

**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, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kanugala Mudiyanseelage Abeywardhana,  
“Seepoth”  
Yatiantota.

**PETITIONER**

**C.A. Case No. WRT/0171/20**

**Vs.**

1. Land Commissioner General,  
“Mihikatha Medura”,  
1200/6, Rajamalwatta Road,  
Battaramulla.
2. District Secretary (Land),  
District Secretariat,  
Kegalle.
3. Divisional Secretary,  
Divisional Secretariat,  
Yatiantota.
4. Kanugala Mudiyanseelage Harischandra,  
Colombo Road,  
Hamanda,  
Yatiantota.
5. Kanugala Mudiyanseelage Gunasiri,

Y. Sugathapala C/O,  
20/16, National Estate,  
Gokarella.

**RESPONDENTS**

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

**COUNSEL :** Thishya Weragoda, Prathap Welikumbura instructed by  
Niluka Dissanayake for the Petitioner.  
Yuresha Fernando, DSG for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
Srinath Perera, PC with Thanuja Amarasinghe for the 4<sup>th</sup>  
Respondent.

**ARGUED ON :** 27.03.2025

**WRITTEN SUBMISSIONS FILED ON :** 23. 05.2025 and 30.05.2025

**DECIDED ON :** 06.06.2025

**JUDGEMENT**

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

1. The petitioner *inter alia* is seeking a writ of certiorari to quash a grant made under the Land Development Ordinance and the entries in the Register made under the hand of the 1<sup>st</sup> respondent, marked A5(b) and A6 as to the registration of the nomination and succession of the 4<sup>th</sup> respondent.

**Facts.**

2. The petitioner, the 4<sup>th</sup> respondent, and the 5<sup>th</sup> respondent are three brothers of a family of five siblings. The petitioner is the eldest of the three. Their father, Jamis Signo, was married to Podimanike. The petitioner refers to his father as *Kanugala Mudiyanseelage Jamis Signo*.

The name Jamis Signo is repeated in that form throughout the petition. However, on the perusal of the Birth Certificate [marked A2(a)] the name appears to be *Kanugala Mudiyansele* **Emis** Signo (එමිස් සික්කේසේ). Similarly, on the Death Certificate (marked A3) the name appears in the same form. Therefore, it is apparent that the correct name of the father of the petitioner is *Kanugala Mudiyansele Emis Signo*.

3. Emis Signo died on 26.07.1970. There is no evidence of making any nomination of a successor prior to the demise of Emis Signo. However, on 05.02.1973, his wife Podimenike's name had been inserted as permit holder to the permit 3R1. On the same day i.e., 05.02.1973, a nomination of a successor has been made by endorsement on the permit 3R1, that of "*K. G. Abeywardhana (son 16 years)*." Thus, if at all, is Podimenike who had made this nomination by endorsement at the point of receiving the permit. This nomination is also entered in the land ledger 3R1A which confirms the fact of the said nomination and the date.
4. Then, under Section 19(4) of the Land Development Ordinance (LDO), Podimenike was the recipient of a grant dated 26.03.1986 bearing no. ka/PR 4341 in respect of the said land. Podimenike as the grantee appears to have nominated the 4<sup>th</sup> and the 5<sup>th</sup> respondents as successors which nominations have been registered in October 2004, *vide* A5(b). The 4<sup>th</sup> respondent had been named as the successor and the same is registered (*vide* A6). The petitioner, being aggrieved by the said nomination and the registration thereof, has preferred this application *inter alia* seeking to quash the said entries, A5(b) and A6.

#### **Podimenike's stakes vis-à-vis 3R1.**

5. The petitioner claims that his father initially received a permit under Section 19(2) and then was the recipient of a grant under Section 19(4) of the Ordinance. However, no copy or any reference to such a grant is found in any of the documents submitted by all parties in the course of

this application. It is common ground that the original permit issued is dated 13.09.1950, marked and produced by the 1<sup>st</sup> to 3<sup>rd</sup> respondents as **3R1**. According to paragraph 3(ii) of the objections of the 1<sup>st</sup> to 3<sup>rd</sup> respondents it is averred that *‘there no disposition made to Emis Signo in terms of the permit itself (3R1).’* However, the name of Emis Signo’s wife, ‘W. A. Podimanike’, had been interpolated on 05.02.1973, upon striking off ‘Bulugoda Gamaralalage Punchi Manika’ a third party on the permit 3R1. Therefore, on the face of this permit 3R1, it is apparent that this had been initially issued to a third party (Bulugoda Gamaralalage Punchi Manika) and at a subsequent point of time, the petitioner’s mother has been inserted and substituted as the permit holder. The 1<sup>st</sup> to 3<sup>rd</sup> respondents at paragraph 3(iii) of the objections aver that, *“The said permit appears HOWEVER to have been issued as a direct de novo permit once again to W. A. Podimenike (allegedly the spouse of the Jamis Signo referred to in the petition) on 05.02.1973 even though the basis of such issuance of such permit at the time is also not apparent in the records maintained in the Divisional Secretariat.”* Then at paragraph 5(ii) the respondents further aver that, *“In any event whilst the name of Emis Signo appears in the land ledger of the time (1954), the original permit in respect of the same land had been in the name of a third party (Bulugoda Gamaralalage Punchi Manika) seemingly unrelated to any of the parties to this application and issued as a de novo permit to W. A. Podimanike.”* Thus, Podimenike is not a successor qua spouse but a direct recipient of the permit 3R1.

6. Podimanike herself died on 19.07.2018. The petitioner claims to be lawfully entitled to succeed by nomination. The name of the nominee by endorsement appears as “K. G. Abeywardhana.” However, the petitioner’s name is “K. M. Abeywardhana”. The Learned DSG Yuresha Fernando, based on this discrepancy, submitted that the petitioner’s name does not appear as the nominee successor and also that as there is no evidence of the said nomination of the petitioner being registered as required by Section 58 of the LDO, there cannot be a valid

nomination enforceable by this Court. Section 58 of the LDO reads as follows:

*“58. (1) 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.”*

7. In **Palate Gedera Gunadasa vs. Palate Gedera Merywathy** [SC Appeal No. 82/2008 (SCM 26.10.2010)], Her Ladyship Dr. Shirani Bandaranayake, J (as she was then), held that according to Section 60 of the LDO (referred to above), *“...a nomination would become effective only if such nomination or cancellation is duly registered before the date of death of the holding or the permit holder.”* Accordingly, a nomination not registered prior to the death of the permit holder will not be effective. It is settled law that the successor under the LDO has to be considered in terms of Section 60 of the said Ordinance. As held in **Madurasinghe vs. Madurasinghe** (1988) 2 SLR 142, the succession of the property alienated on a permit under the LDO has to be necessarily considered and decided on the basis of Section 60 of the Ordinance, which reads as follows:

*“60. 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.”*

8. The learned DSG relying on Section 60 of the Ordinance, submitted that a nomination or the cancellation thereof of a successor is not valid, unless such nomination or the cancellation is duly registered before the death of the owner of the holding or the permit holder. The operative argument is that the petitioner has failed to place before this Court any evidence of the registration of his nomination. As such, the apparent nomination, referred to in documents 3R1, the permit, 3R1A, the land ledger, and A1(a), the letter dated 21.12.2016 is not valid. As opposed to that, the nominations of the 4<sup>th</sup> and the 5<sup>th</sup> respondents are registered, and is therefore valid.
  
9. The respondents, having taken up the firm position that the permit issued to Podimanike is a *de novo* permit, in the sense that Podimanike did not succeed as the life interest holder *qua* spouse, is now taking up a different position at the point of argument. According to the written submission, it is submitted that Podimanike could not have made a valid nomination in view of the provisions of Section 48A as she was the spouse who succeeded. Podimenike's name is inserted to the permit (3R1) almost 3 years after the death of Emis Signo. Emis Signo's name does not appear on the permit 3R1. The nomination of the petitioner by endorsement is on 05.02.1973. This was well after the death of Emis Signo. Thus, it is Podimanike who has made this nomination as a *de novo* permit holder. Section 48A would thus have no application to the nomination made by Podimanike. Accordingly, the nomination of the petitioner by endorsement remains valid.

**Discrepancy as to the name.**

10. On the permit, as well as the ledger, the name of the nominee is K. G. Abeywardhana. The petitioner is K. M. Abeywardhana. The second initial 'G' clearly appears to be erroneous and different. However, the nomination clearly refers to the nominee as being the son who was around 16 years. On a perusal of the birth certificate of the petitioner A2 (a) it is evident that the petitioner's date of birth is in 1955, and the

name is Abeywardhana. In 1973, he was around that age, and is the only son of Podimanike named Abeywardhana. In these circumstances, it is obvious and apparent that the nomination is of the petitioner, notwithstanding an error in one of the initials.

**The modes of nominating a successor under the LDO.**

11. It is opportune at this juncture to consider the statutory provision and the mode of nominating a successor in relation to permits and grants under the Ordinance. As I observe, there are three modes by which the nomination of a successor may be made by a permit holder or an owner of the holding. They are: (1) nomination using the prescribed form (Section 56); (2) nomination by a last will (Section 63); and then (3) a recipient of a permit has a further option of making a nomination by endorsement (Section 87).
12. Firstly, a permit holder or an owner of the holding may make a nomination on the prescribed form which document requires it to be then registered. As for nominations made by a last will, the immediate registration is not necessary, however, within three months of the death of the permit holder or the owner of the holding upon applying for probate, the same should be registered (*vide* Sections 64 and 65 of the LDO). However, as for nomination by endorsement, I see no requirement of registration of such nomination separately. The nomination of successor by endorsement is provided for by Section 87 of the Ordinance, which reads thus:

*“87. A person to whom a Government Agent has agreed to alienate land may nominate as his successor any person who is entitled under this Ordinance to be so nominated, and the name of such successor may be endorsed on the permit before it is issued to the first-mentioned person, and the Government Agent may upon being requested so to do by the permit-holder cancel the name of such successor by an*

*endorsement on the permit and endorse on the permit the name of any other person suggested by the permit-holder as his successor.”*

13. According to the above, when the Government Agent (Divisional Secretary) has agreed to alienate the land under this Ordinance, the person entitled to such permit may nominate and name his successor and the same may be endorsed on the permit before it is issued. Therefore, the Ordinance makes specific provision that enables an endorsement to be made at the point of issuing such permit. Document 3R1, the permit, which is the initial document produced in respect of the land in question, at page 2 contains an endorsement as to the nomination of the successor. It is “*K. G. Abeywardhana (son – 16 years).*” Therefore, in the present application, the petitioner appears as the nominee successor endorsed on the permit. Podimanike’s name has been interpolated as the permit holder of 05.02.1973. This date appears soon after the said interpolation. Similarly, the endorsement as to the nomination of the successor appears also to have been made on the same day, as evident from the date below the said endorsement on 3R1. Therefore, the petitioner is the nominee by virtue of the endorsement made on the permit under Section 87 of the Ordinance. The immediate issue for determination is whether such a nomination requires to be separately registered as required by Section 60.

14. As observed earlier, the respondents concede that the said permit was issued to W. A. Podimenike on 05.02.1973, and this bears the name “*K. G. Abeywardhana*” as the nominee successor (vide paragraph 3 (iv)). Respondents refer to this permit as a *de novo* permit issued to W. A. Podimenike. Similarly, it is admitted that the grant bearing No. ka/PR/4341 is in respect of the said land, had also been given to W. A. Podimanike, on 27.03.1986. The respondents also accept and tender the relevant ledger extract marked 3R2B.



15. The said documentation and the averments, establish that the petitioner was in fact nominated as the successor by endorsement at the point of issuing the permit 3R1 to W. A. Podimanike. It is Podimenike who has nominated *K. G. Abeywardhana* as successor.

16. Then with the lapse of time, a grant has been made under Section 19(4) of the Ordinance on 27.03.1986. In these circumstances, to my mind, the separate registration of the nomination made by endorsement is not required. The nomination made by endorsement on the original permit would be valid and operative, notwithstanding the absence of any separate registration. What Sections 58 and 60 require is the registration of the “document” on which a nomination is made. It is not the registration of the nomination. Hence, when a nomination is made by endorsement on a permit when initially issued there is no separate document making a nomination to be registered. It is the permit itself that would contain the nomination and would be so registered. Therefore, with the registration of the permit, the said nomination will *ipso facto* be registered. The Government Agent (Divisional Secretary) is required to cause the permit to be registered, *vide* Section 19 (3). This is the rationale and reason for not requiring a separate registration of a nomination made by endorsement.

17. This is confirmed by the provision of Section 56 of the LDO, which reads as follows:

*56. (1) The nomination of a successor and the cancellation of any such nomination shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a divisional Assistant Government Agent, or a notary, or a Justice of the Peace.*

*(2) The provisions of subsection (1) shall not apply to any nomination or cancellation of a successor made by last will in the*

*manner hereinafter provided, or to the nomination and cancellation of a successor to a land alienated on a permit made in the manner provided in section 87.*

*(3) A document by which the nomination of a successor or the cancellation of any such nomination is effected under subsection (1) shall not be deemed to be an instrument affecting land for the purposes of the Registration of Documents Ordinance, nor shall the provisions of Chapter II of that Ordinance apply to any person before whom any such document is executed.*

Subsection (2) puts it beyond doubt by stating that the provisions of subsection (1) is not applicable to the nomination or cancellation of a successor to a land alienated on a permit made in the manner provided in Section 87.

18. In view of the objections raised by the learned DSG, it is necessary to consider if the petitioner has been duly nominated as a lawful successor, and if the said nomination remains valid upon the grant being issued.
19. The nomination of the petitioner is by endorsement on the initial permit issued to Podimanike. Several years thereafter, a grant has been issued under Section 19(4) of the LDO. Upon the said grant, the nomination of the 4<sup>th</sup> and 5<sup>th</sup> respondents have been made. All these three nominations appear and are reflected on the land ledger. However, upon the demise of Podimanike, it appears that the nomination initially made on the permit had not been considered in determining the successor.
20. The immediate legal issue is the validity of the nomination made on the permit and the subsequent issue if a grant. Does the subsequent issue of a grant extinguish and determine the initial nomination made under the permit? This specific question was considered in **M.W.D. Dayaratne vs. M.W.D. Agosinno**, SC Appeal No. 30/2004 and **Piyasena vs. Wijesinghe** (2002) 2 SLR 242.

21. In the case of **M.W.D. Dayaratne vs. M.W.D. Agosinno**, His Lordship S. N. Silva, C.J., held as follows:

*“In these circumstances, we are of the view that the 1<sup>st</sup> 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. It is clear from the provisions of the law that the change in the nature of the holding from that of a permit to a grant is one process and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made.”*

22. Then, in **Piyasena vs. Wijesinghe**, Justice J. A. N. De Silva (P/CA) (as he was then). His Lordship held that,

*“It is to be noted that the issuance of a grant changes status of a permit holder to that of an "owner" who derives title to the land in question (see section 2 of the Ordinance). By the amending Act No. 27 of 1987 this interpretation of "owner" was extended to also cover "a permit holder who has paid all sums which he is required to pay . . . and has complied with all the other conditions specified in the permit". The satisfaction of "paying all sums and complying with all conditions" entitles the permit holder to a grant which "shall" be issued in respect of the said land in terms of section 19 (4) of the same Act... and I hold that the nomination of a successor under the permit becomes converted to nomination made by her as the owner of the land. In my view this interpretation is in keeping with the spirit and intention of the amending Act. A broader definition attributed to 80 the term "owner" and the legal entitlement of a permit holder to*

*be regarded as such are salutary features of the amendment.”*

23. In the above cases of **Piyasena vs. Wijesinghe** and **M.W.D. Dayaratne vs. M.W.D. Agosinno**, it has been unequivocally held that the change in the nature of the holding from that of a permit to a grant is one process and should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made.

24. In **M.W.D. Dayaratne vs. M.W.D. Agosinno** (supra), S.N. Silva C.J. clearly opined that the entitlement to a grant accrues to a permit holder who duly satisfies all conditions of the permit and making payment of all sums due. Such permit holder will then be issued with a grant in terms of Section 19(4). In such circumstances, the nomination of a successor made under the permit becomes converted to a nomination under the grant. As I see, this principle stands to reason and is in consonance with the definition of the word “owner” as considered by Justice J. A. N. De Silva in **Piyasena vs. Wijesinghe**. Issuing of a grant under Section 19(4) is necessarily preceded by the due satisfaction of the conditions of a permit. Thus, it is only such a permit holder who will be entitled to a grant under Section 19(4). Therefore, a nomination made during the pendency of the permit, unless cancelled or revoked, would remain valid and effectual notwithstanding the subsequent issuance of a grant. This is the principle determined in **Piyasena vs. Wijesinghe** and **M.W.D. Dayaratne vs. M.W.D. Agosinno** (supra).

### **Conclusion.**

25. In the above circumstances, I hold that the nomination by endorsement of the petitioner, reflected in the permit and the land ledger was valid and effectual at the point of the demise of Podimanike. The petitioner has made several attempts to have his nomination asserted which had not been considered by the respondents. The Divisional Secretary has then named the 4<sup>th</sup> respondent K. M. Harischandra as the successor,

which is now registered as A6. It was incumbent upon the Divisional Secretary to have considered the three nominations and to have determined the relevant successor.

26. Accordingly, the entry appearing in the land register marked A6 is hereby quashed by way of certiorari and the 1<sup>st</sup>, 2<sup>nd</sup>, and/or 3<sup>rd</sup> respondents are directed to duly consider the three nominations and to determine the lawful successor according to law. Writ of certiorari to that extent, as prayed for by paragraph *(d)* is granted.

Application is allowed to that extent. However, I make no order as to costs.

**JUDGE OF THE COURT OF APPEAL**