

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

CA Writ 556/2010

Palate Gedera Gunadasa,
Pradeshiya Sabawa,
Medirigiriya.

Plaintiff-Respondent-Appellant

Vs.

Palate Gedera Marywathy,
Parana Pola Asala,
Diyasenpura.

Defendant-Appellant-Respondent

C.A. Writ Application No. 556/2010

BEFORE : K.T. Chitrasiri, J. &
L.T. B. Dehideniya, J

COUNSEL : Rohan Sahabandu P.C. for the Petitioners.
Suranga Wimalasena, S.S.C. for the 1st – 5th
Respondents.

Kumar Dunusinghe for the 6th Resapondent.

DECIDED ON : 15.07.2015

K.T. Chitrasiri, J.

Heard all three counsel in support of their respective cases.

Petitioner, by his petition dated 16.08.2010 sought *inter alia* to have a Mandate in the nature of a Writ of *Certiorari* to quash the re-registration effected in the name of the 6th Respondent namely D.M.Upali Ranasinghe as the successor to the permit holder in the Register of permits/grants under the land Development Ordinance. Admittedly, the aforesaid re-registration in the name of the 6th Respondent had taken place after the death of the original permit holder namely Bebinona who is the mother of the 6th Respondent and of the Petitioners. Section 60 of

the Land Development Ordinance stipulates that: *“No nomination or cancellation of the nomination of a successor shall be valid unless the document (other than a last will) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the permit-holder”.*

The aforesaid position of law had been discussed in the case of *Palate Gedera Gunadasa Vs. Palate Gedera Merywathy* (S.C. Appeal No.82/2008 Supreme Court minutes dated 26.10.2010). In that Judgment Dr.A. Shirani Bandaranayake, J. (as she was then) has stated thus:

According to Section 60 of the Land Development Ordinance, referred to above, a nomination would become effective, only if such nomination or cancelation is duly registered before the date of the death of the owner of the holding or the permit-holder. It is therefore quite obvious that the nomination of the respondent had been registered on a date several months after the death of the said Jamis, who was the permit-holder.

It is therefore evident that it is necessary to apply the provisions contained in section 60 of the Land Development Ordinance to the facts of this case and the learned Judges of the High Court had

erred by failing to consider and apply section 60 of the said Ordinance.

The matters referred to above show that it is a legal requirement to register cancellation of the nomination of the successor prior to the death of the permit holder or the grantee who makes such a cancellation of the nomination.

At this stage, Mr. Rohan Sahabandu P.C. citing *Madurasinghe Vs. Madurasinghe (1988 (2)SLR 142)* submits that the Court had discussed the instances that could be considered as valid in order to accept the registration that was effected after the death of the permit holder provided those facts fall beyond the control of the persons who are responsible for the registration of such a cancellation. In the case of *Madurasinghe* too, Dr. A. Shirani Bandaranayake, J. has referred to the said decision in *Gunadasa Vs. Merywathy (supra)* referred to by Mr. Sahabandu P.C.

Therefore, it is clear that the authorities referred to above as well as the statutory provisions in force, require it to register the cancellation of the nomination before the death of the permit holder. As mentioned before, the grantee who made the cancellation of this nomination had died on 28.02.2000 and the registration of the cancellation was effected only on 14.09.2009. Therefore it is clear that the registration of the

cancellation of the nomination had taken place after the death of the grantee who was the mother of the subsequent nominee.

In the circumstances, we do not see any error in the decision of the 5th Respondent. Hence, we are not inclined to interfere with the impugned decision made by the 5th respondent. Since the said decision is now accepted as valid, question of issuing a writ of Mandamus will not become necessary.

For the aforesaid reasons, this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J.

I agree

JUDGE OF THE COURT OF APPEAL

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