

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

**In the matter of an Application for a mandate in the
nature of *Writ of Certiorari, Mandamus* under article
140 of the Constitution of the Democratic Socialist
Republic of Sri Lanka**

Hemadiyage Yasawathi alias,
Weerasinghe Yasawathi,
Kumbukgollewa,
Mahapothana.

PETITIONER

CA/WRIT/111/2013

Vs,

1. Land Commissioner General,
Land Commissioner General's Department,
"Mihikatha Madura",
1200/6, Rajamalwatta Road,
Battaramulla.
2. Divisional Secretary,
Horowpathana Divisional Secretariat,
Horowpathana.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
4. Weerasinghege Kumaradasa,
Miliyadda,
Kandeniya,
Ridigama.

5. The Provincial Land Commissioner,
Provincial Land Commissioner's Department,
Department of Lands- North Central Province,
Anuradhapura.

RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA) &**

H.C.J. Madawala J

Counsel: Thisya Weragoda with Iresha Seneviratne instructed by Niluka Dissanayake
for the Petitioner
Suranga Wimalasena SSC for the 1st to 3rd and 5th Respondents
Arjuna Kurukulasuriya for the 4th Respondent

Argued on: 04.11.2015

Written Submissions on: 16.12.2015, 11.01.2016

Judgment on: 29.04.2016

Order

Vijith K. Malalgoda PC J

Petitioner to the present application Hemadiyage Yasawathi alias Weerasinghe Yasawathi had come before this court seeking inter alia,

- d) a mandate in the nature of a *Writ of Certiorari* quashing the decision of the 5th Respondent dated 10th April 2013 marked A5 (b)
- e) a mandate in the nature of a *Writ of Mandamus* compelling the 1st and/or 2nd and/or 5th Respondents to issue a declaration and/or certificate of succession in favour of the Petitioner under the Land Development Ordinance

- f) a mandate in the nature of a *Writ of Mandamus* compelling the 1st and 2nd and/or 5th Respondents to perform their lawful obligations under the Land Development Ordinance

The facts of the present application as submitted by the Petitioner can be summarized as follows;

One W. Hamadiya alias Welage Weerasinghe was issued with a permit under the provisions of Land Development Ordinance in the year 1965 with regard to a Land situated in the village of Nabadawewa in the District of Anuradhapura to the extent of 1 acre.

The Petitioner to the present application being the eldest daughter to the said permit holder was nominated as the successor to the said land and the said nomination was registered at the Land Ledger maintained with the 2nd Respondent. (A Copy of which was produced by the 2nd Respondent before this court on a directive made by this court with his letter dated 29.04.2015 received by the Registry on 05.05.2015)

Subsequently by virtue of the power vested in Her Excellency the President of the Democratic Socialist Republic of Sri Lanka under and in terms of section 19 (6) read with section 19 (4) of the Land Development Ordinance issued a grant with regard to the said land to Welage Weerasinghe on 3rd March 1999.

The said grantee Welage Weerasinghe had not cancelled the said nomination made by him nominating the Petitioner as the successor in the original permit during his life time and died intestate on or about 2nd February 2003.

It was further revealed that the said grantee Welage Weerasinghe had not made a fresh nomination after receiving the grant, prior to his death in the year 2003.

As submitted by the Petitioner, she had on or about 13th August 2011 requested the 2nd Respondent to effect the nomination made in the original permit since no fresh nomination had been made by the late permit holder Welage Weerasinghe.

The 5th Respondent by his letter dated 05.03.2013 which is produced marked A 5 (a) had requested the Petitioner, the 4th Respondent, (the eldest son of late Welage Weerasinghe) and one W. Yasawathi to be present for an inquiry to resolve the dispute with regard to the said Land.

Subsequent to the said inquiry, the 5th Respondent had informed his decision to the 2nd Respondent and in the said decision which was produced marked A 5 (b) the 5th Respondent refers to an attempt

made by him to bring about a settlement between the parties, but since it was failed, he had decided to effect the succession based on the 3rd schedule to the Land Development Ordinance.

Being dissatisfied with the said decision Petitioner has filed the present application seeking a mandate in the nature of *Writ of Certiorari* to quash the said decision along with other relief as referred to above in this judgment.

