

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

In the matter of an Application in the nature of Writs of *Certiorari* and *Mandamus* under and in terms of the provisions of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0017/2020

Ranasinghe Arachchige Nimal Ranasinghe

Ulukanaththa Waththa,
Kapuwarala,
Alawwa.

Petitioner

1. R.M.C.M. Herath

Commissioner of Lands and Development,
Mihikatha Medura, Land Secretariat,
Rajamalwatta Road,
Battaramulla.

2. R.N.D.P. Pushpa Kumari

District Secretary District Secretariat,
Hinguraggoda.

3. Ranasinghe Arachchige Ranjith Ananda

Colombo Road,
Kapuwarala,
Alawwa.

4. Hon. Attorney General

Attorney General Department,
Hulftsdorp,
Colombo 12.

Respondents

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

Counsel: Nimal Wickramasinghe for the Petitioner.

Shamanthi Dunuwila for the 1st, 2nd and 4th Respondents.

Ananda Kasturiarachchi for the 3rd Respondent.

Argued on: 05.06.2023

Written Submissions on: 21.07.2023 by the Petitioner.

09.08.2023 by the 3rd Respondent.

Decided on: 31.08.2023

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 3rd Respondent in relation to a Grant bearing number po/pr/10255 and Writ of Mandamus granting the succession to the Petitioner.

In analyzing the material facts at hand, one Ranasinghe Arachchilage Hendrick Ranasinghe (hereinafter referred to as “Ranasinghe”) , father of the Petitioner and the 3rd Respondent, in terms of the provisions of the Land Development Ordinance No 19 of 1935 (as amended) obtained a Permit bearing no. 1205, marked as P1, in respect of the land described as

lot 330 in final colony plan No. 47 to the extent of land 02A 02R12P in Hingurakoda 70E Thabalaweva, on 12th January 1967.

The said Permit holder had nominated the 3rd Respondent as his successor. Thereafter, a Grant bearing number po/ pra/ 10255 dated 30.05.1986 under and in terms of Section 19(4) of the Land Development Ordinance was granted to the said Ranasinghe pertaining to the same land (marked as P1) which was then subsequently registered on 15.08.1988 at the land registry, which is marked as P2.

Subsequent to the death of the said Ranasinghe on the 22. 10. 1988 the widow, Emalin nona, succeeded as life interest holder which was registered on 15.01.1988 and subsequently died on 4.9.2007.

Prior to this Application being instituted in this Court, action bearing number 1364/L was instituted in the District Court of Polonnaruwa by the 3rd Respondent to eject one Abeyrathne who was cultivating on the said land. However the Court decided that the 3rd Respondent was not entitled to succeed to the Grant in terms of the provisions of the Land Development Ordinance. The 3rd Respondent, appealing to the Provincial High Court (Civil Appellate) Anuradhapura, had the judgment of the District Court set aside.

Thereafter, the 2nd Respondent Divisional Secretary Hingurakgoda after an inquiry decided that the Petitioner is legally entitled to succeed to the said Grant and communicated the decision on 25.6.2018 (marked "P6"). Accordingly, the name of the Petitioner had been registered in the relevant Register on 26.6.2018 (marked "P7"). Subsequently the Petitioner received a letter dated 24.8.2018 marked "P8" from the 1st Respondent Commissioner of Lands that the Register has been amended. The Petitioner obtaining certified copies of the relevant folio from the Land Registry discovered that the Grant has been registered in the name of the 3rd Respondent.

The Petitioner argues that he is entitled to the land as he is the eldest son of the original Grantee Under section 72 of the Land Development Ordinance as amended by Section 68(2)(ii) of the Land Development Ordinance as amended by Act, No 16 of 1969 and Act, No 27 of 1981.

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 provisions 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 processes 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.”

Furthermore it was observed in this court in **Paranavitharana Karunapala Vs Minister of Lands and others**³ 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

¹ SC Appeal 30-2004. SC Minute dated 23-03-2005

² 2022-2 SLR-242

³ WRT-0377-2019. Minuted 21.11.2022

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. “

In light of the aforementioned judicial pronouncements and the provisions of the Land Development Ordinance, I hold that the nomination of succession made by the Permit Holder, Ranasinghe, in the Permit, to the 3rd Respondent extends its validity to the Grant as well. Consequently, under these circumstances, the decision rendered by the 1st Respondent to effectuate the transfer of the aforementioned Grant to the 3rd Respondent is deemed to be valid.

Application dismissed. No costs.

JUDGE OF THE COURT OF APPEAL