

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

Attanayake Mudiyanseelage
Punchibanda,
No.1B/4A,
Namal Oya,
Ampara.
Petitioner

CASE NO: CA/WRIT/131/2014

Vs.

1. M. M. S. K. Bandara Mapa,
Divisional Secretary,
Divisional Secretariat,
Ampara.
- 1A. N. M. Upeksha Kumari,
Divisional Secretary,
Divisional Secretariat,
Ampara.
- 1B. H. S. N. D. Soyza Siriwardhana,
Divisional Secretary,
Divisional Secretariat,
Ampara.

2. W. W. A. Chandra,
Commissioner General of Lands,
Commissioner General of Lands
Department,
No.1200/6, Rajamalwatta Road,
Battaramulla.
- 2A. R. M. P. M. Herath,
Commissioner General of Lands,
Commissioner General of Lands
Department,
No.1200/6,
Rajamalwatta Road,
Battaramulla.
3. H. K. W. M. N. Hapuhinna,
Assistant Land Commissioner
(Ranbima),
Land Commissioner General's
Department,
No.1200/6,
Rajamalwatta Road,
Battaramulla.
- 3A. Lakmali Jayasinghe,
Assistant Land Commissioner
(Ranbima),
Land Commissioner General's
Department,
No.1200/6,
Rajamalwatta Road,
Battaramulla.

4. N. M. D. T. M. Jayathilaka,
Assistant Land Commissioner,
Deputy Land Commissioner's
Office,
Ampara.
- 4A. Sameera Hettiarachchi,
Assistant Land Commissioner
Deputy Land Commissioner's
Office,
Ampara.
5. Attanayake Mudiyansele,
Ranbanda,
No.1B, 138, Namal Oya,
Ampara.
6. Attanayake Mudiyansele,
Sudubanda,
No.179, Salasumgama,
Dehiattakandiya.

Respondents

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

Counsel: Ranjan Suwandarathne, P.C., with Anil
Rajakaruna for the Petitioner.
Suranga Wimalasena, S.S.C., for the 1st-4th
Respondents.
Anura Gunaratne for the 5th-8th Respondents.

Argued on: 13.07.2020

Decided on: 28.07.2020

Mahinda Samayawardhena, J.

The Permit marked A1 dated 28.02.1992 was issued under the Land Development Ordinance, No.19 of 1935, as amended, to A. M. Heen Banda, in respect of a portion of land comprising high land and paddy land. Heen Banda was married to D. M. Sudu Bandi, and they had eight children. The Petitioner and the 5th-8th Respondents are the sons born of that union. As seen from page 2 of the said Permit, Heen Banda nominated the Petitioner as his successor to the land on the same day the Permit was issued.

Heen Banda died on 15.01.1995 and, in terms of section 48A(1) of the Land Development Ordinance, his spouse, Sudu Bandi, succeeded to the land and the Grants marked A4 and A5 were issued in her favour.

In terms of section 48A(2), Sudu Bandi could not alienate or nominate a successor to the land and could only possess it during her lifetime. Therefore, in terms of section 48A(3), Sudu Bandi's nomination of the Petitioner as her successor to the land, by A6 and A7, is invalid. Learned President's Counsel for the Petitioner concedes this position.

Sudu Bandi died on 04.04.2004; thereafter, the Petitioner, as the nominated successor of the Permit holder, Heen Banda, succeeded to the land by operation of the law – *vide* section 49 of the Land Development Ordinance.

Disputes had arisen among the siblings regarding possession of the land. It appears the 1st Respondent Divisional Secretary of Ampara tried to settle the disputes but to no avail. Thereafter

the 1st Respondent directed the Petitioner and the 7th and 8th Respondents by a letter marked A13 to resolve their dispute in Court. In the said letter, the 1st Respondent further informs he will not be performing any duties in respect of this land dispute thenceforth, due to the unruly behaviour of the parties at the inquiries held in this regard.

It is thereafter that the 5th Respondent, as the eldest son of Heen Banda, filed two actions in the District Court of Ampara to have himself declared the rightful owner of the land under the Land Development Ordinance.

I must mention at this stage that in terms of section 72 read with Rule 1 of the Third Schedule to the Land Development Ordinance, the eldest son will succeed to the land pursuant to the Third Schedule coming into effect “*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 [the] Ordinance*”. In the instant matter, there is a nominated successor to the land and therefore the claim of the 5th Respondent is unsustainable.

The 5th-8th Respondents have tendered R5(a) and (b) to submit that after having nominated the Petitioner as his successor, Heen Banda later changed his mind and desired the land to be given to his three youngest sons: the Petitioner, the 7th and 8th Respondents. The Land Development Ordinance lays down a procedure for the cancellation and replacement of a nominated successor. Even assuming R5(a) and (b) are authentic, these cannot be considered a valid nomination.

The Petitioner has filed this application seeking to quash by a writ of certiorari the decision of the 1st Respondent contained in A13 referred to above, and to compel the 1st and 2nd Respondents by a writ of mandamus to take steps to issue a Permit or Grant in respect of the land to the Petitioner in terms of the Land Development Ordinance.

I have no qualms that the writ of certiorari sought can be issued, as the 1st Respondent cannot refuse to perform his statutory duty on the ground of unruly behaviour by the parties at the inquiry. The 1st Respondent could have obtained the assistance of a police officer during the course of the inquiry, if he so desired. Nor can the 1st Respondent direct the parties to go to the District Court for a decision on the question of succession. Once the 1st Respondent determines the successor to the land in terms of the Land Development Ordinance, the dissatisfied party, if so advised, can come before this Court challenging the said decision by way of a writ application.

Regarding issuance of mandamus, learned Counsel for the 5th-8th Respondents takes up the position that the nomination of the Petitioner in the Permit marked A1 by the Permit holder Heen Banda is invalid because Heen Banda has not placed his signature in the required place on the Permit. The Permit holder never took up such a position during his lifetime. The 1st and the 2nd Respondents also do not take up the position the nomination is invalid on this basis. In fact, the 5th-8th Respondents themselves did not take up this position in any of the inquiries before the 1st Respondent, and moreover, took it up before this Court for the first time at the stage of the argument – *vide* the limited statement of objections filed in this

regard dated 15.06.2017. As seen from the documents tendered by the Petitioner, such as A12, it is clear the 1st and 2nd Respondents have acted on the validity of the said nomination.

The Land Development Ordinance does not state the nomination of a successor to the land will not be valid unless the Permit holder signs the Permit. The Permit relevant to this matter, which contains 17 conditions, has been signed and dated by the Divisional Secretary. It is furthermore stated on the Permit that the contents thereof have been explained to the Permit holder, and “*the Permit holder has nominated A.M. Punchi Banda (son) as the successor.*” The Divisional Secretary has again placed his signature below the aforementioned statement. This, in my view, is sufficient compliance.

Learned Counsel for the 5th-8th Respondents submits the Petitioner has not acted with *uberrima fides* and, therefore, the Petitioner’s application shall be dismissed *in limine*.

Making a comparison between A4 and R2 – i.e. the certified copies of the Grants previously referred to, tendered by the Petitioner and the 5th-8th Respondents respectively – the said Respondents state A4 does not contain conditions 8-10 which are included in R2, and this is an act of manipulation on the part of the Petitioner because the said conditions are disadvantageous to the Petitioner. There is no evidence to say this is manipulation by the Petitioner. Both A4 and R2 are certified copies issued by the 1st Respondent. In any event, the Petitioner does not rely on the said Grants in this application.

The 5th-8th Respondents further say, although the Petitioner states in the petition that he is in sole possession of the land in dispute, R3-R5 demonstrate the 7th and 8th Respondents are also in possession of the land. This, in my view, cannot be considered a lack of *uberrima fides* on the part of the Petitioner on a material fact warranting dismissal of the Petitioner's application *in limine*. This is neither a possessory action nor a Section 66 application. The question is not who is in possession of the land but rather, who, in terms of the Land Development Ordinance, is entitled to succeed to the land upon the death of the Permit holder and his spouse.

Finally, the 5th-8th Respondents state the Petitioner is guilty of laches having come before this Court nearly 20 years after A4 and A5 were issued. I cannot understand this argument. There was no necessity for the Petitioner, being the nominated successor of the original Permit holder Heen Banda, to come before this Court until the 1st Respondent, by A13, refused to discharge his statutory duty and declare the Petitioner the successor to the land. There is no delay on the part of the Petitioner.

I grant the Petitioner the reliefs as prayed for in paragraphs (b), (c) and (d) of the prayer to the petition.

The application of the Petitioner is allowed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal