

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

In the matter of an application for a  
mandate in the nature of writs of  
*certiorari* and *mandamus* under and in  
terms of Article 140 of the Constitution  
of the Democratic Socialist Republic of  
Sri Lanka.

**CASE NO: CA/WRIT/206/14**

K.M. Chandralatha,  
67/1, Dumutulugala,  
Parakrma Samudraya,  
Polonnaruwa.

**PETITIONER**

**VS.**

1. Commissioner General of Lands,  
Department of Commissioner  
General of Lands,  
1200/2, Land Secretariate,  
Mihikatha Medura,  
Battaramulla.
2. Divisional Secretary,  
Divisional Secretariate,  
Thamankaduwa, New Town,  
Polonnaruwa.
3. Karukkan Mullege Piyasena,  
No. 18, Milk Centre Road,  
Sudarmarama Pedesa,  
Parakrma Samudraya,  
Polonnaruwa.
4. K.M.D. Wimalaweera *alias*  
Babanis,  
Udaya Niwasa,  
Parakrma Samudraya,  
Polonnaruwa (Deceased).

- 4A. Weerappuli Radge Karunawathie
- 4B. Palith Udayasiri Wimalaweera
- 4C. Puspa Kanthi Swarnalath
- 4D. Gamini Wimalaweera

All of Udaya Niwasa,  
Parakrma Samudraya,  
Polonnaruwa.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Anoja Weerasekera for the Petitioner.

Vikum de Abrew, SDSG for the Respondents.

Written Submissions on: 15.11.2019 (by the Petitioners).

12.02.2021 (by the Respondents).

Decided on: 05.08.2021.

**MOHAMMED LAFFAR, J.**

The Petitioner in this application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking the following main relief:

- a) A mandate in the nature of writ of *certiorari* to quash the decision of the 2<sup>nd</sup> Respondent dated 16.08.2001 bearing reference No. NCP/TK/9/5/Mul/Pol/G/4063/High Land, in transferring the paddy field<sup>1</sup> bearing Lot No. 124 depicted in FCP Plan No. 33 and referred to in Grant No. 4063, to the 4<sup>th</sup> Respondent as evidenced by P9<sup>2</sup>.

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<sup>1</sup> The subject matter in this case.

<sup>2</sup> Register of permits/Grants under the Land Development Ordinance, No. 19 of 1935 (as amended).

- b) A mandate in the nature of writ of *certiorari* to quash the decision of the 2<sup>nd</sup> Respondent, in granting approval to transfer part of the said paddy field by the 4<sup>th</sup> Respondent to the 3<sup>rd</sup> Respondent by letter dated 01.10.2012 bearing reference No. NCP/TK/9/4/164/19 as evidenced by P9.
  
- c) A mandate in the nature of writ of *mandamus* to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to issue and/or transfer the rights under the grant Pol/G/4063 (P15A) in respect of the paddy field bearing Lot No. 124 depicted in FCP Plan No. 33 in the name of the Petitioner.

When this matter was taken up for argument, both parties had consented to dispose the matter by way of written submissions.

I have been nominated by His Lordship Justice Arjuna Obesekera, President of the Court of Appeal (as he then was) to hear and determine this case, sitting alone.

### **The Contention of the Petitioner**

The 1<sup>st</sup> Respondent is the Commissioner General of Lands assigned with the powers for due performance of duties and function and the general supervision and control of all Government Agents and officers in respect of State Lands in terms of section 3 of the Land Development Ordinance. The 2<sup>nd</sup> Respondent is the Divisional Secretary of Thamankaduwa, Polonnaruwa who exercises powers and duties under the Land Development Ordinance subject to the supervision of the 1<sup>st</sup> Respondent.

The paddy field described as Lot No. 124 in FCP Plan No. 33, an extent of 4A-1R-10P is the subject matter in this case. On 28.01.1983, in terms of the Provisions of the Land Development Ordinance No. 19 of 1935 (as amended), one K.M. Kira obtained a Grant bearing No.

P/G/4063 in respect of the said paddy field, from the state (P5A). The said Kira married to one Dingiri and they had children as follows:

1. K.M. Laisa, born in 1928 (Daughter).
2. K.M. Martin, born in 1930 (Eldest son- Petitioner's father).
3. K.M.D. Wimalaweera, born in 1933 (2<sup>nd</sup> son- 4<sup>th</sup> Respondent).
4. K.M. Rosalin, born in 1936 (Daughter).

The Petitioner states that the said Dingiri died in 1938, and thereafter, the said Kira was living with one Punchi Ridi. The contention of the Petitioner was that there was no lawful marriage between Kira and Punchi Ridi. The said Punchi Ridi gave birth to following children:

1. Bastian, born in 1941.
2. Simon, born in 1944.
3. Piyasena, born in 1950 (3<sup>rd</sup> Respondent).
4. Jinadasa, born in 1953.
5. David, born in 1955.
6. Emalin, born in 1956.

On 19.10.1961, the said K.M. Martin, the eldest son of Kira married one Devagiri Henayalage Emalin and the only child born on 08.09.1962 from the said marriage was the Petitioner in this case.

It was contended by the Petitioner that the said Kira died on 23.05.1992, and thereupon, the said K.M. Martin being the eldest son of Kira succeeded to the subject matter in operation of law. The said Martin died on 23.11.1993 before a deed of transfer executed in his name by the state. Subsequently, on 11.12.1994, the said Punchi Ride, the partner of the said Kira died.

The Petitioner states that in terms of the provisions of the Land Development Ordinance, she is entitled to the subject matter upon the demise of her father, namely the said K.M. Martin.

The Petitioner further states that the 4<sup>th</sup> Respondent has secretly and fraudulently made representation to the 2<sup>nd</sup> Respondent that he is the eldest son of the original grantee, and therefore the 4<sup>th</sup> Respondent is entitled to succeed to the subject matter. Accordingly, the 2<sup>nd</sup> Respondent without holding an *inquiry* had transferred the subject matter to the 4<sup>th</sup> Respondent by letter dated 16.08.2001. The said letter is marked as X13 and the Register of Permits/Grants is marked as P9). Thereafter, the 4<sup>th</sup> Respondent by an undated deed bearing No. 28 attested by M.S. Gajanayake, Notary Public marked X7, sold part of the subject matter, an extent of 2A-3R-10P to the 3<sup>rd</sup> Respondent. The 1<sup>st</sup> Respondent has granted approval for the said transfer by letter dated 01.10.2012 under reference No. NCP/TK/9/4/164/19 (Vide P9 page No.2).

The Petitioner further states that even though the 1<sup>st</sup> and 2<sup>nd</sup> Respondents held several *inquiries* upon the complaints made by the Petitioner in this regard, no *final decision* was made to transfer the subject matter in the name of the petitioner.

Accordingly, the Petitioner states that she has a *legitimate expectation* to receive a transfer of rights in respect of the subject matter in terms of the Land Development Ordinance, and the aforesaid transfers in the names of the 4<sup>th</sup> and 3<sup>rd</sup> Respondents are fraudulent, illegal and void *ab initio* on the basis that:

- a) The 2<sup>nd</sup> Respondent could not have transferred or grant approval for a transfer the said subject matter in the name of the 4<sup>th</sup> Respondent in terms of the provisions of the Land Development Ordinance where only the Petitioner's father K.M. Martin is legally entitled to succeed upon the death of the original grantee. Upon the death of the said Martin, the Petitioner being the only daughter is lawfully entitled to succeed.
- b) The 2<sup>nd</sup> Respondent in transferring the said subject matter without an *inquiry* had acted in violation of the rules of natural justice and the express provisions of the Land Development Ordinance.

In the circumstances, the Petitioner contended that, the aforesaid orders or approvals to transfer the subject matter to the 4<sup>th</sup> and 3<sup>rd</sup> Respondents are illegal and liable to be quashed by way of writ of *certiorari*. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are entrusted with the public duty to effect the transfer of the subject matter in the name of the petitioner and had failed to exercise the power vested in them and therefore the petitioner is entitled to compel to perform their duties by way of writ of *mandamus*.

### **The Contention of the Respondents**

The Respondents are not disputing the pedigree of the said Kira which is set out in the Petition. However, in a nutshell, the Respondents took up the position that the marriage between Kira and Punchi Ridi was a valid marriage by cohabitation and repute. Thus, on the demise of Kira the surviving spouse, Punchi Ridi succeeded to the subject matter. On the demise of the said Punchi Ridi, the second son of Kira, the 4<sup>th</sup> Respondent is entitled to succeed as the eldest son, Martin died before the demise of Punchi Ridi. In the circumstances, the transfer of the subject matter to the 4<sup>th</sup> Respondent by P9 and the subsequent deed of transfer executed in favour of the 3<sup>rd</sup> Respondent are lawful and valid in terms of the provisions of the Land Development Ordinance.

### **The fact in issue**

The central issue to be considered in this case is as to whether there was a valid marriage between Kira and Punchi Ridi by cohabitation and repute, that fact has to be established by the respondents with strong and cogent evidence.

The attention of this Court is drawn to the Birth Certificate of David (P1) who is the son of Punchi Ridi wherein the particulars of his father are not stated. It is well established by P1 that Punchi Ridi was not married to Kira as well. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents along with their Statement of Objections have submitted the Birth Certificates of 3<sup>rd</sup> Respondent

and Emalin who are the children of Punchi Ridi marked X2 and X1 respectively. It is pertinent to be noted that in X1 and X2, K.M. Kira has not been indicated as the father of the 3<sup>rd</sup> Respondent and Emalin. Moreover, it appears to this Court that *there is no evidence adduced by the Respondents to substantiate the purported fact that there was a valid marriage between Kira and Punchi Ridi by cohabitation and repute.*

I agree with the decisions of Apex Courts cited by the learned Senior Deputy Solicitor General in the written submissions filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents stating that the marriage by cohabitation and repute should be considered when dealing with the question of succession under the provisions of the Land Development Ordinance. However, in the instant case, the claim of marriage by cohabitation and repute between Kira and Punchi Ridi has not been established to the satisfaction of this Court. *Vide Sarathchandra vs. Attorney General*<sup>3</sup>.

In the circumstances, I am of the considered view that the position took up by the Respondents in their Statement of Objection is devoid of merits.

Having scrutinised the documents and the affidavits tendered by the parties it is abundantly clear that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed to hold a fair and reasonable *inquiry* in terms of the provisions of the Land Development Ordinance to determine the successor of the original grantee, Kira.

Under section 72 of the Land Development Ordinance, the eldest son of the Permit/Grant holder is the lawful successor in the absence of a nomination of a successor and/ or the spouse of the Permit/Grant holder is demised, which reads thus:

*“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*

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<sup>3</sup> [2004] 3 Sri LR 41.

*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 [44, 16 of 1969] [45, 16 of 1969] [46, 16 of 1969] [47, 16 of 1969] [47, 16 of 1969] 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.*

### **THIRD SCHEDULE**

#### *RULES*

*1(a). The groups of relatives from which a successor may be nominated for the purposes of section 51 shall be as set out in the subjoined table.*

*(b) Title to a holding for the purposes of section 72 shall devolve on one only of the relatives of the permit-holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group. [Sections 51, 71, 72 and 77.]*

#### Table:

*(i) Sons, (vii) Brothers, (ii) Daughters, (iii) Grandsons, (iv) Granddaughters, (v) Father, (vi) Mother, (vii) Brothers, (viii) Sisters, (ix) Uncles, (x) Aunts, (xi) Nephews, (xii) Nieces.*

In the case in hand, K.M. Martin, father of the Petitioner was the eldest son of the Grantee, Kira, and therefore, in terms of section 72 of the Land Development Ordinance, he was the lawful successor of Kira.

In the circumstances, it is abundantly clear that the decision of the 2<sup>nd</sup> respondent dated 16.08.2001, transferring the subject matter to the 4<sup>th</sup> Respondent and the decision in granting approval to transfer part of the subject matter by the 4<sup>th</sup> Respondent to the 3<sup>rd</sup> Respondent are illegal and contrary to the provisions of the Land Development Ordinance.



For the foregoing reasons, this Court issue the following relief:

1. A writ of *certiorari* as prayed for in Paragraph (ii) of the petition dated 30.06.2014, to quash the decision of the 2<sup>nd</sup> Respondent dated 16.08.2001 bearing reference No. NCP/TK/9/5/Mul/Pol/G/4063/, in transferring the paddy field bearing Lot No. 124 depicted in FCP plan No. 33 and referred to in Grant No. 4063, to the 4<sup>th</sup> Respondent.
2. A writ of *certiorari* as prayed for in paragraph (iii) of the prayers to the petition dated 30.06.2014, to quash the decision of the 2<sup>nd</sup> Respondent, in granting approval to transfer part of the said paddy field by the 4<sup>th</sup> respondent to the 3<sup>rd</sup> Respondent by letter dated 01.10.2012 bearing reference No. NCP/TK/9/4/164/19.
3. A writ of *mandamus* as prayed for in paragraph (iv) of the prayers to the petition dated 30.06.2014, to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to issue and/or transfer the rights under the grant Pol/G/4063 in respect of the paddy field bearing Lot No. 124 depicted in FCP Plan No. 33 in the name of the Petitioner.

Considering the circumstances of this case, I make no order for costs.

Application of the Petitioner is allowed.

**JUDGE OF THE COURT OF APPEAL**