

**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, Mandamus and Quo Warranto in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application No. 198/2017

1. Hettiarachchige Sarathchandra,
322/B, Pinnawela North,
Pinnawela.
2. Hettiarachchige Nimalsiri,
124/1F, Karuwalapitiya,
Meegoda.

Petitioners

VS

1. Land Commissioner General,
"Mihikatha Medura",
1200/6, Rajamalwatta Road,
Battaramulla.
2. Divisional Secretary,
Divisional Secretariat,
Horana Road, Padukka.
3. Sendanayake Arachchige Premaratne,
573/1, Waga – East, Thummodera.

Respondents

Before: P. Padman Surasena, J/ President of the Court of Appeal
Arjuna Obeyesekere, J

Counsel: Thishya Weragoda with Iresh Seneviratne and Chinthaka
Sugathapala for the Petitioners

Nuwan Peiris, State Counsel for the 1st and 2nd Respondents

Himal Jayasinghe for the 3rd Respondent

Argued on: 01st October 2018

Written submissions

tendered on: 10th October 2018 by the Petitioner
10th October 2018 by the 1st and 2nd Respondents
08th October 2018 by the 3rd Respondent

Decided on: 22nd October 2018

Arjuna Obeyesekere, J

The Petitioners have filed this application seeking *inter alia* the following relief:

1. A Writ of Certiorari to quash an entry contained in the 'Register of Permits and Grants under the Land Development Ordinance', annexed to the petition, marked 'A5';

2. A Writ of Mandamus compelling the 1st and 2nd Respondents to devolve on the Petitioners, the property referred to in the said entry 'A5'.

When this matter was taken up for argument, the learned Counsel for the Petitioner informed this Court that he would only be pursuing the said Writ of Certiorari.

The facts of this matter briefly, are as follows.

The 1st Petitioner is the eldest son of Hettiarachchige Don Jayasekara and Kahandawela Arachchige Leelawathie. After the demise of Leelawathie, Jayasekara is said to have married Kariyawasam Athukoralalage Jane Nona. The 2nd Petitioner is the eldest son of Jayasekara from this second marriage.

In January 1993, Jayasekara had been issued with a Grant by the State under and in terms of Section 19(4) of the Land Development Ordinance, in respect of a land in extent of 0.169 hectares. A copy of the said grant has been annexed to the petition, marked 'A1'.

In December 2010, Jayasekara had nominated the 3rd Respondent Sendanayake Arachchige Premaratne as the successor under the said grant 'A1'. It is admitted between the parties that the 3rd Respondent is not a son of Jayasekara nor is he a blood relative of Jayasekara and appears to be either a nephew of Jane Nona¹ or the son of Jane Nona². Be that as it may, the said nomination, produced with the petition, marked 'A6' has been accepted by the

¹ As claimed by the Petitioners and as borne out by the Birth Certificate of the 3rd Respondent, annexed to the petition, marked 'A7'.

² As claimed by the 3rd Respondent. However, no proof has been adduced in this regard.

Divisional Secretary and has been duly registered in the 'Register of Permits and Grants under the Land Development Ordinance' maintained by the 1st Respondent. The relevant page containing the said registration has been produced with the petition, marked 'A5'.

The Petitioners do not appear to have had any issue with the aforementioned nomination of the 3rd Respondent. However, after the death of Jayasekara in February 2016 and his wife Jane Nona in June 2016, the Petitioners appear to have claimed title to the said land. In this application filed in 2017, the Petitioners claim that the nomination of the 3rd Respondent as the successor of Jayasekara in terms of Section 51 of the Land Development Ordinance is bad in law as the 3rd Respondent is not a blood relative of Jayasekara. It is in these circumstances that the Petitioners have sought the Writ of Certiorari to quash the registration of the said nomination reflected in 'A5'.

The question that arises for consideration by this Court is whether the nomination of the 3rd Respondent as successor under the provisions of the Land Development Ordinance is bad in law and if so, whether the Petitioners are entitled to a Writ of Certiorari to quash the registration of such nomination.

Provisions with regard to the nomination of a successor are found in Section 51 of the Land Development Ordinance, which reads as follows:

"No person shall be nominated by the owner of a holding or a permit holder either as his successor unless that person is the spouse of such

owner or permit holder or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule”

Rule 1 of the Third Schedule reads as follows:

“The groups of relatives from which a successor may be nominated for the purposes of Section 51 shall be as set out in the subjoined table.

Table

- i. Sons
- ii. Daughters
- iii. Grandsons
- iv. Granddaughters
- v. Father
- vi. Mother
- vii. Borthers
- viii. Sisters
- ix. Uncles
- x. Aunts
- xi. Nephews
- xii. Nieces

In this rule, ‘relative’ means a relative by blood and not by marriage.”

The 3rd Respondent does not fall into the group of relatives in the Table nor is he a blood relative of Jayasekara. Hence, in terms of Section 51, the 3rd Respondent could not have been nominated as the successor of Jayasekara. The necessary consequence of a nomination that is contrary to Section 51 is that it is wholly invalid in terms of Section 75, which reads as follows:

“Any nomination of a successor shall be wholly invalid if such nomination or cancellation in any way contravenes the provisions of this Ordinance.”

Thus, this Court is of the view that the registration of the nomination of the 3rd Respondent as the successor of Jayasekara was contrary to the provisions of the Land Development Ordinance and that this decision is liable to be quashed by a Writ of Certiorari. In these circumstances, this Court proceeds to issue the Writ of Certiorari prayed for in paragraph ‘c’ of the prayer to the petition. This Court makes no order with regard to costs.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal