

**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 under Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

C A Writ Application No. 453/2013

G Ranjith,
No. 71/31, Koloniya,
Kawdulla

PETITIONER

-Vs-

1. M A A S Nissanka Arachchi,
Divisional Secretary,
Divisional Secretariat,
Hingurakgoda.
2. Provincial Commissioner of Lands,
Provincial Land Commissioner`s
Department,
North Central Province,
Anuradhapura.

3. R P R Rajapaksa,
Commissioner General of Lands,
Department of the Commissioner
General of Lands,
"Mihikatha Madura",
No. 1200/06,
Rajamalwatta Road,
Battaramulla.
4. G Kirisadu,
No. 71/31, Koloniya,
Kawdulla.
5. D Dayawathie,
No. 71/31/01 Koloniya,
Kawdulla.

RESPONDENTS

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

P. Padman Surasena J

Counsel : Athula Perera with Chathurani De Silva for the Petitioner,
Manohara Jayasinghe S C for the 1st - 3rd Respondents,
Harith de Mel with Safra Deen, Farook and C Hettiarachchi for
the 4th & 5th Respondents.

Argued on: 2016-02-15

Decided on : 2016-10-10

JUDGMENT

P Padman Surasena J

Petitioner is the eldest son of Godayalage Seemon who had been nominated as the successor to the permit issued to Godayalage Babanis in respect of the lands in dispute in this case. This permit has been marked and produced as **P 1** and it had been issued on 1952-01-21.

In the said permit said Godayalage Babanis has nominated his son Godayalage Seemon as the successor. This nomination has been made on 1952-01-21.

Thereafter His Excellency the President of the Republic, in terms of the provisions of the Land Development Ordinance, has issued, in the name of

said Godayalage Babanis, two grants, in respect of these lands referred to in the said permit **P 1** on 1982-01-26. These grants bearing numbers 1043 and 1048 have been marked and produced as **P 2** and **P 3** respectively.

Said Godayalage Babanis had died on 1992-12-05, leaving behind the 5th Respondent, the Petitioner's father G Seemon, Siyadoris who is the husband of the 5th Respondent and five others as his children.

The wife of Godayalage Babanis (grandmother of the Petitioner) Athugal Pedige Hapu (who had the life interest in terms of the provisions of the Land Development Ordinance) also had died on 2001-01-12.

Godayalage Seemon (father of the Petitioner) also had died on 2001-11-20 leaving his wife M P Seetha and five children namely; G Ranjith (Petitioner), G Priyantha, G Ranjith Priyantha, G Seetha Priyanthika, G Wasantha and G Ajith.

The Petitioner has stated in paragraph 17 of his petition that his mother (wife of G Seemon) M P Seetha had made representations to the 1st and 2nd Respondents to appoint her or her eldest son G Ranjith (the Petitioner)

as the successor to the two grants above referred to. These letters have been marked and produced as **P 11**, **P 12**, **P 13**, **P 14** and **P 15**.

1st Respondent by his letter dated 2012-11-05, had informed all relevant parties:

- I. that he had sought advice from the Commissioner General of Lands with regard to the dispute between parties relating to the succession pertaining to this land.
- II. that the Commissioner General of Lands had advised him to divide the lands with the consent of the successors in terms of the 3rd schedule to the Land Development Ordinance, amongst the parties who possess the land.
- III. that in terms of the 3rd schedule to the Ordinance G Kirisadu (4th Respondent) is the successor.

This letter has been marked and produced as **P 25**.

Thereafter the 1st Respondent by the letter marked and produced as **P 26** has informed the Petitioner`s mother to attend an inquiry with regard to the issue of succession pertaining to these grants.

Thereafter the 1st Respondent by his letter dated 2013-01-18, had informed the Petitioner's mother that he has taken steps to appoint Godayalage Kirisadu (4th Respondent) as the successor to the said grant in terms of the 3rd Schedule of the Land Development Ordinance. This letter has been marked and produced as **P 27**. It is this letter that the Petitioner seeks to quash in these proceedings.

The Petitioner in the prayers of his petition inter alia has prayed for:

- I. a writ of Certiorari to quash the decision of the 1st to 3rd Respondents communicated by the 1st Respondent by his letter dated 2013-01-18 (**P 27**)
- II. a Writ of Mandamus directing the 1st to 3rd Respondents to appoint the Petitioner and/or a suitable person as a successor to the grants **P 2** and **P 3** considering the nomination made by G Babanis (the original permit holder) as reflected in the permit **P 1**.

It is to be noted that the 1st Respondent by his letter dated 2013-07-24, addressed to G Kirisadu (**P 33**) had permitted the 4th Respondent G Kirisadu to survey the land in order to divide the lands in the manner stated in that letter.

The petitioner has submitted that the 1st Respondent has accordingly taken steps to enter the name of the 4th Respondent as the successor to the said two grants in the register of permits/grants under the Land Development Ordinance. Extracts of this register have been marked and produced as **P 34** and **P 35**.

It is the submission of the learned counsel for the petitioner that the decision of the 1st Respondent embodied in the document marked **P 27** is illegal as it is contrary to the expressed provisions in the Land Development Ordinance.

The Supreme Court in the case of Mallehe Vidaneralalage Don Dayaratne Vs Divisional Secretary of Thamankaduwa, Polonnaruwa and four others (S C Appeal No. 30/2004 decided on 2005-03-23) has held that it is important to give effect to the wish of the deceased holder. The Supreme Court has also referred to the judgment of the Court of Appeal in Piyasena Vs Wijesinghe and others 2002 (2) S L R page 242 where the Court of Appeal has also taken the same view that the intention of the permit holder should be given effect to.

Learned counsel for the 4th and 5th Respondents did not controvert the facts of this case. However, they, in particular the learned counsel for the 4th Respondent advanced several arguments to convince this court that this application should be dismissed. Learned counsel for the 5th Respondent associated herself with the submissions made by learned counsel for the 4th Respondent.

First argument of the learned counsel for the 4th Respondent is that there is no nomination in the permit as the nomination of G Seemon by the permit holder has not been registered as required by section 58 of the Land Development Ordinance.

Section 58 is as follows:

- (1) A document (other than a last Will) whereby the nomination of a successor is effected or cancelled shall not be valid unless and until it has been registered by the Registrar of Lands of the district in which the holding or land to which that document refers is situated.
- (2) Regulations may be made prescribing the procedure for the registration of documents whereby nominations of successors are effected or cancelled and for all matters connected therewith or

incidental thereto, including the registers which shall be kept and the fees which shall be charged for such registration.

Thus the law is very clear on this point i.e. the nomination has to be made in the prescribed form and be registered in the Land Registry in terms of section 58 of the Land Development Ordinance and if it is not registered such nomination is considered to be invalid.

Admittedly the nomination of G Seemon as a successor by the said Godayalage Babanis has not been registered as required by the provisions of the Land Development Ordinance. Therefore in terms of section 58 of the Land Development Ordinance there is no valid nomination made in the said permit.

It was the counter submission of the learned counsel for the Petitioner that it is not necessary to have the nomination registered when such nomination has been made at the time of the 1st issuance of the grant. Learned Senior State Counsel who had appeared for the 1st, 2nd and 3rd Respondents, had at an earlier occasion submitted to this court that the

Hon. Attorney General would not file objections in this case but would assist court. However the said Respondents were not represented by anyone at the time of argument on 2016-02-15. Realizing in the course of argument the necessity of the Attorney General's assistance, this court issued notice on the Attorney General upon which learned State Counsel filed before this Court necessary documents.

Since the 4th Respondent is the eldest male child of G Babanis the decision made by the 1st and 3rd Respondents that the 4th Respondent is entitled to succeed to the land in terms of the 3rd schedule read together with section 72 of the Land Development Ordinance cannot be termed as illegal. This is so particularly in view of the fact that the nomination relied upon by the Petitioner has not been registered in terms of section 58 of the Ordinance.

As stated in Section 72 of the Land Development Ordinance, one occasion in which that section (i.e. Section 72) must apply is when the nomination of a successor contravenes the provisions of the Ordinance. This is manifestly clear by the wordings contained in section 72 of the Land Development Ordinance which 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." (emphasis effected above is mine.)

Thus the devolution of the succession to these lands must be according to the 3rd schedule of the Ordinance.

Second argument advanced by the learned counsel for the 4th Respondent is that there is unexplained delay of over one year.

The Petitioner does not adduce any acceptable reason for this delay.

Third argument relied upon by the learned counsel for the 4th Respondent is that the Petitioner has sought to quash the wrong document.

Perusal of the documents marked **P 33** and **P 44** which have also been marked as **5 R(1)(a)** and **5 R(1)(b)**, it is clear that the name of the 4th Respondent has already been registered as the lawful successor to these lands. As claimed by the 4th Respondent, Petitioner has not prayed that these documents containing the registration of the 4th Respondent as the successor be quashed by this court.

Fourth argument advanced by the learned counsel for the Petitioner is that the Petitioner does not have *locus standi* as the Petitioner's mother Seetha is amongst living. It would suffice in the present circumstances of this case, only to observe that section 48 A of the Land Development Ordinance states that upon the death of a permit holder who at the time of his or her death was required to pay any annual installments by virtue of the provisions of subsection (2) of section 19, notwithstanding default in the payment of such installments, the spouse of that permit holder, whether he or she has or has not been nominated as successor by that permit holder, shall be entitled to succeed to the land alienated to that permit holder on

the permit and the terms and conditions of that permit shall be applicable to that spouse.

In these circumstances and foregoing reasons we see no basis to issue the writs the Petitioner has prayed for. Hence we decide to refuse this application and proceed to dismiss the same.

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