

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

In the nature of an application in the nature
of writ of Certiorari, Mandamus and
Prohibition under and in terms of Article 140
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

CA/WRIT/425/22

Ihala Jawara Gedara Hema Malani
No 303, 1st Phase,
Medirigiriya.

PETITIONER

1. Ms. C.M Karunarathna
Divisional Secretary,
Divisional Secretariat,
Medirigiriya.

2. Mr.P.S.P.Abeywardhana

2A. Mr. W.R.A.N.S. Wijayasinghe
Registrar General
234/ A3,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

3. Ms.P.M.H.Priyadarshani

3A. MS. P.C.D. Siera
Commissioner General of Title Settlement,
No. 1200/6,
Mihikatha Medura Rajamalwatta Road,
Battaramulla.

4. R.M.C.M.Herath,

4A. K.D. Bandula Jayasinghe
Land Commissioner General,
Department of Land Commissioner
General,
No. 1200/6, Mihikatha Medura
Rajamalwatta, Battaramulla.

5. Mr. Pradeep Rupasinghe

5A. Mr. S.L.M. Herath
Additional Registrar of Title,
No 54, New Court Complex,
Gamudawa, Pulathisigama,
Hingurakgoda.

6. Ihala Jawara Gedara Chandrawathi
Manike,
No 303/01, 1st Phase, Medirigiriya.

RESPONDENTS

Before : N. Bandula Karunarithna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: Nuwan Bopage with Chathura Weththasinghe for the Petitioner
Suren Gnanaraj with Sakuni Weeraratne for the 6th Respondent
Medhaka Fernando, SC for the 1st-5th Respondents

Argued On: 08.07.2024

Written

Submissions: 20.09.2024 (by the Petitioner)

On 13.08.2024 (by the 6th Respondents)

07.08.2024 (by the 1st-5th Respondents)

Judgment On: 25.09.2024

B. Sasi Mahendran, J.

The Petitioner instituted this action to obtain the following reliefs prayed for in the Petition dated 11.11.2022.

- a. Issue Notice on the Respondents.
- b. Grant a Writ of Certiorari quashing the 1st Respondent's decision (found in document marked as X11) to transfer and/or certify the original ownership of the grant bearing number o/g/11395 to the 6th Respondent and/or identifying the 6th Respondent as the successor of the grant bearing number o/g/11395 relating to the subject matter.
- c. Grant a Writ of Certiorari quashing the 2nd Respondent's order marked as X7 (ii) made under section 35 of the Registration of Documents Ordinance to alter the status of the grantee as a life-holder in the document marked as "X7 (i)"
- d. Grant a Writ of Certiorari quashing the 3rd Respondent's decision marked as X10(ii) to cancel the certificate of title bearing number 0002878 issued in favor of the Petitioner's mother.
- e. Grant a Writ of Mandamus directing the 1st Respondent to name the Petitioner as the original owner and/or name the Petitioner as the successor of the subject matter.
- f. Grant a Writ of Mandamus directing the 1st to 5th Respondents to revalidate the certificate of title bearing number 0002878 and / or re-issue a certificate of title relating to the subject matter in favor of the Petitioner
- g. Grant an interim order preventing the 1st to 5th Respondents taking any further steps to changing the status quo of the subject matter by way of any legal instrument until this application is heard and determined by Your Lordships' Court.
- h. Grant an interim order suspending the 1st Respondent's decision found in document marked as X11 to transfer and/or certify the original ownership of the grant bearing number o/g/ 11395 to the 6th Respondent and/or identifying the 6th

Respondent as the successor of the grant bearing number පෙ/ප්‍ර 11395 relating to the subject matter until this application is heard and determined by Your Lordships' Court.

- i. Grant an interim order preventing the 6th Respondent and/or her agent and/or servant and/or anyone who is acting under 6th Respondent from disturbing and/or interfering with the Petitioner's peaceful possession of the subject matter until this application is heard and determined by Your Lordships' Court.
- j. Grant cost and,
- k. Grant such other and further reliefs Your Lordships shall seem meet.

The facts of this case are as follows:

According to the petition, the Petitioner's father namely Ihala Jawara Gedra Appuhami was the original permit holder of the subject matter. The Petitioner avers that Ihala Jawara Gedra Appuhami nominated his wife namely Udaha Akiriye Gadara Punchi Mahaththayo as his successor. The Petitioner further states that, the Petitioner's mother namely Udaha Akiriye Gadara Punchi Mahaththayo was also issued a permit by the predecessor of the 1st Respondent relating to the same subject matter. In the meantime, a grant bearing No. පෙ/ප්‍ර/11395 in favour of the Petitioner's father on 05.06.1987 was issued as well. Further, the Petitioner states that, the Petitioner's father passed away on 23.01.1991 without changing the nomination made in the permit where 1st Respondent's predecessor has taken steps to name the Petitioner's mother as the original owner of the grant bearing No. පෙ/ප්‍ර/11395 and it was duly registered in the relevant folio No. 4/4/47(1) in Polonnaruwa Land Registry. The Petitioner further avers that, her mother duly nominated the Petitioner as the successor and the said nomination was also duly registered in the relevant folio on 24.07.2009. According to the Petitioner, after the demise of the Petitioner's mother on 21.01.2012, the title certificate bearing No. 0002878 was issued in the Petitioner's favour. The Petitioner further states that, subsequently, the Petitioner learnt that the 1st and 2nd Respondents have taken steps to alter the records by removing the nomination of the Petitioner without giving the Petitioner any hearing, stating that the original grant holder, the Petitioner's father has not nominated the Petitioner's mother as the successor on the basis that the said nomination was not registered according to the law and thus the Petitioner's mother was not conveyed the

title to the subject matter as the successor and accordingly named the Petitioner's elder sister as the original owner of the subject matter. Since the 1st Respondent failed to take action to rectify this error despite several requests, the Petitioner filed the action bearing No.172/L/17 in the District Court of Hungurakgoda seeking a declaration that the Petitioner is entitled to the subject matter under succession. The said action was dismissed on the basis of lack of jurisdiction and the Civil Appellate High Court of Anuradhapura in the case NCP/HVVA/FA 28/19 affirmed the order of the District Court. The Petitioner has invoked the writ jurisdiction of this Court inter alia seeking to quash the decisions where her mother was named as the life holder and the 6th Respondent as the successor of the grant bearing No. ෧෩/෧/11395, by way of writs of Certiorari.

On the other hand, the 1st to 5th Respondents have raised the objection that, there was no evidence that the said nomination of the Petitioner's mother had been registered in terms of Section 58 of the Land Development Ordinance read with Section 60 of the said Ordinance. Further, the Respondents took the position that, at the time the Petitioner's father passed away, there was no successor named with respect to the Grant ෧෩/෧/11395. The question before us is whether the particular nomination of succession indicated in the original permit needs to be registered under Section 60 of the Land Development Ordinance which reads as follows:

“60. Nomination or cancellation of nomination Invalid unless registered before death of owner or permit-holder.

No nomination or cancellation of the nomination of a successor shall be valid unless the document (other than a last will) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the permit holder.”

According to the above Section, no nomination or cancellation of the nomination of a successor will be valid unless it is registered. This Court has to consider whether it is mandated where the nomination was endorsed on a permit before it was issued.

Section 87 of the said Ordinance reads as follows:

“87. Name of successor nominated by the permit holder may be endorsed on permit before issue.

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 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.”

According to the material available, there is no dispute that, there is an endorsement of the Petitioner’s mother as the successor. This nomination was done by the government agent according to the provisions of the said Ordinance. The question is whether there is any necessity for the grantee to register such a nomination in the said land registry.

My understanding is that, if the permit holder wishes to cancel the earlier nomination, it should be registered before his death to validate the said cancellation. It is not disputed that, the Petitioner’s father; Ihala Jawara Gedra Appuhami had nominated the Petitioner’s mother as his successor, before the said permit was issued. Thus, there is no purpose of submitting another application to the government agent to nominate a successor in accordance with Section 58 of the said Ordinance. It should be noted that the permit holder’s intention is indicated to the government agent regarding the nomination. If the permit holder wishes to cancel the said nomination of the successor, it could be made in terms of the provisions in Chapter VII of the Land Development Ordinance. That nomination has to be made in the prescribed form and registered in the land registry in terms of Section 58 of the said ordinance. If it is not registered, such nomination is considered to be invalid.

Since there is no cancellation of the nomination by the original permit holder, under Section 49 of the Land Development Ordinance, no person can dispute the rights of such nominator as she is lawfully entitled to succeed to the rights of the original permit holder by virtue of the statutory provisions.

In fact, earlier, the Respondents had accepted the Petitioner’s mother as the successor and issued a Grant.

Later, the Respondents have changed the status of the Petitioner's mother as a life interest holder on the basis that, the particular nomination was not registered under Section 60 of the Land Development Ordinance.

I am of the view that, if the particular nomination was entered into before it was issued, there is no requirement to register the said nomination under Section 58 of the said Ordinance as this endorsement was done by the government agent.

Thereafter, if the Permit holder wishes the nomination to be cancelled, that has to be registered under Section 60 of the Land Development Ordinance.

In the instant case, the Respondents have failed to consider Section 87 of the said Ordinance, and have wrongly come to the conclusion, that the said nomination has not been registered under Section 60 of the Land Development Ordinance.

Our Courts have held that the intention of the permit holder should be considered when dealing with permits. In the instant case, the Respondents have treated the Petitioner's mother as a life interest holder and the 6th Respondent as the successor in terms of Section 72 of the Land Development Ordinance.

Did the Respondents act illegally or unreasonably or irrationally when they decided to consider the 6th Respondent as the successor to the said Grant?

This Court has to decide on the legality or validity of the action taken by the Respondents. In Dayananda v. Thalwatte, (2001) 2 SLR 73 at page 80, his Lordship Jayasinghe, J. held:

“An aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari.”

The principles of illegality and unreasonableness were considered by his Lordship Arjuna Obeysekara J in Udagedara Waththe Anusha Kumari v. Jayasinghe Mudiyanseelage Chamila Indi Jayasinghe, CA/WRIT Application No. 293/17, Decided On 18.11.2019:

“This brings this Court back to the issue that arises for determination - i.e. did the Respondent act illegally or unreasonably or irrationally when he formed his opinion that the land which is the subject matter of the said quit notice is State land. In considering this question, it would be useful to bear in mind the

description given by Lord Diplock in *Council of Civil Service Unions vs Minister for the Civil Service* to the phrases 'illegality' and irrationality:

"By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable."

"By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In *Regina v. Hull University Visitor, Ex parte Page* Lord Browne-Wilkinson, after considering the aforementioned passage of Lord Diplock, observed as follows :
"Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle [of judicial review] is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a *Wednesbury* sense reasonably. If the decision-maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is *Wednesbury* unreasonable, he is acting *ultra vires* his powers and therefore unlawfully. "

We hold that in the instant application, the Respondents have wrongly applied the provisions of the Land Development Ordinance, where they held that the said nomination was not registered in accordance with Section 60 of the said Ordinance. They have failed to consider the applicability of Section 87 of the said Ordinance.

We hold that, if the particular nomination was endorsed by the government agent, before it is issued to the permit holder, there is no requirement that it should be registered under the Land Development Ordinance.

The next question before this Court is, even in the absence of nomination, could the 6th Respondent who claimed to be the eldest child of the Petitioner's father, be the successor to the Grant in question? We note that Section 51 of the Ordinance imposes restrictions on the nomination of the successor to the holding.

Section 72 of the Ordinance provides that when there is no successor has been nominated or the successor nominated has failed to succeed, the title to the land devolves as prescribed in Rule 1 of the Third Schedule. The said Rule provides for the relatives from whom the successor may be nominated. In the particular Schedule, preference is given to the oldest child as the successor to the impugned premises.

However, through the amendment made by Act No.11 of 2022 to the Ordinance, Rule 1(d)(i) of the Third Schedule provides thus:

“where any person in the order of priority in which they are respectively mentioned in the subjoined table developed such land, the title to the holding or the land shall not devolve on the older person referred in paragraph (b) but on the person who developed such land; or”

In the instant case, when the Respondents made the decision as to who is the successor to the Grant, this aspect was not considered.

In view of the reasoning provided above, we hold that the Petitioner has established the grounds to issue writs as prayed for in the petition. Therefore, this Court issues writs of Certiorari and Mandamus as prayed in prayers (b), (c), (d), (e) and (f).

Application allowed with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL