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

In the matter of an Application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writ of *Mandamus* to be issued against the 1st 2nd and 3rd Respondents.

CA (Writ) application No: 547/2023

1. Kalu Arachchillage Harsha Kumari Kaluarachchi,
   No. F 22/4, Malpandeniya Watta,
   Akiriyagala Road,
   Paragammana,
   Kegalle

2. Kalu Arachchillage Hasantha Kaluarachchi,
   No. 3/A/4, Unit 19,
   Agbopura,
   Kanthale

PETITIONERS

-Vs-

1. The Divisional Secretary,
   The Divisional Secretariat,
   Kanthale.

2. The Assistant Land Commissioner,
   Assistant Land Commissioner's Office,
   Kanthale

3. Commissioner General of Lands,
   Land Commissioner General's Department,
   "Mihikatha Medura", Land Secretariat,
   1200/6, Rajamalwatte Road,
   Battaramulla.

4. Samarakoon Appuhamilage Wimalarathne,

5. Samarakoon Appuhamilage Ranjani Sujatha,

both of No. 47, Unit 19,
Agbopura,
Kanthale

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

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

Counsel: Sudarshani Cooray for the Petitioners.

Tashya Gajanayake, SC for the 1st to 3rd Respondents.

Ershan Ariyaratnam instructed by Udeni Gallage through Legal Aid Commission for the 4th and 5th Respondents.

Written submissions tendered on:

19.08.2025 by the Petitioners

18.07.2025 by the 4th and 5th Respondents.

Argued on: 09.07.2025

Decided on: 25.09.2025

S. U. B. Karalliyadde, J.

The Petitioners in this Writ Application are siblings. Under Section 19(4) of the Land Development Ordinance, No. 19 of 1935 (as amended) (the Ordinance), Grant bearing

No. ත්‍රි/ප්‍ර/අංක: 2951 dated 18.01.1993 marked as P1 was issued to the Petitioners' father, Kalu Arachchilage Podi Banda, for Lot 2297 in Plan No. F. T. P. 02 Inset 53 in the extent of 4 Acres and 7 Perches marked as P2/P4(i), which is a paddy land. Even though the Grant P1 was issued to the father of the Petitioners in 1993, the father was in possession of that lot before the Grant marked as P1 was issued. The father had abandoned the possession of the land due to the Civil War prevailing in those areas at that time. When the Petitioners' father returned to the area on or around 1996, the 4th and 5th Respondents were occupying the said land. Therefore, the Petitioners' father began to possess the adjoining lot, which is Lot No. 2311 in the Plan marked as P4(i) in the extent of 3 Acres 1 Rood and 4 Perches, to which a Grant dated 08.05.1991 marked as P23/4R4(a) had been issued to the 4th and 5th Respondents' mother. Even though the mother of the 4th and 5th Respondents has been issued with the Grant marked as P23 for Lot 2311 in 1991, the Petitioners' fathers' Grant P1 was issued in 1993 for Lot 2297. Petitioners state that their father had possessed Lot 2311 until he died in 2003 due to a vehicle accident, and the mother also died in the same accident thereafter, as the eldest son, the 2nd Petitioner came into possession of that lot.

After the death of the father, the 2nd Petitioner repeatedly requested the relevant authorities (by letters marked as P7(i), P8 and P22) to register his name as the successor to Lot 2297, which is the lot granted to his father by P1. In reply to those requests, the Assistant Land Commissioner, Kanthale (the 2nd Respondent), by his letter dated 06.04.2016 marked as P13, requested the 2nd Petitioner to hand over the Grant marked

as P1 to rectify the error in it. The Petitioners have averred in the Petition that consequent to the letter marked as P17 sent by the 2nd Respondent dated 22.06.2022 to the 2nd Petitioner and the 4th Respondent and the letter dated 15.08.2022 marked as P18 sent by the Commissioner General of lands (the 3rd Respondent) to the 2nd Respondent, the Petitioners were compelled to hand over the Grant marked as P1 to the Divisional Secretary of Kanthale, the 1st Respondent. Even though the 2nd Petitioner has returned P1 to the 1st Respondent, his name has not been registered as the successor. Thereafter, the 2nd Petitioner became aware that, notwithstanding the 2nd Respondent's failure to register him as the owner of Lot 2297, the 2nd Respondent, following the demise of the mother of the 4th Respondent, has registered the 4th Respondent as the owner of Lot 2311. Under the above-stated circumstances, the Petitioners argue that the failure of the 1st to 3rd Respondents to register the 2nd Petitioner as the lawful successor of Lot 2297 in terms of the Ordinance is arbitrary and unreasonable. The Petitioners have invoked the Writ jurisdiction of this Court and seek the following substantive relief, *inter alia*,

b. Issue a Writ of Mandamus compelling the 1st, 2nd and 3rd Respondents to take steps to register the name/s of the 1st and/or the 2nd Petitioner as the lawful successor of Grant bearing No. නි/ඌ 2951 for Lot No. 2297 in Plan No. F.T.P. 02 Inset 53.

The position of the 4th and 5th Respondents is that they are in possession of the land, which they and their mother have been in possession of for over 60 years, and they became aware that they are not in possession of the land, which the mother became entitled to by P23. Furthermore, even though they have handed over the Grant marked

as P23/4R4(a) to the 1st Respondent, the Petitioners have failed to return their father's Grant marked as P1 to the 1st Respondent. The learned Counsel appearing for the 4th and 5th Respondents argue that, a party seeking a Writ of Mandamus must prove that such party has a legal entitlement for a Mandamus, and that the Petitioners in the instant Application have failed to establish any legal entitlement to Lot 2297, which is currently in possession of the 4th and 5th Respondents, who have developed the said lot.

The contention of the learned Counsel appearing for the Petitioners is that, in terms of Section 104A of the Ordinance, a Grant could only be cancelled on two grounds. Either the owner of the Grant had purposefully given false information at the time of obtaining the Grant, or the Grant had been issued to a person other than the person in possession of the land. The learned Counsel appearing for the Petitioners further argues that the second limb of Section 104A is applicable to them. However, they were in possession of lot 2311, mistakenly believing that they were in possession of lot 2297. Therefore, the Petitioners should not be punished for a genuine mistake. Section 104 of the Ordinance sets out the grounds upon which a Grant may be cancelled. Section 104 reads thus,

> *"The President may make order cancelling the grant of a holding where the President is satisfied that-*
>
> *(a) there has been a failure of succession thereto either because of there is no person lawfully entitled to succeed or because no person so entitled is willing to succeed; or*

(b) the grant has been obtained fraudulently on false information or the grant has been issued to a person other than the legitimate occupant."

This Court observes that, by letter dated 15.08.2022 marked as P18, to resolve the issues between the Petitioners and the 4th and 5th Respondents, the 3rd Respondent has requested the 2nd Respondent to forward recommendations for cancellation of the Grants in the event the 2nd Respondent had determined that the Grants have been fraudulently obtained by giving false information or had been issued to a person other than the legitimate occupant. Furthermore, in terms of Section 104(A) of the Ordinance, where it appears to the 3rd Respondent that a Grant has been so obtained as specified under Section 104(b), a notice shall be issued to the owner or occupant of such land, informing such person that the Grant is liable to be cancelled for the reasons set out therein, unless cause is shown to the contrary on the date specified in such notice. It is the view of this Court that, notwithstanding the Petitioners' contentions regarding the cancellation of the Grant, none of the documents produced before this Court establishes that any steps have been taken to cancel the Grant marked as P1.

Furthermore, the learned State Counsel appearing for the 1st to 3rd Respondents has informed the Court that they will not file objections and will abide by any judgment given by this Court. However, at the argument, the learned State Counsel has admitted that when P1 was issued to the Petitioners' father, the lot number was erroneously stated in P1 as 2297, as it should be Lot 2311 and when Grant P23 was issued to the 4th and 5th Respondent's mother in P23, it has been erroneously stated as 2311 where it should

be Lot 2297. The learned State Counsel has further stated that when the 1st to 3rd Respondents discovered the error committed by them, they informed the Petitioners and the 4th and 5th Respondents to return P1 and P23 to cancel those Grants and issue fresh Grants, the 4th and 5th Respondents have returned the Grant marked as P23, but the Petitioners have failed to return P1.

Under the above-stated circumstances, it is clear that the 1st to 3rd Respondents have requested from the parties to return their Grants to correct the lot numbers when they realised that they are not in possession of the respective lots which they are entitled to by the respective Grants. The Petitioners are seeking relief to get the 1st and/or the 2nd Petitioner registered as the lawful successor of the Grant marked as P1. Therefore, this Court is of the view that the Petitioners' argument on the cancellation of the Grant P1 has no application to the case at hand.

The learned Counsel appearing for the Petitioners further argues that, even though the 2nd Petitioner is possessing Lot 2311 under the impression that he is possessing Lot 2297, the Petitioners, as the lawful successors of their deceased father, are entitled to the rights dealt with the Grant marked as P1. Now this Court will look into whether the Petitioners have a right to succeed the Grant marked as P1 as the lawful successors.

The Petitioners' contention is that the 1st to 3rd Respondents have acted arbitrary and unreasonable by refusing to register the 2nd Petitioner as the lawful successor of Lot 2297 under the provisions of the Ordinance. When an owner of a holding (Grant) dies without leaving behind a spouse and there is no nominated successor, under Section 72

of the Ordinance, the eldest child of the owner of such holding will succeed the Grant in terms of Rule 1 of the 3rd Schedule of the Ordinance. In terms of Section 73 of the Ordinance, the title to the land on a Grant would be devolved on such successor from the date of death of the owner of the holding. In terms of Section 73 of the Ordinance, when the owner of the holding dies without leaving a spouse, the title passes to the person entitled under Section 72 from the date of the owner's death. Section 73 reads thus,

> "*Title to a land alienated on a permit or to a holding shall be deemed to have devolved on any person entitled to succeed to the land or holding under the provisions of section 72 as from the date of the death of the permit-holder or owner of the holding if such permit-holder or owner died without leaving behind his or her spouse, or, if such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed or from the date of the death of such spouse, as the case may be*."

Upon the death of the Petitioners' father, who is the owner of the holding under the Grant P1 and the mother, the title to the holding passes to the eldest son among the siblings of the Petitioners under Section 73, read with Section 72 of the Ordinance.

Nowhere in the Ordinance say that a succession under Section 72 must be registered. The Ordinance only provide for registration of nominated successor or cancellation (vide Section 58 of the Ordinance). Therefore, the 1st to 3rd Respondents do not owe a duty towards the Petitioners to register either one of them as successor for the Grant

P1. It is trite law that to grant a Writ of Mandamus, one must prove that they have a legal right to the performance of a public duty. In *Credit Information Bureau of Sri Lanka v. M/s Jafferjee and Jafferjee (Pvt) Limited*,[1] the Supreme Court held that,

> "*There is rich and profuse case law on Mandamus on the conditions to be satisfied by the Applicant. Some of the conditions precedent to the issue of Mandamus appear to be :*
>
> *(a) The Applicant must have a legal right to the performance of a legal duty by the parties against whom the Mandamus is sought ... The foundation of Mandamus is the existence of a legal right*
>
> *(b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.*"

In the case of *Kaluarachchi v. Ceylon Petroleum Corporation and Others*,[2] referring to the judgment in *Credit Information Bureau of Sri Lanka v. M/s Jafferjee and Jafferjee (Pvt) Limited* (supra), Murdu N.B. Fernando, PC. J. (as she then was) reiterated that,

> *"the foundation of mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce a right which is not legal and not based upon a public duty."*

[1] [2005] 1 Sri LR 89
[2] SC Appeal No. 43/2013; SC Minutes of 19.06.2019

In the case of *Ratnayake and others v. C.D. Perera and others,*[3] the Supreme Court held that,

> *"The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the superior courts for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest."*

Considering all the above-stated facts and circumstances, this Court is of the view that the 1st to 3rd Respondents do not have a public legal duty towards the Petitioners to register one of them as the successor of the Grant marked as P1.

The Petitioners assert that the 2nd Petitioner repeatedly made requests to nominate him as the successor. In support of this position, the Petitioner have submitted the letters marked as P7(i) and P8. While P7(i) is dated 16.07.2014, P8 is dated 15.02.2015. When examining the letter dated 23.07.2014 marked as 4R4 issued by the 2nd Respondent addressed to the 3rd Respondent, it is clear that the Petitioner, in fact, has requested to get him registered as the successor of the Grant P1. The Petitioners' father had died in 2003. The earliest proof that the 2nd Petitioner has attempted to get himself registered as the successor dates back to the year 2014. The first letter requesting the 2nd Petitioner

[3] [1982] 2 Sri. L.R. 451

to hand over P1, issued by the 2nd Respondent, is dated 06.04.2016, marked as P13. The Petitioners have filed the instant Application on 21.09.2023. There is an inordinate delay by the Petitioners in filing the instant Application. It is settled law that if a party that invokes the Writ jurisdiction of this Court is not entitled to any relief, if there is an inordinate delay in filing the application. In *Seneviratne v. Tissa Bandaranayake and another 1999(2) SLR 341 at page 351,* Amerasinghe, J. observed that,

> "*If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant*"

In the case of *P. B. Dissanayake v. 1. O. K. G. Fernando and another,*[4] Weeramantry, J. held that

> "*where the extraordinary process of this Court is sought after such a long lapse of time, it is essential that the reasons for the delay in seeking relief should be set out in the papers filed in this Court*."

In the case of *Dahanayake and Others v. Sri Lanka Insurance Corporation and Other,*[5] deciding that the Petitioners are guilty of laches and not entitled to the relief prayed for by them due to the failure of the Petitioners in that application in invoking the

[4] 71 NLR 356

[5] (2005) 1 SLR 67

jurisdiction of this Court within a reasonable time and failing to explain their delay in a reasonable way, Saleem Marsoof, J, (P/CA) (as he then was) observed that,

> "*The grievances of the petitioners arose in November 1994, when the arrears of the enhanced cost of living allowance was paid to the employees in service at that time. The petitioner should have sought a writ of mandamus in 1994 and not in 2003. It is settled law that inordinate delay in invoking the jurisdiction of the Court does not entitle the petitioners to any relief under writ jurisdiction*."

The Petitioner has not explained the reasons for the delay in filing this Application. It is the view of this Court that those who sleep over their rights and are not vigilant are not entitled to the relief they have prayed for. Therefore, this Court is not inclined to grant the relief prayed by the Petitioners.

Furthermore, the Petitioners, by the Writ of Mandamus, prayed in prayer (b) to attempt to compel the 1st to 3rd Respondent to register the 1st and/or the 2nd Petitioner as the lawful successor of Lot 2297 in P1. According to the letters marked as P7(i), P8 and P22, it is clear that the Petitioners are attempting to get the title to the land. This Court is of the view that the Petitioners are now attempting to get a title to a land they are not in possession of by way of a Writ of Mandamus. In the case of *S M Ratnawathi Manike v. Mohiden Kasim Bibi and Others*,[6] Sisira J De Abrew, J. observed that, "*a Grant issued in terms of Section 19(4) of the Land Development Ordinance has to be*

[6] SC Appeal 154/2015, SC Minutes of 10.11.2017

considered as a deed conveying the title to the grantee by the State". Therefore, this Court is of the view that as the successors of P1, the Petitioners have an equally convenient remedy by filing an action in the District Court for a declaration of title or instituting a vindicatory action rather than invoking the Writ jurisdiction of this Court. It is trite law that when there is an equally convenient alternative remedy available, the writ Courts are reluctant to exercise its discretionary power. In the case of *Office Equipment Ltd v. Urban Development Authority*[7], K Sri Bawan, J (as he was then) held that,

> *"In view of the authorities cited above, I hold that the Petitioner's claim cannot be suitably decided in a Writ application. Furthermore, prerogative writs will not issue where there are adequate, convenient and effective remedies available to determine the rights of parties granted where the Petitioner has another adequate and specific legal remedy in the District Court competent to afford relief upon the same subject matter."*

In *Pinnaduwage Baby Mallika Chandraseana v. C.W. Abeysuriya,* [8] this Court held that,

> "*Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him*."

[7] CA/Writ/1062/2000 CA Minutes of 05.09.2003

[8] CA/WRIT/457/2019 CA Minutes of 16.06.2022

In the case of *Wickremasinghage Francis Kulasooriya and another v. Officer-In-Charge, Police Station, Kirindiwela*,[9] the Court held that,

> "*If the Writ jurisdiction is invoked where an equally effective remedy is available, an explanation should be offered as to why that equally effective remedy has not been resorted to.*"

Considering all the above-stated facts and circumstances, this Court is of the view that the Petitioners are not entitled to the Writ of Mandamus as prayed for in prayer (b) of the Petition. Accordingly, this Writ Application is dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

[9] CA (Writ) Application No. 338/2011, CA Minutes of 22.10.2018