

**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.*

1. Nekath Gedara Tikiri Banda,  
No. 8/132, Golden Medows, 4A Lane,  
Kirigampamunuwa, Polgasowita.
2. Nekath Gedara Jayarathna Bandara,  
No. 75, Kothmalpura, Thambuttegama.

**CA (Writ) App. No. 08/2023**

**PETITIONERS**

**Vs.**

1. Sri Lanka Mahaweli Authority,  
No. 500, T.B. Jaya Mawatha,  
Colombo 10.
2. The Director General Sri Lanka  
Mahaweli Authority  
No. 500, T.B. Jaya Mawatha,  
Colombo 10.
3. W.M. Sugath Weerasinghe  
Resident Project Manager,  
Mahaweli Authority of Sri Lanka  
Office

of the Resident Project Manag System  
H,  
Thambuttegama.

4. I. Ranaweera Deputy Resident Project  
Manager (Land),  
Mahaweli Authority of Sri Lanka,  
Office of the Resident Project Manager  
System H,  
Thambuttegama.
5. R.S. Nilmini Sriyalatha  
Block Manager,  
Mahaweli Authority of Sri Lanka,  
Block Office - Thambuttegama  
System-H,  
Thambuttegama.
6. A. Nisantha Bandara,  
Unit Manager,  
Mahaweli Authority of Sri Lanka  
Unit 404, System – H,  
Thambuttegama.
7. Nekath Gedara Wijerathna Bandara,  
No. 74, Mahaweli Kandawura.  
Thambuttegama.
8. Nekath Gedara Bandara Menike,  
No. 75, Kothmalpura, Thambuttegama.
9. Nekath Gedara Dingiri Banda,  
No. 86, Samagipura, Nawalapitiya.
10. Nekatha Gedara Jayamenike,  
Maliyadewapura, Thambuttegama.
11. Nekath Gedara Wije Menike,  
No. 1395, 3<sup>rd</sup> Lane, Bogaswewa 2,  
Vavuniya.
12. Nekath Gedara Sunil Bandara,  
No. 75, Kothmalpura, Thambuttegama.

13. Nekath Gendra Nimal Bandara,  
No. 75, Kothmalpura, Thambuttegama.

14. Nekath Gedara Jayantha Nimal  
Bandara,  
No. 72, Sama Uyana, Kundasale.

15. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp, Colombo 12.

**RESPONDENTS**

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

**Counsel:**

Naveen Maharachchi instructed by Usha Kannangara for the Petitioners.

Shehan Soysa, S.S.C., for the 1<sup>st</sup> to 6<sup>th</sup> Respondents.

Kushan Illangatillake instructed by Udeni Gallage for the 7<sup>th</sup> Respondent.

Shanika Kariyawasam instructed by Ms. Gimhani Gamage for the 8<sup>th</sup> to 14<sup>th</sup> Respondents.

**Argued on:** 15.09.2025

**Delivered on:** 09.06.2026

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

## **Judgement**

### **Introduction**

The two Petitioners are the eldest and the second child of one Nekath Gedara Appuhamy, and the 7<sup>th</sup> to 14<sup>th</sup> Respondent are also the said Appuhamy's children and the siblings of the Petitioners.

The 1<sup>st</sup> Respondent is the Mahaweli Development Authority (hereinafter referred to as the "MDA"), the 2<sup>nd</sup> Respondent is its Director General, the 3<sup>rd</sup> Respondent is the Resident Project Manager of the MDA, the 4<sup>th</sup> Respondent is the Deputy Resident Project Manager (Land), and the 5<sup>th</sup> Respondent is the Block Manager while the 6<sup>th</sup> Respondent is the Unit Manager. The 7<sup>th</sup> Respondent was once a manger of the 1<sup>st</sup> Respondent and a child of the said Appuhamy.

The said Appuhamy had been initially issued with a permit in respect of certain parcel of paddy land which is morefully described in the schedule to the grant issued to him later to legalise his possession, marked as **P1A** annexed to the Petition. After he had been issued with the said grant, he had not nominated anybody to succeed to the rights, and he died in 2013. Thereafter, his wife survived him, and died in 2021.

After the death of the original grantee's wife, the 1<sup>st</sup> Petitioner, who is the eldest child, had made an application to the 6<sup>th</sup> Respondent to succeed to the rights of the original grantee. However, he initially refused to accept the same, and returned the same, asking him to submit it with certain other documents including the Grama Sevaka Certificate, which he had complied with.

Later, he was informed by the 6<sup>th</sup> Respondent that the 7<sup>th</sup> Respondent had been nominated as the successor, and therefore, his succession will be accepted; as such, he rejected the application of

the 1<sup>st</sup> Petitioner. Thereupon, there had been various appeals by the Petitioners and the other siblings who objected to such succession of the 7<sup>th</sup> Respondent, and however, on the advice of the Honourable Attorney General, the 5<sup>th</sup> Respondent has decided to accept the 7<sup>th</sup> Respondent to succeed to the rights of the original grantee. The said information had been notified to the 1<sup>st</sup> Petitioner, and the Petitioners thereupon has instituted the above-styled application before this Court, challenging the same which is marked as **X** annexed to the Petition.

After issuance of formal notice, the 1<sup>st</sup> to 6<sup>th</sup> Respondent and the 8<sup>th</sup> to 14<sup>th</sup> Respondents have filed their respective Objections, while the 7<sup>th</sup> Respondent has filed separate Objections.

This was argued before me on 28.04.2026; hence, this judgement.

### **Arguments**

The thrust of the main contention of Mr. Maharachchi is that there is a cancellation of the original nomination made by the permit holder, who had nominated the 7<sup>th</sup> Respondent by the document marked **P16**. Subsequently, after cancellation of the nomination by document **P18**, he has re-nominated the 12<sup>th</sup> Respondent as the new nominee.

Since the new nominee has declined to succeed, the 1<sup>st</sup> Petitioner, who is the eldest in the family, should succeed to the said rights of the original grantee. In addition to that, he argued that Justice Asoka Silva's judgment in the case of *Piyasena v. Wijesinghe & Others* [2002]<sup>1</sup> on succession applies; however, he further argued that Justice Sarath Silva's judgment in the case of *Mallehe*

---

<sup>1</sup> 2 Sri L.R. 242.

*Vidaneralalage Don Agosinno v. The Divisional Secretary of Polonnaruwa and Others*<sup>2</sup> will not apply.

On the other hand, Mr. Shehan Soysa, the learned State Counsel, argues that no registration is required for nomination, as mentioned by Justice Sasi Mahendran in the case of *Ihala Jawara Gedara Hema Malani v. The Divisional Secretary of Medirigiriya and Others* [2024]<sup>3</sup>.

He contended, therefore, the **P16** will prevail as **P18** is a disputed document, and there is no valid cancellation of the original nomination as well.

On the other hand, Mr. Illangatillake argued for the 7<sup>th</sup> Respondent that registration is not required as far as the original nomination is considered. However, he disputes the authenticity of **P18** when compared the two signatures on **P16** and **P18** of the nominator. In addition to that, he contends that he is not aware of the existence of the document marked as **P17**.

In reply, Mr. Mahawaniarachi argued that the only question to be decided is whether the cancellation should be registered or not. Hence, all parties concede that registration is not required when there is a nomination. In that case, the only question is whether cancellation also needs to be registered.

### **The Petitioners' position**

According to the Petitioners, the said copy of the grant given to the said Appuhamy is marked as **P1A** annexed to the Petition, and the same has been registered in the relevant folio of the Land Registry and registered in the Mahaweli Development Registry; the relevant documents are

---

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

<sup>3</sup> CA (WRT) 425/2022 (CA Minutes 25.09.2024).

marked and annexed to the Petition as **P1A** to **P1B**. In addition to that, it is their position that the same has been registered under the Title of Registration Act, which is depicted in the cadastral plan of the Surveyor General; in proof thereof, the Petitioners have marked **P2A** to **P2B** annexed to the Petition.

The said Appuhamy had several children, including the two Petitioners and the 7<sup>th</sup> to 14<sup>th</sup> Respondents; to establish that, the Petitioners have marked and annexed their birth certificates as **P3C(i)** to **P3C(x)**. The said Appuhamy died in 2013, and his death certificate is annexed to the Petition, marked as **P3A**. His wife also died in 2021, and in proof thereof, her death certificate is marked as **P3B** annexed to the Petition.

Thereafter, according to the Petitioners, the 1<sup>st</sup> Petitioner has made an application to the 6<sup>th</sup> Respondent to accept him, being the eldest male child, as the successor. The said application was returned by the 5<sup>th</sup> Respondent asking him to submit it with relevant documents including the Grama Sevaka Certificate, which he complied with.

Thereafter, the 1<sup>st</sup> Petitioner has been informed by the 5<sup>th</sup> Respondent that the 7<sup>th</sup> Respondent's name has been accepted to the rights of the original grantee, Appuhamy, and therefore, his application cannot be accepted.

The Petitioners' father, Appuhamy, had initially been issued with a permit, and under the said permit, he had nominated the 7<sup>th</sup> Respondent as his successor, which is registered as well and reflected by the document marked as **P16**. However, after the issuance of the grant in terms of Section 19(4) of the Land Development Ordinance, which is marked as **P1A** annexed to the Petition, there was no nomination.

Nevertheless, it is asserted in the Petition that the father of the Petitioners, namely the late Appuhamy, had cancelled the nomination made under the permit and, having cancelled the same, re-nominated the 12<sup>th</sup> Respondent as the successor. In support of that position, the Petitioners have annexed the documents marked as **P18** and **P18(i)** along with the Petition.

Thereupon, all the children including the 2<sup>nd</sup> Petitioner and the 8<sup>th</sup> to 14<sup>th</sup> Respondents have objected to the same. Thereafter, there had been certain inquiries and correspondence which the Petitioners have annexed to the Petition. However, after consulting the Honourable Attorney General, the Honourable Attorney General has given the opinion directing the 4<sup>th</sup> to 6<sup>th</sup> Respondent to accept the 7<sup>th</sup> Respondent as the successor and accordingly register him as the successor.

It is their position that the 7<sup>th</sup> Respondent cannot be treated as the successor in so far as he is not the eldest child in the family. Additionally, when Appuhamy was indisposed in 1995, the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners were involved in cultivation in the land in suit, particularly the 2<sup>nd</sup> Petitioner's name has been registered in the Govi Sangamaya and other relevant places to be the farmer who cultivated the said paddy field. In addition to that, the fertilizer subsidiary was issued in the 2<sup>nd</sup> Petitioner's name, and he has attended to all the relevant cultivation work, including the preparation of the field, sowing paddy seeds, fertilizing, manuring, treating the young paddy plants, reaping the harvest, and dealing with harvest, except for two seasons where only the 7<sup>th</sup> Respondent, by force, has cultivated the land; however, there had been complaints against each other on that. Except for those two seasons, even to date from 2000, the 2<sup>nd</sup> Petitioner has cultivated the land and therefore should be treated as the person who developed the paddy field.

As such, it is the position of the Petitioners that if the 1<sup>st</sup> Petitioner is not accepted, being the eldest child, then the 2<sup>nd</sup> Petitioner should be accepted as the person who developed the land as the successor, and not the 7<sup>th</sup> Respondent.

According to the Petitioners, the 7<sup>th</sup> Respondent, being a manager of the 1<sup>st</sup> Respondent Authority of a particular unit has used his influence and instigated all other relevant people, including the 2<sup>nd</sup> to 6<sup>th</sup> Respondent, to accept him as the successor, which he should not have done and has no right to do; to establish that, a document issued to that effect by the 1<sup>st</sup> Respondent Authority in 2022 stating that the 7<sup>th</sup> Respondent, having joined as an officer therein and on promotion, served from 2018 as a manager of a unit under the 1<sup>st</sup> Respondent, and after completing sixty years, had retired from the said unit, is marked and annexed to the Petition as **Y**.

Therefore, the Petitioners impugned the document marked as **X** has been influenced by the 7<sup>th</sup> Respondent over the other Respondents to take a decision in his favour to accept him as the successor who has no right. As such, the Petitioners challenge the same and seek *inter alia* the following relief;

*“b) Grant and issue an Order in the nature of writ of Certiorari quashing and/or setting aside the decision by the 3<sup>rd</sup> Respondent morefully set out in the letter dated 07.06.2022 marked ‘X’ hereto, to name the said Nekath Gedara Wijerathna Bandara, the 7<sup>th</sup> Respondent as the owner to the land in question morefully described in the Schedule hereunder;*

*c) Grant and issue an Order in the nature of writ of Mandamus directing the 1<sup>st</sup> to 6<sup>th</sup> Respondents above named, to name and/or appoint the 1<sup>st</sup> Petitioner and/or 2<sup>nd</sup> Petitioner as the owner and/or owners, and/or successor and/or successors to the land in question morefully described in the Schedule hereunder;”*

## **The Respondents' Objections**

The 1<sup>st</sup> to 6<sup>th</sup> Respondents have filed their Objections, and according to them, while denying the averments contained in the Petition, the 7<sup>th</sup> Respondent had been nominated as the successor while the original grantee held the land under a permit. Thereafter, it was their position that there was no other nomination or cancellation of nomination made under the permit; therefore, the 7<sup>th</sup> Respondent is entitled to succeed, and as such, they have sought the dismissal of this Application.

The 7<sup>th</sup> Respondent has also filed a separate set of Limited Objections, where he has admitted certain averments contained in the Petition. He, being a child of the late Appuhamy, admitted that he also cultivated the land along with the 2<sup>nd</sup> Petitioner.

However, **P18** and **P18(i)** are seriously challenged by the 7<sup>th</sup> Respondent; in particular, **P18** does not bear any signature. Further, **P18(i)** has been submitted by an attesting witness to **P18**; however, the said attesting witness has not stated anything with regard to the non-existence or execution of **P18**. In addition to that, neither **P18** nor **P18(i)** had been submitted to the relevant authorities communicating the cancellation of the original nomination and the fresh nomination of the 12<sup>th</sup> Respondent.

However, he denies the rest of the averments contained in the Petition, except for the fact that he worked as a manager of a unit of the 1<sup>st</sup> Respondent, and he retired with effect from 2018; thereafter, his daughter, initially having been trained as a data operator of the 1<sup>st</sup> Respondent, was later attached to the same as a permanent employee.

In addition to that, he has admitted that his daughter-in-law also worked under the 1<sup>st</sup> Respondent as an officer; in proof of that, he has annexed the documents marked as **7R4** and **7R5** to his Statement of Objections.

As such, he has sought the dismissal of this Application as well.

In addition to that, certain other Respondents, as siblings of the Petitioners, have filed their respective Objections, where some have moved for a dismissal of this Application while others have sought the relief be granted in favour of the Petitioners.

Among them, the 12<sup>th</sup> Respondent has also filed his respective Objections, and in his Statement of Objections, he has mentioned that he was nominated after the cancellation of the nomination of the 7<sup>th</sup> Respondent under the permit by the father, but he asserts that his nomination was never submitted for registration since he was under the impression that it might prejudice the rights of all other siblings, particularly the 2<sup>nd</sup> Petitioner who cultivated the land during their father's illness.

