

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

1. Rajapaksha Sumanawathi
Naramana, Padeniya.
2. Rajapaksha Pedige Kamalawathie
Naramana, Padeniya.

PETITIONERS

C.A. 291/2009 (Writ)

Vs.

1. The Divisional Secretary
Divisional Secretariat
Wariyapola.
2. Provincial Commissioner of Lands
Provincial Commissioner's Office
Kurunegala.
3. The Commissioner General of Lands
No. 7, Gregory's Avenue,
Colombo 7.
4. R. P. Ariyaratne
Naramana, Padeniya
5. Hon. Attorney General
Attorney General's Department.
Colombo 12.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Deepali Wijesundera J.

COUNSEL: W. Dayaratne P.C., R. Jayawardena with D. Dayaratne for the Petitioner
A. Samaranayake S.S.C for 1st to 3rd & 5th Respondents

ARGUED ON: 24.07.2013

DECIDED ON: 30.10.2013

GOONERATNE J.

The two Petitioners to this application have sought Writs of Certiorari and Mandamus to quash the decision in letter X17 and permit 1R1 and to compel the 1st Respondent to issue a permit or a deed of disposition to the two Petitioners in terms of the Land Development Ordinance. It is the case of the Petitioners that their father R.P. Koranelis was the original permit holder (X1) in terms of the Land Development Ordinance. The father of the Petitioners nominated his wife Premawathie, as successor but she predeceased him prior to his death (X2). However Koranelis executed a last will on 2.3.2003 in respect of the subject matter and the two Petitioners became the beneficiaries. Petitioners

have produced the last will (X3), Death Certificates X4 & X5, the Birth Certificate X6, in support of their case.

It is stated that upon the death of 'Koranelis' a testamentary case had been filed to prove the last will. The order at X9 of the learned District Judge inter alia state that probate granted to Sumanawathie (1st Petitioner) and to exclude the subject matter from the estate of Koranelis. The trial Judge also state in his order that subject matter of the case is a permit issued under the Land Development Ordinance and it is State Land. It appears to this court that the land being excluded from the testamentary case led the 4th Respondent. (eldest son of Koranelis) to assert his position and complain to the 1st Respondent on the basis of the line of succession for issuance of permits under the Land Development Ordinance. The material placed before court indicates that an inquiry was held based on 4th Respondent's complaint. The inquiry was held by the 2nd Respondent and all the children of the deceased were called for an inquiry. Petitioner state that at the inquiry all concerned, other than the 4th Respondent participated at the inquiry and all others agreed to alienate the land in dispute to the Petitioners. Petitioner state that by letter X12 which refer to a circular and a suggestion made to delay the procedure of nominating a successor, and X12 is a letter between Government and

Provincial Officers. There is also reference in the petition to letters X15 & X16. (Attorney General's opinion). The position in X16 and X17 which are under review by court, is that the last will has not been registered within 3 months from the date of the death of the permit holder as required by Section 64 of the Ordinance and that the said last will is not valid. Based on this view 3rd Respondent informed the 1st Respondent to decide on the successor to the required permit under Section 72 of the Ordinance.

The other matters urged inter alia on behalf of the Petitioners is that Koranelis had given all 11 children sufficient land except to the 2 Petitioners. The 4th Respondent also had been given land by Koranelis. Further by X19 Attorney-at-Law who attested the last will informed the 1st Respondent that the last will was sent for registration. X19 is dated 30.11.2008. Koranelis died on 29.3.2003 (X4). Learned President's Counsel drew the attention of this court to certain provisions of the Land Development Ordinance and impressed upon this court that failure to register the last will under Section 64 of the Ordinance without proof is a technicality and it does not go to the root of the case.

The position of the official Respondents inter alia as submitted by learned Senior State Counsel is that failure to register the last will as being fatal for the Petitioners. Further such omission is not a disputed fact, and the petitioners do not deny their lapse to register within time. Attention of this court was drawn to the provisions that require registration, by learned Senior State Counsel, (vide Sections 19(3), 29 to both permits and grants) and Section 56(1), 58 & 64 of the Land Development Ordinance. To the written submissions submitted to this court on behalf of 1st to 3rd & 5th Respondents are annexed marked 'A' orders published by the relevant Minister in terms of the provisions of the Land Development Ordinance. It relates to the prescribed procedure or the manner required to be adopted in registering permits and grants. (To be registered in a folio contained in a special register meant for the purpose in the Land Registry).

This court is mindful of the fact that the Land Development Ordinance was enacted to provide for the systematic development and alienation of state land in the country. A permit is personal to a permit holder and upon his death no title will pass to his heirs other than a successor duly nominated. (Section 26). This court also observes that the legislature in enacting this ordinance has at various stages of alienation of state land and registration of same either on a permit or grant provided that it need to be done within a time

limit, more particularly a condition to be adhered to by the respective beneficiaries. It is so done for the systematic alienation and development of State land. When one attempts as a permit holder or as a holder of a grant to convey his or her rights certain time limits need to be followed as the property in dispute remains state land. As such state need to exercise some control to achieve the purpose of the statute, unlike private property where court will not insist on strict compliance on time limits even in cases where a last will has to be proved or an application for probate is made to court, since they are private dealings and private arrangements. Case before this court is different and strict compliance of the statute would be essential. I would refer to the provisions where registration is essential in case of a last will, as follows:

Section 64..

A nomination or cancellation of a nomination made in the last will of the owner of a holding or a permit-holder shall not be valid unless it is registered in the prescribed manner within a period of three months reckoned from the date of the death of the owner of that holding, or the date of the death of that permit-holder, as the case may be.

Section 65(1)

A nomination or a cancellation of a nomination made in the last will of the owner of a holding or of a permit-holder shall not be registered unless the applicant for registration shall furnish to the registering officer a certified copy of that will together with a certificate in the prescribed

form to the effect that probate of that will has been applied for, signed by the secretary of the District Court to which the application for probate was made.

In the above context (Sections clear and no further interpretation would be necessary) failure to follow the method and procedure contained in the Sections 64 & 65 would result in a state of invalidity which might ultimately cause surrender of land to the State. The following to be noted.

Section 85..

A successor duly nominated by a permit-holder who fails to make application for a permit within a period of one year reckoned from the date of the death of that permit-holder, shall be deemed to have surrendered to the Crown his title as successor to the land.

Section 86..

Land deemed to have been surrendered under section 85 shall vest in the Crown free from all encumbrances

The Petitioners argued that the original permit holder died on 29.3.2003 and the Petitioners instituted testamentary proceeding in the District Court on 27.6.2003 within 3 months as referred to in the order X9, and Petitioner thought it fit to impress this court that Section 58(1) of the Ordinance does not apply to registration of last wills and that Section 58(1) refer to other documents where the place of registration is stated i.e Registrar of Lands of the District. Then an attempt was made by the Petitioners to demonstrate that in terms of Section

64 which applies to last wills the place of registration is silent and mere failure of the Petitioners to register the last will under Section 64 without proof is a technicality which does not go to the root of the case. I am unable to agree to that view suggested by the learned President's Counsel for the Petitioners. This court takes the view that strict compliance with the statute is mandatory in case of the Land Development Ordinance and Section 64 and Section 65 need to be followed exactly to the point. The words included in the Section 65(1) with emphasis is that ..." a certified copy of that will together with a certificate in the prescribed form to the effect that probate of that will has been applied for, signed by the Secretary of the District Court. It is only a notification of probate that is required in terms of the statute, at a early stage. This court is also of the view that Section 65(2) is another situation where probate is refused by court. That would occur at a subsequent stage of the proceedings in the District Court.

This court is firmly of the view that there is no technicality in the manner argued by learned President's Counsel since the last will in question is a will executed dealing with State Land and not private property. As observed above courts need not apply a strict standard if the property in question was not subject to the provisions of the above statute, as private dealings and

transactions on a last will are purely family arrangements, but not in the case of last wills executed under the Land Development Ordinance.

Learned President's Counsel as regards the arguments advanced on 'technicality' cited some case laws. Nanayakkara Vs. Warnakulasooriya, S.C. Appeal 50/2008, W.M. Mendis & Co. Vs. Excise Commissioner. The case in hand is no comparison to the above decided cases, since the Land Development Ordinance includes clear provisions which are very substantive in their nature and non compliance with same is no technicality, but fatal to the application. The above decided cases no doubt demonstrate sound law on the aspect of technical objections. The argument of learned President's Counsel on this question has to be rejected for the reasons stated above, since non-compliance with the provisions of the statute would necessarily lead to abuse and result in a situation for the authorities concerned to work in a state of confusion, which should be avoided.

In all the above facts and circumstances we are not inclined to grant any relief to the Petitioners, for non compliance with statutory requirements. It is very unfortunate that the last will has to be rejected. We are inclined to accept the position of the learned Senior State Counsel who analysed the provisions of

the Land Development Ordinance. Writs of Certiorari and Mandamus are discretionary remedies of court. This is not a fit case to consider the issuance of the writs sought . Application dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL