

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

Sipkaduwa Anthony Dhanawathie
Wimalasuriya alias
S.A. Dhanawathie,
37, Seenigoda,
Watugedara.
Petitioner

CASE NO: CA/WRIT/47/2014

Vs.

Commissioner-General of Lands,
Land Commissioner General's
Department,
Land Secretariat,
No. 1200/6,
Rajamalwatte Road,
Battaramulla.
And 19 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Ranjan Mendis for the Petitioner.

Kanishka De Silva Balapatabendi, S.C.C. for the 1st-
13th Respondents.

Atula Perera for the 15th Respondent.

Decided on: 29.07.2018

Mahinda Samayawardhena, J.

The Petitioner filed this writ application, the petition of which is running into 26 pages, naming 20 Respondents, seeking the following, in my view, vague and unspecific reliefs.

- a. *Issue notice on the Respondents*
- b. *Direct the 1st to the 14th Respondents to make available to court at the earliest possible opportunity the impugned recommendations of the 5th Respondent abovenamed*
- c. *Grant the Petitioner abovenamed permission to reserve her right to seek interim relief as per the plea contained in the foregoing paragraph 24.1(a)*
- d. *Issue mandate in the nature of a writ of certiorari in order to quash the alleged or purported recommendations of the 5th Respondent referred to in the aforesaid pleadings (as per the letter of 6th Respondent dated 2011.08.03 pleaded by the Petitioner as P11)*
- e. *Issue mandate in the nature of a writ of certiorari in order to quash any findings arrived at or any decision made by the Respondents 1st to 14th relating to the entitlement of any party (or in particular the 15th Respondent abovenamed) to succeed to the rights pertaining to the corpus or any part thereof, on the basis of the permit that was enjoyed by the late H.H. Salpinona*
- f. *Also issue a mandate in the nature of a writ of certiorari to quash all other decisions made by the 1st to the 14th Respondents in relation to the granting of permits and/or alienation of lands in connection with the corpus*

- g. Issue a mandate in the nature of a writ of prohibition in order to restrain the 1st to the 14th Respondents from granting of permits and/or alienation of lands in connection with the corpus aforesaid*
- h. Issue a writ of mandamus on the 1st Respondent abovenamed directing him to conduct an appropriate inquiry into the scratching off/obliteration of the Petitioner's name from the Land Ledger a copy of which is pleaded as P5*
- i. The 1st Respondent be directed by way of a writ of mandamus to grant the Petitioner the rights that would accrue to her on the basis of the permit previously held by her mother the late H.H. Salpinona by granting her a permit in terms of the LDO*
- j. Direct the 2nd to the 14th Respondents to make available to court the Land Ledger which deals with the corpus.*
- k. Grant costs and*
- l. Other and further relief*

By going through the said reliefs, it appears to me that the main relief which the Petitioner seeks is to quash some recommendations made by the 5th Respondent Divisional Secretary of Balapitiya alleged to have been made to the Petitions Committee of the Southern Provincial Council.

In the first place, as a general rule, recommendations are not amenable to writ jurisdiction as they have no force of law. What is amenable to writ jurisdiction is the decision made on the alleged recommendations. There is no specific decision which the Petitioner has invited the Court to quash. The Petitioner in

the prayer to the petition makes a general statement seeking the Court to quash by way of writ of certiorari any decision made by the 1st-14th Respondents in relation to alienation of land which is the subject matter in this application and morefully described in the schedule to the petition. The 1st-14th Respondents include the Commissioner General of Lands, the Provincial Land Commissioner in the Southern Province, the District Secretary of Galle, the Divisional Secretary of Balapitiya, the Secretary to the Southern Provincial Council, the Surveyor General, the Secretary to the Ministry of Public Administration, the Grama Niladhari of Watugedara.

This Court cannot issue writs in such vague terms against an array of Government officials. This application, filed seeking vague reliefs, shall, in my view, be dismissed *in limine* on that basis.

Be that as it may, let me now understand the grievance of the Petitioner as set out in the petition. The petition running into 26 pages is prolix. The Petitioner's mother, namely Salpinona, has been issued with the Permit dated 26.06.1967 marked P2 under the Land Development Ordinance regarding a land described therein in extent of 1 Acre and 1 Rood. According to P2, no successor has been nominated by Salpinona. That portion relevant to nomination, which is at the end of P2, is still blank.

However, the Petitioner, who is one of the children of Salpinona—a daughter—heavily relying on P5 states that she had been nominated as the successor to the land by her mother, but

it has later been deleted for unknown reasons without following the procedure set out in the Land Development Ordinance.

P5 is a photocopy of a Land Ledger. It is neither the original nor a certified copy of the original. It is a True Copy certified at least not by an Attorney-at-Law but by the husband of the Petitioner. This a blatant violation of Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules of 1990.

Be that as it may, the Petitioner who challenges the deletion of her name as the nominated successor in P5 on the basis that no proper procedure has been followed, in the first place, shall explain how her name came to the Land Ledger as the nominated successor of her mother, Salpinona. It is not clear, who made that entry and when it was made. P5 is in relation to a Permit No. 2645 dated 10.01.1947 issued in the name of Salpinona. But P2 Permit in the name of Salpinona is dated 26.06.1967.

The said deleted endorsement in P5 under “Nominated Successor”, which, according to the Petitioner, is in favour of her, reads as follows: “*S. Danawathie, Daughter, 12 yrs*”. According to the caption, the Petitioner’s name is Sipkaduwa Anthony Dhanawathie Wimalasuriya *alias* S.A. Dhanawathie. According to her National Identity Card number mentioned in the proxy, the Petitioner was born in 1942. Salpinona could have nominated the Petitioner as her nominated successor on or after 26.06.1967 because Permit P2 issued in favour of Salpinona is dated 26.06.1967. If we are to assume nomination in P5 was made on 26.06.1967, the Petitioner’s age at that time

should have been 25 years and definitely not 12 years. If we are to assume nomination in P5 was made on or around 10.01.1947, the date of the Permit mentioned in P5, the Petitioner would have been only 5 years old at that time and not 12 years. The mother cannot make such blatant mistakes regarding the age of her child.

Hence this Court cannot accept with certainty that it is the Petitioner who has been nominated by Salpinona as her successor to the land.

In that backdrop even though it is not necessary to explain in detail how nomination can be effected under the Land Development Ordinance, let me say the following.

Under section 56, the nomination of a successor shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a Divisional Assistant Government Agent, or a Notary, or a Justice of the Peace if the nomination is not done on the Permit itself as stated in section 87.

The Petitioner, who speaks of failure to follow the provisions of the Land Development Ordinance for cancellation of a nomination, has, in the first place, not proved nomination as above. Nomination of the Petitioner has not been done on the Permit. Nor has it been done in the prescribed form in triplicate either.

I take the view that the Petitioner has not proved that she was the nominated successor to the land to the satisfaction of the Court. Hence the Petitioner cannot succeed in this application.

It is the position of the 5th Respondent Divisional Secretary of Balapitiya that, at the request of the Permit-holder Salpinona, three new Permits bearing numbers 54920, 54921 and 54922 were issued, each in extent of 1 Rood, in the name of three of Salpinona's daughters including the Petitioner; and in respect of the balance portion of the land the eldest son succeeded in terms of Rule 1 of the Third Schedule read with section 72 of the Land Development Ordinance, and he (the eldest son) requested the balance portion to be divided among remaining six children of Salpinona. Those new Permits have been issued more than 15 years before filing of this application.

There is no necessity to scrutinize those assertions as the burden is on the Petitioner to prove that he is entitled to the reliefs she seeks from Court.

The Petitioner in the written submissions drawing attention of Court to *The Superintendent, Stafford State v. Solaimuthu Rasu [2013] 1 Sri LR 25* says that "*the Respondent officials of the Southern Provincial Council who have made these orders have acted ultra vires*". Who are the alleged specific Respondents of the Southern Provincial Council the Petitioner is complaining against? What are the specific Orders they have made? This belated submission is unclear and unspecific.

Let me add the following on that matter. The Petitioner and her husband have invited the Southern Provincial Council to

intervene in this matter, and thereafter, it seems that the Southern Provincial Council has referred the matter to the Land Commissioner and the Divisional Secretary. I do not think that there is any order made by the Provincial Council which the Petitioner seeks to challenge in these proceedings. Having sought some redress from the Provincial Council on her own, it cannot now lie in the mouth of the Petitioner to say that the Provincial Council had no authority to deal with the matter. The Petitioner must understand that writ is a discretionary remedy and the conduct of the Petitioner is a relevant factor in deciding the case.

I dismiss the application of the Petitioner with costs.

Judge of the Court of Appeal