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

In the matter of an Application for Orders on the nature of Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Kanugala Mudiyanselage Abeywardhana,
"Seepoth", Yatiyantota.

C.A. Writ Application No. 171/2020

PETITIONER

1. Land Commissioner General, "Mihikath Medura", 1200/6, Rajamalwatte Road, Battaramulla.

And 04 others

RESPONDENTS

Before: Hon. Justice D. N. Samarakoon

Hon. Justice Sasi Mahendran

Counsel: Thishya Weragoda for the petitioner

A.S.M. Perera P.C., with Angela Joseph for the 4th respondent

Yuresha Fernando S.S.C. for 01st to 03rd and 05th respondents

Written Submissions on: 04.05.2022 by the petitioner

17.05.2022 by 01st to 03rd respondents

04.05.2022 by 04th respondent

Date: 30.11.2022

D.N. Samarakoon, J.

The petitioner's deceased father as the Permit Holder made the petitioner the nominee. Thereafter a Grant has been effected in the name of petitioner's mother and 04 and 05 respondents.

With regard to the question whether the nomination made by the Permit Holder will be valid in the face of the Grant, the petitioner has referred to the case of Piyasena vs. Wijesinghe (2002) 2 SLR 242 by Justice J.A.N. de Silva (later Chief Justice) in which it was said,

"**It is common ground that the 4th respondent was the nominated successor of Ukku Bandi under the permit and the subsequent grant to her never reached her until her death.** It is to be noted that the issuance of a grant changes status of a permit holder to that of an "owner" who derives title to the land in question (see section 2 of the Ordinance). **By the amending Act No. 27 of 1987 this interpretation of "owner" was extended to also cover "a permit holder who has paid all sums which he is required to pay . . . and has complied with all the other conditions specified in the permit".** The satisfaction of "paying all sums and complying with all conditions" entitles the permit holder to a grant which "shall" be issued in respect of the said land in terms of section 19 (4) of the same Act. In view of these provisions it could be reasonably argued that at the time of her death Ukku Bandi was entitled to be considered as "owner" by virtue of the fact that she had been awarded a grant. The fact that the grant never reached her and also the fact that the execution of the grant was never conveyed to her cannot be held against her. **There are circumstances in her favour and I hold that the nomination of a successor under the permit becomes converted to nomination made by her as the owner of the land.** In my view this interpretation is in keeping with the spirit and intention of the amending Act. A broader definition attributed to the term "owner" and the legal entitlement of a permit holder to be regarded as such are salutary features of the amendments". (page 245)

The petitioner also submits that he is not trying to quash the Grant issued by the President of the Republic, but attempting to quash the nominations made by the mother of the petitioner and 5 and 6 respondents.

The 1 to 3 respondents, among other things, has submitted that a nomination or a cancellation is not valid unless registered. However, this is a matter to be considered at a later stage together with other facts.

The 4th respondent too has submitted, among other things, that the position of the petitioner that Podi Menike being the wife of deceased Jamis Singho is entitled to the life interest under section 48(A)(1) is untenable.

The 4th respondent, having said so, at page 5 of his Written Submissions dated 04.05.2022 refers to the matters in the affidavit of the petitioner.

As **William John Kenneth Diplock, Baron Diplock** said in **American Cyanamid Co. Ltd., vs. Ethicon [1975]**[1],

> "It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations….that it aided the Court in doing that which was its great object, viz., abstaining from expressing any opinion upon the merits of the case until the hearing (Wakefield vs. Duke of Buccleuch ((1865) 12 L. T. 628).

[1] American Cyanamid Co v Ethicon Ltd - [1975] Full judgment - All England Law Reports/1975/Volume 1 - StuDocu

The aforesaid questions arisen are, by their very nature, those to be determined after a full hearing.

In the Lecture on "**Judicial Ethics**", made by late **Justice Dr. A. R. B. Amerasinghe** to the District Judges of the Western Province on 01st June 1991 [This is incidentally, the First Article of the First Issue of the Judges Journal published by the Judges Training Institute of Sri Lanka] His Lordship said,

> "In **Goold v Evans & Co (1951) 2 T. L.R. I 189,1 191,** Lord Justice Denning put the matter in this way: "(The Judge) must keep his vision unclouded … Let the advocates one after the other put the weights into the scales - the ' nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly. The judge's part in all this …is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure to see that the advocates behave themselves seemly and keep to the rules laid down by law to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. 'If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well.. Such are our standards."

His Lordship added,

> "Lord Chancellor Eldon, it is said was slow on the Bench while the Vice Chancellor, Sir John Leach was too hasty. Atkinson, in his biography of Sir Samuel Romilly, 1920, 219, recalls that Sir Samuel had remarked: "**I begin to think that the tardy justice of the Chancellor is better than the swift injustice of his deputy.**" And B. L. Shientag (The Personality of the Judge, 1944,69) relates that when Sir John Leach had cleared his work before the end of the term, a barrister had suggested that Sir John could

fill the time by having his causes set down again and hearing the other side!"

Hence having satisfied on a prima facie basis that there is a matter to be looked into by this Court, the Court issues notice to the respondents.

Judge of the Court of Appeal

Hon. Sasi Mahendran, J.

I agree.

Judge of the High Court of Civil Appeal