

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

In the matter of Appeal under Section  
11 of the Provincial High Court  
(Special Provisions) Act No: 19 of  
1990.

Pillegedara Punchirala,  
No: 13/90, Kalinga Ela,  
Polonnaruwa.

H.C. Case No: Writ 10/2006

**CA (PHC) 43/2008**

**PETITIONER**

**Vs.**

01.N.G. Panditharatne,  
Divisional Secretary,  
Thamankaduwa Divisional Office,  
New Town, Polonnaruwa.

02.P.D. Keerthi Gamage,  
Provincial Land Commissioner,  
Department of Provincial Land  
Commission,  
North Central Province,  
Anuradhapura.

03.Pillegedara Heenbanda,  
No: 13/4, Kalinga Ela,  
Polonnaruwa.

04. Pillegedara Thusitha Chandana,  
No: 13/4, Kalinga Ela,  
Polonnaruwa.

05. Pillegedara Chaminda Jayalath  
Kumara,  
No: 13/4, Kalinga Ela,  
Polonnaruwa.

06. The Attorney General,  
Attorney General's Department,  
P.O. Bo. 502, Colombo 12.

**RESPONDENTS**

**Vs.**

Pillegedara Punchirala,  
No: 13/90, Kalinga Ela,  
Polonnaruwa.

**PETITIONER - APPELLANTS**

**Vs.**

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Kumara,  
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Polonnaruwa.
06. The Attorney General,  
Attorney General's Department,  
P.O. Bo. 502, Colombo 12.

**RESPONDENTS - RESPONDENTS**

**Before : P.R.Walgama, J**  
**: L.T.B. Dehideniya, J**

**Counsel : Appellant is absent and unrepresented.**  
**: Suranga Wimalasena, S.S.C for the A.G.**

**Argued on : 17.02.2016**

**Decided on: 13.06.2016**

**CASE-NO-CA-(PHC)-43/2008-JUDGMENT-13.06.2016**

**P.R.Walgama, J**

The Petitioner- Appellant (in short the Appellant) moved Court to set aside the impugned judgment of the

Learned High Court Judge dated 03.04.2008 in the case bearing No. PHC – Polonnaruwa – 10/2006

The Appellant's application before the Provincial High Court of Polonnaruwa was as stated below;

That the 1<sup>st</sup> Respondent in contravention of the provisions of the Land Development Ordinance had conveyed the property more fully described in the schedule, to the 3<sup>rd</sup> Respondent.

The father of the Appellant and the 3<sup>rd</sup> Respondent became the owner of the said land by the Crown grant marked as P1.

Their father Ukkubanda and the mother Ranmanike had cultivated this land since 1951.

In the year 1960 said Ukkubanda died and he has not nominated a successor to the above property, in terms of Section 72 of the above Act.

Further it is seen from the documents marked P6 and P7 the Appellant has taken steps to acquire his rights to the subject land. Nevertheless at a later stage he became aware that his brother the 3<sup>rd</sup> Respondent had gained title to the land in issue.

Therefore it is alleged by the Appellant that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents acted in contravention of the provision 72 of the Land Development Ordinance by giving all rights to the 3<sup>rd</sup> Respondent. Further it is

stated that the 3<sup>rd</sup> Respondent has appointed the 4<sup>th</sup> and 5<sup>th</sup> Respondents as his successors to the subject land.

The said Section 72 states thus;

“ If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of the successor contravenes the provisions of this ordinance, the title to the land alienated on a permit to a permit holder who at the time of his or her death was paying an annual sum by virtue of the provisions of the subsection (3) of section 19a or to the holding of an owner shall, upon the death of such permit holder or owner without leaving behind his or her spouse, upon the failure such spouse to succeed to that land or holding or upon the death of such spouse, devolved as prescribed in rule 1 of the Third Schedule.”

In the above setting it is stated that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents do not have any authority to register the names of the 4<sup>th</sup> and 5<sup>th</sup> Respondents as the successors of the 3<sup>rd</sup> Respondent.

In the light of the facts surfaced above it is contended by the Appellant that to have the said decision of the 1<sup>st</sup> Respondent set aside by a writ of Certiorari, and for a writ of Mandamus to compel the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent to hold an inquiry in terms of Section of the above Act and to appoint

the Petitioner -Appellant as original owner of the said land.

The 1<sup>st</sup> Respondent by his objections to the above application of the Appellant had stated the following;

That the original permit holder P.G.Ukkubanda has nominated the 3<sup>rd</sup> Respondent Piheelegadara Heenbanda as his successor to the permit granted on 24.04.1953 for the purpose of develop the land. Therefore it is said that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents need not have acted in terms of Section 72 of the said Act.

In proof of the said fact the purported permit is marked as 1V1 and the nomination of the 3<sup>rd</sup> Respondent as his successor has been marked as 1V1A. Further the relevant ledger is marked as IV2.

Therefore it is apparent that the 3<sup>rd</sup> Respondent has been duly nominated by their father Ukkubanda as the successor to the subject land. Therefore the Appellant cannot have recourse to the Section 72 of the said Act, as the original permit holder has nominated the 3<sup>rd</sup> Respondent as his successor to the subject land.

Hence in the above setting this Court is of the view that the Appellant's argument is untenable in law, and has no locus to maintain this appeal.

Accordingly appeal is dismissed subject to a costs of Rs.5000/.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J  
I agree,

**JUDGE OF THE COURT OF APPEAL**