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

Kattadige Jinadasa,
No. 45, Kuda Gammana 4,
Beralihela, Tissamaharamaya.

CA/WRIT/378/2014 **PETITIONER**

VS.

1. Hathiringe Dayananda
   C/o. Hathiringe Dharmasena,
   'Pinibindu' Kiwulara
   Thanamalwila.

2. Dayananda Ratnayake
   Divisional Secretary
   Thanamalwila
   Divisional Secretariat,
   Thabamalawila.

3. E. P. Amarasinghe
   Divisional Secretary – Lands.

4. Gundasa Amarasinghe
   The Provincial Commissioner
   of Land,
   Uva Provincial Land
   Commissioners Department
   Kachcheri Complex, Badulla.

5. The Hon. Attorney General
   Attorney General's
   Department,
   Colombo 12.

RESPONDENTS

Before : **M. M. A. Gaffoor, J**

Counsel : Ranjan Suwandaratna PC with Anil Rajakaruna and Yuwin Matugama for the Petitioner

Arjuna Kurukulasooriya for the 1st Respondent

Vikum de Abrew DSG with M. Amarasingha SC for the 2nd – 5th Respondents

Written Submission tendered on : 28.09.2018 (by the Petitioner and the 1st Respondent)

26.10.2018 (by the 2nd – 5th Respondents)

Decided on : **01.03.2019**

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M. M. A. Gaffoor, J.

The Petitioner above named filed this application on 31.10.2015 seeking *inter alia*:

a. to issue an order in the nature of writ *certiorari* quashing the declaration marked **X9** made under Section 49 of the Land Development Ordinance, No. 19 of 1935 as amended in favour of the 1st respondent dated 29.01.1996
b. to issue an order in the nature of writ of *mandamus* directing the 2nd and 3rd Respondents to issue a declaration in favour of the Petitioner in terms of Section 49 of the Land Development Ordinance in relation to the aforementioned property referred to in exhibit marked as X1 in the Petition.

According to the Petition, the basis of filing this application by the Petitioner in detail is that:

One Kattadige David (now deceased) by virtue of Grant No. 226 dated 20.03.1986, issued in terms of provisions contained in Section 19(6) read together with Section 19(4) of the Land Development Ordinance became the owner of the land called 'Kiwularahena lot 119' of FVP Plan No. 52 which is in extent of 0.987 hectares situated at Kiwulara Sittarama Grama Niladhari's Division, Wellawaya Korala, Thanamalwila, Moneragala.

The Petitioner stated that the said Kattadige David was unmarried and died issueless and at the time of his death (on 21.12.1995) his parents were deceased and under those circumstances the succession to said grant should have been determined in terms of the 3rd Schedule given in the Land Development Ordinance. Therefore, the Petitioner stated that accordingly, he is the sole brother of the deceased Kattadige David and he is the person who is entitled to the succession of the said holding Grant No. 226.

The Petitioner further revealed that the 1st Respondent above named is a nephew of the said Kattadige David and he was attempting to alienate the said property on his own will. Therefore, the Petitioner inquired into the situation of the said grant of his brother Kattadige David and he became aware that the 1st Respondent by suppressing the existence of the Petitioner who is the brother of the deceased original owner had got him purportedly succeeded to the said grant by declaration dated 29.01.1996.

It was the position of the Petitioner that, the 1st Respondent, a nephew of the deceased Kattadige David and nephews are placed in term No. (xi) of the aforementioned table set in the 3rd schedule of the Land Development Ordinance, therefore, the succession of a grant or holding should take place strictly in terms of

the said schedule and if a brother of the deceased is survive, nephews who are placed at the 11th position (No. (xi)) of the said table has no legal right for succession of the grant in question.

The Petitioner further submitted that the 2nd and 3rd Respondents, the officials who are responsible for determination of succession in a case of death of a person who has been given a grant or holding; and 2nd and 3rd Respondent prior to issuing of the said declaration under Section 49 of the Land Development Ordinance had totally failed to hold a proper inquiry after giving due notices to the family members and relatives of the original owner Kattadige David and acted merely on false representation made by the 1st Respondent who is not in fact legally entitled for a succession to the said grant in terms of the table set out on the 3rd schedule of the Land Development Ordinance and thereby had acted in violation of the natural justice

Thus, the Petitioner believes that, considering the above circumstances, the Petitioner is entitled to obtain a permit in relation to the said property of Kattadige David and on that basis not sought to quash the decision to grant a permit made on behalf of the 1st Respondent made by the 2nd and 3rd Respondent and also sought for a *mandamus* against the 2nd Respondent directing them to issue a permit in favour of the Petitioner which he is entitled to in accordance with provisions contained in Land Development Ordinance.

However, the 1st to 4th Respondents conjointly submitted and brought an important fact that the said Kattadige David had named the 1st Respondent as successor of the property by letter marked **2R1** dated 20.12.1995. Having satisfied the document 2R1, the 2nd Respondent acted under Section 49 of the Land Development Ordinance and the said nomination was duly registered on or about 14.02.1996 as per documents annexed as **X8** and **X9**. They further

submitted that, having known all these facts, the Petitioner made a request by way of an affidavit dated 21.02.2011 (marked as **'2R2'**) to the 2nd Respondent, almost 15 years after the transfer has taken place.

Therefore, the learned State Counsel for the 2nd to 4th Respondents argued that the instant application would be dismissed on the *basis of delay in filling the application* and misconceives and untenable in law.

It is to be noted that the Petitioner had instituted an action bearing Case No. 181/L in the District Court of Wellawaya on or about 30.10.2012 against the aforesaid declaration (**X9**) of the 2nd Respondent and the learned District Judge by his order dated 28.01.2013 dismissed the action. Thereafter, the Petitioner had preferred a writ application bearing No. 03/2013 at the Provincial High Court of Uva, Holden in Monaragala on or about 28.03.2013 seeking for writ of *certiorari* to quash the declaration (**X9)** and writ of *mandamus* to issue a declaration under Section 49 of the Land Development Ordinance in favour of the Petitioner in relation to the said property.

Perusal of the said document **2R1** shows that, said Kattadige David had gave an authority to the 1st Respondent to act as successor of the property. Having satisfied with the said letter, the 2nd and 3rd Respondents have acted under Section 49 of the Land Development Ordinance and made declaration in terms of the Land Development Ordinance in favour of the 1st Respondent, afterward, the said declaration (replacement/nomination) was duly registered as per the documents appended as **X8** and **X9**.

Therefore, I am of the firm view that, when an Apex Court spread out its discretionary power, especially in a writ application, the Court bound with a duty to evaluate whether the applicant has acted with the utmost promptitude to proceed his/her case. This appraisal duty of an Apex Court reiterated in many instances [vide: ***Jayaweera vs. Assistant Commissioner of Agrarian Services*** (1996) 2 SLR 70; ***Babu Appu vs. Simon Appu*** (1907) 11 NLR 44 and ***Sri Lanka Insurance Corporation Limited vs. Shanmugam*** (1995) 1 SLR 55)]

In this application, it is crystal clear that the Petitioner has not acted with the utmost promptitude when he decided to come before a Court of law (i.e. District Court) more than 15 years after the 2nd Respondent reject his claim. As held by several cases in our Courts, in the absence of a satisfactory explanation as to why the alleged party could not come before a Court of law in time is considered as delay in a review application.

Further, I observed that, as I stated earlier, the said Kattadige David had named the 1st Respondent as the successor of the property by letter marked **2R1** dated 20.12.1995. Having satisfied the document 2R1, the 2nd and 3rd Respondents acted under Section 49 of the Land Development Ordinance and the said nomination was duly registered on or about 14.02.1996 as per documents annexed as **X8** and **X9**. Only the Respondents were brought these facts to this Court, the Petitioner had not referred/questioned any fact from the said **2R1**- the consent letter of the deceased.

At this juncture, I would like to re-call the following words of Saleem Marsoof, P.C., J. in the case of **NAMUNUKULA PLANTATIONS LTD. VS. MINISTER OF LANDS AND OTHERS** [S.C. Appeal No. 46/2008, S. C. Minutes dated 13.03.2012]:

"It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence..."

Hence, on the grounds of (lack of) utmost promptitude and the variance on the important facts, the application of the Petitioner is liable to be dismissed.

Accordingly, I dismiss this application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL