

**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.*

CA (Writ) Application No. 228 / 2013

N H G Damith Saliya Nanayakkara,

No. 564/3,

Siyambalagaswadiya,

Polonnaruwa.

**PETITIONER**

**Vs**

1. Mr. Nimal Abeysiri,

District Secretary of Polonnaruwa,

District Secretariat,

Polonnaruwa.

2. E M D S Ekanayake,

Divisional Secretary,

Divisional Secretariat,

Thamankaduwa.

3. R P R Rajapakshe,

Commissioner General of Lands,

Department of Commissioner General of

Lands,

No. 07,

Hector Kobbekaduwa Mawatha,

Colombo 07.

4. Nanayakkarawasam Hikkaduwa Gamage

Sarath Kumara

No. 558/2,

Aluthwewa,

Thamankaduwa,

Polonnaruwa.

5. Nanayakkarawasam Hikkaduwa Gamage

Hamlet,

C/O, N H H Jeewalatha,

No. 29,

Aluthwewa,  
Polonnaruwa.

**RESPONDENTS**

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

Counsel:    Rasika Dissanayke for the Petitioner.

                 Suranga Wimalasena, SSC for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

                 Sanjeewa Dassanayake for the 5<sup>th</sup> Respondent.

Argued on: 2016-06-15

Decided on: 2016-08-09

JUDGMENT**P Padman Surasena J**

The permit marked and produced in this case as **P 01** was originally issued to Nanayakkara Hikkaduwa Gamage James Appuhami with regard to a paddy land, the extent of which is 5 acres, 3 roods and 8 perches.

The said N H G James Appuhami had nominated one of his sons N H G Wilson as his successor.

His Excellency the President, upon said N H G James Appuhami duly complying with the conditions stipulated in the said permit, had issued a grant in his name in the year 1982. The said grant is marked and produced as **P 02**. The said N H G James Appuhami again nominated his son N H G Wilson as the successor to the said paddy land allocated to him by the said grant.

Said N H G James Appuhami, the owner of the said paddy land, died on 1990-06-22 leaving behind his nominee N H G Wilson.

The 2<sup>nd</sup> Respondent (the Divisional Secretary) had approved the transfer of ownership of the said paddy land to the said nominee N H G Wilson by the letter dated 2003-06-09 marked **P 04**. Said N H G Wilson nominated his

son who is the Petitioner in this case and his brother N H G Ranjan as the successors of the said paddy land in terms of the provisions of the Land Development Ordinance. These nominations have been duly registered on 2003-09-12.

Said N H G Wilson died on 2006-05-05 leaving the above 2 nominees as successors to the said paddy land.

The complaint made by the Petitioner to this court is that this land has been purportedly transferred in the name of one N H A Karunasena in violation of the provisions of the Land Development Ordinance. It is the position of the Petitioner that the 2<sup>nd</sup> respondent (Divisional Secretary) completely disregarding the specific instructions given by the 3<sup>rd</sup> Respondent (Commissioner General of Land) and knowing very well that the Petitioner and the 4<sup>th</sup> Respondent are the lawful owners of the said paddy land, acting in collusion with the 5<sup>th</sup> Respondent has illegally and unlawfully transferred the said paddy land in the name of the 5<sup>th</sup> Respondent without any notice to the Petitioner.

The original Permit holder N H G James Appuhami's eldest son is N H G Francis who is the father of the 5<sup>th</sup> Respondent. It is to be noted that said

N H G Francis had died in the year 1991 (his death certificate is marked as **5 R 5 (ii)**). According to **5 R 2** (Marriage certificate) Godakande Kankanamge Misinona is the wife of N H G James Appuhami. The said Godakande Kankanamge Misinona had died in 1983 according to the death certificate marked and produced as **5 R 5 (i)**.

It is the position of the 2<sup>nd</sup> Respondent that he gave the succession rights to the 5<sup>th</sup> Respondent as he is the son of the eldest son of the original permit holder. The 2<sup>nd</sup> Respondent has based his assertion that the 5<sup>th</sup> Respondent is the rightful owner of this paddy land according to Section 72 of the Ordinance. That is the purported basis the 5<sup>th</sup> Respondent has put forward to make a claim to this land.

According to Section 49 of the Ordinance, where a permit holder, or an owner of a holding, has died leaving behind his spouse, upon the failure of such spouse to succeed to the land or holding, or upon the death of such spouse, a person nominated as successor by such permit holder or owner shall succeed to the land or holding. Therefore it is clear in this instance

persons who shall succeed as the lawful owners to this land are the Petitioner and the 4<sup>th</sup> Respondent.

As has been mentioned above, the basis 5<sup>th</sup> Respondent is claiming the land is section 72 of the Ordinance. However section 72 of the Ordinance comes in to operation only if such 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 a nominated person and the said nominated person has succeeded to the land, section 72 of the Ordinance will have no application at this instance. Further, the 5<sup>th</sup> Respondent does not state anywhere that either he or his father was in possession of this land at any time.

For the above reasons we hold that in this instance it is the Petitioner and the 4<sup>th</sup> Respondent who are the lawful owners of this land. Therefore the action taken by the 2<sup>nd</sup> Respondent deciding that the 5<sup>th</sup> Respondent is the successor to this land is illegal and hence is ultra vires the powers vested in him by the Land Development Ordinance.

In these circumstances we issue:

- a) a writ of certiorari to quash the purported decision of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to transfer the said paddy lands in the name of the 5<sup>th</sup> Respondent as it is reflected in the extract marked **P 14**.
- b) a writ of mandamus to compel the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to cancel the said transfer of the paddy land in the name of the 5<sup>th</sup> respondent which appears in the extract marked **P 14**.

No cost is ordered.

Application is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**