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 and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

R. M. D. Wasantha,
Mahasen Place,
New City,
Polonnaruwa.

PETITIONER

C.A. Case No. WRT/0497/19

Vs.

1. Mr. Nimal Abeysiri,
   District Secretary of Polonnaruwa,
   District Secretariat,
   Polonnaruwa.

1A. Mr. E.M.D.S. Ekanayake,
   District Secretary of Polonnaruwa,
   District Secretariat,
   Polonnaruwa.

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

2A. W.M.I. Karunarathne,
   The Divisional Secretary,
   Divisional Secretariat,

Thamankaduwa.

3. E.M.M. Ekanayake,
   Deputy Commissioner of Lands,
   Office of the Deputy Commissioner of Lands,
   Polonnaruwa.

3A. W.M.A.N. Weerakoon,
   Deputy Commissioner of Lands,
   Office of the Deputy Commissioner of Lands,
   Polonnaruwa.

4. Mrs. R.M.A.C. Herath,
   The Commissioner General of Lands,
   The Department of the Commissioner
   General of Lands,
   No. 07, Hector Kobbekaduwa Mawatha,
   Colombo 07.

4A. Mr. Chandana Ranaweera Arachchi,
   The Commissioner General of Lands,
   The Department of the Commissioner
   General of Lands,
   Mihikatha Medura,
   1200/6, Rajamalwatta Road,
   Battaramulla.

5. R.M.D. Piyasena,
   No. 82/2, Aluthwewa,
   Polonnaruwa.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Shabbeer Huzair instructed by Yuha Ismail for the Petitioner.

Shemanthi Dunuwille, SC, for the 1st to 4th Respondents.

ARGUED ON : 04.07.2025

DECIDED ON : 22.09.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

Facts.

1. The petitioner is a son of the original grantee, Rajapakshe Mohottige Emis Appuhamy, of the grant bearing No. ඉඩ/ප්‍ර/4386, dated 28.01.1983, issued under Section 19 (4) of the Land Development Ordinance No. 19 of 1935 (hereinafter referred to as "LDO"). The said grant was registered on 24.06.1986. A copy of the said grant is annexed to this application marked P-1. This is in respect of 3 acres of high land.

2. The said Appuhamy died on 21.07.1986. Thereafter, the petitioner made an application to the Divisional Secretary to nominate him as the successor, as he was the eldest son. Upon considering this request, the 2nd respondent Divisional Secretary nominated the petitioner as the successor by his letter dated 23.01.2002 (*vide* P-3). Correspondingly, the petitioner was also named and registered as the owner of the said land (*vide* P-4). However, subsequently, the petitioner has found out that the registration of his succession had been cancelled and the 5th respondent, his brother, had been named as the permit holder of this land (*vide* para 2 of P-4). On inquiry, the 2nd respondent has, by letter dated 04.10.2004, confirmed the cancellation (*vide* P-6).

3. The reasons adduced for this decision, as stated in P-6, are that the registration of the grant issued to Appuhamy has been effected after the death of the said Appuhamy, and as such, the succession of the petitioner is void; that the original permit is now valid and operative, and all action in respect of the said land will be based on the said original permit; and that the grant bearing No. ඉඩ/ප්‍ර/4386 is not valid.

Upon receiving this intimation, the petitioner has made several representations and requests to the respondents, but with no success. Further, the petitioner also has ascertained that upon the cancellation of his registration, the 5th respondent, Rajapakshe Mohottige Don Piyasena, has been named as the successor to the original permit and made a nomination in his favour.

4. The petitioner has also made a complaint to the Human Rights Commission. The position taken up by the 1st respondent is that since the original grantee, Appuhamy, was not alive when the letter by which the issuing of the grant was conveyed to him, the said grant was invalidated.

5. The petitioner has then instituted this application on 15.11.2019. Upon the granting of Notice, this Court has endeavoured to facilitate some form of settlement, and the respondents have inquired and a report has been submitted, marked R-8, along with the objections of the respondents. The petitioner has participated; however, the 5th respondent has not. The sum total of this report is that the grant is dated 28.01.1983 but registered on 24.06.1986. It is found that the said grant is valid, as the original grantee died thereafter on 21.07.1986; to that extent, the reason stated in P-6 has now been resiled and retracted to that extent.

6. However, it is reported that as the 5th respondent was the nominee in the original permit, the said nomination continued to be valid and effective even upon the issue of the grant, and as such, the petitioner's nomination and succession effected on 06.03.2005 had been cancelled and a nomination made in favour of the 5th respondent and registered the same. Then, the 1st - 4th respondents concede in P-8 that if a nominee fails to succeed within 6 months or does not enter into possession, it is a failure of succession in terms of Section 68 of the LDO. It is further reported that a request for succession had been made by the 5th respondent on 04.08.2003. The 5th respondent had also

asserted that he had been in possession since his birth. However, the said Report observes that the decision to register the 5th respondent as the successor had been made purely on the said letter, without independently ascertaining its correctness or veracity. In these circumstances, the Commissioner General of Land has expressed the view that the 5th respondent has failed to succeed within the stipulated period as required by Section 68 of the LDO.

7. It is also relevant to note that as much as the 5th respondent has failed and has not participated at the said inquiry held, he has also not appeared before this Court, notwithstanding being issued with notice on several occasions.

Validity of the grant.

8. The 3rd respondent, in his letter P-6, has acted on the premise that the grant bearing No.ඔසා/ප/4386 was not valid. The registration of the ownership was thus cancelled but the 3rd and 4th respondents have now, in P-8, conceded and admitted that the said grant is valid. A grant is issued by the President under and by virtue of the provisions of Section19(4) read with Section 19 (6) of the LDO. Once it is so made out, such grant will be valid until and unless it is cancelled or determined as provided for by the provisions of the LDO. The cancellation of grants and permits is provided for by Sections 104 - 118A, under Chapter VIII of the LDO as amended by Act No. 11 of 2022. Section 104 was repealed and substituted and new Sections 104A, 104B, 104C, and 104D were inserted immediately after Section 104. These amended and added sections provide for the mode and procedure to be followed for the cancellation of permits and grants. As the purported inference of cancellation of the grant was made before the amending Act No. 11 of 2022 came into operation, the pre-amended provisions will be considered in deciding this application. The said Section is as follows:

> *"The President may make order cancelling the grant of a holding if he is satisfied that there has been a failure of succession thereto*

either because there is no person lawfully entitled to succeed or because no person so entitled is willing to succeed."

9. The power to cancel a grant is vested exclusively with the President and no other. On the perusal of Section 104, as the law then was, there was no specific requirement of holding any inquiry or granting an opportunity to the grantee/owner to be heard. However, in view of the rules of natural justice, it is implicit and incumbent upon the authority to afford an opportunity to be heard prior to the cancellation of such grant or holding. By the subsequent amendment by Act No. 11 of 2022, the requirement of providing a notice to the owner of a holding of such grant is expressly provided for by Section 104A. Thereafter, Sections 104B, 104C, and 104D provide in detail the requirements to be followed in effecting a cancellation.

10. Accordingly, even under the pre-amended Section 104, as it prevailed then, it is incumbent upon the relevant authority to afford an opportunity which admittedly has not been provided in this instance. Being named as a successor to a grant and registration confers upon such person proprietary rights over such land. The denial or deprivation of such right or entitlement seriously affects and prejudices such right of such person. The petitioner has not been heard before making this decision. In this context, it is more the reason that the petitioner ought to have been heard prior to the purported decision amounting to cancellation being made by the 1st - 4th respondents. Therefore, there is a serious violation and a failure to comply with the rules of natural justice prior to the cancellation of the grant. In ***Regina vs. Commission for Racial Equality ex parte Hillingdon LBC*** [1982] A. C. 779, Lord Diplock said,

"*Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that*

the administrative body should act fairly towards those persons who will be affected by their decision".

11. The petitioner annexed the proceedings and the judgement of the Polonnaruwa District Court, Case No. 13932/L/10, as document P-23. There is material that has transpired that the 5th respondent had acted in connivance with a Commissioner of Lands, who had been instrumental in effecting the purported cancellation. This allegation is also made in P-24, a letter written to the respondents where it is alleged that a predecessor of the respondents had colluded with the 5th respondent. This, to some extent, explains the reason for the sudden reversal and cancellation in the manner alleged. This allegation is stated in detail in document P-15, where the petitioner has made this specific allegation to the District Secretary of Polonnaruwa. According to which, it is alleged that the 5th respondent Piyasena's daughter, R. M. D. Pushpa Priyadarshani, serves as an Assistant Commissioner of Lands at the Polonnaruwa Divisional Secretariat, and her husband happens to be the Additional Divisional Secretary of Thamankaduwa, and that it is they who orchestrated and engineered the purported cancellation.

12. Secondly, as the plain meaning clearly puts it beyond doubt, the sole power of cancellation is with the President, and the Divisional Secretary could not have and did not have any legal authority to effect the purported cancellation. Therefore, the power to cancel a grant, even as the law that prevailed then, was not conferred on the Government Agent or the Divisional Secretary.

The cancellation of the registration.

13. In this application, the 2nd respondent has purported to cancel the registration of the petitioner as the succeeding owner of the said grant. The legal effect of deciding on the successor and the registration of the same is that such person succeeds to the permit or grant and will acquire the status or attributes of a permit holder or the owner, as the case may be. With such nomination of the successor and registration

thereof, such nominee acquires the status of the owner of the holding. The said owner of the holding will be in respect of the land alienated on the grant. The status thus amounts to that of a grantee. Upon such acquisition and the conferring of such status, such person will have all the attributes, benefits, entitlements, and protection *qua* owner. That being so, a cancellation of such registration or the reversal of the process of registering the successor of a grant, in fact and in law, will amount to a cancellation of such grant. By virtue of the provisions of Section 104 of the LDO, as the law was, and as well as after the amendment made by Act No. 11 of 2022, the statutory power to cancel a grant is conferred exclusively upon the President and no other. Accordingly, such grant cannot be cancelled or reversed by any process which results in the cancellation except in accordance with the provisions of Chapter VIII of the LDO, by the President. To that extent, the purported decision intimated by P-6 to reverse the process and to invalidate and cancel the registration in P-4 is contrary to law, *ultra vires*, and is a nullity. This decision had been made without affording a hearing to the petitioner and in violation of the rules of natural justice. The decision clearly affects the proprietary rights and interests of the petitioner and causes great prejudice, depriving him of the property rights held by him.

14. S. A. de Smith in '**Judicial Review**' (4th Ed., at page 420) states that *"Recent practice clearly indicates that where the proceedings were a nullity an award of Certiorari will not readily be denied."* This was so reflected in the case of ***Dharmaratne vs. Samaraweera and others*** 2004 (1) SLR 57, where the Supreme Court overturned the dismissal of the writ applications, which the Court of Appeal had based partially on the ground of laches raised *ex mero motu,* finding that the Commission's proceedings and adverse findings against the appellants were in flagrant violation of natural justice (the *audi alteram partem* rule) and its recommendations for depriving civic rights and instituting criminal proceedings were *ultra vires* the Commissions of Inquiry Act. The Court held that:

"The adverse findings against the appellant were therefore reached in flagrant violation of the audi alteram partem rule, and must be quashed on that ground. The appellant also complains that the 1st respondent has acted ultra vires in terms of reference set out in the warrant and/or the provisions of the Commissions of Inquiry Act and therefore the findings and the recommendations of the Commissioner are void."

15. Thus, the 1st respondent Divisional Secretary does not have any power to cancel a grant in the guise of cancelling the registration of the succession. Accordingly, I hold that the cancellation effected by the subsequent registration, as depicted in P-4, the entry by which the registration of the ownership of the petitioner is purported to have been cancelled and entered by the Registrar on 30.09.2004, is null and void. Further, I find that the consequential entry by which the 5th respondent R. M. D. Piyasena, has been registered as the succeeding owner, entered by the Registrar of Lands on 04.03.2005, is also without jurisdiction and therefore *ultra vires* and void.

Failure to succeed as per Section 68.

16. The position now taken up by the 4th respondent in R-8 is that there was a failure to succeed by the 5th respondent. It is thus admitted and is common ground that the 5th respondent has not come forward and sought to succeed within the stipulated 6 months of the demise of the original owner. To that extent, the provisions of Section 68 will come into operation, and it will thus amount to a failure of succession. Section 68 reads as follows:

"68. Failure of Succession

(1) The spouse of a deceased 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 the spouse of an owner, fails to succeed to the land held by such permit-holder on the permit or to the holding of such owner, as the case may be-*

(a) if such spouse refuses to succeed to that land or holding, or

(b) if such spouse does not enter into possession of that land or holding within a period of six months reckoned from the date of the death of such permit-holder or owner.

(2) A nominated successor fails to succeed to the land held on a permit by 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 if he refuses to succeed to that land or holding, or, if the nominated successor does not enter into possession of that land or holding within a period of six months reckoned-*

(i) where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the death of such permit-holder or owner; or

(ii) where such permit-holder or owner dies leaving behind his or her spouse, from the date of the failure of such spouse to succeed, such date being reckoned according to the provisions of paragraph (b) of subsection (1), or of the death of such spouse, as the case may be."

17. In ***Leelawathie vs. Perera*** (2012) 1 Sri LR 246, Dr. Shirani A. Bandaranayake, C.J., considered Section 68 as follows:

"*The applicability of the provisions contained in the original Section 68 was considered in* ***Gunawardena v. Rosalin*** *(1960) 62 N. L. R. 213. In that a grantee of land under the Land Development Ordinance had nominated his sister, the plaintiff, as the life-holder. He had died in 1951 leaving his widow (the 1st defendant) and their son (a minor) who was nominated under the Land Development Ordinance as the successor to the land by letter dated 17. 06. 1948. The plaintiff alleged that the 1st defendant was in unlawful and wrongful possession of the land since the death of the grantee and she claimed the value of the produce.*

It is to be noted that the plaintiff had never enjoyed the produce of the land or entered into occupation. The Supreme Court considering the provisions of Section 68(1) had held that as the plaintiff did not enter into possession within the period of six (6) months prescribed in Section 68 (1) of the Land Development Ordinance, the successor had succeeded to the holding. In deciding the issue, Basnayake, C. J. had stated thus:

"Section 68 (1) of the Land Development Ordinance provides that a nominated life-holder fails to succeed if he refuses to succeed or does not enter into possession of the holding

within a period of six months reckoned from the date of the death of the owner of the holding."

As stated earlier, the original Section 68 had been replaced with a new section by Land Development (Amendment) Act, No. 16 of 1969. In the new Section 68 instances where failure to succeed to the holding are clearly stated. Accordingly, if the spouse of a permit-holder does not enter into possession of the land or holding in question within a period of six months reckoned from the date of the death of the permit-holder the said spouse would fail to succeed to the land, so held by the permit holder on the permit.

It is quite clear that since the death of the appellant's husband in 1988 she had not entered into possession of the paddy field. It had been harvested by the respondent from 1988 until 1992, the appellant in fact had not even being living in the area. The evidence before the District Court clearly reveals that the appellant had not entered into possession at all after 1988 and she had instituted action before the District Court in February 2001.

In such circumstances, considering the provisions contained in Section 68 (1) of the Land Development (Amendment) Act, since the appellant had failed to enter into possession of the land in question within a period of six months from the date of the death of the appellant's husband, the appellant is not entitled to claim succession to the land so held by her deceased husband as a permit-holder."

18. In these circumstances, the Divisional Secretary is entitled and authorised to consider the nomination of another prescribed person coming within the Third Schedule. The petitioner is the eldest son of the original owner and had been in possession of at least a portion thereof. Therefore the determination that the petitioner be the successor as made initially is lawful and correct.

Delay.

19. The respondents alleged that the petitioner is guilty of laches or delay. It has been held that delay by itself does not prevent the exercise of the

Court's writ jurisdiction in judicial review. In ***Biso Menika vs. Cyril de Alwis and Others*** [1982 (1) SLR 368], Sharvananda J., held as follows:

> *"When the Court has examined the record and is satisfied the order complained of, is manifestly erroneous or without jurisdiction the Court would be loathed to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically."*

The above was followed and cited with approval in ***Paudgalika The Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association vs. H. D. Hemaratna, Tea Commissioner and Others*** (SC/Appeal/47/2011, decided on 09.03.2015), where K. Sripavan, C.J., held,

> *"The Court may therefore in its discretion entertain an application in spite of the fact that a petitioner comes to Court late, especially where the order challenged is a nullity. The conduct of the petitioner cannot be branded as unreasonable to disentitle it to a Writ especially when the decisions contained in the letters marked P12 and P13 are ultra vires the powers of the Tea Commissioner."*
>
> *"There has undoubtedly been great delay in challenging the validity or legality of the said circulars. However, the rule of laches or delay is not a rigid rule which can be cast in a straightjacket formula, for there may be cases where despite delay and creation of third-party rights, the Court may still in the exercise of its discretion interfere and grant relief to the petitioner."*

In ***Pathirana vs. Victor Perera (DIG Personal Training Police)*** 2006 (2) SLR 281, it was held that while the petitioner had technically disentitled himself to the discretionary relief of *certiorari* due to his own conduct, including undue delay and laches, the delay was ultimately excused because of the nature of the error in the proceedings. The above was also followed in ***Dr. N. B. D. N. B. Balalle and others vs. Chief***

Accountant, Ministry of Justice and others (CA/Writ/35/2023, decided on 02.11.2023). Accordingly, as the impugned decision is void and is a nullity, the delay would not defeat this application.

Conclusion.

20. The substantive relief sought by the petitioner in this application are by prayers *(b)* and *(c)*. Prayer *(b)* seeks *"a writ of certiorari to quash the purported decision of the 1st and the 3rd respondents to transfer the said high land in the name of the 5th respondent which is reflected in the extract marked P-4."* As held above, the action by the 1st respondent to cancel the registration of the succeeding ownership of the petitioner is *ultra vires* and *void ab initio*.

21. Accordingly, writs of *certiorari* are issued quashing the said decision and thereby quashing
    - the entry appearing in folio 5/1/3/131 of the Register of Permits and Grants made by the Registrar on 30.09.2004; and
    - the entry appearing in folio 5/1/3/131 of the Register of Permits and Grants made by the Registrar on 04.03.2005 (both depicted in P-4).

22. Now to consider the relief prayed for by prayer *(c)*. The petitioner is seeking a writ of *mandamus* directing the respondents to hold an inquiry in terms of the LDO and the regulations. P-8 confirms that upon the filing of this application, an inquiry was held as directed by this Court. The report P-8 is the outcome of the said inquiry. Accordingly, the consideration of relief as per prayer *(c)* is now not required.

23. In consequence of the writs so issued, the 1st respondent is directed to take necessary steps to have the said quashing given effect to and registered, and the Register be rectified by making a suitable application to the Registrar of Lands.

24. Accordingly, the application is allowed to that extent. However, I make no order as to costs.

Application allowed.

JUDGE OF THE COURT OF APPEAL