

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

CA Writ Application No:
0475/2019

In the matter of an application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writ of Mandamus.

Mrs. Mudaliperuge Manel Rupa Ranjani Kulathunga,
No 50 A, Bhambagolla Road, Galewela.

Petitioner

Vs.

01. M. U. Nishantha,
The divisional secretary, The Divisional Secretariat, Galewela.
02. Ajantha Wickremarathne,
The Provisional Land Commissioner,
Provincial Land Commissioner's Department,
Central Province, Pallekele, Kundasale.
03. The District Agent,
The Office of the District Agent, Matale.
04. H. J. de Zoyza,
The Administration Officer,
Office of the Divisional Secretariat, Matale.
05. The Land Commissioner General,
Land Commissioner General's Department,
No 07, Hector Kobbekaduwa Mawatha,
Colombo 07.
06. Sarath Asoka Makalanda (eldest son of late
M.D.G. Silva of Hombawa),
Bambaragaswewa, Galewela.
07. Chandrika Manel, (daughter of late M. D. G.
Silva of Hombawa), Bambaragaswewa,
Galewela.

08. Samantha Silva, (son of late M.D. G. Silva, of Hombawa), Bambaragaswewa, Galewela.

09. L.K.G. Makalanda, (son of late S - W. Makalanda) of No 133 D, Kandawatte, Hombawa, Bambaragaswewa, Galewela

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Ms. Sudashani Coorey for the Petitioner

Sampath Pushpakumara with Chanaka Kulathunga for the 7th Respondent

Ms. Yuresha Fernando SSC with Ms. Sabrima Ahamed SC for the 1st, 3rd, 4th, 5th Respondents

Argued on: 04.03.2022

Decided on: 26.05.2022

S.U.B. Karalliyadde, J.

This Order is regarding the application of the Petitioner dated 27.09.2020 for a stay order against the 1st to 5th Respondents to prevent them from alienating, disposing or changing the ownership of the land in dispute which is the subject matter of this writ application and prevent the 1st and 2nd Respondents from changing the status quo of it, constructing the buildings and using the land to store gunpowder and other dangerous explosives. In this writ application the Petitioner seeks a writ of Mandamus to compel the 1st – 5th Respondents to implement the decision of the 2nd Respondent dated 20.07.2005 mentioned in the latter marked as P-7. The facts of this writ application are as briefly as follows;

In respect of a land in extent of 20 Acres 2 Roods 0 Perches which is the subject matter of this writ application (hereinafter referred to as the land) a permit marked as P-1 had been issued in the year 1952 under the Land Development Ordinance, No. 19 of 1935 (as amended) (hereinafter referred to as the Ordinance) to the grandfather of the Petitioner, Mr. M.H.J. De Silva. In 1980, he nominated his daughter who was the mother of the Petitioner as his successor to the land. The mother, in 1997 nominated the Petitioner as her successor to the land as per the land ledger marked as P-2. In 1970 and 1991 two brothers of the Petitioner's mother disputed the possession of the grandfather and the mother. Since that dispute remained unsettled, the 2nd Respondent held an inquiry about the dispute and by letter dated 20.07.2005 marked as P-7, the 1st Respondent informed the occupiers of the land that at the inquiry before the 2nd Respondent, the mother of the Petitioner had consented for allocation of the portions of land which they are possessing to them by the State and instructed them to prepare a plan as described in P-7 to issue permits under the Ordinance to them. Nevertheless, the parties did not take steps as per the instructions mentioned in P-7 and the 1st Respondent, by Order dated 08.03.2007 marked as P-6 acting under section 110 of the Ordinance cancelled the permit marked P-1.

When considering the above stated facts, it is clear that the permit marked P-1 issued to the grandfather of the Petitioner has been cancelled by the P-6. Now the Petitioner has no right to the land and it belongs to the State. By this writ application the Petitioner seeks a writ of mandamus to compel the 1st to 5th Respondents to implement the settlement mentioned in P-7 and only if the Court issue a writ as sought by the Petitioner, she will be entitled to the rights of the land. It's trite law that in respect of a land, a stay order could be issued only if the Petitioner has rights to the land. In the instant application, since the land belongs to the State and the Court cannot be satisfied

that the Petitioner has rights to it, she is not entitled to a stay order. Therefore, the Court refuses the application of the Petitioner for a stay order. Application for a stay order is dismissed. No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL