

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

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

Batuwattalage Wimalawathi,  
4, Thambala Road,  
Hospital Junction,  
Polonnaruwa.

**PETITIONER**

Vs.

**CA (Writ) Application No. 112/2013**

1. Land Commissioner General,  
Land Commissioner General's  
Department,  
"Mihikatha Madura",  
1200/6, Rajamalwatta Road,  
Battaramulla.
  
2. Divisional Secretary,  
(as Assistant Land Commissioner),  
Thamankaduwa Divisional  
Secretariat,  
Thamankaduwa.

3. Hon. The Attorney General,  
Attorney General's Department,  
Colombo 12.
4. Batuwattalage Himali Wijayalatha  
Fernando,  
7, Kalahagala,  
Polonnaruwa.
5. Batuwattalage Rosalin,  
4/3, Thambala Road,  
Hospital Junction,  
Polonnaruwa.
6. Batuwattalage Wimalawathi,  
4, Thambala Road,  
Hospital Junction,  
Polonnaruwa.
7. Batuwattalage Ariyatillaka,  
4/3, Thambala Road,  
Hospital Junction,  
Polonnaruwa.
8. Batuwattalage Karunawathie,
9. Batuwattalage Nimal Fernando,
10. Chaminda Kekulandara,  
All of 4/1, Thambala Road,  
Hospital Junction,  
Polonnaruwa.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Thishya Weragoda for the Petitioner

Suranga Wimalasena, Senior State Counsel for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents

Athula Perera with Vindya Divulwewa for the 4<sup>th</sup> Respondent

**Argued on:** 18<sup>th</sup> July 2018 and 10<sup>th</sup> December 2018

**Written Submissions:** Tendered on behalf of the Petitioner on 27<sup>th</sup> September 2018 and 31<sup>st</sup> January 2019

Tendered on behalf of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents on 22<sup>nd</sup> May 2019

Tendered on behalf of the 4<sup>th</sup> Respondent on 11<sup>th</sup> December 2018

**Decided on:** 31<sup>st</sup> May 2019

**Arjuna Obeyesekere, J**

The Petitioner states that the State had issued Balayage Puncha alias Batuwattalage Puncha Grant No. Pra/Po/10539 dated 4<sup>th</sup> June 1984, annexed to the petition marked 'A1'<sup>1</sup>, under and in terms of Section 19(6) read with Section 19(4) of the Land Development Ordinance, in respect of a land in extent of 2A 1R 13P.

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<sup>1</sup>'A1' has been duly registered in the Register of Permits/Grants under the Land Development Ordinance.

The Petitioner states that Balayage Puncha passed away on 7<sup>th</sup> February 1997. It is not in dispute that Balayage Puncha had not nominated a successor to the said land at the time of his death. He was survived by his spouse Marappulige Kirimallu and three of their seven children, including the Petitioner. There is also no dispute between the parties that Kirimallu succeeded to the said land upon the death of Balayage Puncha. The eldest son who was alive at the time Balayage Puncha passed away was Battuwattalage Wilson Fernando. The 4<sup>th</sup> Respondent in this application is the daughter of the said Wilson Fernando. Wilson Fernando passed away on 14<sup>th</sup> July 1998, while Kirimallu passed away on 19<sup>th</sup> September 2009.

Even prior to the death of Kirimallu, a dispute had arisen between the 4<sup>th</sup> Respondent and the Petitioner as to who should succeed to the said land. This Court observes that together with the other Respondents who are the surviving children and/or grandchildren of Balayage Puncha, the Petitioner and her children are occupying parts of the land which is the subject matter of the said Grant.

The Petitioner states that after the death of Kirimallu, the 2<sup>nd</sup> Respondent, Divisional Secretary, Thamankaduwa had issued a Declaration/ Certificate of Succession dated 25<sup>th</sup> October 2010, annexed to the petition marked 'A3', to the 4<sup>th</sup> Respondent declaring that she is entitled to succeed to the said land by virtue of being the eldest daughter of the deceased Wilson Fernando, who as noted earlier, was the eldest surviving son of Balayage Puncha, but had pre-deceased his mother, Kirimallu.

The Petitioner claims that the provisions of the Land Development Ordinance relating to the devolution of rights have not been duly followed by the 2<sup>nd</sup> Respondent in making the decision to issue 'A3' to the 4<sup>th</sup> Respondent. Although this Court had been informed that Statement of Objections of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents will not be filed, the learned Senior State Counsel has filed of record a copy of the entire file maintained by the 2<sup>nd</sup> Respondent relating to the grant 'A1'. This Court has examined the said record and it appears to this Court that the 2<sup>nd</sup> Respondent had not conducted a formal inquiry to determine the successor, prior to issuing 'A3'.

Be that as it may, it is in the above factual background that the Petitioner has invoked the Writ jurisdiction of this Court seeking *inter alia* the following relief from this Court:

1. A Writ of Certiorari to quash the Declaration/ Certificate of Succession dated 25<sup>th</sup> October 2010, marked 'A3';
2. A Writ of Mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to perform its lawful obligations under the Land Development Ordinance;
3. A Writ of Mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to hold an appropriate inquiry to determine the rightful successor to the land more fully described in the Grant marked 'A1'.

The issue that arises for determination in this application is what should be the date on which succession should take place where no successor has been nominated in respect of a grant. It is the contention of the Petitioner that

where no nomination has been made in respect of the holding in question, and the spouse of the owner of the holding succeeds to the said land upon the death of the owner, the procedure for succession is triggered only after the death of the spouse who successfully succeeded to the said land, and that succession according to the Third Schedule could take place only thereafter. In contrast to the said position of the Petitioner, the position taken up by the 4<sup>th</sup> Respondent is that where no nomination has been made by the owner of the holding, the process for succession in terms of Rule 1 of the Third Schedule is triggered at the time of death of the said owner and that succession is deemed to have taken place soon after the death of the owner, but subject to the rights of the surviving spouse who is the life interest holder.

The determination of this application requires a discussion of the provisions of the Land Development Ordinance No. 19 of 1935 and the amendments made thereto, in particular by the Land Development (Amendment) Act No. 16 of 1969, relating to succession under a grant.

This Court would first examine the provisions of the Land Development Ordinance, as it stood prior to the amendment in 1969. The starting point is Section 49 of the Land Development Ordinance, which empowered the owner of a holding to nominate a person to succeed him on his death. Section 51 provided that the person so nominated by the owner should belong to one of the groups of relatives enumerated in Rule 1 of the Third Schedule. Where a valid nomination had been effected and in the absence of a life holder, the successor was required by Section 70 to succeed to the holding, upon the death of the owner. In terms of Section 68(2), a nominated successor fails to succeed *inter alia* if he refuses to succeed or if he does not enter into

possession of the holding within a period of six months from the death of the owner of the holding. However, if a successor had not been nominated, or where the nominated successor failed to succeed, Section 71 provided that title shall devolve as prescribed by the rules of the Third Schedule. In terms of Section 73(2), "title to a holding shall be deemed to have devolved on any person succeeding under the provisions of Section 72 as from the date of the death of the life-holder of the holding to which such person so succeeds."<sup>2</sup>

Several important amendments were introduced by the aforementioned Amendment Act No. 16 of 1969. The first such amendment was the introduction of Section 48B by which the spouse of the owner of the holding was automatically entitled to succeed to the holding upon the death of the owner. Section 48B(1) provided that "upon the the death of the owner of a holding, the spouse of that owner shall be entitled to succeed to that holding" subject to the conditions specified therein.<sup>3</sup>

It is not in dispute that Kirimallu, the spouse of Balayage Puncha, exercised the right given under Section 48B(1) and succeeded to the said holding upon the death of Balayage Puncha.

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<sup>2</sup> Section 72(2) is identical to Section 71.

<sup>3</sup> The conditions are as follows:

- (a) upon the marriage of such spouse, title to the holding shall devolve on the nominated successor of the deceased owner or, if there was no such nomination, on the person who **was** entitled to succeed under rule 1 of the Third Schedule;
- (b) such spouse shall have no power to dispose of that holding;
- (c) such spouse shall have no power to nominate a successor to that holding;

Provided that the aforesaid conditions shall not apply to a spouse who has been nominated by the deceased owner of the holding to succeed to that holding.

Section 72 of the Land Development Ordinance sets out *inter alia* as to who should succeed where a nomination has not been made. The relevant portions of Section 72 are re-produced below:<sup>4</sup>

"If no successor has been nominated, .... the title .... to the holding of an owner shall upon the death of such... owner... where such...owner died leaving behind his or her spouse, .... **upon the death of such spouse,** devolve as prescribed in Rule 1 of the Third Schedule."<sup>5</sup>

It is the view of this Court that in terms of Section 72, devolution of title in terms of Rule 1 of the Third Schedule shall take place only upon the death of the spouse who has succeeded to the land, and more importantly not upon the death of the owner of the holding.

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<sup>4</sup> Section 72 also applies where the nominated successor has failed to succeed.

<sup>5</sup> Rule 1 of the Third Schedule reads as follows:

- (a) The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.
- (b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permit-holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.

Table

(i)	Sons
(ii)	Daughters
(iii)	Grandsons
(iv)	Granddaughters
(v)	Father
(vi)	Mother
(vii)	Brothers
(viii)	Sisters
(ix)	Uncles
(x)	Aunts
(xi)	Nephews
(xii)	Nieces

In this rule, "relative" means a relative by blood and not by marriage.

This point is further buttressed by the amendment made to Section 73 of the Land Development Ordinance,<sup>6</sup> the relevant portions of which are re-produced below:

"Title to .... the holding shall be deemed to have devolved on any person entitled to succeed to the land or holding under the provisions of section 72 **as from the date of the death of the .... owner of the holding or if such .... owner died .... leaving behind his or her spouse, .... from the date of the death of such spouse, as the case may be.**"

It is the view of this Court that Section 73 leaves no doubt that succession shall take place from the date of the death of Kirimallu.

The next important amendment was the introduction of the following new definition of the word, 'successor' in Section 48<sup>7</sup>:

"In this Chapter "successor", when used with reference to any land alienated on a .... holding, means a person who is entitled under this Chapter to succeed to that .... holding upon the death of the .... owner thereof, if that .... owner died without leaving behind his or her spouse, or, if that .... owner died leaving behind his or her spouse, upon the failure of that spouse to succeed to that land or holding or **upon the death of that spouse.**"

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<sup>6</sup> Section 73 has been repealed by Act No 16 of 1969 and a new Section 73 has been substituted therefor. The marginal note of Section 73 reads as, 'date of succession'.

<sup>7</sup> The reference to a 'permit' and a 'permit holder' have been omitted when re-producing the definition.

In terms of this definition, since Kirimallu has succeeded to the holding, the entitlement to succession among the relatives of Balayage Puncha is triggered upon the death of Kirimallu. Thus, the view of this Court that succession should take place not when Balayage Puncha passed away but on the passing away of Kirimallu is supported by the above definition.

This position is confirmed by Section 49 of the Land Development Ordinance which deals with succession by a nominee of the owner of the holding. The relevant parts of Section 49 are re-produced below:

"Upon the death of ....an owner of a holding .... where such... owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to the land alienated .... or upon the death of such spouse, a person nominated as successor by such ....owner shall succeed to that land or holding."

Although Section 49 will not have any application as Balayage Puncha had not nominated a successor, had there been a nominated successor, such person was required to succeed to the land six months from the death of the spouse.<sup>8</sup> Section 49 clearly establishes that had there been a nominated successor, the right of the successor to succeed to the land will only arise at the time of the death of the spouse, and not prior to that.

The learned Counsel for the 4<sup>th</sup> Respondent referred to the use of the word, 'was' in condition (a) of Section 48B(1)(a),<sup>9</sup> as supporting his argument that

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<sup>8</sup> See Section 68(2)(ii) of the Land Development Ordinance.

<sup>9</sup> Supra.

succession shall take place among the heirs who were living at the time of the death of the owner. While there is some merit in the said argument, this Court observes that the said condition applies only where the spouse re-marries in which case, the spouse would not be entitled to succeed in terms of Section 48B(1). Upon re-marrying, all the other provisions which refer to the spouse who has succeeded to the holding will not apply. In any event, this is the only place in the Land Development Ordinance where an interpretation as suggested by the learned Counsel for the 4<sup>th</sup> Respondent is possible, whereas all other provisions which have been referred to earlier point in the opposite direction.

The learned Counsel for the 4<sup>th</sup> Respondent has cited the judgment of this Court in Samarasena vs Panditharatne<sup>10</sup> in support of his argument that succession takes place upon the death of the owner of the holding. The facts of that case very briefly are as follows. The Petitioner is the son of Muttiah to whom a grant had been issued by the State. Muttiah died in 1983 while his wife Kaluarachchi also died in the same year. Piyasena was the eldest son of Muttiah. Piyasena passed away in 1996, and the 10<sup>th</sup> Respondent who is the son of Piyasena was recognised as the successor. The Petitioner complained that this decision is wrong. This Court disagreed and disallowed the application.<sup>11</sup> It is observed that in the said case, both Muttiah and his spouse had passed away prior to the death of the eldest son and hence, applying the Third Schedule, the successor should be the 10<sup>th</sup> Respondent. The facts in the present application are clearly different to Samarasena's case, as in this case, the eldest surviving son pre-deceased the spouse, and succession as per the

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<sup>10</sup> CA (Writ) Application No. 239/2010; CA Minutes of 20<sup>th</sup> September 2012.

<sup>11</sup> The Supreme Court refused to grant special leave to appeal – vide SC Special Leave to Appeal Application No. 232/2012; SC Minutes of 13<sup>th</sup> February 2013.

Third Schedule would only be triggered upon the death of the spouse, Kirimallu.

Taking into consideration the above provisions of the Land Development Ordinance, the view of this Court is as follows. At the time Balayage Puncha passed away in 1997, the eldest living son Wilson Fernando was eligible to succeed to the said holding. However, as his mother Kirimallu, who is the spouse of Balayage Puncha was still alive, and as she exercised her right to succeed, the scheme of devolution set out in Section 72 did not get triggered and therefore no rights accrued in favour of Wilson Fernando upon the death of Balayage Puncha. The process of devolution set out in Section 72 can only take place upon the death of Kirimallu. By the time Kirimallu passed away in September 2009, Wilson Fernando had already passed away. Rule 1 of the Third Schedule is triggered only at this stage and priority would be given to the surviving children of Balayage Puncha. The grandchildren of Balayage Puncha including the children of Wilson Fernando would be entitled to succeed only if the surviving children of Balayage Puncha did not succeed.

In these circumstances, this Court holds that the decision of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents to issue the certificate of heirship to the 4<sup>th</sup> Respondents is a misapplication of the provisions of the Land Development Ordinance and is bad in law. It is a decision which is inconsistent with the provisions of the Land Development Ordinance and therefore the said decision is liable to be quashed by a Writ of Certiorari. As the Petitioner is not the eldest of the surviving children, the 1<sup>st</sup> Respondent will have to take steps in terms of the Land Development Ordinance to determine the lawful successor to the said land.

This Court must observe at this stage that even though a Statement of Objections was not filed on behalf of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents, the learned Senior State Counsel, in the written submissions tendered to this Court has quite correctly stated as follows:

“Therefore, the point of time that needs to be considered in order to ascertain the succession in respect of the facts applicable to this application is “the time of the death of the spouse of the grant holder”. In such a situation, at the time of the death of the spouse, the living person who comes on top of the hierarchy as set out in the schedule to LDO gets the succession.”

This Court observes from the record submitted by the learned Senior State Counsel that, acting on a complaint made by the Petitioner to the Presidential Secretariat, the Provincial Land Commissioner of the North Central Province, having called for observations from the 2<sup>nd</sup> Respondent, had advised the 2<sup>nd</sup> Respondent as follows:<sup>12</sup>

“දුමනාපතු සහිත ඉඩමවල අයිතිය, හිමකරු හෝ හිමකාධිය හා කාලානුයා මයයාමෙන් අනුග්‍රහ නම තොකරක ලද අවස්ථාවක) පත්‍රයේ 3 වන උපලේඛනයට අනුව හිමවන බැවින් එව අනුඛලව කටයුතු කරන ලෙස දැනුම දෙන අතර ඉන් බැහැරව කටයුතු කර ඇත්තම, වය නිවැරදි කිරීමට පියවර ගන්නා ලෙසන් දැනුම දෙමු.”

This Court observes further that the 2<sup>nd</sup> Respondent had totally disregarded the said advice and insisted that his decision 'A3' is right.<sup>13</sup> However, by a

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<sup>12</sup> Letter dated 18<sup>th</sup> June 2012.

<sup>13</sup> Letter dated 11<sup>th</sup> March 2013.

further letter dated 26<sup>th</sup> July 2014, the 2<sup>nd</sup> Respondent had conceded that his decision is wrong,<sup>14</sup> but no steps have been taken by the 1<sup>st</sup> – 3<sup>rd</sup> Respondents to rectify this error.

During the course of the argument as well as in the written submissions, the learned Counsel for the 4<sup>th</sup> Respondent submitted that the Petitioner is not entitled to the relief prayed for, on the following grounds.

1. The Petitioner is guilty of laches.
2. The Petitioner is guilty of suppression and/or misrepresentation of material facts.
3. The Petitioner has no *locus standi* to make the application.
4. A Writ of Mandamus cannot be issued against a person named in his official capacity.

This Court would like to very briefly address each of the said objections.

This Court observes that the certificate of heirship had been issued in favour of the 4<sup>th</sup> Respondent on 25<sup>th</sup> October 2010, whereas this application has been filed on 26<sup>th</sup> April 2013. This Court has time and again held that a litigant must invoke the jurisdiction of this Court without delay and that this Court, which is

<sup>14</sup> මෙම ඉඩමේ කිරීමල්ල යන අයගේ මරණින් පසුව හිටුයදී උරුම කර ඇතුනා ගැනීම සඳහා යිදුකළ පරිස්කරණයේ ඉදිරිපත්වූ තරඟු අර්ථකාත්‍ය කර ගැනීමෙදී යිදුව ප්‍රමාද දෝශයක් මත මියගිය විෂ්කර් යන අයගේ වශීමහළ දියුණිය ව බැවුරුත්තාගේ කිමාලු විප්පාලතා යන අයට මුළු දීමතා පැනුකරු බැහැර කරන ලද කොටස නෑත ඉතිරි කොටසේ මුළු අධිකිය ලියාපදිංචි කර ඇත.

exercising a discretionary jurisdiction can refuse to grant relief, especially where there has not been an explanation for the delay.

This Court observes that the Petitioner has not explained the delay in filing this application. However, as observed earlier, a perusal of the record maintained by the 2<sup>nd</sup> Respondent reveals that the Petitioner and the 4<sup>th</sup> Respondent has had a dispute with regard to the land even prior to the death of Kirimallu. The said dispute had continued after her death. Furthermore, a formal inquiry had not been held by the 2<sup>nd</sup> Respondent prior to the issuance of 'A3'. However, the letter dated 27<sup>th</sup> April 2011 sent by the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent, letter dated 25<sup>th</sup> April 2012 sent by the Petitioner to the 2<sup>nd</sup> Respondent, letter dated 18<sup>th</sup> May 2012 sent to the Petitioner by the Presidential Secretariat and letter dated 28<sup>th</sup> May 2012 sent by the Petitioner to the 1<sup>st</sup> Respondent, establishes that the Petitioner did in fact agitate the issue of succession even after 'A3' was issued, before the proper administrative forum. The Petitioner's delay can thus be excused to some extent.

The question that this Court must now consider is whether this Court should shut its eyes to the injustice that would follow if this Court refuses to grant relief to the Petitioner inspite of the decision of the 2<sup>nd</sup> Respondent being illegal, or whether the relief prayed for should be granted, notwithstanding the delay and the failure of the Petitioner to explain the delay.

In this regard, this Court would like to refer to the decision of the Supreme Court in Biso Menika vs Cyril de Alwis and others<sup>15</sup> where it was held as follows:

"When the Court has examined the record and is satisfied the Order complained of is manifestly erroneous or without jurisdiction the Court would be loathe 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. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically.

...Unlike in English Law, in our Law there is no statutory time limit within which a petition for the issue of a Writ must be filed. But a rule of practice has grown which insists upon such petition being made without undue delay. When no time limit is specified for seeking such remedy, the Court has ample power to condone delays, where denial of Writ to the petitioner is likely to cause great injustice. The Court may therefore in its discretion entertain the application in spite of the fact that a petitioner comes to Court late, especially where the Order challenged is a nullity for absolute want of jurisdiction in the authority making the order."

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<sup>15</sup> 1982 (1) Sri LR 368 at 379-380.

The approach that should be adopted by this Court when considering an objection with regard to delay has been discussed in V. Ramasamy v. Ceylon State Mortgage Bank and Others,<sup>16</sup> where the Supreme Court held as follows:

"The principles of laches have not been applied automatically or arbitrarily or in a technical manner by Courts of Equity themselves. The Privy Council in the case of The Lindsay Petroleum Company vs. Hurd, 1874 Law Reports, Vol V P.C 221 at 239, stated in the clearest terms the manner in which the Courts of Equity have applied this doctrine:<sup>17</sup>

"the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice

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<sup>16</sup> 78 NLR 510. Followed in Rajakaruna vs R.J.De Mel, Minister of Finance [1985 (1) Sri LR 391] and Bogawantalawa Plantations vs Minister of Public Administration and Plantation Affairs and others [2004 (2) Sri LR 329].

<sup>17</sup> ibid; page 514.

or injustice in taking the one course or the other, so far as relates to the remedy."

Finally, it is my view that where we are dealing with a matter concerning the extent of the powers and jurisdiction, which is reposed in us, to be exercised for the public good, we should hesitate to fetter ourselves with arbitrary rules, unless such a course of action is absolutely necessary. The principles of laches must, in my view be applied carefully and discriminately and not automatically and as a mere mechanical device."<sup>18</sup>

Considering the fact that the impugned decision of the 2<sup>nd</sup> Respondent is illegal, and the fact that it has now been recognized by the State that it has made a mistake, an injustice would be caused to the Petitioner by a refusal of this application. Hence, this Court is inclined to follow the above decisions of the Supreme Court. This Court is therefore of the view that this is a fit case where the discretion vested in this Court should be exercised in favour of the Petitioner. In doing so, this Court is also mindful of the fact that the 5<sup>th</sup> – 10<sup>th</sup> Respondents are resident on this land, a fact which has been admitted by the 4<sup>th</sup> Respondent.<sup>19</sup> In these circumstances, this Court overrules the first objection raised by the learned Counsel for the 4<sup>th</sup> Respondent.

The next objection raised by the learned Counsel for the 4<sup>th</sup> Respondent is that the Petitioner has suppressed the fact that the 2<sup>nd</sup> Respondent conducted an inquiry prior to arriving at her decision. A perusal of the record submitted by

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<sup>18</sup> Ibid; page 517.

<sup>19</sup> Paragraph 3 of the petition has been admitted in paragraph 4 of the Statement of Objections of the 4<sup>th</sup> Respondent.

the learned Senior State Counsel does not indicate that a formal inquiry had been held prior to the issuance of 'A3', and to that extent, there does not appear to be any suppression. Be that as it may, it has been consistently held by our Courts that suppression and misrepresentation of material facts by a petitioner who seeks a discretionary remedy of this Court would disentitle such person to such relief. However, what is important is that the suppression must relate to a fact which is material to the complaint raised by such petitioner. This Court has examined the petition and observes that the Petitioner is not complaining that she was not afforded a hearing or that the 2<sup>nd</sup> Respondent arrived at a decision disregarding the principles of natural justice. As observed earlier, the complaint of the Petitioner is that the decision of the 2<sup>nd</sup> Respondent is illegal. In these circumstances, even if an inquiry was held, this Court does not agree with the submission of the learned Counsel for the 4<sup>th</sup> Respondent that the failure to disclose the fact that an 'inquiry' was held, tantamount to a suppression of a material fact.

The third objection raised by the learned Counsel for the 4<sup>th</sup> Respondent is that the Petitioner does not have the *locus standi* to have and maintain this application in view of the fact that the Petitioner is not the eldest of the surviving children of Balayage Puncha. Although such fact is not in dispute, this Court must observe that the Petitioner is in fact eligible in terms of Rule 1 of the Third Schedule of the Land Development Ordinance to succeed to the said holding, in the event the other siblings refuse to succeed. As illustrated above, the entitlement of the Petitioner takes priority to the entitlement of the 4<sup>th</sup> Respondent, thus giving the Petitioner the *locus* to institute this action. .

This Court also observes that the Petitioner has in fact named his siblings as well as some of their children who are occupying the said land as Respondents to this application, thus demonstrating that the Petitioner is not seeking to gain an unfair advantage over the others. Furthermore, the Petitioner is not seeking an order from this Court that she be regarded as the successor. For these reasons, this Court does not see any merit in the third objection of the learned Counsel for the 4<sup>th</sup> Respondent.

The final objection of the learned Counsel for the 4<sup>th</sup> Respondent is that a Writ of Mandamus cannot be issued against a person named in his official capacity. The Petitioner has named the 'Land Commissioner General' as the 1<sup>st</sup> Respondent and the Divisional Secretary, Thamankaduwa as the 2<sup>nd</sup> Respondent but has not named the holders of the offices. The question is whether the failure to do so is fatal, and whether this Court cannot issue a Writ of Mandamus in such a situation. This Court does not think so, for three reasons.

The first is that such a course of action is provided for in Rule 5 of the Court of Appeal (Appellate Procedure) Rules of 1990 which reads as follows:

- "(1) This rule shall apply to applications under Articles 140 and 141 of the Constitution, in which a public officer has been made a respondent in his official capacity, (whether on account of an act or omission in such official capacity, or to obtain relief against him in such capacity, or otherwise).

(2) A public officer may be made a respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a respondent cannot be sufficiently identified in the manner, it shall be sufficient if his name is disclosed in the averments in the petition.

(3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name, designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The Court may make such order as it thinks fit in the interests of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any such omission, defect or irregularity.

(4) (a) In respect of an act or omission done in official capacity by a public officer who has thereafter ceased to hold such office, such application may be made and proceeded with against his successor, for the time being, in such office, such successor being made a respondent, by reference to his official designation only, in terms of sub rule (2)

(b) If such an application has been made against a public officer, who has been made a respondent by reference to his official designation

(and not by name), in respect of an act or omission in his official capacity, and such public officer ceases to hold such office, during the pendency of such application, such application may be proceeded with against his successor, for the time being, in such office, without any addition or substitution of respondent afresh, proxy, or the issue of any notice, unless the Court considers such addition, substitution, proxy or notice to be necessary in the interests of justice. Such successor will be bound, in his official capacity, by any order made, or direction given, by the Court against, or in respect of, such original respondent.

- (c) Where such an application has been made against a public officer, who has been made a respondent by reference to his official designation (and not by name), and such public officer ceases to hold such office after the final determination of such application, but before complying with the order made or direction given therein, his successor, for the time being, in such office will be bound by and shall comply with, such order or direction."

The Rules of this Court therefore makes it very clear that a person can be named as Respondent by reference to his official designation only and that it is not imperative to refer to such person by name.

The second reason why this Court does not see any merit in the said objection is that there are judicial pronouncements that take a contrary view. This issue has been discussed extensively in the recent judgment of this Court in Methodist Trust Association of Ceylon vs Divisional Director of Education of

Galle<sup>20</sup> where it was held that a Writ of Mandamus can be issued on a juristic person as well on a public official identified by his or her official designation.

The third reason is that, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have appeared before this Court, have filed their proxies and have been represented by the Hon. Attorney General. They have clearly submitted themselves to the jurisdiction of this Court, have not taken any objection with regard to them not having been referred to by name and more importantly, by motion dated 17<sup>th</sup> March 2014 have informed this Court that they shall abide by any decision of this Court. In these circumstances, this Court is of the view that the final objection raised by the learned Counsel for the 4<sup>th</sup> Respondent cannot be sustained.

In the above circumstances, this Court proceeds to issue the Writ of Certiorari prayed for in paragraph (b) of the prayer to the petition to quash the certificate of succession marked 'A3'. This Court also issues the Writs of Mandamus prayed for in paragraphs (c) and (d) of the prayer to the petition, directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to hold an appropriate inquiry to determine the person entitled to succeed to the said land and to take steps thereafter in terms of the provisions of the Land Development Ordinance. This Court does not make any order with regard to costs.

**Judge of the Court of Appeal**

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<sup>20</sup> CA (Writ) Application No. 192/2015; CA Minutes of 8<sup>th</sup> January 2019.