

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

In the matter of an application for Writs of  
Certiorari and Mandamus in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Happitiya Kariyakaranage Kamalawathie  
2/7, Upper Panagoda,  
Dewalegama West,  
Dellawa,  
Morawaka.

**PETITIONER**

**Case No.CA/Writ/366/2020**

**Vs.**

1. R. H. S. Priyadarshana,  
Divisional Secretary,  
Divisional Secretariat,  
Neluwa.
2. Lalinda Gamage,  
Additional District Secretary,  
District Secretariat,  
Galle.
3. J. D. Pushpakumara,  
Grama Niladhari,  
Mawita East,  
Neluwa.
4. D. P. Wickramasinghe,  
Secretary,  
Ministry of Lands and Land  
Development,  
“Mihikatha Medura”  
Land Secretariat,  
1200/6, Rajamalwatta Road,  
Battaramulla.
5. K. D. Lal Kantha,  
Minister of Lands and Land  
Development,  
Ministry of Lands and Land  
Development,  
“Mihikatha Medura”  
Land Secretariat,  
1200/6, Rajamalwatta Road,  
Battaramulla.

6. Happitiya Kariyakaranage Sunil,  
Mahenthenna,  
Mawita East,  
Neluwa.

**RESPONDENTS**

**Before:** **A. Ranaraja J.**

**&**

**Dr. Sumudu Premachandra J.**

**Counsel:** Sumedha Mahawanniarachchi instructed by Nishan Balasooriya for the Petitioner.

Rajika Aluwihare, SC for the 1<sup>st</sup> – 5<sup>th</sup> Respondents.

Nishadi Wickramasinghe for the 6<sup>th</sup> Respondent.

**Written Submissions:** 19/20/2026 by the Petitioner  
16/10/2026 by the 1<sup>st</sup> to 5<sup>th</sup> Respondents  
22/10/ 2026 by the 6<sup>th</sup> Respondents

**Argued On :** 18/09/2026.

**Judgement On :** 30/10/2026.

**Dr. Sumudu Premachandra J.**

1] This Petition concerns a dispute over the succession to a plot of land originally granted to the Petitioner's parents under a Presidential Grant dated 18/08/1995. Following the death of her mother on 26/02/2009 and her father

on 31/03/2019, the Petitioner, as the eldest child and registered nominee in the land ledger, applied to be recognized as the successor to the property. She also submitted a written consent indicating that portions of the land could be granted to her sister and nephew, who were already residing on and occupying parts of the property.

2] The Petitioner alleges that, notwithstanding her registered nomination and application for succession, the Divisional Secretary of Neluwa, the 1st Respondent, disregarded her claim and issued a certificate dated 21/01/2020 appointing her younger brother, the 6th Respondent, as the sole successor.

3] The Petitioner contends that this decision was based primarily on the assertion that she was not in physical occupation of the land. In support of her case, she relies on documents including the Presidential Grant, land plan and registered extracts (P1–P1(b)); land ledger extracts confirming her nomination and related official correspondence (P2–P2(a)); the death certificates of her parents (P3–P4); her application for succession and written consent concerning the other occupants (P5–P6); and complaints and correspondence addressed to the District Secretary of Galle and the Ministry of Lands (P7–P10).

4] Petitioner further relies on P11–P11(b), comprising correspondence and certificates confirming the decision to register the 6th Respondent as successor, and P12–P12(a), consisting of information-request documents and the report of the 3rd Respondent, the Grama Niladhari, which allegedly formed the basis of the impugned decision.

5] The Petitioner challenges the legality of the 1st Respondent's decision on the basis that her registered nomination was improperly disregarded and seeks a Writ of Certiorari to quash the certificate issued in favour of the 6th Respondent and a Writ of Mandamus compelling the relevant authorities to recognize and register her as the lawful successor. She also seeks interim relief restraining the transfer or alienation of the subject property pending the final determination of the Petition.

