

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
Prohibition under and in terms of Article
140 of the Constitution.

Sinhala Pedidurayalage Sarath Arunasiri,
Jayasiripura,
Nagollagoda.

Petitioner

CA (Writ) Application No: 431/2015 Vs.

1. D.T.S. Kumara,
Divisional Secretary,
Divisional Secretariat,
Panduwasnuwara, (West),
Panduwasnuwara.
2. J.M.R.P. Jayasinghe,
The Provincial Land Commissioner,
Provincial Land Commissioner's
Department,
Provincial Council Office Complex,
Kurunegala.
3. H.K.D.W.M.N. Hapuhinna,
Deputy Land Commissioner (Ranbima),
No. 1200/6, Rajamalwatta Road,
Battaramulla.

4. R.P.P. Rajapakshe,
Commissioner General of Land,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
5. Ranjith Ariyaratne,
Senior Deputy Secretary (Land),
Ministry of Land and Land Development,
Mihikatha Medura,
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
6. Sinhala Pedidurayalage Nandawathie,
Thorawela,
Nagollagoda.
7. Sinhala Pedidurayalage Pemawathie,
No. 234/3, Galahitiyawa,
Kuliyapitiya.
8. Sinhala Pedidurayalage Rasika Sampath
Chandrasiri,
Jayasiripura,
Nagollagoda.
9. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : P. Padman Surasena, J. (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : Maheshika Wijetunga for the Petitioner.

Chaya Sri Nammuni, SC for 1st to 5th and 9th Respondents.

Saliya Pieris, PC for the 6th to 8th Respondents.

Argued on : 21/11/2017

Written Submissions of the Petitioner filed on: 02/03/2018

Written Submissions of the 6th to 8th Respondents filed on: 06/03/2018

Written Submissions of the 1st to 5th & 9th Respondents filed on: 15/05/2018

Judgment on : 18/07/2018

A.L. Shiran Gooneratne J.

The Petitioner, the eldest surviving son of Sinhala Pedidurayalage Pina, (herein after sometimes referred to as Pina) is claiming an exclusive right of succession to the land in extent of 0.775 hectares, more fully described in the schedule to the grant marked P2, in terms of rule 1 of schedule 3 of the Land Development Ordinance (LDO). The Petitioner claims that Pina, prior to his death has nominated his two daughters, the 6th and 7th Respondents, as successors to 0.202 hectares of land, each, as reflected in registration document marked P3, which the Petitioner states does not conform to the minimum extent of land that can be fragmented in terms of the said grant and therefore, the 6th and 7th Respondents cannot be held duly nominated as successors to the said portion of

land. The balance 0.371 hectares of land has been transferred to the 8th Respondent a grandson of Pina, as reflected in document marked P5.

In the said background, the Petitioner has invoked the jurisdiction of this Court to seek a mandate in the nature of writ of Certiorari to quash the decision contained in document marked P5, inserting the 8th Respondent in the list of permit as a successor to the holding a share of 0.371 hectares of land and the nomination of the 6th and 7th Respondents as his successors as reflected in document marked P3. The Petitioner has also prayed for writ of Mandamus to direct the 1st to 4th Respondents to implement the decision of the 3rd Respondent to effect nomination in favour of the Petitioner under rule 1 of schedule 3 of the LDO, as reflected in document marked P9.

The Petitioner is challenging the said decision on the basis that the;

- (a) nomination of the 6th and 7th Respondents are illegal, in terms of conditions 1 and 2 of the permit marked P2.
- (b) nomination of the 6th and 7th Respondents are invalid as the nomination marked P2, as successors apply only to a part of the holding.
- (c) There is no valid nomination of a successor to the remaining part of the holding.
- (d) Petitioner being the eldest surviving son of the original permit holder has priority over the 8th Respondent who is a grandson of the original permit holder.

Section 52 (2), (3) and (4) of the LDO states,

52. (2) More persons than one may be nominated by the owner of a holding or a permit-holder as successors to the holding or land alienated on the permit provided that such nomination does not contravene the conditions of the grant or permit.

(3) No person shall be nominated as the life-holder of a part or share of a holding, whether divided or undivided.

(4) The nomination of a successor and the cancellation of any such nomination shall not be made subject to any condition or defeasance.

According to the grant marked P2, fragmentation of land is possible in terms of the conditions as stipulated. At page 3 of the grant, condition 1 states that, the "owner shall not convey a sub-division or demarcation less than 0.203 hectares". Therefore as stipulated by the said condition the sub-division of 0.202 each to the 6th and 7th Respondents is a violation of condition 1 of the grant. It is also observed that, no person can be nominated as life-holder to a divided part or share of less than 0.203 of a holding in the land. The transfer upon the grantees death of the remaining 0.371 hectares to the 8th Respondent by nomination dated 03/07/2003, by the 1st Respondent marked P5, contravenes condition 3 of the grant.

Section 52 (2) of the LDO, require a permit holder when nominating more persons than one as successors to the holding or land not to contravene the conditions of the grant. Therefore, the Petitioners challenge of validity of the nomination in terms of Section 52 (2) of the LDO should be upheld.

In terms of Section 49, if a permit holder fails to nominate a successor during his lifetime, Section 71 provides that succession will be according to the rules laid down in the third schedule of the Ordinance.

As noted earlier, the Petitioner is the eldest surviving son of Pina, and the brother of 6th and 7th Respondents. The 8th Respondent, born on 24/09/1987, is the son of Nimal Chandrasiri, Pina's eldest son, who predeceased him. Therefore, in the absence of a valid nomination in terms of Section 49 of the LDO, succession should devolve as prescribed by the rules in the third schedule in terms of Section 72 of the LDO. This position has been accepted by the 3rd Respondent by document marked P9.

In the circumstances, the Petitioner, being the eldest surviving son of Pina, should succeed to the title upon the death of the life-holder, as successor in terms of Section 72, in the order of priority contemplated under rule 1 of schedule 3 of the LDO.

The 6th to 8th Respondents claims that the Petitioner is guilty of laches since the instant application seeking to challenge the nomination of the 8th Respondent was made on 30th April 2003.

The Petitioner, consistently has taken up the position that he was unaware of an inquiry held regarding this matter by the 1st Respondent on 30/04/2003, and the subsequent nomination of the 8th Respondent as successor to the remainder of the land.

When deciding on delay the Court should be mindful of the conduct of the Petitioner. It is observed that, the 1st Respondent by letters marked P14(a) and P14(b), copied to the 8th Respondent, has informed the 2nd Respondent about the discovery of the irregularity of the nomination of the 8th Respondent prior to filing this application. By letter dated 08/04/2015, marked P15, the 1st Respondent had summoned the 8th Respondent for an inquiry. The 8th Respondent has failed to participate at the said inquiry. In the circumstances, it is my view that taking to account his own conduct the 8th Respondent now cannot be heard to complain about undue delay.

In all the above circumstances, I hold that in the absence of a valid nomination, the 6th, 7th and 8th Respondents have no right of succession to the land morefully described in the schedule to the grant marked P2.

Therefore, the Court grants a mandate in the nature of writ of Certiorari to quash the decision reflected in document marked P5, as prayed for in paragraph (b), the Court also grants a writ of Mandamus directing the 1st to 4th Respondents to implement the decision of the 3rd Respondent contained in document marked P9 as prayed for in paragraph (c), and also declare that the appointments of 6th, 7th and

8th Respondents as successes to the said land are null and void, as prayed for in paragraph (d) of the Petition.

Petition is allowed. I make no order for costs.

JUDGE OF THE COURT OF APPEAL

P. Padman Surasena, J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL