

**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.

Court of Appeal Case No.

CA/WRT/0255/2019

K. P. Ranathunga Nandasena

No. 137, Track 3.

Rajanganaya.

Petitioner

Vs.

1. **P. G. Sunil Abeykon,**
Divisional Secretary,
Divisional Secretariat,
Rajanganaya

2. **R. M. Wanninayake,**
District Secretary,
District Secretariat,
Anuradhapura.

3. **R. M. C. M. Herath,**
Commissioner General of Lands
No. 1220/6, Land Secretariat,
Mihikatha Medura, Rajamalwatta Road,
Battaramulla.

4. **K. P. Thilakarathna,**
Egodagama,
Algama.

5. **K. P. Somawathie,**

Track 3,
Rajanganaya

Respondents

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

Counsel: Kalpana Madhubhashini, Ms. Irodha Sandeepani with C. Nanayakkarawasam, instructed by Sunil Watagala for the Petitioner.
M. Fernando, SC for the 1st – 3rd Respondents.
J.P. Gamage, instructed by A. R. L. Jayantha for the 4th and 5th Respondents.

Argued on: By way of written submissions.

Written Submissions on: 09.03.2023 by the Petitioner
20.07.2023 by the 1st to 3rd Respondent

Decided on: 07.11.2023

MOHAMMED LAFFAR, J.

The Petitioner is seeking *inter-alia* mandates in the nature of Writs of Certiorari quashing the decision contained in **P11** appointing the 4th Respondent as the permit holder of the high-land referred to as Lot. 137, situated in Track 3 of Rajanganaya and the decision contained in **P12** appointing the 4th Respondent as a permit holder of the paddy- land referred to as Lot. 59 in terms of the provisions of the Land Developments Ordinance. Furthermore, the Petitioner is seeking Writs of Mandamus directing the 1st to 3rd Respondents to hold a fresh inquiry to determine the rights to the said subject matter and directing the 1st to 3rd Respondents to proceed with the steps initiated for cancellation of the permits issued to the 4th Respondents pertaining to the said lands.

When the matter was taken up for support on 06-08-2019, this Court issued formal notices on the Respondents with regard to reliefs (c) and (d), namely directing the 1st to 3rd Respondents to

hold a fresh inquiry and to proceed ahead with the steps taken to cancel the permits.

FACTUAL MATRIX:

The aforesaid Permits **P11** and **P12** were originally issued to the Petitioner's father, namely K.P. Jonga. The Petitioner, 4th and 5th Respondents are siblings. Admittedly, the original permit holder appointed the 4th Respondent as the successor to the said permits. The 4th Respondent's nomination as the successor of the said permits is reflected in the land ledger too (**1R3**). Subsequent to the death of the original permit holder and his spouse, the 4th Respondent was named as the permit holder by the 1st Respondent.

The Petitioner states that the Petitioner and the eldest male child of the original permit holder had requested the 1st Respondent to hold an inquiry to decide the rights to the lands in dispute and however, no such inquiry was held by the 1st Respondent. As such, appointing the 4th Respondent as the permit holder is arbitrary. The Petitioner further states that in terms of Section 68 (2) of the Land Development Ordinance, a nominated successor has to enter into possession of the land within six months from the death of the spouse of the original permit holder, and failing which it would amount to a failure to succession. In this case, since the 4th Respondent failed to enter into possession within six months from the death of the spouse of the original permit holder, the 4th Respondent has lost his rights as the successor. In those circumstances, the Petitioner states that the decision made by the 1st Respondent to insert the name of the 4th Respondent as the permit holder of the land in suit is contrary to the provisions of the Land Development Ordinance. Hence, the contention of the Petitioner is that not holding an inquiry to determine the rights to the lands and abandoning the steps taken for cancellation of the permits already issued to the 4th Respondent are *ultra-vires*.

It is borne out from the permits marked as **P11** and **P12** that the 4th Respondent has been nominated as the successor of the lands in dispute by the original permit holder under Section 56 read with Section 87 of the Land Development Ordinance. The nomination of the 4th Respondent as a successor is further substantiated with

the land ledger marked as **1R3** wherein, it is stated that the 4th Respondent is the nominated successor.

Under Section 49 of the Land Development Ordinance, the 4th Respondent, as the successor is entitled to succeed to the lands in question, which reads thus;

“Upon the death of a permit-holder who at the time of his or her death was paying an annual sum by virtue of the provisions of subSection (3) of Section 19A, or of an owner of a holding, without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to the land alienated to that permit-holder on the permit or holding or upon the death of such spouse, **a person nominated as successor by such permit-holder or owner shall succeed to that land or holding.**”*

Section 87 of the Land Development Ordinance enables the nomination of a successor to a permit to be endorsed on the permit. The said Section is reproduced as follows;

“A person to whom a Government Agent has agreed to alienate land may nominate as his successor any person who is entitled under this Ordinance to be so nominated, and the name of such successor may be endorsed on the permit before it is issued to the first-mentioned person, and the Government Agent may upon being requested so to do by the permit-holder cancel the name of such successor by an endorsement on the permit and endorse on the permit the name of any other person suggested by the permit-holder as his successor.”

The contention of the Petitioner that the 4th Respondent has renounced his rights as the successor to the said permits by an affidavit marked as **P3** is disputed by the 4th Respondent in paragraph 8 of the affidavit filed by the 4th Respondent in this proceeding, which reads thus;

“Answering the averments contained in paragraph 15 of the Petitions we deny the facts that the 4th Respondent has renounced the rights in respect of the lands in question.”

In these circumstances, it appears to this Court that the question of whether the affidavit **P3** is genuine or not is a disputed question of fact before this Court. **A.S. CHOUDRI in his book on the law of Writs and Fundamental Rights (2nd Edition) Vol-2. At page 449)** states that

“where facts are in dispute and in order to get at the truth, it is necessary that the question should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a Writ will not issue.”

The Supreme Court in **Francis Kulasooriya Vs. OIC- Police Station-Kirindiwela**¹ observed that

“Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute.”

In **Dr. Puvanendran Vs. Premasiri**² the Supreme Court held that;

“The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”

In those circumstances, since the facts stated in **P3** relied upon by the Petitioner are in dispute, the Petitioner is not entitled to a judicial review upon those disputed facts.

However, under Section 75 of the said Ordinance, 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. Hence, it appears to this Court that the submission of

¹ SC Appeal No. 52/2021. SC Minute of 14-7-2023.

² 2009- 2SLR-p107

the learned Counsel for the Petitioner stating that the nomination of the 4th Respondent is deemed to be cancelled by virtue of **P3** is devoid of merits.

In this scenario, it is the view of this Court that the permits issued in favour of the 4th Respondent on the ground of the nominated successor are within the purview of the Land Development Ordinance and therefore, there is no necessity to carry out a fresh inquiry to determine the rights with regard to the permits in issue.

The learned Counsel for the Petitioner contended that as the 4th Respondent failed to enter into possession within six months from the death of the spouse of the original permit holder, the 4th Respondent has lost his rights as the successor under Section 68 (2) of the said Ordinance. The 4th Respondent, in paragraph 16 of his affidavit denied the aforesaid position of the Petitioner and further averred that as the duly nominated successor the 4th Respondent had the constructive possession of the lands and enjoyed the benefits, though the Petitioner was also living in the house with the parents. It is pertinent to note that having accepted the possession of the 4th Respondent in respect of the lands in dispute, the 1st Respondent had issued permits to the 4th Respondent. Subsequently, the relevant Grama Niladari of the Division within which the paddy land pertaining to the Permit P12 is situated reported to the 1st Respondent that the 4th Respondent was not in possession of the paddy land and was also not developing the same (**R4**). Accordingly, under Section 106 of the said Ordinance, having issued a show cause notice to the 4th (**R6**) Respondent, the 1st Respondent had already initiated steps to cancel the permit **P12**. Since there is no report from the Grama Niladari or materials before the 1st Respondent as to the fact that the 4th Respondent is not in possession of the high land(**P11**), the 1st Respondent has not taken steps under Section 106 of the said Ordinance in respect of the high land (**P11**).

It appears to this Court that the inquiry with regard to the cancellation of the Permit **P12 (Paddy land)** is suspended by the 1st Respondent due to the action instituted by the 4th Respondent in the District Court of Anuradhapura in case No. L/23274 praying for a declaration of title to the high land (**P11**). Since the paddy land (**P12**) is not the subject matter in case Number L/23274,

suspension of the inquiry under Section 106 is erroneous. The District Court action is not an impediment to the 1st Respondent to proceed with the inquiry under Section 106 that has already been initiated against the 4th Respondent.

For the foregoing reasons, this Court declines to issue a Writ of Mandamus directing the 1st - 3rd Respondents to hold a fresh inquiry to determine the rights pertaining to the high land (Permit marked P11) as prayed for in paragraph (c) of the prayers to the Petition. However, a Writ of Mandamus directing the 1st - 3rd Respondents to proceed ahead with the steps initiated under Section 106 of the Land Development Ordinance for cancellation of the permit already issued in respect of the paddy land (Permit marked P12) is issued. The Parties should bear their own costs as to this Application.

Application partly allowed. No costs.

JUDGE OF THE COURT OF APPEAL