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

Ariyadasa Galappaththi,
No.13/A, Udawela Grama
Sanwardhana Place,
New City,
Polonnaruwa.
Petitioner

CASE NO: CA/WRIT/279/2018

Vs.

1. R.P.R. Rajapakshe,
   Commissioner General of Lands,
   The Department of the
   Commissioner General of Lands,
   No.1200/6, Rajamalwatte Road,
   Battaramulla.

1A. R.A.M.C. Herath,
   Commissioner General of Lands,
   The Department of the
   Commissioner General of Lands,
   No.1200/6, Rajamalwatte Road,
   Battaramulla.

2. N.A.S. Nissanka Arachchi,
Divisional Secretary,
Divisional Secretariat,
Thamankaduwa.

2A. H.S.K.J. Bandara,
Divisional Secretary,
Divisional Secretariat,
Thamankaduwa.

3. E.M.M. Ekanayake,
Deputy Commissioner of Lands,
Divisional Secretariat,
Polonnaruwa.

3A. K.M.H.D. Wijewardane,
Deputy Commissioner of Lands,
District Secretariat,
Polonnaruwa.

4. Amaradasa Galappaththi,
No.512, 23rd Mile Post,
Jayanthipura.

Respondents

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

Counsel: Chandrasiri Wanigapura with Dinuka Cooray for the Petitioner.
Rajin Goonaratne, S.C., for the 1st-3rd Respondents.
Jagath Wickramanayake, P.C., with Keishara Perera for the 4th Respondent.

Argued on: 31.07.2020

Decided on: 25.09.2020

Mahinda Samayawardhena, J.

The father of the Petitioner and 4th Respondent was issued the permit P1 in respect of an extent of paddy land and high land under the Land Development Ordinance. The permit holder nominated the Petitioner as his successor, which is reflected both in the permit and the land ledger P2. Thereafter, the permit holder was issued two grants, one for the paddy land and the other for the high land, both of which are marked P3. The subject matter in the present case is the paddy land whereas the subject matter in the connected case No. CA/WRIT/280/2018 is the high land.

There is no nomination as to succession made in the grant by the grantee. The grantee died in 1992. The spouse of the grantee, who succeeded to the land under section 48B of the Land Development Ordinance, died in 2016.

The requests made by the Petitioner to be recognised as the owner of the land on the strength of the nomination in the permit were turned down by the 1st-3rd Respondents. The said Respondents were instead inclined to recognise the 4th Respondent, the eldest surviving male child of the grantee, as the rightful owner of the land, relying on rule 1 of the third schedule read with section 72 of the Land Development Ordinance.

The Petitioner filed this application seeking to compel the 1st-3rd Respondents by a writ of mandamus to recognise the Petitioner as the lawful owner of the paddy land described in the schedule to the grant, and to prohibit the said Respondents by a writ of prohibition from issuing a grant in the name of the 4th Respondent.

The pivotal argument of learned State Counsel for the 1st-3rd Respondents and learned President's Counsel for the 4th Respondent is that a grant has an existence independent of a permit thereby creating a fresh contract, and therefore a nominee successor in a permit cannot rely on the nomination in the permit to claim succession to the land once a grant is issued in respect of the same land. Learned State Counsel says, unlike in a permit, in terms of section 37 of the Land Development Ordinance, "*The conditions included in any grant shall, as from the date of such grant, run with the land and shall bind the original and all owners thereof and all persons whomsoever who acquire any title thereto.*" Learned President's Counsel for the 4th Respondent says such grants are issued in terms of the President's prerogative enshrined in Article 33(d) of the Constitution.

Whether a successor nominated in a permit can rely on such a nomination in the absence of a nomination in the grant is not a new issue. This issue has been the subject matter of several cases before our superior Courts.

In the Court of Appeal case of *Piyasena v. Wijesinghe [2002] 2 Sri LR 242*, Justice J.A.N. de Silva as the President of the Court of Appeal (later C.J.), and in the Supreme Court case of *Agosinno v. Divisional Secretary, Thamankaduwa* (S.C. Appeal No.30/2004) decided on 23.03.2005, Chief Justice S.N. Silva, answered this issue in the affirmative.

Referring to the aforesaid Court of Appeal Judgment, R.K. Goonesekere in his book *Select Laws on State Lands* says at page 319 "*Where a permit-holder becomes a grantee the nomination of a successor under the permit becomes converted to a nomination made by her as owner.*"

The Supreme Court, in the said case, held that section 37 of the Land Development Ordinance "*cannot apply in relation to a nomination that has been made by the holder indicating his wish as to the persons who should succeed him in respect of his interest.*"

The Supreme Court also emphasised "*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.*"

I am unable to accept the submission of learned President's Counsel for the 4th Respondent that grants are independent of permits, especially in view of the fact that grants are issued exclusively by the President under Article 33(d) of the Constitution.

Section 19 subsections (1) and (2) of the Land Development Ordinance, insofar as relevant to this context, read as follows:

> *19(1) Alienation of State land to any person under the provisions of this Ordinance shall be effected in the manner hereinafter provided.*
>
> *(2) Every such person shall in the first instance receive a permit authorizing him to occupy the land.*

The grant P3 has been issued, as stated on the face of it, under section 19(4) incorporating the stipulations in section 19(6) of the Land Development Ordinance (Chapter 464), as amended by Act Nos. 16 of 1969 and 27 of 1981.

Section 19(4) reads 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 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.

Section 19(6) reads as follows:

Every grant issued under subsection (4) shall contain the conditions that the owner of the holding shall not

(a) dispose of a divided portion, or an undivided share of the holding which is less in extent than the unit of the sub-division or the minimum fraction specified in the grant; and

(b) dispose of such holding except with the prior approval of the Government Agent.

The above two sections clearly establish that a grant has no independent genesis without a permit. The permit is the precursor to the grant; the two are intrinsically linked. It is the permit which matures into a grant upon the fulfilment of certain conditions. In the words of Chief Justice S.N. Silva, as stated in the above cited Supreme Court case, "*the permit holder's right fructifies to a grant upon the satisfaction of certain conditions*."

This is also made clear by section 48A(2) of the Land Development Ordinance, which enacts "*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 conditions stipulated in that section.

The argument that a grant has an existence independent of a permit is unacceptable.

It may also be relevant to note that the definition of the word "owner" found in section 2 of the Land Development Ordinance was amended by Land Development (Amendment) Act No.27 of 1981 to read as follows:

> *"owner" means the owner of a holding whose title thereto is derived from or under a grant issued under this Ordinance and includes a permit-holder who has paid all sums which he is required to pay under subsection (2) of section 19 and has complied with all the other conditions specified in the permit.*

Hence, if the owner of a holding has not nominated a successor in the grant, the successor nominated in the permit preceding the grant is entitled to succeed to the land. Such an interpretation is in consonance with the scheme and purpose of the Land Development Ordinance.

The word "holding", according to section 2, means land alienated by grant under the Land Development Ordinance.

Rule 1 of the third schedule read with section 72 of the Land Development Ordinance has no application in such situations. In general, rule 1 of the third schedule read with section 72 becomes applicable only if no successor has been nominated or the nominated successor fails to succeed. Let me quote section 72 for better understanding:

> *If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.*

Learned President's Counsel for the 4th Respondent also makes the following submissions, if I may say so, in passing.

One submission is that there is suppression of material facts by the Petitioner. However, the 4th Respondent has not convinced the Court that the alleged suppression is on material facts.

Another submission is the Petitioner failed to succeed to the land as required by section 68(2) of the Land Development Ordinance. The Petitioner has proved his succession to the land by producing P6-P10. In any event, the 4th Respondent cannot for the first time take up such a position in this Court. He ought to have complained about the Petitioner's failure to succeed to the land to the 1st-3rd Respondents at the relevant time and then come before this Court if he was dissatisfied with the decision.

Yet another submission is the endorsement of the Petitioner as the nominated successor in the permit and the land ledger is a forgery. The 4th Respondent has not complained of such a serious matter to any authority prior to taking it up for the first time in this Court. The 1st-3rd Respondents stand by the nomination in the permit.

I am not inclined to accept the arguments advanced on behalf of the Respondents in resisting the application of the Petitioner.

I grant the Petitioner the reliefs as prayed for in paragraphs (b)-(d) of the prayer to the petition.

The application of the Petitioner is allowed with costs.

As agreed, this Judgment is applicable to CA/WRIT/280/2018, filed in respect of the high land.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.
I agree.

Judge of the Court of Appeal