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

In the matter of an Application for an order in the nature of a Writ of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 182/2013

Vijitha Pushpakumara Dias
Hettiarachchi Senanayake,
No. 183, 2/Ela,
Polonnaruwa.

Petitioner

Vs.

1. Lakshman Ranjith Williams,
   No. 184, 2/Ela, Polonnaruwa.

2. Nimal Ranjith Williams,
   No. 184, 2/Ela, Polonnaruwa.

3. Prins Ranjith Williams,
   No. 184, 2/Ela, Polonnaruwa.

4. Sunil Ranjith Williams,
   No. 184, 2/Ela, Polonnaruwa.

5. R.P.R. Rajapaksha,
   The Commissioner General of Lands,
   Department of the
   Commissioner General of Lands,
   Land Secretariat,

No. 1200/6, Rajamalwatta Road,
Battaramulla.

6. R.K.S.S. Wijesinghe,
The Provincial Commissioner of Lands,
North Central Province,
Department of the Provincial Land Commissioner,
Anuradhapura.

7. E.M.D.S. Ekanayake,
The Divisional Secretary,
Divisional Secretariat,
Thamankaduwa.

Respondents

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Nuwan Bopege with Manoj Jayasena for the Petitioner

Chathura Galhena with P. Perera for the 1st – 4th Respondents

Suranga Wimalsena, Senior State Counsel for the 5th - 7th Respondents

Argued on: 22nd July 2020

Written Submissions: Tendered on behalf of the Petitioner on 25th June 2018 and 4th August 2020

Tendered on behalf of the 1st – 4th Respondents on 6th July 2018

Tendered on behalf of the 5th - 7th Respondents on 11th February 2019

Decided on: 26th August 2020

Arjuna Obeyesekere, J

The issue that has culminated in this application commenced in 1961, with the Petitioner's mother, Anula Kumarihamy being issued Permit No. 21 under the Land Development Ordinance (the Ordinance). In terms of the said permit, a copy of which has been annexed to the petition marked '**P1**', the land given to Anula Kumarihamy consisted of a high land, which is Lot No. 12 of the Kachcheri Surveyors sketch in extent of 4A 1R and 10P, and a paddy land, which is Lot No. 20 of the said sketch, in extent of 1A 0R 8P.

The Petitioner, who claims that he is the nominated successor of Anula Kumarihamy states that at about the same time that '**P1**' was issued, the State had also issued to G.G.Premaratne, Permit No. 20 in terms of the Ordinance. There is no dispute that the 1st – 4th Respondents are the successors of Premaratne. According to the said permit, a copy of which has been annexed to the petition marked '**P2**', Premaratne has been given a high land and a paddy land, described as being '*Lot No. 13 in Kachcheri Surveyors sketch*' and containing in extent of 4A 2R 35P. The specific extents of the high land and the paddy land given to Premaratne have not been specified in '**P2**'. However, it is clear from the letter sent by the 7th Respondent, the Divisional Secretary, Thamankaduwa in November 2011 annexed to the petition marked '**P10**' that the paddy land forms part of Lot No. 297 in Supplement No. 2 of the Final Colony Plan No. 17 annexed to the petition marked '**P4**'.

The Petitioner states that in 1986, the State had issued Anula Kumarihamy Grant No. 10746, annexed to the petition marked '**P3**', in terms of Section 19(4) of the Ordinance, read together with Section 19(6) of the Ordinance. The First Schedule

to '**P3**' identifies the land as Lot No. 308 of the said Final Colony Plan No. 17 marked '**P4**', in extent of 2A 3R 20P. According to the Petitioner, the land given under the Grant '**P3**' was only part of the high land given to Anula Kumarihamy under the Permit '**P1**'. Thus, when issuing the Grant '**P3**', the State had not given the entirety of the land held by Anula Kumarihamy under the permit '**P1**' but had instead given 1A 1R 30P less than the extent of the high land given under the Permit '**P1**'. Be that as it may, the Petitioner claims that he is in occupation of the entire land given under the permit '**P1**' to Anula Kumarihamy.

I must observe at this stage that no reasons have been adduced by the 5th – 7th Respondents in their Statement of Objections for the reduction of the extent of land when executing the grant '**P3**'. However, as would be adverted to later, it appears that the reduction in the extent took place when preparing Supplement No. 2 of the Final Colony Plan marked '**P4**' and that the said reduction was due to an oversight or inadvertence on the part of the 5th – 7th Respondents.

The Petitioner states further that soon after issuing Anula Kumarihamy with the grant '**P3**', the State had issued Grant No. 10751 to Premaratne in respect of Lot No. 305 of the said Plan '**P4**'. According to the said Grant, a copy of which has been produced by the 1st – 4th Respondents marked '**1R2**', the extent of Lot No. 305 is 3A 2R 10P. The Petitioner claims that Lot No. 305 includes the 1A 1R 30P of the aforementioned high land that Anula Kumarihamy possessed under the permit '**P1**' and which extent of land the Petitioner states he continues to possess until this date.

The Petitioner states that Anula Kumarihamy had complained to the 7th Respondent, the Divisional Secretary, Thamankaduwa about the alleged

discrepancy. Although the date of the complaint is not borne out by the pleadings, it appears that such complaint has been made in 2011 and that an 'inquiry' had been held in April 2011. This is borne out by the letter dated 8th September 2011 written by the 7th Respondent to the Petitioner and the 1st – 4th Respondents, annexed to the petition marked '**P6**', which reads as follows:

> " පො/ප/10751 හා පො/ප/10746 දිමනා පත්‍ර ඉඩම් සම්බන්ධ ගැටලුව නිරාකරණය කිරීම
>
> 02. මේ සම්බන්ධයෙන් 2011.04.21 දින මෙම කාර්යාලයේදි පැවති ඉඩම් ගැටළු විසදීමේ පංගම සේවයේදි ඉඩම් හා ඉඩම් සංවර්ධන අමාත්‍යාංශයේ අතිරේක ලේකම්වරයා විසින් ලබාදි ඇති උපදෙස් පරිදි අදාල ගැටුම නිරාකරණය කරගැනිමට අදාල දිමනා පත්‍ර ඉඩම් හුක්ති විදින ආකාරයට මැණුම් කර නැවත දිමනා පත්‍ර නිකුත් කිරිමට ඔබ වෙත ලබාදි ඇති උක්ත දිමනා පත්‍ර දෙක ආපසු රජයට භාරදිමට කටයුතු කරන ලෙස කාරුණිකව ඉල්ලා සිටිම්."

The Petitioner had also complained to the Parliamentary Commissioner for Administration (Ombudsman) in the latter part of 2011 about the purported discrepancy. The report submitted by the 7th Respondent to the Ombudsman, which has been annexed to the petition marked '**P10**', sets out very clearly the manner in which the discrepancy in the extent of land given to the Petitioner has arisen. The relevant parts of '**P10**' are re-produced below:

> "4. මෙම දෙපාර්ශවයේම ගොඩ, මඩ ඉඩම් කොටස් එක අසල පිහිටා තිබී ඇත. අ.ජ.පි.පො[1] 17 පිලියල විමේදි දෙදෙනාගේම මඩ කොටස් දෙක කැබැලි අංක 297 ටද, ප්‍රේමරත්නගේ (20 බලපත්‍රය) ගොඩ ඉඩම 305 ලෙසද, අනුලා කුමාරිහාමිගේ (21 බලපත්‍රය) ගොඩ ඉඩම 308 ලෙසට ද, මැන ඇත.
>
> නවදුරටත්
> 297 මඩ ඉඩම - 4:3:11 (ප්‍රේමරත්න + අනුලා කුමාරිහාම්)

[1] wjidk ckmo msnqr – fmdf,dkakrej

305 ගොඩ ඉඩම - 3:2:10 (ප්‍රේමරත්න)

308 ගොඩ ඉඩම - 2:3:20 (අනුලා කුමාරිහාමි)

5. අංක 21 බලපත්‍රය හිමි අනුලා කුමාරිහාමිගේ මඩ ඉඩම ඒ අනුව 297 කැබැල්ලෙන් 1:0:08 ක් වේ. එවිට 297 න් මඩ ඉඩම් ලෙස ඉතිරිවන ප්‍රමාණය (4:3:11 – 1:0:8) 20 බලපත්‍රයේ ප්‍රේමරත්නට 03:03:03 ක් වේ. එහෙයින් ඔහුගේ ගොඩ හා මඩ දෙකෙහිම එකතුව (3:2:10 + 03:03:03) 07:01:13 ක් වේ. ඒ අනුව 20 බලපත්‍රයේ සඳහන් ඉඩම් ප්‍රමාණයේ එකතුව ට වඩා (07:01:13 – 04:02:35) 2:2:18 ක ප්‍රමාණයක් වැඩි බව සනාත කර ගත හැක.

6. අනුලා කුමාරිහාමි (21 බලපත්‍රකාරිය) මහත්මියගේ 17 පිඹුර අනුව ගොඩ, මඩ ඉඩම් පංගුව වන්නේ කැබලි අංක 308 හා 297 න් ඉතිරි ප්‍රමාණයේ එකතුව වේ. එනම් (2:3:20 + 1:0:8) 3:3:28 කි. එම ප්‍රමාණය අංක 21 බලපත්‍රයේ සටහන් ගොඩ මඩ ඉතිරි ප්‍රමාණයේ එකතුවට වඩා (5:1:18 - 3:3:28) 1:01:30 ක අඩුවීමක බව පෙනී යයි.

6. මේ පිළිබඳව පොලොන්නරුව දිසා අධිකරනයේ 807 එල් නඩුව විභාග වී පසුව ඉල්ලා අස්කර ගැනීම හේතුවෙන් නඩුව නිශ්ප්‍රභා කර ඇත. ක්ෂේත්‍රය නිරීක්ෂනය කිරීමේදි මෙම අඩුවීම වී ඇත්තේ අනුලා කුමාරිහාමි භුක්තිය ලැබූ ගොඩ ඉඩමෙන් බව නිරීක්ෂනය වේ. එනම් අනුලා කුමාරිහාමිගේ පැරණි නිවස තිබූ සථානය 17 පිඹුරේ 305 කැබැල්ලට අයත්ව ගල් දමා ඇත. පැරණි නිවසේ අවශේෂ එහි පවති. තවද 295 බී.ඕ.පී. පිඹුරේ අංක 20 බලපත්‍රකරුගේ ගොඩ ඉඩමට ප්‍රවේශ වන නැගෙනහිර පාර පැත්තට මායිම්වන ඉඩම ඉතා පටු ලෙස සටහන් වේ. නමුත් 17 පිඹුරේ නැගෙනහිර පාරට මායිම්වන ප්‍රමාණය 295 පිඹුරට මායිම්වන ප්‍රමාණය මෙන් තුන් ගුනයක් පමණ වේ. තවද 305 කැබැල්ලට වැඩිපුර අයත්ව ඇති ත්‍රිකෝණාකාර කොටස ඇස් මටටමට අක්කර 01:01:00 පමණ වන බවද නිරීක්ෂනය වේ.

7 මෙම ගැටලුව තමන්කඩුව ලේකම් කාර්යාලයේ පැවති පංගම සේවයේදි අතිරේක ලේකම් (ඉඩම්) වෙත යොමු වීමෙන් පසු දිමනාපත්‍ර රජයට භාරගෙන භුක්තිය අනුව මැනුම්කර නිරවුල් කිරීමට පාර්ශවකරුවන් දැනුවත් කරන ලෙසද, එසේ එකග නොවන්නේ නම් අධිකරණ ක්‍රියාමාර්ගයක් ගැනීමට දනුවත් කරන ලෙසද සඳහනක් පවති. මේ පිලිබඳව මගේ සමාංක හා 2011-08-16 දිනැතිව ඉඩම් කොමසාරිස් ජනරාල්වරයා වෙතින් වැඩිදුර උපදෙස් විමසා ඇති බවත් වාර්තා කරමි.”

The 5th Respondent, the Commissioner General of Lands has sent the 7th Respondent the following letter dated 29th November 2012 annexed to the petition marked '**P11**', which reads as follows:

> "**උක්ත කරුණ සම්බන්ධයෙන් තමන්කඩුව ප්‍රාදේශිය ලේකම් කාර්යාලයේ දී පැවති පංගම සේවයේ දී අතිරේක ලේකම් (ඉඩම්) විසින් අදාල ආරවුල ඇති දිමනා පත්‍රය රජයට භාරගෙන භුක්තිය අනුව මැණුම්කර නිරවුල් කිරීමට අදාළ පාර්ශවකරුවන් දැනුවත් කිරීමටත්, එයට එකඟ නොවන්නේ නම් අධිකරණ ක්‍රියාමාර්ගයක් ගැනීමට දැණුවත් කරන ලෙසත් කාරුණිකව දන්වා සිටිම්**."

It is therefore clear that the reduction in the extent of land given to Anula Kumarihamy by the State is due to an inadvertence, and that the 5th and 7th Respondents were of the view that the said discrepancy must be resolved. Thus, even though the 1st – 4th Respondents were requested to surrender the grant marked '**1R2**' issued to them to rectify the said error, the 1st – 4th Respondents have not agreed to the said course of action.

It is in the above circumstances that the Petitioner has filed this application seeking a Writ of Mandamus directing the 7th Respondent, the Divisional Secretary of Thamankaduwa to take action in terms of '**P11**' read together with '**P10**'.

Before proceeding to consider whether the Petitioner is entitled to the above relief, I would like to make reference to the fact that the 1st – 4th Respondents had filed Case No. 14036/L/10 in October 2010 against the Petitioner in the District Court of Polonnaruwa in October 2010, seeking *inter alia* the following relief:

"(අ) මෙහි දෙවන උපලේඛනයේ විස්තර කෙරන ඉඩම් කොටසේ නිත්‍යානුකූල හිමිකරුවන් අයිතිකරුවන් උරුමකරුවන් පැමිණිලිකරුවන් බවට ප්‍රකාශයක්ද

(ආ) විත්තිකරු හා ඔහුගේ යැපෙන්නන් සේවකයින් නියෝජිතයින් කුලිකාරාදින් එකි ඉඩම් කොටසින් නෙරපා හැර නිරවුල් භුක්තිය පැමිණිලිකරුවන් හට ලබාදෙන ලෙසට නියෝගයක්ද

(ඇ) පැමිණිලිකරුවන් එකි ඉඩම් කොටසේ නිරවුල් සන්තකයේ පිහිටුවන ලෙසටත්".[2]

The Petitioner has produced with his written submissions, a copy of the judgment of the learned District Judge where he has analysed the facts relating to the two permits and the two grants, before holding that the 1st – 4th Respondents are not entitled to the relief prayed for. The judgment of the learned District Judge has been upheld by the Provincial High Court of the North Central Province holden at Anuradhapura, exercising Civil Appellate jurisdiction. I have not considered the evidence led before the learned District Judge for the reason that an appeal has been preferred to the Supreme Court against the judgment of the Provincial High Court.

The first issue that this Court needs to consider is whether the 5th – 7th Respondents were under a legal duty to execute a grant in respect of the entire extent of land that had been given by way of the Permit '**P1**' to Anula Kumarihamy, and whether Anula Kumarihamy had a legal right to receive the entire land referred to in '**P1**' by way of a grant. It is only if the first issue is answered in the affirmative that this Court would have to consider whether the relief prayed for by the Petitioner could be granted.

[2] A copy of the plaint has been annexed to the petition marked 'P12'. The second schedule to the plaint refers to a land in extent of 1A 0R 8P with the following boundaries – North – by the remaining portion of the same land; East by Lot No. 306 ½; South by Lot No. 308; and West by the remaining portion of the same land and Lot No. 309.

Alienation of State land to any person under the provisions of the Land Development Ordinance shall be effected in the manner provided in the said Ordinance.[3] Section 19(2) of the Ordinance specifies that "*every such person shall in the first instance receive a permit authorizing him to occupy the land*."

Section 19(4) of the Ordinance proceeds to state as follows:

> "*A permit holder shall be issued a grant in respect of the land of which he is in occupation:*
>
> *(a) where he has paid all sums which he is required to pay under sub-section (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: …*"

A plain reading of Sections 19(2) and 19(4) would demonstrate that the following conditions must be satisfied prior to being issued with a grant in respect of a State land under the Land Development Ordinance:

1) A permit must be issued in the first instance in respect of the said land;

[3] Section 19(1) of the Ordinance.

2) The permit holder must be in occupation of the said land;

3) The permit holder must develop the said land, to the satisfaction of the Divisional Secretary;

4) The permit holder must comply with all other conditions specified in the permit.

It is evident that in terms of Section 19(4), a grant is issued to a person who already has a permit in respect of the land for which the grant is to be given. It is thus clear that the issuing of a grant is a continuation of the permit issued in the first instance.

It would be appropriate at this stage to refer to the judgment of the Supreme Court in **Agosinno vs Divisional Secretary, Thamankaduwa**[4]. In that case, the issue that arose was whether a nomination made under a permit would continue to be valid after a grant was issued in respect of the same land, even though a nomination had not been made under the grant. The Supreme Court, having considered the provisions of the Land Development Ordinance, held as follows:

> "*On an examination of the scheme of the sections, in particular, Section 19(4) referred to in P7 itself, it is clear that the permit holder's right fructifies to a grant upon the satisfaction of certain conditions.*
>
> *It is clear from the provisions of the law that the change in the nature of the holding from that of a permit to a grant is one process and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made*."

[4] SC Appeal No. 30/2004; SC Minutes of 23rd March 2005.

Although the Supreme Court arrived at the above conclusion when called upon to decide on the validity of a nomination made while the permit was valid, and the permit had subsequently been converted to a grant, I am of the view that the principle laid down by the Supreme Court that the transfer from a permit to a grant is one process, would apply to this case.

The 1st – 4th Respondents have not disputed the fact that the extent of the land given to them under the permit was only 4A 2R 35P and, as pointed out in '**P10**' that together with the paddy land, they have now received or are entitled to receive by way of grant, an extent of 7A 1R 13P.[5] Furthermore, the 1st – 4th Respondents have not explained to this Court their entitlement to an increased extent of land. I must reiterate that the 1st – 4th Respondents could only have an expectation to receive the same extent of land given to Premaratne under the permit, provided Premaratne and/or the 1st – 4th Respondents have complied with the conditions set out in Section 19(4) of the Land Development Ordinance, and nothing more.

The very fact that action was filed in the District Court by the 1st – 4th Respondents seeking to evict the Petitioner from an extent of 1A 0R 8P of land[6] demonstrates that the 1st – 4th Respondents are not in occupation of the said land. Without such occupation, the 1st – 4th Respondents could not have developed the said land. Thus, it is clear that Premaratne and the 1st – 4th Respondents are not entitled in

[5] The total extent of the paddy land depicted as Lot No. 297 in 'P4' is 4A 3R 11P – vide 'P10'. The total extent of paddy land that Anula Kumarihamy has received by way of the Permit 'P1' is 1A 0R 8P, leaving the 1st – 4th Respondents with the rest of Lot No. 297 being a paddy land in extent of 3A 3R 3P. This, together with the extent of the high land given to G.G.Premaratne by '1R2', which is 3A 2R 10P means that the combined extent of the paddy land and high land of the 1st – 4th Respondents is 7A 1R 13P.

[6] Vide Second Schedule to the Plaint marked 'P12'.

terms of the law to receive a grant over and above the extent of the land specified in the permit marked '**P2**'.

The 5th – 7th Respondents have not taken up the position that the Petitioner was not entitled to receive a grant in terms of Section 19(4) in respect of the entirety of the land covered by the permit '**P1**'. The 5th – 7th Respondents have not alleged that the Petitioner or Anula Kumarihamy did not develop the land or that they did not occupy the land. Nor have the said Respondents alleged that Anula Kumarihamy had breached the terms and conditions of the permit '**P1**'. As observed earlier, the explanation given by the 5th and 7th Respondents points to a mistake on the part of the said Respondents, which mistake the said Respondents were keen to rectify – hence, the request to surrender the grants so that the extents of land specified therein could be rectified.

Taking into consideration the above, I am of the view that Anula Kumarihamy had a legal right to receive a grant for the entire extent of high land held under the permit '**P1**' and that the State was under a legal duty to execute a grant in respect of the entire extent of high land specified in the permit as the provisions of Section 19(4) had been complied with. In the above circumstances, I am in agreement with the position taken by the 7th Respondent in '**P10**' and the position of the 5th Respondent in '**P11**' that the situation that has arisen must be rectified.

The next question that I must consider is whether the Petitioner is entitled to a Writ of Mandamus directing the 5th – 7th Respondents to take steps in terms of '**P11**'.

In **Ratnayake and Other v C D Perera and Others**[7] this Court identified the role of Mandamus in the following manner:

> "*The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the superior Court for the performance of a public legal duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest*."

The wide scope of the Writ of Mandamus was considered by this Court in **Dr. Jayalath Jayawardena v Chandra Fernando, Inspector General of Police**[8] where it was held as follows:

> "*Within the field of public law the scope of mandamus is still wide and the court may use it freely to prevent breach of duty and injustice. Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which by any reasonable construction, it can be made applicable. (R V Hanley Revising Barrister [1912] 3 KB 518)*."

As discussed above, I am of the view that Anula Kumarihamy, having developed the land given to her in terms of the permit and being in occupation of the said land, and in the absence of any allegation that she breached any of the terms or conditions of the permit '**P1**', was entitled to receive a grant in respect of the

[7] 1982 (2) Sri L R 456; followed in S M Gunerathne v Director General of Customs [CA (Writ) Application No. 894/07; CA Minutes of 23rd September 2009.
[8] CA Writ Application No. 1507/2005; CA Minutes of 10th June 2008.

entirety of the land, at the time the State decided to issue the grant to her in 1986. In other words, once the State decides to give her a grant, she had a legal right to receive the entirety of the land referred to in the permit and the Respondents were under a legal duty to issue a grant in respect of the entire land. This Court is therefore of the view that the Respondents have breached that duty by recommending the issuing of a grant for a lesser extent of land than the permit and that it would be in the interest of justice for a Writ of Mandamus be issued to rectify the error.

Before concluding, there are two issues that I would like to address. The first issue relates to an objection taken by the learned Counsel for the 1st – 4th Respondents that the Petitioner is not the sole nominee of Anula Kumarihamy. In support of this objection, the 1st -4th Respondents have produced marked '**1R1**' a certified copy of the folio containing the said nomination, which position has however been contradicted by the 5th – 7th Respondents who admit that the Petitioner is the nominee of Anula Kumarihamy. It is noted that the Petitioner is not seeking an order recognizing him as the successor of Anula Kumarihamy. Be that as it may, it is observed that the 1st – 4th Respondents have filed the District Court action against the Petitioner, thus recognizing the Petitioner as the person in occupation of the said land. In these circumstances, I am satisfied that the Petitioner has the *locus standi* to have and maintain this application.

The second issue raised by the learned Counsel for the 1st – 4th Respondents is that the Petitioner is guilty of inordinate delay, and thus not entitled to a discretionary remedy. This Court observes that the complaints of the Petitioner to the 5th Respondent and to the Ombudsman commenced only after the 1st – 4th Respondents instituted action in the District Court, and that this action has been

filed 7 months after '**P11**' advising the parties to take legal action. To that extent, the delay can be excused. In any event, a grave injustice would be caused to the Petitioner in the event of this Court dismissing this application on account of delay and for that reason, this Court is of the view that the discretion vested in this Court should be applied in favour of the Petitioner. This view is supported by the judgment of the Supreme Court in **Biso Menika v.Cyril de Alwis and others**[9] where it was held as follows:

> "*Unlike in English Law, in our Law there is no statutory time limit within which a petition for the issue of a Writ must be filed. But a rule of practice has grown which insists upon such, petition being made without undue delay. When no time limit is specified for seeking such remedy, the Court has ample power to condone delays, where denial of Writ to the petitioner is likely to cause great injustice. The Court may therefore in its discretion entertain the application in spite of the fact that a petitioner comes to Court late, especially where the Order challenged is a nullity for absolute want of jurisdiction in the authority making the order*."

As held by the Supreme Court in **Ranjanee Pathirana vs Secretary, Ministry of Environment and Natural Resources and Others**[10], "*In the field of public law the writ of mandamus is a powerful weapon the Courts use freely to prevent breach of duty and injustice.*" I am of the view that this is one such case where the Writ of Mandamus must be used to ensure compliance with the law.

For the reasons set out in this judgment, I issue a Writ of Mandamus directing the 5th – 7th Respondents to recommend in terms of the Ordinance, the issuance of a

[9] 1982 (1) Sri LR 368 at 379-380.
[10] SC Appeal No. 78/2006; SC Minutes of 5th March 2010.

grant in favour of the nominees of Anula Kumarihamy in respect of the high land set out in '**P1**', which land shall be equal in extent to the land set out in the permit '**P1**'.

For the purpose of making the said recommendation, the 5th – 7th Respondents shall be entitled to:

(a) Conduct a fresh survey in order to identify the precise boundaries of the said high land;

(b) Recommend the amendments that may be required to the extent of land set out in '**1R2**' arising from the aforementioned recommendation.

I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal