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

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

1. Rankoth Pedige Gamini Karunatilake,
   No. B.O.P. 317,
   Thalpotha, Polonnaruwa.

2. Rankoth Pedige Jayatilake,
   No. B.O.P. 317,
   Thalpotha, Polonnaruwa.

PETITIONERS

Vs.

Court of Appeal Case No:
CA/WRIT/554/2023

1. W.M.I. Karunaratne,
   Divisional Secretary,
   Divisional Secretaries Office,
   Medigiriya,
   Polonnaruwa.

2. K.H.M.B. Wijewardena,
   Inter Provincial Land Commissioner,
   Land Commissioner's (Inter Provincial) Office,
   District Secretariat,
   Polonnaruwa.

3. Land Commissioner General,
   Land Commissioner General's Department,
   Mihikatha Madura,
   Land Secretariat,
   No. 1200/6, Rajamalwatte Road,
   Battaramulla.

4. R.W.R.M. Ranwarana,
   Present Divisional Secretary,
   Lankapura,
   Polonnaruwa.

5. W.V.T.D. Amarasinghe,
   Assistant Commissioner of Lands,
   Land Commissioner's Department,
   Mihikatha Madura,
   Land Secretariat,
   No. 1200/6, Rajamalwatte Road,
   Battaramulla.

6. Rankoth Pedige Dhanapala,
   No. 30, B.O.P.,
   Thalpotha,
   Polonnaruwa.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: W. Dayaratne, P.C. with Ranjika Jayawardena for the Petitioner
Rajika Aluwihara, S.C. for the 1st to 5th Respondents
Niranjan Arulprajasam and Lasika Udayangani instructed by Dinesh De Silva for the 6th Respondent

Argued on: 02.06.2025

Written Submissions: For the Petitioner on 22.10.2025
For the 1st to 5th Respondents on 18.07.2025
For the 6th Respondent on 24.10.2025

Decided on: 19.12.2025

Mayadunne Corea J

The Petitioners in this Application sought, *inter alia*, the following reliefs:

> "*b) Issue a mandate in the nature of writ of Certiorari and quash the decision of the 1st Respondent to divide the corpus according to his direction given by letter dated 31/05/2021 (P12)*
>
> *c) To quash the decision of the 1st Respondent to allocate the Lots according to the plan prepared by the 6th Respondent which is produced marked P14*
>
> *d) Issue a mandate in the nature of writ of Mandamus against the 2nd, 3rd and 4th Respondents directing them to divide the corpus among the two Petitioners and the 6th Respondent proportionately areas they possess along with their children named in the said plan marked P13 removing the names of their sons as allotees and adding those respective Lots to the two Petitioners and the 6th Respondent*"

The facts of the case briefly are as follows. The Petitioners and 6th Respondent are brothers. The Petitioners' father was issued with a permit to a land in Polonnaruwa, and he nominated the Petitioners and the 6th Respondent as successors to the permit. Subsequently, the Petitioners' father had been issued with a grant in respect of the same land in 1994. However, no nominations were made by the Petitioners' father in respect of the grant prior to his death in 2000, and the siblings were allowed to continue in possession of the land.

In or around 2020, the 1st Respondent held an inquiry to resolve the dispute with regard to the appointment of a successor to the grant. Thereafter the 1st Respondent decided to appoint the 6th Respondent as grantee, and informed the 2nd Respondent that an inquiry had been held and that the parties had agreed to allot shares according to their possession. Thereafter, the 1st Respondent sent a letter to the 6th Respondent stating that the original grant had been transferred in his name, and permitted the 6th Respondent to divide the land among the parties in accordance with the extents specified in the letter (P12). Following the receipt of this letter the Petitioner alleges that the 6th Respondent had caused a surveyor to prepare a plan (P13). This contention was denied by the 6th Respondent who alleged that the said plan was prepared at the behest of the Petitioners. Subsequently, a second plan was drawn by which the extents previously allotted to the Petitioners by P13 had been reduced

(P14). The Petitioners state that the 1st Respondent had accepted the second plan proposed by the 6th Respondent. Hence, this Writ Application.

The Petitioners' contention

The Petitioners challenged the acts of the Respondents on the following ground:

- The 6th Respondent was appointed grantee on the premise that the land would be divided in accordance with possession. Nevertheless, the 6th Respondent in collusion with the 1st Respondent, had acted in violation of this undertaking.
- The issue of appointment of a grantee arose 20 years following the death of the Petitioners' father. Therefore, the 1st Respondent was statutorily bound to consider the appeals to appoint the 1st Petitioner as the successor to the grant.

The Respondents' contention

The 6th Respondent raised the following objections:

- The Petitioners have wilfully suppressed and misrepresented material facts.
- The Petitioners have failed to come before Court with clean hands.
- The Petitioners' Application is misconceived in law.

Analysis

It is common ground that the original grantee is the Petitioners' and 6th Respondent's father and he was the grantee of 2 grants namely, land in the extent of 4 Acres 2 Roods and 27 Perches which is the Paddy land and 2 Acres 3 Roods 27 Perches of highland land. The said two grants are marked as P1 and P3. While the P1 grant has been given on 13.09.1994. P3 is dated 03.05.1983. The parties are also not in dispute that before the two grants were issued, the father of the Petitioners and 6th Respondent was the holder of a permit. As per the document marked as P1, which is an extract of the land ledger, there are 3 names that have been nominated as successors to the permit. They are R.P. Danapala, R.P.G. Karunatilake and R.P. Jayatilake who are the 6th Respondent and the two Petitioners in this Writ Application.

The ledger also contained an entry to state that a grant had been issued for 2 Acres 3 Roods and 27 Perches. The said entry corresponds with the grant depicting the highland. All parties conceded that the dispute is concerning the highland. The original grantee, one Subhaya too has expired in the year 2000. It is also contended by the Petitioners that though the children of the original grantor Subhaya were in possession of the lands, none of the children have taken steps to be appointed as the successor until the year 2020. It is also not disputed that the eldest son of Subhaya, namely, Wimaladasa had not staked a claim to the highland. However, subsequent to the death of Wilmaladasa, a dispute arose between the children pertaining to the succession to the grant depicted in P11, which is the highland.

At this stage, it is pertinent to note that all parties before this Court conceded that the dispute is confined to the highland which is depicted in grant P1.

Succession to the deceased grantor

It is common ground that when Subhaya died in the year 2000, he had not nominated a successor to the highland depicted in P1. However, it was also not disputed that before obtaining the grant on 13.09.1994, Subhaya had been in possession of the land depicted in Pe1, on the strength of a permit and as stated above, Subhaya has nominated 3 successors to the highland. It is pertinent to note that in the absence of a specific nomination in the grant, this Court has constantly held that a nomination made for the permit is considered a nomination for the land grant.

This court has held the same in ***Piyasena v. Wijesinghe and others*** **(2002) 2 SLR 242**, ***Mallehe Vidaneralalage Don Agosinno v. Divisional Secretary-Thamankaduv*** **SC Appeal 30/2004 decided on 23.03.2005**, ***Ranasinghe Archchige Ranasinghe v. Commissioner of Lands and Development*** **CA Writ 17/2020 decided on 31.08.2023** which was followed in ***T. P. Nimal Premasiri v. Chathura Samarasinghe, Divisional Secretary and others*** **CA Writ 742/2023 decided on 12.09.2025**. However, in this instance it appears that this has not been followed.

The Petitioners in their written submission in paragraph 7 have pleaded that as Subhaya's wife has predeceased him in 1997, the issue of life interest has not arisen. But Subhaya's eldest son who is Wimaladasa has declined to succeed to the highland as by that time he was in possession of the paddy land. It is the contention of the Petitioners in the said

paragraph that Wimaladasa should have succeeded as he is the eldest son under Rule 1 of the 3rd schedule of the Land Development Ordinance, No. 19 of 1935 (as amended) (herein referred to as "LDO"). By this submission, the Petitioners concede that there is no nomination and therefore, the said schedule of the LDO should be applied in considering the successor to the highlands. It is further contended by the Petitioners that in the absence of the eldest son succeeding to the title of the deceased Subhaya, the Divisional Secretary had acted in terms of section 72 of the LDO and has considered the second eldest son who is the 6th Respondent in this case as the successor. This has been given effect to by the document marked as P5.

Thereafter, by P6 the said 6th Respondent's name has been registered as the successor to the grant. The said letter marked as P5 is dated 19.10.2020 and it has been formally registered on 20.10.2020 (P6). In view of the above stated judgements this Court observes that the said recognition of the 6th Respondent as the successor to the grant (P2) is bad in law. However, the Petitioners have not invoked the jurisdiction of this Court on the said grounds nor is there any relief prayed to that effect.

Basis for the Petitioners' claim

As I have observed by paragraph 7 of the Petitioners' own written submission, it appears that the Petitioners have gone on the basis that the grant should be awarded to the eldest son in compliance with the 3rd schedule to the LDO. Be it as it may, the Petitioners by paragraph 10 of the Petition have taken a completely different stance. In paragraph 10 it was pleaded that the wife, the daughter and another child of the eldest son of Subhaya, the wife and two sons of the 1st Petitioner had written to the Divisional Secretary and requested to nominate the 1st Petitioner as the successor and for him to divide the highland among R.P. Dahanpala, R.P. Karunathilka and Gamini Karunathilke in equal shares (P4(a)-(g)). However, no documentary evidence was tendered to Court to establish the relationship between Subhaya or the children and the authors of these letters. It is pertinent to note as per the submissions of the learned Counsel for the Petitioners, the 1st Petitioner is the youngest son of Subhaya. However, the learned Counsel for the Petitioner did not address this Court as to the basis this request was made, which is in violation of the provisions pertaining to succession under the LDO. As I have stated above, even if the Petitioners disregarded the nomination made to the permit, then the applicable position would be to resort to the 3rd schedule of the LDO on the basis of the absence of a nominated successor. However, there is no provision in the LDO to nominate the youngest son of the deceased grant holder to succeed in violation of the 3rd Schedule. Further, there is no other material

apart from the letters marked as P4(a)-(g) to establish that all the surviving children had made the request to nominate the 1st Petitioner to succeed to the grant. There is no material to demonstrate that the 6th Respondent, being the second eldest son, had given his consent. The Counsel for the Petitioner failed to tender any document to show that even the 2nd Petitioner had given his consent for the nomination of the 1st Petitioner as successor to the grant. It appears, that none of the children of Subhaya have staked a claim for the highland on the basis that they were the nominees to the permit. In any event no such document demonstrating such a request was tendered to Court. Instead, it appears that all the children have gone on the basis of the late father not having nominated a successor and had invited the Divisional Secretary to act pursuant to the provisions of the LDO on the basis that there was no nominated successor to the grant marked as P2. It is pertinent to observe that by their conduct the Petitioners have voluntary given up their right to succeed to title in the permit as nominees of Subhaya.

I have considered the documents marked as P4(a)-(g). Although the authors of the said documents acknowledge that there were 3 nominations made by the deceased grantee, had requested the Divisional Secretary to nominate a successor in violation of the original grantee's nomination. It is also observed that none of the nominated parties have made a request to succeed to the grant. Hence, there is no material tendered to Court to demonstrate any attempt by the nominee successor to the permit to succeed to the grant. As I have observed elsewhere in this judgement, even in this application, the Petitioners do not seek such relief.

The action of the Divisional Secretary

Accordingly, it appears that the Divisional Secretary has decided to act in terms of the 3rd Schedule and since the eldest son had declined to succeed, had nominated the second eldest son which is in accordance with the 3rd schedule of the LDO. Thus, by P5 the Divisional Secretary has recognized R.P. Danapala, the 6th Respondent to this case as the successor and has taken steps to register the land under his name. The extract of the register is marked as P6. Hence, the 6th Respondent became the successor to the grant P2.

It is pertinent to note that by the document marked as P5 the Divisional Secretary has given his decision pertaining to the succession and named the 6th Respondent as the successor. This document bears the date 19.10.2020 and has not been challenged by any of the Petitioners. Further, it is also pertinent to observe that this Court was not tendered with

any material to demonstrate any objection by the Petitioners for the 6th Respondent succeeding to the grant. Even in this Application, the Petitioners have failed to challenge the said grant to the 6th Respondent but their objection is not on succession to the grant but for the way the 6th Respondent is dividing and demarcating the land.

After receiving the document marked P6, the second oldest son who has succeeded to the grant had sought permission to divide the land among the children of Subhaya. This request letter was not tendered to this Court by the Petitioner. However, as per P8, P9 and P10, it appears that by P8 the Divisional Secretary has informed the Land Commissioner that there had been an inquiry into the succession and as per the said inquiry the parties had agreed to resurvey the lands according to the portions they possess and the Divisional Secretary had agreed to this request. Further, by P9, the Land Commissioner had informed the 6th Respondent, the two Petitioners ad the wife of the eldest son to demarcate the land as possessed as per the inquiry held on 08.03.2001 and as per the agreement reached between the parties. Further, the Divisional Secretary in his letter dated 24.01.2021 marked as P10 had given permission to the 6th Respondent to survey the entire land that is depicted in the grant marked Pe1. This has been confirmed to the Land Commissioner by the Divisional Secretary in his letter dated 28.03.2021 marked as P11. Thereafter, the Divisional Secretary has written to the 6th Respondent by his letter dated 22.04 2021 marked as P12 authorizing the said Respondent to survey the land and to submit the surveyor report.

The 6th Respondent's possession

However, the attention of this Court has been drawn to the document marked as 6R1. It was the contention of the 6th Respondent that there had been a meeting on 28.04.2021 at the Divisional Secretary's Office presided by the Divisional Secretary and the parties had agreed to demarcate the land as stated in the said document 6R1. According to this letter, the demarcation and the division of the land is to be made as follows:

"	රූඩ්	පර්
ආර්. පී. ලංකා රාජ් හසන්	02	00
ආර්. පී. ලංකා මදුෂ සමීර	02	00
ආර්. පී. රෝෂන් යානුජ්රිය	02	00
ආර්. පී. ජයනිලක	01	00

ආර්. පී. රණීත් යානුප්රිය	*01*	*00*
ආර්. පී. ගාමිනි කරුණාතිලක	*03*	*27″*

Further, by the said letter, the 6th Respondent had sought the Divisional Secretary's permission to survey the land according to the divisions in the said letter. Interestingly, at the bottom of the letter there is an endorsement which states that all the parties mentioned in the said letter have agreed to the said division. In agreement the said parties have placed their signature. The Court observes that the said agreement is signed by the Petitioners. This document was not submitted to this Court by the Petitioners nor have they disclosed it in their pleadings. In my view, after placing their signatures and not pleading about the existence of the document, the Petitioners have misrepresented and suppressed material facts from this Court. The said request has been approved by the Divisional Secretary by his letter dated 31.05.2021 marked as 6R2. The Petitioners have not denied placing their signatures in the document marked as 6R1.

Now I will consider the objections raised by the Respondents.

Suppression of material facts and lack of *uberrima fides*

It is the 6th Respondent's contention that the demarcation that has been approved by the document marked as 6R2 is in accordance with the agreement of all parties to demarcate the land which is reflected in 6R1. The document contains the signatures of the two Petitioners. However, the Petitioners have failed to disclose the existence of this document in their pleadings. The Petitioners have failed to file any Counter Affidavit denying or explaining the 6th Respondent's assertions. Even at the hearing, the Petitioners did not deny placing their signatures on the document 6R1. They have failed to explain why the said document was not disclosed to this Court until the 6th Respondent tendered the said document to Court. Further, it is the submission of the Counsel for the 6th Respondent that the challenged demarcation reflected in the document marked as P14 is in accordance with the agreement reflected in 6R1. Hence, it is his contention that the failure to disclose the existence of the said document is a material suppression and the Petitioners have failed to come with clean hands. In the absence of any reply to the said contention I am inclined to agree with the said submission and I hold that the Petitioners are guilty of misrepresentation and suppression.

In my view, the Petitioners had a duty to disclose this agreement, which they have failed to do. It is trite law that misrepresentation and lack of *uberrima fides* disentitles a Petitioner from obtaining his relief. In coming to this conclusion, I am guided by the following dicta.

