

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 Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Wickramasinghe Mudiyansele Dingiri Banda
No. 175, Getalawa, Galenbindunuwewa.
2. Wickramasinghe Mudiyansele Karunatileke
Wewapamula, Elapathhawa,
Getalawa, Galenbindunuwewa.

Petitioners

Case No. C. A. (Writ) Application 635/2011 Vs.

1. G. D. L. Gunarathne
Divisional Secretary,
Divisional Secretary's Office,
Galenbindunuwewa.
2. Commissioner General of Lands,
Office of the Commissioner General of Lands,
Gregory's Road, Colombo 07.
3. The District Land Officer, Anuradhapura.
4. The Minister of Lands and Land Development,
"Govijana Mandiraya," No. 80/5,
Rajamalwatte Ave., Battaramulla.

5. W. Tilakaratne
No. 175, Getalawa, Galenbindunuwewa.
6. Widanalage Abeymenika
No. 175, Getalawa, Galenbindunuwewa.
7. Udayakumara Tilakaratne
No. 175, Getalawa, Galenbindunuwewa.
8. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
9. Mrs. Chandrika Bandaranayake Kumarathunga
Former President of the Republic of Sri Lanka,
Rosmead Place, Colombo 07.

Respondents

Before: Janak De Silva J.

Priyantha Fernando J.

Counsel:

Sudarshani Cooray for the Petitioners

Chaya Sri Nammuni SSC for 1st to 4th and 8th Respondents

Written Submissions tendered on:

Petitioner on 12.11.2018

1st to 4th and 8th Respondents on 13.11.2018

Argued on: 29.04.2019

Decided on: 21.06.2019

Janak De Silva J.

The Petitioners are seeking to impugn the grant (P9) given under the Land Development Ordinance (Ordinance) in favour of the 5th Respondent.

A permit (P1) was issued under the Ordinance to one W.M. Punchi Banda and included both paddy land and high land. He had 8 children, 4 sons and 4 daughters. The 1st and 2nd Petitioners and the 5th are sons of the said W.M. Punchi Banda. The eldest son is deceased and hence the 1st Petitioner was the eldest amongst the surviving sons at the time of filing this application.

There is no dispute between the parties that R.M. Ranmenika was the wife of the said W.M. Punchi Banda and that she had been nominated by him as the successor. The dispute is whether the said R.M. Ranmenika could have nominated a successor as she had nominated the 5th Respondent as her successor on the strength of which the grant P9 was issued in favour of the 5th Respondent.

The learned counsel for the Petitioners' relies on section 48A of the Ordinance which reads:

“(1) Upon the death of 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+, the spouse of that permit-holder, whether he or she has or has not been nominated as successor by that permit-holder, shall be entitled to succeed to the land alienated to that permit-holder on the permit and the terms and conditions of that permit shall be applicable to such spouse :

Provided that where a spouse who was not nominated as successor by the deceased permit-holder succeeded under the preceding provisions of this subsection to the land alienated on the permit and where after so succeeding, such spouse marries, then upon such marriage

- (a) the person nominated by the deceased permit-holder shall succeed to the land, or
- (b) if no successor has been so nominated, the title to the land shall devolve as prescribed by rule 1 of the Third Schedule.

(2) If, during the lifetime of the spouse of a deceased permit-holder who has succeeded under subsection (1) to the land alienated on the permit, the terms and conditions of the permit are complied with by such spouse, such spouse shall be entitled to a grant of that land subject to the following conditions:

(a) such spouse shall have no power to dispose of the land alienated by the grant;

(b) such spouse shall have no power to nominate a successor to that land;

(c) upon the death of such spouse, or upon his or her marriage, the person, who was nominated as successor by the deceased permit-holder or who would have been entitled to succeed as his successor, shall succeed to that land:

Provided that the aforesaid conditions shall not apply to a grant of any land to be made to a spouse who has been nominated by the deceased permit-holder to succeed to the land alienated on the permit."

The learned counsel for the Petitioners' submits that the prohibition set out above prohibits the spouse of a permit holder who has succeeded under the above section from nominating a successor. The learned SSC submits that the prohibition applies only to a spouse who has not been nominated.

In *Bandaranayake v. Karunawathie* [(2003) 3 Sri.L.R. 295] this Court held that where the original permit-holder "S" had nominated his spouse to be his successor on 11.12.1957, and he had died on 24.11.1981 the spouse will not be subjected to the restrictions placed by section 48(A)(2) of the Ordinance as it would be the proviso to section 48(A)(2) that would be applicable. It was further held that as the original owner had nominated his spouse as his successor, it would give her authority to nominate a successor.

Having carefully considered the above provisions, I am in respectful agreement with that part of the judgment in *Bandaranayake v. Karunawathie* (supra) and the position articulated by the learned SSC. I hold that a spouse of a permit holder who has been nominated as his successor and succeeds to the permit has the right in turn to nominate a successor. The prohibition in section 48A (2b) of the Ordinance applies only to a spouse who has not been nominated by the permit holder to succeed.

The learned counsel for the Petitioners' further submitted that in any event R.M. Ranmenika has not succeeded to the land in dispute in accordance with the provisions of the Ordinance. The Respondents dispute this assertion. That is a question of fact. Firstly, there is no material to establish such failure. Secondly a court exercising judicial review is ill equipped to determine disputed questions of fact. Our courts have consistently held that it will not exercise writ jurisdiction where the facts are in dispute [*Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri.L.R. 471]. The Supreme Court has in *Dr. Puvanendran and another v. Premasiri and two others* [(2009) 2 Sri.L.R. 107] [2009 BLR 65] held that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.

For the foregoing reasons, the application is dismissed with costs.

Judge of the Court of Appeal

Priyantha Fernando J.

I agree.

Judge of the Court of Appeal