

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

CA Writ 221/2010

Badurakada Kamalasiri
No: 45,
Track 04,
South Bank,
Rajanganaya.

Appellant

Vs.

Divisional Secretary,
Divisional Secretariat Office,
Rajanganaya.

And 04 others

Respondents

C.A. Writ Application No.221/2010

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

Counsel: Mahinda Ralapanawe with Nisansala
Fernando for the Petitioner.
Thilak Bandara Wanduressa with
P. Raveendran for 4th Respondent.
F.Jameel DSG for 1st to 3rd & 5th
Respondents.

Argued &

Decided on: 28.06.2012.

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

The petitioner in this application has sought a writ of certiorari to quash documents marked "Y6" dated 12.01.2000, "Y7" dated 12.01.2000 and "Y8 (a)" dated 12.01.2000 and entrees made in marked as X9(a) and X9(b) in 1995. The petitioner is seeking to quash these documents by an application to this court in 2010 after about 10 years. The only explanation given by the petitioner is that he had been wrongly advised to file an application in the Provincial High Court and as the said court has no jurisdiction, this application was filed in this court. This explanation cannot be accepted by this court as an explanation for seeking a relief after 10 years.

The main issue in this application is in relation to the permit that was issued to Badurakade Jamis. The said Badurakade Jamis died without any children. The said Jamis was not married and the said Jamis had three brothers and a sister, all of them according to the document presented to this court, had died before Jamis's death.

There were only two nephews, namely, the petitioner and the 4th respondent who are entitle to the said permit under the 3rd schedule of the Land Development Ordinance. The complaint of the petitioner is that the Divisional Secretary has given the said permit to the 4th respondent without holding an inquiry. The 3rd schedule, rule 2 says where in any group of relatives mentioned in the table, there are two or more persons are equally entitled and willing to succeed, the Government Agent may nominate one of such persons to succeed to the holding, such decision of the government agent shall be final. In this case, out of the petitioner and the 4th respondent, the Divisional Secretary has chosen to grant the said permit to the 4th respondent. The petitioner in this application has not submitted any evidence to show that the petitioner is the oldest or he is elder to the 4th respondent.

In these circumstances, the petitioner has not established that he is entitled to said permit or in other words the permit issue to the 4th respondent was in violation of the 3rd schedule of the Land Development Ordinance. In the above circumstances, the permit issued by the Divisional Secretary to the 4th respondent has not been proved to be illegal or unreasonable this court cannot interfere in that decision. Hence this court dismisses the application without costs. Support leave to appeal if any on 25.07.2012

PRESIDENT OF THE COURT OF APPEAL

Deepali Wijesundera, J

I agree

JUDGE OF THE COURT OF APPEAL

Na/-