

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

In the matter of an application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for an order in the nature of Writs of Certiorari and Mandamus.

**CA (Writ) Application No: 494/2011**

1. Herath Mudiyansele Herath  
Senarathne Bandara,  
also known as  
Herath Mudiyansele Punchi Banda,  
No. 165, BOP 317, Talpotha,  
Polonnaruwa.

**PETITIONER**

Vs.

1. The Divisional Secretary,  
Divisional Secretariat,  
Lankapura, Thalpotha,  
Polonnaruwa.
2. The Commissioner of Lands of the  
North Central Province,  
Office of the Land Commissioner,  
Anuradhapura.

3. The Deputy Commissioner of Lands,  
North Central Province,  
Office of the Land Commissioner,  
Anuradhapura.
4. Hon. Minister of Lands and Land  
Development,  
"Govijana Mandiraya,  
No. 80/5, Rajamalwatta Road,  
Battaramulla.
5. Hon. Deputy Minister of Lands and  
Land Development,  
"Govijana Mandiraya,  
No. 80/5, Rajamalwatta Road,  
Battaramulla.
6. Yapa Mudiyanseelage Somawathie,
7. Herath Mudiyanseelage Ananda  
Bandara,
8. Herath Mudiyanseelage Gamini Podi  
Bandara,
9. Herath Mudiyanseelage Jayarathne  
Bandara,
10. Herath Mudiyanseelage Seetha Kumari  
Bandara,

All of No. 448, Buddhayaya,  
Galamuna, Hingurakgoda.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Geeshan Rodrigo for the Petitioner

Suranga Wimalasena, Senior State Counsel for the 1<sup>st</sup> – 5<sup>th</sup>  
Respondents

Chathura Amaratunga for the 6<sup>th</sup> – 10<sup>th</sup> Respondents

**Written Submissions:** Tendered on behalf of the Petitioner on 1<sup>st</sup> August  
2018

Tendered on behalf of the 1<sup>st</sup> – 5<sup>th</sup> Respondents on  
16<sup>th</sup> January 2019

Tendered on behalf of the 6<sup>th</sup> – 10<sup>th</sup> Respondents on  
30<sup>th</sup> August 2018

**Decided on:** 14<sup>th</sup> February 2019

**Arjuna Obeyesekere, J**

When this application was taken up for argument on 19<sup>th</sup> June 2018, the learned Counsel appearing for all parties moved that this Court pronounce judgment on the written submissions that would be tendered by the parties.

By an amended petition dated 19<sup>th</sup> September 2011, the Petitioner had sought the following relief:

- a) A Writ of Certiorari to quash the 'grants' dated 16<sup>th</sup> November 2009 issued to Herath Mudiyanseelage Dharmadasa under the provisions of the Land Development Ordinance<sup>1</sup>;
- b) A Writ of Mandamus to compel the 1<sup>st</sup> Respondent to issue a grant to the Petitioner under the provisions of the Land Development Ordinance, in respect of the lands referred to in the documents marked 'P7' and 'P8'.<sup>2</sup>

The facts of this application very briefly are as follows.

The Petitioner states that the State had issued the Petitioner's father, Ambangaha Kumbure Herath Mudiyanseelage Ukkurala, a permit in respect of a high land and a paddy land in the 1960's, under the provisions of the Land Development Ordinance (the Ordinance). A copy of the said permit has been produced by the 1<sup>st</sup> Respondent marked 'R1'. The Petitioner states further that he had been nominated as the successor under the said permit by Ukkurala. This Court observes that an endorsement has been made on the reverse of 'R1' nominating Herath Mudiyanseelage Punchi Banda, who was one year of age at that time, as the successor. This nomination has been registered on 20<sup>th</sup> March 1962 in the land ledger relating to this land, as borne out by an extract thereof, produced by the 1<sup>st</sup> Respondent marked 'R2'. The Petitioner states that he changed his name in 1987 from Herath Mudiyanseelage Punchi Banda to Herath Mudiyanseelage Senaratne Banda and has annexed to the petition, marked 'P3', a copy of the birth certificate which confirms the amendment to the name.

---

<sup>1</sup> The Petitioner has annexed to the petition, marked 'P7' and 'P8', two letters issued by the 1<sup>st</sup> Respondent Divisional Secretary, Lankapura to the Registrar of Lands of Polonnaruwa requesting that the name of Herath Mudiyanseelage Dharmadasa be registered as the successor to two grants issued in the name of Dharmadasa's father, Ambangaha Kumbure Herath Mudiyanseelage Ukkurala.

