

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Nirosha Manjula Arudsothy,
No.118, Katawela, Leula.

CA (Writ) App. No. 104/2023

PETITIONER

Vs.

1. U.J.M.S.S.B. Jayasinghe,
Divisional Secretary,
Kadawath Sathara – Gangawata,
Korale.
- 1A. H.M.M.U.B. Herath,
Divisional Secretary,
Kadawath Sathara – Gangawata,
Korale.
2. Mr. G.D. Keerthi Gamage,
Land Commissioner General,
Department of Land Commissioner
General,
Mihikatha Medura, No. 1200/6,
Rajamalwatta Road, Battaramulla.

- 2A. Mr. D.D.K. Wickramaarchchi,
Land Commissioner General,
Department of Land Commissioner
General,
Mihikatha Medura, No. 1200/6,
Rajamalwatta Road, Battaramulla.
3. Subasinghe Arachchilage Gamini
Subasinghe,
No. 145/1, Kandakula, Thalatuoya,
Kandy.
4. Hon. Harin Fernando,
Minister of Tourism and Land,
Ministry of Tourism and Land,
Mihikatha Medura, Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
- 4A. Hon. Kurugamage Don Lalkantha,
Minister of Agriculture, Livestock,
Land and Irrigation,
Mihikatha Medura, Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
5. Mr. Chulananda Perera,
Secretary,
Ministry of Tourism and Land,
Mihikatha Medura, Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
- 5A. Mr. D.G. Wickramasinghe,
Secretary,
Ministry of Agriculture, Livestock,
Land and Irrigation,
Mihikatha Medura, Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

6. Mr. P.S.P. Abeywardhana,
Registrar General,
Registrar General's Department,
No. 234/A3,
Denzil Kobbakaduwa Mawatha,
Battaramulla.
- 6A. N.S. Wijayasinghe,
Registrar General,
Registrar General's Department,
No. 234/A3,
Denzil Kobbakaduwa Mawatha,
Battaramulla.
7. N.P. Vipula Sampath Nerangama,
Additional Land Registrar,
Land and District Registrar's Office,
Kandy.

RESPONDENTS

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

Counsel:

Sanjeewa Jayawardena, P.C. with Rukshan Senadheera for the Petitioner.

Avanthi Weerakoon, S.C. for the 1st, 2nd, and 4th to 7th Respondents.

Ishan Alawathurage instructed by Neethika Partners for the 3rd Respondent.

Argued on: 25.02.2026

Delivered on: 02.04.2026

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

Judgement

Introduction

The Petitioner in this Application is the grandson of the original grantee of a parcel of land in extent of Two Acres. The said grant has been issued in terms of Section 19(4) of the Land Development Ordinance (hereinafter referred to as “the Ordinance”) by the Head of the State. Before the said grant, there had been a permit issued to the same grantee, and under the permit, there was a nomination of succession of the 3rd Respondent, who is a child of the said grantee.

The original grantee died on 20.04.1996 and his spouse died on 13.01.2022, with whom the mother of the Petitioner had also lived with, including the Petitioner. The mother of the Petitioner is the daughter of the original grantee.

Subsequently, a dispute has arisen between the Petitioner and the 3rd Respondent after the death of the spouse of the original grantee in 2022. After inquiry, the 1st to 2nd Respondents decided to accept the 3rd Respondent as the successor, and the Petitioner challenges this decision by this Application.

After issuance of notice, the Respondents have filed their respective Objections. It is the position of the 1st to 2nd Respondents, that the 3rd Respondent’s nomination for succession had been made prior to the issuance of the grant, under the permit, and the said nomination had been properly registered in the correct folio which is clearly borne out by the document marked and annexed to the Petition as **P2**. Therefore, there is valid nomination, though there is no subsequent nomination under the grant; therefore, the 3rd Respondent can only succeed after the death of the spouse of the original grantee in 2022. It is their stand that when he claims to succeed, asserting his rights, the

dispute arose on which the 1st and 2nd Respondents had inquired into and decided to accept the 3rd Respondent as the successor. Thus, the Petitioner cannot maintain this Application and sought a dismissal.

The 3rd Respondent has also filed his respective Objections, denying any right has been accrued to the Petitioner to maintain this Application. Particularly, he has challenged the documents **P4** and **P5**, that are the two documents that are alleged to have been signed by the original grantee and the 3rd Respondent, and several other Respondents.

This was argued before me on 25.02.2026, and the following arguments were advanced by the counsel; hence, this judgement.

Arguments

The first argument of the Counsel for the Petitioner, Mr. Sanjeeva Jayawardena, P.C., is that under the grant, the 3rd Respondent had not succeeded within six months after the death of the original grantee, and therefore, Section 68 comes into play and now he cannot succeed.

The next contention of Mr. Jayawardena is that the 1st and 2nd Respondents have failed to take into consideration the development effected by the Petitioner to the land in suit, and the occupation and possession by the Petitioner along with his mother and grandmother after the death of the original grantee.

Further, having referred to the documents marked as **P4** and **P5**, signed by the original grantee and the 3rd Respondent, he contends that their decision confirm that their intention was to keep it for the mother of the Petitioner as a dowry. Further, the report marked as **1R8** could not have been prepared after the document marked as **1R5**. In those circumstances, the Petitioner challenges the documents marked as **P11** and **1R8**.

Ms. Weerakoon, learned S.C., on the other hand argued that after the death of the original grantee, the 3rd Respondent's mother was occupying and living in the property where the ancestral house was situated, along with the Petitioner's mother; therefore, no question of succession by the 3rd Respondent, the nominee, arose when the original grantee (the father) had died within six months of the death. The question of succession by the 3rd Respondent will only arise in 2022, after the death of the original grantee's spouse; in fact, that has happened as so. Therefore, the said inquiry had been held, and the 1st and 2nd Respondents have decided to accept the succession of the 3rd Respondent as the correct succession, since there was a nomination under the permit borne out by **P2**.

Further, having associated with the submissions made by Ms. Weerakoon, the Counsel for the 3rd Respondent, Mr. Alawathura argues that the 3rd Respondent had taken steps only after the death of the Petitioner's mother by the documents marked as **P15** to **P17**, and only Sections 50 and 68 comes into play as Section 72 does not have any application to the present Application.

Factual matrix

The 1st Petitioner is the eldest child of the original permit holder. The 2nd Petitioner is the child of the 1st Petitioner. The 1st Respondent is the Divisional Secretary of the Kadawath Sathara – Gangawata Korale Division; the 3rd Respondent is the successor. The 4th Respondent is the Minister in charge of the subject of Lands, the 5th Respondent is the Secretary to the Ministry of Lands, the 6th Respondent is the Registrar General, and the 7th Respondent is the Land Registrar of Kandy.

The land in suit was granted to Subasinghe Arachchilage Podi Appuhami (hereinafter referred to as the 'original grantee'). However, prior to that, a permit had been issued in terms of Section

19(2) of the Land Development Ordinance in respect of the same land. The said permit was issued on 27.09.1982 and was duly registered in the relevant folio of the Land Registry, which is marked as **P2** and annexed to the Petition. Thereafter, the said permit holder was issued with a grant in terms of Section 19(4) of the Land Development Ordinance, whereby the permit was converted into a grant. The said grant is marked as **P3** and annexed to the Petition.

The Petitioner does not state in the Petition whether any nomination was made by the original grantee, either under the permit or under the grant. However, be that as it is, the original grantee died on 20.04.1996, as borne out by **P7**. The said land is depicted along with the other tenements, in the Plan marked and annexed as **P3**. It appears that the original grantee had established his residence on the land, thereby making it ancestral property of the 1st Petitioner, the 2nd Petitioner, and other family members, including the 3rd Respondent.

The wife of the original grantee survived him and lived until 13.01.2022, on which date she died, as borne out by P8(a). The 1st Petitioner died in 2018, prior to the death of her mother, as marked in document P8(b).

The Petitioner has stated in the Petition that, by document marked **P4**, the 3rd Respondent, who is the sibling of the Petitioner's mother and the uncle of the Petitioner, had consented to transfer the property in the name of the Petitioner's uncle as dowry property.

In addition, electricity bills and other utility bills had been paid in the name of the 1st Petitioner. It is further stated that all members of the family, including the 3rd Respondent and the original grantee, had executed a deed transferring their rights and title to the 1st Petitioner as far back as 22.02.1995; the said deed is annexed to the Petition and marked as **P6**. Therefore, the Petitioner alleges that the land in suit devolved upon the 1st Petitioner, and since the 1st Petitioner has died,

her rights devolved upon her two children. Thereafter, by document marked **P9**, the said rights have been transferred to the Petitioner, Nirosha Manjula Arudsothy.

Accordingly, the 1st Petitioner had made all attempts to have the rights under the grant, marked as **P3**, recognised.

Accordingly, in 2022, a dispute arose with the 3rd Respondent, and several police complaints were made by the parties, as borne out by documents **P10** and **P11**. Thereafter, the 1st Respondent decided to accept the 3rd Respondent as the successor to the rights of the original grantee, and his name was registered in terms of Sections 49 and 72 of the Land Development Ordinance as the successor to the rights under the grant **P3**; the relevant entry in the Land Registry is marked as **P12** and annexed to the Petition.

Therefore, the Petitioner challenges the said registration. In addition, the Petitioner has annexed several documents to demonstrate that the Petitioner and his mother had effected numerous improvements to the property, including the construction of their ancestral house and the cultivation of plantations thereon.

The Petitioner's grievance

After the death of the 1st Petitioner, the 2nd Petitioner continues these proceedings as the sole Petitioner; therefore now the Petitioner contends that the 3rd Respondent fails to make an application to succeed to the rights of the original grantor, which is reflected in the document marked **P3**, within six months of the original grantee's death in 1996. Accordingly, the 3rd Respondent is not entitled to succeed to the rights, and the acceptance and registration of the 3rd Respondent as successor by the 1st Respondent and other Respondents amount to a violation of the law. Therefore, the Petitioner seeks to challenge **P12** by this Application.

After the issuance of notice, the Respondents filed their respective Objections. The 1st, 2nd, 4th, 5th, 6th, and 7th Respondents filed joint Objections, while the 3rd Respondent filed Objections separately.

Objections

It is the position of the Respondents (officials) that there had been a nomination of a successor under the original permit, and that such nomination had been properly registered prior to the issuance of the grant marked as **P3** annexed to the Petition. Therefore, although no nomination was made by the father (the original grantee) under **P3**, the nomination made under the permit **P2**, which is duly reflected in the relevant folio of the Land Registry, should be treated as a valid nomination. Accordingly, the 3rd Respondent is entitled to succeed to the rights of the original grantee.

They further state that no question of succession arose until the death of the surviving spouse on 13.01.2022. The dispute arose only thereafter, at which point the 3rd Respondent made an application to succeed to the rights. Upon resistance, an inquiry was conducted, and the officers accepted the succession of the 3rd Respondent and duly registered it in the proper folio, as reflected in **P12**. Therefore, they contend that the Petitioner cannot maintain this Application, which is liable to be dismissed.

The Objection of the 3rd Respondent is that he denies having signed **P6** and further denies that any member of his family, including his father (the original grantee), had ever signed the said document. He alleges that **P6** is a forged document. His objection is based on the nomination made by the original grantee, which was accepted by the officials as far back as 1982 under the original permit and duly registered, as reflected in **P2**.

Therefore, he states that no new nomination was made under the grant, and he claims rights based on the earlier nomination. These matters were argued before me.

Now, I have to decide the following questions for my consideration;

- i. When there is a nomination under the original permit prior to the issuance of the grant in terms of Section 19(4), does such nomination survive despite the absence of a nomination under the grant?
- ii. Can the Petitioner rely upon possession to claim a right to succeed to the property based on other documents?

In this case, I have raised the above questions for my consideration; accordingly, I will now deal with the first question that I have raised.

Survival of nomination under the grant

It was argued for and on behalf of the Petitioner that even if the 3rd Respondent was nominated under the original permit issued to the original grantee, after his death in 1996, the 3rd Respondent has not made any attempt to succeed within six months. Mr. Jayawardena, P.C. relies heavily on Section 48A of the Ordinance.

It must be remembered that the nomination had been made by original grantee as reflected in **P2**, under a permit, and thereafter, the original permit holder had been issued with a grant, which is marked as **P3**. However, there is no nomination under the said grant by the original grantee. Nevertheless, it is my view that the nomination reflected in **P2** of Gamini Subasinghe (the 3rd Respondent) will come to operate (come into effect) only after the death of the original grantee's spouse and not immediately after the death of the original grantee, as there is a surviving spouse. Therefore, Gamini Subasinghe's succession to the rights of the original grantee within six months

of the original grantee's death does not arise, until the death of the spouse of the original grantee and 1st Petitioner takes place.

According to the evidence placed before me, the original grantee's wife survived him until 2022, and she had lived in the house built by the original grantee and the family, including the 3rd Respondent and the Petitioner as the Petitioner claims. However, the original grantee's wife has passed away on 13.01.2022, as evidenced by the document marked as **P8(a)** annexed to the Amended Petition. Therefore, the question of taking possession under succession does not arise once the original grantee dies, as according to Section 48B, the spouse (wife) has to succeed as the life interest holder; thus, the mother of the Petitioner and 3rd Respondent had succeeded to the rights of the original grantee until her death in 2022. The relevant provision is reproduced below for further clarity;

“48B. (1) Upon the death of the owner of a holding, the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions:-

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

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

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

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

(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.” (Emphasis is mine)

Subsequent to the death of the spouse of the original grantee, all the problems have arisen, and then only has the 3rd Respondent made an application to succeed; that application has been resisted by the 1st and 2nd Petitioners, and there had been an inquiry and police complaints as well. After the inquiry, the nomination made by the original grantee as evidenced in **P2** has been accepted, and accordingly, **1R8** was prepared and sent to the Commissioner General of Lands by the Divisional Secretary. On the instructions of the Commissioner General of Lands, the Divisional Secretary has taken steps by **1R5** to register the 3rd Respondent as the successor, and **P12** is the final result of that. The Land Registrar also has quite correctly registered the said succession of the 3rd Respondent as the correct and true successor according to law.

Therefore, in this case, the arguments advanced by Mr. Alawathurage and Ms. Weerakoon hold much water as against the argument advanced by Mr. Jayawardena, the learned President’s Counsel, because Section 48A does not apply here; only Section 48B of the Ordinance applies, and thereafter, Section 49 applies as far as succession is concerned, which reads thus;

*“49. **Upon the death** of 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 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 permit- holder or owner shall succeed to that land or holding.”*

(The operative phrases in the above-mentioned section are emphasised.)

In addition to that, I must also rely upon the two cases handed down by the judgement of this Court by His Lordship Justice J.A.N. De Silva (as he then was) and His Lordship Chief Justice Sarath Silva in the cases of *Piyasena v. Wijesinghe and Others*¹ and *Mallehe Vidaneralalage Don Agosinno v. Divisional Secretary and Others*² respectively. Chief Justice Sarath Silva has gone on to state that although there is no nomination made under the grant made under Section 19(4), if there is nomination made under a permit in respect of the same parcel of land issued under Section 19(2), it is sufficient for the authorities to take steps to accept the same nomination as rightful nomination under the grant as well. Accordingly, it is my view that the 3rd Respondent's rights are properly secured by reason of the strength of those two judgements as well.

Furthermore, I must hold that the Petitioner has relied upon several documents, particularly **P4** and **P6**, to say that the 3rd Respondent and the original grantee had transferred the property and their rights to the 1st Petitioner when she married. However, they cannot do so without any permission of the Divisional Secretary or the Land Commissioner. In addition to that, the 3rd Respondent heavily challenges those documents, claiming that those are forged documents. If the Petitioner is to rely upon those documents, he must establish his rights before the District Court as against the 3rd Respondent. However, in any case, it cannot be done as the original grantee, nor the 3rd Respondent cannot transfer their rights without the permission of the authorities. Therefore, they can only remain as invalid documents.

In those circumstances, I see no reason to interfere with the decisions taken by the 1st Respondent as well as the Divisional Secretary to register the succession of the 3rd Respondent as the successor to the original grantee and hold that **P12** is a legally valid document.

¹ [2002] 2 Sri L.R. 242.

² SC Appeal No. 30/2004 (SC Minutes 23.03.2005).

Conclusion

Based on the reasons adumbrated above, I dismiss this Application subject to cost, and the Petitioner is liable to pay Rs. 10,500/- (Ten Thousand Five Hundred Rupees) each to the 3rd Respondent and other Respondents amounting to Rs. 21,000/- (Twenty-One Thousand Rupees).

JUDGE OF THE COURT OF APPEAL