

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

Court of Appeal

Application No:

Writ/381/2014

In the matter of an application for a mandate in the nature of Writ of Certiorari and Writ of Mandamus made in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Wanniarachchi Kankanamage Piyadasa
Aluth Wewa Gaawa Koratuwa,
Pallemulana,
Medamulana.

Petitioner

-Vs-

01. C.P. Wanniarachchi
Divisional Secretary,
Divisional Secretariat Office,
Weeraketiya.

02. P.B. Ruwan Pathirana
Deputy Commissioner of Land,
(Southern Province)
Southern Provincial Deputy Land
Commissioner's Office,
2nd Floor,
Magam Ruhunupura Administrative
Complex,
Siriboopura,
Hambantota.

03. R.P.R. Rajapaksha,
Commissioner of Land,
Land Secretariat Office,
No.1200/6,
Rajamalwatta,
Battaramulla.

04. Wanniarachchi Kankanamge Hendric,
Katakelaagaha Watta,
Pallemulana,
Medamulana.

05. Wanniarachchi Kankanamge Aranolis,
Katakelaagaha Watta,
Pallemulana,
Medamulana.

Respondents

Before: C.P. Kirtisinghe – J.
Mayadunne Corea – J.

Counsel: Chandana Dias instructed by K.C. Govinnage for the Petitioner.
Chaya Sri Nammuni, DSG for 1st – 3rd Respondents.
N. Jayasinghe with M. Dissanayake for 4th Respondent.

Argued on: 11.11.2022

Decided On: 16.12.2022

C. P. Kirtisinghe – J.

The Petitioner is seeking for a mandate in the nature of a Writ of Certiorari quashing the decision of the 2nd Respondent contained in the document marked P6 and for a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to hold a fresh inquiry to select the grantee.

By the letter marked P6, the 2nd Respondent had requested the 1st Respondent to regularize the grant in dispute in favour of the 4th Respondent.

The Petitioner and the 4th Respondent are brothers and according to the Petitioner their father had come into possession of the land in dispute in 1960 and developed it and cultivated it as a paddy field since then. In 1967 a permit for the land was issued to Petitioner's father. On 30.08.1996 a grant in terms of section 19 (4) of the Land Development Ordinance was issued to the father. The father passed away in 1997. The widow of the original permit holder/ the mother of the Petitioner and 4th and 5th Respondents had passed away in 2006. The Petitioner states that the title to the land has devolved on him in terms of section 72 of the Land Development Ordinance read with the 3rd schedule of the ordinance. The Petitioner had written several times to the 1st Respondent to get the grant transferred to the Petitioner and as a result the Petitioner was summoned several times to the Divisional Secretariat at Weeraketiya. The Petitioner states that the 1st Respondent and his predecessors delayed issuing the grant in Petitioner's favour. Thereafter, the Petitioner had written to the District Secretary Hambantota and also placed his grievance before the member of Parliament in the area. The Parliamentary Committee for Land and Land Development having considered the Petitioner's Complaint had decided to issue the grant in Petitioner's favour. Thereafter 1st and 2nd Respondents had held an inquiry regarding the matter and the 2nd Respondent by his letter marked P6 had decided to issue the grant to the 4th Respondent. The Petitioner states that that decision is illegal, unlawful, malicious, wrongful and arbitrary. The Petitioner states that the 2nd Respondent had come to the wrong conclusion that the grant had been issued to the Petitioner's father after his death. The Petitioner's father died after the grant was issued to him.

The Petitioner states that the 2nd Respondent had failed to appreciate the following grounds when he took the decision.

1. The grant was issued to the Petitioner's father before his death.

2. The original grantee had not nominated any successor after grant was issued.
3. No nomination has been registered in the relevant folio.
4. A nomination made prior to the issuing of the grant has no effect.
5. The title to the land has devolved on the Petitioner in terms of section 72 of the Land Development Ordinance.

The Petitioner states that he is cultivating a portion of the land.

The 1st – 3rd Respondents in their statement of objections state that the fact that the Petitioner is the eldest son of the original permit holder is irrelevant to the matter before court. The permit marked 1R1 was issued to Dines Hamy (father of the Petitioner and the 4th Respondent) in respect of this land in 1967 and the 4th Respondent who was a son of the permit holder was nominated as the successor to the land. A certified copy of the relevant extract of the land ledger has been annexed marked 1R2. The Respondents state that in view of the fact that the nomination made by Dines Hamy had not been cancelled prior to Dines hamy's death, the said nomination of the 4th Respondent remained valid for the purpose of succession to the grant.

