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 Prohibition and Mandamus under and in terms of Article 140 of the Constitution.

Weerasinghe Dissanayake,
No.10, Jayanthi Road,
Kekirawa.

Petitioner

Vs.

CA/WRIT/269/2018

1. Divisional Secretary,
   Divisional Secretary's Office,
   Kekirawa.

2. Secretary,
   Pradeshiya Sabha,
   Kekirawa

3. Commissioner General of Land,
   Land Commissioner General's Department,
   No.1200/6, Rajamalwatta,
   Avenue, Battaramulla.

4. Provincial Land Commissioner,
   Provincial Land Commissioner Department,
   North Central Province,
   Anuradhapura.

5. Deputy Land Commissioner,
   Deputy Land Commissioner's Office,
   District Secretariat,
   Anuradhapura.

6. Hon. Minister of Lands and
   Parliamentary Reforms,
   Ministry of Lands and
   Parliamentary Reforms,
   No. 1200/6, Rajamalwatta
   Avenue,
   Battaramulla.

7. Hon. State Minister,
   Ministry of Lands,
   No.1200/6,
   Rajamalwatta Avenue,
   Battaramulla.

8. Weerasinghage Jayaweera,
   No. 10/1, Jayanthi Road,
   Kekirawa.

9. Weerasinghage Siripala,
   10 B, Seethagama,
   Awissawella.

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

Respondents

BEFORE : D.N.Samarakoon J
Neil Iddawala J

COUNSEL : Himali D. Ariyasena appears for the Petitioner, instructed by Cooray and Cooray.
S. Wimalasena, DSG, for the 2nd, 3rd and 4th respondents.
Boopathi Kahathuduwa for the 8th and 9th Respondents.

Argued on	:	07.09.2023
Written Submissions	:	02.10.2023
Decided on	:	02.11.2023

Iddawala – J

This is an application made by the petitioner seeking relief by way of Writs in the nature of Mandamus and Prohibition pertaining to the declaration of the petitioner as the legally nominated legal successor of license number 91/629/908 as per the petition dated 14.08.2018.

The facts of the case are as follows. The petitioner avers that the mother of the petitioner originally nominated all three of her children (including the petitioner, the 8th and the 9th respondents) as successors to the land affected by the license bearing number 91/629/908 and then in the year 1995, she changed her mind and made an amendment to the license nominating the petitioner as the sole successor to the land affected by the license. The petitioner further avers that the cancellation and the registration of a fresh nomination has been carried out by the 1st respondent in the official documents maintained at the 1st respondent's office.

However, this position is contended by the 8th and the 9th respondents claiming that the amendment made subsequent to the original nomination has been made due to the intimidation to the mother by the petitioner and therefore, such nomination is bereft of proper procedure and lacks the intention of the mother to make such an amendment. The petitioner has come before the court due to the decision made by the Land Commissioner of the North Central Province on 23.02.2015, declaring that the purported amendment has not been made in accordance with the proper procedure promulgated by the law. The Land Commissioner consequent to such a determination, has decided to divide the land among all the three children according to the original nomination by the decision dated 07.11.2016.

Therefore in light of such a declaration, the petitioner by the petition dated 14.08.2018, sought a Writ of Mandamus to issue the license to the petitioner on the ground of the petitioner being the sole successor to the license bearing

number 91/629/608 and furthermore has sought a Writ of Prohibition to prevent the sub division of the land affected by the license bearing number 91/629/608 among the petitioner, the 8th and the 9th respondents.

In addressing the major contention of the present application, this Court is of the view that the amendment to the original nomination has not been made in accordance with the procedure laid out by the law in the Land Development Ordinance no.19 of 1935. The pertinent sections can be elaborated in the following manner:

Section 54 of the Land Development Ordinance stipulates that:

> *"The owner of a holding or permit holder may make a further nomination in lieu of any nomination which has been cancelled; and a person may be renominated as successor notwithstanding the previous cancellation of the nomination of that person in such capacity."*

As stipulated in the above section, in order to make a fresh nomination, the original nomination has to be duly cancelled and in lieu of such cancellation a further nomination can be made by the owner of a holding or a permit holder.

The appropriate procedure to be followed while making such cancellation or registration of a fresh nomination is provided under Section 56 of the Land Development Ordinance where it is stipulated that:

> "*The nomination of a successor and the cancellation of any such nomination shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a divisional Assistant Government Agent, or a notary, or a Justice of the Peace.*"

According to Section 56, a nomination or a cancellation of a nomination is affected solely upon the execution of the procedure prescribed in the Land Development Ordinance and adding further to the same, Section 58 of the Land Development Ordinance stipulates that:

> "*A document (Other than a last will) whereby the nomination of a successor is effected or cancelled shall not be valid unless and until it*

> *has been registered by the Registrar of Lands of the district in which the holding or land to which that document refers is situated*".

In the instant application the petitioner averred that the mother has made an amendment to the original nomination, however, it is evident as per the above promulgated law, that in order for such amended nomination to be in operation it is essential to be made in accordance with the proper procedure laid in the Land Development Ordinance. Thereby as per Section 58 of the Land Development Ordinance such an amendment needs to be registered by the Registrar of Lands of the district in which the holding or land to which that document refers is situated. In absence of the adherence to the aforementioned procedure, a nomination is considered to be invalid.

In the instant application, the respondents averred that the amendment has been made by striking off the names of the 8th and the 9th respondents from the list of names in the original nomination and the petitioner has failed to submit documents as proof of a lawful registration of the amended nomination and the documents with regard to the cancellation of the original nomination.

Section 62 of the Land Development Ordinance further buttresses the above point and states that in order for a fresh nomination to be registered, the previous nomination has to be cancelled by the "*registration of a document of cancellation.*" The petitioner in the instant application has not provided any documents of cancellation registered in the Land Registry, nor has the petitioner submitted a fresh nomination registered as per Section 58 of the Land Development Ordinance. Therefore, it could be said that the purported amendment has not been made in accordance with the procedure laid out in the Land Development Ordinance.

In such an event, it is pertinent to shed light on Section 75 of the Land Development Ordinance, which reads as follows:

> *"Any nomination of a successor and any cancellation of any registered nomination of a successor shall be wholly invalid if such nomination or cancellation in any way contravenes the provisions of this Ordinance."*

Accordingly, since the provisions of the Ordinance have not been followed, it is the observation of this Court that the purported amendment has not been made in accordance with the procedure prescribed by the law. Therefore, the

lack of adherence to proper procedure is considered a contravention of the Land Development Ordinance in terms of Section 75 of the Ordinance. Hence, in the event of such contravention of the law, the purported nomination amendment can be considered as invalid.

The learned counsel for the 8th and the 9th respondents quoted the determination in ***CA Writ Application no.453/2013*** decided on 10.10.2016 where his Lordship Justice P. Padman Surasena held that "*the nomination has to be made in the prescribed form and be registered in the Land Registry in terms of Section 58 of the Land Development Ordinance and if it is not registered, such nomination is considered to be invalid*". Therefore, it is the observation of this Court that since the petitioner has failed to submit any document with regard to the cancellation of the original nomination and any document with regard to the fresh nomination, the purported amendment is invalid.

The petitioner through his submissions stated that the respondents are only now, questioning the validity of the thumb impression of the mother: J. Magilin Nona but haven't taken such defenses in the other legal forums where they themselves contested the amendment to the legal nomination of license bearing number 91/629/908, namely in the District Court of Anuradhapura or the High Court of Anuradhapura where they contested the same issue which lies before this Court.

The counsel for the 8th and 9th respondents through his submissions tendered that the petitioner is guilty of laches. It is pointed out by the respondents that though the petitioner comes before this court upon the decision taken by the Commissioner General of Lands on 07.11.2016 to divide the land among the petitioner and the 8th and 9th respondents, the dispute between these parties' dates back to 1998. Thus, the respondent claims that the petitioner has come to court over 20 years after the dispute has arisen and claims this extreme delay is fatal for the application.

In support of the above submissions the respondents have cited the case of ***Issadeen v The Commissioner of National Housing and Others*** 2003 2 SLR Page 10 which states: *"It is however to be noted that delay could defeat equity. Although there is no* statutory *provision in this country restricting the time limit in filing an application for judicial review and the case law of this*

country is indicative of the inclination of the Court to be generous in finding 'a good and a valid reason for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy. Prof. G.L. Peiris, in his book on Essays on Administrative Law in Sri Lanka (Lake House Investments 160 Ltd., pg.13 and 15) stated that, "Where a discretion is available to the Court in regard to the grant or refusal of certiorari, the writ will generally not issue if there has been unjustifiable delay on the part of the applicant in seeking relief ... The relevant principle is that relief by way of certiorari must be sought punctually."

Considering the aforementioned it could be said that similar to the principle that relief by way of Writ of Certiorari must be sought punctually, any relief sought in the nature of writs should be filed in due course and any delay in filing an application should be justified by the party themselves. It is the view of this Court that the petitioner in the instant application has not justified to the court the reasons for the delay.

Hence, this Court finds no reason to grant the relief in the nature of writs as prayed by the petitioner thus refuses to grant relief prayed before this Court.

The Application is hereby dismissed.

JUDGE OF THE COURT OF APPEAL

D.N. Samarakoon J

I agree.

JUDGE OF THE COURT OF APPEAL