

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

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

CA (Writ) Application No. 326/2013

Sellappulige Ravinda Susantha De Rosa,
No. 111/2, Palugasdamana,
Polonnaruwa.

Petitioner

Vs.

1. Divisional Secretary,
Divisional Secretariat,
Thamankaduwa,
Polonnaruwa.
2. Provincial Commissioner of Lands,
Department of Provincial
Commissioner of Lands,
North Central Province,
Anuradhapura.
3. Deputy Commissioner of Lands,

Office of the Deputy Commissioner of
Lands,
Polonnaruwa.

4. Sellappulige Benjamin Rosa,
No. 111/1/1, Palugasdamana,
Polonnaruwa.
5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Arjuna Obeyesekere, J

Counsel: Sabry Nilamdeen for the Petitioner

Nuwan Peiris, State Counsel for the 1st – 3rd and 5th Respondents

Sunil Premadasa for the 4th Respondent

Argued on: 26th September 2018

Written Submissions: Tendered on behalf of the Petitioner on 7th November
2018

Tendered on behalf of the 1st – 3rd and 5th
Respondents on 21st November 2018

Decided on: 21st February 2019

Arjuna Obeyesekere, J

The Petitioner has filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision to register the name of the 4th Respondent as the owner of a State land;
- b) A Writ of Prohibition preventing the Respondents from interfering with the Petitioner's possession of the said land;
- c) A Writ of Mandamus directing the 1st Respondent to convey the ownership of the aforementioned land to the Petitioner.

The facts of this matter very briefly are as follows.

The State had issued a permit in terms of the Land Development Ordinance (the Ordinance) to the grandfather of the Petitioner, Edwin Rosa in 1949. A copy of the said permit has been produced by the 1st Respondent, marked '1R1'. The said permit covered a high land in extent of 3A 2R 18P and a paddy land in extent of 4A 2R 38 perches. The dispute that is to be decided in this application relates to the paddy land.

According to the permit marked '1R1' Edwin Rosa had initially nominated his son Joseph Rosa as the successor. The Petitioner is the son of Joseph Rosa. The nomination of Joseph Rosa has been registered in the land ledger produced by the 1st Respondent marked '1R2'. However, by a further endorsement made on '1R2' on 27th August 1963, the name of Joseph Rosa had been deleted and the

name of Benjamin Rosa, the 4th Respondent, who is also a son of Edwin Rosa, had been substituted. Edwin Rosa died on 1st March 1979, leaving behind his widow, Lucia Fernando and children.

The 1st Respondent states that in terms of Section 48A(1) of the Ordinance, upon the death of Edwin Rosa, Lucia Fernando was entitled to succeed to the lands set out in '1R1'. Section 48A(1) of the Ordinance reads as follows:

“Upon the death of a permit-holder who at the time of his or her death was required to pay any annual instalments by virtue of the provisions of subsection (2) of section 19, notwithstanding default in the payment of such instalments, the spouse of that permit-holder, whether he or she has or has not been nominated as successor by that permit-holder, shall be entitled to succeed to the land alienated to that permit-holder on the permit and the terms and conditions of that permit shall be applicable to that spouse”

The name of Lucia Fernando had been registered as the permit holder on 10th August 1980. This is borne out by the endorsement made on '1R1' as well as by the letter dated 18th March 2009 issued by the 1st Respondent.¹

On 31st January 1983, Lucia Fernando had been issued with a grant in terms of Section 19(4) of the Ordinance read together with Section 19(6) thereof, in respect of the paddy land. A copy of the said grant has been annexed to the petition marked 'P5'. Provision to issue a grant to Lucia Fernando in respect of

¹ This letter has been annexed to the petition, marked 'P7a'.

the said land is contained in Section 48A(2) of the Ordinance, which reads as follows:

“If, during the lifetime of the spouse of a deceased permit-holder who has succeeded under subsection (1) to the land alienated on the permit, the terms and conditions of the permit are complied with by such spouse, such spouse shall be entitled to a grant of that land subject to the following conditions:

- (a) such spouse shall have no power to dispose of the land alienated by the grant;
- (b) such spouse shall have no power to nominate a successor to that land;
- (c) upon the death of such spouse, or upon his or her marriage, the person, who was nominated as successor by the deceased permit holder or who would have been entitled to succeed as his successor, shall succeed to that land:

Provided that the aforesaid conditions shall not apply to a grant of any land to be made to a spouse who has been nominated by the deceased permit-holder to succeed to the land alienated on the permit.”

There is no dispute among the parties that Lucia Fernando had not been named as a successor by Edwin Rosa. Thus, while the above proviso would not apply, the conditions set out in paragraphs (a), (b) and (c) would apply to Lucia Fernando. Section 48A(3) of the Ordinance further specifies that, ‘any

disposition or nomination made by a spouse in contravention of the provisions of subsection (2) shall be invalid.'

The Petitioner has produced with the petition, marked as 'P6a' – 'P6c', the extracts relating to the said land taken from the Register of the grants issued under the Ordinance. According to 'P6a', on 29th July 1991, Lucia Fernando had nominated Seemon Rosa and Benjamin Rosa as her successors under the said grant. On 15th June 2004, Lucia Fernando had nominated as her successors, Benjamin Rosa and the Petitioner. This is reflected in the document marked 'P6b'. However, according to 'P6c', on 19th May 2005, the 1st Respondent had registered Benjamin Rosa as the sole owner of the said land.

The grievance of the Petitioner arose upon the name of Benjamin Rosa being registered as the sole owner of the said land and culminated with the filing of this application by the Petitioner seeking a Writ of Certiorari to quash the said registration.

The first argument of the Petitioner is that the cancellation of the nomination of his father Joseph Rosa and the substitution of Benjamin Rosa as successor is bad in law. If this Court agrees with the Petitioner, then, by virtue of the Petitioner being the eldest son of Joseph Rosa, he is entitled to succeed to the said land. The 1st Respondent has produced marked as '1R1' a Sinhala copy of the permit issued to Edwin Rosa as well as an English copy of the said permit. While the reverse of the Sinhala copy of '1R1' only contains the name of Benjamin Rosa as the successor, the English copy of '1R1' contains the name of Joseph Rosa, which has been subsequently deleted and the name of Benjamin Rosa has been inserted as the successor. This endorsement has been signed on

behalf of the Assistant Government Agent and the date has been inserted. The said amendment of the nominee has been effected in the land ledger, a copy of which has been produced by the 1st Respondent, marked '1R2', on the same day that the amendment was made on the permit '1R1'. In these circumstances, this Court cannot agree with the submission of the learned Counsel for the Petitioner that the cancellation of the name of Joseph Rosa as nominee and the substitution of Benjamin Rosa is not in accordance with the law.

The second argument of the Petitioner is that the 1st Respondent must give effect to the nomination made by Lucia Fernando and that in terms of the said nomination, as reflected in 'P6b', the Petitioner is entitled to receive 1A 2R 5P from the paddy land. It is the position of the 1st – 3rd Respondents that Lucia Fernando only held a life interest over the said land and that in terms of Section 48A(2)(b) of the Ordinance, Lucia Fernando had no power to nominate a successor. Accordingly, it was submitted that in terms of Section 48A(3) of the Ordinance, the said nomination by Lucia Fernando shall be invalid. This Court is in agreement with the submission of the learned State Counsel that the nominations made by Lucia Fernando including the nomination of the Petitioner as a successor, is bad in law. This Court is of the view that in terms of Section 48A(2)(c) of the Ordinance, upon the death of Lucia Fernando, Benjamin Rosa, who had been nominated as the successor by Edwin Rosa was entitled to succeed.

There is one other matter that this Court would like to advert to, with regard to the validity of a nomination made under a permit, where a grant has subsequently been issued. In Mallehe Widanaralage Don Dayaratne vs

Mallehe Widanaralalage Don Agosinno and four others² the question arose whether a nomination made under a permit continued to be valid once a grant had been issued in respect of the same land. The Supreme Court had held as follows:

" The fact that his interest is converted from that of a permit to a grant cannot make a variation in the wish that has been already indicated by him to the relevant authority. There is no provision in the Land Development Ordinance which has the effect of annulling the nomination that has been made by a holder of any lot. On an examination of the scheme of the sections, in particular, section 19(4) referred to in P7 itself, it is clear that the permit holder's right fructifies to a grant upon the satisfaction of certain conditions. The conversion of the character of the holdings cannot have the effect of annulling the nomination that has been validly made.

In these circumstances, we are of the view that the 1st Respondent has made the order P7 on proper application of the relevant provisions and importantly, by giving effect to the wish of the deceased allottee

The facts of the present application are slightly different to that of Dayaratne's case in that the nomination of Benjamin Rosa was done under a permit held by Edwin Rosa but the grant had been issued to Lucia Fernando. However, this Court is of the view that, that does not affect the applicability of the judgment of the Supreme Court to this application. The nomination of Benjamin Rosa as

² SC Appeal No.30/2004; SC Minutes of 23rd March 2005. The judgment of the Supreme Court has been referred to and followed in Abeysinghe Arachchige Asoka vs Rajapakse, Commissioner General of Lands [CA (Writ) Application No. 208/2013; CA Minutes of 2nd September 2016].

the successor of Edwin Rosa was in force at the time of Edwin Rosa's death. This Court is of the view that the subsequent recognition of Lucia Fernando as the successor under the permit '1R1' and the issuance of the grant 'P5' in favour of Lucia Fernando was a continuation of the rights of Edwin Rosa under the permit and did not affect the validity of the aforesaid nomination made by Edwin Rosa. Thus, the nomination of Benjamin Rosa as the successor continued to be valid and Benjamin Rosa was entitled to succeed to the said land in terms of the Ordinance.

In the above circumstances, this Court is of the view that the registration of the name of Benjamin Rosa in the Register of grants as reflected in 'P6c' is in terms of the law and hence, this Court does not see any legal basis to issue the Writ of Certiorari prayed for by the Petitioner. The necessity to consider the Writs of Prohibition and Mandamus does not therefore arise. This application of the Petitioner is dismissed, without costs.

Judge of the Court of Appeal