

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

In the matter of an Application for a
mandate in the nature of Writs of
Certiorari and Mandamus in terms of
Article 140 of the Constitution.

H. M. Bandaranayake,
Track 29,
No. 101, Atthankadaewela.

Petitioner

1. Dasanayaka Mudiyanse Gendara
Sumanawathie Manike
2. Gamantha Wijebandara
Both of Track 29,
No.101, Atthankadaewela.

Substituted - Petitioners

Vs.

C.A. Application No: Writ 114/2018

1. Mahaweli Authority of Sri Lanka
No. 500, T. B. Jaya Mawatha,
Colombo 10.
2. A.M. Herathbanda
Resident Project Manager,

3. I.W. Inoka Warnakulasuriya
Acting Block Manager,
Both of Mahaweli Authority of Sri
Lanka,
Moragahakanda Zone,
Bakamuna.
4. W.M. Erandi Wanigasekara
Land Officer,
Attanakadawela Zonal Office,
Attanakadawela.
5. H.M. Jayathilake Banda
6. H.M. Chandraratne Pamunuwa
Both of Track 29, No. 01,
Attanakadawela.

Respondents

Before	:	Dhammika Ganepola, J.
Counsel	:	Prinath Fernando for the Substituted Petitioners. Manohara Jayasinghe, D.S.G. for the Respondents.
Argued On	:	17.07.2024
Written Submissions tendered On	:	Substituted Petitioners : 28.08.2024 1 st to 4 th Respondents : 15.08.2024

Decided On : 27.09.2024

Dhammika Ganepola, J.

The Petitioner's case

The Petitioner seeks inter alia a mandate in the nature of Writ of Certiorari quashing the decision to register the nomination made by the Petitioner's mother on 02.02.1993 nominating the Petitioner, 5th and 6th Respondents as the successors in the Register of Permits /Grants issued under the Land Development Ordinance and a Writ of Mandamus compelling the 1st to 3rd Respondents to execute the grant in favour of the Petitioner with regard the subject land. As per the permit marked P1 issued under the Land Development Ordinance, H. M. Muthubanda, the father of the Petitioner was the permit holder of the subject land who nominated the Petitioner as the successor. Said Muthubanda had passed away in 1977. Thereafter, the Petitioner's mother, R.M. Muthumenike, had been issued a Grant marked P3 in respect of the subject land on 09.04.1984. Said R.M. Muthumenike has nominated the Petitioner, 5th and 6th Respondents as the successors to the subject land. Said nomination has been registered in the Register of Permits /Grants maintained in terms of the Land Development Ordinance. Copy of such registration extract has been submitted by the Petitioner marked as P5. The Petitioner states that the said nomination made by his mother Muthumenike, is contrary to the provisions of Sections 48A and 75 of the Land Development Ordinance and Regulations 143 and 144 of the Land Manual. Further, the Petitioner states that the Respondents arbitrarily and unjustifiably refrained from discharging their public duty under the Mahaweli Authority Act No. 23 of 1979 read with Section 48A of the Land Development Ordinance and Regulations under the Land Manual in failing to execute a Grant exclusively in favour of the Petitioner.

Stance of the 1st to 4th Respondents

However, the 1st to 4th Respondents have denied the fact that said H.M. Muthubanda was given possession of the subject land by the license marked

P1 and the fact that the said Muthubanda is the father of the Petitioner. Further, the Respondents deny the nomination made by the said Muthubanda. The 1st to 4th Respondents also submit that the purported license at P1 does not appear to make any reference to a successor. Said Muthumenike in whose favour the Grant P3 was issued has named the Petitioner, 5th and 6th Respondents as successors to the subject land, as she has the legal authority to name successors to the property. It is contended that the said nomination has been lawfully registered and the Respondents have acted according to law in effecting such registration.

Legal submissions

The Petitioner primarily relies upon Section 48A of the Land Development Ordinance. Said Section 48A (1) of the Land Development reads as follows;

48A.(1) Upon the death of a permit-holder who at the time of his or her death was required to pay any annual instalments by virtue of the provisions of subsection (2) of section 19, notwithstanding default in the payment of such instalments, 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 that spouse.

(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.

(3) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (2) shall be invalid. [+ Section 19A is repealed by Law No. 43 of 1973]

As per the above Section, the spouse of the deceased permit holder is entitled to a Grant of the land and upon the death of such spouse the nominee who was nominated as successor by the deceased permit holder shall succeed to the land. Since the Petitioner is challenging the decision of the 1st to 4th Respondents to register the nomination, the burden lies upon the Petitioner to prove that the said decision is contrary to the law.

Accordingly, to get the benefit of the above statutory provisions, the Petitioner must first establish and satisfy this Court that R.M. Muthumenike was the spouse of the permit-holder H.M. Muthubanda, especially in the circumstances where the 1st to 4th Respondents deny the existence of such fact. Although, the Petitioner has stated in his amended Petition and the affidavit that the above Muthubanda and Muthumenike are his parents, the Petitioner has failed to adduce any evidence before this Court to establish his relationship with said Muthubanda and Muthumenike. Such failure is fatal in the circumstances where the Respondents have denied Petitioner's relationship with said Muthubanda.

The 1st to 4th Respondents submit that the purported license P1 does not appear to make any reference to a successor. Upon a careful perusal of P1, it has come to my attention that the permit holder of P1 has nominated one H.M. Banda as successor. However, it is not certain that the said H.M. Banda and the Petitioner are the same since the Petitioner's name appears in the pleadings and the document marked P5 as H.M. Bandaranayake. No evidence has been placed before this Court for this Court to reach upon a favorable conclusion for the Petitioner concerning the above matter. Under such circumstances, and upon considering the materials placed before this Court, this Court is not in a position to consider the applicability of above Section 48A in respect of the Petitioner's claim, as the Petitioner has failed to satisfy the factual matters specified under Said Section.

'It has often been laid down that the onus of proof rests upon the party alleging invalidity.¹

Judges have likewise spoken of 'the clearly established presumption that statutory duties are duly and properly performed'.² An administrative authority cannot therefore be put to proof of the facts or conditions on which the validity of its order must depend, unless the party attacking it can produce evidence which will shift the burden of proof off his own shoulders.' [**ADMINISTRATIVE LAW-ELEVENTH EDITION- BY H.W.R.WADE & C.F.FORSYTH**]

However, in the instant circumstances, the Petitioner has failed to discharge such duty and burden of proof. Such failure of the Petitioner is crucial in determining the rights of the Petitioner and since the Petitioner has failed to discharge said duty, this Court cannot arrive at a determination in favour of the Petitioner.

¹. *Minister of National Revenue v. Wright's Canadian Ropes Ltd* [1947]AC 109 @122; *Associated Provincial Picture House Ltd v. Wednesbury Cpn* [1948] 1 KB 223 @ 228; *Fawcett Properties Ltd Buckingham Country Council* [1959] Ch 543 @ 575, affirmed[1961]AC 636.

². *Wilover Nominees Ltd v. Inland Revenue Commissioners* [1973] 1 WLR 1393 @1399 (Goulding j), affirmed [1974] 1 WLR 1342.

Conclusion

In the circumstances where the Petitioner had failed to discharge his burden of proof, I am not inclined to grant any discretionary relief sought by him. Accordingly, I dismiss the application without cost.

Application dismissed.

Judge of the Court of Appeal