

**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 Writs of  
Certiorari and Mandamus in terms of  
Article 140 of the constitution*

C A (Writ) Application No. 112 / 2014

Liyanage Jayatissa

Katuwana Gedara,

Gegawa,

Kudagoda-East,

Kariyamadiththa.

**Petitioner**

Vs.

1. Provincial Commissioner of Lands,  
Department of Provincial Commissioner  
of Land  
Southern Province,  
Town Hall Building,  
1st floor,

Galle.

2. Divisional Secretary  
Divisional Secretariat,  
Katuwana.
3. Liyanage Chandana  
No. 02,  
Kotawayegedara,  
Dabethalawa,  
Middeniya.
4. Liyanage Danapala  
Katuwana Gedara,  
Gegawa,  
Kudagoda,  
Kariyamadiththa.
5. Liyanage Amaradasa,  
Katuwana Gedara,  
Gegawa,  
Kudagoda,  
Kariyamadiththa.
6. Liyanage Siripala,  
Katuwana Gedara,  
Gegawa,

- Kudagoda,  
Kariyamadiththa.
7. Liyanage Piyadasa,  
Katuwana Gedara,  
Thorakolayaya,  
Muladiyawala.
8. Liyanage Ranaweera,  
Landewatta,  
Kaparella,  
Sudugala,  
Muladiyawala.
9. Liyanage Dayawathi  
Katuwana Gedara,  
Kudagoda,  
Kariyamadiththa.
10. Liyanage Merihami  
Katuwana Gedara,  
Gegawa,  
Kudagoda-East,  
Kariyamadiththa.

11. Liyanage Thilakahami,  
No. 194,  
Mallagahadeniya,  
Ihala Walpala,  
Imaduwa.

**RESPONDENTS**

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

**P. Padman Surasena J**

Counsel: Asthika Devendra with Lilan Warusavithana for the Petitioner

Waruna de Saram for the 4<sup>th</sup> and 8<sup>th</sup> Respondents

Sureka Ahamed, SC for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Argued on: 2016-06-28

Written submissions for the Petitioner on : 2016-07-05

Written submissions for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on : 2016-07-07

Decided on: 2016-08-03

**JUDGMENT**

## **P Padman Surasena J**

A permit under section 19 of the Land Development Ordinance was issued to Liyanage Janis who is the father of the Petitioner. This permit has been marked and produced as **P 01 A**. It is dated 1987-11-27.

Said Janis (father of the Petitioner) had died on 2001-11-18 without nominating a successor to the said land. The death certificate of said Janis has been marked and produced as **P 2**.

Life interest of the said land was thereafter transferred to the mother of the Petitioner namely Weraharage Palagasin Pathiranage Podihami in terms of section 48 B of the Land Development Ordinance. The 2<sup>nd</sup> Respondent has made an endorsement to that effect on the said permit on 2006-10-03.

The mother of the Petitioner had passed away on 2010-02-21. Her death certificate has been marked and produced as **P 3**.

Petitioner's elder brother (father of the 3<sup>rd</sup> Respondent) had died on 2005-07-07. The Petitioner had thereafter made a request to the 2<sup>nd</sup> Respondent to issue him a permit for the said land.

At an inquiry held by the 2<sup>nd</sup> Respondent, elder brothers of the Petitioner namely 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents had submitted affidavits to state that they are not inclined to succeed to the said land and had consented for the transfer of the said land to the Petitioner. That affidavit has been marked and produced as **P 6**.

The Ordinance defines who a successor is. It is as follows.

### **Section 48**

*"In this chapter "Successor" when used with reference to any land alienated on a permit or a holding, means a person who is entitled under this chapter to succeed to that land or holding upon the death of the permit holder or owner thereof, if that permit-holder or owner died without leaving behind his or her spouse, or , if that permit-holder or owner died leaving behind his or her spouse, upon the failure of that spouse to succeed to that land or holding or upon the death of that spouse."*

Section 72 which deals with the Succession under the Third Schedule of the Land Development Ordinance is as follows.

**Section 72.**

*"If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a 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 installment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in Rule 1 of the Third Schedule."*

Section 73 sets out the date of such succession. That section is as follows.

**Section 73.**

*"Title to a land alienated on a permit or to a holding shall be deemed to have devolved on any person entitled to succeed to the land or holding under the provisions of section 72 as from the date of the death of the permit-holder or owner of the holding if such permit-holder or owner died without leaving behind his or her spouse, or, if such permit-holder or owner died leaving behind his or her spouse, upon the failure of such*

*spouse to succeed or from the date of the death of such spouse, as the case may be."*

Section 72 of the Ordinance comes in to operation if the permit holder or owner dies without leaving behind his or her spouse, or if such permit holder or owner dies leaving behind his or her spouse and such spouse fails to succeed to the land or upon the death of such spouse. Since there is no nominated person and that the original Permit-holder's spouse also has died, person entitled to succeed must be decided according to section 72 of the Ordinance.

1<sup>st</sup> and 2<sup>nd</sup> Respondents have stated in their statement of objections that the death certificate of the eldest son of the original permit holder was submitted to them. The 3<sup>rd</sup> Respondent is the son of Liyanage David who is the elder brother of the Petitioner. However said Liyanage David has predeceased his mother. That death certificate has been marked and produced as **1 R 2**. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents do not set out any acceptable legal basis to justify their decision that the Petitioner is not entitled to be the successor of this land.



Upon the advice given by the 1<sup>st</sup> Respondent, having held an inquiry, 2<sup>nd</sup> Respondent has sent the letter marked **P 13** dated 2013-08-07.

The 3<sup>rd</sup> Respondent has not participated in the proceedings before this Court and hence has not taken up any position. There is no evidence before this Court that the 3<sup>rd</sup> Respondent's father was in possession of this land at any time. In any case, as has been mentioned before, father of the 3<sup>rd</sup> Respondent had died on 2005-07-07.

Thus in this instance it is clear from the above material, that the title to this land shall devolve on the Petitioner in terms of Section 72 of the Ordinance. Therefore the 2<sup>nd</sup> Respondent's decision that the Petitioner is not entitled to be the successor of this land is illegal. That decision is therefore ultra vires the powers vested in 1<sup>st</sup> and 2<sup>nd</sup> Respondents by the Land Development Ordinance.

In these circumstances we issue:

- a) a mandate in the nature of writ of Certiorari to quash the decisions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents embodied in the letter dated 2013-

08-05 (marked **P 12**) and in the letter dated 2013-08-07 (marked **P 13**)

b) a mandate in the nature of writ of Mandamus to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to name the Petitioner as the successor to the said land

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**