

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 Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

Dinamithra Gedara Karunathilake
No. 48/1, Pallewatta,
Hasalaka.

Petitioner

CA WRIT : 360/2020

Vs.

1. Mr. S. M. C. Gunaratne
Divisional Secretary of Minipe,
Minipe Divisional Secretariat,
Hasalaka.
2. Mrs. R. M. C. M. Herath
The Commissioner General of Lands,
The Department of the Commissioner General of
Lands, No. 1200/6,
Rajamalwaththa Road,
Baththaramulla.
3. Mr. E. R. Thilakaratne
Land Commissioner,
Inter Provincial Office,
Mahiyanganaya.
4. Deputy Land Commissioner

Deputy Land Commissioner's Office,
Rest House Road,
Mahiyanganaya.

5. The Registrar of Lands
The Land Registry of Kandy,
Yatinuwara Weediya,
Kandy.
6. Dinamithra Gedara Premathilaka
No. 48/1, Pallewatta,
Hasalaka.
7. Dinamithrage Sarath Wijeweera
No. 48/1, Pallewatta,
Hasalaka.
8. Ishara Thisaruk Wijesinghe
9. Shashikala Pawithrani Wijesinghe
10. Mindika Malini Wijesinghe

All are at
No. 48/1, Pallewatta,
Hasalaka.

Respondents

Before : Dhammika Ganepola, J.
Damith Thotawatta, J.

Counsel : Rasika Dissanayake with Shabbeer Huzair
instructed by Danuka Lakmal for the

Petitioner.

Nishadi Wickramasinghe for the 6th

Respondent.

Shamanthi Dunuwila, S.C. for the 1st – 5th

Respondents.

Argued on : 09.07.2024, 10.03.2025

Written Submissions : Petitioner : 28.04.2025
tendered on 6th Respondent : 02.05.2025

Decided on : 30.06.2025

Dhammika Ganepola, J.

Position of the Petitioner

The Petitioner's father, Dinamithra Gedera Bodisena, had been issued with a Grant under the Land Development Ordinance bearing No මධ්‍යම/මිනිප්/ජන/790 marked P1 in respect of the land in subject under the instant application which is of A:1 R1:P28 in extent and is situated within Minipe Divisional Secretariat of Kandy. The Petitioner states that said Bodisena, in November 2001, nominated his wife Dinamithra Gedera Bebinona as his successor to the land. The original grantee, Bodisena, departed his life, and accordingly, his wife Bebinona succeeded as the owner of the land. Thereafter, said Bebinona, on or about 28.01.2009, had nominated her three sons, namely the Petitioner, 6th Respondent, 7th Respondent and Don Chandani Nelum Jayathilaka, the wife of the deceased Dinamithrage Wijesinghe, as her successors. Said Bebinona had passed away on 28.02.2009(P6),

leaving the said nominees. Subsequently, the Petitioner, as well as the 6th to 10th Respondents, had taken steps to develop the shares of the land allocated to them by aforesaid late Bebinona.

The Petitioner states that he, with the 7th Respondent and Nelum Jayathilaka, were making representations to the 1st to 4th Respondents to have registered them as the owners of the respective shares of the land in dispute. Meanwhile, said Nelum Jayathilaka had passed away intestate, leaving her children 8th to 10th Respondents. Upon a request made by the 1st to 4th Respondents, as well as the 6th Respondent, the Petitioner had given his consent for the issuance of a Grant in favour of the 6th Respondent by an affidavit subject to the specific undertaking that the 6th Respondent will divide the said land according to the wish of their late mother Bebinona.

Although the 1st to 4th Respondents had taken the steps to register the name of the 6th Respondent as the grantee, the 6th Respondent has failed to facilitate the transfer of the respective shares of the land as per the aforesaid undertaking. Therefore, the Petitioner and the 4th Respondent had made representations to the 1st to 4th Respondents in view of giving effect to the said undertaking. Accordingly, the 2nd Respondent had called for an inquiry wherein it had been revealed that the nomination effected by Bebinona had not been registered prior to her death due to the fault of the officers of the Land Commissioner General's Department. It had been registered after the demise of said Bebinona on 03.04.2009 (P13). Subsequently, the 2nd Respondent had informed the Petitioner by a letter dated January 26, 2020 (P14), that the 4th Respondent is unable to rectify the error made by the officers of the Land Commissioner General's Department, as the Land Commissioner General does not have the authority to do so in law. The Petitioner urged that the above acts and the failures of the 1st to 4th Respondents as above mentioned are illegal and unlawful.

Accordingly the Petitioner seeks *inter alia* in the nature of Writs of Certiorari to quash the decision of the 3rd Respondent not to give effect to the nomination as reflected in the letter marked P14, quash the registration of the name of the 6th Respondent as the grantee of the land in dispute as reflected in the P13 and Writs

of Mandamus compelling 1st to 4th Respondents to register the Petitioner and the 7th to 10th Respondents as the grantees of the respective shares as per the nomination effected by said Bebinona and to rectify the errors made by the relevant officers as a result of delaying the registration of the nomination made by said Bebinona.

Position of the Respondents

The 1st to 5th Respondents in their Statement of Objections have admitted that, after the demise of the original grantee Bodisena, his spouse, the nominee, Bebinona, succeeded to the land in dispute. Further, the above Respondents conceded the nomination of successors effected by Bebinona (P5) and further admitted that due to an inadvertence, it had not been registered prior to the death of said Bebinona, giving due effect in law as per section 58 of the Ordinance. The 1st to 5th Respondents admit that in spite of such circumstances, the Petitioner and the 6th Respondent had reached a settlement to divide the land in dispute among each other as they deem fit as reflected in the affidavit marked P12.

However, the 6th Respondent has taken up the stance that said Bodisena had not effected any nomination during his lifetime. Hence, it is claimed that said Bebinona succeeded to the land in dispute only as the spouse of the Bodisena in terms of section 48B of the Land Development Ordinance, but not as his nominee. In the absence of a valid nomination made by said Bodisena, it is claimed that the 6th Respondent, being his eldest son, succeeded to the land in dispute in terms of the provisions of the Land Development Ordinance. Further, the 6th Respondent states that the document marked P5 (nomination of the Bebinona) is contrary to Section 48 B(1)(c) of the Ordinance and that the same is invalid before law. However, the 6th Respondent concedes the fact that the Petitioner, 7th Respondent, late Nelum Jayathilake and her husband and the 6th Respondent have been in possession of various parts of the land in dispute for a very long time and have developed such portions of land over the period.

Impugned Nomination Effected by the Bodisena

It is on common ground that the original grantee was the above-mentioned Bodisena. The stance of the Petitioner is that said Bodisena nominated his wife Bebinona as his successor to the land in issue. However, the 6th Respondent challenges said position of the Petitioner. The 6th Respondent contends that Bodisena had not made any nomination during his lifetime, and Bebinona succeeded to the land as the spouse of Bodisena in terms of Section 48B of the Ordinance. Hence, it is claimed that said Bebinona had no power to nominate a successor to the land. Section 48B is as follows:

48B(1) Upon the death of the owner of a holding, the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions:-

- (a) Upon the marriage of such spouse, title to the holding shall devolve on the nominated successor of the deceased owner or, if there was no such nomination, on the person who was entitled to succeed under rule 1 of the Third Schedule;*
- (b) Such spouse shall have no power to dispose of that holding;*
- (c) Such spouse shall have no power to nominate a successor to that holding:*

Provided that the aforesaid conditions shall not apply to a spouse who has been nominated by the deceased owner of the holding to succeed to that holding.

(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.”

As per Section 58 of the Ordinance, no nomination of a successor is effected unless and until it has been registered in the relevant land Registry.

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.

The Petitioner has failed to submit any document which shall prove the position of the Petitioner that said Bodisena had effected any nomination as set out in the above statutory provisions. The 6th Respondent has submitted a copy of the relevant extracts from the Register of Permits/Grants under the Land Development Ordinance issued by the Kandy Land Registry marked as 6R2, and the same does not reflect any such registration of nomination.

The Petitioner claims that Bebinona succeeded as the owner of the land after the demise of the Bodisena, as evident by document marked P3. Although, Bebinona had been given ownership of the land by document P3, it appears from the document marked P2, which is the relevant land registry extract, that no nomination effected by said Bodisena had been registered. Thus, in terms of Section 58 of the Land Development Ordinance any such nomination as claimed by the Petitioner cannot be recognized in law.

Hence, this Court is inclined to accept the position of the 6th Respondent that said Bodisena has not effected a nomination naming said Bebinona as his successor.

Impugned Nomination made by the Bebinona

The Petitioner mainly relies on the nomination made by the Bebinona (P5), the original grantee, Bodisena's spouse. First, it is observed that the Petitioner has failed to satisfy the Court as to the existence of a valid registration of the alleged nomination of Bebinona as the successor as effected by said Bodisena. Hence, it is viewed that the said Bebinona was only entitled to hold life interest over the impugned land. As such, it is apparent that said Bebinona was not entitled to effect any nomination in terms of Section 48B(1)(c) of the Ordinance. A spouse of a grantee could effect a nomination in terms of the Land Development Ordinance only in the event where such spouse is nominated as a successor by the original grantee.

In spite of such, the Petitioner claims that the nomination made by Bebinona (P5) had not been registered before her death due to an inadvertence of the 1st to 5th

Respondents. The 1st to 5th Respondents have admitted that it had occurred due to their inadvertence(P14). Conversely, even if it had been registered before the death of Bebinona, such a nomination(P5) would not have any effect as said Bebinona had no power to nominate a successor in terms of Section 48B(1)c of the Ordinance. Section 48B(2) specifies that any nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid. As such, this Court holds that said Bebinona had no legal right to effect any nomination in respect of the impugned land and as such no necessity arises for the relevant authorities to register such nomination.

Applicable Legal Provisions in the event where no Nomination has been Effected by the Grantee Before his/her Demise

Section 72 of the Ordinance stipulates that if no successor has been nominated, 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, or owner upon the death of such spouse, devolves as prescribed in rule 1 of the Third Schedule. Aforesaid Section 72 is 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.’

The 6th Respondent claims that he, being the eldest son of Bodisena and Bebinona, and in the absence of a valid nomination, rightfully succeeds to the land in dispute in terms of Section 72 of the Ordinance. As evident from the document marked 6R1 dated 23.10.2013, the Divisional Secretary has granted ownership of the land to the 6th Respondent in accordance with Sections 49 and 72 of the Ordinance. I

am in agreement with the position advanced by the 6th Respondent. Since, said Bebinona had no legal right to effect any nomination in terms of Section 72 of the Ordinance, the 6th Respondent should lawfully succeed to the land in question. Thus, I see no reason as to why the registration of the name of the 6th Respondent as the grantee of the land in dispute, as reflected in the P13 should be quashed.

Since, this Court is of the view that said Bebinona had no legal right to effect any nomination, this Court shall not grant any of the reliefs that have been sought by the Petitioner. Accordingly, the Petition of the Petitioner is dismissed. However, I wish to make the following observation.

The Petitioner states that the 1st to 4th Respondents, along with the 6th Respondent, requested the Petitioner to consent to the issuance of a grant in favour of the 6th Respondent. In response, the Petitioner has given his consent to such issuance through an affidavit (P12), on the condition that the 6th Respondent would facilitate the subdivision of the land in dispute according to the wishes of their mother Bebinona. The affidavit marked P12, dated 03.08.2013, is evidence of the same. Although the 6th Respondent denied the contents of the affidavit marked P12, the 1st to 5th Respondents, including the Divisional Secretary, admitted the existence of the document P12 and the matters relating to the settlement reflected therein. Further, the letter marked P14, issued by the 3rd Respondent, also reflects the agreement reached among the parties and the consent given by affidavits issued by them.

Taking into consideration the above, the conclusion that could be arrived at is that the ownership granted by 6R2 was contingent upon the agreement reached among the relevant parties. The 6th Respondent admits that the 6th Respondent, the Petitioner and the other relevant Respondents are in possession of various parts of the land in dispute for a very long time and have developed such portions. Further, the 6th Respondent had made an attempt to transfer the portions of land in dispute to the relevant parties, including the Petitioner, who are in possession of various parts of the land, by making a request through the letter marked 6R7 to the Commissioner General of Lands. However, it is observed that the relevant officers of the Land Commissioner General's Department have failed to give effect to said

request. Hence, it is my considered view that this judgement should not stand in the way of the 1st to 5th Respondent in giving effect to the said request of the 6th Respondent to divide the land in dispute among the Petitioner and the relevant Respondents (so that each person shall be entitled for a land not less than the unit of sub-division as specified in the Grant) in compliance with the applicable legal provisions.

Accordingly, the application is dismissed without cost.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal