

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

1. K. W. A. Sarath Sanjeewa,
No. 30/15, Vijayarajapura,
Kalinga-ela,
Polonnaruwa.

PETITIONER

CA No. CA/Writ/0030/2019

v.

1. Mrs. R. M. A. C. Herath,
Commissioner General of Lands,
The Department of the Commissioner
General of Lands,
No. 1200/6, Rajamalwatte Road,
Battaramulla.
2. Mr. H. S. K. J. Bandara,
The Divisional Secretary,
Divisional Secretariat,
Thamankaduwa.
3. Bamunusinghe Arachchige Gunasinghe,
Vijayarajapura,
Kalinga-ela,
Polonnaruwa.

RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
M. Ahsan. R. Marikar J.

COUNSEL : Thusitha Wijekoon for the Petitioner.

Yuresha Fernando, DSG for the 1st and
2nd Respondents.

Niranjan De Silva with S.R. Thambiah for
the 3rd Respondent.

DECIDED ON : 20.10.2023

M. Sampath K. B. Wijeratne J.

Introduction

This is an application by the Petitioner seeking *inter-alia*, a writ of *mandamus* to compel the 1st and 2nd Respondents to register the name of the Petitioner as the lawful owner of the paddy lands described in the Grants marked ‘P 1’ and ‘P 2’, a writ of prohibition against the 1st and 2nd Respondents preventing them from transferring the lands described in the Grants marked ‘P 1’ and ‘P 2’ in the name of the 3rd Respondent and/or issuing a grant in the name of the 3rd Respondent contrary to the provisions of the Land Development Ordinance (hereinafter referred to as the ‘LDO’).

Factual background

Bamunusingha Arachchilage Subasingha was issued Grants No. ෧෩/ප්‍ර/කම/738 (‘P 1’)¹ for the land in an extent of 3 A. 0 R. 14 P. bearing Lot No. 19 in plan No. අ/ග/පි/෧෩/35 and the Grant No. ෧෩/ප්‍ර/කම/1504 (‘P2’)² for the land in an extent of 0 A. 2 R. 35 P. bearing Lot No. 89 of the same plan, by Her Excellency the then President. Subasingha was married to Kariyawasam Wickremarachchilage Podihamine (‘P 8(c)'). Both the 1st and

¹ *Vide* corresponding entry in the register of permits/grants under the Land Development Ordinance (‘P3(b)).

² *Vide* corresponding entry in the register of permits/grants under the Land Development Ordinance (‘P4(b)).

2nd Respondents have acknowledged the aforementioned facts³. According to the Petitioner, since Subasingha and Podihamine had no children born from and out of their wedlock, the Petitioner was adopted as their own son. The Petitioner's biological father, Kariyawasam Wickremarachchilage Gunarathne is a brother of Podihamine. The Petitioner submitted the birth certificate of the Petitioner marked as 'P 8(a)'. In both the birth certificate of his biological father Gunarathne, marked as 'P 8(b)', and the marriage certificate of Podihamine marked 'P 8(c)', the father's name is the same. These two documents prove that Gunarathne and Podihamine are siblings.

The Petitioner claims that during his lifetime, Subasingha nominated the Petitioner as his successor for the two lands alienated to him by the Grants 'P1' and 'P 2'. The Petitioner contended that his nomination was registered in the relevant ledger at the Land Registry and submitted extracts of the two ledgers marked 'P 3(a)' and ('P 4(a)' and the two extracts of the Register of Permits/Grants under the LDO marked 'P 3(b)' and 'P 4(b)'. However, the 1st and 2nd Respondents challenged the registration of the Petitioner's nomination on the ground that the corresponding documents cannot be located in the file kept at the 2nd Respondent's office. It was also stated that the Petitioner failed to submit the documents in the prescribed form, the grantee nominated the Petitioner as the successor to the lands in issue, as stipulated in Section 56 (1) of the LDO. It was further submitted that the Petitioner's nomination is not registered in the manner specified in the LDO and therefore, invalid⁴. Furthermore, it was asserted that the Petitioner has failed to prove the consanguinity to the grantee as enumerated in Rule 1 of the Third Schedule, read along with Section 72 of the LDO.

The Petitioner asserts that Subasingha cultivated the two lands with the assistance of the Petitioner. After his demise in the year 2006 ('P 9'), his wife Podihamine succeeded to the land. The 1st and 2nd Respondents admitted the above fact⁵. The Petitioner claims that he continued to cultivate the land even after, with the consent of Podihamine. Podihamine died in May 2018 ('P 10') and thereafter, the Petitioner requested the Respondents to register him as the lawful owner of the two lands on the strength of the nomination effected by the deceased Subasingha⁶. The 1st and 2nd Respondents admit that the

³ Paragraphs 2 (a) and (b) of the objections.

⁴ At paragraph 2 (e)(f)(h) and (i).

⁵ At paragraph 2(c) of the objections.

⁶ ('P 11(a)') and ('P 11(b)').

Petitioner made a claim to the two lands after the demise of Podihamine⁷. However, the Petitioner states that there was no favourable response to his request from the Respondents.

When the matter remains as such the Petitioner has become aware that there is a move to transfer the ownership of the two lands to the 3rd Respondent who is a brother of deceased Subasingha. It is also stated that the 3rd Respondent made several attempts to forcibly enter into the two lands and to dispossess the Petitioner.

The Petitioner alleges that the 1st and 2nd Respondents ignored the Petitioner's request and deliberately delayed registering the Petitioner as the lawful owner of the two lands while making attempts to transfer the lands in the name of the 3rd Respondent on the basis that the 3rd Respondent inherited the same under the LDO. The Petitioner claims that the nomination made by late Subasingha is still in force and therefore, the 3rd Respondent is not entitled to succeed under the LDO. The Petitioner has also demanded the 2nd Respondent to register him as the lawful owner of the two lands by the letter of demand dated 10th October 2018 marked ('P 13').

Accordingly, the Petitioner states that the aforementioned acts and/or failures of the 1st and 2nd Respondents to register the name of the Petitioner as the lawful owner of the two lands are illegal, unlawful, arbitrary, capricious, *ultra-vires*, violative of the principles of natural justice and contrary to the principles of reasonableness. Thus, the Petitioner prays for the writs mentioned earlier in this judgment.

Analysis

Admittedly, Bamunusingha Arachchilage Subasingha was issued with the two Grants 'P 1' and 'P 2' in the year 1995. Kariyawasam Wickremarachchilage Podihamine was the lawful wife of Subasingha ('P 8(c)'). According to the Petitioner, Subasingha and Podihamine adopted the Petitioner as their own son. However, the 1st and 2nd Respondents challenged the legality of the adoption. There is no material before the Court to establish that the Petitioner was legally adopted. The biological father of the Petitioner ('P 8(a)') is Kariyawasam Wickremarachchilage Gunarathne. Gunarathne is a brother of Podihamine. Therefore, the relationship between Subasingha and Petitioner is uncle and nephew. The Petitioner applied to succeed to the land on the ground

⁷ At paragraph 12 of the objections.

that the Petitioner is the nominated successor, being the adopted son of deceased Subasingha, the Grantee.

According to Section 170 of the LDO, succession of a grantee has to be regulated entirely by the ordinance. Section 51 imposes restrictions on the nomination of successors to holdings. As a result, the owner of the holding must choose either their spouse or a person belonging to one of the groups of relatives enumerated in Rule 1 of the Third Schedule, as the successor. Section 48B of the LDO stipulates that the spouse of the owner of a holding is entitled to succeed to it upon their death. Accordingly, in this instance, Podihamine, the wife of Subasingha, has succeeded in the two lands upon the death of Subasingha. Podihamine died in 2018. Consequently, the Petitioner has requested the 2nd Respondent to register him as the successor to the two lands on the strength of the nomination made by late Gunarathne. As I have already stated above, the Petitioner is a nephew of Gunarathne but not by blood, but by marriage. In Rule 1 of the Third Schedule the term '*relative*' is defined as '*a relative by blood and not by marriage*'. Consequently, as per Section 51 of the LDO, the Petitioner is legally not entitled to be nominated as the successor of late Subasingha.

Furthermore, there is another impediment that vitiates the validity of the Petitioner's nomination as the successor of Subasingha.

The Petitioner submitted two land ledgers ('P 3(a)' and 'P 4(a)') and the two registers of permits/grants under the LDO ('P 3(b)' and 'P 4(b)'). The Petitioner's nomination is registered in both the land ledgers, on the 27th of May 2004. However, the Petitioner's nomination is not registered in the two registers of permits/grants under the LDO. Section 58 of the LDO provides that a document whereby the nomination of a successor is affected (other than a last will) shall not be valid unless and until it has been registered by the Registrar of Lands of the District in which the land is situated. Furthermore, according to Section 60 of the LDO, a nomination has to be registered before the death of the owner of the holding.

Land ledger is a document maintained in the Land Commissioner's office⁸. The register of permits/grants under the LDO is the document where the Registrar of Lands registers the Grants. In both 'P 3(b)' and 'P 4(b)') the two

⁸ *Vide Enasalmada Aluth Gedara Ariyasinghe v. Enasalmada Aluth Gedara Wijesinghe*, SC Appeal No. 116/2017, at p. 4.

grants issued to late Subasingha had been registered on the 26th November 1995 and 9th October 1996, respectively. In ‘P 3(b)’ the next entry is the registration of the life interest of late Subasinghas’s wife Podihamine on the 25th March 2009. In ‘P 4(b)’ the next entry is a purported transfer effected by late Subasingha on the 18th March 2010. The date of registration is 23rd March 2010. The Respondent challenges the validity of the above transfer. In fact, Subasingha’s death occurred on the 4th October 2006 (‘P 9’). Therefore, on the face of it, the entry regarding the transfer of the land said to have been effected by Subasingha on the 18th March 2010 should be fraudulent. However, it is not an issued before this Court. The important fact is that in both ‘P 3(b)’ and ‘P 4(b)’ the nomination of the Petitioner is not registered. If it is registered, there should be an entry made in between the first and second entries of both ‘P 3(b)’ and ‘P 4(b)’. Consequently, even if the Petitioner is nominated as the successor of Subasingha as reflected in the two ledgers ‘P3(a)’ and ‘P 4(a)’, since it is not registered by the Registrar of Lands in ‘P3(b)’ and ‘P 4(b)’ such registration is invalid.

In light if the above analysis, firstly, the Petitioner is not entitled to be nominated as the successor of Subasingha, the owner of the holding, since the Petitioner is not a blood relation of Subasingha. Secondly, the purported nomination is invalid since it is not registered by the Registrar of Lands.

In the case of *Alexander Pintuge Abeyaratne v Minister of Lands and six others*,⁹ (S.C.) His Lordship Sarath N. Silva C.J. observed that ‘*in a writ of mandamus issue is not that of an abuse of discretion but whether the public authority failed to discharge a duty owed to the applicant*¹⁰’.

His Lordship Sharvananda CJ in *Ratnayake and others v. C.D. Perera and others*¹¹ held as follows:

‘The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the superior courts for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest.’

⁹ SC. Appeal No. 85/2008 and 101/2008, SC. minutes dated 1st June 2009.

¹⁰ At p. 14.

¹¹ [1982] 2 Sri. L.R. 451at 456.

In the case of *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd*¹² (S.C.) His Lordship J. A. N. de Silva (as his Lordship then was) in setting out some of the conditions precedent to the issue of *mandamus*, it was held that the applicant must have a legal right to the performance of the legal duty by the parties against whom the *mandamus* is sought¹³. Accordingly, the foundation of *mandamus* is the existence of a legal right¹⁴.

As a result, based on the above analysis, I am clearly of the view that the Petitioner has failed to establish the existence of a legal right towards him. Consequently, the performance of the legal duty by the Respondents towards the Petitioner does not arise.

Conclusion

In view of the reasoning provided above in this judgement in respect of the matter in issue, I hold that the Petitioner has failed to establish legitimate grounds to issue the writs prayed for in the Petition. Therefore, I refused to issue the writ of *mandamus* prayed for in paragraph (b) of the prayer of the Petition, and consequently, the writ of prohibition prayed for in paragraph (c) of the prayer of the Petition as well.

I would hold that the Petitioner's application must fail. Consequently, the application is dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL

¹² [2005] 1 Sri L.R. 89.

¹³ *R v. Barnstaple Justice*, (1937) 54 TLR 36,

¹⁴ *Napier Ex parte*, 1852 18 QB, 692, at p. 695.