

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

Priyanthi Pushpika Jayasundara,  
Delmella,  
Bulathsinghala.  
Petitioner

**CASE NO: CA/WRIT/263/2017**

Vs.

1. S.K. Henadeera,  
Divisional Secretary,  
Divisional Secretariat,  
Bulathsinghala.
2. N.M.D.T.M. Jayathilaka,  
Provincial Land Commissioner,  
Provincial Land Commissioner's  
Department, (WP) PO Box 1518,  
1<sup>st</sup> Floor, Kachcheri, Maligawatte,  
Colombo 10.
3. R.M.C.M. Herath,  
Commissioner General of Lands,  
"Mihikatha Medura",  
No.1200/6, Rajamalwatte Road,  
Battaramulla.

4. L.A.D. Nandasena Jayasundara,  
Delmella,  
Bulathsinghala.

4A. Wickramage Adilinnona,  
Delmella,  
Bulathsinghala.

Respondents

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Thisath Wijayagunawardane, P.C., with Gihan  
Liyanage for the Petitioner.  
Yuresha Fernando, S.S.C., for the 1<sup>st</sup>-3<sup>rd</sup>  
Respondents.  
Vidura Ranawaka with Sudath Perera for the  
4<sup>th</sup> Respondent.

Argued on: 31.08.2020

Decided on: 16.11.2020

Mahinda Samayawardhena, J.

The permit under the Land Development Ordinance was issued to Richard Jayasundera in respect of the land described in the grant X3A. It is clear from the Land Ledger Y1 that Richard Jayasundera named his son Chandradasa Jayasundera, who was 12 years of age at that time, as his nominated successor. Chandradasa Jayasundera was the father of the Petitioner. Richard Jayasundera died in 1960.

As seen from the Land Ledger, Asilin Rodrigo was named the owner/permit-holder of the land on 11.08.1962, nearly two years after the death of Richard Jayasundera. Asilin Rodrigo was the widow of Richard Jayasundera and the mother of Chandradasa Jayasundera.

At the time Asilin Rodrigo was named the owner/permit-holder in 1962, according to section 2 of the Land Development Ordinance, “owner” meant the owner of a holding whose title thereto is derived from or under a grant issued under the Ordinance, and “permit-holder” meant any person to whom a permit has been issued.

It is important to realise that the naming of Asilin Rodrigo as the owner/permit-holder in 1962 is not the same as succession to the land by the widow of the owner/permit-holder by operation of the law. Section 48A(1), which recognises the right of the spouse to succeed to the land whether or not nomination has been made, was first introduced in the year 1969 by the Land Development (Amendment) Act, No.16 of 1969.

At the time Asilin Rodrigo was named owner/permit-holder, the permit was considered personal to the permit-holder. The old section 26, which was repealed by Act No.16 of 1969, read as follows:

*A permit shall for all purposes be and be construed as personal to the permit-holder and upon his death no title whatsoever to the land held under such permit shall pass or accrue to his heirs or to any person other than a successor*

*duly nominated by such permit-holder in the manner hereinafter provided.*

At that time, a permit-holder could nominate his spouse as his successor but there was no automatic succession. The old Section 77, which was repealed by the same Act of 1969, read as follows:

*A permit-holder may nominate as his successor his spouse or any relative of his out of the group of relatives mentioned in rule 1 of the Third Schedule.*

Chandradasa Jayasundera died in 1975.

Asilin Rodrigo was issued the grant X3A in 1983. This, in my view, was in sequence to her being made the owner/permit-holder of the land in 1962.

I must stress that except for the Land Ledger Y1, no permit issued to either Richard Jayasundera or Asilin Rodrigo has been tendered to Court. The Land Ledger has been tendered by the Petitioner. She relies on it. Hence the Court can go by its contents.

The grant X3A was issued in terms of section 19(4) read with section 19(6) of the Land Development Ordinance.

Asilin Rodrigo died in 1992 without nominating a successor in the grant.

The question to be decided is who was entitled to succeed to the land after the death of Asilin Rodrigo?

The 1<sup>st</sup> Respondent Divisional Secretary decided by Z that the 4<sup>th</sup> Respondent being the eldest surviving son of Asilin Rodrigo shall succeed to the land.

The Petitioner filed this application seeking to quash the said decision by a writ of certiorari and compel the 1<sup>st</sup> Respondent by a writ of mandamus to nominate the Petitioner to succeed to the land on the basis that he is the only surviving child of Chandradasa Jayasundera.

In the facts and circumstances of this case, as I have already stated, the grant in favour of Asilin Rodrigo was not issued under section 48A(1) of the Land Development Ordinance.

In my view, the nomination of Chandradasa Jayasundera as the successor of Richard Jayasundera came to an end upon Asilin Rodrigo becoming the owner/permit-holder of the land. Up to now, nobody has challenged Asilin Rodrigo being made the owner/permit-holder of the land in the year 1962.

If no successor has been nominated or the nominated successor fails to succeed in terms of section 68(2), the title to the land shall devolve as prescribed by Rule 1 of the Third Schedule read with section 72 of the Land Development Ordinance.

Let us assume the nomination of Chandradasa Jayasundera was enforceable. Even then, rights to the land do not accrue merely by nomination unless the nominated successor also succeeds to the land in terms of section 68(2).

In terms of section 73, the nominated successor can succeed to the land only after the death of the permit-holder or, if the permit-

holder is survived by his or her spouse, upon the failure of such spouse to succeed to the land or after the death of such spouse. Obviously Chandradasa Jayasundera could not have succeeded to the land because he predeceased the spouse of the permit-holder, Asilin Rodrigo (i.e. the mother of Chandradasa Jayasundara).

Learned President's Counsel for the Petitioner draws the attention of the Court to Land Order No.154 found in the State Land Manual. The Divisional Secretary also refers to this in the impugned Order. There is no necessity for me to consider whether the said Land Orders have the force of law, as the said Order is inapplicable in this case. Let me explain.

According to learned President's Counsel, Order No.154 refers to two situations. The first is where there are more nominees than one and one nominee dies after the death of the permit holder. The second situation is where the nominee dies before the death of the permit-holder. The case at hand does not relate to either of these situations. There are not several nominees. Nor did the nominee die before the permit-holder.

As Asilin Rodrigo has not nominated a successor in the grant, the title to the holding shall devolve as prescribed by Rule 1 of the Third Schedule read with section 72 of the Land Development Ordinance.

Accordingly, the decision of the 1<sup>st</sup> Respondent that the 4<sup>th</sup> Respondent shall succeed to the land is flawless.

I dismiss the application of the Petitioner with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal