

**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.*

Meegasdeniya Kankanamge Chandana  
Priyantha, “Magawatta”, Unana,  
Palapotha, Beliatta.

**CA (Writ) App. No. 822/2025**

**PETITIONER**

**Vs.**

1. Chandana Ranaweera Aarachchi,  
Land Commissioner General,  
Land Commissioner General’s  
Department,  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6,  
Rajamalwatta Avenue,  
Battaramulla.
2. H.M.J.D.B. Herath,  
Assistant Land Commissioner  
(Research and Development Division),  
Land Commissioner General’s  
Department,  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6,

Rajamalwatta Avenue,  
Battaramulla.

3. The Divisional Secretary,  
Divisional Secretariat,  
Beliatta.
4. District Secretary,  
District Secretariat,  
Hambantota.
5. Meegasdeniya Kankanange Somapala,  
“Isuru”, Beragama Janapadaya,  
Ambalantota.
6. Meegasdeniya Kankanamge Munidasa,  
Medical Centre, Imbulgoda,  
Akuressa.
7. Meegasdeniya Kankanamge Thilak,  
‘Magawatta’, Unana, Palapotha,  
Beliatta.
8. Meegasdeniya Kankanamge Piyal,  
“Nadeewasa”, Ridiyagama Road,  
Ambalantota.
9. Meegasdeniya Kankanamge  
Leelawathie,  
Opposite Hospital, Beragama,  
Ambalantota.

**RESPONDENTS**

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

**Counsel:**

Sanjeewa Ranaweera with Upul Pushpakumara instructed by Buddhika Alawaththa for the Petitioner.

Dr. Peshan Gunaratne, S.C. for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

Kaushali Samaratunga with S.A.D.S. Suraweera instructed by Srma Balasuriya for the 5<sup>th</sup> Respondent.

Chandima Muthukumarana instructed by Niluka Welgama for the 6<sup>th</sup> Respondent.

Sarath Chandraguptha for the 7<sup>th</sup> Respondent.

H.C.M.P. Herath for the 9<sup>th</sup> Respondent.

**Supported on:** 16.01.2026

**Order delivered on:** 02.02.2026

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

## **Order**

### **Introduction**

In this case, the Petitioner is the grandson of the original grantee who had been issued with a grant marked as **P1** annexed to the Petition by the Head of the State (then) under Section 19(4) of the Land Development Ordinance (hereinafter referred to as the “the Ordinance”). The said grantee had died in 1964 without nominating any successor. Thereupon, his wife has succeeded to the rights of the grantee in terms of Section 48B of the Ordinance as the life interest holder. Nevertheless, she has nominated several people as her successors to the rights of the original grantee.

Later, an heir who claimed to have devolved the rights of the original grantee, who is also the 6<sup>th</sup> Respondent to the present Application, had challenged the said nominations in case bearing No.CA/WRT/86/2014, as reflected in the document marked **P7** annexed to the Petition. Nevertheless, without asking for a *Writ of Certiorari* to quash the said nominations, he has asked for certain other reliefs. However, by the judgement of this Court which is marked as **P7** annexed to the Petition, dismissed the said application of the Petitioner of the said case (the 6<sup>th</sup> Respondent to the present Application) on the basis that without seeking to quash the nomination, he was not entitled to obtain rights to succeed.

After the death of the spouse of the original grantee, there had been several representations to succeed to the rights of the original grantee. Nevertheless, the 3<sup>rd</sup> Respondent has decided to accept the 5<sup>th</sup> Respondent as the person capable of succeeding to the said rights, being the eldest male child, and accordingly, after accepting him and registering his succession as the successor to the

original grantee's rights, he was asked to surrender the original grant to inquire into the claims of all the heirs of the original grantee including the children and grandchildren, and thereafter issue suitable permits or grants to the relevant claimants. The said decision of the 3<sup>rd</sup> Respondent is reflected in **P8**, and the Petitioner in this Application is seeking to challenge the same.

Accordingly, this was supported before this Court on 16.01.2026, and the following arguments were advanced by the counsel on all sides, and except for the 6<sup>th</sup> Respondent, all other Respondents have objected to this Application; hence, this order.

### **Arguments**

Mr. Ranaweera argued that since **P5** is valid in view of the judgement marked as **P7** annexed to the Petition; the 1<sup>st</sup> to 4<sup>th</sup> Respondents are also bound by that, and therefore the 1<sup>st</sup> and 2<sup>nd</sup> Respondents cannot take a decision as reflected in **P8** in view of the existence of the said judgement.

In addition to that, the second argument advanced by Mr. Ranaweera is that in view of the decision taken in **P8**, the power and authority conferred on the 1<sup>st</sup> to 4<sup>th</sup> Respondents cannot be delegated or relinquished in favour of the 5<sup>th</sup> Respondent as such, delegation amounts to dereliction, and therefore, is *ultra vires*.

Finally, he argued that if the devolution is based on succession in terms of Section 72, then the 9<sup>th</sup> Respondent should succeed as the eldest male child, and therefore, the decision contained in **P9(b)** is erroneous in view of the contents of the Circular **P9**.

However, Mr. Ranaweera did not answer the questions raised by me with regard to the content of the judgement **P7** in view of the provisions of the Land Development Ordinance, particularly in relation to Section 48B, and whether **P7** overrides the statutory provisions or whether the statutory

provisions override common law. The second question that he failed to answer was whether if **P5** is a *per incuriam*, is **P7** *per incuriam* as well.

Commenting on **P7**, Dr. Gunaratne argued that **P5** is palpably wrong, and therefore, **P7** is also *per incuriam* and the statutory law should override the common law.

His second argument is that **P8** is well within the statute and therefore, is *intra vires*. In addition to that, he argued that the 6<sup>th</sup> Respondent had not challenged **P5** in such sense in the said document marked as **P6**; therefore, no decision was taken by **P7** based on **P5**.

Further, he argued that the succession should have taken place after the death of the spouse.

Finally, he argued that the 9<sup>th</sup> Respondent, though the eldest child in the family, had not made any application to succeed, and could not have succeeded until the spouse of the original grantee died.

The Counsel for and on behalf of the 5<sup>th</sup> Respondent also associated with the submissions of Dr. Gunaratne.

The Counsel for and on behalf of the 6<sup>th</sup> Respondent, Mr. Muthukumarana argued that their Lordships in **P7** have not touched the issue of the existence of **P5** in that sense, except on mere technical ground on which it was dismissed. In reply, the Counsel for the Petitioner argued that **P7** has not dealt with Section 48(b); therefore, **P5** is only voidable and not *ab initio* and void.

### **Factual matrix**

I wish to mention, for further clarity, the following facts which have been stated in the Amended Petition by the Petitioner to obtain formal notice and the reliefs sought therein.

The Petitioner is a grandson of the original grantee. The original grantee had been issued with a grant under Section 19(4) of the Land Development Ordinance by the Head of the State as way

back as 1955, which is borne out by the grant marked as **P1** annexed to the Petition, together with the relevant documents and the plan on which the said land is depicted is marked and annexed to Petition as **P2**. The land so alienated under **P1** is in an extent of a little more than 7 Acres, consisting of 3 plots, and are amalgamated.

The 1<sup>st</sup> Respondent is the Land Commissioner, the 2<sup>nd</sup> Respondent is the Chairman of the Land Commission, the 3<sup>rd</sup> Respondent is the Director thereof, and the 4<sup>th</sup> Respondent is the Divisional Secretary.

The 5<sup>th</sup> Respondent is the eldest child of the original grantee, who is still living, and the 6<sup>th</sup> Respondent is one of the siblings of the 5<sup>th</sup> Respondent, the uncle of the Petitioner, and a child of the original grantee. Likewise, all other Respondents up to the 9<sup>th</sup> Respondent are either children or grandchildren of the original grantee, as the case may be. Suffice is to say that the Petitioner has named them as heirs of the original grantee.

The original grantee died in 1964, and thereafter, according to the Petition, his wife succeeded to the rights of the original grantee. In the meantime, she has nominated the 6<sup>th</sup> Respondent and certain others as successors to her rights by the document marked as **P5**; she died thereafter. Thereafter, the 6<sup>th</sup> Respondent, who had been nominated by the mother after the demise of the original grantee, together with the 5<sup>th</sup> Respondent, sought a *Writ of Certiorari* in this Court bearing No.CA/WRT/86/2014, as reflected in document marked **P7**. However, Their Lordships, Judges of this Court, dismissed the application on the basis that since the Petitioner therein had not sought to cancel the nomination in the document marked as **P5**, it stands as valid, and therefore, without asking for such cancellation, the Petitioner to that application could not ask for any other ancillary relief deriving from the rights of the original grantee under **P1**.

Thereafter, the 2<sup>nd</sup> Respondent has decided to recall the original grant after accepting the succession of one heir according to law and then divide the land on merits according to improvements and other evidence. His decision was communicated to the 3<sup>rd</sup> Respondent by letter marked as **P8**, which the Petitioner challenges in this Application. **P8** has been issued in terms of **P9**, which is a circular issued by the Land Commission to implement the provisions of the Land Development Ordinance, including succession.

Thereafter, the Petitioner had certain correspondence with the parties, which are annexed to this Application, including official letters. In this Application, the Petitioner claims that he also possesses the ancestral house and certain appurtenant land around the house, and thus his rights should also be considered as an heir to the original grantee, whose rights have devolved after his father's death as an heir to his father's rights.

In those circumstances, he challenges **P8**, wherein a decision of the 2<sup>nd</sup> Respondent is contained to accept the 5<sup>th</sup> Respondent as the heir in terms of Section 72 read with the Third Schedule of the Land Development Ordinance, despite there being a nomination in the document marked as **P5**, which is erroneous in law. In addition, he challenges **P9** as well. Therefore, he has sought the reliefs as mentioned above.

### **Questions to be decided**

Now the question to be decided in this Application is that I have to first decide whether **P5** remains valid nomination since it has not been declared void by any Court, and two Judges of this Court by the document marked as **P7**, have accepted that it is valid unless and until it is declared void. Therefore, an argument was advanced by the Counsel for the Petitioner, that I am bound by that decision.

Secondly, I raise the question whether, if Their Lordships have not followed any statutory provisions, is their judgement *per incuriam*; then, on that basis, whether I am bound by such a judgement to follow it.

Thirdly, the question arises whether, even if there is a *per incuriam* judgement in existence, particularly where the interpretation of a legal provision is erroneously decided, whether a numerically inferior court is bound by a numerically superior court's judgment of the same Court.

In addition to that, in this case, I have to further decide whether, on law as well as on the merits, the 2<sup>nd</sup> Respondent's decision contained in **P8** is justifiable or correct. Accordingly, as mentioned above, without repeating the same facts, I will now decide the position under different headings to answer the questions that I have raised.

#### **Whether P5 is *ab initio* void or voidable?**

On a perusal of the Land Development Ordinance, it is clearly expressed that no spouse who has succeeded to the rights of the original grantee can make a nomination. This is clearly spelt out in Section 48B of the Land Development Ordinance, which reads as follows;

*“(1) Upon the death of the owner of a holding, the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions:-*

*(a) upon the marriage of such spouse, title to the holding shall devolve on the nominated successor of the deceased owner or, if there was no such nomination, on the person who was entitled to succeed under rule 1 of the Third Schedule;*

*(b) such spouse shall have no power to dispose of that holding;*

*(c) such spouse shall have no power to nominate a successor to that holding:*

*Provided that the aforesaid conditions shall not apply to a spouse who has been nominated by the deceased owner of the holding to succeed to that holding.*

*(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.”<sup>1</sup>*

The rationale behind this is that the only person other than a blood relation who can succeed to the rights is the spouse of a grantee or a permit holder, but such spouse will only succeed as a life interest holder and nothing else. Once he/she succeeds, such spouse, widow, or widower cannot nominate anybody on the basis of succession, because succession should go according to law under Section 72 and the provisions of the Third Schedule of the Ordinance.

This is because only the rights of a tenant cultivator should be held within his blood relations and by nobody else, as alienation of such properties is limited to the family as it is his toil spent on the development of the land that is recognized and accepted by the State which acts as a benevolent dictator rather than a monarch under the Sinhalese Kings’ era, where such rights were granted only for services rendered known as “රාජකාරි” (“*rajakari*”).

Therefore, the Head of the State is empowered to give a grant only for the benefit of a developer or, on his death, to his blood relations. This includes illegitimate children, because most of the tenant cultivators were poor farmers who were uneducated in village areas and were not educated enough to enter into legally valid marriages, except living in habitat-type unions, and sometimes marriages were registered only after the birth of their children. Therefore, the Legitimacy Act which came after 1972, was not applicable earlier, and the provisions of the Land Development Ordinance provide for such exigencies as well.

---

<sup>1</sup> Land Development Ordinance, No. 19 of 1935 (as amended).

Accordingly, no spouse can nominate a successor. Otherwise, if for instance, the original grantee had illegitimate children from another union and thereafter married another woman with children, then if such spouse is permitted to nominate, she could nominate her own children from another marriage rather than the children of the original grantee, thereby alienating the property without devolving it upon the due heirs who may have assisted or helped the original grantee to toil on the development of the land along with their parents who so started developing it.

Therefore, the rationale behind this provision is very clear, and I hold that the nomination contained in **P5** by the spouse of the original grantee is *ab initio* void as it violates the statutory provisions and nothing flows from the *Macfoy* case<sup>2</sup>.

**‘P7’ is *per incuriam***

Now, the question arises whether my view and my expression of law is invalid in view of the judgement bearing No.CA/WRT/86/2014, document marked **P7**, of the two Judges of this Court.

It is very clear that Their Lordships have not considered Section 48B in their judgement, except for the expression of their view to the effect that unless the Petitioner in that case sought to cancel the nomination in **P5**, it remains valid. However, when something cannot be done according to law and is not valid according to law, it is *ab initio* void. Therefore, nothing flows from such void act.

As such, it remains *ab initio* void and therefore, without properly considering and interpreting Section 48B, Their Lordships have expressed their view on the matter; therefore, it is my view with all due respect to Their Lordships, the said judgement is *per incuriam*. As such, judgements made by this Court and even the Supreme Court have held that no judge, however numerically or

---

<sup>2</sup> *MacFoy v. United Africa Company Limited* [1961] UKPC 49

otherwise subordinate he is, is not bound by the opinions expressed in a *per incuriam* judgement. Thus, I hold that I am not bound by the said judgement **P7** on the basis that Their Lordships' expression is *per incuriam*. Secondly, I further hold that the *per incuriam* judgements are not binding any future judge.

Although **P7** was handed down by another bench of this Court which is numerically superior is binding on me in terms of the proposition of law enunciated by Chief Justice Basnayake in *Bandahamy v. Senanayake* [1960]<sup>3</sup>. However, now I will consider whether I am bound by a judgement if it is *per incuriam*.

This has been the focal point in many a judgements, and our courts also having followed English authorities and held so as enunciated in *S.M. Rosalin Bertha of Dummalasooriya and Another v. M.K. Juwan Appu of Dummalasooriya and Others* [2022]<sup>4</sup>;

*“Morrelle Ltd. v. Wakeling [1955] 2 QB 389 is considered a leading authority that defined per incuriam. Lord Evershed M.R. declared at 406:*

*‘As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some feature of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided per incuriam, must, in our judgment,*

---

<sup>3</sup> 62 NLR 313

<sup>4</sup> SC Appeal 160/2016 (SC Minute 02.12.2022)

*consistently with the stare decisis rule which is an essential part of our law, be of the rarest occurrence.’”*

On the same *per incuriam* judgement, Lord Denning M.R. in *Farrell v. Alexander*<sup>5</sup> had to say this;

*“No court is entitled to throw over the plain words of a statute by referring to a previous judicial decision. When there is a conflict between a plain statute and a previous decision, the statute must prevail. That appears from the decision of the House of Lords in Campbell College, Belfast (Governors) v. Northern Ireland Valuation Commissioner [1964] 1 WLR 912.”*

With the same figure, in the case of *Sitti Nufeesa v. Chandrasena and Others*<sup>6</sup>, Justice Amarasekara had to say this;

*“This court observes that the Honorable Supreme Court in making the decision in Gamaralalage Karunawathie Vs. Godayalage Piyasena has not considered the amendments brought to the Partition Law by the amending Act No. 17 of 1997. Especially it has not considered the provisions of section 48(1) and section 81 mentioned before in this order. K.T. Chithrasiri J., Judge of the Court of Appeal (as he then was) in the aforesaid Judgement Jane Nona and Others Vs. Chalo singho has discussed in detail a similar situation and has considered the Judgement in Gamaralalage Karunawathie Vs. Godagelage Piyasena is not absolutely binding on this court as it was given in per incuriam, since the Supreme Court failed to consider the specific provisions in the Partition Law. I too agree with the view that the aforesaid decision of the Supreme Court was made in per incuriam. For the reasons mentioned before, I am of the view that this court need not follow the aforesaid*

---

<sup>5</sup> [1976] 1 QB 345

<sup>6</sup> CA/APPEAL/654 & 655/2000(F) (CA Minutes 03.08.2018)

*decision of the Supreme Court as it was made in per incuriam without considering of the relevant statutory provisions.”*

Therefore, it is my view that I am not bound by the judgement **P7** as their Lordships have considered Section 48B of the Ordinance.

**‘P8’ is *intra vires***

Next, I will consider the other remaining matters.

According to law, the nomination made by the spouse of the original grantee is invalid. Since the law is very clear regarding Section 72 of the Ordinance, Section 72 and 73 must come into operate here, read with the Third Schedule of the Ordinance, according to which the eldest male child as the law stood when the original grantee died in 1964 should succeed to the rights of the original grantee. Therefore, even at the time when the spouse of the original grantee, who may have succeeded to the said rights as a life interest holder, died in 1988, prior to the Enactment which brought certain changes to the Ordinance regarding succession of children based on their sexuality in 2024. As such, I still hold that the 5<sup>th</sup> Respondent is entitled to the succession.

Accordingly, what the 2<sup>nd</sup> Respondent has expressed in **P8** is that the 5<sup>th</sup> Respondent’s succession should be accepted and thereafter, get him to surrender the original grant, and subsequently, consider the rights of all the parties who are in possession of the land in suit, on the basis it devolved on them from the original grant, which I think is a reasonable and meritorious act as it is decided based on merits as well as on the development and improvements done to the land, in accordance to the rationale behind the Ordinance. Thus, the view and opinions expressed in **P8** is legal and justified.

As such, I see no reason to interfere with that. In fact, I further hold as I have previously held in certain other judgements that the experienced senior officers such as the 2<sup>nd</sup> Respondent are appointed to their post to take decisions without any malice, prejudice, or bias towards anybody. Thus, in this case as the law stands and merits also indicate, and as indicated in the Petition by the Petitioner himself, the 2<sup>nd</sup> Respondent has finally proposed to consider possession of all the heirs of the original grantee, including the Petitioner, when they finally issue the separate permits or grants. Accordingly, the course of action suggested by the 2<sup>nd</sup> Respondent is justified and according to law.

### **Conclusion**

In the circumstances, for the reasons adumbrated above, I am compelled to refuse to issue formal notice, and this Application is dismissed *in limine*, without cost.

**JUDGE OF THE COURT OF APPEAL**