

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

CA/WRT/0711/2023

*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.*

Punchi Bandage Sarath Gamini Herath
Ilukegama Road,
Maha Kekirawa,
Kekirawa.

PETITIONER

Vs.

1. Mahaweli Authority of Sri Lanka
No. 500, T.B. Jayah Mawatha,
Colombo 10.
2. Director General
Mahaweli Authority of Sri Lanka,
No. 500, T.B. Jayah Mawatha,
Colombo 10.
3. Resident Project Manager
Huruluwewa Division (System),
Resident Project Manager's Office,
Mahaweli Authority of Sri Lanka,
Pelwehera,
Dambulla.
4. Resident Project Manager
H Division (System),
Resident Project Manager's Office,
Mahaweli Authority of Sri Lanka,
Madatugama.

And now

Resident Project Manager
H Division (System),
Resident Project Manager's Office,
Mahaweli Authority of Sri Lanka,
Tambuttegama.

5. Block Manager
Block Manager's Office,
Mahaweli Authority of Sri Lanka,
Madatugama.
6. Land Officer
Block Manager's Office,
Mahaweli Authority of Sri Lanka,
Madatugama.
7. Unit Manager
Unit Manager's Office,
Mahaweli Authority of Sri Lanka,
Thibbatuwewwa, Kekirawa.
8. Commissioner-General of Lands
Department of Commissioner-General of
Lands, Mihikatha Medura,
No. 1200/6,
Rajamalwaththa Road,
Battaramulla.
9. Provincial Commissioner of Lands
North Central Province,
Office of the Provincial Commissioner of
Lands, Anuradhapura.
10. Deputy Commissioner of Lands
(Anuradhapura),
District Secretariat Office,
Anuradhapura.
11. Registrar of Lands (Anuradhapura),
District Secretariat Office,
Maithripala Senanayake Mawatha,
Anuradhapura.
12. Additional Registrar of Lands,
(Anuradhapura),
District Secretariat Office,
Maithripala Senanayake Mawatha,
Anuradhapura.
13. P.B. Jayalath Kumara Herath
Ilukegama Road,
Maha Kekirawa,
Kekirawa.

14. P. B. Sarath Bandula Herath
Ilukegama Road, Maha Kekirawa,
Kekirawa.
15. R.M.C. Ranjith Rathnayake
Maha Kekirawa, Kekirawa.
16. H.M. Leelawathie
Maha Kekirawa, Kekirawa.
17. W.M. Dahampath Weerasinghe
(Justice of the Peace (Whole Island),
Hospital Road, Kekirawa.

And now

W.M. Dahampath Weerasinghe
(Justice of the Peace (Whole Island),
“Daham Sevana,”
Yakalla Road, Kekirawa.

18. Hon. Attorney-General
Attorney-General’s Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Sharmal Herath with N. Nadesh Kumar for the Petitioner.

Dilantha Sampath, State Counsel for the 1st to 7th and 18th Respondents.

A. R. P. Bandara with Anjana Alawatta instructed by P. Gunasekara for the 13th
and 15th Respondents

Argued on: 17.02.2026 and 11.03.2026

Written Submissions: Petitioner on 30.04.2026.
1st to 7th and 18th Respondents on 16.03.2026.
13th and 15th Respondent on 30.01.2026

Decided on: 07.08.2026

Introduction

The Petitioner has identified himself as the second eldest son of the late Kapuruhamige Punchi Banda (K. Punchi Banda) and the late Malhamige Seelawathie (M. Seelawathie), who were the permit holder and the grantee in respect of the subject land. The said permit and grant were issued in terms of the Land Development Ordinance No. 19 of 1935 (as amended) (LDO). In the instant application, the Petitioner has impugned the nomination of the 13th Respondent by the said M. Seelawathie and the acceptance and registration of such nomination and the issuance and registration of a certificate of heirship in favour of the 13th Respondent. The substantive reliefs sought by the Petitioner in the amended petition dated 20.11.2023 may be summarized as follows;

- (a) a writ of *Certiorari* quashing the nomination of the 13th Respondent dated 14.11.2006, which was accepted by the 5th Respondent on 20.11.2006, as reflected in the Form (P16);
 - (b) a writ of *Certiorari* quashing the registration dated 25.01.2007 of the nomination (P16) by the 11th and/or 12th Respondent, as embodied in the Register of Permits/Grants (P18);
 - (c) a writ of *Mandamus* directing the 11th Respondent and/or the 12th Respondent to delete and/or expunge from the Register of Permits/Grants, the registration dated 25.01.2007 of the nomination (P16) and also to cancel the said registration;
 - (d) a writ of *Certiorari* quashing the certificate of heirship issued to the 13th Respondent dated 20.10.2008 (P17);
 - (e) a writ of *Certiorari* quashing the registration dated 23.10.2008 of the certificate of heirship (P17) in the Register of Permits/Grants (P18);
 - (f) a writ of *Mandamus* directing the 11th Respondent and/or the 12th Respondent to delete and/or expunge from the Register of Permits/Grants, the registration dated 23.10.2008 of the certificate of heirship (P17) and also to cancel the said registration;
 - (g) a writ of *Mandamus* directing the 3rd Respondent and/or the 5th Respondent to hold an inquiry in terms of the law to decide the succession rights of the High Land in question;
- or in the alternative to (g) above,
- (h) a writ of *Mandamus* directing the 3rd Respondent and/or the 5th Respondent to issue separate certificates of heirship to the Petitioner and the 13th Respondent for equal shares of the High Land in question.

The 1st to 7th Respondents as well as the 13th and 15th Respondents have filed statements of objections, objecting to the grant of such reliefs and seeking the dismissal of the instant application. Accordingly, the application was taken up for argument and the parties have also filed written submissions.

Upon their request, the parties were also granted an opportunity to administratively resolve the dispute but the Court was informed on 26.06.2026 that no such settlement was forthcoming.

Factual Background

The factual background to the instant application, as set out in the pleadings and documents filed by the parties, may be presented as follows.

The aforementioned K. Punchi Banda, who was the father of the Petitioner and the 13th and 14th Respondents, had received a High Land and a Paddy Land in the Maha Kekirawa village in the Anuradhapura District from the Mahaweli Authority of Sri Lanka (MASL) in 1979 and had been issued with two separate permits for the said lands in terms of section 19(2) of the LDO. The dispute between the parties in the instant application pertains to the High Land referred to above.

A copy of the permit bearing No. 104/H2B/46 issued to the permit holder in respect of the aforementioned High Land dated 19.02.1986 has been submitted by the 13th and 15th Respondents with their statement of objections and its authenticity and contents have been accepted by the other parties. It was clarified by the learned State Counsel for the 1st to 7th Respondents (MASL) at the hearing and in his written submissions that the original office copy of the said permit maintained by the MASL had been destroyed due to fire that had occurred at the Mahaweli Block Manager's Office at Madatugama during the 1988/1989 insurgency period and it had been reconstructed by obtaining information from the permit-holder. Such reconstituted permit, a copy of which had been issued to the Petitioner, has been submitted with the petition marked (P5). Such position has been confirmed by the letter dated 10.10.2024 (P26) issued in response to a request made by the Petitioner (P25),¹ and by the learned Counsel for the Petitioner and the 13th and 15th Respondents in their submissions.

A comparison of the copies of the original permit (X1) and the reconstructed permit (P5) reveals that in the original permit (X1), the name of "Malhamige Seelawathie" has been entered as the nominee. In the reconstituted permit (P5), the name of "Kapuruhamige Punchi Banda" has been struck off and the name of "Malhamige Seelawathie" has been entered as the permit holder. There is an endorsement in the said permit (P5) referring to a letter bearing No. RPM/T/L/2/7/3-1 dated 23.09.1995 and the learned State Counsel submitted that the change in the name of the permit holder had been made therein in view of the contents of such letter. The said letter was not submitted by the 1st to 7th Respondents with their objections but has been submitted with their post-hearing written submissions marked (R1) and have moved that the contents of same may be considered in the "interest of justice."

¹ filed by the Petitioner with the motion dated 07.11.2024

Regarding the discrepancies in the extent and boundaries of the land in the two copies of the permit, it was common ground between the parties that a survey of the land had not been conducted at the time the original permit (X1) had been issued and that the specific extent and boundaries are set out in the reconstructed permit (P5), which had been issued after the land had been surveyed.

The permit-holder K. Punchi Banda had possessed and enjoyed the two allotments of land and had died intestate on 22.08.1991 (P7). His widow, the aforementioned M. Seelawathie had succeeded to the said lands and had continued to reside in a house built by the original permit-holder on the High Land along with the 13th Respondent and another brother. Although the fact of M. Seelawathie's succession to the land is not in dispute, the parties are at variance as to the capacity in which she succeeded. M. Seelawathie had been issued with a grant in terms of section 19(4) of the LDO on 17.12.2003 (P8) in respect of the High Land. As submitted by all Counsel, it is observed that the boundaries of the subject land set out in the grant (P8) correspond to the boundaries set out in the reconstructed permit (P5).

The Petitioner has pleaded that he too resides on a house built by him on a portion of the of the same High Land, to date. He has further pleaded that, since he and the 13th Respondent were residing on the land with her, M. Seelawathie had intended to nominate the Petitioner and the 13th Respondent as successors to the High Land in equal shares, and, that such parties, along with the 14th Respondent, who was the elder brother, had made representations in mid-2004 to the Block Manager of the MASL.² They had been informed that the mother could not make nominations and that the eldest male child was eligible to succeed, and, accordingly, the 14th Respondent had undertaken "to do the needful" upon the mother's demise.³

The grantee M. Seelawathie had died on 26.11.2007 (P9), and, the 13th Respondent and the Petitioner had continued to occupy the land. Although the 14th Respondent had informed the Petitioner and other siblings that he would take steps regarding the succession to the land as intended by the grantee, it had come to light, when he had requested the 14th Respondent to transfer a portion of land to him in late-2022, that the grantee had nominated the 13th Respondent during her lifetime as the sole successor to the High Land and that the 13th Respondent had obtained a certificate of heirship after her demise.⁴ The Petitioner has pleaded that it is at such point in time that he had become aware of the nomination of the 13th Respondent, who had also confirmed such fact subsequently.⁵

Thereafter, the Petitioner has pleaded that he had, by means of requests under the Right to Information Act No. 12 of 2016, obtained information and documents pertaining to the nomination of the 13th Respondent. In response to the information sought by the Petitioner's letter dated 13.02.2023 (P14), the MASL, by its letter dated 02.04.2023 (P15), had *inter alia*, disclosed the following information: that M. Seelawathie had been nominated by K. Punchi Banda as his successor and that such nomination had been registered in the land ledger of the MASL (it has also been stated that such ledger could not be found); that such nomination had not been registered in the District Land Registry, Anuradhapura; that the M. Seelawathie had

² vide paragraphs 10 and 11 of the petition.

³ vide paragraphs 12 and 13 of the petition.

⁴ vide paragraphs 14 to 21 of the petition.

⁵ vide paragraphs 21 to 23 of the petition

nominated Punchi Bandage Jayalath Kumara Herath (13th Respondent) as her successor and that such nomination had been registered at the District Land Registry, Anuradhapura on 20.11.2006; and, that the 13th Respondent had confirmed his heirship on 23.10.2008 and it had been registered in the District Land Registry, Anuradhapura. The same information is contained in the letter addressed by the MASL dated 25.07.2023 (P24). Copies of the nomination of the 13th Respondent as the successor dated 14.11.2006 (P16), the certificate of heirship issued to the 13th Respondent dated 20.10.2008 (P17) and the extracts of the District Land Registry, Anuradhapura folio relating to the subject High Land (P18) too have been submitted accordingly with the petition.

The Petitioner has instituted the instant application impugning the aforementioned decisions.

Grounds of Review and Analysis

In paragraph 33 of the amended petition, the Petitioner contends that;

- (i) endorsing and/or accepting the nomination dated 14.11.2006 by the 5th Respondent on 20.11.2006 (P16);
- (ii) causing to register and registering of the nomination (P16) by the 11th and/or 12th Respondents on 25.01.2007 (P18);
- (iii) subsequently issuing the certificate of heirship dated 20.10.2008 (P17) by the 4th Respondent in favour of the 13th Respondent based on the aforementioned nomination and registration thereof; and
- (iv) causing to register and registering of the certificate of heirship (P17) by the 11th and/or 12th Respondents on 23.10.2008 (P18);

are arbitrary, unreasonable, illegal and *ultra vires* the provisions of the LDO, *inter alia*, for the following reasons;

- (a) It is against the common law;
- (b) it is for an ulterior motive;
- (c) the 1st to 12th Respondents (primarily the 4th, 5th, 11th and 12th Respondents) have failed to discharge their mandatory statutory and/or public duties causing grave prejudice to the Petitioner; and
- (d) the 1st to 12th Respondents (primarily the 4th, 5th, 11th and 12th Respondents) have failed to act judicially.

I propose to examine the aforementioned grounds of review presented by the Petitioner with recourse to the positions taken up by the respective parties and applicable legal provisions.

The primary contention of the Petitioner is that his mother M. Seelawathie had succeeded as permit holder to the subject land by operation of law due to being the spouse of the original permit-holder K. Punchi Banda in terms of section 48A of the LDO, and, not by any other means. The Petitioner further contends that, although M. Seelawathie had been nominated as successor in the permit (X1), such nomination is invalid and devoid of any legal effect due to the fact that it has not been registered in the relevant District Land Registry, as required

under sections 58(1) and 60 of the LDO. Such fact of non-registration in the Land Registry has been admitted by the MASL itself in its responses (P15) and (P24) to the RTI requests made by the Petitioner.

The Petitioner maintains that M. Seelawathie was entitled to succeed to the subject land by virtue of being the spouse of the deceased permit-holder in terms of section 48A of the LDO even in the absence of a valid nomination and that she was entitled to the grant (P8) in terms of section 48A (2) of the Ordinance. However, he contends that the said grant is subject to the restrictions set out in the said section 48A(2), including the restriction in sub-paragraph (b) that she shall have no power to nominate a successor to the land. He further contends that due to her nomination as successor being invalid as aforesaid, the proviso to section 48A(2) was inapplicable to the instant case. In such circumstances, the Petitioner contends that the nomination by M. Seelawathie of the 13th Respondent as her successor, the acceptance and registration of such nomination and the consequential issuance and registration of a certificate of heirship to the 13th Respondent are all violative of section 48A(3) of the LDO and are invalid and void *ab initio*.

In contrast, the position taken up by the 1st to 7th Respondents is that M. Seelawathie obtained original ownership of the subject land with the approval of the MASL after the demise of her husband and original permit-holder K. Punchi Banda.⁶ They have sought to rely on the contents of the letter bearing No. RPM/T/L/2/7/3-1 dated 23.09.1995 (R1) in taking up such position. The learned State Counsel further submitted that registration of a permit was not mandatory and that section 58(1) of the LDO cannot be considered in isolation. Upon such bases, the said Respondents contend that M. Seelawathie was an independent permit holder who was not subject to any encumbrances laid down in section 48B(2) at the time the grant (P8) was issued in her favour, and, accordingly, she was entitled to nominate the 13th Respondent as the successor to the holding.⁷ Thus, they further contend that the purported defect in the nomination of M. Seelawathie due to the failure to register the same in the Land Registry does not arise. It was also pointed out that the nomination of the 13th Respondent as successor and the certificate of heirship issued consequently had been duly registered and that there was no dispute on such matters.

The position taken up by the 13th and 15th Respondents are consistent with the aforementioned position taken up by the 1st to 7th Respondents. In particular, the learned Counsel for the said Respondents emphasized that registration of a permit itself was not mandatory under the LDO, and as such, the registration of a nomination thereunder too was not mandatory. In support of such argument, the learned Counsel referred to sections 29, 56, 58 and 87 of the Ordinance. In addition, the 13th and 15th Respondents have raised certain legal objections to the maintainability of the instant application, which will be considered in due course.

I will now proceed to examine the issues for determination arising out of the positions taken up by the parties, as aforesaid.

⁶ vide written submissions of the 1st to 7th and 18th Respondents, paragraph 5

⁷ Ibid, paragraph 7

Necessity for Registration of a Nomination under Permit issued in terms of the Land Development Ordinance

The Petitioner contends that it is a mandatory requirement in terms of sections 58(1) read with section 60 of the LDO to register the nomination of a successor to a grant or permit. The learned Counsel for the Petitioner explained that, whilst the requirement to register nominations in terms of sections 58 (1) and 60 was initially confined under the principal enactment to grants, the said requirement was subsequently extended to permits as well under the Land Development (Amendment) Act No. 16 of 1969. A perusal of the text of the principal enactment and the amending act confirms such position.

Sections 58(1) and 60 of the Land Development Ordinance No. 19 of 1935 (the principal enactment) provided as follows;

58.(1) A document (other than a last will) whereby the nomination of a successor or of a life-holder is effected or cancelled shall not be valid unless and until it has been registered by the Registrar of Lands of the district in which the holding to which that document refers is situated.

.....

60. No nomination or cancellation of the nomination of a successor or a life-holder shall be valid unless the document (other than a last will) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding in respect of which such nomination or cancellation was made. (emphasis added)

Pursuant to the amendments made by Land Development (Amendment) Act No. 16 of 1969, the said sections 58(1) and 60 read as follows;

58.(1) A document (other than a last will) whereby the nomination of a successor is effected or cancelled shall not be valid unless and until it has been registered by the Registrar of Lands of the district in which the holding or land to which that document refers is situated.

.....

60. No nomination or cancellation of the nomination of a successor shall be valid unless the document (other than a last will) effecting such nomination or cancellation is duly registered before the date of the death of the owner of the holding or the permit-holder. (emphasis added)

The term “holding” has been defined in section 2 of the LDO to mean “*land alienated by grant under this Ordinance, and includes any part thereof or interest therein;*” and such definition has remained unchanged.

Thus, the learned Counsel for the Petitioner submitted that the intention of the Legislature was clear that the registration of nomination of a successor under a permit is required and that the failure to do so renders such nomination invalid.

The learned Counsel also referred to several decisions wherein the requirement of registration of a nomination under a permit and the consequences of non-compliance had been considered by this Court. In **Piyasena v. Wijesinghe and others**,⁸ the Court observed as follows (per J. A. N. De Silva, J. (P/CA) (as His Lordship then was));

*It is to be noted that in terms of the Land Development Ordinance, a permit holder is entitled to nominate a person or persons to succeed to the ownership of the land after his/her death. Such nomination could be cancelled by the permit holder and a new nomination could be made in terms of the provisions in chapter VII of the Land Development Ordinance. The nomination has to be made in the prescribed form and registered in the Land Registry in terms of section 58 of the Lands Development Ordinance and if it is not registered such nomination is considered to be invalid (vide section 58 (1)).*⁹ (emphasis added).

In **G. Ranjith v. M.A.A.S. Nissanka Arachchi, Divisional Secretary, Hingurakgoda and others**,¹⁰ this Court has opined as follows (per Surasena J (as His Lordship then was);

First argument of the learned counsel for the 4th Respondent is that there is no nomination in the permit as the nomination of G Seemon by the permit holder has not been registered as required by section 58 of the Land Development Ordinance.

Section 58 is as follows:

.....

*Thus the law is very clear on this point i.e. the nomination has to be made in the prescribed form and be registered in the Land Registry in terms of section 58 of the Land Development Ordinance and if it is not registered such nomination is considered to be invalid.*¹¹ (emphasis added)

The learned Counsel also referred to **Perumbada Pedi Duralalage Jayasinghe v. Divisional Secretary, Galgamuwa and others**,¹² wherein this Court held as follows (per Samayawardhena. J.);

Before issuing the Grant, a Permit marked R5 had been issued in favour of Sirisena. It is the position of the 1st respondent Divisional Secretary that, as seen from page 2 of the said Permit, Sirisena, first nominated his son, the petitioner as the successor, and thereafter, instead of the petitioner, his wife Rosalin was nominated as the successor, and it is on that basis Rosalin was recognized as the successor.

⁸ [2002] 2 Sri L.R 242

⁹ Ibid, p 244

¹⁰ CA (Writ) Application No. 453/2013, decided on 10.10.2016

¹¹ Ibid, pp 8-9

¹² CA (Writ) Application No. 440/2015, decided on 06.06.2019

However, in terms of sections 58 and 60 of the Land Development Ordinance, no nomination or cancellation of the nomination of a successor shall be valid unless the document effecting such nomination or cancellation is duly registered by the Registrar of Lands before the death of the Grantee or the Permit-holder. There is no such proof of registration in respect of nominations and cancellations reflected at page 2 of the Permit marked R2. Hence those endorsements regarding nomination and cancellation cannot be given legal validity.¹³(emphasis added)

This issue was also extensively discussed by this Court in **Wanniarachchi Kankanamage Piyadasa v. C.P. Wanniarachchi, Divisional Secretary, Weeraketiya and others**.¹⁴ The Court, *inter alia*, made the following observations (per Kirtisinghe. J.)

The 2nd Respondent has come to the conclusion that as the nomination made by Dines Hamy under the permit marked 1R1 and registered in the land ledger as shown in 1R2 is still valid the 4th Respondent (the nominee under the permit) is the lawful successor of Dines Hamy. The learned Deputy Solicitor General appearing for the 1st – 3rd Respondents supported that contention. The learned Counsel for the Petitioner submitted that the nomination made under the permit marked 1R1 is not a valid nomination as contemplated by section 58 (1) of the land Development Ordinance as it has not been registered by the Registrar of Lands of the District. The learned Deputy Solicitor General submitted that the nomination was registered in the land ledger in the Divisional Secretariat and that is sufficient for the purpose. The relevant ledger has been produced marked 1R2.

.....

Section 58 (1) states that a nomination of a successor shall not be valid until and unless it has been registered by the Registrar of Lands of the district in which the land to which the document refers is situated. Section 60 states that a nomination of a successor shall not be valid unless it is duly registered before the death of the owner or the permit holder of the holding.¹⁵

Thereafter, citing the aforementioned decisions in **Piyasena v. Wijesinghe and others (supra)** and **G. Ranjith v. M.A.A.S. Nissanka Arachchi, Divisional Secretary, Hingurakgoda and others (supra)** with approval, the Court further observed as follows;

Both those judgements refer to the requirement of registration in the Land Registry.

*The learned Deputy Solicitor General has drawn our attention to the fact that section 60 of the Ordinance only refers to registration and it does not refer to the registration at the Land Registry. But section 60 has to be read with section 58. What is referred to in section 60 is the registration contemplated in section 58 and section 58 requires the registration by the Registrar of Land of the district.*¹⁶

¹³ Ibid, pp 3-4

¹⁴ CA (Writ) Application No 381/2014, decided on 16.12.2022

¹⁵ Ibid, pp 4-5

¹⁶ Ibid, p 6

It is evident that the position taken up by the Respondents that registration of the nomination of a successor is not mandatory is inconsistent with the aforementioned decisions of this Court.

However, the learned Counsel for the Respondents sought to question the applicability of the aforementioned decisions to the instant case on several bases. One such argument presented by the learned Counsel for the 13th and 15th Respondents was that certain provisions of the LDO that were relevant to the issue, in particular sections 29, 56 and 87 of the Ordinance, have not been considered in the said decisions.

I intend to examine the arguments presented by the Respondents in respect of each of the aforementioned provisions of the LDO. The argument presented by the learned Counsel for the 13th and 15th Respondents on section 29 of the LDO was that it only envisages the registration of grants and not permits, and, as such, there is no necessity to register nominations of successors to such permits.

The text of section 29(1), which is relevant to the issue raised, reads as follows;

29.(1) Every grant, when issued, shall be registered at the instance of the Government Agent in such manner as may be prescribed.

It is observed that the aforementioned section 29 of the LDO relates to the registration of grants and does not relate to the issue of registration of nominations and cancellation of nominations of successors, which is specifically addressed in section 58(1) thereof. In such context, specific reference is made to the requirement to register the nomination and cancellation of nomination of successors of both grants and permits in section 58(1), and, therefore, such specific provision should prevail in terms of the well-established legal maxim relating to statutory interpretation *generalia specialibus non derogant* to the effect that “things general do not restrict or detract from things special.”¹⁷

The learned Counsel also referred to the fact that, since the nomination of M. Seelawathie as the successor had been made at the time of the issuance of the permit (X1) itself, there was no necessity in terms of section 56 read with section 87 of the Ordinance to register same under section 58(1) thereof.

Section 56 of the LDO provides as follows;

56. (1) The nomination of a successor and the cancellation of any such nomination shall be effected by a document substantially in the prescribed form executed and witnessed in triplicate before a Government Agent, or a Registrar of Lands, or a divisional Assistant Government Agent, or a notary, or a Justice of the Peace.

¹⁷ The legal maxim has also been expressed as “*generalibus specialia derogant*” to the effect that “things special restrict things general.” See Bryan A. Garner (ed) *Black’s Law Dictionary* (7th ed, West Group, 1999) 1639. The maxim has been applied in *Abeyratne and Another v. Manchanayake* [1992] 1 Sri L.R. 361 and more recently in *Wiitha Group of Companies (Private) Limited v. Capital Printpack (Private) Limited*, SC Appeal No. 21/2017 decided on 09.06.2023.

(2) The provisions of subsection (1) shall not apply to any nomination or cancellation of a successor made by last will in the manner hereinafter provided, or to the nomination and cancellation of a successor to a land alienated on a permit made in the manner provided in section 87.

(3) A document by which the nomination of a successor or the cancellation of any such nomination is effected under subsection (1) shall not be deemed to be an instrument affecting land for the purposes of the Registration of Documents Ordinance, nor shall the provisions of Chapter II of that Ordinance apply to any person before whom any such document is executed.

