

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

1. Julinona Wijesekara
2. Sumanawathi Wijesooriya
3. Jayasena Wijesooriya
4. Sirinimal Wijesooriya
5. Neetha Jayanthi Wijesooriya
6. Vineetha Wijesooriya
7. Sujatha Indrani Wijesooriya

All of No. 5, 1st Lane
Dharmapala Mawatha
Ampara.

C.A. No. 441/2010 (Writ)

Vs.

PETITIONERS

1. Sunil Kannangara
District Secretary of Ampara
District Secretariat,
Ampara.
2. U. P. Indika Anuradha Piyadasa
The Divisional Secretary,
Divisional Secretariat,
Uhana.
3. The Commissioner General of Lands,
The Land Commissioner General's
Department,
No. 7, Hector Kobbekaduwa Mawatha,
Colombo 7.

4. Deepani Manel Senadeera
No. 26/110, Kumudugama,
Dadayamthalawa,
Amapara.
5. State Mortgage and Investment Bank
No. 269, Galle Road
Colombo 3.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
W.M.M. Malinie Gunaratne J.

COUNSEL: Rasika Dissanayake for Petitioners
Chaya Sri Nammuni S.C., for 1st, 2nd, and 3rd Respondents

ARGUED ON: 21.10.2013

DECIDED ON: 27.01.2014

GOONERATNE J.

This is an application for a Writ of Mandamus as per sub paragraphs 'b' & 'c' of the prayer to the petition although the caption to the petition refer to certiorari as well. Seven petitioners are all children of one W.H.G.Pantis, other

than the 1st Petitioner being the widow of Pantis. The said Pantis was at one time a permit holder and on or about 1987 became entitled by P2 & P3 to two grants dated 05.06.1987. The grants P2 & P3 consists of highland and paddy land as described in paragraph 12 of the petition.

The above named Pantis nominated the following as successor, according to the petition.

- (a) 6th Petitioner (daughter) as successor to a plot of land in extent of 2 rood from grant P2 (high land) in 1995. Nomination marked as 'P4.
- (b) On 25.3.1998 nominated W.H.G. Sunil Wijesooriya in an extent of 1 ½ acres of high land.
- (c) W.H.G. Sunil Wijesooriya and 3rd & 4th Petitioners as successor to paddy land granted on P3. This is by letter P6 (not a prescribed form as 'P4').

Pantis the original grantee died on 24.5.2006. (P7) W.H.G. Sunil Wijesooriya died on 14.2.2009. Died intestate leaving the widow (4th Respondent) and two children. Thereafter 4th Respondent disputed the rights of Petitioners to land grants P2 & P3.

Petitioners states having perused the extracts pertaining to the above described lands in the Land Registry it revealed that a few entries have

been made in violation of the Land Development Ordinance. In relation to P2, document P8a is annexed and in relation to P3, P8b is annexed.

The grievance of the Petitioners are more particularly described in paragraph 21 of the petition. I would refer to same as described therein.

- (i) The grants marked P12 and P13 have been executed irrespective of the permit marked P1 issued to the said W.H.G Pantis and as a result the 3rd Petitioner has been deprived of his legitimate rights to obtain a grant in respect of the land for which the permit has been issued in his name under section 19(2) of the Land Development Ordinance.

A true copy of the said permit issued in the name of the 4th Petitioner is annexed marked as "P9" .

- (ii) The 2nd Respondent and/or his predecessor have failed to follow the guidelines and/or directions issued by the 3rd Respondent in relation to the nomination of successors and thereby allowed to series of irregularities and/or malpractices.

True copies of the circulars bearing Nos. 2007/3 and 2008/2 are marked as "P10" and "P11" .

- (iii) The 1st to 3rd Respondents have allowed to effect several irregular transactions in the absence of a valid cancellation of the nomination of successors.

- (iv) The subject file relating to the said two lands consist of several highly suspicious and irregular documents of which the authenticity is highly questionable
Copies of the three documents obtained from the said file said to have been signed by W.H.G Pantis are respectively annexed hereto marked as P12", "P13" and "P14" .

- (v) The said subject file consist of a document set to have been signed by the 1st Petitioner which in fact has not been signed by her and in any event the 1st Petitioner is not authorized under section 48 of the Land Development Ordinance to execute such a document and the 1st to 3rd Respondents have acted upon the same.
- (vi) A copy of the letter said to have been signed by the 1st Petitioner is annexed here to marked as "P15".
- (vii) A transfer deed has been executed in relation to the land referred in the Grant marked P2 illegally and unlawfully without obtaining the prior approval from the 1st to 3rd Respondent

The said deed of Transfer is annexed hereto marked as "P16".

By document P17 Petitioners have complained to the 1st & 3rd Respondents. The 3rd Respondent called for a report by P18 from the 2nd Respondent. The Petitioners blame 1st – 3rd Respondents and more particularly the 2nd Respondent as in paragraphs 25 – 28 of the petition.

The Respondent's rely on documents marked 2R1 to 2R4 produced along with the affidavit of the 2nd Respondent. It is stated therein that the original grantee 'Pantis' by 2R1 had nominated Sunil Wijesooriya and that was his wish. As such steps were taken accordingly. It seems to be the position of the above Respondents that the original grantee Pantis has made a due nomination under

the law. Documents 2R2 & 2R3 are also produced by these Respondents to prove the alienation of two blocks of land on 27.11.2000 & 4.1.2007 in accordance with the wishes of the original grantee Pantis. Prior to the death of Pantis nomination made for highland as in 2R1. The said Sunil Wijesooriya granted paddy land on 27.11.2007. Based on 2R4 (letter by wife of Pantis) dated 21.12.2006. As such Divisional Secretary granted permission for the issue of paddy land in favour of Sunil Wijesooriya. By P9 the 4th Petitioner was granted a plot of land. It is the position of the official Respondents that alienations were done according to law.

The other contesting Respondent is the 4th Respondent. It is emphasized that the act of nomination is not a disposition. Section 55 of the Land Development Ordinance reads thus:

The act or transaction whereby a successor or a life-holder is lawfully nominated under the provisions of this Chapter shall not be or be construed as a disposition of the land for which such successor or life-holder is so nominated.”

What is stated by the 4th Respondent is that W.H.G. Pantis by deed of transfer No. 4 of 27.11.2000 (P16) has transferred the entirety of his rights to the high land in favour of son W.H.G. Sunil Wijesooriya, having obtained necessary authority from the officials. As regards the paddy land I note the following from the written submissions filed on behalf of the 4th Respondent.

1. The extracts obtained from the Land Registry pertaining to the paddy land is annexed to the petition marked P8 (b).
2. The said W.H.G. Pantis by document marked P13 to the petition (which was also produced marked as 2R1 annexed to the Statement of Objections of the 1st to 3rd Respondents) nominated his son, W.H.G. Sunil Wijesuriya as a successor to the entirety of the paddy land referred to above.
3. The document in the relevant format as prescribed by the Land Development Ordinance and which was signed by the W.H.G. Pantis, the Divisional Secretary and which was registered in the Land Registry appointing W.H.G. Sunil Wijesuriya as a successor to the paddy land as aforesaid is annexed to the petition marked P14.
4. Thereafter, subsequent to the death of W.H.G. Pantis (original grant holder), the Divisional Secretary has granted permission for the issue of the paddy land in favour of Sunil Wijesuriya. (vide paragraph 15(d) of the affidavit of the 2nd Respondent dated 11th February 2011 and paragraph 14 (d) of the Statement of Objections of the 1st to 3rd Respondent)
5. The decision to issue the paddy land in favour of Sunil Wijesuriya has been arrived at consequent to the death of W.H.G. Pantis and the written instructions received from the wife of the W.H.G. Pantis, Julinona Wijesekera (vide paragraph 15 (d) of the affidavit of the 2nd Respondent dated 11th February 2011 and paragraph 14 (d) of the Statement of Objections of the 1st to 3rd Respondent).
6. The letter containing the written instructions of the wife of the W.H.G. Pantis, Julinona Wijesekera was annexed to the petition marked P15 and the said letter was also produced annexed to the Statement of Objections of the 1st to 3rd Respondents marked as 2R4.
7. The Petitioners, in paragraph 21 (v) of the petition states that the subject file pertaining to the said land consists of a document said to have been signed by the 1st Petitioner but which was not signed by the 1st Petitioners.

This court has considered the facts presented by all parties. In any event there is no basis to contest the original grants issued in favour of the father of the 2nd – 7th Petitioners Pantis. Material furnished by the Petitioners does not disclose in a systematic way the necessary public duty and the statutory duty required for the purpose of issuing a Writ of Mandamus. Although Petitioner's attempt to make allegations against the official Respondents it appears to this court that it is merely allegations made without much substance. The question of alleging forgery of documents, illegality of fabricating documents are all facts denied by the Respondents. In the way facts are disputed would not assist this court to arrive at a decision whether to grant the relief prayed for or not. However the allegations are not substantiated and this being a review procedure this court cannot step into an area to decide allegation of forgery or fabrication of documents. These are matters to be decided elsewhere and not in this application seeking a prerogative Writ of Mandamus. On the other hand the official Respondent whilst rejecting the position of the Petitioners aver that steps were taken to provide the said Sunil Wijesooriya (son of Pantis) land according to the wishes of the original grant holder W.H.G. Pantis. We have also examined documents 2R1 to 2R4.

A Mandamus will not be granted to correct an erroneous decision as to fact. 2 CLW 14: 10 Times 65; 12 Law Rec 176. It is not a Writ of Right and not issued as a matter of course 1 CLW 306. A party applying for a Mandamus must make out a legal right and a legal obligation 1 NLR at 35. Error in the exercise of power notwithstanding, provided there has already been a valid exercise of the power in question, mandamus does not lie. De Soysa Vs. Dyson (1945) 46 NLR 351 where a discretion is available and has been exercised, even where it may have been exercised erroneously, Mandamus is not available: per T.S. Fernando J. A. CJ De Silva Vs. Senanayake (1967) 70 NLR 320, 324.

In all the above facts and circumstances, we are not inclined to grant the relief sought. As such we dismiss this application without costs.

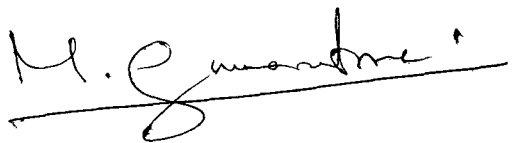
Application dismissed.



JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.



JUDGE OF THE COURT OF APPEAL