

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

In the matter of an Application for Writs in the nature of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

**C.A(Writ) Application No. 268/2014**

Alpiti Badalge Wickremasooriya,  
Track 02/08, Kandaketiya.

**PETITIONER**

Vs.

1. Alpiti Badalge Balasuriya,  
09 Ela, Ulpota Road, Kandaketiya.
2. Divisional Secretary,  
Divisional Secretary Office, Kandaketiya.
3. Assistant Land Commissioner,  
Deputy Land Commissioner's Office,  
Rest House Road, Mahiyangana.
4. Commissioner General of Lands,  
Land Commissioner General's Office,  
07, Gregory's Road, Colombo 07.

**RESPONDENTS**

**Before:** P. Padman Surasena, J/ President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Vijaya Niranjan Perera, PC with A.I. Irfana and Jeevani Perera for  
the Petitioner

Shehan Gunewardena with Dulanjana Gamage for the 1<sup>st</sup>  
Respondent

Manohara Jayasinghe, State Counsel for the 2<sup>nd</sup> – 4<sup>th</sup> Respondents

**Written Submissions of the Petitioner tendered on:** 22<sup>nd</sup> March 2018

**Written Submissions of the 1<sup>st</sup> Respondent tendered on:** 26<sup>th</sup> April 2018

**Written Submissions of the 2<sup>nd</sup> – 4<sup>th</sup> Respondents tendered on:** 21<sup>st</sup> May 2018

**Decided on:** 06<sup>th</sup> August 2018

**Arjuna Obeyesekere, J**

This application has been filed by the Petitioner seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the findings of the 3<sup>rd</sup> Respondent contained in 'P8'<sup>1</sup>;
- b) A Writ of Prohibition to prevent the 4<sup>th</sup> Respondent from taking steps based on 'P8';

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<sup>1</sup> 'P8' is a letter dated 6<sup>th</sup> July 2014 written by the 3<sup>rd</sup> Respondent to the 4<sup>th</sup> Respondent

- c) A Writ of Mandamus directing the 2<sup>nd</sup> – 4<sup>th</sup> Respondents to issue the Petitioner a 'state grant' in terms of the Land Development Ordinance.

The Petitioner is the eldest son of Alpiti Badalage Wijehamy and Manamendra Patabendige Podihamy. The 1<sup>st</sup> Respondent is a younger brother of the Petitioner. The Petitioner states that a permit had been granted by the State under the Land Development Ordinance to Wijehamy in 1955 in respect of a land in extent of approximately 4 acres. The said land has been identified in the Tenement Lists produced with the petition marked 'P2A' and 'P3A' as Lot No. 218 of Plan No. ISPP No. 15<sup>2</sup> and Lot No. 253 of Plan No. ISPP 14<sup>3</sup>. The Petitioner claims that Wijehamy had nominated the Petitioner as the successor, in terms of the Land Development Ordinance. However, a copy of the said permit issued to Wijehamy or documentary proof of such nomination of the Petitioner have not been produced to this Court.

In 1999, while Wijehamy was living, two permits, annexed to the petition marked 'P4' and 'P5' had been issued by the State under Section 19(2) of the Land Development Ordinance in respect of the aforementioned lots of land, to Podihamy.

According to the Petitioner, soon after receiving the permits, Podihamy had nominated all her children as her successors under the permit 'P4'. However, due to the restrictions contained in Condition Nos. 4, 5 and 6 of 'P4', Podihamy had subsequently amended the nomination and nominated only the 1<sup>st</sup> Respondent, as borne out by the copy of the permit annexed to the petition, marked 'P4a'. According to the 1<sup>st</sup> Respondent, Podihamy had nominated the

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<sup>2</sup> Produced with the petition marked 'P2'

<sup>3</sup> Produced with the petition marked 'P3'

1<sup>st</sup> Respondent as her successor under the permit 'P5', as well, which position has been disputed by the Petitioner.

After the demise of Podihamy in 2006 and Wijehamy in 2007, it appears that disputes arose between their children over this land. This is borne out by a letter dated 25<sup>th</sup> August 2008<sup>4</sup> by which the 3<sup>rd</sup> Respondent had requested the Petitioner to participate at a mobile service that was to be held on 28<sup>th</sup> August 2008 to resolve land disputes and the letter dated 7<sup>th</sup> January 2009<sup>5</sup> sent by the 3<sup>rd</sup> Respondent to the Officer in Charge of the Kandaketiya Police Station.

Subsequent to the said mobile service, the 3<sup>rd</sup> Respondent had sent letter dated 18<sup>th</sup> March 2009<sup>6</sup> to all the children of Wijehamy and Podihamy including the Petitioner informing that a survey of the said land would be carried out, to give effect to the decision made by the 4<sup>th</sup> Respondent at the mobile service. However, the Petitioner had objected to the said survey being carried out and no steps have been taken in that regard thereafter.

The Petitioner in the meantime had written to the Land Commissioner General<sup>7</sup> requesting that he should be recognised as the successor of Podihamy as he is the eldest son. The Petitioner had written several other letters thereafter to the 4<sup>th</sup> Respondent requesting that a permit be issued to him in respect of the entire land. By letter dated 20<sup>th</sup> June 2012<sup>8</sup>, the 3<sup>rd</sup>

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<sup>4</sup> Produced with the petition, marked 'P7'

<sup>5</sup> Produced with the petition, marked 'P7b'. According to this letter, the Petitioner had agreed to take an extent of 1A 2R while the 1st Respondent had agreed to take an extent of 2A 38P

<sup>6</sup> Produced with the petition, marked 'P7a'

<sup>7</sup> Produced with the petition, marked 'P7c' (letter dated 16<sup>th</sup> March 2009)

<sup>8</sup> Produced with the petition, marked 'P7g'

Respondent had written to all the children of Wijehamy and Podihamy informing them as follows:

“ඔබ භක්ති විඳින ඉඩම සඳහා විශේෂ අනුමැතියක් යටතේ බලපත්‍ර ලබාදීමට හැකියාවක් ඇති බැවින් මෙම තීරණයට එකඟතාවයක් දක්වන්නේ නම් හෝ නොදක්වන්නේ නම් ඒ සඳහා දිවුරුම් ප්‍රකාශයක් කාරනාලයට ඉදිරිපත් කරන මෙන් කාරුණිකව දන්වමි.”

However, it does not appear that the children of Wijehamy and Podihamy were able to reach any agreement on the division of the said land among themselves.

It is in this factual background that the 3<sup>rd</sup> Respondent sent the letter dated 6<sup>th</sup> July 2014 annexed to the petition marked ‘P8’ to the 4<sup>th</sup> Respondent. By ‘P8’, the 3<sup>rd</sup> Respondent has set out the sequence of events, the background circumstances relating to the issuing of the permits to Podihamy and the fact that steps are being taken to grant a permit to the 1<sup>st</sup> Respondent as he is the successor of Podihamy, under the Permits ‘P4’ and ‘P5’.

Being dissatisfied with the contents of ‘P8’ on the basis that it is factually incorrect, the Petitioner has filed this application seeking a Writ of Certiorari to quash ‘P8’<sup>9</sup>. The Petitioner is also seeking a Writ of Mandamus on the 2<sup>nd</sup> – 4<sup>th</sup> Respondents directing them to take steps to issue the Petitioner a ‘state grant’ in respect of the said land. The basis of the Petitioner’s claim for a Mandamus

<sup>9</sup> The 3<sup>rd</sup> Respondent has admitted in his affidavit tendered to this Court that the statement in ‘P8’ that Podihamy became the permit holder due to the death of Wijehamy is an inadvertent error. In any event, this statement is irrelevant in the light of the conclusion reached by this Court that the Petitioner is estopped from challenging the validity of ‘P4’ and ‘P5’ at this stage.

is that the Petitioner has been named as the original successor of Wijehamy under a permit which is still valid and that in any event, being the eldest son of Wijehamy, he is entitled to succeed to the rights of Wijehamy.

Although the Petitioner has not sought a Writ of Certiorari to quash the permits 'P4' and 'P5' issued to Podihamy, in effect, the Petitioner is challenging the validity of the two permits 'P4' and 'P5' on the basis that the said two permits 'P4' and 'P5' could not have been issued without cancelling the permit issued to Wijehamy and are therefore void *ab initio*. Therefore, in order to succeed in this application, the Petitioner must prove that the permit issued to Wijehamy is valid and that the subsequent permits 'P4' and 'P5' are illegal and does not affect the validity of the permit issued to Wijehamy.

