

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

Hene Gedara Dharmasena alias
Pannala Hene Gedara
Dharmasena,
No. 507/517,
Madudamana,
Aththanakadawala.
Petitioner

CASE NO: CA/WRIT/202/2016

Vs.

1. Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
2. A.M. Herath Banda,
Resident Project Manager of the
Mahaweli Authority of Sri Lanka,
Moragahakanda Zone,
Bakamuna.
3. L.H.J. Bandara,
Divisional Project Manager of the
Mahaweli Authority of Sri Lanka,
Divisional Project Manager's
Office,
Attanakadawala.

- 3A. Yamuna Chandrakanthi
Dasanayake,
Block Manager of the Mahaweli
Authority of Sri Lanka,
Block Manager's Office,
Attanakadawala.
4. Hene Gedera Bodhipala alias
Pannala Hene Gedera Bodhipala,
Track 29, No. 3,
Attanakadawala.

Respondents

5. S.M.K. Kumarihamy,
Divisional Secretary of Elahara,
Divisional Secretariat, Elahara,
Bakamuna.
6. U.G. Ranjith Ariyaratna,
District Secretary of
Polonnaruwa,
District Secretariat,
Polonnaruwa.

Added Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena with Chamara
Nanayakkarawasam and Niranjan
Arulpragasam for the Petitioner.

Dr. Charuka Ekanayake, S.C., for the 1st-3rd,
5th and 6th Respondents.

Shyamal A. Collure with A.P. Jayaweera for
the 4th Respondent.

Argued on: 03.03.2020

Decided on: 27.05.2020

Mahinda Samayawardhena, J.

The contest in this application is between the Petitioner and the 4th Respondent who are siblings. Their deceased father, Hene Gedera Pelis, was issued a Permit under the Land Development Ordinance in the year 1954. By that Permit marked P3, Pelis was given about 3 Acres in extent of high land and about 5.4 Acres in extent of paddy land. No survey was conducted of the land, and therefore the Permit does not give any boundaries to the said two parcels of land. There is no issue in respect of the paddy land. The issue is in respect of the high land.

Pelis first nominated his eldest son, Jinadasa, as the successor to the land. As seen from P3, this nomination had been cancelled in 1977 and the 4th Respondent, Bodhipala, was nominated as the successor.

What is marked R1 by the 1st Respondent, Mahaweli Authority, is the office copy of the same Permit P3. Both parties accept R1. R1 has additional endorsements on page 1 in comparison with P3.

One such additional endorsement is the insertion of the name of the 4th Respondent as the Permit holder. This had been done in 2010, after the death of Pelis, the original Permit holder, on the basis that the 4th Respondent was the nominated successor.

Thereafter in 2013, a Grant was issued in the name of the 4th Respondent.

Prior to the Grant being issued, the land had been surveyed by the Surveyor-General and the Plan prepared in 1990 is marked P2/4R1. As a result, the land is identified in the said Grant with definite boundaries and extent. That is, by the said Grant, Lot No.456 in extent of 1.723 Hectares, which is 4 Acres and 41 Perches, has been given to the 4th Respondent.

The Petitioner filed this application seeking the following reliefs in the prayer to the petition.

- (a) Issue Notice on the Respondents*
- (b) Call for and examine the entire record pertaining to the subject matter of this application;*
- (c) Grant and issue an order in the nature of a writ of certiorari quashing the grant marked P18;*
- (d) Grant and issue an order in the nature of a writ of mandamus directing the 1st to 3rd Respondents to recommend to His Excellency the President to revoke/cancel the grant issued in the name of the 4th Respondent marked P18;*
- (e) Grant and issue an order in the nature of a writ of mandamus directing the 1st to 3rd Respondents to issue a*

permit and/or a grant to the Petitioner for the land alienated to his father under the said Permit bearing No.528 marked P3;

- (f) Grant and issue an order in the nature of a writ of mandamus directing the 1st to 3rd Respondents to continue with the process initiated under P4 to nominate the successor to the land alienated under the said Permit bearing No.528 marked P3, in terms of the provisions of Section 72 of the Land Development Ordinance;*
- (g) Grant and issue an order in the nature of a writ of mandamus directing/compelling the 1st to 3rd Respondents to issue a permit to the Petitioner for the excess portion of Lot No.456 of the Final Colony Plan No. ୧୯୨ 29 marked P2 which is not covered by the said Permit bearing No.528 marked P3;*
- (h) Grant and issue an order in the nature of a writ of mandamus directing/compelling the 1st to 3rd Respondents to hold an inquiry under the provisions of the Land Development Ordinance to issue a permit to the Petitioner for the excess portion of Lot No.456 of the Final Colony Plan No. ୧୯୨ 29 marked P2 which is not covered by the said Permit bearing No.528 marked P3;*
- (i) Grant costs;*
- (j) Grant such other and further reliefs.*

The submission of learned Counsel for the Petitioner is two-fold.

The principal argument of learned Counsel for the Petitioner is that notwithstanding the 4th Respondent was nominated as the

successor, the 4th Respondent failed to succeed to the land in terms of section 68(2) of the Land Development Ordinance, and therefore, inserting the name of the 4th Respondent as the Permit holder in R1 and the consequent Grant issued in favour of the 4th Respondent are illegal.

After the full argument, learned Counsel for the Petitioner abandoned this position, as there is overwhelming evidence to prove possession of the land by the 4th Respondent, which negates the contention that the 4th Respondent failed to succeed to the land despite nomination.

The next argument of learned Counsel for the Petitioner is that, in any event, the 4th Respondent could not have been granted 4 Acres and 41 Perches; the maximum which could be granted to the 4th Respondent is only 3 Acres, and the balance portion of the land depicted in Plan P2/4R1 should be given to the Petitioner.

Counsel says this on the basis that the Permit P3/R1 refers to only 3 Acres, and not 4 Acres and 41 Perches. He argues that it is the Permit which matures into a Grant, and therefore a larger extent than what is stated in the Permit cannot be conveyed by way of a Grant.

I regret my inability to agree with this argument for several reasons.

When the Permit was issued, there was no Survey Plan. Therefore, the land was described in the Permit as a land “*containing in extent about 3.0 acres*” without any boundaries.

Hence it is not correct to say that what was given by the Permit was only a land of 3 Acres in extent and nothing more.

According to section 19(3) of the Land Development Ordinance, there shall be a Plan prepared by the Surveyor-General before a Permit is issued, in order to precisely identify the land by boundaries and in extent. The relevant part of this section reads as follows:

The Government Agent shall in addition cause the land alienated on such a permit to be surveyed by the Surveyor-General, and the extent and description (by reference to metes and bounds) of the land so surveyed shall be inserted in such permit. The Government Agent shall in addition, cause the permit to be registered; no fee shall be paid or recovered for such registration.

However, when the Permit P3/R1 was issued, there was no Plan on the basis of which the land could be identified. On that ground, the Permit does not become null and void.

Section 19(4) of the Land Development Ordinance reads 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 subsection (2);

(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,

Provided, however, that the Land Commissioner may issue a grant before the expiry of the aforesaid period where the permit-holder satisfies him that the failure to issue such grant before the expiry of such period would adversely affect the development of such land.

It is true that in terms of section 19(2), a person shall in the first instance receive a Permit authorising him to occupy the land. In terms of section 19(4), “A Permit holder shall be issued a grant in respect of the land of which he is in occupation”, “and [has] fully developed”, if it is a “high land, for a period of one year”.

According to the Tenement List marked 4R2, prepared by the Surveyor-General together with the Plan P2/4R1 made in 1990, the 4th Respondent had been in possession of the entire land depicted as Lot 456 of Plan P2/4R1 “on Permit No.528” marked P3/R1. The Surveyor-General in 4R2 notes “Garden contains two permanent buildings and coconut and mango trees 20-30

years". The Petitioner was not in occupation of this Lot or any part of it. The Tenement List had been prepared in order to issue Grants to the occupants, as seen from the "*Remarks*" column of 4R2. This has been further confirmed by the Divisional Manager of the Mahaweli Authority of Attanakadawala by R3.

The Petitioner also admits in paragraph 7 of the petition that "*under the Permit bearing No. 528 issued under the Land Development Ordinance, the Petitioner's father Hene Gedera Pelis came into possession of the said high land depicted as Lot No.456 in the Final Colony Plan*" marked P2/4R1.

Hence it is clear that first the original Permit holder and then the 4th Respondent have been in occupation of the entire Lot No.456, comprising 1.723 Hectares, as the Permit land since 1954.

This continued until the Petitioner's son, Thushitha Kumara, on 16.01.2006, either forcibly or unknown to the 4th Respondent entered into possession of a portion of the land hitherto in the possession of the 4th Respondent. This is admitted by the Petitioner and his son in statements made to the police found in the documents compendiously marked P5.

Learned Counsel for the Petitioner places special emphasis on the endorsement "*FCP 29 – from 456 only 3 Acres*" appearing on the first page of R1, presumably made by the Additional Government Agent of Polonnaruwa on the same day the 4th Respondent's name was inserted as the Permit holder. This was in 2010. It is not clear on what basis the said endorsement was

made. There is also no evidence to say that it was made with the knowledge of the 4th Respondent. Although the incumbent Divisional Secretary was later made a party to this application, he has opted to remain silent. In any event, the Government Agent could not have taken such a decision arbitrarily denying the legitimate rights of the 4th Respondent.

However, the Grant has been issued in the name of the 4th Respondent in the year 2013 in respect of the entire Lot No. 456.

Upon a directive of a previous Bench of this Court, the file maintained by the Mahaweli Authority in respect of this land was called for. Learned Counsel for the Petitioner, drawing the attention of this Court to a letter dated 07.12.2016 written after the filing of this application by the Resident Manager of Bakamuna to the Director/Legal of the Mahaweli Authority under the heading of the present case number, argues that the decision to give the entire Lot consisting of 4 Acres and 41 Perches, as opposed to 3 Acres, was taken on the erroneous basis that the 4th Respondent's ownership of the land had been confirmed by the Section 66 application filed by the police in the Magistrate's Court and the civil case filed by the Petitioner in the District Court. If this is in fact the basis upon which the decision was taken, I would agree with Counsel for the Petitioner that the decision is unjustifiable, because the 4th Respondent's ownership has not been decided in those two cases. However, there is no evidence to the effect that the said decision was taken on this basis. It is the submission of learned State Counsel for the Respondents that the said letter contains mere observations of an officer during the pendency of this case upon

the request of the State Counsel handling the case, and it does not constitute the reason for issuing the Grant in respect of the whole of Lot No.456. Perusal of the said document affirms State Counsel's submission. The observations are in a separate loose paper without an authorising signature. Such observations cannot decide the fate of the 4th Respondent, unless an official document to that effect is presented before this Court.

The second argument of Counsel for the Petitioner fails.

For the aforesaid reasons, I dismiss the application of the Petitioner but without costs.

Judge of the Court of Appeal