

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

In the matter of an Application for  
mandates in the nature of Writs of  
Certiorari and Mandamus in terms of Article  
140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka

**CA (Writ) Application No: 124/2017**

Chandani Tissera Sandanayake Seneviratne,  
183, Ethimalewewa, Moneragala.

**PETITIONER**

Vs.

1. Ratnayake Mudiyanseelage Chandrasena,  
183/1, Ethimalewewa, Moneragala.
2. Jayasundera Mudiyanseelage Kumarihamy,  
183, Ethimalewewa, Moneragala.
3. Divisional Secretary,  
Divisional Secretariat,  
Siyambalanduwa.
4. Deputy Land Commissioner,  
Land Commissioners Department,  
Divisional Secretariat, Moneragala.
5. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** Yasantha Kodagoda, P.C., J / President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Vijaya Niranjan Perera, P.C. for the Petitioner

Shihan Ananda Hewa Dewage for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents

Suranga Wimalasena, Senior State Counsel for the 3<sup>rd</sup>  
– 5<sup>th</sup> Respondents

**Written Submissions:** Tendered on behalf of the Petitioner on 25<sup>th</sup>  
September 2019

Tendered on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on  
9<sup>th</sup> October 2019

Tendered on behalf of the 3<sup>rd</sup> – 5<sup>th</sup> Respondents on  
20<sup>th</sup> September 2019

**Decided on:** 13<sup>th</sup> January 2020

**Arjuna Obeyesekere, J**

When this application was taken up for argument on 26<sup>th</sup> July 2019, the learned Counsel appearing for all parties moved that this Court pronounce its judgment upon a consideration of the material placed before Court and the written submissions that would be tendered on behalf of the parties.

By an amended petition dated 31<sup>st</sup> July 2017, the Petitioner has sought the following relief:

- a) A Writ of Certiorari to quash two grants issued to the 2<sup>nd</sup> Respondent under the provisions of the Land Development Ordinance;<sup>1</sup>
- b) A Writ of Mandamus to compel the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to issue a certificate of life interest in the name of the Petitioner.

This application gives rise to issues arising from the alienation of State land under the provisions of the Land Development Ordinance (the Ordinance). Hence, it would be appropriate to consider at the outset the relevant provisions of the said Ordinance. Section 19(1) provides that alienation of State land to any person under the provisions of the Ordinance shall be effected in the manner provided in the said Ordinance.<sup>2</sup> Section 19(2) of the Ordinance specifies that *"every such person shall in the first instance receive a **permit** authorising him to occupy the land."*

Section 19(4) of the Ordinance proceeds to state as follows:

*"A **permit holder** shall be issued a **grant** in respect of the land of which he is in occupation:*

- (a) *where he has paid all sums which he is required to pay under sub-section (2);*

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<sup>1</sup> Copies of the said grants have been annexed to the petition marked 'P3' and 'P3A'.

<sup>2</sup> The procedure to be followed in selecting persons to whom State land shall be alienated is set out in Sections 20 – 24 of the Ordinance.

- b) *where he has complied with all the other conditions specified in the Schedule to the permit; and*
- c) *where he has been in occupation of, and fully developed, to the satisfaction of the Government Agent*
  - (i) *irrigated land, for a period of three years, or*
  - (ii) *high land, for a period of one year: ..."*

A plain reading of Sections 19(2) and 19(4) would demonstrate that the following conditions must be satisfied prior to a **grant** being issued in respect of a State land under the Ordinance:

- 1) A permit must be issued in the first instance in respect of the said land;
- 2) The permit holder must be in occupation of the said land;
- 3) The permit holder must develop the said land, to the satisfaction of the Divisional Secretary;
- 4) The permit holder must comply with all the other conditions specified in the permit.

It is therefore evident that in terms of Section 19(4), a grant is issued to a person to whom a permit has already been issued in respect of the land for



which the grant is given. It is thus clear that the issuing of a grant is a continuation of the permit issued in the first instance, and hence in terms of the Ordinance a grant cannot be issued in the first instance.

The facts of this matter very briefly are as follows.

