

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/or *Mandamus*. Under and in terms of Article 140 of the Constitution.

Claribel Shanthi Ediriweera,
(now Egodawatte) through her
Attorney K.B. Ediriweera of 973C,
Dewatagahawatte Road,
Talangama South,
Talangama.

Petitioner

Case No: CA/WRIT/350/2016

Vs.

1. R.P.R. Rajapakse,
Land Commissioner General's Department,
Mihikatha Medura, 1200/6,
Rajamalwatte Road,
Battaramulla- 10120.
2. S. Thirimanne,
Divisional Secretary's Office,
Palindanuwara,
Badureliya- 12230.
3. Udage Lionel Silva
of Galpotta Road,
Midallana,
Morapitiya- 12232.

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

Respondents

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

&

A.L. Shiran Gooneratne J.

Counsel : Bimal Rajapaksha with Amrith Rajapaksha and Muditha Perera for
the Petitioner.

U.P. Senasinghe, SC for the 1st, 2nd and 3rd Respondents.

Argued on : 02/05/2018

Written Submissions of the Petitioner and Respondents filed on: 18/06/2018

Judgment on : 30/07/2018

A.L. Shiran Gooneratne J.

In this application, the Petitioner seeks a mandate in the nature of writ of Certiorari to quash the decision of the 2nd Respondent, marked "P", appointing the 3rd Respondent as successor to the issue of a land grant to the Petitioner's deceased husband, marked "C", in terms of the Land Development Ordinance (LDO). The Petitioner is challenging the said decision on the basis that the deceased grantee

has not nominated a successor in his lifetime to the land depicted more fully in the said land grant.

The subject matter which relates to this application is a land in extent of A2-R0-P0, situated in the village of Midalana, in the District of Kalutara. KumarasingheThilinahamy, the original permit holder to the said land prior to her death nominated her second child Wasanth Egodawatta, the husband of the Petitioner, as permit holder in the original permit marked 3R1. Wasantha Egodawatta, by letter dated 22/09/2004, marked R1, nominated the 3rd Respondent, a nephew of the grantee as successor to the said permit. The said nomination has been duly effected by the 2nd Respondent on 11/03/2005, marked R2, which is registered in the land ledger.

Wasanth Egodawatta, was unaware of the said land grant dated 01/08/1996, issued in terms of Section 19(4), of the Land Development Ordinance marked "C", during his lifetime. The fact that the land grant marked (C), registered on 10/02/2011, was not handed over to the permit holder before his death, is not in dispute.

The Petitioner submits that the registration of the 3rd Respondent as successor to the permit after 9 years, ie, on 16/03/2005, has no effect in law or any legal consequences. The Petitioner also states that, she presumes that there was no inquiry held prior to the decision endorsing the 3rd Respondents name as successor on 16/03/2005, as reflected in document marked "S". The Petitioner also submits

that in the circumstances, the 1st and 2nd Respondents have failed to make a decision in compliance with Section 51 and 72 of the LDO.

It is observed that, the nomination of the 3rd Respondent has been duly registered in the Land Ledger maintained by the 2nd Respondent as reflected in document marked 3R 1V, and as such the said nomination conforms with Section 51 of the LDO.

The Petitioner, at present, the registered life interest holder of the said land grant, questions the validity of a nomination of a successor through a permit, when there is a subsequent discovery of a grant. The counter argument of the Respondents are that the issuance of a permit and a subsequent grant in respect of the same land constitutes one and the same process.

In the case of *Mahallege Vidaneralalage Don Agosimmo Vs. Divisional Secretary, Polonnaruwa and others SC Appeal No. 30/2004*, the court held, that;

“.....it is clear from the provisions of the law that the change in the nature of the holding from that of the permit to a grant is one process and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made.....”

The Respondent's submit that the exact point in issue in this application was discussed in the case of *Piyasena Vs. Wijesinghe and others 2002 2SLR, 242*, where the court held, that;

“...it is to be noted that the issuance of a grant changes status of a permit holder to that of an “owner” who derives title to the land in question (see Section 2 of the Ordinance). By the amending Act No. 27 of 1981 this interpretation of “owner” was extended to also cover “a permit holder who has paid all sums which he is required to pay.... and has complied with all the other conditions specified in the permit”. The satisfaction of “paying all sums and complying with all conditions” entitles the permit holder to a grant which “shall” be issued in respect of the said land in terms of Section 19(4) of the same Act. In view of these provisions it could be reasonably argued that at the time of her death Ukku Bandi was entitled to be considered as “owner” by virtue of the fact that she had been awarded a grant. The fact that the grant never reached here and also the fact that the execution of the grant was never conveyed to her cannot be held against her. There are circumstances, in her favour and I hold that the nomination of a successor under the permit becomes converted to nomination made by her as the owner of the land. In my view this interpretation is in keeping with the spirit and intention of the amending Act.....”

As observed earlier, the Petitioner’s contention that a proper inquiry was not held regarding the nomination of the 3rd Respondent as successor to the permit is based on presumed facts which the Petitioner has failed to disclose or prove. Therefore, in the absence of any adverse finding by the 2nd Respondent against the

3rd Respondent being the permit holder, the subsequent discovery of a grant in respect of the same land cannot be held against the said Respondent since it should not be considered as two distinct processes but as one and the same process.

In all the above circumstances, I hold that the decision made by the 2nd Respondent as contained in document marked "P" nominating the 3rd Respondent as grantee to the said permit is within the legal confines of the Act and should not be interfered with.

Therefore, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

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

I agree.

PRESIDENT OF THE COURT OF APPEAL