At the outset, this Court must note that no evidence has been presented by any party with regard to the precise circumstances under which the said permits were issued to Podihamy. Nor has the Petitioner adduced any material to prove that the permit issued to Wijehamy had not been cancelled, prior to issuing the permits 'P4' and 'P5' to Podihamy. Therefore, the validity of the permits issued to Wijehamy and Podihamy will have to be considered in the light of the material presented by the parties to this Court.

This Court has considered the documents filed by the Petitioner and the 1<sup>st</sup> Respondent and is of the view that the challenge mounted by the Petitioner to 'P4' and 'P5' must fail, for the following three reasons.

First, if the Petitioner was dissatisfied with the issuing of the permits 'P4' and 'P5', he ought to have challenged 'P4' and 'P5' at the time it was issued in

1999. The Petitioner has not produced any material to this Court to demonstrate that either he or the previous permit holder Wijehamy or any other children of Wijehamy had challenged the issuing of the permits 'P4' and 'P5', until the filing of this application.

In the letter dated 7<sup>th</sup> January 2009 sent by the 3<sup>rd</sup> Respondent to the Officer in Charge of the Kandekatiya Police Station<sup>10</sup> with copy to the Petitioner, the 3<sup>rd</sup> Respondent specifically refers to permits having been issued to Podihamy. If this was not the case and the permit issued to Wijehamy was still valid, the Petitioner ought to have raised issue with the said claim of the 3<sup>rd</sup> Respondent. The Petitioner has not produced any material to this Court to establish that he challenged this position taken by the 3<sup>rd</sup> Respondent. In this background, this Court is of the view that this is a clear indication that the Petitioner had no dispute with the issuing of the permits 'P4' and 'P5'.

The second and more important reason is that the Petitioner has sought to assert rights under the permits 'P4' and 'P5', thus demonstrating that the permit issued to Wijehamy is no longer valid and that he accepts the validity of 'P4' and 'P5'. This is clearly borne out by the letter dated 16<sup>th</sup> March 2009, annexed to the petition marked 'P7c' written by the Petitioner to the 4<sup>th</sup> Respondent Commissioner General of Lands, the relevant portions of which are re-produced below:

"ලැයි 2/8 දරණ ගොඩ සහ මඩ ඉඩම සම්බන්ධයෙන් මේ වනවිට බලපත්‍ර අංක I.S.P.P. 15/218 යටතේ 1999 දී ගොඩ ඉඩම වෙනුවෙන්ද සහ බලපත්‍ර අංක I.S.P.P. 15/253 යටතේ මඩ ඉඩම වෙනුවෙන්ද එම වර්ෂයේදීම මගේ මව වන මනමෙන්ද

<sup>10</sup> Vide document marked 'P7b'

පටබැඳියේ පොඩි හාමිගේ වෙත 464 වන අයිකාරියේ ඉඩම් ආඥා පනතේ 19(2) යටතේ අවසර පත්‍රයක් නිකුත් කර ඇත. මාගේ මව ගේ වනවිට පිටතුන් අතර නැත.

ඉඩම් කාර්ය සංග්‍රහයට අනුව, පවුලේ වැඩිමහල් පිරිමි දරුවා මා බැවින් නිත්‍යානුකූලවම මෙම ඉඩම් මාවතේ උරුම විය යුතු බව ඔබ තුමාට දන්වා සිටින අතර මෙම ඉඩම පනපද ඉඩමක් බවද ඔබතුමාට ප්‍රකාශ කරන අතර

ඉහත කරුණු ගැන සලකා බලා ඉහත නම් සඳහන් ඉඩම් සඳහා බලපත්‍රයක් ලබා ගැනීමට මා ඉදහිඳු වන එකම පුද්ගලයා බවත් ..... අදාළ බලපත්‍රය මා වෙත ලබා දීමට අවශ්‍ය කටයුතු කරන ලෙසත් ඉතා ගෞරවයෙන් ඉල්ලා සිටිමි."

Having sought to claim succession under the permits issued to Podihamy, this Court is of the view that the Petitioner is estopped from taking a contrary position at this stage with regard to the validity of 'P4' and 'P5' and presenting a case to succeed under the permit issued to Wijehamy. In these circumstances, the Petitioner cannot be heard to say that the permit issued to Wijehamy is valid and therefore, this Court is of the view that the basis of the Petitioner's case does not have any merit.

The third reason why the Petitioner cannot challenge the validity of the permits 'P4' and 'P5' is that Wijehamy himself had admitted by a letter dated 21<sup>st</sup> November 2005 the issuing of the permits 'P4' and 'P5' in favour of Podihamy.<sup>11</sup> This letter signed by Wijehamy who describes himself as ඉඩමේ මුල් අයිතිකරු and Podihamy as the පසු අයිතිකාරිකි reads as follows:

<sup>11</sup> Vide letter dated 21<sup>st</sup> November 2005 annexed to the Written Submissions of the Petitioner.



"මුක් 02/08 දරණ ගොඩ සහ මඩ ඉඩමේ, මුල් අයිතිකරු වනුයේ A.B. විජේනාම වන මෙය. දැන් එය මාගේ භාරකාර වන M.P. පොඩිහාමිගේ යන අයට පවරා ඇත. නමුත් මේ වන විට අප දෙදෙනා ඉතාමත් වයෝවෘද්ධය. මාගේ භාරකාරගේ කල්පනා යක්තිශද ඉතාමත් මදය. එම නිසා ඇයගේ මෙම අසනීප තත්වයන් ප්‍රයෝජනයට ගෙන මාගේ දරුවන් විසින් නොයෙකුත් අවස්ථාවල ඉඩමේ අයිතිය ලබාගැනීම සඳහා නොයෙකුත් අවශ්‍යතාවයන් පවතී (බොරැකියමින්) ලියකියවිලි වලට අත්සන් ලබා ගනී."

In these circumstances, this Court is of the view that the Petitioner has failed to establish that the permit issued to Wijehamy is valid and rejects the argument of the Petitioner that he is entitled to be issued a permit under the provisions of the Land Development Ordinance under the said permit. The issuing of the Writ of Mandamus prayed for therefore does not arise.

The next question that needs to be considered by this Court is whether the nomination of the 1<sup>st</sup> Respondent by Podihamy is illegal or invalid. This is in view of the fact that the Petitioner, by virtue of being the eldest son, would be entitled to succeed under the permits 'P4' and 'P5', in the absence of a valid nomination by Podihamy.

As set out above, Podihamy had initially nominated all her children as her successors under the permit 'P4'. Subsequently, this nomination has been amended by nominating only the 1<sup>st</sup> Respondent – vide 'P4a'. There can be no dispute with regard to the nomination in 'P4a', as the nomination has been done in the presence of the Divisional Secretary. The Petitioner disputes the nomination of the 1<sup>st</sup> Respondent in 'P5' on the premise that Podihamy's signature does not appear on 'P5' and therefore that there is no valid nomination. However, this position appears to be incorrect when one

considers the copy of the permit 'P5' produced by the 1<sup>st</sup> Respondent<sup>12</sup>, which clearly shows a thumb impression said to be that of Podihamy affixed in the presence of the Divisional Secretary. Therefore, on the face of the material produced to this Court, this Court does not see any merit in the claim of the Petitioner that Podihamy has not named a successor under the permits 'P4' and 'P5'.

In these circumstances, this Court does not find that the contents of 'P8' are illegal or irrational and therefore holds that the argument of the Petitioner that 'P8' is based on incorrect facts is misconceived. This Court is therefore of the view that the Petitioner is not entitled to the Writ of Certiorari prayed for. *A fortiori* the Petitioner is not entitled to the Writ of Prohibition prayed for.

It is trite law that a petitioner seeking a writ of Mandamus must demonstrate that he has a legal right to the performance of a legal duty by the respondents. Where a valid nomination of a successor under a permit issued under the Land Development Ordinance has been made in terms of the said Ordinance, none of the other children can claim an entitlement to the said land. Thus, the Petitioner cannot claim any rights under 'P4' and 'P5'. In the circumstances of this case, the Petitioner has no legal right to be issued a permit under the provisions of the Land Development Ordinance nor are the 2<sup>nd</sup> – 4<sup>th</sup> Respondents under any legal duty in terms of the law to issue the Petitioner a permit in respect of the said land. Hence, this Court is of the view that the Petitioner is not entitled to the writ of mandamus prayed for.

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<sup>12</sup> Annexed to the Statement of Objections of the 1<sup>st</sup> Respondent, marked 'R5'

In these circumstances, this Court sees no legal basis to issue the Writs of Mandamus, Certiorari and Prohibition prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

**P. Padman Surasena, J/ President of the Court of Appeal**

I agree.

**President of the Court of Appeal**