

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

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

CA/WRT/085-23

Weerasekara Mudiyanseelage Gedara Sanjeewa
Bandara Abeykoon
No. 33, Mihindupura, Anuradhapura.

PETITIONER

-Vs-

1. K.D. Bandula Javasinghe,
The Land Commissioner General,
Land Commissioner General's Department,
"Mihikatha Medura", Land Secretariat,
1200/6, Rajamalwatte Road,
Battaramulla.

2. Keerthi Gamage

Former Land Commissioner General,
Udaya Mawatha, Anuradhapura.

3. S.K.N. Sewwandi Amarasekara,

Asst. Land Commissioner General,
Land Commissioner General's Department,
Mihikatha Medura",
Land Secretariat, 1200/6,
Rajamalwatte Road,
Battaramulla.

4. S.S.M. Sampath Rohana Dharmadasa,

Provincial Commissioner of Lands,
Provincial Land Commissioner's
Department- North Central Province,
Provincial Council Complex,
Dharmapala Mawatha,
Anuradhapura.

5. Sirimewan Dharmasena,

Former Divisional Secretary,
Divisional Secretariat,

And Now

Deputy Chief Secretary (Training) Deputy
Chief Secretary's (Training) Office,
North Central Province, Harischandra
Mawatha, Anuradhapura.

6. N.B.S.A. Nayaka Bandara

Divisional Secretary,
Divisional Secretariat, Mihintale.

7. W.M.G. Manjula Bandara Abeykoon

No. 779/C,
"(Ivon", Savior Mawatha,
Wennappuwa

8. W.M.G. Rohini Inoka Abeykoon

No.450/A, Henawatte
Samanala lane
Anuradhapura.

9. W.M.G. Sanjeewani Amalka Abeykoon

No.450/A, Henawatte
Samanala lane
Anuradhapura.

10. Hon. Attorney General's Department

Attorney General's Department

Colombo 12

RESPONDENTS

Before: N. Bandula Karunarathna, P/CA, J.

B. Sasi Mahendran, J.

Counsel: U. Kannangara with Navee Maharachchige or the Petitioner

Mihiri De Alwis, SSC for the 1st to 6th and 10th Respondents

J.P. Gamage with Chamara Fernando and Theekshana Ranawera for the

7th, 8th, 9th Respondents

Argued On: 24.09.2024

Written 30.09.2024 (by the Petitioner)

Submissions: 03.10.2024 (by the 7th, 8th, and 9th Respondents)

On 09.10.2024 (by the 6th to 10th Respondents)

Judgement On: 14.10.2024

Judgement

B. Sasi Mahendran, J

The Petitioner instituted this action praying for the following reliefs in the petition dated 10.02.2023.

- a. Issue notices of this Application on the Respondents above named;
- b. Grant and issue an Order in the nature of writ of Certiorari quashing the decisions of the 2nd and 3rd Respondents contained in the letters marked P19 and P20.
- c. Grant and issue an Order in the nature of writ of Certiorari quashing the decision of the 4th Respondent contained in the letter marked P21.
- d. Grant and issue an Order in the nature of writ of Certiorari quashing the decision of the 1st Respondent contained in the letter marked P22.
- e. Grant and issue an Order in the nature of writ of Certiorari quashing the decision by the 5th Respondent contained in the letter marked P23.
- f. Grant and issue an Order in the nature of writ of Certiorari quashing the document marked P24.
- g. Grant and issue an Order in the nature of writ of Certiorari quashing the document marked P25.
- h. Grant and issue an Order in the nature of writ of Mandamus directing the 1st and/ or 2nd and/or 3rd and/or 4th and/or 6th Respondents above named, to declare and award title and possession/ succession to the Petitioner of the 2/4th share of the Land described in the Grant marked P1A;
- i. Grant costs of this Application;
- j. Grant such other and further reliefs that Your Lordships' Court shall seem fit.

The facts of this case are briefly as follows:

According to the petition, the late Weerasekara Mudiyanseelage Gedara Bandara Abeykoon, the Petitioner's father is the original grantee of the land situated in Nallapambukulama village in Anuradhapura District under and in terms of Section 19 (4) of the Land Development Ordinance No.19 of 1935 as amended (hereinafter referred to as the 'Ordinance'). The Petitioner states that, his father had nominated the 7th Respondent namely Weerasekara Mudiyanseelage Gedara Manjula Bandara Abeykoon, the 8th Respondent namely Weerasekara Mudiyanseelage Gedara Rohini Inoka Abeykoon, and the 9th Respondent namely Weerasekara Mudiyanseelage Gedara Sanjeewani Amalka Abeykoon as the successors and allocated respectively 2/4th, 1/4th and 1/4th shares to them.

The Petitioner states that the Petitioner's father passed away on or around 17.07.2010 survived by his children being the Petitioner and the 7th to 9th Respondents. The Petitioner further states that his mother Pannilage Dona Violet passed away before his father on 12.08.2007.

As stated by the Petitioner, the 8th and 9th Respondents had built two houses on the impugned land while the original grantee was alive. The Petitioner avers that, after the demise of the Petitioner's father, among the three successors, only the 8th and 9th Respondents continued to be in the said land and the 7th Respondent never came to the possession or did any development on it.

The Petitioner further states that, on or about 22.02.2021, the Petitioner requested the 5th Respondent, the former Divisional Secretary of Mihintale to grant him the title to the unoccupied 2/4th share of the land that was nominated to the 7th Respondent by the original

grantee. Thereafter, the 5th Respondent requested detailed reports from No. 572-Henawatte, Grama Niladhari and the Land Officer of the Divisional Secretary's Office of Mihintale. The Petitioner states that, the 5th Respondent after being satisfied with the said reports, granted the Petitioner the title to the 2/4th share on or about 22.03.2021 under and in terms of Sections 68(2) and 72 of the Ordinance.

According to the Petitioner, the 7th Respondent after being aware that the title to the 2/4th share of land has been granted to the Petitioner, sent a letter dated 20.04.2021 to the 5th Respondent requesting to cancel the title granted to the Petitioner. Thereafter, the 5th Respondent by letter dated 21.04.2021 requested the Petitioner and the 7th Respondent to be present at the Divisional Secretary's Office on 28.04.2021 which was held with the presence of the 5th Respondent, the Land Officer, the 572-Henawatte Divisional Grama Niladhari, the Petitioner and the 7th Respondent. The Petitioner states that, after the inquiry, the 5th Respondent decided to permit the Petitioner to stay on the land as the 7th Respondent had failed to come into the possession of the land in question within the stipulated time period which is six months after the death of the original grantee according to Section 68(2) of the Ordinance.

The Petitioner further states that, the 2nd Respondent and the 3rd Respondent by their letters dated 06.10.2021 and 25.10.2021 addressed to the 5th Respondent stating inter alia that, the granting of the title under and in terms of the Third Schedule of the Land Development Ordinance is unlawful when the original grantee had made a valid nomination and have requested the 5th Respondent to act according to the Circular No. 2015/8 issued by the 1st Respondent and to take necessary steps to cancel the same and to grant the title to the nominated successor.

According to the Petitioner, the 1st Respondent had sent a letter dated 29.08.2022 marked as P22 to the 6th Respondent requesting inter alia to immediately cancel the title granted to the Petitioner and grant the same to the nominated successor as advised by the 4th Respondent by his letter dated 24.06.2022 marked as P21. Thereafter, the 6th Respondent cancelled the title granted to the Petitioner and granted the same to the 7th Respondent on 30.09.2022 which is marked P24.

The Petitioner thereafter filed a caveat on 28.09.2022 at the Land Registry of Anuradhapura to protect his interest in the land in question. The Petitioner had come to know that, on 27.10.2022 his title to the impugned land was cancelled and granted to the 7th Respondent through a notice dated 04.10.2023.

The Petitioner's main contention is that, the 1st Respondent's decision marked as P21 to award the title to the 7th Respondent is illegal and ultra vires.

The Petitioner has thus invoked the jurisdiction of this Court seeking for writs of Certiorari to quash the decisions of the 2nd and 3rd, 4th, 1st and the 5th Respondents contained respectively in the letters marked as P19, P20, P21, P22 and P23 and to quash the documents marked as P24 and P25.

On the other hand, the 7th Respondent has taken the following preliminary objections.

1. The original order made by the 5th Respondent granting the title to the Petitioner is bad in law.
2. Section 72 of the Land Development Ordinance does not apply when there is a nominated successor alive.

According to the Petitioner, the 7th Respondent has failed to enter into the possession of the land within six months from the date of the death of the permit holder. We are mindful that,

the spouse of the permit holder passed away before the permit holder on 12.08.2007. The particular original permit holder nominated the 7th, 8th, and 9th Respondents as successors to the said land. According to the Petitioner and the Respondents, the 8th and 9th Respondents have taken possession of the land and put up houses. If the story of the Petitioner is to be believed that the 7th Respondent did not enter into the possession of the land within six months as per Section 68(2) of the Ordinance, the 5th Respondent should have considered Section 74 of the Ordinance which reads as follows, instead of Section 72 of the said Ordinance.

“74. Where two or more persons have been duly nominated as successors of a holding, the title of any one of such successors who is dead on the date on which such successor is entitled to succeed, or who refuses so to succeed, or who fails so to succeed within a period of six months reckoned from such date, shall, as from such date, be deemed to have accrued to the other successors who were duly nominated with him.”

If it is to be presumed that the 7th Respondent failed to succeed, the said portion of land should have been given to the 8th and 9th Respondents who are the other successors along with the 7th Respondent. Knowing that all the successors are alive, the 5th Respondent had acted according to Section 72 of the Ordinance.

Further, we observe that there was no inquiry held by the 5th Respondent before he acted under Section 72 of the Ordinance. When we peruse the document marked P21, the 1st Respondent had considered the documents submitted by the 7th Respondent to prove that he had entered into possession within six months' time, therefore, he acted under Section 84 of the Ordinance allowing the 7th Respondent to occupy the land.

For convenience of reference, an excerpt of the document marked P21 is reproduced below.

“මිහින්තලේ ප්‍රාදේශීය ලේකම්වරයා විසින් මෙම ඉඩම් කොටසේ අනුප්‍රාප්තිය නම් කර තිබියදී එම පසු උරුමකරු මාස හයක් තුළ භුක්තියට නොපැමිණීම යන කරුණ යටතේ තුන් වන උප ලේඛනයේ පලමු උරුමකරු වෙත උරුමය සාරෝපණය කර ඇති බැවින්, මෙම ගැටලුව නිර්මාණය වී ඇති බව

මෙම දීමනා පත්‍රයේ කලත්‍රයා සහ බලපත්‍රකරු පිළිවෙලින් 2007 වර්ෂයේදී හා 2010 වර්ෂයේදී මිය ගොස් ඇති අතර, ප්‍රාදේශීය ලේකම් කාර්යාලයේ පවත්නා දැව සම්බන්ධ ගොනුවෙන් පැහැදිලි වනුයේ 2015.12.18 වන දින මෙම ඉඩම් කොටසේ පසු උරුමකරු වන මන්ජුල බණ්ඩාර අබේකෝන් යන අය මිහින්තලේ ප්‍රාදේශීය ලේකම්ගේ විදිමත් අවසරයකින් යුක්තව මෙම ඉඩමෙන් දැව ඉවත් කර ඇති බව හා ඒ අනුව මංජුල බණ්ඩාර අබේකෝන් යන අය මෙම ඉඩමේ භුක්තිය දරා ඇති බව හා ඒ අනුව මංජුල බණ්ඩාර අබේකෝන් යන අය මෙම ඉඩමේ භුක්තිය දරා ඇති බව

එමෙන් මෙම ඉඩමට අදාළව ජල බිල්පත් පරික්ශා කිරීමේදී 2012 වර්ෂයේ සිට ජල බිල්පත මංජුල බණ්ඩාර අබේකෝන් යන අය නමින් ලබා දී ඇති බැවින්, මෙම ඉඩම සම්බන්ධයෙන් ඔහුගේ භුක්තිය සනාථ වන බව

වන්දනා නාම ලේඛනයට අනුව මංජුල බණ්ඩාර අබේකෝන් යන අය දීමනා පත්‍රයේ මුල් අයිතිකරු වන චීරසේකර මුදියන්සේලාගේ ගෙදර බණ්ඩාර අබේකෝන් යන අය මිය යන අවස්ථාව වන විටත් එම ඉඩමේ පදිනිවිට ඇති බව හා එම වන්දනා නාමලේඛනයේ තොරතුරු අනුව සංජීව බණ්ඩාර අබේකෝන් යන අය එම ඉඩමේ පදිනිවිට නොසිටි බව හා මංජුල බණ්ඩාර අබේකෝන් යන අය රැකියාවේ අවශ්‍යතාවය මත කොළඹ ප්‍රදේශයට පදිංචියට ගොස් ඇති බව

උක්ත දීමනා පත්‍රයේ පසු උරුමකරුවන් දෙදෙනෙකු වන චීරසේකර මුදියන්සේලාගේ ගෙදර සංජීවනී අමල්කා අබේකෝන් හා චීරසේකර මුදියන්සේලාගේ ගෙදර රෝහිනී අබේකෝන් යන අය ලබා දී ඇති ප්‍රකාශ මංජුල බණ්ඩාර අබේකෝන් යන අය එම ඉඩමේ භුක්තිය සනාථ වන බව”

The succession of lands was considered by His Lordship Aluwihare J in W.M. Chandra Kumari Palamakumbura v. P.A. Hema Damayanthie and Others, SC Appeal No. 47/2012, Decided on 09.03.2016, (2016 BLR 171 at page 173),

“In the context of this case the issue that has to be decided is as to whether the Respondent has succeeded to the land in suit, after the demise of her parents.

Of the applicable provisions, sections 55 and 68 of the Ordinance are crucial to decide the issue of this case.

At the hearing, it was contended on behalf of the Appellant that, in terms of Section 55 of the Land Development Ordinance, the mere nomination of a successor by itself cannot be construed as disposition of the land for which the successor is nominated.

Section 55 of the ordinance clearly states:-

“The act or transaction whereby a successor is lawfully nominated under the provisions of this Chapter shall not be construed as a disposition of the land for which such successor is nominated.” (emphasis added).

The ordinance defines the term “Disposition” in Section 2 and reads thus:-

“Disposition with its grammatical variations and cognate expressions means any transaction of whatever nature affecting land or the title thereto, and includes any conveyance, devise, donation, exchange, lease, mortgage or transfer of land;”

Thus, it appears that the mere nomination of a successor does not tantamount to automatic transfer of the land to the successor nominated; the nominee is then required to have the permit officially transferred upon making an application to that effect to the relevant authority. In view of the statutory provision embodied in section

55 of the Land Development Ordinance, only upon regularising the permit, can the successor gain full benefit of the enjoyment of the land.

Section 84 of the ordinance clarifies this position.

Section 84 (b) states that, “if the permit-holder is not survived by his or her spouse or if the spouse does not succeed to the land, any other person who is a duly nominated successor of the deceased permit-holder shall be entitled to succeed to that land on such person obtaining a permit from the Government Agent under the provisions of this Ordinance to occupy that land.”

In the instant case, according to the document marked P21, there is evidence to show that, the 7th Respondent had made applications to the Respondents with regard to the land in suit. Accordingly, the 7th Respondent has fulfilled the requirements under Section 68(2) of the Ordinance, thus the 7th Respondent has come into the possession of the said land within six months’ time.

We are of the view that, once the nominated successor has fulfilled the requirements to be eligible to be a successor, there is no reason for the 5th Respondent to consider Section 72 of the Ordinance.

Under Section 84 of the Ordinance, it gives the 7th Respondent who is a nominated successor qualified under Section 68(2) of the Ordinance, entitlement to the succession of the said land to obtain a permit from the Government Agent to occupy the land.

We are of the opinion, that the 1st Respondent had acted according to law when he arrived at the decision that the decision taken by the 5th Respondent, the former Divisional Secretary was wrong.

Therefore, we hold that, the 1st Respondent's direction to the 6th Respondent to cancel the title granted to the Petitioner and register the name of the 7th Respondent as the lawful successor to the 2/4th share of the impugned land is lawful.

For the afore-mentioned reasons, we dismiss the application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL