

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

W. B. D. P. Priyantha Wijeratne,
No.110/2, Nilagama,
Bambaragaswewa,
Galewela.
Petitioner

CASE NO: CA/WRIT/95/2018

Vs.

1. H. G. Anulawathie,
Ariyagama, Pallewela
Matale.
2. W. M. Podi Nilame,
Ranawa,
Galkiriyama.
3. Maithripala Sirisena,
Minister of Mahaweli
Development and Environment.
- 4A. Mahinda Amaraweera,
State Minister of Mahaweli
Development and Environment.
- 4B. Ajith Mannapperuma,
State Minister of Mahaweli
Development and Environment.

5. Gotabhaya Jayaratne,
Director General,
Mahaweli Authority of Sri Lanka.
- 5A. Sarath Chandrasiri Withana,
Director General,
Mahaweli Authority of Sri Lanka.
- 5B. D. D. M. S. Dissanayake,
Director General,
Mahaweli Authority of Sri Lanka.
All of No. 500,
T. B. Jayah Mawatha,
Colombo 10.
6. N. U. R. Ranathunga,
Divisional Manager,
Sri Lanka Mahaweli Authority,
Madatugama.
7. Indunil Mudalige,
Unit Manager (2) – Galkiriyagama,
Sri Lanka Mahaweli Authority,
Galkiriyagama.
8. Hemamali Jayasundara,
Resident Business Manager
(Land),
Sri Lanka Mahaweli Authority,
Thambuththegama.
9. Officer-in-Charge,
Police Station,
Galkiriyagama.

10. Attorney General,
 Attorney General's Department,
 Hulftsdorp,
 Colombo 12.
Respondents

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

Counsel: Senany Dayaratne with Nishadi
 Wickramasinghe for the Petitioner.
 Chathura Galhena with Manoja Gunawardana
 for the 1st and 2nd Respondents.
 Madubashini Sri Meththa, S.C., for the 3rd-
 10th Respondents.

Argued on: 17.07.2020

Decided on: 30.07.2020

Mahinda Samayawardhena, J.

The two permits marked P2 and P3 were issued in 1984 to R. Wijeratne, the Petitioner's father, under the Land Development Ordinance, in respect of the land in dispute, which comprises high land and paddy land. At the time, Wijeratne was married to B. H. N. Gunawathie, the Petitioner's mother. The Petitioner is one of many children of that union. Wijeratne legally divorced Gunawathie in 1991 and married the 1st Respondent in 1992. When Wijeratne died on 01.06.1995, the 1st Respondent was his lawful spouse.

It is not explicitly clear from P2 and P3 whether the 1st Respondent was the nominated successor to the land at the time of Wijeratne's demise. In any event, whether or not the spouse of the permit holder is nominated as the successor, in terms of section 48A(1) of the Land Development Ordinance, the spouse of the permit holder is entitled to succeed to the land. However, according to subsections (1) and (2) of section 68, a spouse or a nominee, respectively, who does not enter into possession of the land within six months of the death of the permit holder fails to succeed to the land. The Petitioner says the 1st Respondent, by her own admission, did not enter into possession of the land within the said period.¹ In my view, it is too late in the day for the Petitioner to challenge the succession of the 1st Respondent, as the 8th Respondent recognised the 1st Respondent as having succeeded to the land in 1996.²

According to section 46(1) and (2), without the written consent of the Government Agent, the permit holder is debarred from disposing of the permit land. In terms of section 46(3), if the permit holder does so, such disposition is null and void. In terms of section 48A(3), if the spouse does so upon succession, the result is the same.

The Petitioner by tendering *inter alia* P8 and P12 alleges the 1st Respondent sold the land in dispute to third parties for valuable consideration. By P8, *ex facie*, the high land was sold to a third party. By P12, *ex facie*, the paddy land was sold to the 2nd Respondent. The 1st and 2nd Respondents deny this allegation.

¹ *Vide* page 111 of the Brief.

² *Vide* the endorsements on pages 42, 44 of the permits, and also pages 207-210 of the Brief.

The fact that the land has been sold by the 1st Respondent is acknowledged by the 6th Respondent by P11 and P16, and by the 8th Respondent by P19 and P22. The documents such as P17(a), P17(b), P21(a) and P21(b) demonstrate that the Petitioner and his deceased elder brother, Jayantha Wimalasiri, had been repeatedly complaining to the relevant authorities about this disposition. They had also insisted that steps be taken to cancel the authority given to the 1st Respondent to possess the land and to issue permits in respect of the land in the name of the Petitioner instead.

In the meantime, in 1999, the 1st and 2nd Respondents filed a case in the District Court against the Petitioner and some others, stating that the latter had prevented the 2nd Respondent, whom the 1st Respondent says is her agent, from cultivating the disputed paddy land in the 1996 *yala* season, and seeking a declaration that the 1st Respondent is the permit holder of the land. As seen from P19 and P22, it is because of this District Court action that the authorities did not take steps in respect of the Petitioner's complaint.

As I have already explained, according to sections 46(3) and 48A(3) of the Land Development Ordinance and condition No.13 of the permit, the said disposition of the land by the 1st Respondent, if it has actually taken place, has no force or avail in law. Furthermore, such an act by the 1st Respondent would give rise to the cancellation of the permit or her authority to possess the land, of course, subject to the proper procedure being followed, as laid down in Chapter VIII of the Ordinance.

In my view, it was wrong on the part of the 3rd-8th Respondents to have shirked their statutory duty to hold an inquiry into the complaint of the Petitioner and make a determination on the matter in terms of the Land Development Ordinance. The District Court action could not have been a bar to it.

I must also mention the District Court has no jurisdiction to inquire into the cancellation of a permit, as there is a special procedure laid down in the Land Development Ordinance governing this matter. However, I must add, the District Court action was not in relation to any attempt to cancel the permit, but rather against the eviction of the 2nd Respondent from the paddy land.

During the pendency of the District Court action filed by the 1st Respondent, the Petitioner filed this application in this Court seeking predominantly to quash by certiorari the decision of any one or more of the 3rd-8th Respondents to issue a permit to the 1st Respondent in respect of the paddy land or, in the alternative, to compel the said Respondents by mandamus to cancel the permit already issued to the 1st Respondent. In addition, the Petitioner seeks to compel the said Respondents by mandamus to issue a permit to the said land to the most suitable person in terms of the law. If the Petitioner's complaint is proven, succession shall be decided in terms of section 72 read with Rule 1 of the Third Schedule to the Land Development Ordinance.

Section 72 reads as follows:

If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.

Rule 1 of the Third Schedule stipulates:

- a) The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.*
- b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permit-holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.*

According to the Table, the order of priority is: (i) Sons (ii) Daughters (iii) Grandsons (iv) Granddaughters (v) Father (vi)

Mother (vii) Brothers (viii) Sisters (ix) Uncles (x) Aunts (xi) Nephews (xii) Nieces.

Without a proper inquiry, this Court cannot grant the reliefs sought by the Petitioner. Such an inquiry cannot be held by the writ Court but by the authorities identified in the Land Development Ordinance.

The 3rd-10th Respondents in their amended statement of objections and written submission have clearly stated the conduct of the 1st Respondent is illegal, as she has breached the conditions in the permit and illegally transferred the land to third parties. The said Respondents have also admitted therein that there was a delay and an oversight in the actions of the relevant authorities in looking into this matter. The 5th Respondent Director General of Mahaweli Authority reiterates the foregoing in no uncertain terms in his supporting affidavit. However, in the written submission, the said Respondents admit that cancellation of a permit can only be done after a proper inquiry.

There is a misconception that in judicial review, this Court cannot give directions to authorities on what to do and how to do so. In *Wickremasighe v. Chandrananda de Silva, Secretary Ministry of Defence* [2001] 2 Sri LR 333 at 353, Gunawardena J. held:

[U]nder the judicial review procedure the court exercises a supervisory jurisdiction. A court exercising such supervisory powers can inspect and even direct. Under the judicial review procedure, far from being confined to the matters

averred in the petition, the court is less inhibited and is free to adopt a more interventionist attitude—not with a view to withholding or denying relief but with a view to grant it when justice of the case demands that such a course of action be adopted.

All Ceylon Commercial and Industrial Workers’ Union v. Nestle Lanka Ltd [1999] 1 Sri LR 343 is a case where an Arbitration Award was quashed by this Court by a writ of certiorari on the ground of an error on the face of the record. Having done so, Jayasuriya J. made the following direction:

We direct and order the Honourable Minister of Labour to make another reference in terms of section 4(1) of the Industrial Disputes Act No.14 of 1957 as amended appointing another arbitrator to settle the aforesaid dispute by arbitration. This direction is made in view of the principle laid down by Justice Sharvananda in the decision in Nadaraja Ltd. v. Krishnadasan 78 NLR 255 which is referred to and adopted in Shell Gas Company v. All Ceylon Commercial & Industrial Workers’ Union [1998] 1 Sri LR 118 at 124.

It is an established rule in law that “*the greater includes the less.*”³

Therefore, although this Court cannot at this juncture grant the reliefs prayed for by the Petitioner, I direct the 5th Respondent to hold an inquiry with the participation of all stakeholders,

³ *Ibralebbe alias Rasa Wattan* (1963) CLW 41 at 43 (PC) per Viscount Radcliffe.

including the Petitioner and the 1st and 2nd Respondents, and make a suitable order in terms of the law.

The only submission made by the 1st and 2nd Respondents is the application of the Petitioner shall be dismissed *in limine* on the ground of delay. In my view, in the facts and circumstances of this case, such a submission cannot succeed. As I have stated above, the Petitioner repeatedly took up this matter with the proper authorities, but the 3rd-8th Respondents kept on postponing the holding of an inquiry and failed to make an appropriate decision, due to the case filed by the 1st Respondent in the District Court.

The application of the Petitioner is partly allowed. No costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal