

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

1. Asilin Hewavitharana  
No. 88, Kandasuringdugama  
Kataragama  
**(Deceased)**
  
2. Liyana Pathiramage Lalitha  
No. 88, Kandasuringdugama  
Kataragama
  
3. Liyana Pathiramage Karunadasa  
No. 278, Yaya – 5  
Rajagiriya .
  
4. Liyana Pathiramage Chandrasiri  
No. 133, Pubudu Mawatha  
2<sup>nd</sup> Step  
Thambuththegama.
  
5. Liyana Pathiramage Mulin  
No. 338/A, Thekkawatte,  
Thambuththegama.

C.A 7/2012 (Writ)

Vs.

**PETITIONERS**

1. The Minister of Lands &  
Land Development  
The Ministry of Land &  
Land Development  
No. 80/5, Govijana Mandiraya  
Rajamalwatta Lane, Battaramulla.

**And 7 others**

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** Asoka Fernando with A.R.R. Siriwardena  
For Petitioners

Presanna de Zoysa for 7<sup>th</sup> and 8<sup>th</sup> Respondents

Suranga Wimalasena S.C. for 1<sup>st</sup> to 6<sup>th</sup> Respondents

**ARGUED ON:** 07.02.2014

**DECIDED ON:** 29.05.2014

**GOONERATNE J.**

The five Petitioners in this Writ Application have sought mandates in the nature of Prohibition/Mandamus and Certiorari. By the amended petition dated 8.3.2012. Sub paragraphs (e) & (f) of the prayer refer to Writ of

Certiorari to quash a decision to appoint a successor named therein pertaining to the land described in the said paragraphs which land were held by deceased permit holder on Liyana Pathiramage Jamis Appuhamy (decision not annexed). A Writ of Mandamus compelling 2<sup>nd</sup> to 6<sup>th</sup> Respondents to appoint the 2<sup>nd</sup> Petitioner as successor to the land described in sub-paragraphs (g) & (h). A Writ of Prohibition to prevent 4<sup>th</sup> & 5<sup>th</sup> Respondents from consenting to current successor (sub paragraph 'c' of the prayer) for disposition of the land by sale, mortgage, lease etc. Certain orders and interim relief are also sought. This court observes that the relief sought are vague and no decisions annexed to enable this court to grant the remedy sought. On this ground alone this application need to be rejected.

The body of the petition describes as follows:

- (a) 1<sup>st</sup> Petitioner widow and 2 – 5<sup>th</sup> Petitioners are the children of the deceased permit holders above named L.P. Jamis Appuhamy. Deceased permit holder had not nominated a successor.
- (b) 1<sup>st</sup> Petitioner the widow of the deceased permit holder would succeed as the successor to the permit subject to Section 48 B(1) of the Land Development Ordinance, as she had not been nominated.
- (c) On Liyanapathirage Dharmadasa had not been nominated as the successor (paragraph 5 of the petition).

- (d) The above Liyanapathiranaige Dharmadasa obtained thumb impression in blank sheets of the 1<sup>st</sup> Petitioner for the purpose referred to in paragraph 6 of the petition. Thereby deceived the 1<sup>st</sup> Petitioner and obtained the original – heir ship registered (vide paragraph 6) (e) 1<sup>st</sup> Petitioner is a illiterate person
- (e) Paragraph 8 to 14 of the petition plead certain irregularities that have occurred in obtaining a permit by the person named therein.
- (f) The rest of the paragraphs in the amended petition refer to complaints made to authorities etc.

The official Respondents 1<sup>st</sup> to 5<sup>th</sup> Respondents reject the position of the Petitioners as follows:

1. Permit holder, Jamis appuhamy has not nominated a successor during his life time and further state at the death of the permit holder in terms of section 48B and Land Order No. 155 of the Land Development Ordinance 19 of 1935 as amended, the surviving spouse succeeds and holds the said permit during her/his life time. However, the said spouse cannot dispose of or nominate a successor to the holding land, but can renounce her right of life interest.
2. Succession of the said permit has to be considered in terms of Section 72 and the rules of the given in the third Schedule to the Land Development Ordinance No. 19 of 1935 as amended.
3. 1<sup>st</sup> Petitioner has presenting herself before the 5<sup>th</sup> Respondent given statements stating her intentions of rejecting her rights to holding of the

grants අග/ඊප/ල/1079, අග/ඊප/ල/1714, during her life time and as such, to have the succession of the eldest son, (of the original permit holder and herself) Liyana Pathiranage Dharmadasa, effected. Further, she has submitted 2 affidavits dated 18.8.2009 and 9.12.2009, in support of her intention to give up her rights of life interest to the holding of the said permits/grants. All the statements and the affidavits have been signed by the 1<sup>st</sup> Petitioner by inking her thumb impression, in the presence of the 5<sup>th</sup> Respondent (or his predecessors).

4. The 5<sup>th</sup> Respondent acting in terms of the representations made by the 1<sup>st</sup> Petitioner and taking to account the provisions of section 49 and 72 of the Land Development Ordinance, has acted according to law to certify the succession of the said grants by the said Liyana Pathiranage Dharmadasa.
5. The Respondents further state that the aforesaid procedure carried out by the 5<sup>th</sup> Respondent in terms of Section 49 and 72 of the Land Development Ordinance does not constitute to a disposition of the said land, as averred by the Petitioners. As such, the land orders 137 and 141 does not affect the said situation and effects those dispositions of land done by the permit/grant holders.

I have also considered the material placed by the 7<sup>th</sup> & 8<sup>th</sup> Respondents. It is the position as pleaded inter alia by these Respondents that the deceased Liyana Pathiranage Jamis Appuhamy had not nominated

any successor and the 1<sup>st</sup> Petitioner did waive the life interest pertain to land Nos. LL:62

In all the facts and circumstances of this application this court observes that the entire petition of the Petitioners and the position urged are in very many respects prolix and petitioners unnecessarily entertain disputed facts. Review procedure is not well suited to resolve disputed facts and questions. As observed above the relief sought in the prayer to the petition are vague and the required orders not produced or annexed to the petition. In its absence court cannot consider granting any relief and the remedies sought are misconceived/misrepresented. These are discretionary remedies of court and this court cannot exercise its jurisdiction in favour of the petitioners. As such this application is dismissed with costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL