

**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.*

Amarathunga Arachchige Kapila
Sampath Perera,
No. 144, Greens Road,
Negombo.

PETITIONER

CA (Writ) App. No. 089/2024

Vs.

1. Hon. Harin Fernando,
The Minister of Lands,
The Ministry of Lands,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

- 1A. Hon. K.D. Lalkantha,
The Minister of Lands,
The Ministry of Lands,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

2. Mr. G.D.K. Gamage,
The Commissioner General of Lands,

The Department of Commissioner
General of Lands, No. 7, Hector
Kobbekaduwa Mawatha,
Colombo 07.

3. The Divisional Secretary,
Divisional Secretariat,
Negombo.
4. Ranasekara Pathirajage Chandrani,
No. 310/ 4 B, Daluwakotuwa,
Kochchikade.
5. Rathnayake Mudiyanselage Iresha
Prasangani,
No. 237, Fathimawatta, Daluwakotuwa,
Kochchikade.

RESPONDENTS

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

Counsel:

Rasika Dissanayake with Shabbeer Huzair for the Petitioner.

Chandana Wijesooriya with Chawindya Weerasinghe for the 5th Respondent.

Pulina Jayasuriya, S.C. for the 1st – 3rd Respondents.

Argued on: 03.11.2025

Delivered on: 03.12.2025

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

Judgement

Introduction

The Petitioner is the son of the original grantee, who had been granted a parcel of land in terms of Section 19(4) of the land Development Ordinance (hereinafter referred to as the “Ordinance”). This was so granted in 1995 by the grant marked as P1 annexed to the Petition. Thereafter, he had entered into a tenancy agreement, marked as P5 annexed to the Petition, with the 4th Respondent and placed her in possession of the premises. The said original grantee had parted this life on 7th January 2017. Thereafter, the Petitioner has made all attempts to take possession of the land in suit from the 4th Respondent but was unsuccessful. In the meantime, the Petitioner’s mother has written to the 3rd Respondent under the Right to Information Act, No. 12 of 2016, and P10 has been issued on behalf of the 3rd Respondent.

However, the Petitioner has pursued his application to obtain possession, ejecting the 4th and 5th Respondents through the Authorities. Finally, the Petitioner has received P13 from the 2nd Respondent. In response to an appeal made by the Petitioner to the 2nd Respondent, the 2nd Respondent has directed the 3rd Respondent to inquire into the matter and make a suitable order.

Pursuant to that, the Petitioner has instituted the above styled Application in this Court to obtain the following relief:

“b) issue a mandate in the nature of Writ of Prohibition preventing the 1st to 3rd Respondents from transferring the ownership of the said land in the name of anyone else other than the Petitioner,

c) issue a mandate in the nature of a Writ of Mandamus to compel the 1st, 2nd, and 3rd Respondents to register the name of the Petitioner as the lawful successor of the original owner of the land and/or premises more fully described in the first schedule of the Grant marked ‘P1,’ ”

The 1st Respondent is the Ministry-in-charge, the 2nd Respondent is the Land Commissioner, and the 3rd Respondent is the Divisional Secretary. The 4th Respondent is the tenant who was placed in possession of the premises by the original grantee, while the 5th Respondent is her daughter.

The 1st to 3rd Respondents have not filed their Objections; nevertheless, the 4th and 5th Respondents have filed their respective objections. However, no counter affidavits have been filed although the dates have been allotted to the parties.

On the day of arguments, 03.11.2025, when this matter was taken up, the counsel for all the parties indicated that they are agreeable to argue or dismiss the case despite the fact that the 1st to 3rd Respondents have not filed their objections yet. They were able to conclude the matter with the documents available to complement their arguments. Accordingly, the following arguments were advanced.

Arguments

The first argument of the Counsel for the Petitioner, Mr. Rasika Dissanayake, is that the Petitioner is entitled to succeed to the tenancy in terms of the Land Development Ordinance. He heavily relies on **P10**, the document sent to the Petitioner’s mother by the Divisional Secretary, recommending that the Petitioner should succeed. However, on questioning he conceded that his father had decided to sell the land to the 4th Respondent, who was put in possession by the father

and he further conceded that she was so put in possession without any permission obtained from the Divisional Secretariat.

On the other hand, the learned State Counsel, Mr. Jayasuriya argued that on the death of the father (the original grantee) in 2017, the Petitioner's mother has not succeeded as the spouse, and the Petitioner has not explained as to why the mother was unable to succeed to the grant. In addition to that, the Petitioner has not explained as to why he was unable to make the mother, as the life interest holder, a party to the Application.

The other contention advanced by Mr. Jayasuriya is that the Petitioner's father who is the original grantee has placed the 4th Respondent in possession violating the condition of **P1**, the grant. Therefore, they have continuously violated it, and neither the Petitioner nor her mother has explained as to why they were unable to succeed within six months from the date of the death of the father, the original grantee. However, on the other hand, Mr. Wijesooriya, Counsel for the 4th and 5th Respondent argues that the mother of the 5th Respondent was put in possession by the original grantee, and the 4th and 5th Respondents came to possess the premises in suit as the prospective buyers to purchase the same.

In reply, Mr. Dissanayake argued that the 4th Respondent is only a licensee, and they have admitted that they are willing to give the premises, but so far, they have not given the premises.

In those circumstances, the Petitioner is entitled to obtain a permit or a grant as the successor of the land.

Factual matrix

According to the Petition of the Petitioner, the Petitioner's father, one Amarathunga Arachchige Stanley Lawus Perera, had been granted a permit under the Section 19(4) of the Land Development

Ordinance, marked as P1, annexed to the Petition. Thereafter, the Petitioner's father had moved into the premises in suit along with his family, including the Petitioner, his mother having erected the house thereof, and occupied the same until 2008. The Petitioner asserts that in 2008 as his father had fallen ill and was admitted to hospital, the Petitioner and the other members of the family had moved into another rented out premises in the vicinity of the hospital and thereby left the premises unoccupied. However, later the 4th Respondent along with the 5th Respondent had moved into the house on a tenancy agreement, marked as P5, for one year. The said P5 was entered between the Petitioner's father, the original grantee and the 4th Respondent.

Later, the 4th and 5th Respondents have agreed to purchase the same by paying in instalments. Initially, they have paid Rs. 300,000 (Three Hundred Thousand Rupees); thereafter, in monthly instalments of Rs. 18,000 (Eighteen Thousand Rupees). However, the Petitioner asserts that later the 4th and 5th Respondents have defaulted; therefore, he decided to eject them and take possession. However, on his representation, there had been some inquiry conducted by the 3rd Respondent. In addition to that, when he made representation to the 2nd Respondent, he also has referred the matter to the 3rd Respondent to take necessary steps to register the 5th Respondent as the successor or issue a new permit. However, the Petitioner has come before this Court challenging the decision of the 2nd and 3rd Respondents on the basis that the Petitioner should be issued with a grant under P1 or should be accepted as successor to P1.

Grievance of the Petitioner

The Petitioner's father has passed away in 2017 and prior to that, by P5, he had entered into a tenancy agreement with the 4th Respondent, violating the conditions in P1, the original grant, since it was entered into without obtaining prior permission from the Divisional Secretary. In addition to that, the 4th Respondent along with the 5th Respondents are in possession of the property, which

is borne out by **P6** and **P7**, the two police complaints made by the parties. In addition to that, the Petitioner has not succeeded to the rights of his father, who was the original grantee, within 6 months from his death as the law requires. Therefore, in any case, the Petitioner is not entitled to succeed as the law provides.

No writ lies

However, on the other hand, there is ample evidence to establish that the 4th Respondent or the 5th Respondent is in possession of the property in suit. Therefore, even on applications and the appeals made by the Petitioner to the relevant authorities, the Land Commissioner has referred the matter to the Divisional Secretary to make a suitable order. On the documents before us, it is very clear that the Petitioner is not entitled either to succeed or to obtain a prohibition against the 3rd Respondent from accepting any rights of the 4th and 5th Respondents or issuing any mandamus compelling the 3rd Respondent to accept the Petitioner as the successor to the original grantee. Furthermore, it is my view that, if at all the Petitioner has any right, he should first go to the District Court and establish that right and obtain proper relief from the District Court against the 4th and 5th Respondents¹.

¹ *Thajudeen v. Sri Lanka Tea Board and Another* [1981] 2 Sri LR 471.

Conclusion

Therefore, it is my view that no writ lies; as such, this Application is liable to be dismissed. Without costs.

JUDGE OF THE COURT OF APPEAL