

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

Case No:
CA-Writ-0293-19

Rajakaruna Mudiyansele Jayawardhena,
Mudungoda, Kiralogama.

Petitioner

Vs.

1. Director General,
Mahaweli Authority,
No. 500, T.B. Jaya Mawatha,
Colombo 10.
2. Resident Project Manager (Land),
Thambuththegama.
3. Commissioner of Lands,
Land Commissioner's Department,
Colombo 07.
4. Registrar of Lands,
Land Registry, Anuradhapura.
5. Rajakaruna Mudiyansele Siriwardhana,
Mudungoda, Kiralogama.
6. Rajakaruna Mudiyansele
Dharmawardhana,
Mudungoda, Kiralogama.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before:

M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Esara Wellala, instructed by Bandula Wellala for the Petitioner.

Medhaka Fernando, SC for the 1st - 4th and 7th Respondents.

Migara Doss with Isuru Jayasantha, instructed by Dinesh De Silva for the 5th Respondent.

Written submissions tendered on:

17.11.2022 by the 5th Respondent.

29.11.2022 by the Petitioner.

29.11.2022 by the 1st and 2nd Respondents.

Argued on: 20.09.2022.

Decided on: 31.05.2023.

S.U.B. Karalliyadde, J.

By this Writ Application, the Petitioner is challenging the nominations of the 5th and 6th Respondents done by the Petitioner's mother as her successors under and in terms of Chapter VII of the Land Development Ordinance, No. 19 of 1935 (as amended) (hereinafter referred to as the Ordinance). As evident by the documents marked as P2 and P2 (a) the father of the Petitioner, Punchirala had been selected on 21.09.1979 in terms of the Sale of State Lands

(Special Provisions) Law, No. 43 of 1973 of the National State Assembly, to alienate the paddy lands which are subject to this Application. Even though, he had been selected to issue permits he had died on 29.10.1980 before issuing the Permits. After the demise of Punchirala in terms of section 19 (2) of the Ordinance, on 12.12.1984 Permits (marked as P7 and P8) and thereafter, on 17.01.2002 and on 29.02.2002 in terms of section 19 (4) the Grants (marked as P5 and P6) had been issued in the name of Punchirala's widow who was the Petitioner's mother, Nandawathi.

The position of the learned Counsel appearing for the Petitioner is that upon the death of Punchirala the Petitioner being his eldest son, in terms of the Ordinance should be nominated as the successor of Punchirala. In the Permits marked as P7 and P8 which were prepared to be issued to Punchirala before his demise naming Punchirala as the permits-holder and in the Land Ledgers, marked as P7(a) and P 8(a) Punchirala's name had been deleted and the name of Punchirala's widow who was the mother of the Petitioner, Nandawathi had been written and Nandawathi had nominated the 5th to 6th Respondents who are the siblings of the Petitioner as successors to the lands. The learned Counsel for the Petitioner submitted to Court that the mother of the Petitioner, under the undue influence of the 5th and 6th Respondents, had submitted the nomination papers to the authorities by which the 5th and 6th Respondents have been nominated as the successors of the mother and accordingly, the name of the 5th and 6th Respondents have been entered in the Land Ledgers. The learned Counsel appearing for the Petitioner argued that in terms of the Ordinance, the mother of the Petitioner had only the life interest of Punchirala and therefore, she was not entitled to nominate the 5th and 6th Respondents as the successors to the subject matter. On that premise, the learned Counsel for the Petitioner sought to issue a writ of Certiorari to quash the decision of the 1st to 3rd Respondents to name the 5th and 6th Respondents as the successors of the subject matter and writs of Mandamus directing the 1st to 3rd Respondents to name the Petitioner as the successor

of the subject lands and directing the 4th Respondent to delete the 5th and 6th Respondent's names in the Land Ledgers maintained in the Land Registry. In the Petition to this Application, no reliefs have been sought against naming the mother of the Petitioner as the Permit-holder in the Permits marked as P7 and P8 and the Grantee in the Grants marked as P5 and P6.

The position of the learned Counsel appearing for the Respondents is that in terms of the Sale of State Lands (Special Provisions) Law after Panchirala had been selected to alienate the subject matter of the action, the Permits marked as P7 and P8 had been prepared but before the Permits were issued to him he had died. Therefore, in the Permits and in the Ledgers maintained by the 1st to 4th Respondents in respect of the subject lands were altered by entering the name of Panchirala's widow, Nandawathi as the Permit-holder. Thereafter, the Grants marked as P5 and P6 were also issued in the name of Nandawathi. The argument of the learned Counsel appeared for the Respondents was that since Nandawathi was the Permit-holder and thereafter the Grantee of the lands in terms of sections 19 (2) and 19 (4) of the Ordinance respectively, under Chapter VII of the Ordinance she had a right to nominate a successor and therefore, the nomination of the 5th and 6th Respondents by Nandawathi as her successor is according to the provisions of the Ordinance.

Panchirala died on 29.10.1980 and the permits had been issued to his widow, Nandawathi after Panchirala's death. Therefore, the Court can be satisfied that even though the Permits were prepared to be issued to Panchirala, before the Permits were issued, he had died and therefore, the name of Panchirala had been deleted in the Permits and in the Land Ledgers maintained by the 1st to 3rd Respondents and the name of Nandawathi who was the widow of Panchirala had been entered deleting Panchirala's name. Therefore, the Grants also were issued in the name of Nandawathi. Under the above-stated circumstances, the Court can be satisfied that the Grants marked P5 and P6 were issued to Nandawathi and after issuing the Grants she had nominated the 5th and 6th Respondents as her successors in terms of the Ordinance and therefore, the 1st –

4th Respondents have acted according to the provisions of the Ordinance. Under the said circumstance, I conclude that the Petitioner is not entitled to the reliefs sought in the Writ Application. Therefore, I dismiss the writ Application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL