

**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 Writ of Mandamus under and in terms of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No: WRT-339/20

Dampage Don Lakxan Priyalal,
38/28, Bibila Road,
Hulandawa,
Monaragala.

Petitioner

Vs.

01. K.Pradeep Kulathilaka,
Divisional Secretary,
Divisional Secretariat Office,
Monaragala.

02. Gunadasa Samarasinghe,
District Secretary,
District Secretariat Office,
Monaragala.

03. R.H.C. Priyanthi
Uva Provincial Land,
Commissioner,
Uva Provincial Land Commissioners
Department,
Uva Provincial Council.

04. R.M.C.M. Herath,
Land Commissioner General,
Land Commissioner General's Department,
"Mihikatha Madura".
No. 1200/6,
Rajamalwaththa Road,
Battaramulla.
05. D.D. Subodani Shriyani,
No. 38, Bibila Road,
Hulandawa,
Monaragala.
06. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: D.N. Samarakoon, J.
B. Sasi Mahendran, J.

Counsel: Nuwan Bopage with Bivihara Pinnaduwa for the Petitioner

Support On : 23.03.2022

Order On : 30.05.2022

B. Sasi Mahendran, J.

The Petitioner, by Petition dated 15.09.2020, seeks a Writ of Mandamus to direct the 1st- 4th Respondents to issue a permit and/or grant and/or to make an appropriate order for the succession and transfer of the lands more fully described in the Second and Third Schedules to the Petition and for an order ejecting the 5th Respondent from the property more fully described in the Second Schedule. This Order pertains to whether notice ought to be issued to the Respondents.

In the instant case, the Petitioner has demanded the relevant authorities to issue a permit and/or grant to the said lands, under the Land Development Ordinance No.19 of 1935, as amended, on the basis that he is the only son of the late Mathugamage Nandawathie, the original grant holder. Mathugamage Nandawathie passed away on 23.05.2017, without nominating her successor. During her lifetime she alienated several portions of the land to several persons including her youngest daughter's son and elder daughter.

According to Paragraph 19 of the Petition, there is a dispute between the Petitioner and the 5th Respondent (The Petitioner's youngest sister) which is pending before the Magistrate Court of Monaragala, in which the Petitioner contends that the 5th Respondent is illegally occupying the land which he is entitled to.

The Petitioner claims that in terms of Section 72 of the Land Development Ordinance he should be the lawful successor to the lands. Section 72 deals with succession upon the death of the life-holder, in the absence of nominating a successor. The title to the land is to devolve as per Rule 1 in Schedule 3 to the Ordinance, wherein male relatives are preferred over female relatives, and the older relation is preferred to the younger in the order of succession.

However, it should be noted that there is no evidence to show that thus far a decision has been taken by the Respondents to nominate the Petitioner as Successor under Section 72, in terms of the priority list.

According to documents filed by the Petitioner, especially P15(iv) and P15(v), it is indicated that steps have been undertaken to conduct an inquiry and report to the Land Commissioner-General, so that a decision may be taken. The progress or result of such

inquiry is also not known. This Court is mindful of the delays caused due to the Covid-19 pandemic in the functioning of the relevant authorities.

In order for the Petitioner to successfully obtain a writ of Mandamus, there should be a refusal by the authority to perform its duty. In the instant case, as alluded to above, steps have been taken to resolve this matter. Therefore, we hold that this is a premature application, as it may be premature to come to any conclusions while this matter is under inquiry.

In Sunil F.A. Coorey's Principles of Administrative Law in Sri Lanka Volume 3 (atp.972), it is stated,

“An application for mandamus to compel the valid exercise of power should not be made prematurely. If there has already been an invalid exercise of power an application for the remedy thereafter to compel a fresh and valid exercise of power in place of the invalid one is never premature. If there has been no attempt to exercise power even invalidly, an application for mandamus is premature unless there has been a demand for the exercise of that power followed by an express or implied refusal.”

This view has been reaffirmed by our Courts as well, as evident from the following decisions:

In Ceylon Mineral Water, Ltd v. District Judge, Anuradhapura 70 NLR 312 his Lordship Abeyesundere, J. held,

“The application made by the petitioner for Writs of Certiorari and Prohibition is premature. At the present moment, there is no order of the District Court of Anuradhapura to be reviewed by this court and so there is no reason to issue a writ of certiorari. As there is no evidence to show that the District Court of Anuradhapura is about to determine the claim made to the motor car seized in execution of the decree of that Court, no writ of prohibition can be issued. We, therefore, dismiss the petition. The dismissal of this petition should not be considered as a bar to the petitioner, if so advised, filing a new petition in appropriate circumstances.”

In Appapillai Amirthalingam v. Piyasekera, Commissioner of Elections [1980] 2 SLR 285, the Court of Appeal refused to intervene in an election-related matter as it was premature to do so.

Therefore, we refuse to issue notice. However, the dismissal of this Petition must not be construed as a bar to the Petitioner, if advised, to file a new Petition in appropriate circumstances. Further, the Respondents are urged to take steps to expeditiously inquire into and determine this matter.

JUDGE OF THE COURT OF APPEAL

D.N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL