

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

In the matter of an application for Writs  
of Mandamus under and in terms of  
Article 140 of the Constitution.

Madagama Gamage Chminda Kumara  
Gunaratne,  
Near School, Pelenda

**Petitioner.**

**C.A.No. 213/2012 (Writ)**

**Vs.**

1. Tharani Anjoja Gamage,  
Divisional Secretary,  
Divisional Secretariat,  
Palinda Nuwara.
2. Medagama Gamage Ramani  
Gunarathne  
Saddamgoda,  
Nahalla, Naboda.
3. Hon. Attorney General.  
Attorney General's  
Department,  
Colombo 12.

**Respondents.**

BEFORE : Deepali Wijesundera J., and  
M.M.A. Gaffoor J.,

COUNSEL : Razik Zarook P.C. with Rohana  
Deshapriya and Chanakya  
Liyanaage for the Petitioner.

W.Dayarathne P.C. with R.  
Jayawardena for the 2<sup>nd</sup>  
Respondents

Nayomi kahawita S.C. for 1<sup>st</sup> and  
3<sup>rd</sup> Respondents

ARGUED ON : 17/12/2015

DECIDED ON : 05/12/2016

**M.M.A.Gaffoor,J.**

The petitioner in this application has sought to invoke the writ jurisdiction praying the following remedies:-

- a) To issue a mandate in the nature of Writ of Certiorari in quash the nomination of the 2<sup>nd</sup> respondent in the LDO 199/70 dated 25<sup>th</sup> October 2010.

**b)** To issue a mandate in the nature of Writ of Certiorari to quash the second nomination that had been registered under Sections 19 and 72 of the land Development Ordinance the Mathugama Land Registry under LDO199/70 on 25<sup>th</sup> October 2010 and the endorsement.

**c)** To issue a mandate in the nature of Writ of Mandamus to direct the 1<sup>st</sup> Respondent to enforce the first nomination registered as LDO 59/117 dated 26<sup>th</sup> January 2006.

The subject matter of the dispute land which is One Acre and Ten Perches was originally issues to one Unduwana Athoralage Ejinona, the Grandmother of the petitioner by virtue of the permit marked as P1 which was registered in the Registry of LDO permits in the Mathugama Land Registry under LDO 45/179 dated 11.10.1995. The said original permit holder Unduwana Athoralage Ejinona nominated four nominees to the said land including the petitioner and the 2<sup>nd</sup> respondent the said nomination a duly registered in the Registry of LOD permits in the Mathugama Land Registry under LDO 159/117 date 26<sup>th</sup> January 2006 which is marked as P3.

However the original permit holder Unduwana Athoralage Ejinona passed away on 24<sup>th</sup> October 2010 her death certificate marked as P4. Prior to her demise she took steps to cancel the above mentioned 1<sup>st</sup> nomination and nominated the 2<sup>nd</sup> respondent as the sole successor to the said land. The said nominations was made by the deceased on 20/10/2010 four days prior to her demises and said nomination was registered on 25<sup>th</sup> October 2010 . One day after the death of the original permit holder.

In this matter petitioner pointed out the nomination of the 2<sup>nd</sup> respondent was bad in law as per Section 60 of the Land Development Ordinance No.19 of 1935 as the 2<sup>nd</sup> nomination was registered after the death of the original permit holder. Therefore it should be analyzed whether the 2<sup>nd</sup> nomination to the 2<sup>nd</sup> respondent was bad in law according to the land Development Ordinance Section 60.

According to the Section 60 of the Land Development Ordinance Section 60 “ No nomination or cancellation of the

nomination of a successor shall be valid unless the document (other than a last will ) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the permit holder". In this matter nomination of the 2<sup>nd</sup> Respondent as the sole successor to the said land had been registered on 25<sup>th</sup> October 2010 a day after the death of the original permit holder (24/10/2010) and the 2<sup>nd</sup> nomination was made by the deceased on 20/10/2010.

However it should be noted , whether the 1<sup>st</sup> respondent had submitted the nomination for registration without any delays or within a reasonable time period.

As above nomination was made by deceased on 20/10/2010 which was a Wednesday followed by the Thursday 21/10/2010 a working day there after Friday a poya day (public holiday) and the weekend Saturday and Sunday namely 23/10/2010 and 24/10/2010 . Based on this 1<sup>st</sup> respondent had a reasonable time ( two working Days ) namely 20.10.2010 and 21/10/2010 ( Wednesday and

Thursday) to submit the nomination made by deceased on 20/10/2010 for Registration. Here Section 8(2) of the Interpretation Ordinance is not applicable hence 20/10/2010 and 21/10/2010 are working days and office is opened on that day.

And also it should be noted the interpretation of "Registered" in Interpretation Ordinance that "Registered used with the reference to a document shall mean registered under the provisions of the law for the time being applicable to the registration of such document".

Supported in Judicial decision **in *Madurasinghe Vs. Madurasinghe SLR 1988 Volume 2, Page No.14 and C.A. No.408/78 (F) D.C.Gampaha 16946/L.***

Therefore in this matter the effective nomination date was 25/10/2010 and which day the nomination to the 2<sup>nd</sup> respondent submitted to the Registration. Admittedly the nomination of 2<sup>nd</sup> respondent as a sole successor by the said permit holder Unduwana Athoralage Ejinona has not been

registered before her demise as required by the provisions of the Land Development Ordinance. Therefore in terms of Section 60 of the Land Development Ordinance there is no valid nomination made in the said permit.

In this circumstance we issue,

- a) Writ of Certiorari to quash the nomination of the 2<sup>nd</sup> respondent in the LDO 199/70 dated 25<sup>th</sup> October 2010.
- b) Writ of Certiorari to quash the second nomination that had been registered under Sections 90 and 72 of the Land Development Ordinance the Mathugama Land Registry under LDO 199/70 on 25<sup>th</sup> October 2010 and the endorsement.
- c) Writ of Mandamus to direct the 1<sup>st</sup> Respondent to enforce the first nomination registered as LDO 59/117 dated 26<sup>th</sup> January 2006.

Appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundara, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**