

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

**In the matter of an Application for mandates in
the nature of Writ of *Mandamus* under and in
terms of Article 140 of the Constitution of Sri
Lanka**

H.A.Daminda Hettiarachchi,
No.591/3, Kuruppu Junction,
Polonnaruwa.

PETITIONER

CA/WRIT 360/2013

Vs,

1. Mr. Nimal Abeysiri,
District Secretary of Polonnaruwa,
District Secretariat,
Polonnaruwa.
2. E.M.D.S.Ekanayake,
The Divisional Secretary,
Divisional Secretariat,
Thamankaduwa.
3. R.P.R.Rajapakshe,
The Commissioner General of Lands,
The Department of Commissioner General of
Lands,
No.07, Hector Kobbekaduwa Mw,
Colombo 07.
4. Jayasuriya Mudiyanse Lage Sumith Eranga
Weerasinghe,
Gama Hotel,
Nissankamallapura,

Pollonnaruwa.

5. U.D.I.O. Antenat Uduwarage,
Gama Hotel,
Nissankamallapura,
Pollonnaruwa.

RESPONDENTS

**Before : Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel: Rasika Dissanayake for the Petitioner

Manohara Jayasinghe SC for the Respondents

Argued On: 30.06.2015

Written Submissions On: 22.07.2015

Order On: 18.09.2015

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioner has filed this application seeking inter alia;

- b. issue a mandate in the nature of a Writ of *Mandamus* to compel the 1st, 2nd and 3rd Respondents to rectify the error and/or mistake appears in the Grant marked P-2

One Dewatha Pedigedara Edwin of Nissankamallapura was issued with a permit under the Land Development Ordinance in respect of a Land in Nissankamallapura to the extent of two Roods and 10 perches in the year 1997. In the year 1999 Her Excellency the then President issued a grant in respect of the said land to the said Dewatha Pedigedara Edwin, which is produced marked P-2.

The said land has been identified as the allotment of land bearing No 710A depicted in the Surveyor General Plan bearing No අ.ඪ.ඪ. 3950 which is produced marked P-3 in the said Presidential grant.

The Petitioner has become the lawful owner of the said portion of land by Deed of Transfer No 1520 attested by Siripala Ranathunga Notary Public and the said Deed of Transfer was prepared with the written permission obtained from the divisional secretary Thamankaduwa by the said Dewatha Pedigedara Edwin who was the lawful grantee of the said Land.

According to the Petitioner, the said land had been identified in the 1st schedule to the said deed in the same manner, as it referred to in the said Presidential Grant.

The Petitioner's position before this court was that he permitted a known couple(4th and 5th Respondents) to occupy the said land, but later when he got to know some surreptitious conduct of the said 4th and 5th Respondents, demanded them to vacate the said land and to hand over the vacant possession to the Petitioner.

Since the 4th and 5th Respondents refused to vacate the said land, Petitioner has filed an action in the District Court of Polonnaruwa seeking to eject them from the said Land.

When the said action was pending before the District Court of Polonnaruwa, the Petitioner has realized that the lot number referred to in the Presidential grant and the subsequent deed of Transfer from which the Petitioner claims title, mistakenly typed and/or printed as 710A but the correct number should be 728.

When the said discrepancy was detected, the Petitioner has taken steps to withdraw the District Court Action with liberty to file a fresh action, once the lot numbers are rectified and thereafter requested the Grama Niladhari of the area to issue a certificate confirming his position. Accordingly the Grama Niladhari has issued a certificate which was produced marked P-7 on 12.11.2011. Since then several representations were made by the Petitioner to the 1st and 3rd Respondents but his request had not been implemented. The said correspondents are evinced from the documents produced before us marked P-9 to P-14.

The inquiries had been held by the 2nd Respondent and the 3rd Respondents representative and according to P-11, a letter addressed to 3rd respondent by his representative and also by P-12 letter signed by the 2nd Respondent it is admitted a rectification is necessary and in fact the 2nd Respondent had admitted forwarding the necessary documents to the representative of the 3rd Respondent on 29.12.2011 for necessary action.

When this application was filed before this court, the Learned State Counsel who appeared for the 1st to 3rd Respondents have informed that he would not be filing any objections on behalf of the 1st to 3rd Respondents and would be abiding by the decision of this court.

When going through the document submitted before this court by the Petitioner (they were not challenged by the Respondents) it is crystal clear that the mistake had taken place when the Original grant was made to Dewatha Pedigedara Edwin. Until it was revealed in the District Court, the parties were under the impression that the correct lot number of the said land is 710A but, it should be lot No 728.

4th and 5th Respondents were not represented before this court but from the document produced marked P-12 and P-13 it is evident that the 4th and 5th Respondents were not issued with any permit and they are illegal occupants.

Considering all these issues court decided to grant the relief prayed by the Petitioner in prayer "b" of his Petition and issue a mandate in the nature of Writ of *Mandamus* directing the 1st, 2nd and 3rd Respondents to rectify the error and/or mistake appear in the Grant marked P-2.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. MADAWALA,

I agree,

JUDGE OF THE CUORT OF APPEAL