6] Therefore, the Petitioners pray that this Court be pleased to; -

- a) Issue Notice on the Respondents;
- b) Grant an Interim Order restraining the 6<sup>th</sup> Respondent from alienating and/or gifting and/or transferring any portion of the subject matter to any person until the final determination of this application;
- c) Call for the files maintained at the offices of the 1<sup>st</sup> to 5<sup>th</sup> Respondents in relation to the matter in issue if Your Lordships' Court decides that some of the documents that are not available to the Petitioner would become relevant to take a decision in this case;
- d) Grant a Writ of Certiorari against the 1<sup>st</sup> Respondent, quashing his decision indicated in the certificate marked P11 (A) and the registration of the said certificate in P11 (B);
- e) Grant a Writ of Mandamus directing the 1<sup>st</sup> Respondent to issue a certificate in favour of the Petitioner naming her as the successor to the subject matter and register the same in the folio marked P11 (B) or such relevant folio;
- f) Grant costs and;
- g) Grant such other and further reliefs Your Lordships' Court shall seem meet.

7] On 22/03/2023, matter was supported for formal notices. By order dated 28/03/2023, formal notices were issued.

8] The State appearing on behalf of the 1<sup>st</sup> to 5<sup>th</sup> Respondents denies the Petitioner's claims and maintain that the alleged nomination of succession was not legally valid on the basis that the nominated successor, D.L. Piyasena, son was 5 years old and thereafter the Petitioner 5 months old and secondly by Land Order No 148, there is no proper certification by the Government Agent-Galle.

8] They further stated that the relevant inquiry was conducted on the basis of an official report submitted by the Officer-in-Charge of the Neluwa Police Station, rather than the documents relied upon by the Petitioner. The Respondents also contend that the Petitioner resides in a different Grama Niladhari Division, 27 kilometers away from the impugned land and has neither occupied nor possessed the subject land.

9] On the merits, the Respondents contend that the subject land was originally granted to Dalipoththage Kusumawathie in 1995, without a legally valid nominated successor. Accordingly, under Section 72 of the Land Development Ordinance, succession devolved upon her eldest son, K. Ranjith. However, as Ranjith predeceased the original grant holder, the entitlement subsequently devolved upon the second son, H. K. Sunil. The Respondents stated that Sunil thereafter made a statement before the District Secretariat agreeing to transfer a portion of the land to H. K. Manel Chandralatha, while H. K. Manel Chandralatha and H. K. Amila Pathum had been occupying and maintaining houses on the property for several decades. Following the relevant administrative proceedings and determination of succession, the land was formally registered with the District Land Registrar in January 2020.

10] The 6th Respondent raises objections, argues, asserting that the Petitioner's application is misconceived in law, misinterprets applicable land laws. The gist of the 6<sup>th</sup> Respondent objection is that the letter from the 2nd Respondent confirming the Petitioner's lack of possession (P10), documents issued and signed by the Divisional Secretary of Neluwa formalizing the land grant in favor of the 6th Respondent, and an additional document (P12). Based on these grounds, the 6th Respondent submits that the Petitioner lacks legal entitlement to give or withhold consent regarding land allocation. Learned Counsel for the 6<sup>th</sup> Respondent stressed that interpretation of the possession in relation to Land Development Ordinance must be given with very ethos of the Land Development Ordinance.

11] I now consider the merits of the application. It is an admitted fact that the original permit was given to Delipoththage Kusumawathi on 18/08/1995 and

she had expired on 31/03/2009 (Vide R7). Thereafter, her husband succeeded and he had demised on 31/03/2019. Thereafter, the Petitioner made an application to succeed within 6 months as section 68(2) of the Land Development Ordinance stipulates. The State admits that the Petitioner has made the application to succeed within six months.

