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 *Certiorari* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0377/2019

Paranavitharana Karunapala,
17/3, Meegahawatta,
Delgoda.

Petitioner

Vs

1. Minister of Lands,
   Mihikatha Madura,
   Land Secretariat,
   1200/6, Rajamalwatte Road,
   Battaramulla.

2. Commissioner General of Lands,
   Land Commissioner General's
   Department,
   1200/6, Rajamalwatte Road,
   Battaramulla.

3. Assistant Commissioner General of Lands
   (Galle District),
   Land Commissioner General's
   Department,
   1200/6, Rajamalwatte Road,
   Battaramulla.

4. Provincial Commissioner of Lands,
   Department of Commissioners,

Southern Province,
1st Floor, Provincial Council Building,
Galle.

5. District Secretary,
   09, Colombo Road,
   Galle.

6. Divisional Secretary of Elpitiya,
   Divisional Secretariat,
   Elpitiya.

7. Parnavitharanage Sumathiapala,
   Jayanthi Temple,
   Thalawa.

8. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Dasun Nagashena with Shikara Ekanayaka for the Petitioner, instructed by Uditha Subasinghe.

G. Ananda Silva for the 7th Respondent.

Ms. Sabrina Ahamed, SC, for the 1st to 6th Respondent

Argued on: 21.11.2022

Written Submissions on: Not tendered by the Petitioner

09.01.2023 by the 1st to 6th and 8th Respondents.

Decided on: 03.03.2023

MOHAMMED LAFFAR, J.

The Petitioner in this Application is seeking mandates in the nature of a Writ of Certiorari quashing the succession granted to the 7th Respondent in relation to Crown Grant No. GP-5110/LL4919 and a Writ of Mandamus granting the succession to the Petitioner.

Delving into the material facts at hand, one Paranavithanage David, father of the Petitioner and the 7th Respondent, in terms of the provisions of the Land Development Ordinance No. 19 of 1935 (as amended), obtained the Permit bearing No. LL4919 dated 22-03-1938 which is marked as **7R1**, in respect of the land called Thalawa or Inelamana depicted in Plan No. P.P.A. 254 and situated in Elpitiya at the Elpitiya Pradeshiya Sabha limit of Galle District in the Southern Province which is in the extent of one acre and 17 perches (A1-R0-P17). The said Permit holder had nominated the 7th Respondent as his successor which is marked as **7R1a**. The said nomination had been registered in the Land Ledger No. 4919 on 12-03-1969 **(R2).** Thereafter, the Crown Grant bearing No. GP.5110/LL4919 dated 11-02-1985 was granted to the said David pertaining to the said land which is marked as **P1**. The Petitioner states that the said Paranavithanage David died on 19-11-1998 without nominating a successor to the said land in the said Crown Grant, and therefore, under Section 71 of the said Act, the Petitioner, being the oldest son of the original grantee is entitled to the succession of the said Crown Grant. The Petitioner further states that the decision of the 5th Respondent (District Secretary of Galle) to grant the succession to the 7th Respondent who is the youngest son of the grantee, is illegal, unreasonable, *ultra-vires* and a violation of the principles of natural justice.

The learned State Counsel submits that the original Grant holder, Paranavithanage David, nominated the 7th Respondent as a successor in the Permit marked **7R1**. Thereafter, when the said land was given to him on a Grant, he did not make a fresh nomination for the Grant. In this scenario, on his death, and the death of his spouse, and in the absence of a subsequent nomination prior to his death, the original nomination stands valid in law. Accordingly, on 12-09-2017, the Grant had been transferred to the 7th Respondent as he was the successor nominated by the original Grant Holder in the Permit and he was the person in possession of the land in suit. The letter of transfer is marked as **P10** and the Permit and Land Ledger wherein the said transfer is registed has been produced as **P10A.**

In this regard, I refer to the observation made by the Supreme Court in the case of **Mallehe Vidaneralalage Don Agosinno Vs. Divisional Secretary-Thamankaduv** [1] where His Lordship the Chief Justice S.N. Silva enunciated that;

> *"it is clear from the provisons of the law that the change in the nature of the holding from that of a permit to a Grant is one purpose and it should not be taken as two distinct proccsses for the purpose of annulling a nomination that has been previously made."*

In the case of **Piyasena Vs. Wijesinghe**[2] the Court of Appeal observed that;

> *"The nomination in the Permit itself shall stand valid until it is subsequently cancelled by the Permit Holder. The nomination of a successor under the Permit becomes converted to nomination made by the permit holder as the owner of the land."*

In the light of the above judicial pronouncements and the provisions of the Land Development Ordinance, I hold that the nomination of succession made by the Permit Holder, namely Paranavithanage David in the Permit **(7R1)** stands valid to the Crown Grant **(P1**) as well. In these circumstances, the decision of the Respondents to transfer the said Grant to the 7th Respondent is valid in law.

Besides, it is pertinent to be noted that the Permit marked as 7R1 issued to the original Permit holder and the nomination of the 7th Respondent as a successor therein are very material facts to this Application. The Petitioner has suppressed these material facts in his Petition. Suppression of material facts to the court refers to intentionally withholding or concealing information that is crucial or relevant to a legal proceeding. In legal terms, material facts are those that are relevant and significant to a case and would influence a reasonable person's decision. This can include information that could impact the outcome of a case or information that would affect the credibility of a witness or evidence presented.

It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts. It is necessary in this context to

[1] SC Appeal 30-2004. Sc Minute dated 23-03-2005.
[2] 2002-2SLR-242.

refer to the following passage from the judgment of **Pathirana J in W. S. Alphonso Appuhamy v. Hettiarachchi** [3]

> *"The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ or injunction, is made and the process of the Court is invoked is laid down in the case of the King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington- Exparte Princess Edmorbd de Poigns Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination".*

Thus, it is the view of this Court that the instant Application is liable to be dismissed in-limine, on the ground of suppression of material facts by the Petitioner.

Moreover, 12-09-2017, the Grant had been transferred to the 7th Respondent on 12-09-2017 and the instant Application has been filed on 03-09-2019, approximately after two years whereas the delay has not been explained to the satisfaction of this Court.

In **Bisomenike Vs. C. R. de Alwis (1982-1SLR-368),**[4] Sharvananda, J., (as he then was) observed that;

> *"A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver The proposition that the Application for Writ must*

[3] 77 NLR 131, 135 and 136

[4] 1982-1SLR 368.

be sought as soon as injury is caused is merely an Application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay. An Application for a Writ of Certiorari should be filled within a reasonable time"

In **Sarath Hulangamuwa Sriwardena Vs. The Principal Vishaka Vidyalaya** [5] the Court of Appeal held that;

"The Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the Application.… The laches of the Petitioner must necessarily be a determining factor in deciding the Application for Writ as the Court will not lend itself to making a stultifying order which cannot be carried out."

In lieu of the above observations, it is the considered view of this Court that the nomination of a successor made by the Permit holder in his Permit is valid until the same is revoked. However, if the Permit holder has made a fresh nomination in his Grant which has been given to him subsequent to the said Permit in respect of the same land, the original nomination made by him in the Permit becomes invalid, and the fresh nomination is deemed to be valid. In the absence of a fresh nomination in the subsequent Grant, the nomination made by the Permit holder in his Permit will be considered as a valid nomination to the Grant as the nomination flows from the Permit to the Grant.

For the foregoing reasons, I hold that the Application made by the Petitioner is liable to be dismissed. Thus, the Application is dismissed. The parties should bear their own costs as to this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

[5] 1986-1SLR-275.