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

In the matter of an Appeal under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. Appeal No:
48/2024

SC/SPL/LA No:
193/2023

CA Writ Application No.
CA(Writ) 293/19

Rajakaruna Mudiyanselage
Jayawardhena,
Mudungoda,
Kiralogama.
PETITIONER

Vs.

1. Director General,
Mahaweli Authority,
No. 500,
T.B. Jaya Mawatha,
Colombo 10.

2. Resident Project Manager
(Land),
Resident of RPM (Land),
Thambuththegama.

3. Commissioner of Lands,
Land Commissioner's
Department,
Colombo 07.

4. Registrar of Lands,
Land Registry,
Anuradhapura.

5. Rajakaruna Mudiyanselage
Siriwardhana,
Mudungoda,
Kiralogama.

6. Rajakaruna Mudiyanselage
Dharmawardhana,
Mudungoda,
Kiralogama.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

Rajakaruna Mudiyanselage
Jayawardhena,
Mudungoda,
Kiralogama.

PETITIONER-APPELLANT

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Mudungoda,
Kiralogama.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.
RESPONDENTS-RESPONDENTS

Before **:** Mahinda Samayawardhena, J.

: Sampath B. Abayakoon, J.

: Sampath K. B. Wijeratne, J.

Counsel	**:**	Priyantha Alagiyawanna with Sauri Senanayake instructed by Sachini Maheshika for the Petitioner-Appellant.
	:	Vijithsingh instructed by Dinesh de Silva for the 5th Respondent-Respondent.
	:	Chaya Sri Nammuni, DSG with Hashini Opatha, SSC, for the 1st to 4th and 7th Respondent-Respondents.
Argued on	**:**	06-08-2025
Written Submissions	**:**	09-09-2025 (By the Petitioner-Appellant)
	:	16-05-2024 (By the Petitioner-Appellant)
	:	10-09-2025 (By the 1st to 4th and 6th Respondent-Respondents)
	:	25-10-2024 (By the 1st to 4th and 7th Respondent-Respondents)
	:	17-09-2025 (By the 5th Respondent-Respondent)
	:	19-09-2024 (By the 5th Respondent-Respondent)
Decided on	**:**	21-11-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the petitioner-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of the judgment pronounced by the Court of Appeal on 31-05-2023, wherein the Writ Application preferred by the appellant was dismissed.

This is a matter where the appellant sought a mandate in the nature of a Writ of Certiorari to quash the nominations that had been made in the documents

P-9, P-9A and P-9B marked and produced along with his petition, and also a mandate in the nature of a Writ of Mandamus as prayed for in the petition.

The Court of Appeal from the impugned judgment refused to grant the said reliefs and dismissed the Writ Application without costs for the reasons set out in the said judgment.

When this appeal was considered for the granting of leave to appeal by this Court on 14-03-2024, leave was granted by this Court on the following questions of law.

1. Have Their Lordships of the Court of Appeal misdirected themselves in law and/or in fact when they failed to consider that as per section 48A(2) of the Land Development Ordinance, irrespective of the fact that the original allotee or the selected prospective permit holder had died prior to the issuance of a permit, his spouse is only entitled to life interests as provided by section 48A(2) of the Land Development Ordinance, and the spouse has no right to make any nomination?
2. Have Their Lordships of the Court of Appeal misdirected themselves in law and/or in fact when failing to identify that once a land is reserved under a person's name, even if the said person passes away, the spouse is entitled only to life interest?
3. Whether Nandawathie had succeeded as a permit holder and not as a life interest holder in 1980 upon the death of Punchirala, in terms of Section 26 Rule 1 of the Sale of State Land (Special Provisions) Act No. 43 of 1973?
4. Whether in terms of Section 19(2) of the Land Development Ordinance, the permit could have been issued to Punchirala as he had died in 1980?
5. In the circumstances, whether Nandawathie had become the original permit holder in terms of the Land Development Ordinance inasmuch as she could not have been issued with a permit in terms of Act No. 43 of 1973?

When this matter was taken up for argument, it was agreed by the parties that this matter could be argued together with SC Appeal No. 49/2024, since the facts and the circumstances and the law that should be considered are similar. It was agreed that a single judgment can be pronounced, but the questions of law that need determination in relation to both the matters should be answered separately.

At the hearing of the appeal on 06-08-2025, this Court heard the submissions of the learned Counsel, and also had the benefit of considering the pre-argument as well as post-argument written submissions in relation to their respective stands taken up before the Court.

Although the parties agreed to have a single judgment, it is my view that it would be prudent to pronounce two separate judgments in view of the slight variations as to the facts and the questions of law under which the two appeals were argued, which would in my view provide better clarity.

The appellant has gone before the Court of Appeal on the basis of being the eldest son of the deceased Rajakaruna Mudiyanselage Punchirala and the claimed legal successor of the subject matter of the application under the provisions of the Land Development Ordinance (LDO).

It has been his position that his father Punchirala developed three plots of paddy land situated at Eppawala with the consent of the Mahaweli Authority (referred to as Lot 492, 467 and 491), and therefore, the Mahaweli Authority conveyed the said lands to Punchirala as per the land ledger and the State Land permits issued in that regard. It was his position that the said three lands were conveyed and allocated to his father in the year 1979 under the provisions of LDO (the documents marked P-2 and P-2A filed together with the petition before the Court of Appeal).

It has been his position that it is he who developed the said land Lots 492 and 491 with the consent of his father, and even after his father's death on 29-10-1980, it was he who cultivated and possessed the said lands.

He has contended that his mother Nandawathie fell ill in the year 2008 and two of his siblings named as the 5th and 6th respondents in the Court of Appeal petition influenced his mother to demand that he should leave the lands he was cultivating, which resulted in finding out that his mother had been issued State Grants in terms of section 19(4) of the LDO in relation to the lands.

It has been his position that upon further inquiry, he came to know that in the land permits issued to his father in relation to two of the lands out of the earlier mentioned three lands, his father's name has been struck off and his mother's name has been entered as the permit holder [(permit no. 407/D5/TO/46/03 *alias* 492 (irrigation) land ledger marked P-7 and P-7A) and (permit no. 407/D5/TO/46/02 *alias* 491 (irrigation) land ledger marked P-8 and P-8A)]. It has been his position that as a result, his mother has obtained the land grants in relation to the said lands under her name and has nominated the 5th and 6th respondents, which he termed as illegal nominations.

Claiming that it is he who is entitled to succeed to the lands given to his father under the permits as the eldest son of the family in terms of the LDO, he has prayed for a mandate in the nature of a Writ of Certiorari to quash the documents marked P-9, P-9A and P-9B. He has prayed for a mandate in the nature of a Writ of Mandamus directing the 1st to 3rd respondents named in the Court of Appeal petition that his name should be entered as the nominee or successor of the lands mentioned in the land grants marked P-5 and P-6 as per the regulations in the LDO. He has also prayed for a Writ of Mandamus directing the 4th respondent to delete the nominations registered in the land registry as specified in P-9A and P-9B.

The Court of Appeal in the impugned judgment has determined that the earlier mentioned Punchirala, the father of the appellant, has been selected to alienate the State Lands mentioned in the petition in terms of the Sale of State Lands (Special Provisions) Law, and since he has passed away before any permit could be issued to him, the said permits had been issued to his widow Nandawathie, and that was the reason for the deletion of Punchirala's name and substituting the name of Nandawathie in the said land permits.

It has been the view of the Court of Appeal that accordingly, the State Grants in terms of section 19(4) of the LDO have been properly granted to Nandawathie, and it is she who has the right to nominate her successor.

It has been determined that there was no basis for the Court of Appeal to issue Writs in the nature of Certiorari and Mandamus, while holding that the appellant is not entitled to the reliefs sought.

At the hearing of this appeal, the learned Counsel for the appellant strenuously argued that in terms of section 48A(2) of the LDO, irrespective of the fact that the original allotee/selected prospective permit holder had died prior to the issuance of permits or not, his spouse is only entitled to life interests and the spouse has no right to make any nominations. It was his contention that even if the grants were being issued in terms of section 19(4) of the LDO, the positions still remain the same.

It was his position that in terms of section 2 of the LDO, the term 'permit-holder' should mean any person to whom a permit has been issued and includes a person who is in occupation in any land alienated to him on a permit, although no permit has actually been issued to him. Therefore, it was his position that Punchirala's spouse Nandawathie to whom the grant has been issued in terms of section 19(4) can only have life interest, where she would not have the power to dispose or nominate a successor.

The learned Counsel heavily relied on the judgment of **Obeyesekere, J.** pronounced in the case of **Jayathilaka Vs. Divisional Secretary Kuruwita and Others (2021) 2 SLR 430** and the judgment pronounced by the Supreme Court on 09-11-2023 in **SC Appeal 166/2017** where **Samayawardhena, J.** has extensively discussed the legal effects of a permit and a grant issued in terms of section 19(2) and 19(4) of the LDO.

The position taken up on behalf of the respondents was that since the original allocation of the lands to Punchirala was made in terms of the Sale of State Lands (Special Provisions) Law No. 43 of 1973, although the said Law has later been repealed, the Law that should be considered as applicable in

relation to the issuing of permit to Nandawathie instead of Punchirala should be that and not the LDO.

It was the position of the learned Counsel that section 26 of the said Law is the relevant provision under which the relevant authority has decided to change the name of the allotee of the lands in question after the death of the original allotee, and accordingly, permits issued in terms of section 19(2) and the grants issued under section 19(4) have been issued in the name of Nandawathie in terms of the LDO. It was submitted on behalf of the respondents that since Nandawathie was the original permit holder, it is she who has the right to nominate the successor in terms of the LDO and the nominations are legal and valid before the law.

Having considered the above factual matrix and the legal arguments advanced before the Court, it is my view that the central question that needs consideration would be whether Nandawathie, the mother of the appellant, is the person who was given the original permit or the permit has been given only on the basis that she is the widow of the original allotee or permit holder, and if not, whether she has any right to nominate a successor on her own motion as she has done on this particular occasion.

It is clear that when the father of the appellant, namely Punchirala, was selected for the sale of the State Lands mentioned in the petition, the said selection was done on 21-09-1979 in terms of Sale of State Lands (Special Provisions) Law of No. 43 of 1973 (P-2). It is undisputed that the said Punchirala passed away on 20-10-1980, before being issued with a permit or a grant in terms of the said Law.

The documents marked P-7A and P-8A, the relevant land ledgers establish the fact that although initially the ledgers have been prepared on the basis that Punchirala is the permit holder, before any permit could be issued, he has passed away in the year 1980.

Although the Sale of State Lands (Special Provisions) Law was repealed on 05-05-1981 by the Amendment Act No. 27 of 1981 of the LDO, there cannot be any doubt that the applicable law at the time Punchirala passed away in

relation to the allocation of the lands to him has been the Sale of State Lands (Special Provisions) Law. It may be the very reason why the relevant authority has decided to insert Nandawathie's name in the land ledger having considered the applicability of section 26 of the Law in relation to the devolution of title in case of a death of a permit holder or holder of a grant although there was no permit.

It appears that since the Sale of State Lands (Special Provisions) Law stands repealed from the 05-05-1981, when the permits were finally issued on 12-12-1984, it has been issued in terms of the LDO. Accordingly, the grants in respect of the questioned lands have also been issued to the said Nandawathie in terms of section 19(4) of the LDO (the documents marked P-5 and P-6). The said grants have been issued on 29-08-2002 and 17-01-2002 respectively.

Therefore, it is my considered view that when the land permits in terms of section 19(2) of the LDO were issued in the name of Nandawathie, the permits have not been issued on the basis that she was the widow of the original permit holder Punchirala, but on the basis that she is the person who should get the permit since the original allotee Punchirala was never issued with a permit in terms of either the Sale of State Lands (Special Provisions) Law or LDO, due to the fact that he has passed away in the year 1980.

It is therefore clear that the said Nandawathie has been issued with the corresponding grants in terms of section 19(4) of the LDO on the same basis.

Accordingly, I am of the view that the said Nandawathie had the legal right to nominate her successors and to nominate the 5th and the 6th respondents as shown in the documents marked P-9A and P-9B.

It needs to be noted that the case relied on by the appellant, namely the case of **Jayathilaka Vs. Divisional Secretary, Kuruwita and Others (supra)**, was not a case where similar facts as in this case had been considered. In the said case, the permit under the provisions of the LDO has been issued in the name of one Rathran Hami and the said Rathran Hami had nominated Pahala Gamaethiralalage Jayathilaka as his successor in the permit itself. Upon the death of the said Rathran Hami, his spouse Gunarathne Manike has

succeeded to the said land in terms of section 48A(1) of the LDO as amended by Amendment Act No. 27 of 1981.

It has been an admitted fact that the only entitlement that the said Gunarathne Manike had to the land was by virtue of being the surviving spouse of the original permit holder. The said Gunarathne Manike has been granted the permit to the land in terms of section 19(4) of the LDO and she has in turn, based on the strength of the grant in her favour, has nominated one of her other daughters as the successor to the said land.

The question before the Court was whether it is the nominee of the original permit holder, namely Jayathilaka, or the nominee of the Gunarathne Manike, who had a grant in her favour as the wife of the original permit holder who should be considered as the successor of the land upon the death of the said Gunarathne Manike.

It was under that context His Lordship of the Court of Appeal has considered the provisions of section 48A(2) of the Ordinance in determining that such a spouse shall be entitled to a grant of that land, but the said spouse would not have the power to nominate a successor to that land. It was held that it would be the successor nominated by the original permit holder who can succeed to the land mentioned in the grant accordingly.

However, the facts of the matter before this Court are quite different, although it may look somewhat similar.

As I have stated previously, the relevant document submitted to the Court of Appeal clearly demonstrates the fact that the mother of the appellant, namely Nandawathie, has not been given the grant on the basis of being the spouse of the permit holder, but the said Nandawathie is the permit holder.

It is my view that there is no basis to argue that section 48A(1) or 48A(2) should be the provision applicable when it comes to nominating a successor to the two lands in question.

It is clear that Nandawathie being the permit holder on her own right, has been granted the relevant permits in terms of section 19(4) of the LDO.

The relevant section 19(4) of the Ordinance reads as follows,

> **19(4). A permit-holder shall be issued a grant in respect of the land which he is in occupation**
>
> **(a) Where he has paid all sums which he is required to pay under subsection (2);**
> **(b) Where he has complied with all the other conditions specified in the Schedule to the permit; and**
> **(c) Where he has been in occupation of, and fully developed, to the satisfaction of the Government Agent**
>
> **(i) Irrigated land, for a period of three years, or**
> **(ii) High land for a period of one year:**
>
> **Provided, however, that the Land Commissioner may issue a grant before the expiry of the aforesaid period where the permit-holder satisfies him that the failure to issue such grant before the expiry of such period would adversely affect the development of such land.**

For the aforementioned reasons, I find that the learned Judges of the Court of Appeal were correct when it refused to issue Writs in the nature of Certiorari and Mandamus as sought by the appellant, though the Court has not considered the relevant legal provisions and its applicability to the matter at hand in detail.

However, it needs to be emphasized that granting of a Writ is a discretionary remedy that would be afforded to a party only upon the discretion of the Court. In such an instance, the conduct of a party who seeks such a Writ is also immensely relevant.

It is well settled law that a Writ would not lie if the party is guilty of laches or due to unnecessary delay and in similar circumstances.

In the case of **Biso Menika Vs. Cyril de Alwis and Others (1982) 1 SLR**, it was stated that;

Per Sharvananda, J., citing Lord Greene,

"*A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver. As Lord Greene M.R. in Rex Vs. Stafford Justices (1940) 2 K.B 33 at page 43 stated,*

> *"Now, in my opinion, the Order, for the issue of Writ of Certiorari is, except in cases where it goes of course, strictly in all cases a matter of discretion, It is perfectly true to say that if no special circumstance exists and if all that appears is a clear excess of jurisdiction, then a person aggrieved by that is, entitled ex debito justitiae to his Order. That merely means this, in my judgment, that the Court in such circumstances will exercise its discretion by granting the relief. In all discretionary remedies it is well known and settled that in certain circumstances - I will not say in all of them, but in a great many of them - the Court, although nominally it has a discretion, if it is to act according to the ordinary principles upon which judicial discretion is exercised, must exercise the discretion in a particular way and if a Judge at a trial refuses to do so then the Court of Appeal will set the matter right. But when once it is established that in deciding whether or not a particular remedy shall be granted the Court is entitled to inquire into the conduct of the applicant, and circumstances of the case, in order to ascertain whether it is proper or not proper to grant the remedy sought, the case must in my judgment be one of discretion."*

The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay."

The appellant has filed his action before the Court of Appeal on the 12th day of July 2019. The appellant being the eldest son of Punchirala and Nandawathie and the claimed occupier of the two lands, it is hard to believe what he has stated in his petition, that he came to know only in 2008 after his mother fell ill that the said grants had been issued in favour of his mother Nandawathie. In my view, given the facts of the matter, he should have known that fact from the very outset.

Even if he came to know about the grants and the nominations made by his mother in 2008 in favour of his other two siblings, the 5th and the 6th respondents, he has come before the Court of Appeal seeking to quash the said nominations by way of a Writ more than 10 years after the said finding, as claimed in his petition.

Although he has attempted to justify the said delay by stating that he complained to the relevant authorities in order to get the nominations cancelled and get his name approved as the successor, which resulted in the delay, I find no basis to agree.

The appellant has also averred that he has already initiated a District Court action as well as an action before the High Court of Anuradhapura to assert his rights, which means he has come before the Court of Appeal seeking a discretionary remedy of a Writ while perusing alternative remedies that may be available to him.

For the aforementioned reasons, I answer the questions of law considered in the following manner;

1. Considering the matter in terms of section 48A(2) of the LDO does not arise as Nandawathie was the person to whom the permit has been granted.
2. Punchirala has been named as the allotee of the land and had passed away before he was issued with a permit, and the relevant law applicable to the allotments at the time of his death was the Sale of State Lands (Special Provisions) Law and the question of life interest of the spouse would not arise.
3. Yes.
4. No.
5. Yes.

Based on the above answers to the questions of law, the appeal is dismissed as I find no merit in the same.

The parties shall bear their own costs of the appeal.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Sampath K. B. Wijeratne, J.

I agree.

Judge of the Supreme Court