

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

In the matter of an application for mandate in the nature of a writ of mandamus and prohibition under the Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/writ/363/2017

Bowathdeniye Aluthgedara Malkanthi,
Sirimagama, Awkana.

Petitioner

Vs.

1. Gamini Sisira Kumara,
Divisional Manager,
Mahaweli Authority of Sri Lanka,
Divisional Management Office,
Galnewa.
2. Director-General,
Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
3. D.J.N. Wickremasinghe,
President Project Manager (Lands),
Mahaweli Authority of Sri Lanka,
'H' System, Tambuttegama.
4. Block Manager,
Block Office, 'H' System, Tambuttegama.
5. Divisional Secretary,
Divisional Secretariat, Galnewa.

6. W.P.I. Wickremasuriya,
Chief Government Management- Assistant,
Divisional Secretariat, Galnewa.

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

Respondents

Before : L.T.B. Dehideniya J. (P/CA)

: Shiran Gooneratne J.

Counsel : Venuka Coorey for the Petitioner.

: G. Wakishta Arachchi SC for the Respondents.

Argued on : 29.11.2017

Decided on : 04.12.2017

L.T.B. Dehideniya J. (P/CA)

This is an application for a mandate in the nature of writs of *mandamus* and *prohibition*. The petitioner states that her father was the original permit holder of the residential premises under the Land Development Ordinance (LDO). On his demise, the Petitioner had made a request to the Block Office of System H of the Mahaweli Authority to be qualified as the successor to the said premises. She further states that she learnt that the 1st to 4th Respondents are taking steps to issue the permit to one Dharmadasage Dharmasiri Rajapakse, who is not named as a party to this application. The Petitioner is moving this Court to issue a writ of *mandamus* compelling the Respondents to issue a "Deed of Ownership" in respect of the land in question to the Petitioner.

Under the section 48A of the LDO, the spouse of the permit holder, whether he/she is nominated as the successor or not, is entitle to obtain the

permit in his/her name at the demise of the original permit holder. If the spouse is the nominated successor, he/she become entitle to make a nomination too. In the present case the Petitioner pleads in the paragraph 6 of the petition that that her siblings settled in different areas and she continued to occupy the premises with her mother and brother which means that the spouse of the permit holder is among living. As per section 72 of the LDO the children of the deceased permit holder become entitle to be issued with the permit only after the death of the spouse.

As per the scheme of succession under Rule 1 of the Third Schedule of the LDO, the holding devolves only on one person and the elder is preferred to the younger and the sons preferred over the daughters. The Petitioner admits that she is living in this premises with her brother. Further she admits that her father had more children other that the Petitioner and her brother by stating in the paragraph 6 of the petition that her siblings are settled in different areas. She has failed or neglected to disclose the details of her siblings for the Court to come to a conclusion on her entitlement for succession.

Under these circumstances, I hold that the Petitioner has failed to establish her entitlement to be qualified as the successor to her late father, the original permit holder. Accordingly, I dismiss the application without issuing notice.

President of the Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal