

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

Nanayakkarage Upul Nishantha  
Perera,  
No.194,  
Monarathenna,  
Paluagasdamana,  
Polonnaruwa.  
Petitioner

**CASE NO: CA/WRIT/99/2016**

Vs.

1. R.P.R. Rajapaksha,  
Commissioner General of Lands,  
Office of the Commissioner  
General of Lands,  
No. 1200/6,  
Rajamalwatta Road,  
Battaramulla.
2. Divisional Secretary,  
Divisional Secretariat,  
Thanmankaduwa.
3. Nuwara Gedara Piyaratne Perera,  
No.194/1, Monarathenna,  
Paluagasdamana,  
Polonnaruwa.  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Upul Kumarapperuma with Oshini Ruberu for  
the Petitioner.

Mithree Amarasinghe, S.C., for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents.

(No written submissions have been filed on  
behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.)

Jagath Wickremanayake with Migora Doss for  
the 3<sup>rd</sup> Respondent.

Decided on: 02.05.2019

Samayawardhena, J.

The petitioner filed this application against the Commissioner General of Lands, the Divisional Secretary and his elder brother as the 1<sup>st</sup>-3<sup>rd</sup> respondents respectively, seeking to quash by way of writ of certiorari the decisions P11 and P12 of the 1<sup>st</sup> and 2<sup>nd</sup> respondents nominating the 3<sup>rd</sup> respondent as successor to the Grants P4 and P5; and to compel the 1<sup>st</sup> and 2<sup>nd</sup> respondents by way of writ of mandamus to appoint the petitioner as the grantee in succession as per P8 and P9.

The facts led to the filing of this application are as follows: The petitioner's and the 3<sup>rd</sup> respondent's father was issued with the Permit P2 under the Land Development Ordinance, No.19 of 1935, as amended. The father nominated his eldest son, the 3<sup>rd</sup> respondent, as the successor. After the death of the father, the mother was issued with two Grants P4 and P5 in respect of the same land in terms of section 19(4) read with section 19(6) of the

Land Development Ordinance. The mother by P8 and P9 nominated the petitioner as the successor. Upon the death of the mother, the eldest son who was nominated by the father in the Permit as the successor informed the 1<sup>st</sup> and 2<sup>nd</sup> respondents that he is the lawful successor to the land. This was upheld by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It is this decision of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, which is being canvassed in this writ application.

The learned counsel for petitioner concedes that upon the death of a permit-holder, the spouse of that permit-holder automatically becomes entitled to succeed to the land by operation of law.

Section 48A(1) of the Land Development 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 pivotal argument of the learned counsel for the petitioner is that, after the death of the father, the mother who is entitled in law to succeed and the 3<sup>rd</sup> respondent being the nominated successor of the Permit, failed to take steps to succeed to the

land under section 84, and therefore the land in question deemed to have been surrendered to the State under section 85, and it is on that basis fresh Grants P4 and P5, which should be considered as a fresh transaction between the State and the mother, were issued in the name of the mother, who nominated the petitioner as the successor. Hence the learned counsel submits that the petitioner is the lawful successor.

I regret my inability to agree with that submission. Grants P4 and P5 did not constitute a fresh transaction between the State and the mother. It is the continuation of the same old transaction with the father as a permit-holder.

The petitioner cannot state that the mother who was entitled to succeed to the land did not succeed to the land upon the death of her husband. There is no evidence to that effect. If the mother did not succeed to the land, as I will explain later, Grant could not have been issued under section 19(4) of the Land Development Ordinance.

On the other hand, as I will explain later, in terms of section 48A(2)(c), the nominated successor in the Permit could not have succeeded to the land until the death of the Grantee (the mother).

Then section 48A(2) 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.*

It is common ground that the deceased permit-holder, the father, did not nominate the mother as the successor.

Then section 48A(3) reads as follows:

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

There is no administrative fault in issuing Grants in the name of the mother as stated by the 1<sup>st</sup> respondent in P11 on the (incorrect) advice of the Attorney General. Those Grants have been issued, as stated on the Grants themselves, in terms of section 19(4) read with 19(6) of the Land Development Ordinance. This has also to be read and understood with section 48A(2) of the Land Development Ordinance which I quoted above.

Section 19(4) reads as follows:

*A permit-holder shall be issued a grant in respect of the land of which he is in occupation*

- a) where he has paid all sums which he is required to pay under subsection (2);*
- b) where he has complied with all the other conditions specified in the Schedule to the permit; and*
- c) where he has been in occupation of, and fully developed, to the satisfaction of the Government Agent*
  - i. irrigated land, for a period of three years, or*
  - ii. high land, for a period of one year:*

*Provided, however, that the Land Commissioner may issue a grant before the expiry of the aforesaid period where the permit-holder satisfies him that the failure to issue such grant before the expiry of such period would adversely affect the development of such land.*

Section 19(6) reads as follows:

*Every grant issued under subsection (4) shall contain the conditions that the owner of the holding shall not*

- a) dispose of a divided portion, or an undivided share of the holding which is less in extent than the unit of the sub-division or the minimum fraction specified in the grant; and*
- b) dispose of such holding except with the prior approval of the Government Agent.*

For the aforesaid reasons, the 3<sup>rd</sup> respondent shall succeed to the land.

Application of the petitioner is dismissed without costs.

Judge of the Court of Appeal