

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

CA Writ 725/2010

Kanapathipillai Rathnasothy
New Samantha Street,
Pandirippu – 1B

Appellant

Vs.

Hon. Attorney General
Attorney General's Department,
Colombo 12.

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 1st to 8th
Respondents
Kumar Dunusinghe for the 9th 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 10th 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 1st Respondent and therefore this Court sets aside the order marked X29 dated 13.10.2010. As an inquiry was held the 1st 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/-