

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

In the matter of an application for mandates in the nature of Writs of Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA-WRT-300/23

R.B. Sarath Kumarasiri

Kattimahana

Dummalasuriya

Petitioner

Vs.

1. Harin Fernando

The Minister of Lands

The Ministry of Lands

No. 1200/6, Rajamalwatta Road

Battaramulla

1AHon. Mr. K.D. Lalkantha

The Minister of Lands

No. 1200/6

Rajamalwatta Road

Battaramulla

2. Mr. G.D.K. Gamage

The Commissioner General of Lands

The Department of commissioner General of
lands

No. 07, Hector Kobbekaduwa Mawatha
Colombo 07.

3. H.S.K.J. bandara

The Divisional Secretary
Divisional Secretariat
Hingurakgoda

4. Esida Perera

No. 68, nawaratna land
Hingurakgoda

5. Jasintha Perera

No. 85/3, R/B/01
Temple Road
Hingurakgoda

6. Vineetha Perera

No. 88, R/B/01
Temple road
Higurakgoda

7. Nimal Perera

No. 20
2nd Cross Street
Higurakgoda (Deceased)

7A. Dissanayaka mudianselage
Karunawathie abeygunasekara
No. 20
2nd Cross Street

Higurakgoda

7B. Dinuka Rasanga Perera

No.20

2nd Cross Street

Higurakgoda

7C. Chamara Rasanga Perera

No.20

2nd Cross Street

Higurakgoda

7D. Ashen rasanga Perera

No.20

2nd Cross Street

Higurakgoda

8. Nimal Perera

No. R. B/01

Temple Road

Higurakgoda

9. Sunil Perera

No. 86/5, R/B/01

Temple road

Higurakgoda

10. Dammika Ekanayake

No. 87, w.O.P 400

Puastigama

Polonnaruwa

11. R.A. Swrmalatha

No. 688
Nawaratna House
Higurakgoda

Respondents

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

Counsel: Rasika Dissanayaka for the Petitioner
Chamara Nanayakkarawasam for the 5th, 6th 7th (a) and 7th (d) Respondents.
Ishara Madarasinghe, SC for the state

Argued On: 06.12.2024

Written

Submissions: 22.01.2025 (by the 1st, 2nd and 3rd Respondents)

On

Judgment On: 28.01.2025

JUDGMENT

B. Sasi Mahendran, J.

The Petitioner instituted this application by petition dated 02.06.2023 seeking *inter alia* a writ of Mandamus to compel the 1st, 2nd, and 3rd Respondents to register the name of the Petitioner as the lawful leaseholder of the premises described in the Lease Agreement

marked P1 and a writ of Prohibition against the 1st to 3rd Respondents preventing them from registering the names of anyone or more of the 5th, 6th and 7th Respondents as the lessees of the premises described in the said Lease Agreement or part thereof without adhering to the provisions of the Land development Ordinance.

The factual matrix of this case is as follows:

According to the document marked P1, the Lease Agreement concerned in this case was granted under the State Land Ordinance No. 8 of 1947 to one D.M. Leelawathie for commercial purposes.

Thereafter, on 11.01.2021, the said D.M. Leelawathie, the Petitioner's mother had requested the 3rd Respondent to nominate the Petitioner as the successor of the disputed premises, on the basis that she is not capable to administer and/or develop and/or maintain the leasehold right of the premises.

It should be noted that according to the petition, the Petitioner is not a legitimate child of the said D.M. Leelawathie.

The Petitioner avers that subsequently, the Petitioner's mother during her lifetime had given the express consent to have the Petitioner nominated as the successor for the premises in question by letter dated 19.02.2021 marked P2. The Petitioner states that the 5th, 6th and 7th Respondents upon being aware of this fact, disputed the rights of the Petitioner to be succeeded.

Since the other legitimate children of D.M. Leelawathie had disputed the granting of the lease to the Petitioner, the 3rd Respondent called the parties for an inquiry by letter dated 17.03.2021 to which D.M. Leelawathie participated and consented to have the Petitioner as the successor.

The said D.M. Leelawathie died on 08.06.2021. Upon her demise, two inquiries were held by the 3rd Respondent. Thereafter, the 2nd Respondent also held an inquiry. Thereafter, by letter dated 19.01.2023, the 3rd Respondent informed the Petitioner and the Respondents to resolve the matter through legal proceedings.

In this context, the Petitioner has invoked the writ jurisdiction of this Court seeking *inter alia* a writ of Mandamus to compel the 1st, 2nd, and 3rd Respondents to register the name of the Petitioner as the lawful leaseholder of the premises described in the Lease Agreement marked P1 and a writ of Prohibition against the 1st to 3rd Respondents preventing them from registering the names of anyone or more of the 5th, 6th and 7th Respondents as the lessees of the premises described in the said Lease Agreement or part thereof without adhering to the provisions of the Land development Ordinance.

According to the written submission of the 1st to 3rd Respondents, the said Leelawathie had given the consent to transfer the Lease Agreement to the Petitioner. According to the document marked 2R1 which reads as follows:

“ඒ අනුව රජයේ ඉඩම් අඤා පනත ප්‍රකාරව බදුකරයේ ඇති දීර්ඝ කාලීන බදුකර බදුකරු ජීවත්ව සිටියදී බදුකරුගේ එකඟතාවයෙන් සිදු කරනු ලබන පැවරීම සඳහා උරුමකරුවන්ගේ එකඟතාවය ලබා ගැනීම අවශ්‍ය නොවේ.

බැහැර කරනු ලබන්නේ බදු අයිතිය පමණක් වන බැවින් බදුකරුගේ එකඟතාවයක් පමණක් ප්‍රමාණවත් වන බවත් බදුකරු මියගිය අවස්තාවක දී උරුමකරුවන් සියලු දෙනාගේම එකඟතාවය මත එක අයකුට හෝ වෙනත් පාර්ශ්වයකට පැවරීමට අවශ්‍ය වන්නේ නම් පමණක් උරුමය හිමි වීමේදී පවුලේ සෙසු අයගේ එකඟතාවය දිවුරුම් ප්‍රකාශයක් මගින් ලබා ගැනීම සුදුසු බවට මෙයින් උපදෙස් දෙමි.”

There is no special provision available in the State Land Ordinance like in the Land Development Ordinance or in the Land Grants Act regarding the nomination.

According to the said letter marked 2R1, this is not a transfer of title, this is a lease where title will not be transferred.

According to Section 11 of the State Lands Ordinance, if the licensee has failed to observe any condition attached to the said permit, the government agent may cancel the permit and eject the person from the premises.

We are of the view that the Court should consider the intention and the willingness of the said Leelawathie which was indicated in several instances to transfer the land to the Petitioner.

According to the said letter marked 2R1, the consents of the other legal heirs are not material if the original lessee has expressly given the consent.

Therefore, we issue a writ of Mandamus to the 1st to 3rd Respondents to register the Petitioner as the lawful leaseholder of the premises in dispute.

No order for costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL