

**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, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Karunarathnage Robert Seneviratne
Tennakoon,
No. 44B, Erewwala Road, Pannipitiya.

CA (Writ) App. No. 103/2024

PETITIONER

Vs.

1. Divisional Secretary,
Divisional Secretariat,
Kobeigane.
2. Provincial Land Commissioner (North
Western),
No. 46, Provincial Council Complex,
Kurunegala.
3. Commissioner General of Lands,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
4. Karunarathnage Chandradasa
Happuaarachchi,
Hospital Road, Narammala.

5. Karunarathnage Lalitha Wijesinghe,
Pubbiliya, Kobeigane.
6. Karunarathnage Kularathna
Happuaarachchi,
Napana, Gunnepana.
7. Karunarathnage Anulawathie
Happuaarachchi,
Kotambapitiya, Hettipola.
8. Karunarathnage Sunil Happuaarachchi,
Galagedara, Nikaweratiya.
9. Karunarathnage Piyasena
Happuaarachchi,
Ottawa, Canada.
10. Karunarathnage Nimal Karunathilaka
Happuaarachchi,
New York, United States.
11. Karunarathnage Dhammadika Tennakoon
Happuaarachchi,
Bogamulla, Narammala.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Shantha Jayawardena with Thilini Vidanagamage for the Petitioner.

Abigail Jayakody, S.C. for the 1st to 3rd Respondents.

Sapumal Bandara with Dilan Kuragodage instructed by Manjula Balasooriya for the 4th, 5th, 7th to 11th Respondents.

Shashiraga Sooriya Patabendige instructed by Upeka Sooriya Patabendige for the 6th Respondent.

Argued on: 14.10.2025

Delivered on: 19.12.2025

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner's father, Midiyaledurayalage Hapuwa alias Karunaratnage Hapuaarachchi had been initially possessing about 8 Acres of State land. The said land possessed by the said Hapuaarachchi had been identified as two lots: Namely, Lot No. 126 and 127 as depicted in the final Village Plan marked and annexed to the Petition as **P3**. The 1st Respondent had issued a permit in terms of Section 19(2) of the Land Development Ordinance (hereinafter referred to as "the Ordinance") to the said Hapuaarachchi for Lot No. 126; the said permit is marked as **P2** and annexed to the Petition.

Later, the second permit for the adjacent tenement of Lot No. 127 in **P3**, which is in extent of a little more than Five Acres, was proposed to be issued in terms of Section 19(2) of the Ordinance, to the same Karunaratnage Hapuaarachchi. However, pending the issuance, he died in 1996. Prior to his death, he had nominated his wife and the mother of the Petitioner (and the 4th to 11th Respondents), Karunapedidurayalage Hapu, as the successor to his rights under **P2**, which is in respect of the land Lot No. 126.

Thereafter, there had been several applications by the parties to the 1st Respondent, finally the 1st Respondent had decided to issue permits amalgamating both Lot Nos. 126 and 127 as one land and dividing it into equal shares to all the children of the said Hapuaarachchi. The said decision is

reflected in the document marked as **1R4**, and the same is challenged by the Petitioner in this Application. In fact, he claims that he should be the successor in terms of Section 72 of the Land Development Ordinance to Lot No. 126 where his father held it under a permit; whereas, he has no objections to the division and issuance of permit in respect of Lot No. 127 in equal shares to all of his siblings.

The 1st to 3rd Respondents also filed their Objections, on the basis that the 1st to 3rd Respondents had decided to issue permits in respect of both the lands put together as an amalgamated land on the basis of non-possession of the land within 6 months from the death of his father by the nominee. In addition to that, the 4th to 11th Respondents have filed their Objections and, in their Objections, they have taken up the position that the delay on the part of the Petitioner.

The parties filed their respective objections, and this was argued before the Court on 14.10.2025, and the following arguments were advanced.

Arguments

The first argument of Mr. Shantha Jayawardhana, learned Counsel for the Petitioner, is that as far as Tenement number 126 of **P3** is concerned, a permit had been already issued in favour of the late Midiyaledurayalage Hapuwa alias Karunaratne Hapuarachchi, and therefore, the Petitioner should succeed to the same as the eldest male child of the family. In addition to that, the Petitioner is also entitled to equal shares of the balance 5-acre land which is in Tenement number 127 of **P3**, along with the other siblings on the basis of non-nomination.

Ms. Jayakody, learned State Counsel, conceded that there is a mistake as far as tenement number 126 is concerned in amalgamating both Tenements of Land, namely 126 and 127 in **P2**. Therefore, she argued that the tenement number 126 should first be dealt with by the relevant authorities

separately; as such, the Petitioner's application should be allowed as far as only the Tenement bearing No. 126 is concerned. However, as far as tenement number 127 is concerned, her argument is that it should be given to all members in equal shares.

However, on the other hand, Mr. Sapumal Bandara argued that the original permit holder died in 1996 and that his spouse (widow) also died in 1997. However, before her death, without succeeding as the life interest holder, she had made an application to the Divisional Secretary to amalgamate both lands, namely Lot Nos.126 and 127 in **P3**, and divide the same among the children in equal shares, on which the Divisional Secretary had acted and decided to do the same. Mr. Bandara particularly relied upon the laches on the part of the Petitioner in pursuing this application from 1996 to date, as for many years after the father's death, without getting into possession, he has pursued the application.

Factual matrix

The Petitioner is an 84-year-old person, who is the eldest son of Karunaratne Hapuarachchi, who initially had been issued with a permit in terms of Section 19(2) of the Land Development Ordinance by the 1st Respondent. The 2nd Respondent is the Provincial Land Commissioner while the 3rd Respondent is the Commissioner-General of Lands. The 4th to 11th Respondents are siblings of the Petitioner.

The Petitioner's father, the said Hapuarachchi, had been in possession of an 8-acre Government land from 1960. To regularize the said unlawful possession, there had been a land kachcheri, the land possessed by the Petitioner's father had been identified as two Lots, namely Tenement (Lot) No. 126 and 127 in the Plan **P3**. The plot of land depicted as Tenement bearing No. 126 is in extent of 2 Acres 2 Roods and 16 Perches for which the permit was issued in terms of Section 19(2) of

the Ordinance, marked and annexed to the Petition as **P2**. The said permit holder Hapuaarachchi had nominated his wife as the lawful successor, reflected in the second page of the same document marked as **P2** annexed to the Petition. The Tenement bearing No. 126 is described in document marked as **P4**. Additionally, it can be seen that Tenements bearing No. 126 and 127 are adjacent tenements. The document marked as **P4** is the description attached to **P3**.

The mother never succeeded

Since Karunaratne Hapuaarachchi passed away on 28.03.1996, the mother of the parties, Karunapedidurayalage Hapu, who had been nominated to succeed to the rights of the said Hapuaarachchi, should have made an application to succeed, and she should have done so within six months from the death of the said Hapuaarachchi. However, the mother also had passed away within sixteen months, namely on 01.08.1997, without making an application to succeed to Lot No. 126.

However, in the course of Arguments, Mr. Bandara referred to the fact that the mother had made an application to the 1st Respondent, to amalgamate both lands or to alienate both plots of land, namely Lot No. 126 and 127 of **P3**, and divide it amongst all the children in equal shares; but there is no application to that effect placed before this Court, not even in the ledger produced. Contrary to that, paragraph 7 in the Objections of the 4th, 5th, and 7th to 11th Respondents reads as thus;

“viii. Thus, the Respondents state that then 1st Respondent has acted extremely fairly and justifiably and upon the request of their father itself, has divided the land lots among the children and grandchildren of original permit holder, Karunarathna Hapuarachchi.”

Succession

Therefore, it is very clear that the mother has not made any such application to the 1st Respondent; neither has she made any application to succeed to the rights of the original permit holder. Accordingly, as far as Lot No. 126 of P3 is concerned, Section 72 of the Ordinance applies since there is a permit already issued, and the relevant section is reproduced below;

“72. 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 this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.*

*[*Section 19A is repealed by Law No. 43 of 1973] [Sections 69, 70 and 71 are repealed by Act No. 16 of 1969]” [Emphasis is mine]*

Since the father had died in 1996 and the mother had not succeeded to his rights as nominee, the devolution of rights should be according to Section 72. As such, according to the Third Schedule before the amendment enacted in 2022, since the issue of succession had arisen in 1996 with the death of the father, or at least (worst case scenario) in 1997 with the death of the mother which took place prior to the enactment of the amending Act, No. 11 of 2022, the Petitioner is entitled to the said rights as the eldest male child of the original permit holder. Thus, I hold that the Counsel for the 1st to 3rd Respondents’ argument referred to above appears to be attractive, which I further hold that Mr. Jayawardena’s argument should succeed.

In those circumstances, the 1st Respondent's decision to amalgamate the Lot Nos. 126 and 127 as one land, and divide the same in equal shares amongst the Petitioner and the 4th to 11th Respondents, and issue permits or grants to be made on that basis as reflected in the document marked as **1R4**, is erroneously taken and palpably wrong. Therefore, the said decision should be quashed by way of a *Writ of Certiorari*. However, Lot No. 127 should be divided in equal shares and accordingly issue permits or grants to all; this includes the Petitioner as well as the 4th to 11th Respondents.

Delay

The Respondents have raised the issue of delay in pursuing the Petitioner's present Application in this Court, namely after the father's death in 1996, almost twenty-odd years had elapsed. Nevertheless, when all the facts discussed by me above are put together and considered as a whole, it is the Respondents who had caused the delay as it is for the Respondents to act in terms of Section 72 of the Ordinance and then issue the permit or accept the Petitioner as the successor to the original permit holder in respect of Lot No. 126 of **P3** to the Petitioner.

Since the Petitioner was not issued with such a permit, the delay was caused, and the Respondents have embarked upon on unwanted and redundant inquiries on the applications made by other parties (siblings of the Petitioner). Therefore, the delay is mainly caused by the Respondents; thus, the delay does not defeat this Application.

Conclusion

Accordingly, *Writ of Certiorari* is issued as prayed for in (d) of the Petition. In addition to that, since the Petitioner is entitled to succeed on the above-mentioned basis, he is entitled to compel the 1st to 3rd Respondents to register his name as the successor to the original permit holder's rights

to Lot No. 126 of **P3**; therefore, relief prayed for in prayers *(a)*, *(b)*, and *(c)* of the Petition is granted; thus, *Writ of Mandamus* is also issued.

JUDGE OF THE COURT OF APPEAL