

**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 Writ of *Certiorari and Mandamus* under
and in terms of Article 140 of the Constitution of
The Democratic Socialist Republic of Sri Lanka**

Wilegoda Liyanage Sajeewana Rohana Rasika
Gunawardena,

No. 23, Thalagolle, Makehelwela.

Petitioner

CA/ WRIT/283/2013

Vs,

1. Divisional Secretary,
Divisional Secretariat of Mawanella.
2. Land Commissioner General,
Officer of Land Commissioner General,
Gregory's Road, Colombo 07.
3. The Additional Registrar of Lands,
Land Registry Kegalle.
4. The Minister of Lands and Land Development,
"Govijana Mandiraya" 80/5,
Rajamalwatte Avenue,
Battaramulla.
5. Wilegoda Liyanage Karunathilake,
No.01, 'Aluambe Janapadaya,'
Mawenella.

6. Wilegoda Lyanage Dayarathne,
'Aluambe Janapadaya,'
Mawenella.

7. The Hon. Attorney General, Attorney General's
Department, Colombo 12.

Respondents

Before

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

Counsel : Dr. Sunil Cooray with M. Nayanakantha and Sudarshani Cooray for the Petitioner,
S. Dharmawardana DSG for the 1st to 3rd Respondents
Sunil Abeyrathne with S.S.P Samaranayake for the 5th Respondents

Written Submissions On: 27.04.2016

Order On: **15.09.2016**

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioner to the present application Wilegoda Liyanage Sajeewana Rohana Rasika Gunawardena has come before this court seeking inter alia,

- b) Issue an order in the nature of writ of Certiorari quashing the decision/action of the 1st and 3rd Respondents to insert the name of the 5th Respondent as the owner of the Agricultural Land in the Register of Permit/Grants under the Land Development Ordinance marked as "X13" and to direct the deletion of the 5th Respondent's name in the said Register;

- c) Issue an order in the nature of writ of Mandamus compelling the 1st, 2nd and 3rd Respondents to hold an inquiry to decide as to whose name should be inserted according to law;
- d) Issue an order in the nature of writ of Mandamus to thereafter insert the Petitioner's name as the owner of the Agricultural Land in the Register of Permit/Grants under the Land Development Ordinance marked as "X13".

Learned Counsel for all the parties agreed when this matter came up on 27.04.2016, before this court to rely fully on their written submissions. Therefore this judgment would be based on the material that have been adduced by the parties in their pleadings and written submissions.

As revealed before this court, Mahagedara Vidana Ralalage Rosalin Nona was the original permit holder to the land referred to in original permit bearing No. 9496 dated 26.10.1963. The said permit was later converted to a grant in the year 1982.

The said grant holder Rosalin Nona had nominated her eldest son Wilegoda Liyanage Gunawardena as the successor for the said grant and the said nomination was properly registered in the relevant land ledger.

The said nominated successor W.L. Gunawardena had died on 30th July 1993 during the life time of the grant holder and, the grant holder Rosalin Nona had died on 23rd January 2003 without making a fresh nomination for succession.

The eldest surviving son of the deceased grant holder Rosalin Nona, namely W.L. Karunathilake had made a request to nominate him as the successor to the said land, and after an inquiry held before all the parties, including the Petitioner to the present application, a decision had been taken to nominate the said W.L. Karunathilake as the successor to the land in question. It is the said decision which is challenged before this court in the present application.

The Petitioner to the present application, who is the eldest son of the late W.L. Gunawardena has taken up the position that it is illegal and unjust for the 1st Respondent to wipe out all rights of the heirs of the 1st born child of the grantee and under the provisions of the 3rd Schedule of the Land Development Ordinance, the 1st born child should inherit after the demise of the grantee. The petitioner has further submitted that he being the eldest son of the 1st born child of the grantee Rosalin Nona, the 2nd born child, the 5th Respondent cannot be considered to be nominated as the successor to a land, the 1st born child had inherited.

Before considering the above arguments raised by the Petitioner before this court, I would like to first discuss the relevant legal provision with regard to succession under the Land Development Ordinance.

Section 49 of the Land Development Ordinance 19 of 1935 (as amended)

“Upon the death of a permit-holder who at the time of his or her death was paying an annual sum by virtue of the provisions of subsection (3) of section 19A, or of an owner of a holding, 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 the land alienated to that permit- holder on the permit or holding or upon the death of such spouse, a person nominated as successor by such permit-holder or owner shall succeed to that land or holding.”

Section 61 of the Land Development Ordinance 19 of 1935 (as amended)

“The death during the lifetime of the owner of a holding or a permit-holder of a person who has been nominated by that owner or permit-holder as a successor to that holding or the land alienated on the permit shall operate as a cancellation of a nomination of that person as a successor.”

Section 72 of the Land Development Ordinance 19 of 1935 (as amended)

“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 death was paying an annual sum by virtue of the provisions of 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, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of holding, or upon the death of such spouse devolve as prescribed in rule 1 of the Third Schedule.”

Rule 1 (b) of the 3rd schedule to the Land Development Ordinance 19 of 1935 (as amended)

(b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permit-holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.

Table

i) Sons	vii) Brothers
ii) Daughters	viii) Sisters
iii) Grandsons	ix) Uncles
iv) Granddaughters	x) Aunts
v) Father	xi) Nephews
vi) Mother	xii) Nieces

In this rule, “relative” means a relative by blood and not by marriage.

Under section 49 above a nominated successor will only be able to succeed to the land,

- (a). Where the permit holder or the owner of a holding died without leaving behind his or her spouse
- (b). If the permit holder or the owner of the holding had died leaving behind his or her spouse, in such a situation the nominated successor will succeed only after the death of the spouse or upon the failure of the spouse to succeed to the land.

Section 61 deals with a situation where the death of the nominated successor takes place during the life time of the permit holder or the owner of the holding and according to this section in such a situation the said nomination shall operate as a cancellation of such nomination.

Section 72 had provided the succession to take place under the 3rd Schedule, if

- a) No successor has been nominated or,
- b) If the nominated successor fails to succeed or,
- c) If the nomination of a successor contravenes the provisions of ordinance

When the above provisions are considered with the facts and circumstances of the case in hand it is clear, that the eldest son and the nominated successor of the original grant holder had died on 30th July 1993 prior to the death of the grant holder who had died 23rd January 2003. Therefore it is clear that under section 49 he cannot succeed to the land. It is further observed that, with the operation of the provisions in section 61 the nomination made by the grant holder shall operate as a cancellation of the nomination of W.L. Gunawardene.

In the absence of fresh nomination thereafter by the grant holder, the only conclusion this court can arrive is that there was no nomination made with regard to the succession by the grant holder Rosalin Nona.

Since Rosalin Nona had died without nominating a successor, the succession will have to be decided under section 72 read with Rule 1 (b) of the 3rd Schedule only.

In the said circumstance the succession rights will be passed on to the eldest living son of the deceased grant holder and therefore we see no reason to interfere with the decision of the 1st and/or 2nd and/or 3rd Respondent to nominate and/or insert the name of the 5th Respondent as the successor or the owner of the agricultural land referred to the present application.

We therefore dismiss the application of the Petitioner but make no order with regard to cost.

Application is dismissed.

PRESIDENT OF THE COURT OF APPEAL