

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

In the matter of an application for Orders 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.

Ramanayake Arachchige Don Ravindu
Dilhan Ramanayake,
No. 320, Ramanayake Mawatha,
Arewwala, Pannipitiya.

PETITIONER

C.A. Case No. WRT/0021/24

Vs.

1. Danasooriya Arachilage Prageeth
Danasooriya,
Divisional Secretary,
Divisional Secretariat,
Nuwara-Eliya.
2. Ekanayake Mudiyanseelage Dammika
Ekanayake,
Nawa Janapadaya, Pattipola,
Ambewela.
3. Ekanayake Mudiyanseelage Rathnapali
Ekanayake,
Nawa Janapadaya, Pattipola,
Ambewela.
4. Thejitha Liyanaarachchi,

No. 70,
Pattipola Nawa Janapadaya,
Ambewela.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
6. Manoja Wijethunga,
Provincial Land Commissioner Central
Province,
Central Province Land Commissioner's
Department,
Provincial Council Complex, Pallekele,
Kundasale.
7. K.D. Bandula Jayasinghe,
Commissioner General,
Land Commissioner General's Department,
"Mihikatha Medura", Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Bhagya Herath with Ms. S. Jayasinghe on the instructions of
Sivanatham Associates for the Petitioner.

Ishara Madarasinghe, SC for the 1st, 5th, 6th and 7th
Respondents.

Thanuka Nandasiri with Sasi Wanigapura for the 2nd, 3rd and
4th Respondents.

ARGUED ON : 26.06.2025

DECIDED ON : 05.08.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

1. This application was taken up for argument on 26.06.2025. The learned State Counsel appeared for the 1st, 5th, 6th and 7th respondents, and the 2nd, 3rd and 4th respondents were represented by their Counsel Thanuka Nandasiri, Attorney-at-Law, and Ms. Bhagya Herath, Attorney-at-Law, appeared for the petitioners. Several dates have been granted for the respondents to file objections. However, none of the respondents have filed their objections. Accordingly, this was taken up for argument.

Facts.

2. The Wijesuriya Mudiyanseelage Kumarihami, the grandmother of the petitioner, was issued with the grant P-2 in respect of an extent of 2 roods of land under the Land Development Ordinance (hereinafter referred to as “the LDO”). The said grant is registered in the Register of Permits and Grants in the District of Nuwara Eliya (*vide* P-3). On 17.12.2020, the petitioner’s grandmother has nominated the petitioner and the 4th respondent as successors (*vide* P-8 and P-9). P-9 is the copy of the perfected prescribed form of nomination, Form LC 155, according to which nomination, the 4th respondent and the petitioner were nominated to succeed to 20 perches and 60 perches respectively.
3. The petitioner’s grandmother Kumarihami then died on 21.05.2022. Upon her demise, the 2nd and 3rd respondents appear to have disputed the claim of the petitioner and the petitioner has made an application to the 1st respondent Divisional Secretary to intervene. The 1st respondent has then held an inquiry summoning the petitioner’s father, 2nd respondent, and the 3rd respondent on 09.10.2023. The petitioner had also been present at the said inquiry. Upon the said inquiry, the 1st respondent had found that the failure to register the nomination is due to an oversight of the Divisional Secretariat and that the successors be

determined in respect of the land as nominated and proposed to seek advice from the Land Commissioner General. The relevant inquiry recommendation is marked P-12. The finding is as follows: “ඉඩමේ අනුප්‍රාප්තිය ලියාපදිංචි නොකිරීම කාර්යාලයේ සිදුවූ ප්‍රමාද දෝශයන් නිසා සිදුවූ බව නිරීක්ෂණය වේ. ඒ අනුව ... අනුප්‍රාප්තිය නම්කල ආකාරයට ලබාදීමට සුදුසු බව නිරීක්ෂණය වේ. ඉඩමේ වැඩිපුර ඇති කොටස පවර ගැනීමට කටයුතු කරන්න. මේ පිළිබඳව ඉ.කො.ජ. උපදෙස් විමසා ඉදිරි කටයුතු කරන්න.”

4. Thereafter, the petitioner’s father had received a letter dated 22.11.2023, calling him, along with the 2nd and 3rd respondents, for a fresh inquiry to be held on 27.11.2023. Upon the said inquiry, the 1st respondent has informed the parties to have this matter determined by a competent Court. The relevant inquiry recommendation is marked P-16. The 1st respondent has informed that: “දෙපාර්ශවයට අධිකරණ මාර්ගයෙන් මෙය විසඳා ගන්නා ලෙස දන්වන්න.”
5. It is the petitioner’s position that since the 1st respondent had already determined this issue, it was not lawful for the 1st respondent to change the said finding at the second inquiry, and accordingly moves *inter alia* for a writ of *certiorari* to quash P-16. The petitioner is also seeking a writ of *mandamus* directing the 1st respondent to register and give effect to the succession as per the nominations made by the original owner.
6. The petitioner, in short, is seeking a *mandamus* to direct the 1st respondent to register/effect and enter the succession as per the nominations made by P-9. No doubt, this nomination has been made on the prescribed form; however there had not been any registration of the same. According to P-3, the extract of the register, last registered item in respect of this land is the grant issued to Kumarihami, the grandmother of the petitioner. The finding upon the original inquiry held on 09.10.2023 is that due to an oversight on the part of the office (of the 1st respondent) the registration of the nomination had not been made and it is observed that it is suitable to determine the succession

as per the said nomination. It appears that there is no decision made in P-12 but only certain observations. In these circumstances, holding a subsequent inquiry does not appear to be unwarranted or improper. However, at the second inquiry (*vide* P-16), the 1st respondent has concluded that the parties be advised to sort this matter out before a competent Court. The main issue is the non-registration of the nomination.

Who is under a duty to register the nomination?

7. In this application, the 1st respondent Divisional Secretary had admitted in P-12 that the failure to register the nomination was due to an oversight and inaction on the part of the Divisional Secretariat. According to the provisions of the LDO, the nomination of a successor is required to be made and registered during the lifetime of the permit holder or owner.

Section 49 provides that; *“Upon the death of a permit-holder ... or of an owner of a holding, ... a person nominated as successor by such permit-holder or owner shall succeed to that land or holding.”*

Section 58 provides 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. (2) Regulations may be made prescribing the procedure for the registration of documents whereby nominations of successors are effected or cancelled and for all matters connected therewith or incidental thereto, including the registers which shall be kept and the fees which shall be charged for such registration.”*

8. Such nomination is required to be made on the prescribed form, by Section 56 of the LDO. The procedure as to submitting and the

registration is then provided for by Rule 148 of the Land Manual, which states as follows:

“148. පසු උරුමකරුවෙකු නම් කිරීමක්, අවලංගු කිරීමක් හෝ නැවත නම් කිරීමක් ප්‍රදාන පත්‍රකරු හෝ අවසරපත්‍ර කරු ජීවත් ව 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 අවසරපත්‍ර කරු ලඟ 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 අත්‍යාවශ්‍ය කරුණකි.”

9. According to the above, the nomination or cancellation is required to be effected during the lifetime of the owner or the permit holder. The registration referred to therein is the registration in the relevant Land Registry. The said Rule also provides that if the permit is yet to be registered, an entry should be made in the relevant land ledger and also in the original copy of the permit. It also provides that when taking action in respect to succession, the officers are required to act with due diligence and without delay. Accordingly, it appears that upon the perfection of the relevant application for nomination in the prescribed form, the same is then handed over to the relevant Divisional Secretary. It then appears that the Divisional Secretariat effects the necessary registration by sending it to the relevant Land Registry. The sum total is that the original owner has, in fact, tendered the nomination on the prescribed form on 09.10.2020, which is annexed as P-9. According to P-9, the 4th respondent and the petitioner have been nominated for succession in respect of 20 and 60 perches, which constitutes the total extent of 2 roods.
10. The obligation to determine the succession is a matter to be decided by the 1st respondent Divisional Secretary. The Divisional Secretary, notwithstanding having held two inquiries, had not determined the issue

of succession. However, on 09.10.2023 certain observations had been made as aforesaid. Then subsequently on 27.11.2023, the 1st respondent decides to inform the parties to have this matter sorted out by referring the same to a competent Court. The end result is that the Divisional Secretary has not made a decision as to succession by virtue of the provisions of the LDO. It is incumbent upon the Divisional Secretary to consider this matter and make a determination. In this instance, the 1st respondent Divisional Secretary has not exercised and has failed to perform his duty to so determine. Correspondingly, the petitioner has a right to have this matter determined by the Divisional Secretary. He had made a request to the Divisional Secretary. It is settled law that the refusal to decide will be amenable to a writ of *mandamus* and such officer may be directed to perform the same.

11. Two matters arise for the consideration of this Court, Firstly, the failure to register the nomination, and secondly, the determination of the succession and the successors. I will first consider the former.

Failure to register the nomination.

12. As narrated above, and clearly evident from documents P-8, P-9, and P-12, the nomination had been made. However, there had been no registration due to the lapse and negligence of the Divisional Secretary and the Secretariat. Padman Surasena, J. (P/CA), (as His Lordship then was) in ***Rathnayaka Mudiyansele Ranbanda vs. Mahaweli Authority of Sri Lanka and four others***, CA/WRT/267/2013 (C.A.M. 26.07.2018), held as follows:

“It is to be noted that the nomination had been made by the Petitioner's father before his death. It is just that the relevant officials had not taken steps to have it registered immediately. The responsibility to ensure the due registration of the nomination is with the public authority. Due to the lapses on the part of the public authority, the said nomination has been registered after demise of the Petitioner's father.”

*“It is relevant for this Court to note at this stage that the Supreme Court in the case of **Mallehe Vidaneralalage Don Dayaratne vs. Divisional Secretary of Thamankaduwa, Polonnaruwa and four others**, SC Appeal No. 30/2004 decided on 23.03.2005, has stressed the importance of giving effect to the wish of the deceased holder.”*

In the abovementioned case of **Dayaratne vs. Divisional Secretary of Thamankaduwa**, His Lordship S. N. Silva, C.J., held as follows:

*“In these circumstances, we are of the view that the 1st respondent has made the order P7 on a proper application of the relevant provisions and importantly, by giving effect to the wish of the deceased allottee. Our attention has also been drawn to a judgement of the Court of Appeal in **Piyasena vs. Wijesinghe and others** (2002) 2 SLR 242 where the Court of Appeal has taken the same view that on the basis that there is a lacuna in the law and that the intention of the allottee should be given effect to.”*

13. What is glaring and apparent is the fact that due to the lapse and negligence or extreme remissness on the part of a public officer, the nomination has not been registered prior to the demise of the owner of the grant (grandmother of the petitioner). This had come to light only when the petitioner participated at the inquiry held by the 1st respondent. The owner has done everything required to be fulfilled by her to effect the nomination, as required by the LDO. In these circumstances, the petitioner and the 4th respondent who are the nominees, cannot be prejudiced or denied the benefit and right they ought to have derived and are entitled to, by virtue of such nomination. The said nomination reflected in P-9 is the clear intention of the original owner. Provisions of Section 58 and 60 of the LDO are now relevant. Section 58 provides that a document whereby a nomination of a successor is effected shall not be valid unless it has been registered.

Correspondingly, Section 60 provides 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.”*

14. The cumulative effect of Sections 58 and 60 is that a document by which the nomination of a successor is made would be valid only if such nomination is made in the prescribed form and is duly registered before the death of the owner or the permit holder. In the present application, the owner died on 21.05.2022. The registration of the nomination had not been made before that date. On a plain reading, the effect and the import is that the document by which the nomination is made in this application will not be valid. I observe that these provisions are akin to the provisions of the Registration of Documents, which require the registration of certain documents pertaining to land. Primarily, this is provided to ensure others of the existence of a nomination, and may also be to afford some form of priority, if there be a subsequent nomination made and registered. Be that as it may, the owner has certainly made a nomination by P-9. The affidavit P-8 clearly states the object and intention for this nomination. Therefore, without doubt, it is apparent that the owner Kumarihami had clearly intended, for good reason, to nominate the petitioner and the 4th respondent as successors.

15. That being so, once the said nomination is tendered to the Divisional Secretary, there was a duty and an obligation upon such officer to forward it to the relevant Land Registry and cause it to be registered. As held by Justice Surasena, J., (P/CA) (as he then was) in ***Rathnayaka Mudiyanseelage Ranbanda vs. Mahaweli Authority of Sri Lanka and four others, CA/WRT/267/2013*** (supra), it is the responsibility of the relevant officer to ensure the due registration of the said nomination. This obligation to take steps without delay is incorporated in Rule 148 of the Land Manual as well. In these circumstances, I hold that once the

perfected papers for nomination are submitted, such owner or permit holder is entitled to expect the same to be duly submitted for registration and registered without delay. Correspondingly, the acceptance of the duly completed nomination papers by the Divisional Secretary amounts to a holding out that the same will be duly registered without delay. If there be a lapse on the part of the Divisional Secretary or any other, the owner's intent and the nominee's rights cannot be denied or prejudiced thereby. In the circumstances of this application, especially in view of the clear admission by the Divisional Secretary of his lapse and in the absence of any other subsequent competing nomination or registration of a subsequent nomination, I hold that upon the tendering of the papers for nomination, it ought to be deemed that the same had been so registered in due course. This will then be well before the date of death of the owner in this application.

16. In the above premises, I hold that the petitioner is entitled to the relief as prayed for by prayer (e) of the petition. Accordingly, a writ of *mandamus* is issued, directing the 1st respondent to take steps to register the nomination made by P-9, and the same to be registered with an endorsement that the said nomination is registered with effect from 01.11.2020. Upon so effecting the said registration, the 1st respondent is further directed to determine the succession giving due consideration to the nomination made by P-9 upon holding an inquiry. The application of the petitioner is accordingly allowed to that extent. However, I make no order as to costs.

17. Application is allowed.

JUDGE OF THE COURT OF APPEAL