<sup>2</sup> Ibid.

In January 1983, the Government had issued Ukkurala a grant under the provisions of Section 19(4) of the Ordinance, read with Section 19(6) thereof, in respect of the aforementioned high land in extent of 2A 3R 1P. A copy of the said grant has been annexed to the petition, marked 'P1'. In May 1986, the Government had issued Ukkurala a further grant under the provisions of Section 19(4) of the Ordinance, read with Section 19(6) thereof, in respect of the aforementioned paddy land in extent of 4A 3R 38P. A copy of the said grant has been annexed to the petition, marked 'P2'. It is admitted between the parties that Ukkurala did not make a fresh nomination of a successor, under either of the two grants 'P1' or 'P2'. Thus, the said nomination of the Petitioner continued to be valid, under the grants as well.<sup>3</sup>

Ukkurala had passed away on 13<sup>th</sup> April 1991, while his widow, Lokumenike had passed away on 1<sup>st</sup> May 2007. It is an admitted fact that Ukkurala and his wife had 10 children. Herath Mudiyanseleage Dharmadasa, the late husband of the 6<sup>th</sup> Respondent and the father of the 7<sup>th</sup> – 10<sup>th</sup> Respondents, was the eldest son of Ukkurala and his wife.

The issue that arises in this application is, who is entitled to succeed to the grants 'P1' and 'P2' issued to Ukkurala. Chapter VII of the Ordinance contains provisions with regard to succession under a permit or holding. In terms of Section 48B of the Ordinance, upon the death of Ukkurala, his spouse Lokumenike was entitled to succeed to the said lands. In terms of Section 68(1) of the Ordinance, if Lokumenike refuses to succeed or does not enter into

---

<sup>3</sup> See the judgment of the Supreme Court in Mallehe Widanaralalage Don Dayaratne vs Mallehe Widanaralalage Don Agosinno and four others [SC Appeal No.30/2004; SC Minutes of 23<sup>rd</sup> March 2005] followed by this Court in Abeysinghe Arachchige Asoka vs Rajapakse, Commissioner General of Lands [CA (Writ) Application No. 208/2013; CA Minutes of 2<sup>nd</sup> September 2016].

possession of the land within a period of 6 months from the date of the death of Ukkurala, that will amount to a failure to succeed by Lokumenike. In such an event, in terms of Section 49 of the Ordinance, the Petitioner, being the nominated successor of Ukkurala under the permit 'R1' was entitled to succeed to the holding and the Petitioner ought to have taken steps to succeed to the said lands, upon Lokumenike failing to succeed. In terms of Section 68(2) of the Ordinance, if the Petitioner refuses to succeed to the land or the Petitioner does not enter into possession within 6 months of the date from which Lokumenike failed to succeed, that shall tantamount to a failure by the Petitioner to succeed to the said land.

This Court shall now consider if the Petitioner took steps in terms of the law to exercise his rights as a nominee and succeed to the lands in question.

The Petitioner states in paragraph 6 of the petition that he and the "other brothers and sisters, except the deceased brother" had been in continuous occupation of the lands covered by the said grants, even after the death of both parents and that this was the position that prevailed even at the time this application was filed. This Court observes that the 6<sup>th</sup> – 10<sup>th</sup> Respondents have admitted this position of the Petitioner in their Statement of Objections. The fact that the Petitioner and five of his siblings are occupying the high land<sup>4</sup> and the fact that the Petitioner and two others<sup>5</sup> are in possession of the paddy land is borne out by the letters dated 21<sup>st</sup> October 2010 written by the Grama Niladhari of Gemunupura, annexed to the petition marked 'P29' and 'P30',<sup>6</sup> respectively.

---

<sup>4</sup> The siblings of the Petitioner have not been made parties to this application.

<sup>5</sup> These two persons have not been made parties to this application.

<sup>6</sup> According to 'P30', the Petitioner is in occupation of an extent of 3A of the paddy land.

The Petitioner has not placed any material before this Court with regard to what transpired in respect of the said high land and the paddy land, from the time that Ukkurala passed away in 1991 until 2009 when 'P7' and 'P8' were issued. There is no material before this Court that Lokumenike succeeded to the holding upon the death of Ukkurala. Nor has the Petitioner placed any material to demonstrate that he, as the nominee under the permit 'R1', took steps upon the failure of Lokumenike to succeed, or at least upon the death of Lokumemike, to have himself substituted. Although the Petitioner states in the letter annexed to the petition, marked 'P32', that he has been in occupation of this land for 25 years, there is no specific averment in the petition that the Petitioner succeeded to the land nor has the Petitioner submitted any material to prove that he succeeded to the said land when Lokumenike failed to succeed in terms of Section 68(1) of the Ordinance. The Petitioner being in possession of part of the land does not amount to succeeding to the land. This Court takes the view that succeeding to a land as contemplated by the Ordinance requires a positive act on the part of the nominee or the person entitled to succeed in terms of the Ordinance. The admission by the Petitioner that five of his siblings are also in occupation of the high land and that two others are in possession of the paddy land is clear evidence that the Petitioner has not succeeded to the land and that even at this point of time, there are others, in addition to the Petitioner, occupying the high land and the paddy land. In these circumstances, this Court is of the view that the Petitioner has failed to substantiate that he exercised his rights as a nominee and that he succeeded to the said lands.

Section 72 of the Ordinance regulates the devolution of title when no successor has been nominated, or the nominated successor fails to succeed, or the nomination of a successor contravenes the provisions of the Ordinance.<sup>7</sup>

Section 72 of the Ordinance reads as follows:

“If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual installment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in Rule 1 of the Third Schedule.”

Thus, upon the failure of the nominee to succeed to the land, the State is entitled to act in terms of Section 72 in determining devolution.

The starting point of the present dispute appears to be a letter dated 1<sup>st</sup> July 2009 written by Dharmadasa to the 1<sup>st</sup> Respondent, produced by the 6<sup>th</sup> Respondent, marked '6R1', which is reproduced below.

“ගරු ප්‍රදේශය මහා ලේකම් තුමනිල

---

<sup>7</sup> See *Abeyasinghe Arachchige Asoka vs Rajapakse*, Commissioner General of Lands; *supra*.

ඉහත නම සහ ලිපිනය සඳහන් වන මාගේ මුල් නිවස පිහිටා ඇත්තේ බී.ඕ.පී. 317 - අංක 165, තල්පොත, පොළොන්නරුව යන ලිපිනයෙනි. මෙම නිවසේ පදිංචිව සිට මිය ගිය එච්.එම්. උක්කුරාල සහ වයි.ඇම් ලොකුමණිකේ යන දෙපළගේ වැඩිමහල් පුත්‍රයා මම වෙමි. පියාට රජයෙන් ලැබී ඇති අංක පො/ප්‍ර/4907 දරණ ගොඩ ඉඩම සහ අංක පො/ප්‍ර/8126 දරණ මඩ ඉඩම යන ඉඩම් දෙකම දැනට භුක්ති විදින්නේ මගේ සොහොයුරන්ය. මේවා භුක්ති විදීමේදී ඔවුන් අතර ගැටලු රාශියක් මතු වී ඇත.

එම නිසා මෙම ඉඩම් නිත්‍යානුකූලව කොටස් කර ගෙන වෙන් කර ගෙන භුක්තිවිදීමේ අවශ්‍යතාවය ඉස්මතු වී ඇත. එබැවින් මෙම කර්තව්‍ය ඉෂ්ඨකර ගැනීම සඳහා පවුලේ වැඩිමහල් සොහොයුරා වන මා වෙත මෙම ඉඩම් වල අයිතිය නිත්‍යානුකූලව පවරාදෙන මෙන් ඔබතුමාගෙන් ඉතා කාරුණිකව ඉල්ලා සිටිමි.”

There is a copy of an undated letter sent by the Grama Niladhari of Gemunupura to the 1<sup>st</sup> Respondent on the reverse of ‘6R1’ which confirms that Dharmadasa did not occupy the said lands and that six children of Ukkurala, including the Petitioner, were in occupation of the land.

The above letter was followed by another letter dated 17<sup>th</sup> September 2009 written by Dharmadasa to the 1<sup>st</sup> Respondent produced by the 6<sup>th</sup> Respondent, marked ‘6R2’. In this letter, Dharmadasa had claimed that he had been trying to obtain a grant for himself for the last 10-12 years but that he had abandoned his plans as he did not receive a positive response to such request. Dharmadasa had thereafter requested that he be named as the successor to the said two lands. Dharmadasa had also stated in ‘6R2’ as follows:

“මුල් අයිතිය ගත්තාට මා අතින් අයව එලවන්නේ නැත. මා කරන ප්‍රථම දෙය නම්, අයිතිය වගයෙන් සුදුසු අයට මෙම ඉඩම් කොටස් බෙදා දීමයි. මා වෙන්කර ගන්නා හෝ ඉල්ලන හෝ, එකම දෙය නම්, කුඹුරෙන් අක්කර එකහමාරක් (අක්. 01 යි රූඩ් 2 ක්) පමණක් වෙන්කර ගැනීමයි.”