As observed above the grantee Welage Weerasinghe had passed away by committing suicide on 2nd February 2003. His wife Ukkuwage Gorabi had died on 10th October 2005. As submitted by the Petitioner she had requested the 2nd Respondent to effect the nomination for the first time on or about 13th August 2011.

The main objective of the Land Development Ordinance was to provide for the systematic development and alienation of the Crown Land in the Country. When examine the provision of the said ordinance it is clear, that the legislature expected the land to be occupied and developed by the permit-holder/ grantee or his successor without abounding the property so alienated.

In the said context the Land Development Ordinance had provided provisions to alienate the land when there is a failure to succession by parties.

Section 68 of the Land Development Ordinance which refers to failure of succession reads thus,

- 68 (1) The spouse of a deceased 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 the spouse of an owner, fails to succeed to the land held by such permit-holder on the permit or to the holding of such owner, as the case may be,
- a) If such spouse refuses to succeed to that land or holding, or
 - b) If such spouse does not enter into possession of that land or holding within a period of six months reckoned from the date of the death of such permit-holder or owner.
- (2) A nominated successor fails to succeed to the land held on a permit by 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 to the holding of an owner if he refuses to succeed to that land or holding, or, if the nominated successor does not enter into possession of that land or holding within a period of six months reckoned-
- i. Where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the death of such permit-holder or owner; or

- ii. Where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the failure of such spouse to succeed, such date being reckoned according to the provisions of paragraph (b) of subsection (1), or of the death of such spouse, as the case may be.

In the case of *Gunawardena V. Rosalin* 62 NLR 213 rights of a holder against the successor to possess a land when the life holder failed to enter into possession under section 68 of the original enactment (Both the original section 68 and the replace section refers to the failure of succession) was discussed by Basnayake CJ as follows;

“Section 68 (1) of the Land Development Ordinance provides that a nominated life holder failed to succeed if he refuses to succeed or does not enter into possession of the holding within a period of six months reckoned from the date of the death of the owner of the holding.”

How the alienation should take place when there is a failure in succession is explained in section 72 of the Land Development Ordinance as follows;

Section 72, “If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to 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 to the holding of an owner shall, upon the death of such permit-holder or owner 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 that land or holding, or upon the death of such spouse, devolve as prescribed in rule I of the Third Schedule.”

When referring to the above provisions, it is very much clear that there is a requirement under the provisions of the Land Development Ordinance for the successor to succeed within 6 months upon the death of the permit holder or the owner as the case may be or upon the death of the spouse. As observed by this court earlier in this judgment, the Petitioner had requested to effect the nomination on or about 13th August, 8 years after the death of the grantee and 6 years after the death of the wife of the grantee.

It is further observed by this court, that at no stage of the present case, the Petitioner had submitted any material to establish that she was in occupation of the land in question namely “Nabadawewa” in the District of Anuradhapura.

During the argument before this court the Petitioner whilst relying on the decision of the Court of Appeal in the case of *Piyasena V. Wijesinghe (2002) 2 Sri LR 242* argued that a nomination made in a permit issued in terms of section 19 (2) of the Land Development Ordinance continue to be effective and valid notwithstanding a fresh nomination not being made at the time of issuance of the Grant in terms of section 19 (4) of the said Ordinance.

However as observed by this court, what is important in the case in hand is not the validity of the nomination made by the grantee Welage Weerasinghe but whether the said nominee succeeded to the said land within 6 months of the death of the grantee or his spouse as required by section 68 and 72 of the Land Development Ordinance.

The Petitioner has failed to establish this fact before us and in fact the Petitioner had for the first time requested the 2nd Respondent to effect the nomination 8 years after the death of the grantee and 5 years after the death of the spouse of the grantee.

Under these circumstances we see no reason to interfere with the decision arrived by the 5th Respondent as conveyed in the document produced marked A 5 (b).

Application by the Petitioner seeking a *Writ of Certiorari* to quash the said decision and a *Writ of Mandamus* compelling 1st and/or 2nd and/or 5th Respondents to issue a declaration and/or certificate of succession is refused. In the said circumstance issuing of a *Writ of Mandamus* as prayed in paragraph (f) to the Petition will not arise.

Application is dismissed. Court make no order with regard to costs.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL