

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

Sellappulige Ravindra Susantha De Rosa,
No. 111/2, Palugasdamana,
Polonnaruwa.

Through his Power of Attorney holder,
Hondamuni Anoma Priyadharshani,
No. 111/2, Palugasdamana,
Polonnaruwa.

Petitioner-Appellant

SC/APPEAL/81/2019

CA/WRIT/326/2013

Vs.

1. Divisional Secretary,
Divisional Secretariat,
Thamankaduwa, Polannaruwa.
2. Provincial Commissioner of Lands,
Department of Provincial
Commissioner of Lands,
North-Central Province,
Anuradhapura.
3. Deputy Commissioner of Lands,
Office of the Deputy
Commissioner of Lands,
Polonnaruwa.
4. Sellappulige Benjamin Rosa,
No. 111/1/1, Palugasdamana,
Polonnaruwa.

5. Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.
Respondent-Respondent

Before: Hon. Justice S. Thurairaja, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice Sobhitha Rajakaruna

Counsel: M.S. Nilamudeen with S. Rajendran for the Petitioner
Appellant.
Ms. Navodi De Zoysa, S.C., for the 1st to 3rd and 5th
Respondent-Respondents.
Amrit Rajapakse for the 4th Respondent-Respondent.

Argued on: 16.07.2025

Written submissions:

By the Petitioner-Appellant on 25.08.2025.
By the 1st to 3rd and 5th Respondents on 07.11.2019.
By the 4th Respondent on 23.10.2025

Decided on: 16.12.2025

Samayawardhena, J.

The petitioner filed this writ application in the Court of Appeal seeking, *inter alia*, a writ of certiorari to quash the decision of the Divisional Secretary of Polonnaruwa to transfer the original ownership of the land, which forms the subject matter of this application, to the 4th respondent, Benjamin Rosa, as reflected in the Register marked P6(c).

The Sinhala copy of the original Permit issued under the Land Development Ordinance in the name of Edwin Rosa, the petitioner's grandfather, was marked P2. His wife was Lucia Fernando. As seen from P2, Edwin Rosa had nominated his elder son, Joseph Rosa, as his successor. Joseph Rosa is the petitioner's father. Thereafter, the name of Joseph Rosa has been struck off with a single line, and the name of Benjamin Rosa has been entered as the successor. Benjamin Rosa is the younger son of Edwin Rosa and the brother of the petitioner's father. It is not the petitioner's complaint that a nomination, once made, cannot be changed. Under sections 53 and 54 of the Land Development Ordinance, any nomination of a successor may be cancelled at any time by the owner or Permit-holder who made such nomination, and a fresh nomination may be made. The petitioner's complaint before the Court of Appeal was that "*it is not stated in the Permit or in any other document as to when, or by whom, or on what grounds this name has been entered in this manner.*"

In the Court of Appeal, the Divisional Secretary tendered the English copy of the original Permit as 1R1 and the Land Ledger as 1R2. As evidenced by the death certificate marked P3, Edwin Rosa died on 01.03.1979. This confirms that the cancellation of the earlier nomination and the making of a fresh nomination occurred during his lifetime. According to 1R1 and 1R2, Edwin Rosa nominated his elder son, Joseph Rosa, as his successor on 08.04.1954. Thereafter, on 27.08.1963, he nominated his younger son, Benjamin Rosa, as his successor in place of his elder son, Joseph Rosa. These entries appear in Permit 1R1 and in the Land Ledger marked 1R2. In the absence of any evidence to the contrary, the Court is entitled to presume that official acts have been regularly performed, in terms of Illustration (d) to section 114 of the Evidence Ordinance.

Edwin Rosa did not nominate his wife, Lucia Fernando, as his successor to the land in the Permit. However, upon his death, and by operation of law,

Lucia Fernando succeeded to the land, and the Grant marked P5 was thereafter issued in her name in terms of section 48A of the Land Development Ordinance.

As seen from P6(a) and P6(b), although she had purported to nominate several persons in the Grant issued to her, including the petitioner (her grandson), as successors, those nominations are without legal effect. Section 48A(2)(b) expressly prevents the spouse of the deceased permit-holder from nominating a successor to the land. In accordance with section 48B(1)(c), the same restriction applies where the spouse is that of the owner of a holding, that is, a person in whose favour a Grant had been issued.

The spouse can only enjoy the land during his or her lifetime. Upon the death of the spouse, the person nominated as successor by the deceased permit-holder or owner of the holding, or, where there is no such nomination, the person entitled to succeed under Rule 1 of the Third Schedule to the Ordinance, shall succeed to the land.

Sections 48A and 48B read as follows:

48A(1) Upon the death of a permit-holder who at the time of his or her death was required to pay any annual instalments by virtue of the provisions of subsection (2) of section 19, notwithstanding default in the payment of such instalments, the spouse of that permit-holder, whether he or she has or has not been nominated as successor by that permit-holder, shall be entitled to succeed to the land alienated to that permit-holder on the permit and the terms and conditions of that permit shall be applicable to that spouse.

(2) If, during the lifetime of the spouse of a deceased permit-holder who has succeeded under subsection (1) to the land alienated on the permit, the terms and conditions of the permit are complied with by such

spouse, such spouse shall be entitled to a grant of that land subject to the following conditions:-

- (a) such spouse shall have no power to dispose of the land alienated by the grant;*
- (b) such spouse shall have no power to nominate a successor to that land;*
- (c) upon the death of such spouse, or upon his or her marriage, the person, who was nominated as successor by the deceased permit-holder or who would have been entitled to succeed as his successor, shall succeed to that land:*

Provided that the aforesaid conditions shall not apply to a grant of any land to be made to a spouse who has been nominated by the deceased permit-holder to succeed to the land alienated on the permit.

(3) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (2) shall be invalid.

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:-

- (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.

(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.

According to the death certificate marked P4(a), Lucia Fernando died on 06.01.2013. As the permit-holder, Edwin Rosa did not nominate her in the Permit as his successor, and therefore upon her death, Benjamin Rosa, the person nominated by Edwin Rosa, shall succeed to the land. Accordingly, the decision of the Divisional Secretary of Polonnaruwa to transfer the ownership of the land to the 4th Respondent, Benjamin Rosa, as reflected in the Register marked P6(c), is flawless.

Accordingly, the dismissal of the petitioner's writ application by the Court of Appeal is correct, although the petitioner has sought to challenge that judgment before this Court. A previous Bench of this Court granted leave to appeal on the question whether the Court of Appeal erred in not considering that the name of the petitioner's father, which had initially been included as the successor to the land, had been struck off and the name of the 4th respondent was inserted unlawfully. I answer that question of law in the negative. The appeal is dismissed, but without costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Sobitha Rajakaruna, J.

I agree.

Judge of the Supreme Court