

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

In the matter of an application for a mandate  
in the nature of Writs of Certiorari and  
Mandamus under and in terms of Article 140  
of the Constitution.

Dinamithra Gedara Upali Ranasinghe  
No.39, Waragolla West,  
Hasalaka.

CA (Writ) Application

No. 333/15

Petitioner

Vs.

1. Commissioner General of Lands  
Department of Land Commissioner General,  
Gregory's Lane, Colombo 7.
2. The Divisional Secretary  
Minipe Divisional Secretariat,  
Hasalaka.
3. The District Secretary of Kandy  
The District Secretariat,  
Kandy.
4. The Assistant Land Commissioner

Provincial Land Commissioner's  
Department,  
The Provincial Land Secretariat,  
P.O. Box 129,  
Kandy.

5. Hon. Harin Fernando  
Hon. Minister of Lands & Tourism,  
'Mihikatha Medura',  
The Land Secretariat,  
No.1200/6, Rajamalwatta Road,  
Battaramulla.
6. Hon. Attorney General  
The Attorney General's Department,  
Colombo 12.
7. D.M. Karunathilaka  
No.48/1, Thilak Stores, Pallewatta,  
Haslaka.

**Respondents**

**Before** : Dhammika Ganepola, J.

**Counsel** : Kumar Dunusinghe for the Petitioner.  
Yuresha Fernando, DSG for the 1<sup>st</sup> to 6<sup>th</sup>  
Respondents.  
Chanaka Kulathunge for the 7<sup>th</sup> Respondent.

**Argued On** : 12.07.2024

Written Submissions : Petitioner : 22.07.2024  
tendered On

Decided On : 16.10.2024

Dhammika Ganepola, J.

*The petitioner's case*

The Petitioner's mother, Dinamithra Gedera Baby Nona was the original permit holder of the subject land under permit bearing no.මධ්‍ය/මිෂේ/නව/නගර/2002/09. The said Baby Nona had made the Petitioner the successor of said land on 26.09.2005. However, as per the Land Ledger marked P6, the said nomination of the Petitioner had been cancelled upon the request of the permit holder on 06.03.2006. The Petitioner states that the above cancellation had been affected without the knowledge of the Petitioner and the original permit holder Baby Nona. Upon an application made by the original permit holder, the Petitioner had been renominated as the successor of the subject land on 02.04.2008. Amidst such circumstances, the original permit holder Baby Nona passed away on 28.02.2009. Thereafter, the Petitioner had made an application to the 2<sup>nd</sup> Respondent to succeed as the permit holder. At such instance, the Petitioner had come to know that both the Petitioner and the 7<sup>th</sup> Respondent had been nominated as co-successors of the subject land, with specific portions, that is portion of one acre to the Petitioner and a portion of half an acre to the 7<sup>th</sup> Respondent, without cancelling the previous renomination of the Petitioner as successor. The Petitioner claims that such nomination of co-successors is a violation of Sections 81 and 83 of the Land Development Ordinance No. 19 of 1935.

It is submitted that the Petitioner had objected to the 2<sup>nd</sup> Respondent in respect of the 7<sup>th</sup> Respondent succeeding or attempting to succeed to any portion of the subject land. However, the 2<sup>nd</sup> Respondent had disregarded the

Petitioner's objections and had arbitrarily divided the subject land without any survey being done. Upon a complaint made by the Petitioner to the 3<sup>rd</sup> Respondent, the 2<sup>nd</sup> Respondent had been asked to inquire into the matter. The Petitioner stated that although the 2<sup>nd</sup> Respondent halted the division of subject land, the land had been already divided by a fence erected by the 7<sup>th</sup> Respondent. However, the Petitioner had been informed by the 2<sup>nd</sup> Respondent that until the judicial proceedings of the District Court of Mahiyanganaya in the case bearing no. 50/12/L are concluded, no further action pertaining to the subject land shall be taken. Said District Court action has been instituted by the Petitioner against the 7<sup>th</sup> Respondent seeking a declaration that the Petitioner is the successor of the subject land and a direction for ejectment of the 7<sup>th</sup> Respondent from the subject land. In the instant application, the Petitioner seeks a mandate in the nature of a Writ of Certiorari quashing the appointment of successors dated 17.12.2008 affected on Land Ledger [P6] by the 2<sup>nd</sup> Respondent and Writ of Mandamus compelling the 2<sup>nd</sup> Respondent to remove the fence erected across the land consequent to the division and to grant the land permit to the Petitioner.

### ***Stance of the 1<sup>st</sup> to 6<sup>th</sup> Respondents***

The 1<sup>st</sup> to the 6<sup>th</sup> Respondents admit that said Baby Nona was the original permit holder. The first nomination of succession of the Petitioner was cancelled at the request of the permit holder. Nomination of the subsequent successors has been made after the cancellation of the previous nomination. The Respondents take up the position that the Permit holder could nominate one or more persons as successors in law and that there is no statutory requirement to inform the previous nominee of such cancellation of the nomination. It is claimed that the Petitioner, the 7<sup>th</sup> Respondent, and the permit holder reached an agreement to allocate a portion of 1 acre to the Petitioner and a portion of ½ an acre to the 7<sup>th</sup> Respondent of the subject land. The Respondents further state that the Petitioner, the 7<sup>th</sup> Respondent and D.M. Premathilaka have agreed to divide and fence the subject land. However, the Petitioner on various grounds avoided participating in the carrying out of the division of the subject land.

### ***The 7<sup>th</sup> Respondent's stance***

The 7<sup>th</sup> Respondent states that the Permit holder Baby Nona duly cancelled the previous nomination of the Petitioner and nominated the Petitioner and the 7<sup>th</sup> Respondent as the successors allocating a portion of 1 acre and a portion of ½ an acre of the subject land respectively. The 2<sup>nd</sup> Respondent, following the application and in accordance with the wishes of the permit holder Baby Nona, properly recorded the names of the successors. The Petitioner admitted dividing the subject land between the Petitioner and the 7<sup>th</sup> Respondent and signed an agreement before the 2<sup>nd</sup> Respondent. However, the 7<sup>th</sup> Respondent states that the Petitioner delayed the said division and made several attempts to obtain the portion of land allocated to him. The application for an enjoining order and the interim injunction obtained against the 7<sup>th</sup> Respondent by the Petitioner for the same purpose in the above-mentioned case bearing no. 50/12/L instituted in the District Court of Mahiyanganaya by the Petitioner had been refused.

### ***Appointment of a Successor (Nomination) by the Permit Holder***

It is on common ground that the original permit holder Baby Nona had initially nominated the Petitioner as the successor. As per the Land Ledger marked P6, said appointment of the Petitioner as nominee had been made on 26.09.2005. However, the appointment of Petitioner as sole nominee was cancelled at the request of the permit holder and registered in the Land Ledger (P6) on 06.03.2006. Again, at the request of the permit holder, the name of the Petitioner had been re-registered as the nominee of succession on 02.04.2008 in the Land Ledger (P6). It is observed that such renomination of the Petitioner as successor had not been challenged by any of the Respondents.

Section 53 of the Land Development Ordinance empowers the permit holder to cancel any nomination made by him/her and Section 54 empowers the permit holder to renominate even the same person notwithstanding the previous cancellation. Said Sections are as follows,

*53. Any nomination of a successor may at any time be cancelled by the owner or permit-holder who made such nomination.*

*54. The owner of a holding or permit-holder may make a further nomination in lieu of any nomination which has been cancelled, and a person may be renominated as successor notwithstanding the previous cancellation of the nomination of that person in such capacity.*

Accordingly, this Court is of the view that the cancellation of the Petitioner's first appointment as the successor and reappointment of the Petitioner as successor on 02.04.2008 had been affected in terms of the law.

***Nomination of the Petitioner, and the 7<sup>th</sup> Respondent as Co-Successors***

It appears from the Land Ledger (P6) that the Petitioner and the 7<sup>th</sup> Respondent were appointed as successors on 17.12.2008, giving an extent of one acre of the land to the Petitioner and half an acre of the land to the 7<sup>th</sup> Respondent on the request of the permit holder. However, the Petitioner challenges such nominations of the Petitioner, and the 7<sup>th</sup> Respondent as co-successors on the basis that the renomination of the Petitioner as successor dated 02.04.2008 had not been duly cancelled before such multiple nominations. As per Section 62(1) of the Land Development Ordinance cancellation of nomination in due manner is a mandatory statutory requirement before registering a new nomination. Said Section 62(1) reads as follows.

*62(1) After the registration of a document whereby a person is nominated as successor to a holding or a land alienated on a permit, a document which purports to nominate any other person as successor to that holding or land shall not be registered unless the nomination effected by the registered document has been duly cancelled by the registration of a document of cancellation:*

*Provided that it shall be lawful in one and the same document to cancel a registered nomination and to make some other nomination in lieu thereof; and, in that event, notwithstanding anything in this section contained, the document in which such cancellation and nomination are combined may be registered and shall upon due registration operate both as a cancellation of a previously registered nomination and as a nomination of a new nominee.*

It is observed that although the Additional Divisional Secretary has nominated the Petitioner and the 7<sup>th</sup> Respondent, the nomination affected on 02.04.2008 was not duly cancelled before effecting such multiple

nominations on Land Ledger P6 17.12.2008. In any event, the Respondents also have failed to submit any other documents to prove that nomination made on 02.04.2008 was cancelled as specified under the law. However, it appears on the Land Ledger P6 that the renomination of the Petitioner as successor on 02.04.2008 has also been struck off with a single line without any express invalidation. One may argue that such a deletion would amount to a cancellation of the renomination of Petitioner as successor dated 02.04.2000. However, such contention cannot be accepted because there is a specific legal procedure provided by statute for the cancellation of nominations. Furthermore, it is observed that the original nomination of the Petitioner appeared on the Land Ledger P6, which had been cancelled with an express endorsement of invalidation made on 09.03.2006. Specifically, Section 56(1) of the Land Development Ordinance stipulates the requirement of cancellation of a nomination by a document substantially in the prescribed form executed and witnessed in triplicate. Said Section is reproduced 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.*

Further, the Petitioner submits that the Minister in terms of Section 155 of the Ordinance has structured “Form -155” which is a format of a document of Cancellation and Nomination of Successors referred to in Section 56(1).

Such cancellation of nomination of successor or nomination of successor would not come into effect without due registration of such cancellation. Section 58(1) of the Ordinance provides that,

*“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.”*

All these statutory provisions lead towards the conclusion that it is a mandatory requirement under the law to register written cancellation of the nomination prior to making a new nomination. The Land Development

Ordinance emphasizes the strict compliance of its provisions in respect of the cancellation of any nomination or any nomination of a successor. Section 75 of the Ordinance stipulates as follows.

*75. Any nomination of a successor and any cancellation of any registered nomination of a successor shall be wholly invalid if such nomination or cancellation in any way contravenes the provisions of this Ordinance.*

Although the Respondents submit that the permit holder had nominated the Petitioner and the 7<sup>th</sup> Respondent as co-successors on 17.12.2008, the Respondents have failed to satisfy this Court to the effect that the mandatory statutory requirements were fulfilled in giving effect to such intention of the permit holder.

In the above context, I am of the view that the endorsement made on the Land Ledger P6 namely “an extent of one Acre to be given to the Petitioner and half an Acre to be given to the 7<sup>th</sup> Respondent” would not amount to a lawful renomination of successors followed by valid cancellation of nomination under Land Development Ordinance. Accordingly, the nomination of co-successors on 17.12.-2008 as reflected in the Land Ledger P6 by the 2<sup>nd</sup> Respondent is unlawful, ultra virus and cannot sustain in law.

### ***Agreement to Appoint Co-Successors***

It is observed that the nomination of co-successors was affected as a consequence of an inquiry held by the Divisional Secretary of Minipe while the permit holder was alive. The letter annexed with the Petition marked P12, written by the Additional District Secretary of Kandy addressed to the Petitioner refers that there had been an inquiry on 17.12.2008 in respect of the dispute of the subject land where the permit holder Baby Nona and the Petitioner had signed the statement consenting to give effect to the nomination whereby one acre of the land to the Petitioner and the half of an acre of land to the 7<sup>th</sup> Respondent. In proof of such, the 1<sup>st</sup> to the 6<sup>th</sup> Respondents have submitted a copy of a document dated 17.12.2008 signed by the permit holder and the Petitioner before the Assistant Divisional Secretary of Minipe with a motion dated 24.07.2019 with the permission of the Court. It appears that the nomination of co-successors had been done on the Land Ledger P6 by making an endorsement dated 17.12.2008 by the



Divisional Secretary as per the above agreement reflected in the document dated 17.12.2008. However, such a nomination of a co-successor could not have any effect in law in the absence of a lawful cancellation of the previous nomination of the Petitioner as successor 02.04.2008.

### ***Delay***

The Respondents have taken up a preliminary objection based on the delay of the Petitioner in invoking the jurisdiction of this Court. An application for a Writ of Certiorari should be filed within a reasonable time from the date of the impugned administrative which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts and circumstances of a particular case. In the instant application, the administrative decision complained of is unlawful and erroneous in law as I have concluded above. Hence the application cannot be simply rejected based on the preliminary objection of delay. In ***Biso Menika v Cyril de Alwis and others [1982] 1 SLR 368 Sharvananda J.*** held that when the Court has examined the record and is satisfied the Order complained of is manifestly erroneous or without jurisdiction the Court would be loathed to allow the mischief of the Order to continue and reject the application simply on the ground of delay unless there are very extraordinary reasons to justify such rejection. Further, it is observed that there has been litigation between the Petitioner and the 7<sup>th</sup> Respondent in the District Court of Mahiyanganaya pertaining to the disputed land. It demonstrates that the Petitioner has been seeking relief elsewhere which could satisfactorily explain the delay. In the case of ***Biso Menika v Cyril de Alwis and others [supra]*** it was held that one satisfactory way to explain the delay is for the Petitioner to show that he has been seeking relief elsewhere in a manner provided by the Law. If the delay can be reasonably explained, the Court will not decline to interfere.

### ***Conclusion***

Based on the above circumstances and reasons given, this Court is unable to give legal effect or recognition to a procedure which is contrary and violative of the provisions of the Land Development Ordinance and effect the

nomination of the Petitioner and 7<sup>th</sup> Respondent as co-successors made on 17.12.2008. Accordingly, as the said nomination of the Petitioner and 7<sup>th</sup> Respondent as co-successors is legally invalid, the renomination of the Petitioner as successor dated 02.04.2008 would be valid before law. As such, I am inclined to grant the Writ of Certiorari and Writ of Mandamus as prayed in the prayers (b) and (d) of the Petition. The Petitioner is not entitled to cost.

*Application is partly allowed.*

Judge of the Court of Appeal