

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Wijesinghe Mudiyansele
Thilakasenage Anulawathi,
Nigama Road,
Palagala.

CA (Writ) App. No. 503/2023

PETITIONER

Vs.

1. K.D. Bandula Jayasinghe
Commissioner General of Lands,
Department of Land Commissioner,
'Mihikatha Medura'
Land Secretariat,
1200-/6, Rajamalwatte Road,
Battaramulla.
2. H. District Secretariat (Land)
Divisional Secretariat,
Anuradhapura.
3. R.G.S.C.K Wijerathne
Divisional Secretary,
Divisional Secretariat,
Palagala.

4. Wijesinghe Mudiyansele
Thilaksenage Susilawathi,
Negama Road,
Palagala.
5. Ekanayake Mudiyansele Chandana
Padmakumara Ekanayake Ngama
Road,
Palagala.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

A.S.M. Perera, PC with Chaturika Vitharana for the Petitioner.

Ashara Senevirathne, S.C. for the 1st – 3rd Respondents.

Argued on: 13.01.2026

Delivered on: 09.02.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is the eldest son of one Appuhamige Thilakasena, who had been issued with a permit in terms of Section 19(2) of the Land Development Ordinance No. 19 of 1935 (hereinafter referred to as “the Ordinance”); the said permit is annexed to the Petition as **P2**. The said Thilakasena had nominated his brother-in-law, D.M.T.B. Dingiri Banda (the brother of Karunawathi), as the successor. Thereafter, the said Thilakasena had died on or about 14.06.1974, and the said Dingiri Banda had nominated Karunawathi as his successor under the same permit.

However, Karunawathi had been issued with a grant under Section 19(4) of the Ordinance, which is marked as **P4** annexed to the Petition. The said Karunawathi also died on or about 24.06.2007. The said Karunawathi, before her death, had not nominated anybody under the grant. Therefore, the Petitioner has made an application to succeed to the rights of his mother as the eldest male child of the family at that time, which the 1st to 3rd Respondents have not taken any steps or response.

In the meantime, on the recommendation of the 3rd Respondent, the 4th and 5th Respondents were issued with permits for some parts of the land alienated by the said grant **P4**. Thereafter, the Petitioner seeks to challenge the same in this Application.

After the issuance of formal notice, the Respondents have filed their respective Objections in which they had taken up the position that Karunawathi, who was nominated under the permit as a successor by her brother the late Dingiri Banda, had nominated the 4th and 5th Respondents as her successor, despite not having nominated anybody under the permit. Therefore, decision by the 1st

to 3rd Respondents to issue permits to the 4th and 5th Respondents is valid. Thus, the Application made by the Petitioner cannot be maintained and should be dismissed.

This was argued before me on 13.01.2026, and the following arguments were advanced by the counsel. Hence, this judgement.

Arguments

Mr. Perera, the learned President's Counsel for the Petitioner contended that nomination made by Appuhamige Thilakasena, the original permit holder of his brother-in-law, Dingiri Banda, is not valid in law in terms of Section 51 read with Section 72 and the Third Schedule to the Land Development Ordinance, No. 19 of 1935 because other than the spouse, no nomination of any other relation other than a blood relation can be made by a permit holder or a grantee of a parcel of land under the Ordinance. Therefore, Mr. Perera contended that the nomination by the original permit holder Appuhamige Thilakasena of his brother-in-law is invalid.

Consequently, the nomination of the original permit holder's wife (the Petitioner's mother) by Dingiri Banda is also invalid. In those circumstances, Mr. Perera argued that only the spouse, Karunawathi could have succeeded as the spouse under Section 48A of the Ordinance, and not otherwise. Nevertheless, she is not entitled to make any nomination.

Apart from that, he contended that subsequently Karunawathi had been issued with a grant in terms of Section 19(4), and she had died without making any nomination; therefore, the Petitioner should succeed. As such, the issuance of any grant or accepting the 4th and 5th Respondent as valid nominees by Karunawathi in terms of Section 51 read with Section 72 and the Third Schedule of the Ordinance, and also in view of the two judgements of Justice Asoka Silva and Justice Sarath Silva in the Court of Appeal (as they then were), cannot apply in this instant case because the

original so-called nomination by the mother of the Petitioner as well as the 4th and 5th Respondents under the permit is invalid.

On the other hand, Ms. Senevirathne argued that since there is nomination by the grantee, Karunawathi, not under the grant but under the permit, is considered as a valid nomination, though there is no nomination under the grant. Therefore, the cases of Justice Sarath Silva and Asoka Silva should be followed in this instant case.

In reply as well as on answering a question posed by the Court, Mr. Perera argued that even if there is any nomination by Karunawathi under the permit, it could not have been accepted and be valid under the law by any of the 1st to 3rd Respondents or their predecessors because that nomination is invalid. Secondly, he argued that the grant issued under Section 19(4) supersedes any permit. Therefore, the Petitioner being the eldest male child in the family, should succeed to the rights of the grantee, Karunawathi under Section 19 of the Ordinance.

Regularisation and legalisation of possession

In this case, it is very clear that the Petitioner is basically seeking to challenge the nomination made by his father or his maternal uncle who is his mother's brother (father's brother-in-law, Dingiri Banda).

According to the Ordinance, no nomination can be made of any other person other than a person of blood relation because the rationale behind the entire scheme of the Land Development Ordinance is that the tenant cultivators who had initially possessed State land unlawfully, when seeking regularisation and legalisation of such possession, land kachcheris were held for that purpose by the relevant divisional secretary. After the kachcheri, the parcel of land so occupied by a tenant cultivator is regularised by issuance of a permit by Section 19(2). To further legalise the

permitted lands so possessed by the tenant cultivators, had to be identified and depicted on a plan. Once that is done on a plan with deeds and bounds, it can be regularised in terms of the law as clearly stipulated in the Ordinance.

Nomination made illegally

Once a permit or grant is issued, in respect of a certain parcel of land, it is expected of such tenant cultivators not to alienate such lands to any other person other than blood relations.

In that respect, I have to now consider the relevant statutory provisions applicable in this case. Accordingly, I will now reproduce Sections 51 and 72 of the Land Development Ordinance (as amended);

“51. No person shall be nominated by the owner of a holding or a permit- holder as his successor unless that person is the spouse of such owner or permit-holder, or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule.

[Section 50 is repealed by Act No. 16 of 1969]”

“72. 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.*

*[*Section 19A is repealed by Law No. 43 of 1973] [Sections 69, 70 and 71 are repealed by Act No. 16 of 1969]”*

The relevant sections of the Third Schedule of the Ordinance read as thus;

“1. (a) The group 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) The title of a holding or the land for the purposes of section 72, shall devolve on one only of the group of 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.

Table

(i) Children

(iv) Siblings

(ii) Grand Children

(v) Uncles and Aunts

(iii) Parents

(vi) Nephews and Nieces

In this rule 7 ‘Children’ includes a child adopted according to law; and ‘relative’ means a relative by blood or adoption according to law and shall not include a relative by marriage.”

Rationale behind the statutory provisions

The rationale behind this is that no land is expected or permitted to be alienated by its tenant cultivator, other than to the family members, depriving their livelihood. If such tenant cultivator or person who holds the landholding is permitted to alienate, other than the blood relations, he can either sell it for a meagre sum for unwanted purposes such as squandering money on liquor or gambling, or otherwise, it becomes a business. Therefore, State land is only alienated to the poor

tenant cultivators, as at that time, the British Monarch was more benevolent than the Sri Lankan Monarch that existed prior to the cession of the Island of Ceylon, as far as the rights of the tenant cultivators and their welfare is concerned.

Accordingly, the nomination by the tenant cultivator of his brother-in-law, who is not a blood relation cannot be done. Other than the blood relative of the family, the only exception is the wife, who is considered as the part of the nucleus of the family; who can be nominated as a successor.

In addition to that, in the good old days, most of the country people were not legally married or their marriages were not legally registered. They used to have concubines or marriages of habit and repute; and thus, used to produce biological children. Nevertheless, such biological children are not left out by virtue of the provisions of the Ordinance. It is evident that one would on a perusal of the Third Schedule of the Ordinance find that it provides for succession by such biological children as well.

Therefore, the argument advanced by Mr. Perera in that behalf, namely, the nomination by the original permit holder is erroneous, palpably wrong and cannot be accepted as proper nomination under the Ordinance is tenable. Therefore, even the subsequent nomination by Dingiri Banda of Karunawathi, the wife of the original permit holder is invalid as nothing flows from the already defective original nomination. Thus, the principles enunciated in *MacFoy* case¹ by Lord Denning is on the point.

As such, I hold that the first nomination by the original permit holder, Thilakasena, is erroneous and not valid in law.

¹ *MacFoy v. United Africa Company Limited* [1961] UKPC 49

Quite apart from that, as mentioned above, the wife is a part of the nucleus family, and though she is an outsider as far as blood relationship to the tenant cultivator is concerned, without her, no man can produce another blood relative or issues. Therefore, the well-thought Land Development Ordinance has clearly stipulated that any spouse can succeed to the rights of the permit holder or the owner of a landholding in terms of Sections 48A and 48B respectively.

However, the wife in this case has been later issued with a grant in terms of Section 19(4) and borne out by **P4** annexed to the Petition. Even Mr. Perera has no objection in respect of this grant, and neither does the 1st to 5th Respondents. Therefore, when there is a grant, it supersedes even the rights given under a permit under Section 19(2) in respect of the land. Thus, the only question that is left to be decided is whether the rights of Karunawathi under the permit **P4** should be decided on that basis.

Nomination by Karunawathi under 'P2' is illegal

In any case however, the question arises whether the original permit holder, Thilakasena's nomination of Dingiri Banda as his successor, who is his brother-in-law, is erroneously done as I held above. Therefore, the subsequent nomination by Dingiri Banda of Karunawathi as his successor, and based on that, when Karunawathi succeeded to the said rights, it is also palpably wrong. In addition, in the document marked as **P2**, Karunawathi has nominated the 4th and 5th Respondents as her successor based on the strength of the said Dingiri Banda's nomination. Therefore, the whole process of nomination is erroneously done. As such, nothing flows from the said nomination.

In any case, Karunawathi cannot nominate any successor, even under **P2** or **P4**, for two reasons. Firstly, the original permit **P2** had been issued to the said Thilakasena, whose wife can only

succeed to his rights as the spouse under Section 48A of the Ordinance. In such case, Karunawathi cannot nominate any successor; therefore, Karunawathi's nomination under **P2** cannot be taken into account in deciding the succession under **P2** or **P4**.

Secondly, **P4** has been issued on the strength of **P2**; therefore, even if **P4** is accepted as a correct and valid grant to the successor of Karunawathi, who is the wife of Thilakasena, such succession has taken place only on the strength of **P2**. Thus, Karunawathi cannot nominate anybody.

Furthermore, Karunawathi has passed away without nominating anybody under **P4**. Therefore, the erroneous nomination under **P2** cannot be taken into account under **P4**, as the successor should be in the order of seniority in terms of the law, namely, Section 51 read with Section 72 and the Third Schedule of the Ordinance. Thus, the Petitioner is entitled to the writs as sought in this Application.

Conclusion

For the reasons adumbrated above, I grant the reliefs as prayed for in prayers (e) and (f) in the Petition, without costs.

JUDGE OF THE COURT OF APPEAL