12] Section 49 of the Land Development Ordinance (LDO) enacts

*“Upon the death of a permit-holder who at the time of his or her death was paying an annual sum by virtue of the provisions of subsection (3) of section 19A,\* or of an owner of a holding, 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 the land alienated to that permit-holder on the permit or holding or upon the death of such spouse, **a person nominated as successor by such permitholder or owner shall succeed to that land or holding.**” [Emphasis is added]*

13] The effect of succession has been mentioned in section 62 of LDO. It says;

**Section 62 (1)**

*“After the registration of a document whereby a person is nominated as successor to a holding or a land alienated on a permit, a document which purports to nominate any other person as successor to that holding or land shall not be registered unless the nomination effected by the registered document has been duly cancelled by the registration of a document of cancellation.*

*Provided that **it shall be lawful in one and the same document to cancel a registered nomination and to make some other nomination in lieu** thereof; and in that event, notwithstanding anything in this section contained, the document in which such cancellation and nomination are combined may be registered and shall upon due registration operate both as cancellation of a previously registered nomination and as a nomination of a new nominee.” [ Emphasis is added]*

14] Thus, in P2, the D.L. Piyasena’s nomination was cancelled H.K. Kamalawathi’s name was inserted to the land ledger as the nominated successor



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**பிரதேச செயலகம்**  
**Divisional Secretariat**

**නෙලුව**  
**நெலுவ**  
**Neluwa**

දුරකථන අංකය  
 Telephone No. 011 2345678

ෆැක්ස් අංකය  
 Fax No. 011 2345678

විද්‍යුත් තැපෑල  
 E-mail: ds@neluwa.lk

විද්‍යුත් තැපෑල  
 E-mail: ds@neluwa.lk

නෙලුව, 2019.06.26

2019.06.26

අංක 2/ස/15/අ/20477 දරණ ඉඩමේ මුල් අයිතිය ලබා ගැනීම

ලකන කරුණු සම්බන්ධයෙන් මා අයදුම් කරමින් සිටින බව 2019.07.30 දිනැති ලිපිය හා බැඳේ.

02. ඒ අනුව මාගේ/මාගේ, මාගේ, නෙලුව ලිපියෙන් පදිංචි වීමෙන් සුළු මහල සහ මාගේ, නෙලුව ලිපියෙන් පදිංචි වීමෙන් මාගේ මහල වත්තුලා මහත්මිය අතර පැවති ඉඩම් අරමුදල සම්බන්ධයෙන් කාර්යාල පරීක්ෂණය 2019.06.10 වන දින පෙ.ව. 11.00 පමණ කාර්යාලයේදී මා විසින් පවත්වන ලදී.

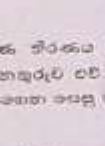
03. කාර්යාල පරීක්ෂණ අවස්ථාවට දෙපාර්තමේන්තු සහභාගී විය. 2/ස/15/අ/20477 අංක දරණ දිසා පත්‍රය දැලිපොත් සහ කුසලානවලින් යන අය නමින් නිකුත් කර ඇති අතර ආය 2009.02.26 දින දිසාපොත් ඇති අතර, කලත්‍රය 2019.03.31 දින දිසා පොත් ඇත. මෙම පත්‍ර අයිතිය බලපත්‍ර අවස්ථාවේ දැලිපොත් සහ කුසලානවලින් හෝ වැඩිපිටත් දියමය වන පත්විධිය කාර්යාලයෙන් කමිලාවක් යන අය නමින් කර ඇති අතර දිසාපොත් අවස්ථාවේ පත්‍ර අයිතිය නම් කර නොමැත.

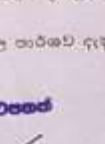
04. ඒ අනුව කාර්යාල පරීක්ෂණ අවස්ථාවේදී අංක SC/30/2004 භේදයකින් යුතුව පවතින පත්විධිය කාර්යාලයෙන් කමිලාවක් හා ඉඩමෙහි මුල් අයිතිය නම් කිරීමෙන් අනතුරුව මාගේ, කමිලාවක් වීමත් අනුබන්ධී මිලාවක් කළ බවත් මෙය අත්හර 1/4 ක ප්‍රමාණයක් රඳවාගෙන පවතින ඉඩමක් පවතින බවද මුල් අයිතිය නොමැති කිරීමට එකඟ වන ලදී.

I. දැනට ඉඩමේ පදිංචි වීමෙන් කමිලාවක් සහෝදරයා වන මාගේ, මාගේ මහල වත්තුලා හා අත්හර 1/4

II. මාගේ, කමිලාවක් සහෝදරයා වන මාගේ, සුළු මහල වන මාගේ, අළු මාලු නම අත්හර 1/4

05. ඒ අනුව අවසාන අදීර් කටයුතු සඳහා පත්විධිය ප්‍රකාශ ලබා දෙන පෙර අදාල කරුණු දැනුවත් කර ඇති අතර, කටයුතු පමණක් අවසන් කර නොමැත.

  
**මාගේ, මාගේ, මාගේ, මාගේ**  
**Divisional Secretary**

  
**මාගේ, මාගේ, මාගේ, මාගේ**  
**Officer**

Page 7 of 15

“කාර්යාල පරීක්ෂණ අවස්ථාවේදී අංක SC 30/2004 ශ්‍රේෂ්ඨාධිකරණ තීරණය පරිදි හප්පිටිය කාරියකරවනගේ කමලාවතී හට ඉඩමේ මුල් අයිතිය නම්කිරීමෙන් අනතුරුව එච්. කේ. කමලාවතී විසින් අනුබෙදුම් සීමාව තුළ තමන් වෙත අක්කර 1/4 ප්‍රමාණයක් රඳවාගෙන සෙසු ඉඩම පහත පරිදි මුල් අයිතිය සහතික කිරීමට එකඟවෙන ලදී.”

16] However, by P10, the said position was clearly differentiated by the 1st Respondent. The Additional District Secretary informs the petitioner by P10 as follows;

**දිස්ත්‍රික් ලේකම් කාර්යාලය**  
**மாவட்ட செயலாளர் அலுவலகம்**  
**DISTRICT SECRETARIAT**

අංක 06, කොළඹ පාර, කොළඹ - 06, Коломбо පාර, කොළඹ - 06, Colombo Road, Galle

දුරකථන  
 091-2222333  
 091-2234491

ෆැක්ස්  
 091-2222972  
 091-2234236

විද්‍යුත් තැපෑල  
 විමසුමක්  
 E-mail  
 dssec@distsecret.lk

වෙබ් අඩවි  
 විමසුමක්  
 Web site  
 www.galle.lk

අයදුම් අංකය  
 05G/LND/01/02/Ne/02

ඔබේ අයදුම  
 අංකය  
 Your No.

දිනය  
 2009.01.26

එච්.කේ. කමලාවතී මිය,  
 දෙල්ලුව,  
 කොටුක,  
 කොත්මලිය,  
ඉඩම් ආවේණිකත්වය සහතික ඇති පැමිණිලි සම්බන්ධවයි.

උන්ම කාර්යාලය සම්බන්ධයෙන් මට විසින් එවන ලද 2019.12.24 දිනැති ලිපිය බැලේ.

02. එම ලිපියේ සඳහන් කරුණු පිළිබඳව තොරතුරු ප්‍රාදේශීය ලේකම් වෙතින් උත්තරයක් සැපයෙනු ඇත.

03. ඒ අනුව, අංක 2/යා/15/ප්‍ර/20477 දරණ දීමනා පත්‍රය දැලිපොත්තෙන් සුදුසුකම් යන අය කමිත් තිදෙනෙක් කර ඇති අතර, ඇය සහ ඇයගේ කලාපයා මේ වනවිට මියගොස් ඇත. මෙම ඉඩමෙහි පළ අයිතිය සලකුණු අවස්ථාවේදී පළමුව වැඩිමහල් දියණිය වන සිං වෙත නම් කර ඇත. සිං විසින් මෙම ඉඩමේ ඉක්මනින් හෝ පදිංචිය නොමැති බව නිරීක්ෂණය වී ඇත.

04. 1990 වර්ෂයේ සිට එච්.කේ. සානෙල් වන්දුලසා යන අය මෙම ඉඩමේ නිවසක් සහා පදිංචිව ඇති බවද, එම 02 හි පමණක් සේ වසා කර භුක්ති විඳින බවත්, එම සේ, සුනිල් යන අයගේ පුත්‍රයා වන එච්.කේ. සේලා පොල් යන අයද පරිවර් 10 ක ප්‍රමාණයක නිවසක් සහා පදිංචිව ඇති බව දන්වා ඇත. මෙම දීමනා පත්‍රය පළ උද්භවය නම් කර නොමැති බැවින් හා සලකුණු අවස්ථාවේදී නම් කරන ලද උද්භවය වන සිං මෙම ඉඩමෙහි පදිංචිය/භුක්තිය නොදරන බැවින් සිංට මෙම දීමනා පත්‍රයෙහි මුල් අයිතිය ලබා ඇති බව නොමැති බව.

05. එබැවින්, මෙම දීමනා පත්‍රයෙහි මුල් අයිතිය එච්.කේ. සුනිල් හට සංවර්ධනය වන අතර, සුනිල් විසින් එච්.කේ. සානෙල් වන්දුලසා යන අය පදිංචි ඉඩමෙන් අක්කර ¼ ක කොටසක් ඇය හට ලබා දීමට එයා වි ඇති බව ප්‍රාදේශීය ලේකම් විසින් මා වෙත දන්වා ඇති බව කාරුණිකව දන්වමි.

ලිපිපිටි ගණන්,  
 අතිරේක දිස්ත්‍රික් ලේකම් (ඉඩම් සහ කොට්ඨාස),  
 ගාල්ල දිස්ත්‍රික් ලේකම් වෙතුවට.

මටසන් :- ප්‍රාදේශීය ලේකම්, තොරතුරු දැනුම

**P. E. CHAMPIKA RODRIGO**  
 LL.B (Ceylon), LL.M (UK)  
 Attorney-at-Law, Notary Public  
 Company Secretary &  
 Commissioner for Oaths  
 Kandana, Pooneryn, P.O.  
 Tel: 011-2242222

17] By P11, it shows that despite the settlement entered by R5, with the agreement of the Petitioner, the 1st Respondent for no reason has registered the

ownership to Happitiys Kariyakaranage Sunil. The Paragraph 09 of P11 shows that as;

“අනතුරුව 2020 ජනවාරි 21 වන දින හප්පිටිය කාරියකරනගේ සුනිල් හට මුල අයිතිය සහතික කිරීම ඇමුණුම 6 මගින් ලියාපදිංචි කරන ලදී”

18] The reason is given by paragraph 7 of the P11 as;

“බලපත්‍ර අවස්ථාවේදී නම්කරනලද පසු උරුමකාරිය වන එච්. කේ. කමලාවතී මෙම ඉඩමෙහි පදිංචිය/භුක්තිය නොදරන බවත් පැහැදිලිවේ. ඒ අනුව එකී පසු උරුමකාරිය හට මෙම දීමනා පත්‍රයේ මුල් අයිතිය ලබාගැනීමට නොහැකි වේ.”

19] Section 68(2) of LDO shows how a successor loses his or her right to succeed. It shows;

*“68 (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 sum by virtue of the provisions of subsection (3) of section 19A\* 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 (I), or of the death of such spouse, as the case may be.”*

20] The 1st Respondent admits the Petitioner applied within six months as stipulated. By R5 he has mentioned that the Petitioner duly succeeded and she (the Petitioner) agreed to a subdivision. When the nominated successor duly succeeded there cannot be further inquiry under section 72 of LDO. It should be noted that 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.”*

21] The Petitioner, being the eldest child, was formally nominated and registered as the lawful successor to a plot of land granted to her mother by a Presidential Grant in 1995. Following the deaths of her mother in 2009 and her father (the original permit holder's surviving spouse who occupied the land until his passing) in March 2019, the Petitioner applied to the 1st Respondent within three months to be named the official successor. Despite the Petitioner consenting to allocate portions of the land to other family members occupying it, the 1st Respondent named the 6th Respondent (the surviving eldest son) as the sole successor in January 2020 on the grounds that the Petitioner was not in occupation.

22] It is further seen that given the validly registered nomination, the Petitioner's prompt application within 3 months, and consent from occupants, the 1st Respondent's interpretation that the possession of the Petitioner must be considered for valid nomination is against the law and unreasonable.

23] Therefore, registration of the 6th Respondent's ownership under Section 72 and Rule 1 of the Third Schedule to the LDO by P11(a) and P11(b) because the Petitioner failed to take physical or constructive possession of the land within six months of the spouse's death cannot be tenable.

24] In **PIYASENA v. WIJESINGHE & OTHERS**, [2002] SLR 242, it was held;

*“The nomination of a successor under the permit becomes converted to nomination made by her as the owner of the land. At the time of her death B was entitled to be considered as owner by virtue of the fact that she had been awarded a grant.”*

*“The nomination in the Permit itself shall stand valid until it is subsequently cancelled by the Permit Holder. The nomination of a successor under the Permit becomes converted to nomination made by the permit holder as the owner of the land.”*

25] In **Mohideen Bawa Abdul Cassim vs Weeragoda Arachchige Pathmasiri Silva and others**, SC Appeal 48/2013, Decided on: 04.09.2019, His Lordship Vijith K. Malalgoda PC J held;

*“In the said circumstances it is clear, that according to the above provisions of the Land Development Ordinance, a nominated person can only succeed to a land to which he is lawfully nominated, is either after the death of the spouse or when the said spouse failed to succeed to the said property. When going through the above provisions it is further observed that the nominee is not entitled by law to succeed to a property until the death (or failure to succeed to the land) of the spouse of the original permit holder. In other words he becomes entitled by law to succeed to the property only after the death (or failure to succeed) of the spouse of the original permit holder.”*

26] In the instant case, the Petitioner duly submitted the application for succession according to the stipulated time. Further, in **Mallehe Vidanaralalage don Agostino v. Divisional Secretary and others** SC Appeal No. 30/2004 decided on 23.03.2005 His Lordship Justice S.N. Silva CJ observed that;

*“it is clear from the provisions of the law that the change in the nature of the holding from that of a permit to a Grant is one purpose and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made.”*

27] Thus, the original nomination carries out until proper cancellation, if not the nominated successor would be entitled to the ownership. This position was reiterated in the case of **Ranasinghe Arachchige Nimal Ranasinghe v. Commissioner of Lands and Development** CA Writ 17/2020 decided on 31.08.2023 where Justice Mohammed Laffar held;

*“In light of the aforementioned judicial pronouncements and the provisions of the Land Development Ordinance, I hold that the nomination of succession made by the Permit Holder, Ranasinghe, in the Permit, to the 3rd Respondent extends its validity to the Grant as well.”*

28] In **M.W.D. Dayaratne vs. M.W.D. Agosinno**, (supra) His Lordship S.N. Silva C.J. has stressed the importance of giving effect to the wish of the original allottee who was already indicated by the grantee to the relevant authority. In the said case Supreme Court stressed upon the fact that *“the change in the nature of the holding from that of a permit to a grant is one process and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made”*.

29] In **Galappaththi Vs. Commissioner General Of Lands And Others** [2020] 3 SLR 130, His Lordship SAMAYAWARDHENA, J. clearly held the relationship of permit and grant and held;

“

1. A grant has no independent genesis without a permit. The permit is the precursor to the grant; the two are intrinsically linked. It is the permit which matures into a grant upon the fulfilment of certain conditions.
2. If the owner of a holding has not nominated a successor in the grant, the successor nominated in the permit preceding the grant is entitled to succeed to the land.

3. Rule 1 of the Third Schedule read with section 72 of the Land Development Ordinance has no application in such situations. This Rule becomes applicable only if no successor has been nominated or the nominated successor fails to succeed.”

30] In **Weeravairodi Mudiyanseilage Agala Kumbure Gedara Jayathissa v. Weeravairodi Mudiyanseilage Agala Kumbure Gedara Punchi Banda**, SC/APPEAL/109/2020, Decided on: 17.12.2025, His Lordship Samayawardhena, J. Considered the possession related to LDO permits and held;

*“It is necessary to state at this stage that possession is mainly of two kinds, namely actual possession and constructive possession. **Section 68 shall be construed as encompassing both forms of possession. To hold otherwise would defeat the statutory scheme** and place a surviving spouse, particularly one of advanced age, at an unfair disadvantage, as such a spouse may be incapable of entering into physical possession of the land upon the death of the permit-holder or owner.”* [Emphasis is added]

31] the possession relates to lands has been considered in **Iqbal v. Majedudeen and Others** [1999] 3 SLR 213. In that case the Court of Appeal of Sri Lanka establishes key legal principles regarding the definition of **possession** and **forcible dispossession** under the Primary Courts' Procedure Act.

|                                |                                                                                                                                                                                                        |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Actual Possession</b>       | When a person has direct, immediate physical control over a corporeal thing (such as a house or land) at a given time.                                                                                 |
| <b>Constructive Possession</b> | When a person is not in physical possession but retains both the power and intention to exercise dominion, control, or general management over the property (either directly or through someone else). |

32] The impugned decision was made by the 1st Respondent considering the possession. In my view, for Land Development Ordinance, possession of a land has no material or relevance. It is important to consider wish of the permit holder or grantee. If the grantee wants to do a fresh nomination, there are provisions under Land Development Ordinance. If he or she does not change the original nomination, despite who are in the possession, the wish of the grantee or permit holder should prevail under law. It should be remembered and stressed that under section 161 of the Land Development Ordinance no one can acquire lands subject to LDO by prescription. It prohibits the acquisition of lands by prescription. It enacts;

*“161. No person shall, by possession of any land alienated on a permit, acquire any prescriptive title thereto against any other person or against the State.”*

33] In ***Lebbe vs Umma*** [1999] 3 SLR 367, His Lordship WIGNESWARAN, J., held that the restrictions in the Land Development Ordinance are absolute. Because the LDO explicitly requires the Government Agent's prior written consent before an allotment can be alienated, any transfer executed without it holds no legal validity. No title ever passed if no sanction has been taken, the long possession does not give the title.

34] In granting P11(a), the 1st Respondent, Divisional Secretary of Neluwa has considered the possession of the parties. Divisional Secretary cannot override the provisions of Land Development Ordinance. Thus, the impugned decision is illegal against the law and untenable. It should be noted that if the land has been developed by another party, other than the owner, permit holder, grantee or nominated successor with permission of the owner, the Divisional Secretary has power to make subdivisions and grant portion of lands to the party who made the developments or improvements with the approval of the owner, grantee, permit holder or nominated successor such as R5, in view of justification of the improvements and developments made to the land. If the development and improvements of the land made with the approval, it has to be

compensated in some manner, possibly by way of subdivision with the agreement of the owner, permit holder or nominated successor. This consent can be implied. It is a burning issue that parents (Owner, Grantee or Permit holder) keep silence when improving and developing the land subject to LDO by the other siblings despite nominated successor is available. After their demise (parents), this would turn to long standing legal battle. If the land was developed by someone else of the family other than the nominated successor, he or she (the developer) should be nominated by the Owner, Grantee or permit holder as fresh nomination. If not the nominated successor should be given the ownership. Otherwise, Divisional Secretaries hands are tight, they cannot do a justice in good faith to the developer who developed and improved the land. In the instant case, by R5 agreement, the Petitioner, is not in possession, has agreed for subdivision and she now cannot blow hot and cold, approbate and reprobate, her stance. Thus, this judgment has no bar to carry out the agreement of R5 by the 1st Respondent in accordance with the law.

35] Hence, in view of the above considered law and the judgements, I grant the Petitioner the reliefs as prayed for in paragraphs (d) issuing Writ of Certiorari quashing the certificate marked as P11(a) and (e) Writ of Mandamus directing 1<sup>st</sup> Respondent to issue a certificate naming the Petitioner as the lawful successor and register it in the same folio which P11(a) registered, of the prayer to the petition. The application of the Petitioner is allowed without costs.

**JUDGE OF THE COURT OF APPEAL**

**AMAL RANARAJA J.**

I agree

**JUDGE OF THE COURT OF APPEAL**