The State had issued a permit under the provisions of the Ordinance to R.M.Punchibanda in respect of a paddy land in extent of 2A 3R 12P, and a high land in extent of 2A 0R 19P. The said permit had been cancelled in 1967 in terms of Section 110 of the Ordinance. According to the land ledger relating to the above lands maintained at the Moneragala Land Registry, an extract of which has been annexed to the petition marked 'P1', a decision had been taken in 1968 to give the said land to R.M. Piyadasa Bandara, who is (a) the husband of the 2<sup>nd</sup> Respondent, (b) the father of the 1<sup>st</sup> Respondent, and (c) the father-in-law of the Petitioner.

It is the position of the 3<sup>rd</sup> Respondent, the Divisional Secretary of Siyambalanduwa that even though a decision had been taken to provide the above land to Piyadasa Bandara, and such fact is recorded in the ledger 'P1', a permit in terms of Section 19(2) of the Ordinance was never issued to him. The Petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents too concur with the said position.<sup>3</sup> Piyadasa Bandara passed away on 1<sup>st</sup> September 1987, survived by his spouse, and at least two children, namely the 1<sup>st</sup> Respondent and another son, Sumanasiri Ratnayake, the husband of the Petitioner.

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<sup>3</sup> Vide page 3 of the Written Submissions filed on behalf of the Petitioner.

Chapter VII of the Ordinance contain provisions relating to succession to land alienated by way of a permit or a grant issued in terms of the Ordinance. In terms of Section 48A(1), the spouse of a permit holder may succeed to the land alienated to the permit holder upon the death of the permit holder. Section 48B(1) contains similar provisions relating to grants. Section 49 contains provisions relating to succession by a person who has been nominated as a successor by the permit holder or the grantee, in terms of Section 56 of the Ordinance. What is important to note however is that all these provisions apply to situations where a permit or a grant has in fact been issued, whereas in the present application, at the time of his death, a permit in respect of the State land in question had not been issued to Piyadasa Bandara.

Be that as it may, the State has proceeded on the basis that Piyadasa Bandara was eligible to be issued a permit at the time of his death. There is no dispute among the parties on this fact. The 3<sup>rd</sup> Respondent states that soon after the death of Piyadasa Bandara, the State had recognised the entitlement of the 2<sup>nd</sup> Respondent to succeed to the said land as a 'life interest holder'. This is reflected in the ledger marked 'P1'. Thus, it is clear to this Court that the State had continued to recognise the fact that Piyadasa Bandara was eligible to receive a permit, and that the 2<sup>nd</sup> Respondent was entitled to succeed to the said land by virtue of being the spouse of Piyadasa Bandara, and not on her own right. The 2<sup>nd</sup> Respondent had thereafter nominated Sumanasiri Ratnayake as her successor, which fact too has been recorded in the ledger 'P1' on 5<sup>th</sup> January 1988, and is confirmed by a letter of the same date issued by the Assistant Land Commissioner, Moneragala, annexed to the petition marked 'P2'. The Petitioner too admits in her letter dated 9<sup>th</sup> February 2012

annexed to the petition marked 'P4' that her husband had been nominated by the 2<sup>nd</sup> Respondent as the successor. It is not in dispute that the said nomination is contrary to the provisions of Section 48A(2)(b) of the Ordinance, as a life interest holder cannot nominate a successor.

The 3<sup>rd</sup> Respondent states that on 4<sup>th</sup> December 1990, the State had issued a permit to the 2<sup>nd</sup> Respondent, and that the 2<sup>nd</sup> Respondent had nominated Sumanasiri Ratnayake and the 1<sup>st</sup> Respondent as her successors, which fact too is registered in the ledger 'P1'. The 3<sup>rd</sup> Respondent states however that the 2<sup>nd</sup> Respondent was not entitled to be issued a permit, and hence was not entitled to nominate a successor. This Court must observe that irrespective of the entitlement of the 2<sup>nd</sup> Respondent to a permit by virtue of being the spouse of Piyadasa Bandara, she could not have nominated a successor, in view of the provisions of Section 48A(2)(b).

The State had subsequently issued the 2<sup>nd</sup> Respondent two grants in terms of Section 19(4) read together with Section 19(6) of the Ordinance. The grant in respect of the high land had been issued on 31<sup>st</sup> July 1995 while the grant in respect of the paddy land had been issued on 8<sup>th</sup> February 1999.<sup>4</sup> This Court must observe that Section 48A(2) of the Ordinance provides for a grant to be issued to the spouse of the deceased permit holder, subject to the conditions stipulated therein, and subject of course to the overarching requirement that a permit had been issued in the first instance to the deceased spouse (i.e. Piyadasa Bandara). As observed earlier, in this application, the State had not issued a permit in the name of Piyadasa Bandara.

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<sup>4</sup> Vide extracts from the 'Register of Grants issued under the Land Development Ordinance', annexed to the petition marked 'P3'.



The Petitioner states that she and her husband, Sumanasiri Ratnayake were residing on the said high land and had cultivated the said paddy land since 1987, until the death of her husband on 15<sup>th</sup> February 2009. The Petitioner states that after his death, she had been prevented from residing on the said land as well as cultivating the said land. Dissatisfied with the said actions, the Petitioner had filed action in the District Court of Moneragala. The Petitioner states that it was at this point of time that she got to know about the issuance of the said grants to the 2<sup>nd</sup> Respondent. It is the position of the learned President's Counsel for the Petitioner that the issuance of the said grants is irregular.

The above facts can be summarised as follows:

- a) Even though the ledger 'P1' records the fact that Piyadasa Bandara was to be given a permit, a formal permit had not been issued to him. Upon his death, his spouse, the 2<sup>nd</sup> Respondent has been recognised as a life interest holder, and there is no dispute between the parties with regard to the recognition of the 2<sup>nd</sup> Respondent as a life interest holder.
- b) Even though the 2<sup>nd</sup> Respondent has been recognized as the life interest holder of Piyadasa Bandara, she did not have the legal entitlement to nominate a successor. Thus, the initial nomination by the 2<sup>nd</sup> Respondent of Sumanasiri Ratnayake, which is relied upon by the Petitioner and which forms the basis of her prayer for the Writ of Mandamus, and the



subsequent nomination by the 2<sup>nd</sup> Respondent of the 1<sup>st</sup> Respondent and Sumanasiri Ratnayake, are of no force in law.

In these circumstances, the factual situation that prevails as at this point of time is the same factual situation that prevailed at the time Piyadasa Bandara passed away. That is, upon the death of Piyadasa Bandara, the 2<sup>nd</sup> Respondent could only have succeeded as a life interest holder, and even if the grants were issued in her favour, she could not have nominated a successor. As the 2<sup>nd</sup> Respondent has succeeded to the land, the successor of Piyadasa Bandara could only be determined upon the death of the 2<sup>nd</sup> Respondent, as clearly laid down in Sections 48, 72 and 73 of the Ordinance. It is therefore the view of this Court that upon the death of the 2<sup>nd</sup> Respondent, the State would have to follow the provisions of Section 72 of the Ordinance and decide the heir of Piyadasa Bandara who is entitled to succeed to the said lands. The issuing of the grants have not changed the provisions relating to succession, and therefore the quashing of the grants issued to the 2<sup>nd</sup> Respondent will not serve any useful purpose.

As observed earlier, the Petitioner is seeking a Writ of Mandamus *“to compel the 3<sup>rd</sup> and 4<sup>th</sup> Respondents to issue a certificate of life interest in the relevant paddy field / high land in the name of the Petitioner **on the basis that her deceased husband was the lawful successor of the original permit holder as decided by the State.**”*<sup>5</sup> It is an admitted fact that Piyadasa Bandara had not nominated a successor and that it was the 2<sup>nd</sup> Respondent who had nominated a successor, which the 2<sup>nd</sup> Respondent could not have done, as she was only a

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<sup>5</sup> Vide paragraph 14(ii) of the petition.

life interest holder. In these circumstances, the basis of the Petitioner's application for a Writ of Mandamus is misconceived in law.

In the above circumstances, this Court is of the view that the Petitioner is not entitled to the relief prayed for. This application is accordingly dismissed, without costs.



**Judge of the Court of Appeal**

**Yasantha Kodagoda, P.C., J/ President of the Court of Appeal**

I agree.



**President of the Court of Appeal**