In ***Blanca Diamonds (Pvt) Ltd v. Wilfred Van Else & others*** **1997 (1) SLR 360**, the Court observed that:

> "*In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose (uberrima fides) all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in Alponso Appuhamy v Hettiarachchi Justice Pathirana, in an erudite judgement, considered the landmark decisions on this province in English Law, and cited the decisions which laid down the principle when that a party is seeking discretionary relief from the Court upon an application for a writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to this Court.*"

Further, in ***Fonseka v. Lt. General Jagath Jayasuriya and five others*** **2011 (2) SLR 372**, it was held that:

> "*A petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to court, bare every material fact so that the decision of court is not wrongly invoked or exercised*."

As the Petitioners are seeking to enforce the extraordinary remedy of the Writ jurisdiction of this Court, it was incumbent on the Petitioners to disclose all material facts to Court to enable the Court to come to a correct conclusion. In my view, in the instant case, the Petitioners have failed to act so.

Futility

As I have observed above, by the document marked as P5, the 6th Respondent had been recognized as the successor to the grant. In this application, the Petitioners have failed to impugn the said decision contained in P5. In the absence of any challenge to the said decision, the 6th Respondent is entitled in law to the rights over the land as granted pursuant to P2. Hence, the quashing of the document marked as P12 or P14 will not deprive the rights and entitlements of the 6th Respondent over the corpus. Thus, the reliefs, even if granted, would end up in futility.

The prayers of the Petitioners

Let me now examine the prayers of the Petitioners.

By prayer (b), the Petitioners are seeking a Writ of Certiorari to quash the decision of the 1st Respondent to divide the corpus according to his direction given by the letter marked as P12 dated 03.05.2021. The document marked as P12 is letter but does not bear the date stated in the prayer. The said letter is dated 22.04.2021. the court cannot consider it to be a typographical error as the Petitioners never made an application to correct it. Hence, the said prayer is defective and has to fail.

The Petitioners' prayer (c) is to quash the decision of the 1st Respondent to allocate the lots according to the plan prepared by the 6th Respondent marked as P14. However, I observe the said decision to allocate land according to the division in the plan marked as P14 is not before this Court. Even if I am to assume that the said decision is the letter marked as P12, the said letter does not disclose a decision to allocate the lots pursuant to the plan P14. Thus, the Petitioner is inviting the Court to exercise its Writ jurisdiction to quash a decision which is not before this Court. Hence, in the absence of a decision to allocate the lots, the said prayer has to fail.

The Petitioners' prayer (d) has to fail as the Petitioner has failed to disclose the right the Petitioners have, to obtain the Writ of Mandamus the way it is pleaded. When coming to this decision I am mindful of the fact that the Petitioners are not seeking a Writ of Mandamus to succeed to the title according to their late father's nomination in the permit.

It is trite law that a Writ of Mandamus is available only to implement a legal right that the Petitioner is entitled to but has been denied (***Dr. Ranganathan Kapilan v. University Services Appeal Board and 60 others*** **CA Writ 430/19 decided on 22.06.2023**).

In ***Credit Information Bureau of Sri Lanka v. Messers Jafferjee and Jafferjee (Pvt) Ltd*** **(2005) 1 SLR 89**, the Supreme Court held that:

> "*There is rich and profuse case law on mandamus, on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be:*
>
> *a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought…… The foundation of mandamus is the existence of a legal right.*
> b) *The right to be enforced must be a "public right" and the duty sought to be enforced must be of a public nature...*"

Further, the relief prayed cannot be granted in the absence of impugning the document marked as P5. As stated above by the said document 6th Respondent is recognized and registered as the successor to the grant of Subhaya. Thus, the said prayer cannot be sustained and has to fail.

In parting with this judgement, it is pertinent to note that even if I am to assume that the Petitioners at this belated juncture is seeking to implement Subhaya's nomination to the permit, it cannot succeed without quashing the succession of the 6th Respondent, which the Petitioners have not attempted to do even in this Writ Application.

Conclusion

Accordingly, for the reasons stated above, in my view, the Petitioners' Application has to fail. Therefore, I refuse to grant the reliefs prayed for and proceed to dismiss this Writ Application. The parties are to bear their own costs.

It is also pertinent to note that this judgement should not be a bar for an amicable settlement the parties may arrive at, if they so desire.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal