

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

In the matter of an application for mandate,
in the nature of a writ of Certiorari under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

1. Weerasinghe Mudiyanse Lage Ekanayake
Banda
Kabilla, Makulwewa.
2. Weerasinghe Mudiyanse Lage Rathnayake
Banda
Kabilla, Makulwewa.

PETITIONERS

C.A. Application No.577/2011

Vs

1. Divisional Secretary
Ganewatta.
2. Registrar of Land
Kurunegala
3. Weerasinghe Mudiyanse Lage
Seelawathie
Walpola,
Nelumdeniya.
4. Weerasinghe Mudiyanse Lage
Dissanayake (deceased)
Kabilla,
Makulwewa.

4A. Obberiyalage Manikhami

4B. Weerasinghe Mudiyansele Aruna

Chaminda

Both of

Kabilla,

Makulwewa.

4C. Weerasinghe Mudiyansele

Nishanthi Kumari

No. 6, Walasgala Road,

Palugolla, Hiriyala,

Ambagaswewa.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Chula Bandara with

M.L.R. De Silva for the

Petitioners.

Yuresha Fernando S.S.C. for the

1st Respondent.

Nuwan Bopage with

Lahiru Walgama for the 4A, 4B

And 4C Respondents.

ARGUED ON

: 11th November, 2014

DECIDED ON

: 26th February, 2016

Deepali Wijesundera J.

The petitioners have filed this application praying for a writ of certiorari to quash the decision of the first respondent to treat the land grant *Kuru/Pra/24975* date 23/08/1990 marked **P2** as cancelled in view of **P4** dated 27/09/1997 and also to quash the decision to issue **P7** and **P8** both dated 27/09/2000.

The father of the petitioners and third and fourth respondents W.M. Ranbanda was granted a land in terms of the provisions of the *Land Development Ordinance* for the land shown as lot no. 29 in plan marked as **R1** and **R2**. The said Ranbanda had nominated the third respondent namely W.M. Seelawathi as the successor to the property. The third respondent by a letter dated 25/05/1988 has given her consent for the first petitioner to construct a house and occupy a portion of the land. By **P2** on 23/08/1990 the third respondent was given a grant by the President. The third respondent in 1997 by a declaration had renounced all her rights and given the land back to the state. At the same time she has requested the first respondent to transfer the said land to the first and second petitioners and the fourth respondent, all her siblings. The first respondent after registering and accepting the said

renunciation by the third respondent after surveying the land had issued permits to first and second petitioners. The first respondent has also issued two permits to the fourth respondent marked as **P7 and P8**.

The learned counsel for the petitioners submitted that first respondent did not have legal authority to accept the surrender of the grant **P2** given to the third respondent. He stated that in terms of section *3 of the State Land Ordinance* the grantee has to apply to the President to accept the surrender of the land and to re grant the land.

The petitioners further submitted that the first respondent has failed to indicate the manner in which he had decided to accept the surrender of the grant as per **R6** circular. He stated that the first respondent had acted in excess of authority to hold an inquiry and issue new permits under the provisions of the *Land Development Ordinance*. He said the actions of the first respondent are illegal, arbitrary and ultra vires.

Learned counsel for the respondents stated that the petitioner's nomination was never registered under *Sec. 58 (1) and Sec. 60 of the Land Development Ordinance* therefore they have no rights from the

original permit holder. He cited the judgment in **Madurasinghe vs Madurasinghe 2 SLR 142 1988.**

The respondents stated that as the land grant was surrendered to the state, the first respondent being the competent authority to deal with state land could issue permits on the said land.

The respondents further submitted that all permits and grants issued under the Land Development Ordinance are subjected to the provisions of the said ordinance and in the event of any such instrument is surrendered, cancelled or deemed void ab initio it is the prerogative of the respective functionary to once again issue permits under the relevant sections (sec. 19).

The fourth respondent stated that the petitioners are guilty of laches and that the fourth respondents were given land by the state (**Q1 and Q2**).

Section 58 (1) of the Land Development Ordinance states thus;

“A document (other than a last will) whereby the nomination of a successor is effected or cancelled shall not be valid unless and until it has been registered by the Registrar of Lands of the district in which the holding or land to which that document refers is situated”.

Sec. 60 of the Land Development Ordinance (as amended) states thus;

“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”.

Under the above provisions the petitioners nomination by the third respondent has not been duly registered therefore they do not get any rights on the third respondent's nomination.

Document marked **P2** which the petitioners are seeking to quash by way of a writ of certiorari is a State Grant given by the President which cannot be quashed by way of a writ. Documents **P7** and **P8** are

permits given by the first respondent in the year 2000. This was given after an inquiry and also after the third respondent renounced her rights which were duly registered. Thereafter the first respondent who was the competent authority to issue permits has granted P7 and P8. The petitioners after waiting for almost eleven years after permits were issued have filed the instant application. As stated by the fourth respondent it could be said that the petitioners are guilty of laches as well.

In **Madurasinghe vs Madurasinghe** Chief Justice Parinda Ranasinghe has confirmed the mandatory nature of this provisions and the inability to rectify administrative lapses retrospectively. The nomination of the petitioners by the third respondent was not registered as required by the Land Development Ordinance.

For the afore stated reasons this court decide to refuse the application of the petitioners with costs fixed at RS. 25,000/=

JUDGE OF THE COURT OF APPEAL