

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

In the matter of an application for mandates 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.

C.A. (Writ) Application

No: 0576 / 2024

1. Kumastheru Liyange Sumudu Chinthaka
4th Lane,
Oluwila,
Ambalantota.

PETITIONER

Vs

1. Bandula Jayasinghe
Commissioner General of Lands,
Land Commissioner General's Department,
"Mihikatha Madura",
Land Secretariat,
No.1200/6 Rajamalwatta Road,
Battaramulla.

- 1A.Chandana Saman Ranaweera Arachchi,
Commissioner General of Lands,
Land Commissioner General's Department,
"Mihikatha Madura",
Land Secretariat,
No.1200/6 Rajamalwatta Road,
Battaramulla.

2. Senaka Palliyaguruge
Southern Provincial Land Commissioner,
Southern Provincial Land Commissioner's
Department,
No.211, Wackwella Road,
Galle.

3. N.D.P. Ranasinghe
Divisional Secretary,
Divisional Secretariat,
Ambalantota

- 3A. Ms. Chintha P.W. Wanniarachchi
Divisional Secretary,
Divisional Secretariat,
Ambalantota

4. Kumastheru Liyange Premadasa
4th Lane,
Oluwila,
Ambalantota.

5. Juwana Hannadige Karunawathie
15/B, 6th Lane
Vidarshana Mawatha,
Galavilawaththa
Homagama.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Gamini Hettiarachchi for the Petitioner.

Sandamal Rajapaksha for the 5th Respondent.

Dilantha Sampath, S.C. for the 1st to 3rd Respondents.

Argued on : 29.09.2025.

Written Submission

Tendered on : 06.11.2025 for the Petitioner.

Decided on : 20.11.2025.

Adithya Patabendige, J.

The Petitioner has invoked the jurisdiction of this Court, seeking, *inter alia*,

- i) A mandate in the nature of a *writ of certiorari*, to quash the impugned decision of the 1st Respondent, the Commissioner General of Lands, communicated by letter dated 29/07/2024, marked P8.
- ii) A mandate in the nature of a *writ of mandamus* compelling the 1st to 3rd Respondents to issue a Permit or Grant in terms of Section 19 of the Land Development Ordinance (LDO) in respect of the land depicted as lot A in plan marked P7 together with other incidental reliefs.

In the light of the pleadings the following facts are undisputed.

- The grant bearing No. ඩබ්/2/ප්‍ර/29216 (LL 75982), marked P1, had been issued to Kumastheru Liyanage Maginona in terms of Section 19(4) of the LDO.
- The 4th and 5th Respondents are siblings and children of the said Maginona.
- The mother of the Petitioner, Kumastheru Liyanage Sriyawathie is also a sibling of the above 4th and 5th Respondents.
- Maginona died on 30/09/1998 and her husband had predeceased her.
- The Petitioner and the 4th Respondent subsequently made a joint application asserting the relevant portions of the land.
- Maginona had nominated the 5th Respondent as her successor.
- After the death of Maginona, the nominated successor failed to succeed.

Although, a joint application was initially made by the Petitioner and the 4th Respondent, a dispute had thereafter arisen between them. Following an inquiry conducted by the Land Commissioner, Southern Province, it was decided that the 4th Respondent was entitled to succeed to the land of the deceased grantee, Maginona. This decision was conveyed to the Divisional Secretary of Ambalantota by the Commissioner General of Lands through the letter dated 20/07/2024 marked P8.

As noted earlier, the main question in this application concerns the legal consequences arising from the failure of the nominated successor to enter into possession of the land described in P1. Under the scheme of the LDO, nomination alone is insufficient to perfect the right of succession. The nominated successor must also comply with the statutory requirement of entering into possession within the prescribed period.

The Section 68 of the LDO sets out the circumstances in which either the surviving spouse or the nominated successor fails to succeed. The Section 68 (1) addresses the failure of a spouse, while 68(2) specifically governs the failure of the nominated successor. The instant application is related to the nominated successor. Consequently, the legal effect of such failure must be assessed in terms of Section 68(2).

The section 68(2) states as follows;

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.

In terms of Section 72 of the LDO, if the nominated successor fails to succeed, the land or holding shall devolve as per the Rule 1 of the Third schedule.

Section 72 states 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 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.

Accordingly, Section 72, which has the binding force provides that upon the failure of the nominated successor to succeed, the land must devolve strictly in accordance with the hierarchy prescribed in Rule 1 of the Third Schedule, without requiring any further evaluative determination on the part of the administrative authorities.

Before the amendment Act No. 11 of 2022, the order of succession was as follows;

- Sons
- Daughters
- Grandsons
- Granddaughters
- Father
- Mother
- Brothers
- Sisters
- Uncles
- Aunts
- Nephews
- Niece

However, as per the amendment, the statutory order of succession was revised, and recognized into broader group, eliminating the gender-based discrimination. It states as follows;

- Children
- Grandchildren
- Parents
- Siblings
- Uncles and Aunts
- Nephews and Nieces

According to Rule 1 (d) of the Third Schedule, even within the prescribed order of priority, the person who has developed the land is given precedence over another relative who, even though older or earlier in the order, has not developed the land. The said Rule 1(d) states as follows,

Notwithstanding the provisions of paragraphs (b) and (c) above,

(i) where any person in the order of priority in which they are respectively mentioned in the subjoined table developed such land, the title to the holding or the land shall not devolve on the older person referred to in paragraph (b) but on the person who developed such land; or

(ii) where there are two or more persons in the order of priority in which they are respectively mentioned in the subjoined table developed the land, the title to the holding or the land shall devolve on such persons who developed such land.

Rule 2 of the Third Schedule addresses the legal position that arises when the relative identified in Rule 1 fails to succeed after the death of the permit holder or grantee.

Rule 2 states as follows.

If any relative on whom the title to a holding or land devolves under the provisions of these rules is unwilling to succeed to such holding or land, the title thereto shall devolve upon the relative who is next entitled to succeed subject to the provisions of rule 1.

The central issue revolves around the present application is the applicability of the amendment Act No.11 of 2022 to the present dispute. The contention of the Petitioner is that the amendment Act applies to the instant application and order of succession should govern accordingly. However, the Respondents dispute this position and their contention is that since the grantee died in 1998, long before the amendment Act, the issue in hand must therefore be determined strictly in accordance with the law that prevailed at the time of such death. On this basis, the Respondents maintain that the decision of the Commissioner General of Lands marked P8 reflects the correct position and does not give rise to any illegality or error warranting judicial review.

Section 73 of the LDO contemplates the date of succession. It states 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.

According to the above provision, succession is deemed to take effect from the date of death of the permit holder or owner. The application for the nomination by any person entitled, the administrative acts of the Divisional Secretary such as conducting inquiries, recording of statements or site visits do not create the right of succession. Thus, the statute fixes a clear and definite point of time for the succession to take effect, that is the date of death of the permit holder or the grantee. In terms of Section 73 read together with Section 68 of the Land Development Ordinance, the following three points become apparent.

- The right to succeed arises immediately upon the death of the permit holder or the grantee.
- The spouse or the nominated successor must enter into possession within six months from the date of death of the permit holder or the grantee.
- Upon such failure, the Divisional Secretary is empowered to decide the next eligible successor according to the Rules of the LDO.

The next question that arises for consideration is whether the amendment introduced by Act No. 11 of 2022 to the Land Development Ordinance operates with retrospective effect. The Jaffna Matrimonial Rights and Inheritance Ordinance was amended by Act No. 58 of 1947. In considering the applicability of the certain provisions of the amendment, a bench of five judges of the Supreme Court held that, in the absence of an express provision giving retrospective effect, such an amendment cannot disturb rights that had already vested. In the case of *Akilandanayaki v Sothinagaratnam et al*, 53 NLR 385, Justice Gratiaen held the above principle in following terms;

Before one considers the provisions of the amending Ordinance which are claimed to be retrospective, it is necessary to examine section 6 (3) of the Interpretation Ordinance (Cap. 2) which was enacted in 1901- i.e., on a date long prior to the passing of either the principal or the amending Ordinance with which we are now concerned. The section reads as follows:

(3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected-

(a) the past operation of or anything duly done or suffered under the repealed written law;

(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;

(c) any action, proceeding or thing pending or incompleated when the repealing law comes into operation, but every such action, proceeding or thing may be carried on and completed as if there had been no such repeal"

Therefore, it is abundantly clear that in terms of section 6(3) of the Interpretation Ordinance, the amendment Act No. 11 of 2022 does not operate retrospectively.

For these reasons, the Petitioner has failed to establish any legal basis to invoke the writ jurisdiction of this Court.

Accordingly, the Application of the Petitioner is dismissed. I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL