

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

In the matter of an application for
Writ of Certiorari Mandamus under
and in terms of Article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Waga Pedigedara Karunawathie
of No.39, East Manampitiya,
Manampitiya.

C.A (Writ) Application No. 463/2011

PETITIONER

Vs.

1. Director General
Sri Lanka Mahaweli Authority,
500, T.B. Jaya Mawatha,
Colombo.
2. Nishantha Kumara Jayatunga,
Unit Manager, Unit Manager's
Office, Sri Lanka Mahaweli

Authority, East Manampitiya,
Manampitiya.

3. Mr. Gunadasa Hearath, Cercuit
Manager, Circuit Manager's
Office, Sri Lanka Mahaweli
Authority, Dimbulagala.

4. Mr. Weeresinghe Ringsley, The
Resident Business Manager,
Mahaweli B Zone, Sri Lanka
Mahaweli Authority, Welikanda.

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

6. R.M. Sumithra Priyanganie, 187,
Methsirigama, Manampitiya.

RESPONDENT

BEFORE

: P.W.D.C. JAYATHILAKE, J

COUNSEL : J.M. Wijebandara with M. Sarathchandra for
the Petitioner

Anusha Fernando SC for the 1st – 5th
Respondents

Kaushalya Molligoda for the 6th Respondent

Argued On : 10.05.2013

Decided On : 26.09.2013

P.W.D.C. Jayathilake J.

Bodiya Baduge Dharmadasa was the permit holder of two crown grants given under L D O permits P3 and P4 for a land and a paddy land. He had nominated one Bodiya Baduge Sumithra, relative daughter of him, as the successor to those grants. Aforesaid Dharmadasa had got married the Petitioner on 23.06.1987. By that time nomination in respect of land had

already been made. But nomination in respect of paddy land had been made only after the marriage. Therefore the Petitioner states that the nomination made in respect of the land prior to the marriage gets cancelled by operation of Law. Furthermore the petitioner states as the widow of the grantee she is entitled to life interest in respect of the paddy land. The Petitioner alleged that the 1st Respondent without given an opportunity to her to submit her claim had issued two permits in the name of the 6th Respondent after the death of her husband. According to the Petitioner that had been done on the purported basis that the 6th Respondent was the nominated successor.

The Petitioner has filed this application in this court pleading for a mandate in the nature of a Writ of Certiorari cancelling and nullifying grants marked as P7 and P8 and Writ of mandamus compelling the Respondents to execute the permits in favor of the Petitioner in respect of both land and paddy land set out in the original permits marked as P3 and P4.

1st to 5th Respondents state in their objections *inter alia*,

- (a) The deceased permit holder had never disclosed to the Respondents that he had contracted a lawful marriage with the Petitioner;
- (b) The Petitioner who purports to be the widow of the deceased permit holder failed and neglected to enter possession of the land described

in P3 and P4 within the time period stipulated by law and / or to submit a timely claim;

(c) As a result an inquiry had been held in order to decide the successor to the lands described in P3 and P4;

(d) To this end the notice marked as P10 and P11 dated 30th March 2010 had been displayed calling for those who qualify under the 3rd schedule to the Ordinance to submit their claims;

After following the relevant procedure the 4th Respondent has decided that the 6th Respondent was the one who was entitled to be issued to the permits.

The 6th Respondent in her objections states *inter alia*, that she is the daughter of sister of the original grantee. She was aware only the fact that original grantee had been married at some point of time, but she never knew that the Petitioner was the wife of that marriage. She affirms that the original grantee and his wife were separated until the death of the said grantee.

The 6th Respondent further states the following. No one including the Petitioner had made any attempt to enter in to possession of the land within a period of six months from the death of the original grantee. For the aforesaid reason Petitioner is not entitled to claim the right to permits, in terms of the provisions of the Land Development Ordinance. The 1st to 4th Respondents

had taken steps to conduct a transparent and comprehensive investigation for nearly one year to decide on the successor to the permits of the deceased.

The petitioner states that she was not given opportunity to submit a claim. Yet again she gives a reason as an excuse to her failure to submit her claim that she suffered from Osteo Porosis during the relevant period. She also states that she had entrusted a person to look after her property after the demise of her husband.

When considering the above three points, it is evident that above three points are contradicting with each other. The submission has been made on behalf the Petitioner that the principle of "*audi alteram partem*" has been violated by not listening to both sides before arriving at a decision. Therefore the procedure followed by the authorities is wrongful and the decision is *ultra vires* the counsel argues.

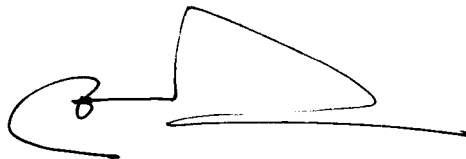
But as the authorities were unaware of a legal marriage of the deceased person and the absence of any claim from the Petitioner, the authorities had no alternative but to listen to the parties that participated at the inquiry and take a decision. To quash an administrative decision there should be an error that occurred in the process of arriving at the decision. If the decision making authority has acted *bonafide*, the subsequently involved factors would not make the said decision erroneous. This court is of the view that the 1st to 4th Respondents have acted *bonafide* and in accordance with the provisions of

Land Development Ordinance in arriving at the decision to issue the permits marked as P7 and P8 to the 6th Respondent.

Unaccountable inaction on the part of the Petitioner and not being alert to her rights (if any) , in my opinion, has to be regarded as a willful renunciation. That disentitles her from inviting this Court to grant the prerogative remedy.

I, therefore dismiss the Petition without cost.

Application dismissed.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line and a large, sweeping 'A'.

JUDGE OF THE COURT OF APPEAL