

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

*In the matter of an application for
mandates in the nature of Writs of
Certiorari in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

C A (Writ) Application

No. 267 / 2013

Rathnayaka Mudiyanseelage Ranbanda

No. 39/1,

Track 19,

Kottapitiya,

Polonnaruwa.

PETITIONER

-Vs-

1. Mahaweli Authority of Sri Lanka

No. 500,

T B Jayah Mawatha,

Colombo 10.

2. Dahanak Arachchige Herath

Banda,

Land Officer,

Mahaweli Authority,

G Division,

Bakamoona.

3. Rathnayaka Mudiyansele

Surangani Kumarihamy,

No. 39,

Track 19,

Kottapitiya.

4. Rathnayaka Mudiyansele

Chandralatha Kumarihamy,

No. 39,

Track 19,

Kottapitiya.

5. Rathnayaka Mudiyansele

Leelawathie Kumarihamy,

No. 39,

Track 19,
Kottapitiya.

RESPONDENTS

Before: P Padman Surasena J (P / C A)

A L Shiran Gooneratne J

Counsel : Chula Bandara with A M S Hemali Atapattu for the
Petitioner.

David Weeraratne for the 3rd 4th and 5th Respondents.

Argued on: 2018 - 03 - 15

Decided on : 2018 - 07 - 26

JUDGMENT

P Padman Surasena J

When these cases were taken up for argument on 2018-03-15 learned counsel for all the parties agreed that the issues to be decided by this court in respect of the cases namely,

C A (Writ) No. 266 / 2013,

C A (Writ) No. 267 / 2013,

are the same. Hence, they agreed that it would suffice for this Court to pronounce one judgment in respect of both the above cases. Hence, this judgment must apply to both the cases referred to above.

The permit dated 1952-10-10 produced marked **P 1** with the Petition, had been issue to the Petitioner's father Rathnayake Mudiyansele Heen Banda, who had nominated his wife Basnayake Mudiyansele Gedara Muthumanika (who is also the Petitioners mother) as the successor to the said land.

Subsequently, said Rathnayake Mudiyansele Heen Banda was granted two distinct land grants in terms of the provisions of the Land Development Ordinance. They have been produced marked **P 2** and **P 3**.

The Petitioner stated that he was born on 1950-11-19 at which time his parents were not married. However, it is his position that his parents have registered their marriage according to the Kandyan Law on 1954-06-22. The said certificate of marriage has been produced marked **P 4**. The said Rathnayake Mudiyansele Heen Banda has passed away on 1989-06-18 and his wife Muthumanika has passed away on 1999-11-02 leaving behind 11 children.

The Petitioner had written a letter dated 1991-03-07 requesting the Mahaweli Authority to take steps to transfer the rights under the said grants to him on the basis that he is the eldest son in the family. The Mahaweli Authority had not acted on the request of the Petitioner on the basis that the 3rd, 4th and 5th Respondents namely Surangani Kumarihamy, Chandralatha Kumarihamy and Leelawathie Kumarihamy who are Petitioner's sisters had stood nominated as successors by virtue of the document produced marked **P 8**. The said nomination has been registered on 1989-07-25. That is on a date after the death of the holder of the original grant.

It is the position of the Petitioner that the said nomination is contrary to law and therefore it is the submission of the learned counsel for the Petitioner that this Court must act as if the father of the Petitioner had not nominated any person as the successor to the said land in the said grant marked **P 3**.

It is on that basis that the Petitioner asserts that he is entitled to succeed to this land in terms of section 72 of the Land Development Ordinance on the basis that no person has validly been nominated as the successor of

this land and hence the person to succeed has to be decided in terms of the provisions set out in the 3rd schedule of the Land Development Ordinance.

Petitioner had instituted an action in the District Court of Polonnaruwa in respect of the same cause of action. That is to agitate his right to succeed to the said land against the said rights of the 3rd, 4th and 5th Respondents. Learned District Judge of Polonnaruwa on 2009-05-19 had dismissed the Petitioner's action.

Being aggrieved by the said judgement of the learned District Judge of Polonnaruwa, the Petitioner has appealed to the Provincial High Court of North Central Province holden in Anuradhapura challenging the said District Court judgement. Provincial High Court had delivered its judgement on 2011-12-07 dismissing the Petitioner's appeal and affirming the judgement of the learned District Judge of Polonnaruwa.

Being aggrieved by the said judgement of the Provincial High Court, the Petitioner had filed in the Supreme Court, a leave to appeal application against the said Provincial High Court judgement. The Supreme Court by its order dated 2013-06-20 had refused to grant leave to proceed and

dismissed the Petitioner's application. It is thereafter that the Petitioner has filed this application on 2013-09-03.

Learned Counsel for the 3rd, 4th and 5th Respondents had raised the issue of delay on the part of the Petitioner in filing this application alleging that the Petitioner has waived his rights for nearly 12 years from 1988 by sleeping over his rights and thereafter wasting time by going to wrong forum all of which cumulatively has caused an aggregate of 21 years of delay after executing the document of **P 8**.

The Petitioner has only prayed for a writ of Certiorari to quash the nomination in **P 8**. This Court observes that the Petitioner for the reasons best known to him, has not prayed for a writ of mandamus to compel the authorities either to recognize him as the successor or at its least to conduct an inquiry to decide that issue.

The Petitioner has not explained the delay except describing the steps he had taken to go to wrong forum.

It is to be noted that the nomination had been made by the Petitioner's father before his death. It is just that the relevant officials had not taken steps to have it registered immediately. The responsibility to ensure the

due registration of the nomination is with the public authority. Due to the lapses on the part of the public authority, the said nomination has been registered after demise of the Petitioner's father.

This Court is also of the view that the Petitioner has not been able to explain to the satisfaction of this Court as to why he waited for so long to challenge what he has now opted to challenge in this Court. Existence of an inordinate delay in this case is therefore clearly a fact established, which this Court is compelled to consider against the Petitioner.

It is relevant for this Court to note at this stage that the Supreme Court in the case of Mallehe Vidaneralalage Don Dayaratne Vs Divisional Secretary of Thamankaduwa, Polonnaruwa and four others¹ has stressed the importance of giving effect to the wish of the deceased holder. The Supreme Court has also referred to the judgment of the Court of Appeal in Piyasena Vs Wijesinghe and others² where the Court of Appeal has also taken the same view that the intention of the permit holder should be given effect to.

¹ S C Appeal No. 30/2004 decided on 2005-03-23.

² 2002 (2) S L R page 242.

The jurisdiction to issue writs in the nature of certiorari and Mandamus which is vested in this Court by virtue of Article 140 of the constitution is a jurisdiction, which this Court could decide in its discretion to exercise in a fit case. This Court is of the view that this is not such fit case in which it should exercise writ jurisdiction. For the foregoing reasons, this Court decides to refuse both the above-mentioned applications.

Thus, both applications namely C A (Writ) No. 266 / 2013, C A (Writ) No. 267 / 2013, must stand dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

A L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL