

**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.

Naththandige Indra Chandana Anton Fernando, of No. 266, “Bandaranayake Janapadaya”, Bandirippuwa, Lunuwila.

CA (Writ) App. No. 283/2024

PETITIONER

Vs.

1. The Divisional Secretary of Wennapuwa, The Divisional Secretariat, Wennapuwa.
2. Commissioner General of Lands, Land Commissioner General's Department, “Mihikatha Medura”, Land Secretariat, 1200/6, Rajamalwatte Road, Battaramulla.
3. The Registrar of Lands of Marawila,

The Land Registry,
Marawila.

4. Ponnamperumage Rita Muriel Fernando,
No. 316,
“Bandaranayake Janapadaya”,
Borelessa,
Lunuwila.
5. Naththandige Sunethra Fernando,
No. 316,
“Bandaranayake Janapadaya”,
Borelessa,
Lunuwila; but presently of Via Etnea
17395124, CataniaCT Italy;

Appearing by her Power of Attorney Holder: Naththandige Consy Bridget Fernando, of No. 260, St. Mary's Road, Bolawatte, Waikkala.

6. Naththandige Shriyani Mallika Fernando,
Boralessa,
Lunuwillia.
7. Naththandige Konsy Bridget Fernando,
No. 260, St. Mary's Road, Bolawatte,
Waikkala.

RESPONDENTS

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

Counsel:

Dr. Sunil Coorey with Sudarshani Coorey for the Petitioner.

Shemanthi Dunuwille, S.C. for the 1st to 3rd Respondents.

Sulakshi Batuwita instructed by Niluka Dissanayake for the 4th, 5th and 7th Respondents.

Argued on: 23.10.2025

Delivered on: 11.12.2025

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

Judgement

Introduction

The Petitioner and the 5th to 7th Respondents are siblings. The 4th Respondent is their mother. The 7th Respondent is the 5th Respondent's Power of Attorney holder. The 1st Respondent is the Divisional Secretary; the 2nd Respondent is the Commissioner General of Lands, while the 3rd Respondent is the Land Registrar of Marawila.

Naththandige Pilesiyana Fernando, the father of the 5th to 7th Respondents and the Petitioner, had been issued with a grant bearing No. ගන/ඇඝ/ග/4563 under the Land Development Ordinance (hereinafter referred to as "the Ordinance"), in respect of the premises in suit by the Head of the State, marked as P1¹ annexed to the Petition and dated 20th May 1983. However, the Petitioner's father, the said Pilesiyana Fernando, passed away on 23.03.1988 without nominating any

¹ Page 154 of document marked P2 annexed to the Petition.

successors. Therefore, his spouse (4th Respondent), who is the mother of the Petitioner and the 5th to 7th Respondents, became the life interest holder by operation of the law.

While she was the life interest holder, the 4th Respondent has nominated the 5th Respondent (the Petitioner's sister) as the successor, who is presently employed in Italy. When the Petitioner's sister, the 5th Respondent, returned to the premises in suit, a dispute had arisen between the Petitioner and the Respondents; thus, there had been litigation between the parties. The Petitioner asserts that he was also permitted to be in possession of the premises in suit in a 66 Application instituted under the Primary Court Procedure Act, No. 44 of 1979; in addition to that, there is pending litigation in the District Court between the Petitioner and the 5th Respondent as well.

Thereafter, the matter has been referred to the 1st Respondent, and the 1st Respondent had already cause to register the 5th Respondent as the successor of the 4th Respondent, and it is registered in the relevant folio at the Land Registry as well. Therefore, the Petitioner seeks to invoke the writ jurisdiction of this Court to quash the said decision, and he seeks to obtain *inter alia* the following relief;

"b) Issue a Writ of Certiorari quashing/ cancelling the entry made in Folio bearing No.

പ്രതി/ബേജ്/42/92, nominating the 5th Respondent as the nominated successor of Grant bearing No. പ്രതി/ബേജ്/പ്ര/4563 dated 1983.05.20.

c) Issue a Writ of Certiorari quashing/ cancelling all the other entries made the continued Folios, in the following the said Folio bearing No. പ്രതി/ബേജ്/42/92 nominating the 5th Respondent as the nominated successor of Grant bearing No. പ്രതി/ബേജ്/പ്ര/4563 dated 1983.05.20.

d) Issue a Writ of Mandamus compelling the 1st, 2nd, and 3rd Respondents to take steps to

the register the name of the Petitioner as the successor/next heir of Grant bearing No. 4563 dated 1983.05.20.”

When this was first supported, notice was issued, and the Counsel agreed to treat the arguments advanced at the support stage as the main arguments. Thereafter, the parties were permitted to file their respective Objections and Written Submissions. Hence, this judgement.

Factual matrix

Before discussing the legal argument, I wish to advert to certain facts where some of them can be treated as undisputed facts; therefore, for the purpose of avoiding any repetition in the main part of the consideration of facts and law in my judgement, I wish to advert to those facts now.

Naththandige Pilesiyanu Fernando was the grantee of the parcel of land by the Government under Section 19(4) of the Land Development Ordinance; the said grant is annexed to the Petition, marked as **P1**. The said Pilesiyanu Fernando had married the 4th Respondent, and the Petitioner and the 5th to 7th Respondents are his children. The 5th Respondent is the eldest child, while the Petitioner is the youngest.

Pilesiyanu Fernando, having constructed a house on the land in suit, moved in with his family there and developed the same while being in possession. However, it is also an undisputed fact that he died in 1998, and after his death, his wife (4th Respondent) has succeeded to his rights in terms of Section 48B of the Land Development Ordinance.

It is also common ground that the 4th Respondent spouse has nominated the 5th Respondent as her successor. This is also registered in the relevant folios of the Land Registry, where the land is also registered. However, there had been disputes between the Petitioner and the 5th Respondent; therefore, an inquiry was held.

After the inquiry by the officials, it was found that the 4th Respondent, after her succession to the rights of her husband, has been recommended to be issued with a new grant; in the meantime, she has nominated the 5th Respondent as her successor, and registered her nomination.

Later, the officials at the inquiry found that it had been erroneously done; namely, the decision to issue a new grant or permit to the 4th Respondent, other than acceptance of the 5th Respondent as her successor, and also nomination and registering the 5th Respondent's nomination as the 4th Respondent's successor, who is not entitled to nominate anybody as her successor.

It is also an undisputed fact that there had been a 66 Application instituted under the Primary Court Procedure Act, No. 44 of 1979, and also a land action pending between the Petitioner and the 5th Respondent in the District Court of Marawila in respect of their respective rights to the said parcel of land in suit.

Now I will consider the legal arguments advanced by the counsel for the parties.

Arguments

The Petitioner's argument is that the 4th Respondent can only succeed to the rights of the original grantee as the spouse and enjoy her rights as a life interest holder. She has succeeded to the original grantee's rights in terms of Section 48BA of the Ordinance. However, she is not entitled to nominate anybody as her successor in terms of Section 48B of the Ordinance.

Therefore, nominating the 5th Respondent as her successor, and registering it by the 1st Respondent in the relevant Folio is erroneous and cannot be maintained. Thus, a *Writ of Certiorari* should be issued.

Furthermore, it is argued for and on behalf of the Petitioner that a *Writ of Mandamus* should also be issued, compelling the 1st to 3rd Respondents to hold an inquiry and accept the Petitioner as the successor since he is the only male child in the family, who also claims possession of the said property.

It has been argued for and on behalf of the 1st Respondent that the 4th Respondent has succeeded to the tenancy and acceptance of her succession, and registering the same is legal. Nevertheless, accepting her rights and the decision to issue a new permit or grant in due favour is erroneous. In addition to that, accepting the nomination of the 5th Respondent by the 4th Respondent as her successor and registering her name is erroneous. Thus, this could be rectified in due course.

Further, it is also argued that unless and until the 4th Respondent's demise occurs, nobody can ask for any succession, or rights to be declared, or compel the 1st to 3rd Respondents to issue or accept any successor to the 4th Respondent or decide as to who should be the rightful successor.

On the other hand, it is argued for and on behalf of the 5th to 7th Respondents that the 4th Respondent can only succeed in terms Section 48B, but she cannot nominate anybody since she is only holding life interest. It is also further argued that no succession after her has to be decided since she cannot nominate anybody as her successor in terms of Section 48B, the succession will only arise after her death; therefore, Sections 72 or 73 of the Ordinance do not come into play.

Succession

When all the arguments advanced by all three counsel are considered together, it is my view that it is the common position of all counsel that the 4th Respondent can succeed to the right of the original grantee as his spouse, who can only have life interest in terms of Section 48B of the Ordinance.

Further, they all have argued that she cannot nominate anybody as her successor in terms of Section 48B which reads as thus;

*"48B. (1) Upon the death of the owner of a holding, **the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions:-***

(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.

(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid." [Emphasis is mine]

In addition to that, it can be deduced that on a perusal of Sections 72, the succession to the rights of the 4th Respondent will only arise on her death. Section 72 and 73 of the Ordinance reads as thus;

"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]*

*73. Title to a land alienated on a permit or to a 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 permit-holder or owner of the holding if such permit-holder or owner died without leaving behind his or her spouse, or, if such permit-holder or owner died leaving behind his or her spouse, **upon the failure of such spouse to succeed or from the date of the death of such spouse, as the case may be.**"* [Emphasis is mine]

Therefore, the 4th Respondent's nomination that the 5th Respondent should be her successor and registering the same by the 1st to 3rd Respondents, is illegal and cannot be condoned.

Accordingly, it is my view that the Petitioner has a right to obtain a *Writ of Certiorari* against the 1st to 3rd Respondents, and also the 4th and 5th Respondents whose rights are affected by the said decision cancelling such a nomination and registering the same.

However, as clearly argued by all counsel, it is my view that neither the 4th Respondent nor the 1st to 3rd Respondents can take a decision as to who should succeed the 4th Respondent on her death. This process should happen in the future, and until her death, it cannot be decided.

In this case, the Petitioner has sought a *Writ of Mandamus*, compelling the 1st to 3rd Respondents to accept the Petitioner as the successor as the only male child to the original grantee and register his name. Therefore, I need to make an order thereof.

In considering the material placed before me, it should also be mentioned that when a decision is taken as amended by Act No. 11 of 2022, now there is no preference based on the sex of any child (next of kin); therefore, even the female children are now entitled to claim succession. As such, if

somebody has developed the land and claimed it right throughout as being in possession, then she or he is entitled to claim succession, and the officials are required to accept such a person as the successor to the rights of the original grantee².

In this case, it appears that the 5th Respondent, after being registered as the successor, has obtained a loan from a bank and developed the land in question. As she has been in possession and developed the land, such evidence can be considered by the 1st to 3rd Respondents in determining the rights of the parties after the death of the 4th Respondent.

Conclusion

Accordingly, only a part of this Application is allowed by granting a *Writ of Certiorari* as prayed for in relief (b) and (c) in the Petition, and refuse to grant a *Writ of Mandamus* sought by the Petitioner.

JUDGE OF THE COURT OF APPEAL

² *Wimalawathi v. Commissioner General of Land and Others* [2019] 3 Sri L.R. 548.