

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

Ratnayake Mudiyanseelage Gunaratne  
Okkampitiya Settlement,  
Maligawila, Okkampitiya

**Petitioner**

C.A.Writ Application

vs

No. 406/2011

V.U.K. Agalawatta,  
Divisional Secretary, Buttala &  
4 others

**Respondents**

Before: S. Sriskandarajah J, P/C.A.,

Sunil Rajapakse J.,

Counsel: Shantha Jayawardena with Duleeka Imbuldeniya for the  
Petitioner.

Ms S. Hettiarachchi for the 4<sup>th</sup> Respondent

Argued on: 25<sup>th</sup> September 2012

Decided on: 18<sup>th</sup> March 2013

**Sunil Rajapakse, J.,**

This is a matter under the provisions of Land Development Ordinance and  
the Petitioner in his application seeks following reliefs as prayed for by the

Petitioner in his petition.

- a) a mandate in the nature of a writ of certiorari quashing P7;
- b) writ of certiorari quashing the nomination of the 4<sup>th</sup> Respondent as the successor for the entire paddy land;
- c) writ or certiorari quashing the registration of P7 in P8;
- d) writ in the nature of writ of prohibition, prohibiting the 1<sup>st</sup> Respondent from permitting the 4<sup>th</sup> Respondent to exercise right over the entire paddy land;
- e) writ of prohibition, prohibiting the 1<sup>st</sup> to 3<sup>rd</sup> Respondents from issuing a Permit and/or grant to the 4<sup>th</sup> Respondent in respect of the paddy land referred to in the schedule to P1, based on P7 and/or P8;
- f) writ of mandamus directing the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents to issue permit or grant to the Petitioner under Land Development Ordinance in respect of 1 ½ acres of the paddy land referred to in the schedule to P1;

The facts of this case are briefly summarised as follows :

The Petitioner in his petition says that his father Punchi Banda was the original owner of the land which is the subject matter of this application. Petitioner submitted that his father Punchi Banda died on 28<sup>th</sup> of June 2005 and his mother Menika passed away on 5<sup>th</sup> December 1995. Petitioner's sister Ratnayake Mudiyanseelage Somawathie (3<sup>rd</sup> nominee in the aforesaid nomination) also died on 29<sup>th</sup> December 2002 at the Cancer Institute Maharagama. The Petitioner contended that his father had been initially issued with a Permit under the Land Development Ordinance and

his father nominated the Petitioner, the 4<sup>th</sup> Respondent and the Petitioner's sister Somawathie as successors to the said disputed paddy land by entering their names in the prescribed form issued under the Land Development Ordinance for that purpose. This nomination was duly registered at the Land Registry under No. LDO/M4155. The Petitioner contended that after the death of his father disputes arose between the Petitioner and the 4<sup>th</sup> Respondent. As the 4<sup>th</sup> Respondent claimed that their father Punchi Banda, prior to his death had nominated him as the successor to the entire extent of the paddy land. Further he stated that he found another nomination dated 20.07.2005 which was registered at the Land Registry on 25.07.2005. In that nomination Punchi Banda had cancelled the earlier nomination and nominated only the 4<sup>th</sup> Respondent as the successor in respect of the entire paddy land. In this case the Petitioner's main contention is that as his father died on 28.06.2005, there was no way in which the second nomination could have been made and signed by his father on 20.07.2005. Second nomination (P7) was registered at the Land Registry on 25.07.2005.

The Petitioner contended that under the provisions of Land Development Ordinance a nomination must be made during the lifetime of the owner by Section 60 of the said Ordinance. Therefore, nomination of a successor must be registered before the death of the owner of the holding or the Permit holder.

The 4<sup>th</sup> Respondent in his objection admitted that his father Punchi Banda had passed away on 28.06.2005. Further he stated that his father Punchi Banda had cancelled the earlier nomination before his death and nominated him as the new successor to the disputed land. Further, he claims that he has not perpetrated any fraud as stated in the Petitioner's petition. The 4<sup>th</sup> Respondent's contention is that his father Punchi Banda had cancelled the earlier nomination and he nominated him (the 4<sup>th</sup> Respondent) as the successor to the disputed entire land.

However, in this case, the 4<sup>th</sup> Respondent's position is that he was nominated a successor to his father. Further he says under the Land Development Ordinance he is the legal successor to the entire paddy land under Permit/Grant by virtue of the provisions of the Land Development Ordinance. Therefore the 4<sup>th</sup> Respondent claims that the decision of the 1<sup>st</sup> Respondent naming the 4<sup>th</sup> Respondent as the successor to the said land is not unlawful and ultra vires. But the court holds that this submission cannot be substantiated by the provisions of the Land Development Ordinance.

The main point argued by the learned Counsel for the Petitioner was that the registration of the nomination of the 4<sup>th</sup> Respondent in respect of the entire paddy land is invalid in terms of Section 60 of the Land Development Ordinance.

Section 60 of the Land Development Ordinance enacts that

“No nomination or cancellation of a successor shall be valid unless the document (other than a Lastwill) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or Permit Holder.”

In this case both Petitioner and the 4<sup>th</sup> Respondent admitted that the owner of the said disputed land passed away by 28<sup>th</sup> June 2005. It was further proved by document P5 (the death certificate of Puchi Banda). Further, the 4<sup>th</sup> Respondent in his written submissions admitted that document P7 had been registered after the death of Puchi Banda, the original Permit Holder. One of the questions that arose before the Court was whether the said document marked P7 was a valid document in terms of Section 60 of the Land Development Ordinance.

After evaluating the submissions made by the Petitioner and the Respondents, the Court holds that Puchi Banda (the original Permit Holder) died on 28<sup>th</sup> June 2005 and the document marked P7 was registered at the Land Registry on 25<sup>th</sup> July 2005, after the death of Puchi Banda.

In this regard I would like to cite following authorities:

Gunadasa vs Marywathy – 2012(BLR pg.248). It was held :

*“According to Section 60 of the Land Development Ordinance, referred to above nomination could become effective only if such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the Permit Holder”.*

In Madurasinghe vs Madurasinghe – 1998 2 SLR 142. It was held that the successor under the Land Development Ordinance has to be considered in terms of Section 60 of the said Ordinance.

Therefore, it is evident that it is necessary to apply the provisions contained in Section 60 of the Land Development Ordinance to the facts of this case.

On the basis of document marked P7, the 4<sup>th</sup> Respondent's name had been entered into the Register of Permit/Grant under Land Development Ordinance on 25.7.2005. The original Permit Holder Puchi Banda died on 28.06.2005. It is obvious that the nomination of the 4<sup>th</sup> Respondent and cancellation of Petitioner's name had been registered after the death of Puchi Bnda who was the original Permit Holder. Therefore, the Court holds that document marked P7 is invalid and illegal in terms of Section 60 of the Land Development Ordinance. .

In all the above circumstances, this Court grants a writ of certiorari under prayer (c), (d), (e) and (f) of this application without costs.

JUDGE OF THE COURT OF APPEAL

Sriskandarajah J.,

I agree.

PRESIDENT – COURT OF APPEAL.