

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

In the matter of an application for mandates in the nature of writs of 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:
29/2019

W.V. Karunawathie
Kotabowa Road,
3rd Mile Post,
Medagama, Bibile.

PETITIONER

Vs.

1. K.M.G.K. Bandara
Divisional Secretary,
Divisional Secretariat, Medagama.
2. D.S. Pathmakulasooriya
District Secretary of Monaragala,
District Secretariat Monaragala.
3. W.D.P.C. Samarasekara
Provincial Commissioner (Uva Province),
Kachcheri Complex, Badulla.
4. R.M.C.M. Herath,
Commissioner General of Lands,
Department of Commissioner General of
Lands, " Mihikatha Madura", No. 1200/6,
Rajamalwaththa Road, Battaramulla.
5. W.V. Podimahaththaya
Eraminna Ahthamada,
8th Mile Post, Medagama, Bibile.

RESPONDENT

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Shantha Jayawardana with Chamara Nanayakkarawasam and Ms. Hiranya
Damunupola for the Petitioner.

Ms. Madhubashini Sri Meththa SC for 1st to 4th Respondents.

N. Jayasinghe for the 5th Respondent.

Written submissions tendered on:

28.03.2022 (by the 5th Respondent)

Argued on: 10.03.2022

Decided on: 09.06.2022

S.U.B. Karalliyadde, J.

By this Writ Application, the Petitioner seeks, inter alia, a writ of Mandamus directing the 1st – 4th Respondents to issue a Permit/Grant under the Land Development Ordinance, No. 19 of 1935 (as amended) (hereinafter referred to as the Ordinance) to the Petitioner for the land depicted as lot 109 of the Supplement 6 of the Final Village Plan No. 157 which is alienated by her under the Permit marked P-3 and a writ of prohibition prohibiting the 1st – 4th Respondents from issuing a Permit/Grant to the 5th Respondent for the said land. The Petitioner is the lawfully nominated successor by her father Waththe Vidanalage Simon alias B.P. Simon to the above-mentioned land which is in extent of 2 Acres. This land is situated within Ellekoona Grama Niladhari Division in the Medagama Divisional Secretariat Division and depicted as Lot 18 in the Final Village Plan No.157. The father of the Petitioner was issued with the Permit marked as P-3 to the said land and he nominated the Petitioner as his successor to the land. The father had died in 1975 and thereafter, the Petitioner, her mother, Nonnehamy and the siblings of the Petitioner continued to live on the land. The Petitioner, after her marriage

in the year 1980, constructed a house on the land and lived in it. In the year 1992, the Petitioner's mother, together with the 5th Respondent, W.V. Podimahaththya who is the brother of the Petitioner ejected the Petitioner and her family from the land, claiming that the mother has the life interest of the father. In pursuant to the complaints made by the Petitioner to the Divisional Secretary of Medagama (the 1st Respondent) inquiry was held regarding the dispute and the mother was permitted to live on the land until her death and her name was inserted to the P-3 as a life interest holder. Later in 1997, a Grant was issued to the mother for her life-interest (as per P-7). The mother died in 2017, but the 5th Respondent did not vacate the land and continued to be in the forcible possession. After the death of the mother even though, the Petitioner made requests from the 1st – 4th Respondents to take necessary steps to issue a Permit/Grant for the land to her, they failed to take any step.

The position of the 5th Respondent is that the Petitioner failed to enter into the possession of the land within six months period from the death of the mother and therefore, in terms of the section 68(2) of the Ordinance she is not entitled to succeed to the land.

Section 68(2) provides thus;

“A nominated successor fails to succeed to the land held on a permit by a permit-holder who at the time of his or her death was paying an annual sum by virtue of the provisions of subsection (3) of section 19A or to the holding of an owner if he refuses to succeed to that land or holding, or, if the nominated successor does not enter into possession of that land or holding within a period of six months reckoned-

(i) where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the death of such permit-holder or owner; or

(ii) where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the failure of such spouse to succeed, such date being reckoned

according to the provisions of paragraph (b) of subsection (1), or of the death of such spouse as the case may be.”

The Petitioner admits that she was dispossessed by her mother and the 5th Respondent from the land. Thereafter, in 1997, a Grant has been issued to the mother for her life interest. Admittedly the mother died on 18.12.2017 (death certificate is marked as P-25). The Petitioner made a formal request on 08.01.2018 to the 1st Respondent in prescribed Form (marked as P-23) used at the Office of the 1st Respondent to succeed to the land and the 1st – 4th Respondents admit in their statement of objections that the letter marked as P-23 was received by the 1st Respondent. After the death of the mother, the Petitioner made attempts to recover the possession of the land from the 5th Respondent, but failed those attempts. Upon the failure of those attempts the Petitioner made a complaint to the Medagama Police Station and by the letter dated 14.03.2018, the OIC of the Police referred the dispute to the 1st Respondent to take suitable steps. The 1st – 4th Respondents admit that Medagama Police referred the matter to the 1st Respondent. The Petitioner wrote to the District Secretary of Monaragala (the 2nd Respondent) about the dispute and the 2nd Respondent by letter dated 02.04.2018 (marked as P-28) referred the matter to the 1st Respondent to inquire into to. By the letter dated 05.07.2018 (marked as P-29) the 1st Respondent summoned the parties for an inquiry. The letters marked as P-24 and P-29 were admitted by the 1st – 4th Respondents. When perusing the documents marked as P-25 to P-28 it is clear that the Petitioner has taken all possible steps to succeed to the land, but failed to enter into the possession of the land due to the resistance of the 5th Respondent. Therefore, the Court cannot accept the position of the 5th Respondent that the Petitioner has failed to succeed to the land within a period of 6 months from the date of the death of the mother, Nonnehamy. Under the above stated circumstances, the Court decided to issue a writ of Mandamus directing the 1st – 4th Respondents to issue a Permit/Grant under the Ordinance to the Petitioner to the land in dispute, and a writ of Prohibition probating the 1st – 4th Respondents from issuing a Permit/Grant to the 5th Respondent for the said

land. The 5th Respondent is ordered to pay Rs:75,000/= to the Petitioner as costs of this Application.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL