

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

*In the matter of an application  
for a mandate in the nature of  
Writs of Certiorari and  
Mandamus under Article 140 of  
the constitution*

CA Application (Writ) No. 359/2013

Waduge Jayasiri

5<sup>th</sup> Ela

Shrawasthipura

**PETITIONER**

-Vs-

1. Divisional Secretary  
Negenahira Nuwaragam Palatha  
Divisional Secretary`s Office  
Anuradhapura
2. Divisional Secretary  
Divisional Secretary`s Office,  
Nachchaduwa,  
Shrawasthipura
3. Assistant Commissioner of Lands

North Central Province  
Provincial Land Commissioner`s  
Department,  
Anuradhapura

4. Provincial Land Commissioner  
North Central Province  
Provincial Land Commissioner`s  
Department,  
Anuradhapura

5. Area Electrical Engineer  
Electrical Engineer`s Office  
Bandaranaike Mawatha  
Anuradhapura

6. Commissioner General of Lands  
No. 07, Gregory`s Avenue  
Colombo 07.

7. Hon. Attorney General  
Attorney General`s Department  
Hulftsdorp,  
Colombo 12

8. Waduge Ajith Amarananda  
No. 109, Adhiranigama

Ihala Halmillewa

**RESPONDENTS**

**Before: Vijith K. Malalgoda PC J (P/CA) &  
P. Padman Surasena J**

Counsel: Leslie J. Siriweera for the Petitioner

Susantha Balapatabendi, DSG for the 1<sup>st</sup> to 7<sup>th</sup> Respondents

G.E. Obeysekara for the 8<sup>th</sup> Respondent

Argued on: 2016-02-09

Decided on: 2016-03-15

**JUDGMENT**

**P. Padman Surasena J**

The Petitioner and the 8<sup>th</sup> Respondent are brothers. Their father, Waduge Jinasena is the holder of the permit marked **P 1** issued by the Divisional Secretary under Section 19 (2) of the Land Development Ordinance. That permit (marked **P 1**) does not contain a name of a successor to hold the rights of said Waduge Jinasena after his demise.

Learned counsel for the Petitioner, learned counsel for the 8<sup>th</sup> Respondent and the Deputy Solicitor General who appeared for the other Respondents are in agreement;

- (i) that the document **P 1** is a copy of the original permit issued to said Waduge Jinasena (father of both the petitioner and the 8<sup>th</sup> respondent).
- (ii) that said Waduge Jinasena has not nominated any successor to his rights under this permit.
- (iii) that this permit has been issued on 1991. 01. 15.

Learned counsel for the Petitioner drew the attention of this court to the documents marked **P 5** and **P 14** also. These two documents are said to be subsequently obtained copies of the same permit. However, in both **P 5** and **P 14**, name of the 8<sup>th</sup> Respondent has been mentioned as the sole successor to the rights of Waduge Jinasena.

It is the position of the 8<sup>th</sup> Respondent that Waduge Jinasena had taken steps to nominate the 8<sup>th</sup> Respondent as his successor to his rights under this permit at a later stage namely on 1994-07-05. Said Waduge Jinasena had passed away in 1997.

Learned Deputy Solicitor General who appeared for the 1<sup>st</sup> – 7<sup>th</sup> Respondents in the course of his submissions referred to the document marked **2 R 2** which is a copy of the Land Ledger maintained at the office of the Divisional Secretary in which the details relating to this permit has been entered. It is the submission of the learned DSG:

- I. that Waduge Jinasena had not nominated any successor at the time of the issuance of this permit on 1991-01-15,

- II. that said Waduge Jinasena had nominated the 8<sup>th</sup> Respondent as his successor to his rights under this permit on 1994-07-05,
- III. that due to the above nomination the name of the 8<sup>th</sup> Respondent was inserted as the permit holder on 2008-04-09 (the date mentioned on the document **2 R 2**)

To the contrary it is the submission of the Petitioner that these alterations on the permit and the Land Ledger have been effected fraudulently.

The positions taken up by the Petitioner and the 8<sup>th</sup> Respondent show that they dispute the major facts pertaining to the question as to who should be the successor to the rights of Waduge Jinasena.

All parties admitted that this dispute namely the dispute as to who should succeed to the rights of said Waduge Jinasena under this permit is the core issue in the District Court case pending between the parties. Therefore, the best course of action available to all the parties undoubtedly is to participate in the pending District Court case and vindicate their rights. That is the most effective way to finally settle this dispute as all parties get the opportunity of not only calling the witnesses on their behalf, but also to cross examine the witnesses called on behalf of their opponents.

Learned DSG drew the attention of this court to the case of Thajudeen Vs Sri Lanka Tea Board and another [1981 (2) SLR 471].

The Case above referred to, is also an application for a writ of Mandamus. This court in that case has taken the view that when the major facts are disputed by parties, the most appropriate procedure for the settlement of such a dispute is an action by way of regular

procedure before the appropriate court of First Instance. This court in that judgment has also taken the view that such an action by way of regular procedure also constitutes an "equally convenient, beneficial and effective" remedy. This court in the exercise of its discretion had refused the application for writs in that case on this ground.

Bearing in mind the core issue to be decided in the pending District Court case, with regard to this dispute, it is important at this stage to turn to the prayers of the Petitioner.

The Petitioner in his application *inter alia* has prayed for,

- 1) a mandate in the nature of **Writ of certiorari** against the 1<sup>st</sup> and/or 2<sup>nd</sup> respondent cancelling and/or nullifying the nomination of the 8<sup>th</sup> respondent as the successor to permit No. 243/ 273 and granting him the 1<sup>st</sup> instance permit holder status.
- 2) the quashing of the decision of the 2<sup>nd</sup> respondent declining to hold an inquiry to rectify the wrongful succession of the 8<sup>th</sup> respondent.
- 3) a mandate in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> and/or 2<sup>nd</sup> respondents to restore the petitioner`s right of succession to the said land alienated to his father under Permit No. 243/ 273
- 4) a declaration that the nomination of the 8<sup>th</sup> respondent as the successor to permit No. 243/ 273 and granting of 1<sup>st</sup> instance permit holder status invalid and has no legal effect.
- 5) a direction on the 1<sup>st</sup> / or 2<sup>nd</sup> respondents to delete the nomination of 8<sup>th</sup> respondent as the successor to land under

permit No. 243/ 273 and granting him the 1<sup>st</sup> instance permit holder status, from the register of permit/ grant, ledger/ relevant folio of the land registry under the Land Development Ordinance.

In order to grant the reliefs the Petitioner has prayed for in the above prayers this court first has to arrive at a conclusion that the Petitioner is the lawful successor to the permit marked **P 1**. In other words, coming to a firm finding after due inquiry as to who is the lawful successor to the impugned permit is a pre requisite, before this court could consider issuing any Writ.

In D.P. Palisena vs K.K.D. Perera (56 NLR 407), it was held that a permit holder under the Land Development Ordinance is entitled to maintain a vindicatory action against a trespasser. Gratien J` s following passage in that judgment "...it is very clear from the language of the Ordinance and from the particular permit **P 1** issued to the plaintiff that a permit holder who has complied with the conditions of his permit enjoys, during the period for which the permit is valid, a sufficient title which he can vindicate against a trespasser in civil proceedings..." has been cited with approval by Somawansa J in Bandaranaike vs Karunawathie [2003 (03) SLR 295].

Time and again courts have held that the Writ jurisdiction of this court is a discretionary one. This has been clearly explained by Jayasuriya J in Jayaweera vs Assistant Commissioner of Agrarian Services Ratnapura and another [1986 (2) SLR 70] when he said "... I hold that the Petitioner who is seeking relief in an application for the issue of a writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine...."

Further the Writ jurisdiction of this court is an extra ordinary jurisdiction and this court will decline to exercise it particularly when there are other means of obtaining justice. As mentioned above in this case, there is not only an alternate remedy which is equally convenient, beneficial and effective available for the Petitioner, but that alternate remedy (i.e. a regular action in the District Court) has already been accessed by the relevant parties also.

For the foregoing reasons Petitioner`s application for a writ of Certiorari and Mandamus is not entitled to succeed. This application is therefore, refused and it should stand dismissed.

Taking into consideration all the circumstances of this case we make no order for costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**