Section 87 of the Ordinance, which is referred to in section 56(2), provides as follows;

87. A person to whom a Government Agent has agreed to alienate land may nominate as his successor any person who is entitled under this Ordinance to be so nominated, and the name of such successor may be endorsed on the permit before it is issued to the first-mentioned person, and the Government Agent may upon being requested so to do by the permit-holder cancel the name of such successor by an endorsement on the permit and endorse on the permit the name of any other person suggested by the permit-holder as his successor.

I am unable to accept such argument presented by the learned Counsel for the 13th and 15th Respondents for several reasons. In the first instance, it is observed that the scope of section 56 is confined to the procedure for “*effecting*” nominations and cancellations of nominations, whilst the issue of the registration of “*a document (other than a last will) whereby the nomination of a successor is effected or cancelled*” is specifically addressed in section 58(1). Secondly, there is no text either in section 56 or 87 excluding the application of section 58 to the said sections. Thirdly, it is evident from a careful perusal of the text of section 56(2) that the exemption from the application of the provisions of section 56(1) in respect of nominations made at the time of the issuance of the permit itself and cancellation of nominations in respect permits so issued under section 87 specifically relates to the procedure for “*effecting*” nominations and cancellations of nominations and does not extend to the obligation to register same imposed by section 58. Thus, I am of the view that, even in instances where the nomination of the successor has been made at the time of the issuance of the permit and is indicated therein, there is an obligation to register such nomination in the Land Register of the relevant district in terms of section 58 of the LDO. I am guided by the decision of this Court in the aforementioned ***G. Ranjith v. M.A.A.S. Nissanka Arachchi, Divisional Secretary, Hingurakgoda and others (supra)*** in arriving at such a conclusion.

I further observe that ***CA (Writ) Application No. 11/2020***¹⁸ referred to in their written submissions too does not relate to a nomination of a successor under the LDO and does not support the argument presented by the 13th and 15th Respondents.

Apart from the provisions of the LDO above, the learned State Counsel also referred to Land Order 148 of the Land Manual in support of his argument that it would suffice if the

¹⁸ The parties to the said Application should be corrected as ***Kankanamage Deepa Samanthi v. Singakkarage Urusula Irin and others***, decided on 28.05.2024

nomination of a successor in respect of a permit was registered in the Land Ledger maintained by the MASL. This issue too was considered and determined in **Wanniarachchi Kankanamage Piyadasa v. C.P. Wanniarachchi, Divisional Secretary, Weeraketiya and others (supra)** in the following manner;

Land Order 148 of the Land Manual reads as follows;

“පසු උරුමකරුවෙකු නම් කිරීමක්, අවලංගු කිරීමක් හෝ නැවත නම් කිරීමක් ප්‍රදානපත්‍රකරු හෝ අවසරපත්‍රකරු ජීවත්ව සිටින කාලය තුළදී ලියාපදිංචි විය යුතුය මෙහිදී ලියාපදිංචි කිරීම යන්නෙන් අදහස් වන්නේ ප්‍රදාන පත්‍රයක් හෝ ඉඩම් ලියාපදිංචි කාර්යාලයේ ලියාපදිංචි කරන ලද අවසරපත්‍රයක් සම්බන්ධයෙන් වූ විට එය ලියාපදිංචි කාර්යාලයේ ලියාපදිංචි කිරීමය. ලියාපදිංචි කිරීමේ කාර්යාලයේ ලියාපදිංචි නොකරන ලද අවසරපත්‍රයක් සම්බන්ධයෙන් වූ විට එය දිසාපති කාර්යාලයේ ලෙජරය හා බලපත්‍ර පිටපතේ හා අවසරපත්‍රකරු ලඟ ඇති මුල් පිටපතේ සටහන් කොට මාණ්ඩලික නිලධාරියා විසින් අත්සන් කර ස්වකීය නිල නාමය හා දිනය දැක්විය යුතුය. එසේ හෙයින් පසු උරුමය සම්බන්ධව කරනු ලබන ඉල්ලීම පිළිබඳව අප්‍රමාදව කටයුතු කිරීම අත්‍යාවශ්‍ය කරුණකි.”

Order 01 reads as follows;

“මෙම රජයේ ඉඩම් පිළිබඳ කාර්ය සංග්‍රහය සකස් කර ඇත්තේ සාමාන්‍ය ඉඩම් ප්‍රතිපත්තිය පිළිබඳ මූලික අදහසක් දීමටත්, ආඥාපනත් යටතේ කටයුතු කිරීමේදී අදාලව ක්‍රියාමාර්ග පිළිබඳ වැදගත් කරුණු ගෙනහැරපෑමට මිස සවිස්තරාත්මකව උපදෙස් දැක්වීම සඳහා නොවේ. ප්‍රතිපත්තිමය වශයෙන් හෝ කාර්යමය වශයෙන් හෝ වෙනත් කිසියම් සැකසහිත අවස්ථා උද්ගත වුවහොත් එවැනි අවස්ථාවන්හිදී ඉඩම් කොමසාරිස් ඇමතිය යුතුය.”

Those Land Orders prescribed by the Land Manual, including the order 148 are not regulations made under the Land Development Ordinance but mere procedural guidelines which cannot override the express statutory provisions of the Land Development Ordinance. Chapter VII of the Land Development Ordinance which deals with succession does not refer to a registration in the land ledger kept at the Divisional Secretariat. Section 58 only refers to a registration by the Registrar of Lands of the District in which the land to which the permit/ grant refers is situated.

For the aforesaid reasons we are of the view that the nomination of the 4th Respondent as the successor of the original permit holder is invalid for the reason that it was not properly registered by the Registrar of Lands of the district as required by section 58 of the Ordinance.¹⁹

In the light of the reasoning in the above case, with which I concur, I hold that the argument presented by the learned State Counsel based on Land Order 148 is devoid of any merit.

It is evident from the foregoing that the LDO mandatorily requires the nomination of a successor in respect of both grants and permits to be registered in the Land Register of the relevant district in terms of section 58 of the LDO and that mere registration in the land ledger maintained by the Divisional Secretary or any other public authority such as the MASL is insufficient to fulfil such statutory requirement. It is equally evident that non-compliance with such statutory requirement renders the nomination invalid and a nullity.

¹⁹ Ibid, pp 6-7

Consequences of the Failure to Register the Nomination under the Permit

According to the Petitioner, the legal effect and consequence of the failure to duly register the nomination of M. Seelawathie as the successor to the permit (X1/P5) was that she succeeded to the subject land in the capacity of the spouse of the deceased permit-holder and not as the nominated successor. The Petitioner has specifically admitted that M. Seelawathie was entitled to succeed to the subject land as the spouse of the permit-holder in terms of section 48A(1) of the LDO, and, subsequently to the issuance of a grant in terms of section 48A(2) thereof.²⁰ However, the Petitioner submits that, considering the aforementioned capacity in which she had succeeded to the land, the said M. Seelawathie was subject to the restrictions set out in section 48A(2) in respect of the grant issued to her.

Section 48A of the LDO provides as follows;

48A. (1) Upon the death of a permit-holder who at the time of his or her death was required to pay any annual instalments by virtue of the provisions of subsection (2) of section 19, notwithstanding default in the payment of such instalments, the spouse of that permit-holder, whether he or she has or has not been nominated as successor by that permit-holder, shall be entitled to succeed to the land alienated to that permit-holder on the permit and the terms and conditions of that permit shall be applicable to that spouse.

(2) If, during the lifetime of the spouse of a deceased permit-holder who has succeeded under subsection (1) to the land alienated on the permit, the terms and conditions of the permit are complied with by such spouse, such spouse shall be entitled to a grant of that land subject to the following conditions: -

- (a) such spouse shall have no power to dispose of the land alienated by the grant;*
- (b) such spouse shall have no power to nominate a successor to that land;*
- (c) upon the death of such spouse, or upon his or her marriage, the person, who was nominated as successor by the deceased permit-holder or who would have been entitled to succeed as his successor, shall succeed to that land:*

Provided that the aforesaid conditions shall not apply to a grant of any land to be made to a spouse who has been nominated by the deceased permit-holder to succeed to the land alienated on the permit.

(3) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (2) shall be invalid.

The Petitioner contends that, in terms of section 48A(2)(b) of the LDO, she was not entitled to nominate a successor to the land, and, as such, her nomination of the 13th Respondent as her successor (P16), is invalid in terms of section 48A(3) thereof. He further contends that the proviso to the section 48A(2) is not applicable to the instant application due to the failure to duly register the nomination of M. Seelawathie under the permit. In such circumstances, the

²⁰ vide paragraph 30 of the petition

learned Counsel for the Petitioner submitted that the conduct on the part of the accepting and registering such nomination made by M. Seelawathie and subsequently issuing and registering a certificate of heirship to the 13th Respondent on the strength of such nomination is illegal and *ultra vires* the provisions of the LDO.

Apart from seeking to justify the validity of the nomination of M. Seelawathie under the permit, as discussed above, the 1st to 7th Respondents have also taken up the position that, at the time of the issuance of the grant (P8), M. Seelawathie was in independent permit holder who was not subject to any of the encumbrances set out in section 48B.²¹ Such position appears to have been taken in view of the fact that the name of M. Seelawathie had been inserted in place of the original permit-holder K. Punchi Banda in the permit (P5) considering the contents of the letter dated 23.09.1995 (R1).

Whilst the submission of unpleaded documents with written submissions is irregular, contrary to the practice of Court and cannot be condoned, considering the fact that the document is specifically referred to in the permit (P5) and a query was raised by the Court itself, I am inclined to make an exception in the instant case and to admit and examine the contents of the said letter dated 23.09.1995 (R1). The said letter sets out the basis upon which the nomination of M. Seelawathie appears to have been accepted, and, its contents are reproduced below;

මගේ අංකය : ආර්පිඑම්/ටී/එල්/2/7/3-1
නේවාසික ව්‍යාපාර කළමනාකාර කාර්යාලය
මහවැලි ආර්ථික ඒජන්සිය - තඹුත්තේගම.
1995 - 09 -23 වන දින

කොට්ඨාශ කළමනාකාර
මඩාදුගම.

අනුප්‍රාප්ති අයිතිය මත ඉඩම් පැවරීම.
මුල් ඉඩම්ලාභියා - කපුරුහාමිගේ පුංචිබන්ඩා.
(104/2ඒ/46 ගෙවතු - 104/ඩී5/ටී41/536 වාරි)

ඉහත කරුණ සම්බන්ධයෙන් මා වෙත යොමු කරන ලද ඔබේ අංක: බීඑම්/එම්/ - සී/8/60 හා 95.07.08 දාතමැති ලිපිය හා බැඳේ.

අවසර පත්‍ර දරන්නා මියගොස් ඇති බැවින් පසු උරුමය නම්කර ඇති අවසර පත්‍ර දරන්නාගේ කලත්‍රයා වන මල්හාමිගේ සීලවතී මිය නමින් ඉහත අංක දරණ ගෙවතු හා වාරි ඉඩමේ අනුප්‍රාප්තිය ලබාදීම අනුමත කරමි.

කරුණාකර, ඒ අනුව බලපත්‍ර සංශෝධනය කරන්න. ඔබ කාර්යාලයට අයත් ගොනුවද මේ සමග එවමි.

අ.කළේ.(එම්.ඩබ්.ඒ. සිල්වා).
නි.නේ.ව්‍යා.කළමනාකාර (ඉඩම්).

ගාමිණි සමරක්කොඩි
ඉඩම් නිලධාරී

²¹ written submissions of the 1st to 7th Respondents, paragraph 7

It is evident from the contents of the said letter that the succession of M. Seelawathie to the subject lands had been approved upon the basis that she had been nominated as the successor in the permit and not upon any other basis. Whilst it has been discussed in the preceding part of this judgment as to why the nomination of M. Seelawathie cannot be given effect to, it is also observed that the contents of the said letter do not explain or support the position taken by the learned State Counsel that the said M. Seelawathie had a status as “an independent status” as a permit-holder. On the contrary, the said letter clearly establishes that succession rights were being accorded in respect of the permit originally issued to K. Punchi Banda.

On this issue, the Petitioner, in his written submissions, has also pointed out that section 26 of the principal enactment, which set out that a permit was personal to the permit-holder, was repealed by the Land Development (Amendment) Act No.16 of 1969. For the sake of completeness, the repealed section 26 of the LDO provided as follows;

26. A permit shall for all purposes be and be construed as personal to the permit holder and upon his death no title whatsoever to the end held under such permit shall pass or accrue to his heirs or to any person other than a successor duly nominated by such permit-holder in the manner hereinafter provide.

Thus, I am inclined to accept the position taken up by the Petitioner that M. Seelawathie, on account of the capacity in which she succeeded to the subject land, was not entitled to nominate the 13th Respondent as her successor and that such nomination is invalid in terms of section 48A(3) of the LDO. Accordingly, the acceptance and registration of such nomination and the subsequent issuance of the certificate of heirship to the 13th Respondent by the 1st to 7th Respondents too are illegal and *ultra vires* the provisions of the LDO.

In his written submissions, the Petitioner has adverted to ***Wathukarage Shantha Merrill Kumara v. National Gem and Jewellery Authority and others***,²² wherein the effect of an *ultra vires* act and the presumption of validity was considered in depth by the Supreme Court (per Samayawardhena, J.).

On the issue of *ultra vires* acts and nullity, the Court made the following observations;

A decision made ultra vires is a nullity

If a decision is ultra vires, it is a nullity for all intents and purposes. It is void, not voidable. Everything that stems from a decision which is a nullity also automatically becomes a nullity without further ado.

*Lord Denning in **Macfoy v. United Africa Co. Ltd.** [1961] 3 All ER 1169 at 1172 articulates this notion in his own inimitable style in this way:*

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null

²² SC(Misc) No. 04/2014, SC Minutes 07.02.2025

and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.

*This passage was referred to with approval by Justice G.P.S. de Silva (as he then was) in **Rajakulendran v. Wijesundera** [1982] 1 Sri Kantha LR 164 at 168-169, Justice Sharvananda (as he then was) in **Sirisena v. Kobbekaduwa, Minister of Agriculture and Lands** (1978) 80 NLR 1 at 182, and Justice Sripavan (as he then was) in **Leelawathie v. Commissioner of National Housing** [2004] 3 Sri LR 175 at 178 and in many more judgments.*

Professor Paul Craig in Administrative Law, (3rd Edition, Sweet & Maxwell 1994) at page 456 takes the view that the invalid acts are retrospectively void:

As we have seen, this means that the decision-maker never had the power to make the decision, and that, therefore, the decision could have no effect at all. This is encapsulated by the idea that decisions made outside jurisdiction are retrospectively null or invalid.

Professor William Wade and Professor Christopher Forsyth in Administrative Law (11th Edition, 2014) echo the same sentiments when they state at page 249 that “since a void administrative act is, and always has been, non-existent in law, a finding that an act is void will generally be retrospective.”

Although this general principle vitiates everything which flows from the original ultra vires decision, it is customary for Courts to issue formal orders quashing such subsequent decisions, albeit redundantly.²³ (emphasis added)

On the issue of the presumption of validity and *ultra vires* acts, the Court opined as follows;

Presumption of validity and ultra vires decisions

The presumption of validity deviates from the general principle that there is no need for an order of the Court to set aside a decision which is a nullity because such a decision together with follow up decisions is automatically null and void without any intervention of Court.

Even if a decision is ex facie ultra vires, the question of whether it is automatically null and void or requires a formal pronouncement by the Court has now become a matter of contention. This is especially so in view of the presumption of validity, which recognizes that all official decisions are presumed to be valid until set aside or otherwise held to be invalid by a Court of competent jurisdiction. This is to protect the entitlement of the public to rely upon the official decisions and to prevent individuals from taking the law into their own hands.

²³ Ibid, pp 7-8

Clive Lewis in *Judicial Remedies in Public Law* (2nd Edition, London Sweet & Maxwell, 2000) at page 150 states “The concept of *ultra vires* and voidness are deceptively simple in appearance but have given rise to theoretical and practical problems.” Wade at page 248 states “an absolute approach to invalidity, although principled and resting upon high authority, poses conundrums that need to be understood in order to be resolved.” De Smith at page 230 says “Behind the simple dichotomy of void acts (void *ab initio*, invalid, without legal effect) and voidable acts (valid until held by a court to be invalid) lurk terminological and conceptual problems of excruciating complexity.” Wade at page 249 stating that “we see the conundrum that theoretically void administrative acts are functionally voidable” gives an example at page 250 that “A common case where an order, however void, becomes valid for practical purposes is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result.”²⁴

.....

The effect of the presumption is that the impugned decision is presumed to be good in law until it is pronounced to be unlawful, but after which it regarded as never having had any legal effect at all.

.....

By virtue of the presumption of validity, a formal pronouncement of nullity is necessary with regard to the initial *ultra vires* decision. While it is desirable to have a formal judicial pronouncement regarding subsequent actions or decisions, such a pronouncement is not mandatory. Nonetheless, prudence dictates that a formal pronouncement be made, depending on the unique facts and circumstances of each case.²⁵(emphasis added)

I intend to be guided by the reasoning in the aforementioned decision of the Supreme Court. In so far as the instant case is concerned, I take the view that the nomination by M. Seelawathie of the 13th Respondent as her successor is illegal and *ultra vires* the LDO, and as such, the said decision and all subsequent decisions made and actions taken pursuant thereto are a nullity and of no force or avail in law.

Legal Objections: Laches

Although several legal objections had been raised in the statements of objections filed by the 1st to 7th Respondents²⁶ and the 13th and 15th Respondents,²⁷ only the objection relating to *laches* was pursued when the instant application was taken up for argument.

The learned Counsel for the 13th and 15th Respondents submitted that, whilst the nomination of the 13th Respondent as the successor in respect of the subject land had taken place on

²⁴ Ibid, pp 9-10

²⁵ Ibid, p 13

²⁶ vide paragraph 1 of the statement of objections of the 1st to 7th Respondents

²⁷ vide paragraph 1 of the statement of objections of the 13th and 15th Respondents

14.11.2006 (P16), the Petitioner has sought to impugn such decision after a period of 17 years by filing the instant application on 13.11.2023. The learned Counsel further submitted that, although the Petitioner pleaded that he had been plagued by ill-health since 2017, he has not tendered any explanation as to why he did not take any action to vindicate his rights prior to 2017. Thus, it was contended that the Petitioner was guilty of *laches*.

The response of the Petitioner was two-fold; on the one hand, he has sought to tender an explanation for the delay; and, secondly, he has taken up the position that *laches* is not an absolute bar to obtain prerogative relief. I intend to examine such defences in greater detail.

In the amended petition, the Petitioner has pleaded that he became aware of the existence of the nomination of the 13th Respondent (P16) as successor and the certificate of heirship (P17) in late 2022 when he had met the 14th Respondent (the elder brother) and requested him to effect the transfer of a portion of the subject land, as promised by him earlier.²⁸ According to the Petitioner, it is at such point that the 13th Respondent confirmed such position but had refused to show the said documents.²⁹ Thereafter, he had taken steps to obtain information and relevant documents from the MASL through RTI requests and instituted the instant application, when no corrective action was taken by the MASL.³⁰ Although the 13th and 15th Respondents have denied such position, they have not disclosed whether they had informed the Petitioner of the existence of the aforementioned nomination and certificate of heirship at any time prior to late 2022. The fact that he did not have access to the said nomination and the certificate of heirship and the fact that he has continued to occupy a portion of the land without interruption indicate that the version of events pleaded by the Petitioner is more probable, and, as such, I am convinced that there has not been any deliberate delay on the part of the Petitioner. Furthermore, there is no material before this Court that any prejudice has been caused to the Respondents by any delay. It is also observed that the 13th Respondent has continued to occupy the portion of land that he had always occupied and that the MASL too had been content to allow both the Petitioner and the 13th Respondent to be in possession of the subject land even after the 13th Respondent has been nominated as the sole successor in 2006 and the certificate of heirship granted in 2008. Hence, I am inclined to the view that, whilst a considerable period of time has elapsed since the execution of the impugned documents and the institution of these proceedings, such delay *per se* would not amount to *laches* considering the aforementioned facts and circumstances.

In arriving at such a conclusion, I am guided by the decision of the Supreme Court in ***Rajapaksha Appuhamilage Lionel Ranjith v. Suraweera Arachchige Dona Leelawathi and two others***,³¹ cited by the Petitioner in his post-hearing written submissions, wherein the Court clarified the status of the law in the following terms (per Samayawardhena J):

It must be emphasised that mere delay, however prolonged, does not per se amount to laches. In other words, laches cannot be determined solely by reference to the length of time taken to make the application. The relevant question is not how many months

²⁸ vide paragraphs 19 to 22 of the amended petition. See also post-hearing written submissions of the Petitioner, pp 31-33

²⁹ vide paragraph 23 of the amended petition

³⁰ vide paragraphs 24 to 27, 37 and 38 of the amended petition

³¹ SC Appeal 100/2020, SC Minutes 14.05.2025

or years have elapsed since the application ought to have been made—for instance, in this case, how much time has passed since the case was first fixed for pre-trial conference to move for an amendment of the answer—but whether the delay is unreasonable and unjustifiable in the context of the particular case. As Mark Fernando J. observed in Lulu Balakumar v. Balasingham Balakumar [1997] BLR 22, “the circumstances of the particular case, the reason for the delay, and impact of the delay on the other party, must all be taken into account.” Similarly, Sharvananda J. (as he then was), in Biso Menika v. Cyril de Alwis [1982] 1 Sri LR 368 at 379, stated: “What is reasonable time and what will constitute delay will depend upon the facts of each particular case.” Where the delay is satisfactorily explained, relief ought not to be refused on the ground of laches.³² (emphasis added)

In further elaboration of the fact that effluxion of time is not the sole determinant of laches, the Petitioner has also referred in his post-hearing written submissions to the case of **Wickrama Arachchige Dona Leelawathie v. Divisional Secretary, Kaduwela and others**,³³ wherein a grant that was wrongfully issued on 03.06.1986 was quashed on 31.03.2021.

The Petitioner has contended that, in any event, that laches is not an absolute bar for the grant of relief, especially where the decision or order impugned has been made without jurisdiction and is a nullity. In the aforementioned case of **Wickrama Arachchige Dona Leelawathie v. Divisional Secretary, Kaduwela and others (supra)**, the said issue has been considered and determined in the following manner;

The Petitioner in his Petition seeks for a mandate in a nature of a writ of certiorari to quash the impugned grant dated 03.06.1986..... Accordingly, it clearly appears that there had been a delay on the part of the Petitioner in invoking the jurisdiction of this Court.

However, in the case of Pathirana vs. Victor Perera (DIG Personal Training Police) (2006) 2 SLR 281,291 it was held as follows;

“an application for a writ of certiorari will not be refused on the ground of delay is not attributable to the petitioner. Laches could be excused if the order is nullity. As the circular is a nullity there are no laches.”

Further, Wanasundera J. in the case of Ramasamy v. Ceylon State Mortgage Bank (1976) 78 NLR 510, held that

“the principles of laches must ... be applied carefully and discriminately and not automatically and as a mere mechanical device.”

In the circumstances I hold that the decision of the 1st to 4th Respondents to issue the impugned grant and the impugned grant on the face of it is void ab initio. As the said

³² Ibid, p 23

³³ CA (Writ) Application No. 11/2019, decided on 31.03.2021

decision of the 1st to 4th Respondents is a nullity, the laches on the part of the Petitioner could be excused.

It was held In Biso Menika Vs. Cyril de Alwis (1982) 1 SLR 368,379 that,

“One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by law. Where the authority concern 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 Petitioner has also referred to the decision of the Supreme Court in **Wijayapala Mendis v. P. R. P. Perera and others**,³⁴ in which the Court commented as follows on the parameters of an objection relating to *laches* (per Mark Fernando, J.);

*Delay is never an absolute bar, particularly where the challenge is to jurisdiction. In any event, a plea of delay must be considered on equitable grounds: as for instance, whether the conduct of the petitioner indicates acquiescence or a waiver of his rights, and whether any appreciable prejudice had been caused to the adverse party by that delay. Nothing of that kind has even been alleged.*³⁵

Upon consideration of the facts and circumstances of the instant case, as determined above, and the aforementioned jurisprudence on the issue, I hold that the objection of *laches* has not been established against the Petitioner and it is accordingly overruled.

Conclusions and Orders of Court

For the reasons set out above, I hold as follows;

- (a) that, the nomination of M. Seelawathie as successor under the permit (X1/P5) has not been duly registered as required under section 58 read with section 60 of the Land Development Ordinance, and, as such is invalid;
- (b) that, consequently, the said M. Seelawathie was not entitled to nominate the 13th Respondent as the successor to the subject land due to the restriction set out in section 48A(2)(b) of the Ordinance;
- (c) that, the acceptance of the nomination of M. Seelawathie as the successor under the permit (X1/P5), the acceptance and registration of the nomination of the 13th Respondent as the successor under the grant (P8), as reflected in the document (P16), and the issuance of the certificate of heirship (P17) and its registration, as reflected in the document (P18),

³⁴ [1999] 2 Sri L.R 110

³⁵ Ibid, p 141

by the 1st to 7th Respondents are *ultra vires* the provisions of the Land Development Ordinance; and

(d) the objection raised by the Respondents relating to *laches* is overruled.

Accordingly, I proceed to issue writs of *Certiorari* as prayed for in paragraphs (d), (e), (g) and (h) of the prayer to the amended petition. I further issue writs of *Mandamus* as prayed for in paragraphs (f), (i) and (j) of the prayer to the said amended petition. The parties shall bear their own costs.

Application allowed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal