for by the Petitioner and, dismisses this application without costs.

President Court of Appeal

Deepali Wijesundera, J

I agree,

Judge of the Court of Appeal