

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

In the matter of an application for orders in the nature of Writs of Certiorari, Mandamus and prohibition under Article 141 of the Constitution.

CA Writ application No.
635/2011

1. W.M.Dingiri Banda.
2. W.M.Karunathilake

Petitioners.

Vs.

1. G.D.J.Gunaratne,
Divisional Secretary,
Divisional Secretary's Office,
Galenbinudunuwewa.
2. Commissioner General of lands,
Office of Commissioner General of
Lands, Gregory's Road, Colombo 07.
3. The District Land Officer,
Anuradhapura.
4. The Minister of Lands and Land
Development
Gowvijana Mandiraya. No.80/5,
Rajamalwatte Av. Battaramulla.
5. W.Thilakarathne,
No. 175, Getalawa, Galenbindunuwewa.

And 04 others.

Respondents.

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

Counsel : Dr. Sunil Cooray with Sudarshani Cooray for the
Petitioner
Chaya Sri Nammuni SSC for the 1st to 4th Respondents.
Dr. Mahinda Ralapanawa with Nisansala Fernando for
the 5th Respondent.

Argued on : 18.07.2015

Decided on : 07.10.2015.

L.T.B. Dehideniya, J.

This is an application for a mandate in the nature of a writ of certiorari and a Writ of Mandamus. At the argument stage the counsel for the 5th Respondent highlighted the fact that an action is pending in the District Court of Anuradhapura to have a declaration as to the title of the land in dispute subject to this application. The 5th Respondent moved that this matter be laid by till the decision is arrived at by the District Court of Anuradhapura. Learned Counsel for the Petitioners did not agree to this application.

The facts of this case are briefly as follows.

The Original permit holder of the land in question was one W.M.Punchi Banda, the father of the Petitioners and the 5th Respondent. The said Punchi Banda has nominated his wife R.M.Ranmanike as his successor. After the death of the Punchi Banda, the permit was issued to his nominee, his wife, Ranmanike. The said Ranmanike has nominated the 5th Respondent as her successor. On the death of Ranmanike, the 5th Respondent was issued with the grant under the Land Development Ordinance.

The Petitioners instituted this application seeking for a Writ of Certiorari to quash the grant issued to the 5th Respondent. The Petitioners' contention that the issuing of grant is unlawful, arbitrary, and malicious and against the provisions of the land Development Ordinance (as amended) and is null and void. Further the Petitioners submit that the 1st Petitioner being the eldest son of the family had a legitimate expectation that he will be entitled for the permit under the 3rd schedule of the Land Development Ordinance.

The 5th respondent instituted an action in the District Court of Anurahdapura for a declaration of title and ejection on the strength of the grant issued under the land Development Ordinance to him. The 1st Petitioner being the 1st Defendant in the District Court action, filed answer praying for a dismissal of the action and alternatively praying for compensation for improvement. In his answer he pleads that the 5th Respondent being the younger brother and the Petitioner being the eldest, the permit issued to the 5th Respondent (the Plaintiff in the District Court action) is bad in law.

The Plaintiff in the District Court action (5th Respondent) seeking for a declaration on the strength of the grant issued by Her Excellency the President under the Land Development Ordinance. The District Court will decide whether the Plaintiff in that action has proved the title to the land in question or not. District Court cannot go into the matter of procedure adopted by the 1st Respondent in the application to issue the permit.

It has been held in the case of Perera v. Peoples' Bank (78 NLR 239) that;

The District Court has no jurisdiction to grant a declaration in a regular action where such declaration is sought as a supervisory remedy to challenge the validity of a judicial or quasi judicial determination made by a statutory authority. Where it is sought to question such determination, the appropriate remedy is to invoke the supervisory jurisdiction of the Supreme Court by way of a Writ of Certiorari.

In the application before us, the Petitioner is challenging the issuance of the grant. The Petitioners' case is that the 1st Respondent has acted unlawfully, arbitrarily and maliciously. After the death of the predecessor in title, Ranmanike, it is the 1st Respondent who had to decide on the entitlement of succession. When deciding this fact, the 1st Respondent has act fairly and justly. The 1st Respondent should have considered the nomination made by the deceased Ranmanike and the combined possession alleged by the Petitioner. The Petitioners' contention is that the 1st Respondent has failed to consider these facts. Therefore the Petitioner is questioning vires of the 1st Respondent's decision which is an administrative law relief or a supervisory remedy.

In C.A. (Writ) Application No.416/2000 dated 28.09.2015 Chitrasiri J. held (which I agreed) that "*When a judicial pronouncement by a competent court is in existent on a particular issue, then no writ could lie to interfere with such a decision*". In the said case the District Court has pronounced the judgment even before instituting the writ application and the Petitioner has appalled against it. The situation in the present case before us is deferent. The action in the District Court of Anuradhapura is still pending.

In the case before us the issue is also quite different from the issue of the District Court action filed by the 5th Respondent in this case. In this court the Petitioner is questioning the vires of the 1st Respondent to issue the permit to the 1st Respondent. In the District Court action, though the validity of the grant is questioned, main relief sought by the Petitioner (1st Defendant of the said action) is compensation for improvement.

Under these circumstances, I hold that even there is a case pending in the District Court of Anuradhapura on the same subject matter, the writ application in the Court of Appeal can be proceeded.

I set this case for further argument.

JUDGE OF THE COURT OF APPEAL.

K.T.Chitrasiri, J.

I agree.

JUDGE OF THE COURT OF APPEAL