In this case, the two Petitioners as well as the 12<sup>th</sup> Respondent, in their Objections, state that the land in question was cultivated at different times by different siblings. In fact, this position was further confirmed by the document marked as **X**, according to which, after the death of the original grantee, the said Appuhamy, his widow, as the life interest holder and the mother of all the children, including the two Petitioners and the 7<sup>th</sup> to 14<sup>th</sup> Respondents, had permitted her children from time to time to cultivate the land depending on the season, namely 'Yala' and 'Maha'. Accordingly, the 7<sup>th</sup> Respondent had also cultivated the land for four seasons, and the other children had likewise cultivated it in the same manner, which is known as seasonal cultivation.

Accordingly, they all cultivated paddy, the subject matter being a paddy field. Therefore, nobody can claim any development or improvement by way of permanent vegetation on the property because paddy, being considered a seasonal crop, falls within the category of *fructus industriales*, as enunciated in several judgments. Therefore, on the basis of development or possession, nobody can claim entitlement to the land.

### **Non-communication of new nomination and cancellation is fatal**

Now I have to consider whether there was communication of the cancellation of the original nomination made by the grantee and whether such cancellation was communicated to the relevant authorities for registration. According to the Petitioners, although there was a cancellation, there was no communication of such cancellation, as reflected in **P16**. In addition to that, the new nomination had also not been communicated. In fact, the 12<sup>th</sup> Respondent has confirmed this position.

Therefore, such non-communication is a fatal defect because none of the 1<sup>st</sup> to 5<sup>th</sup> Respondents was aware of the alleged cancellation and fresh nomination for the purpose of considering and accepting the same for registration. Accordingly, the purported cancellation by the late Appuhamy through **P18** and the alleged fresh nomination of the 12<sup>th</sup> Respondent remain uncommunicated documents and, therefore, cannot form part of the official record. As such, they have no validity in law.

In those circumstances, the interpretation given by the Honourable Attorney General to the relevant provisions of the Land Development Ordinance (hereinafter referred to as the “LDO”) is consistent with the procedure laid down therein. Hence, to buttress my view, I rely on the judgement of Justice Sarath Silva in the case of *Mallehe Vidaneralalage Don Agosinno v. Divisional Secretary and Others* [2005]<sup>4</sup>.

The Honourable Attorney General has given an opinion on the issue of succession based on the registration of the original nomination made under the permit. The permit had been issued by the said late Appuhamy in terms of Section 19(2), and the same was duly registered. Thereafter, a

---

<sup>4</sup> SC Appeal No. 30/2004 (SC Minutes 23.03.2005).

grant was issued under Section 19(4) of the Land Development Ordinance. However, the said Appuhamy never made a nomination under the grant. Although the original nomination was purportedly cancelled, it has not been cancelled ostensibly or otherwise, nor was any new nomination made in its place; this position is clearly admitted by the 12<sup>th</sup> Respondent. Further, upon a clear perusal of documents marked as **P16**, **P17** and **P18**, it is evident that there is no cancellation of the former nomination nor any valid acceptance of a new nomination.

As correctly interpreted and applied thereunder the provisions of the LDO by the Honourable Attorney General to the facts of the instant case, where a nomination made under the original permit has not been cancelled or replaced by a valid subsequent nomination, such nomination should be treated as continuing in force. This position holds notwithstanding the allegations of undue influence sought to be attributed to the 7<sup>th</sup> Respondent or his family members.

In addition, document marked as **X** reveals that the original grantee's wife, after succeeding to the property upon the death of the original grantee in 2013, continued in possession until her death in 2021. During this period, she permitted different children to cultivate the paddy land depending on the season. Therefore, no single child can claim exclusive possession.

In that context, no development activity has been carried out, except for the cultivation of seasonal crops such as paddy. Paddy being a seasonal crop, is considered *fructus industrialis* and not *fructus naturalis*; vide, *Gunatilaka Appu v. Mudainse*.<sup>5</sup>

---

<sup>5</sup> [1880] 3 S.C.C. 80.

**Conclusion**

For the reasons adumbrated above, no writ lies. Accordingly, this Application is dismissed, without cost.

**JUDGE OF THE COURT OF APPEAL**