

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

In the matter of an Application for mandate  
a mandate in the nature of Writs of  
*Certiorari* and *Mandamus* under Article 140  
of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.

T. P. Nimal Premasiri,  
Dampadiya, Yakwila.

**PETITIONER**

**Court of Appeal Case No:**  
**CA/WRIT/742/23**

**Vs.**

1. Chatura Samarasinghe,  
Divisional Secretary,  
Divisional Secretariate  
Giribawa.
2. E.P.U. Rajapaksha,  
Assistant Divisional Secretary,  
Divisional Secretariate  
Giribawa.
3. N.M.J. Fernando,  
Provincial Land Commissioner  
(North Western Province)  
Provincial Land Commissioner's  
Department,  
P.O. Box 46, Kurunegala.
4. K.C.S. Fernando,  
Commissioner of Lands (inter  
Provinces)  
Land Commissioner's (Inter  
Provincial) office.,  
District Secretariate,  
Anuradhapura.

5. K. D. Bandula Jayasinghe,  
Land Commissioner General,  
Land Commissioner General's  
Department,  
"Mihikatha medura",  
Land Secretariate, 1200/6,  
Rajamalwatta Road,  
Battaramulla.
6. The Commissioner of Lands,  
Land Commissioner General's  
Department,  
"Mihikatha medura",  
Land Secretariate, 1200/6,  
Rajamalwatta Road,  
Battaramulla.
7. T.P. Ashoka Damayanthi,  
No. 205, Yaya 5,  
Sandagala, Solewewa.
8. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** S.U.B. Karalliyadde, J  
Mayadunne Corea, J

**Counsel:** W. Dayaratne, P.C with R. Jayawardena for the Petitioner.  
N. Vijith Singh for the 7<sup>th</sup> Respondent.  
Ishara Madarasinghe, S.C. for all the Respondents except for the 7<sup>th</sup> Respondents.

**Argued on:** 18.12.2024 and 23.06.2025

**Written Submissions:** 05.08.2025 for the Petitioner.  
04.08.2025 for the 1<sup>st</sup> to 6<sup>th</sup> and 8<sup>th</sup> Respondents.  
23.07.2025 for the 7<sup>th</sup> Respondent.

**Decided on:** 12.09.2025

**Mayadunne Corea, J.**

The Petitioner in this Application has sought, *inter alia*, the following reliefs:

*“c) Issue a mandate in the nature of writ of certiorari quashing the decisions of the 5th Respondent directing the 4th Respondent dated 15/09/2023 and 25/09/2023 marked and produced as “P16” and “P17” to cancel the Grant issued to the Petitioner and his father and register the same and restore the appointment of the 7th Respondent as the Grantee made on 06/03/2002 and also to register the same;*

*d) Issue a mandate in the nature of writ of certiorari against the District Registrar of Nikaweratiya, quashing the cancellation of Grants issued to T.P. Karunaratne and T.P. Nimal Premasiri Sand restoring the appointment of Ashoka Damayanthi made and registered in P18 (5/3 volume No.90 and Folio 81);*

*e) Issue a mandate in the nature of writ of mandamus compelling the 1st to 5th Respondents to cancel the registration of the 7th Respondent as the owner to the said Grant and to validate the appointment of the Petitioner made on 31/01/2022 by P10;”*

The facts of the case briefly are as follows: The Petitioner alleges that there are two lands, one a highland and the other a paddy field that had been originally given by way of a Permit to one Bramphy Singho. Due to the demise of the said Bramphy Singho the Permit had been issued to the wife Podimanika. In the Permit pertaining to the paddy land Podimanika nominated one of her sons Wijeratne, who is not her eldest son, as the successor. Subsequently, Podimanika had received Grants for both the highland and the paddy land. Upon the demise of Podimanika, the paddy land had been succeeded by the nominee Wijeratne and thereafter by Wijeratne's daughter, the 7<sup>th</sup> Respondent. The 7<sup>th</sup> Respondent had been in possession of the land and had cultivated the land. Thereafter on a complaint made by the eldest son of Podimanika who is the Petitioner's father, the nomination of Wijeratne's daughter had been removed and the eldest son of Podimanika, one Karunaratne, the Petitioner's father had succeeded to the Grant. Following the demise of Karunaratne, the Petitioner has succeeded to the Grant and it is alleged that he has been cultivating the said paddy land. As there had been several disputes between the Petitioner and the 7<sup>th</sup> Respondent, there had been several inquiries and subsequent to the said inquiries, it is alleged that the Grants given to the Petitioner had been cancelled and the title to the paddy land had been given to the 7<sup>th</sup> Respondent. Aggrieved by the said decision the Petitioner has filed this Application.

### **The Petitioner's contention**

The Petitioner contended that the cancellation of the Grant given to him by the 5<sup>th</sup> Respondent and the directions given by the said Respondent to the 4<sup>th</sup> Respondent are bad in law.

### **The Respondents' contention**

The Respondents have taken up several objections namely,

- The Petitioner is guilty of laches.
- The Petitioner's application is vexatious and misconceived in law.
- The Petitioner is not legally entitled to the reliefs sought.
- The Petitioner is guilty of suppression and misrepresentation of facts.
- Futility.

This Court will now consider the Petitioner's contentions along with the Respondents' objections.

### **Sequence of events**

To understand the issue before me, it would be appropriate to consider the sequence of events as it had happened, as the learned President's Counsel appearing for the Petitioner submitted that the issue before this Court is only confined to the paddy land. Therefore, I would consider the sequence of events pertaining to the title of the paddy land.

- In August 1993, a Permit had been issued to the Petitioner's grandfather, one Bramphy Singho. However, before he could accept the same, he had died.
- Upon the death of the said Bramphy Singho, the Permit was issued in the name of his wife Podimenika which is marked as P1 bearing the date 20.01.1993.
- Podimenika has nominated her son T. P. Wijeratne as the successor to the title in the Permit. The endorsement bears the date as 02.04.1993.
- Subsequently, a Grant had been issued in the name of Podimenika dated 01.04.1993. The said Podimenika had not nominated a successor to the Grant.
- Podimenika had died and her son, Wijeratne had succeeded to the Grant, as he was the nominated successor to the Permit. However, successor to the Permit, Wijeratne too, had died in the year 2002.
- The daughter of Wijeratne, the 7<sup>th</sup> Respondent had succeeded to the Grant in the year 2002 (P5).

The parties are not in variance on the said events.

The Petitioner is the son of Podimanika's eldest son Karunaratne and the 7<sup>th</sup> Respondent is the daughter of Podimanika's son Wijeratne who was the nominated successor to the Permit.

The issues between the Petitioner's father and the 7<sup>th</sup> Respondent commenced subsequent to the death of Wijeratne.

### **Petitioner's father's claim to the paddy land**

The Petitioner's father made representations to succeed to the title of the Grant, subsequent to the death of Wijeratne, who is the father of the 7<sup>th</sup> Respondent and the brother of the Petitioner's father. The Petitioner's father namely, T. P. Karunaratne

staked his claim on the grounds of him being the eldest son of the deceased Podimenika. It was the contention of the said Karunaratne that when Podimenika died, she had not nominated a successor to the Grant. Hence, it is the Petitioner's argument that in the absence of a nomination, succession should devolve as stipulated pursuant to Section 48A(1)(b) of the Land Development Ordinance, No. 19 of 1935 as amended. It was further contended that the Third Schedule of the Land Development Ordinance should apply and therefore being the eldest son of the late Podimenika he should succeed to the title. This would be an appropriate time to consider the relevant provisions of the Land Development Ordinance.

Section 48A(1)(b) reads as follows:

*"Section 48A(1)*

*...*

*(b) if no successor has been so nominated, the title to the land shall devolve as prescribed by rule I of the Third Schedule."*

The Third Schedule to the Land Development Ordinance reads as follows:

*"Third Schedule*

*I. (a) The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.*

*(b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permitholder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.*

*Table*

<i>(i) Sons.</i>	<i>(vii) Brothers.</i>
<i>(ii) Daughters.</i>	<i>(viii) Sisters.</i>
<i>(iii) Grandsons.</i>	<i>(ix) Uncles.</i>
<i>(iv) Granddaughters.</i>	<i>(x) Aunts.</i>
<i>(v) Father.</i>	<i>(xi) Nephews.</i>
<i>(vi) Mother.</i>	<i>(xii) Nieces.</i>

*In this rule, "relative" means a relative by blood and not by marriage."*

With the demise of Wijeratne, the 7<sup>th</sup> Respondent was registered as the successor and P5 was issued. The Petitioner's father Karunaratne being the eldest son contested the issuance of P5 whereby on 06.03.2002, the 7<sup>th</sup> Respondent had been registered as the successor to Wijeratne.

In accepting the said contention of the eldest son of Podimanika, the Divisional Secretary had registered the said Karunaratne as the successor to the land by document marked as P7(a). Interestingly, this has been done on 26.07.2002 which is four months after registering the 7<sup>th</sup> Respondent as the successor to the land. At this stage, it is pertinent to note that none of the parties had submitted any documents to demonstrate that prior to issuing P7(a) the authorities had cancelled the document marked as P5. It is also contended by the Respondents that there had been no inquiry conducted by the Divisional Secretary prior to taking the decision to cancel P5, which had been issued to the 7<sup>th</sup> Respondent.

It was argued by both parties that there had been several Court cases pertaining to the succession of the land between the said Karunaratne and the 7<sup>th</sup> Respondent. As the issue before this Court is not the said litigation nor the outcome of the said litigation, I will not be addressing the facts and circumstances pertaining to the said litigation. However, it is sufficed to state that the dispute between the Petitioner's father and the 7<sup>th</sup> Respondent had continued unabated. With the demise of the Petitioner's father, the Petitioner has succeeded to the title.

It appears that on receiving the claim of Karunaratne, the Commissioner of Lands (herein sometimes referred to as 'Commissioner') had held an inquiry and subsequent to the said inquiry the Commissioner had sent a letter dated 22.10.2003 to the Divisional Secretary. The said letter is marked as P8.

### **The letter P8**

It appears the dispute between the parties had commenced as a result of the letter marked as P8. A plain reading of the said letter demonstrates that the Commissioner of Lands had gone on the premise that the original Permit had been issued to Bramphy Singho and on the demise of the said Bramphy Singho, the life interest had been given to his widow Podimenika. The Commissioner has further come to the conclusion that the said

transfer of life interest is wrong and therefore, the Grant issued to Podimenika too is illegal.

A similar line of thinking is visible in the Commissioner's letter dated 04.01.2021 (P9) addressed to the Divisional Secretary. Be that as it may, on the demise of the said Karunaratne the Divisional Secretary had registered the Petitioner as the successor to the Grant (P10).

It was the Commissioner's opinion that on the demise of Bramphy Singho, in the absence of a nomination the succession should have been devolved on the eldest son, Karunaratne. The letter marked as P8, goes on to state that as Wijeratne had been nominated as the successors by Podimenika who had only the life interest, the said nomination of Wijeratne too is faulty. The learned President's Counsel appearing for the Petitioner heavily relied on this document to assert the Petitioner's title. It was the contention of the learned President's Counsel that in view of the findings of the Commissioner of Lands, the Divisional Secretary had correctly come to the conclusion to name the eldest son Karuaratne as the successor and hence on the demise of Karunaratne the Petitioner was named as the successor.

I am not inclined to accede to the contention of the learned President's Counsel as in my view the Commissioner's findings in P8 are not legally tenable. In arriving at his decision, the Commissioner of Lands had not considered the fact that at the time the original Permit was issued Bramphy Singho had been dead. Accordingly, a Permit cannot be issued to a deceased individual. Hence, the authorities had correctly issued it to the other occupier of the land, Bramphy Singho's wife. She obtained the Permit not in the capacity of the widow of Bramphy Singho but on her own accord. Hence, the Permit was never issued to Bramphy Singho but the Permit holder was Podimanika. Therefore, Podimanika did not accede to the Grant as the widow of Bramphy Singho and received only life interest, but she got title for herself as the Permit holder. Subsequent to her becoming the Permit holder she had decided not to confer it to her eldest son but to another son, namely, Wijeratne. This has been duly done and registered. Thereafter, the Permit holder was given a Grant for the same land marked as P7. This Grant has not been revoked and therefore it is valid. In any event, none of the parties challenged the validity of the Grant, nor the issuance of the Permit to Podimanika or the nominee she made during her lifetime. Thus, the valid title holder to the land depicted in the Grant becomes Podimenika.



### **The successor to the Grant**

As per the document submitted to Court the late Podimanika did not nominate a successor to the Grant. It was the contention of the Petitioner's Counsel that in the absence of a nomination then again, the successor must be named pursuant to the prescribed order in the Third Schedule to the Land Development Ordinance. However, the learned Counsel appearing for the 7<sup>th</sup> Respondent argued that the succession to the Grant in this instance will not fall within the Third Schedule as the Grantee did not nominate a specific successor, she had already nominated a successor to the land when she was the Permit holder.

It is observed that the said nomination had never been cancelled. Therefore, as per the jurisprudence that has developed, in the absence of a new nomination and in the absence of a cancellation of the previous nomination made pertaining to the same land by the same person the nominated person to the Permit should succeed to the Grant. In coming to the said conclusion, I have considered several authorises that were relied upon by the Respondents namely ***Piyasena v. Wijeratne (2002) 2 SLR 242*** where the Court held:

*“The nomination in the Permit itself shall stand valid until it is subsequently cancelled by the Permit Holder. The nomination of a successor under the Permit becomes converted to nomination made by the permit holder as the owner of the land.”*

This position was affirmed by the Supreme Court in ***Mallehe Vidanaralalage don Agostino v. Divisional Secretary and others SC Appeal No. 30/2004 decided on 23.03.2005*** where Justice S.N. Silva CJ observed that

*“it is clear from the provisions of the law that the change in the nature of the holding from that of a permit to a Grant is one purpose and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made.”*

The Court of Appeal has considered the above two judgments in the case of ***Ranasinghe Arachchige Nimal Ranasinghe v. Commissioner of Lands and Development CA Writ 17/2020 decided on 31.08.2023*** where Justice Mohammed Laffar held,

*“In light of the aforementioned judicial pronouncements and the provisions of the Land Development Ordinance, I hold that the nomination of succession made by the Permit Holder, Ranasinghe, in the Permit, to the 3rd Respondent extends its validity to the Grant as well.”*

Hence, in view of the above judgements, the Petitioner's main contention that a nominee to a Permit cannot be considered as a nominee to a Grant is not tenable and has to fail.

Therefore, in my view, the nominated successor to the Permit Wijeratne succeeds to the Grant.

This takes me to the next question, which is whether the 7<sup>th</sup> Respondent still succeeds to the Grant on the demise of her father Wijeratne. This question arose as it was submitted that Wijeratne had a wife and the 7<sup>th</sup> Respondent was not the eldest child.

### **The 7<sup>th</sup> Respondent's title**

Before I venture into finding an answer to this, I would like to consider the documents marked as P11 and P12.

The document marked as P11 is a letter addressed to the Divisional Secretary by the Commissioner of Lands. This letter appears to have originated as the land dispute had not been resolved and the 7<sup>th</sup> Respondent had once again complained to the Commissioner. In this letter, the Commissioner has completely taken a different stance to his earlier two letters marked as P8 and P9. In this the Commissioner had analysed the devolvment of title by giving due consideration to the fact that when the original Permit was issued to Bramphy Singho had not been alive and therefore has conceded that the Permit was given to Podimanika. It appears that after a due analysis and taking into consideration the fact that at the time the Permit was issued, Bramphy Singho had not been alive, the Commissioner has come to the conclusion that Podimenika obtained the Permit not in the capacity of a surviving spouse but on her own accord.

The answer to the above question namely as to whether the 7<sup>th</sup> Respondent can succeed to the Grant is found in the said letters. In the said letter, the Commissioner had further considered the devolvment of title after the death of Wijeratne and arrived at the conclusion that subsequent to the death of Wijeratne his wife had been disentitled to succeed to the Grant as she had left the family and had been living separately. Hence, the Commissioner had come to the conclusion that the title should devolve to the eldest son of Wijeratne. However, the eldest had declined to succeed to the Grant as he is living in a separate area and the author of the letter states that the eldest son had given an

affidavit consenting to the land being given to his sister, who is the 7<sup>th</sup> Respondent (7R1).

This letter (P11) had been followed by another letter to the Divisional Secretary by the Commissioner of Lands dated 12.05.2022 (P12). In the said letter the author has further stated that the 7<sup>th</sup> Respondent had possessed the land till 2002 and subsequently the eldest son of Podimanika, namely, Karunaratne had taken possession of the land. In the said letter it is also stated that in giving possession to Karunaratne the authorities had failed to consider the possession of the land up to the year 2002. Accordingly, the Commissioner of Lands had recommended that the land be divided between the two parties. However, the Petitioner had not given his consent to the said recommendation and therefore the Divisional Secretary had requested permission from the Commissioner of Lands to hand the land back to the 7<sup>th</sup> Respondent (P13). This position has been further clarified by the letter sent by the Commissioner of Lands to the Divisional Secretary by letter dated 07.08.2023 marked as P14. Hence, it is clear that the 7<sup>th</sup> Respondent is vested with the title. Hence, prayers (d) and (e) have to fail.

### **Cancellation of the Petitioner's and his father's succession**

In implementing the Commissioner of Lands' decision, the Commissioner thereafter had taken steps to cancel the succession of the Petitioner's father as well as the succession of the Petitioner marked as P16 and P17. They have also sought to quash P18, which will not arise in view of the above finding. The Petitioner by his Petition, *inter alia*, is seeking to quash the above-mentioned documents.

At the argument stage, the learned President's Counsel appearing for the Petitioner also submitted to this Court that pursuant to the cancellations depicted in P16 and P17 once again the 7<sup>th</sup> Respondent's name had been registered as the successor to the Grant. Thus, as per the Petitioner's Counsel's submissions he conceded that presently the registered successor to the Grant is the 7<sup>th</sup> Respondent.

### **The Petitioner's reliefs**

It is pertinent to note that the learned President's Counsel appearing for the Petitioner failed to give any explanation nor justify the correctness of P8 and P9. However, at the argument stage, upon being queried by the Court the learned President's Counsel conceded that a dead person cannot accept a Permit. Further, the Petitioner was not in a

position to impugn or contradict the contents of the letter marked as P14. The said letter clearly states that Bramphy Singho had died on 04.04.1992 and the original Permit had been issued only on 20.01.1993, which is more than a year after the demise of Bramphy Singho. If the Petitioner's stance was that the wife of Bramphy Singho, Podimanika was not the original Permit holder it could have easily been established by producing the Bramphy Singho's death certificate and established that the said Podimanika succeeded to the Permit only in the capacity of the widow. The Petitioner has failed to do so. It is trite law that in a Writ Application the burden of proof lies with the Petitioner.

In coming to this conclusion, this Court has taken cognizance of the ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others SC Appeal 10/2009 decided on 15.12.2014***, where it was held that,

*“The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies.”*

The Petitioner also argued that from the time of Karunaratne, the Petitioner's father being accepted and acceded as the Grant holder, and thereafter the Petitioner, it was the Petitioner who was in possession of the land. However, the Petitioner did not dispute that until Karunartne had been given possession, land had been occupied by Wijeratne and the 7<sup>th</sup> Respondent. In the circumstances, it is clear that the 7<sup>th</sup> Respondent's possession has been terminated only by the authorities who acted pursuant to P8 and P9. Further, it was common ground that the Petitioner's possession commenced only thereafter. It is also pertinent to note that the Petitioner nor his father, the said Karunartne challenged the nomination of Wijeratne as the successor as there are no material submitted to this Court to demonstrate such a challenge.

The Petitioner also contended that a nominee of a Permit has been considered as a nominee of a Grant based on the Circular marked as X1. Therefore, it was his contention that the nomination made by Podimanika was made prior to issuance of the Circular and the said Circular should not apply in the instant case. This Court is not inclined to accede to the said contention as per the above discussed case law. It is also pertinent to note that the date of the said Circular is not clear.

The Petitioner also contended that the Grant given to the Petitioner is a Grant by the President of the country. Hence, it cannot be cancelled by the Divisional Secretary. This argument militates against the Petitioner himself as the 7<sup>th</sup> Respondent had succeeded to the Grant by P5 which was cancelled by the Divisional Secretary to give succession

to the Petitioner. If I am to accede to the Petitioner's contention, then in any event the cancellation of P5 too becomes illegal and the succession reverts back to the 7<sup>th</sup> Respondent.

I have considered the judgment of *Ratnawathi Menike v. Moonafiya and others SC Appeal 154/2015 decided on 10.11.2017* and also the case of *R. P. Sunil Shantha v. The divisional Secretary of Giribawa and 4 others CA Writ 42/2012 decided on 10.11.2016* and find that the facts and circumstances in the present case are different to the said cases. Further, as per the documents submitted by the Petitioner himself it is apparent that there had been several inquiries pertaining to the succession before the decision impugned, had been arrived at.

As per my reasoning pertaining to the validity of P8 and P9 and the reasons given in P14 and P15, I cannot find any illegality in the impugned decisions contained in documents marked as P14, P16 and P17. Further, in my view, the Petitioner has failed to successfully impugn the said documents on any ground nor has the Petitioner been able to demonstrate any grounds to avail himself of the prerogative remedy of a Writ.

Accordingly, for the aforesaid reasons, this Court refuses to grant the reliefs prayed for in this Application and proceed to dismiss this Application. The parties are to bear their own costs.

**Judge of the Court of Appeal**

**S.U.B. Karalliyadde, J**

I agree

**Judge of the Court of Appeal**