By the letter marked P6 the 2nd Respondent had taken up a decision and come to the conclusion that the 4th Respondent is the lawful successor of Dines Hamy. He had also come to the conclusion that the nomination which is already there in the land ledger is still in force. He had conveyed his decision to the 1st Respondent and requested the 1st Respondent to act accordingly. The Respondents had not taken up the position that there is no decision contained in P6. The 2nd Respondent has come to the conclusion that as the nomination made by Dines Hamy under the permit marked 1R1 and registered in the land ledger as shown in 1R2 is still valid the 4th Respondent (the nominee under the permit) is the lawful successor of Dines Hamy. The learned Deputy Solicitor General appearing for the 1st – 3rd Respondents supported that contention. The learned Counsel for the Petitioner submitted that the nomination made under the permit marked 1R1 is not a valid nomination as contemplated by section 58 (1) of the land Development Ordinance as it has not been registered by the Registrar of Lands of the District. The learned Deputy Solicitor General submitted that the nomination was registered in the land ledger in the Divisional Secretariat and that is sufficient for the purpose. The relevant ledger has been produced marked 1R2.

Section 58 (1) of the Land Development Ordinance reads as follows;

“A document (other than a last will) whereby the nomination of a successor is effected or cancelled shall not be valid unless and until it has been registered by the Registrar of Lands of the district in which the holding or land to which that document refers is situated”.

Section 60 of the Land Development Ordinance reads as follows;

“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”.

Section 58 (1) states that a nomination of a successor shall not be valid until and unless it has been registered by the Registrar of Lands of the district in which the land to which the document refers is situated. Section 60 states that a nomination of a successor shall not be valid unless it is duly registered before the death of the owner or the permit holder of the holding.

The learned counsel for the Petitioner cited several authorities. He has cited the judgement of **Palate Gedara Gunadasa Vs Palate Gedara Marywathie – CA Writ/556/2010** decided on 15.07.2015 and the judgement of **Ratnayake Mudiyanseelage Gunaratne Vs V.U.K. Agalawatta – Divisional Secretary, Buttala and 4 others – CA Writ/406/2011** decided on 18.03.2013. Both those cases had dealt with the interpretation of section 60 of the ordinance. In the 1st case it was held that a cancellation of a nomination must be registered before the death of the permit holder. In the 2nd case it was held that a nomination of a successor must be registered before the death of the owner of the holding or the permit holder. Those two cases are not applicable to the situation before us. In the judgement of **Madurasinghe Vs Madurasinghe 1988 (2) SLR 142** also it was held that a nomination should be registered before the death of the permit holder. In the case of **S.C. Appeal No. 82/2008, S.C. (H.C.) C.A.L.A. No. 47/2008, NCP (Anuradhapura) HC CA/ARP 36/2007, D.C. Polonnaruwa No. 6330/L** decided on 26.10.2010 also dealt with section 60 of the ordinance and it was held that a nomination is not valid unless registered before the death of the nominator.

The judgement of **G. Ranjith Vs M.A.A.S. Nissanka Arachchi, the Divisional Secretary, Hingurakgoda and others CA/Writ Application No. 453/2013** decided on 10.10.2016 is a case which dealt with section 58 of the Ordinance. In that case Surasena J. has observed as follows;

“Thus, the law is very clear on this point i.e., the nomination has to be made in the prescribed form and be registered **in the Land Registry** in terms of section 58 of the Land Development Ordinance and if it is not registered such nomination is considered to be invalid”.

In the case of **Piyasena Vs Wijesinghe and others 2002 (2) SLR 242** J.A.N. De Silva J. had observed as follows;

“It is to be noted that in terms of the Land Development Ordinance, a permit holder is entitled to nominate a person or persons to succeed to the ownership of the land after his/her death. Such nomination could be cancelled by the permit holder and a new nomination could be made in terms of the provisions in chapter VII of the Land Development Ordinance. The nomination has to be made in the prescribed form and registered **in the Land Registry** in terms of section 58 of the Land Development Ordinance and if it is not registered such nomination is considered to be invalid (vide section 58(1)). The nomination in the permit itself shall stand valid until it is cancelled by the permit holder”.

Both those judgements refer to the requirement of registration in the Land Registry.

The learned Deputy Solicitor General has drawn our attention to the fact that section 60 of the Ordinance only refers to registration and it does not refer to the registration at the Land Registry. But section 60 has to be read with section 58. What is referred to in section 60 is the registration contemplated in section 58 and section 58 requires the registration by the Registrar of Land of the district.

Land Order 148 of the Land Manual reads as follows;

“පසු උරුමකරුවෙකු නම් කිරීමක්, අවලංගු කිරීමක් හෝ නැවත නම් කිරීමක් ප්‍රදාන පත්‍ර කරු හෝ අවසරපත්‍ර කරු ජීවත්ව සිටින කාලය තුළදී ලියාපදිංචි විය යුතුය. මෙහිදී ලියාපදිංචි කිරීම යන්නෙන් අදහස් වන්නේ ප්‍රදාන පත්‍රයක් හෝ ඉඩම් ලියාපදිංචි කාර්යාලයේ ලියාපදිංචි කරන ලද අවසර පත්‍රයක් සම්බන්ධයෙන් වූ විට එය ලියාපදිංචි කාර්යාලයේ ලියාපදිංචි කිරීමය. ලියාපදිංචි කිරීමේ කාර්යාලයේ ලියාපදිංචි නොකරන ලද අවසර පත්‍රයක් සම්බන්ධයෙන් වූ විට එය දිසාපති කාර්යාලයේ ලෙජරය හා බලපත්‍ර පිටපතේ හා අවසර පත්‍ර කරු ලග ඇති මුල් පිටපතේ සටහන් කොට මාණ්ඩලික නිලධාරියා විසින් අත්සන් කර ස්වකීය නිල නාමය හා දිනය දැක්විය යුතුය. එසේ හෙයින් පසු උරුමය සම්බන්ධව කරනු ලබන ඉල්ලීම් පිළිබඳව අප්‍රමාදව කටයුතු කිරීම අත්‍යවශ්‍ය කරුණකි”.

Order 01 reads as follows;

“මෙම රජයේ ඉඩම් පිළිබඳ කාර්යසාධනය සකස් කර ඇත්තේ සාමාන්‍ය ඉඩම් ප්‍රතිපත්තිය පිළිබඳ මූලික අදහසක් දීමටත්, ආඥාපනත් යටතේ කටයුතු කිරීමේදී අදාළව ක්‍රියාමාර්ගය පිළිබඳ වැදගත් කරුණු ගෙනහැර පැමට මිස සවිස්තරාත්මකව උපදෙස් දැක්වීම සඳහා නොවේ. ප්‍රතිපත්තිය වශයෙන් හෝ කාර්යමය වශයෙන් හෝ වෙනත් කිසියම් සැකසහිත අවස්ථා උද්ගත වුවහොත් එවැනි අවස්ථාවන්හිදී ඉඩම් කොමසාරිස් ඇමතිය යුතුය”.

Those Land Orders prescribed by the Land Manual, including the order 148 are not regulations made under the Land Development Ordinance but mere procedural guidelines which cannot override the express statutory provisions of the Land Development Ordinance. Chapter VII of the Land Development Ordinance which deals with succession does not refer to a registration in the land ledger kept at the Divisional Secretariat. Section 58 only refers to a registration by the Registrar of Lands of the District in which the land to which the permit/ grant refers is situated.

For the aforesaid reasons we are of the view that the nomination of the 4th Respondent as the successor of the original permit holder is invalid for the reason that it was not properly registered by the Registrar of Lands of the district as required by section 58 of the Ordinance.

The learned counsel for the 4th and 5th Respondents has drawn our attention to the judgement of **Piyasena Vs Wijesinghe and others 2002 (2) SLR 242**. In that case it was held that the issuance of a grant changes the status of a permit holder to that of an owner who derives title to the land in question and the nomination of a successor under the permit becomes converted to nomination made by her as the owner of the land. But for such a conversion there should be a valid nomination.

For the aforementioned reasons we are of the view that the decision of the 2nd Respondent contained in the document P6 is unlawful and ultra vires. Therefore, we issue a mandate in the nature of a Writ of Certiorari quashing that decision. We also issue a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to hold a proper inquiry to select a grantee.

We make no order for costs.

Mayadunne Corea – J.

I Agree

Judge of Court of Appeal

Judge of Court of Appeal