

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

**CA Writ Application 752 /2010**

01. Mr .Loku Banda Herath  
5th Mile Post, Handaganawa.

**Petitioner**

**VS**

01. Commissioner General of Land  
Department of Land Commissioner General  
Gregory's Lane,  
Colombo 07 .
02. P. G. Abeykoon  
Former Deputy Commissioner General of Lands,  
Deputy Land Commissioner General's Office,  
Mahiyanganaya.  
  
Presently Deputy Commissioner General of Land  
Deputy Land Commissioner General's Office,  
Debarawewa ,  
Tissamaharamaya.
03. M.M. Thilekeratne  
Deputy Commissioner General of Land,  
Deputy Land Commissioner General's Office,  
Mahiyanganaya.
04. M.G.S.K. Gunarathna  
Land Officer,  
Deputy Land Commissioner General's Office,  
Mahiyanganaya.

05. Honorable Minister Janaka Bandara Tennakoon  
Minister of Land and Land Development,  
Ministry of Land and Land Development.  
Govijana Mandiraya ,  
No: 80/ 5 ,  
Rajamalwatta Road,  
Battaramulla  
Colombo
06. Permanent Secretary to the Ministry of Land  
Ministry of Lands ,  
Colombo
07. Divisional Secretary  
Minipe Divisional Secretariat,  
Hasalaka
08. Government Agent.  
District Secretariat,  
Kandy
09. Ekanayake Mudiyanseelage waluwe  
Dayarthna,  
No: 21/48,  
Hadaganawa.
10. Pallewela Sumana Jothi Thero  
Viharadhipathi ,  
Sandagal Viharaya ,  
5th Mile Post,  
Handaganawa ,

**Respondents**

**C.A. Writ Application No.752/10**

Before :                   **S.Sriskandarajah, J (P,C/A)**  
**Deepali Wijesundera, J**

Counsel:                   Upul Ranjan Hewage for the Petitioner  
Uresha Fernando for the 1<sup>st</sup> to 8<sup>th</sup>  
Respondents  
Kumar Dunusinghe for the 9<sup>th</sup> and 10th  
Respondents.

Argued &

Decided on:               16.07.2012.

**S.Sriskandarajah, J. (P,C/A)**

The Petitioner submitted that an annual permit was granted to the Petitioner's mother Anulawathie on 28.03.1984. Thereafter a further permit was issued under Section 19(2) of the Land Development Ordinance on 27.09.1994 in relation to the land in dispute. The Petitioner's mother died on 20.03.2010, a notice under Section 106 was affixed on the land on 08.06.2010 informing that an inquiry will be held on 12.7.2010. This notice was addressed to M.W.J.M.Anulawathie. Thereafter another notice was issued on 28.06.2010 noticing the Petitioner to be present for an inquiry on 09.08.2010 under Section 106 of the said Ordinance.

On 09.08.2010 the inquiry was held and the Petitioner and the 10<sup>th</sup> Respondent participated in the said inquiry. After the conclusion of the inquiry an order was made on 13.10.2010 under Section 109 of the said Ordinance. Section 109 provides that if the permit holder fails to appear on the date and at the time and place specified in the notice issued under Section 106 or appears and states that he has no cause to show why his permit should not be cancelled the Government Agent may make an order cancelling such permit if that there is breach of any condition. The order under this Section could only be made if the permit holder or successor is not present or states that he has no cause to show. In this particular inquiry the petitioner who claims to be the successor of the said permit was present at the inquiry and claimed to have shown cause. In this instant the order should have been made under Section 110 of the said Ordinance after considering the cause shown by the permit holder or the successor of the said permit. In these circumstances the order made under Section 109 is ultra vires the power of the 1<sup>st</sup> Respondent and therefore this Court sets aside the order marked X29 dated 13.10.2010. As an inquiry was held the 1<sup>st</sup> Respondent could make an appropriate order if necessary under Section 110 of the said Ordinance.

In view of the above the application for a writ of certiorari is allowed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**Deepali Wijesundera, J**

I agree

**JUDGE OF THE COURT OF APPEAL**

KLP/-