The request made by Dharmadasa in '6R1' and '6R2', that he be permitted to succeed to the said two grants culminated with the 1<sup>st</sup> Respondent writing the letter marked 'P7' informing as follows<sup>8</sup>:

“අඹන්ගහ කුඹුරේ හේරත් මුදියන්සේලාගේ උක්කුරාල නමින් නිකුත් කරන ලද අංක පො/පු/8126 දරණ ප්‍රදාන පත්‍රයෙහි ප්‍රදානපත්‍රලාභියා වූ ඉහත නම සඳහන් තැනැත්තා මියගොස් ඇති බව පිලිගත් බැවින් එහි එම දීමනාපත්‍රලාභියා වන අඹන්ගහ කුඹුරේ හේරත් මුදියන්සේලාගේ උක්කුරාල ගේ දරුවන් වන පහත නම සඳහන් අයට<sup>9</sup> ඉහත සඳහන් අංකය දරණ ප්‍රදානපත්‍රයෙහි මුල් අයිතිය ඉඩම් සංවර්ධන ආඥා පනතේ 49 හා 72 වගන්ති යටතේ උරුම මෙයින් සහතික කරමි. යථෝක්ත ප්‍රදානපත්‍රය ලියාපදිංචි කළ පත්ඉරුවේ මෙම මුල් උරුමය සහතික කිරීම ලියාපදිංචි කරන මෙන් කාරුණිකව දන්වා සිටම.”

The name of Dharmadasa had thereafter been registered in the Register of Grants issued under the Ordinance, a copy of which has been annexed to the petition, marked 'P9'.

The Petitioner, being dissatisfied with the registration of Dharmadasa as the successor of Ukkurala under the grants 'P1' and 'P2' had written several letters to the 1<sup>st</sup> – 5<sup>th</sup> Respondents. The first of these letters, which has been annexed to the petition, marked as 'P16' is dated 25<sup>th</sup> April 2011. By 'P16' the Petitioner drew the attention of the Commissioner General of Lands to the fact that the Petitioner was the nominee. The relevant paragraphs of 'P16' read as follows:

<sup>8</sup> The identical letter has been written of the high land – vide 'P8'.

<sup>9</sup> The name mentioned in 'P7' is that of Dharmadasa.

“ඔහු වෙත ඉහත අංක දරණ ප්‍රදාන පත්‍ර ප්‍රදානය කිරීමට පෙර එම ඉඩම් සම්බන්ධව බලපත්‍ර නිකුත් කර තිබූ අතර බල පත්‍රයේ මගේ නම පසු උරුමකරු වශයෙන් සඳහන් කර එකී බලපත්‍රයට අදාළ ලෙජර සටහනේ සඳහන්ව ඇත.

එකී පැවරීමෙන් අනතුරුව ඔහු විසින් මෙම ඉඩම් අත්සතු කිරීමට උත්සහ දරණ අතර එසේ වුවහොත් මෙම ගොඩ මඩ ඉඩම් වල උරුමකරු වන මා මෙන්ම මෙම ගොඩ මඩ ඉඩම් වල පදිංචිව හුක්ති විදින මාගේ පවුලේ අනෙකුත් සහෝදරයන්ද අනාවතාවයට පත් වීමට ඉඩ ඇත. ඒ බව සනාථ කිරීමට ඔවුන්ද පහත අත්සන් කර ඇත.”

It is in the above factual background that the Petitioner invoked the jurisdiction of this Court, seeking the aforementioned relief. The principal contention of the Petitioner is that he is entitled to succeed to the said lands as he was the nominated successor under the permit. There is no dispute between the parties that Ukkurala had nominated the Petitioner as his successor under the permit, way back in 1962. in terms of Section 68(2) of the Ordinance, the nominated successor must succeed to the land within a period of 6 months. This Court has already held that the Petitioner has failed to substantiate that he succeeded to the land upon the failure of Lokumenike to succeed. This establishes that the Petitioner had been sleeping over his rights for almost 20 years. The Petitioner cannot complain 20 years later that the 1<sup>st</sup> – 5<sup>th</sup> Respondents have failed to give effect to the nomination made in 'R1'. The Petitioner must take full responsibility for his failure to act in terms of the law and cannot place the blame on the 1<sup>st</sup> – 5<sup>th</sup> Respondents for his negligence and laches.

It has been consistently held by our Courts that the jurisdiction of this Court must be invoked without delay.

In **Biso Menika v. Cyril de Alwis**<sup>10</sup> Sharvananda, J (as he then was) set out the rationale for the above proposition, in the following manner:

“A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disintitiled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver..... The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay..... An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed.”

In **Seneviratne v. Tissa Dias Bandaranayake and another**<sup>11</sup> Amerasinghe, J advertng to the question of long delay, commented as follows:

“If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, *nam leges vigilantibus, non dormientibus*,

---

<sup>10</sup>1982 1 Sri LR 368; at pages 377 to 379.

<sup>11</sup>1999 2 SLR 341 at 351.

*subveniunt*, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”

In Issadeen v. The Commissioner of National Housing<sup>12</sup> Bandaranayake J, dealing with a belated application for a Writ of Certiorari, held as follows:

“It is however to be noted that delay could defeat equity. Although there is no statutory provision in this country restricting the time limit in filing an application for judicial review and the case law of this country is indicative of the inclination of the Court to be generous in finding ‘a good and valid reason’ for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy”.

Even if one considers the letters ‘6R1’ and ‘6R2’ written in 2009 by Dharmadasa as the starting point, the Petitioner appears to have become agitated over Dharmadasa being recognised as the successor only in April 2011,<sup>13</sup> and that too, because Dharmadasa was trying to sell the land. By this time ‘P7’ and ‘P8’ had been issued. This Court observes that the Petitioner has not offered any explanation in his petition why he failed to invoke the jurisdiction of this Court, prior to ‘P7’ and ‘P8’ being issued. Applying the reasoning laid down by the Supreme Court in the aforementioned cases, this Court takes the view that there has been undue delay on the part of the

---

<sup>12</sup>2003 2 SLR 10 at page 15.

<sup>13</sup> This is borne out by the letters annexed to the Petition marked ‘P16’, ‘P31’, ‘P32’ and ‘P33’.

Petitioner in invoking the jurisdiction of this Court. Therefore, this Court takes the view that on this ground, this application of the Petitioner must fail.

This Court holds that upon the failure of the Petitioner, as the nominated successor taking steps to succeed to the lands referred to in 'P1' and 'P2', the provisions of Section 72 of the Ordinance become operative. In terms of Section 72, the devolution of the land shall take place in accordance with Rule 1 of the Third Schedule which gives priority to the eldest son. Accordingly, the Respondents have acted in terms of Section 72 of the Ordinance and held that Dharmadasa is entitled to succeed. This Court reiterates that the Respondents cannot be faulted for not giving effect to the nomination of the Petitioner under the permit 'R1', as it was the duty of the Petitioner to have taken steps in that regard. This Court further reiterates that the Petitioner, having slept over his rights for almost 20 years, cannot suddenly wake up and seek an Order of this Court to quash the events that have taken place while he was in deep slumber. In these circumstances, the issuing of 'P7' and 'P8' cannot be considered as illegal and therefore, this Court takes the view that 'P7' and 'P8' are not liable to be quashed by a Writ of Certiorari. The necessity to consider the Writ of Mandamus prayed for therefore does not arise.

This Court observes that as Dharmadasa has died, his wife is eligible to succeed to the said lands as a life interest holder and the eldest son is eligible to succeed in terms of Section 72, provided they comply with the provisions of Section 68 of the Ordinance and succeed to the said land. However, it is admitted that Dharmadasa's family is not resident on the high land and are not cultivating the paddy land. In these circumstances, this Court directs the 1<sup>st</sup> – 5<sup>th</sup> Respondents to conduct an inquiry in order to determine the entitlement to

succeed to the lands which are the subject matter of 'P7' and 'P8' and take a decision in terms of the law. In doing so, the 1<sup>st</sup> – 5<sup>th</sup> Respondents may consider the fact that the 6<sup>th</sup> – 10<sup>th</sup> Respondents are not in possession of the said lands, the fact that the Petitioner and five of his siblings are in occupation of the high land and the fact that the Petitioner and two others are cultivating the paddy lands.

This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**