

**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 Certiorari and Writ of  
Mandamus in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**CA WRIT 301/2020**

Poddihiwala Marage Padmalattha,

Kupatha, Kambaraththa,

Ethkandura

**Petitioner**

**Vs.**

1. Wille Gamage,  
Governor of the Southern Provincial,  
Council, Chief Secretary's Office,  
Southern Province,  
S.H.Dahanayake Mw, and also of Southern  
Provincial Secretariat, Bope Road,  
Kalegana, Galle.
2. W.U.P. Premachandra, Council Secretary,  
Council Secretariat of the Southern  
Province, Bope Road, Kalegana,  
Galle.
3. A.M.A.U. G. Kariyawasam  
Divisional Secretariat,  
Welivitiya, Divithura.

4. Akuratiya Gamage Nandawathi  
Galmolaasala, Gurusinghegoda,  
Baddegama.
5. W.G.G.A Tecla Pathmini Gurusinghe,  
Galmolaasala, Gurusinghegoda,  
Baddegama.
6. W.G.G.A. Chandima Indrajith Gurusinghe  
Galmola Asala, Gurusinghagoda,  
Baddegama.
7. W.G.G.A. Purnima Chandimal  
Nambara atta, Ethkandura.
8. W.G.G.A. Yasiru Sri Tilakshana  
Kambaraththa,  
Ethkandura.

**Respondents**

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

**Counsel** : Canishka Withana for the Petitioner  
Shamanthi Dunuwilla SC for the 1<sup>st</sup>-3<sup>rd</sup> Respondents  
Migara Doss with Kalani Ranaweera for the 4<sup>th</sup>-7<sup>th</sup> Respondents

**Written**

**Submissions** : 14.07.2022 (by the Petitioner)

**On** 30.06.2022 (by the 4<sup>th</sup> to 7<sup>th</sup> Respondents)

**Argued On :** 09.06.2022

**Order On :** 13.09.2022

**B. Sasi Mahendran, J.**

The Petitioner, by Petition dated 26<sup>th</sup> August 2020, invoking the writ jurisdiction of this Court in terms of Article 140 of the Constitution, seeks, inter alia, a Writ of Certiorari to quash the decision contained in “P1” and “P2”, a Writ of Mandamus directing the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to hold a fresh inquiry in compliance with the Land Development Ordinance No. 19 of 1935, as amended, and a Writ of Mandamus directing the Respondents to grant permit to the Petitioner under the Land Development Ordinance. This order pertains to whether notice ought to be issued to the Respondents. The matter was supported on 09<sup>th</sup> June 2022 and thereafter both parties filed their written submissions.

The background as narrated in the Petition is as follows.

The land in question (‘Nambarawatta’ – Grant/Permit No. L.L. 58990) which is situated in the village of Nambarawatta- Divithura in the District of Galle was granted pursuant to Section 19(4) of the Land Development Ordinance to the late Wijesekera Gunawardhana Gurusinghe Arachchi Tuder, the Petitioner’s father-in-law (The husband of the 4<sup>th</sup> Respondent). The Petitioner’s father-in-law died leaving his widow (the 4<sup>th</sup> Respondent) and his four children: the Petitioner’s husband, the 5<sup>th</sup> Respondent, the 6<sup>th</sup> Respondent, and one Anil Indrajith, who died leaving his heir the 7<sup>th</sup> Respondent. Following his father’s demise on 20<sup>th</sup> February 2001, in the absence of the father nominating a successor, the Petitioner’s husband, being the eldest son, together with the Petitioner and their son (the 8<sup>th</sup> Respondent), entered possession of the land and resided in it.

On the demise of the Petitioner’s husband on 13<sup>th</sup> September 2012, the 4<sup>th</sup> Respondent (the Petitioner’s mother-in-law) disputed the Petitioner’s continued possession of the land. This dispute was referred to the District Secretary and later referred to the 2<sup>nd</sup> Respondent, who then referred it to the Committee of Petitions. The Petitioner was unable to attend the inquiry as her son suddenly fell ill. The Committee decided to grant title to the 4<sup>th</sup> Respondent and successive title to the surviving children

and grandchildren of the late Wijesekera Gunawardhana Gurusinghe Arachchi Tudar. The Petitioner unsuccessfully objected to the decision of the Committee. The Committee recommended to the 3<sup>rd</sup> Respondent, for the land to be divided amongst the 4<sup>th</sup> to 8<sup>th</sup> Respondents. The relevant part of the letter (dated 24<sup>th</sup> February 2016) marked “P1” reads as follows:

එකී ලිපියේ සඳහන් ආරවුල සම්බන්ධයෙන් 2015.10.12 දින පවත්වන ලද පෙත්සම් කාරක සභාවේ තීරණය දකුණු පළාත් සභා ලේකම්ගේ දපස/3/2/89 හා 2015.11.06 දිනැති ලිපියෙන් මා වෙත දන්වා ඇත.

එකී තීරණයට අනුව ඉඩම් සංවධර්න ආඥා පනතේ විධිවිධානයන්ට අනුකූලව මගේ සමාංක හා 2015.10.20 දිනැති මුල් අයිතිය සහතික කිරීමේ ආකෘති පත්‍රයෙන් ඒ.පී. නන්දාවතී මිය වෙන මුල් අයිතිය ලබා දී ඇල්පිටිය ඉඩම් රෙජිස්ට්‍රාර් කාර්යාලයේ ලියාපදිංචි කරන ලදී. ඉන් අනතුරුව පහත සඳහන් පරිදි පසු අයිතිය නම් කිරීම ලියාපදිංචිය සඳහා ඇල්පිටිය ඉඩම් රෙජිස්ට්‍රාර් වෙත යොමු කර ඇති බව කාරුණිකව දන්වා සිටිමි.

- I. ඩබ්.පී.පී. ඒ. ටෙක්ලා පනමිනි ගුරුසිංහ - නොබෙදූ අක්කර 1/2
- II. ඩබ්.පී.පී. ඒ. වන්දිම ඉන්ද්‍රජිත් ගුරුසිංහ - නොබෙදූ අක්කර 3/4
- III. ඩබ්.පී.පී. ඒ. පුණර්ම වන්දිමාල් - නිවස සමඟ නොබෙදූ අක්කර 1/2
- IV. ඩබ්. පී.පී ඒ. යසිරු ශ්‍රී තිලක්ෂණ - නොබෙදූ අක්කර ½

The Petitioner contends that the 4<sup>th</sup> Respondent, who did not take possession of the land within six months of the death of the original grant holder as per Section 68 of the Land Development Ordinance, is now not entitled to claim possession, and nominate successive heirs. The Petitioner claims that she should be entitled to succeed to the land on the demise of her husband (the eldest son of her father-in-law) and not the 4<sup>th</sup> Respondent.

Further, the Petitioner contends that the decision of the Committee was made under the incorrect assumption that the Petitioner too had participated in the inquiry.

As a result, she contends that the decision of the Committee to grant title in contravention of Sections 48A and 68 of the Land Development Ordinance and that too without a proper hearing to the Petitioner is ultra vires, arbitrary, capricious, and violative of the principles of natural justice.

On this basis, the Petitioner now seeks a Writ of Certiorari to quash the decision of the Committee, a Writ of Mandamus to compel the Committee to undertake a fresh

inquiry to ascertain the persons entitled to succeed to the land in question, and a Writ of Mandamus compelling the Respondents to grant a permit to the Petitioner.

Succession under the Land Development Ordinance is different from the general law on succession. This is made clear by Section 170 of the Land Development Ordinance which provides that no written law, other than this Ordinance, which provides for succession to land upon an intestacy shall apply to any land alienated under the Land Development Ordinance (Dharmalatha v. David De Silva [1995] 1 SLR 259).

On the death of the original grant holder, the spouse of the grant holder is entitled to succeed to the land. If the spouse of the original grant holder dies or fails to succeed to the land, it is only then that a nominated successor can succeed to the land. This position was clearly established by his Lordship Malalgoda J. in Kalander Asiya Umma v. Mohideen Bawa Abdul Cassim, SC Appeal 48/2013 decided on 04.09.2019. Having set out Sections 48A(1) and 49 his Lordship held:

“In the said circumstances it is clear, that according to the above provisions of the Land Development Ordinance, a nominated person can only succeed to a land to which he is lawfully nominated, is either after the death of the spouse or when the said spouse failed to succeed to the said property. When going through the above provisions it is further observed that the nominee is not entitled by law to succeed to a property until the death (or failure to succeed to the land) of the spouse of the original permit holder. In other words he becomes entitled by law to succeed to the property only after the death (or failure to succeed) of the spouse of the original permit holder.”

In the instant case, assuming that the 4<sup>th</sup> Respondent has failed to take possession of the land within a period of six months from the date of the grant-holder’s death (as per Section 68) it is only then that the nominated successor can succeed to the land.

However, in the instant case, in the absence of a nomination of a successor, it is Section 72 that becomes applicable. 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. This Section set out for the purpose of convenience reads:

*If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to 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 shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.*

Rule 1 of the Third Schedule provides as follows:

*(a) The groups of relatives from which a successor may be nominated for the purposes of Section 51 shall be as set out in the subjoined table.*

*(b) Title to a holding for the purposes of Section 72 shall devolve on one only of the relatives of the permit-holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.*

*Table*

|                            |                       |
|----------------------------|-----------------------|
| <i>(i) Sons</i>            | <i>(vii) Brothers</i> |
| <i>(ii) Daughters</i>      | <i>(viii) Sisters</i> |
| <i>(iii) Grandsons</i>     | <i>(ix) Uncles</i>    |
| <i>(iv) Granddaughters</i> | <i>(x) Aunts</i>      |
| <i>(v) Father</i>          | <i>(xi) Nephews</i>   |
| <i>(vi) Mother</i>         | <i>(xii) Nieces</i>   |

*In this rule, "relative " means a relative by blood and not by marriage.*

This position is further solidified by Section 51 of the Land Development Ordinance which provides:

*No person shall be nominated by the owner of a holding or a permit-holder as his successor unless that person is the spouse of such owner or permit-holder or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule.*

In the instant case, the Petitioner does not fall within any of the categories of relatives provided in Rule 1 of Schedule Three as she is the daughter-in-law of the original grant-holder. She would thus have no legal right in terms of the Ordinance to claim a permit for the said land. For the Petitioner to claim, her late husband after the demise of his father should have claimed to be the Successor. However, for some reason, he neglected/failed to exercise his rights.

In order to claim a Writ of Mandamus, which is, to use the words of Wade & Forsyth, “a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him”, there are certain pre-requisites that the party applying for it ought to satisfy. In the case of Credit Information Bureau of Sri Lanka v. Messrs Jafferjee and Jafferjee (Pvt) Ltd [2005] 1 SLR 89 his Lordship J.A.N. De Silva, J. (as he then was), with their Lordships S.N. Silva C.J. and Weerasuriya J. agreeing, set out these prerequisites as follows:

“There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent the issue of Mandamus appear to be:

- (a) **The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought** (R v Barnstaple Justices). **The foundation of Mandamus is the existence of a legal right** (Napier Ex Parte)
- (b) The right to be enforced must be a “Public Right” and the duty sought to be enforced must be of a public nature.
- (c) **The legal right to compel must reside in the Applicant himself** (R v Lewisham Union)
- (d) The application must be made in good faith and not for an indirect purpose
- (e) The application must be preceded by a distinct demand for the performance of the duty
- (f) The person or body to whom the writ is directed must be subject to the jurisdiction of the court issuing the writ
- (g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.
- (h) The conduct of the Applicant may disentitle him to the remedy.
- (i) It would not be issued if the writ would be futile in its result.

(j) Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.

The above principles governing the issue of a writ of Mandamus were also discussed at length in *P.K. Benarji v H.J. Simonds*. Whether the facts show the existence of any or all pre-requisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question, but according to a sound and reasonable interpretation. The court will not grant a Mandamus to enforce a right not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.” [emphasis added]

The conditions set out in this judgment have been referred to and those which were relevant to the respective case have been analysed in *Arulanathan v. D M Jayaratne* 2008 BLR 264, *Mohamed Sali Nazeera Begam & Others v. Vladimir Mikhaylov* C.A. Writ Application No. 13/2012 decided on 19.01.2012, *H.M.P.G. Ranasinghe Bandara v. W.M.P.K. Weerasekara & Others*, CA/PHC/55/2016 decided on 16.11.2020, *Lincoln Property Holdings (Private Limited) v. Condominium Management Authority & Others*, C.A. (Writ) Application No. 577/07 decided on 14.10.2021.

Craig in, ‘Administrative Law’ 8<sup>th</sup> Edition (at p. 801) notes that for Mandamus to apply “there must be a public duty owed to the applicant.” This, he says, involves two distinct requirements: first, the duty must be of a public as opposed to a private character, and second, even if **the duty is of a public character it must be owed to an individual**.

In the instant case, as the Petitioner has no legal right to compel the Respondents to hold a fresh inquiry and grant a permit to her the Writ of Mandamus will not lie.

Similarly, the Petitioner will not be able to obtain a Writ of Certiorari to quash the decisions contained in P1 and P2 as she lacks locus standi.

It should be noted that quashing the decisions contained in P1 and P2 will only be detrimental to the Petitioner as by those decisions her son (the 8<sup>th</sup> Respondent) has been allocated a share of the land. If not, she would not be entitled to any share of the land.



For the foregoing reasons, we are of the view that this application must be dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**D.N.SAMARAKOON,J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**