

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

Perumbada Pedi Duralalage  
Jayasinghe,  
2<sup>nd</sup> Stage,  
Palukadawala,  
Galgamuwa.  
Petitioner

**CASE NO: CA/WRIT/440/2015**

Vs.

1. Divisional Secretary,  
Divisional Secretariat,  
Galgamuwa.
2. K.P.D. Rosaline,  
No. 71, Track 5,  
Karuwalagaswewa,  
Galgamuwa.
3. P.P.D. Somaratne,  
Track 5,  
Karuwalagaswewa,  
Galgamuwa.
4. dodanwela Dadiwela Gedara  
Chitra Kumara,  
Track 5,  
Karuwalagaswewa,  
Galgamuwa.

5. Ms. Biso Menike Manchanayake,  
Retired Divisional Secretary,  
3/84, Kotakandawatte,  
Hidagolla.
6. The Registrar of Lands,  
Land Registry,  
Nikaweratiya.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Dr. Sunil Cooray with Sudarshani Cooray for the  
Petitioner.  
U.P. Senaratne, S.C., for the 1<sup>st</sup> and 6<sup>th</sup>  
Respondents.  
Jacob Joseph for the 2<sup>nd</sup>-4<sup>th</sup> Respondents.

Decided on: 06.06.2019

Mahinda Samayawardhena, J.

The petitioner filed this application seeking to quash by way of certiorari the decisions/entries reflected in the documents marked C and D to the petition.

A Grant under the Land Development Ordinance, No.19 of 1935, as amended, was issued in favour of P.P.D. Sirisena in respect of the land in suit. Grantee Sirisena died on 07.06.2003. Admittedly no successor has been nominated by Sirisena in the said Grant.

When there is no such nomination, it is the contention of the petitioner that he being the eldest son shall succeed to the land (in terms of section 72 read with Rule 1 of the Third Schedule to the Act) by operation of law, and this has been done as seen from the second entry of the document marked B with the petition.

It is the further contention of the petitioner that subsequent succession effected in favour of the 2<sup>nd</sup> respondent Rosalin (who is the widow of Sirisena and also the mother of the petitioner) by R7 by the 1<sup>st</sup> respondent Divisional Secretary<sup>1</sup> and the nomination by Rosalin of the 3<sup>rd</sup> respondent as her successor<sup>2</sup> and alienation of a part of the land by Rosalin to the 4<sup>th</sup> respondent<sup>3</sup> are null and void.

Before issuing the Grant, a Permit marked R5 had been issued in favour of Sirisena. It is the position of the 1<sup>st</sup> respondent Divisional Secretary that, as seen from page 2 of the said Permit, Sirisena, first nominated his son, the petitioner as the successor, and thereafter, instead of the petitioner, his wife Rosalin was nominated as the successor, and it is on that basis Rosalin was recognized as the successor.

However, in terms of sections 58 and 60 of the Land Development Ordinance, no nomination or cancellation of the nomination of a successor shall be valid unless the document effecting such nomination or cancellation is duly registered by the Registrar of Lands before the death of the Grantee or the Permit-holder. There is no such proof of registration in respect

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<sup>1</sup> Vide the first entry in the document marked C with the petition.

<sup>2</sup> Vide the second entry in the document marked C with the petition.

<sup>3</sup> Vide the entry in the document marked D with the petition.

of nominations and cancellations reflected at page 2 of the Permit marked R2. Hence those endorsements regarding nomination and cancellation cannot be given legal validity.

Then the next question is whether succession effected by the Divisional Secretary in favour of Rosalin as seen from the first entry in the document marked C, and nomination of succession and alienation of a part of the land by Rosalin as seen from the second entry in the document marked C and the document marked D are valid.

Section 48A of the Land Development Ordinance relates to Permits and 48B relates to Grants. At the time of the death, a Grant had been issued in favour of Sirisena.

Section 48B of the Act reads as follows:

*48B(1) Upon the death of the owner of a holding<sup>4</sup>, the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions:-*

- a) upon the marriage of such spouse, title to the holding shall devolve on the nominated successor of the deceased owner or, if there was no such nomination, on the person who was entitled to succeed under rule 1 of the Third Schedule;*
- b) such spouse shall have no power to dispose of that holding;*
- c) such spouse shall have no power to nominate a successor to that holding;*

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<sup>4</sup> Interpretation section 2 defines the word "holding" as a land alienated by a Grant.

*Provided that the aforesaid conditions shall not apply to a spouse who has been nominated by the deceased owner of the holding to succeed to that holding.*

*(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.*

From the above, it is clear that succession effected by first endorsement in the document marked C by the Divisional Secretary is valid, but the nomination and alienation by successor Rosaline as seen from second endorsement in the document marked C, and in the document marked D are invalid as Rosaline has no authority to do so.

Hence the latter two decisions/endorsements (second endorsement in C and the endorsement in D) are quashed by way of a writ of certiorari.

In terms of section 72 read with Rule 1 of the Third Schedule of the Land Development Ordinance, being the eldest son of Grantee Sirisena, the petitioner shall succeed to the land. However this is subject to two conditions. One is, in terms of section 73 of the Act, that shall take effect from the date of the death of Rosalin (the spouse of Sirisena and the mother of the petitioner). The other is, the Divisional Secretary can convey 48 perches out of this land to the 4<sup>th</sup> respondent.<sup>5</sup>

Application is partly allowed. No costs.

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<sup>5</sup> Counsel for the petitioner in paragraph 23 of the written submissions dated 25.07.2018 says "The petitioner further respectfully states that he is ready and willing to part with 48 perches of land to be granted to the 4<sup>th</sup> respondent as per settlement entered before the Divisional Secretary dated 2010.03.10 (document marked as R3).

Judge of the Court of Appeal