

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writ of Mandamus.

Court of Appeal Case No:
CA/WRIT/623/2023

1. Maththaka Gamage Shriyalatha,
Nakaththegama,
Pahalamaragahawewa.
2. A.M. Chamith Sithara,
Nakaththegama,
Pahalamaragahawewa.
3. A.M. Piyumi Ireshika Nishadini,
Nakaththegama,
Pahalamaragahawewa.

PETITIONERS

Vs.

1. Mr. R.R.A.S.K. Rathnayake,
Divisional Secretary,
Divisional Secretariat,
Nochchiyagama.
2. G.A. Kithsiri,
Provincial Land Commissioner,
North Central Province,
Office of the Provincial
Commissioner of Lands,
Anuradhapura.

3. Mr. K.D. Bandula Jayasinghe,
Land Commissioner General,
Land Commissioner General's
Department,
'Mihikatha Medura',
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
4. Mr. Harin Fernando,
Hon. Minister of Tourism and Lands,
'Mihikatha Medura',
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
5. K. Wallihamy,
Nakaththegama,
Pahalamaragahawewa.
6. Maththaka Gamage Ranjani
Priyanwada
Dunudambuwewa,
Nochchiyagama.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Migara Dos with Madara Gunawardana instructed by Anurangi Singh
for the Petitioners.
Dilantha Sampath, SC for the 1st to 4th Respondents

Argued on: 26.11.2026.

Written Submissions: For the Petitioners on 23.01.2026.
For the 1st to 4th Respondents on 09.12.2026.

Decided on: 27.03.2026.

Mayadunne Corea J

The Petitioner in this Application sought, *inter alia*, the following reliefs:

- “b) Grant and issue an order in the nature of a Writ of Certiorari quashing the decision of the 1st Respondent and one or more of the other Respondents in cancelling the nomination of the 1st Petitioner marked as P11A and P12*
- c) Grant and issue an order in the nature of a Writ of Certiorari quashing the decision of the 1st Respondent and one or more of the other Respondents in accepting the nomination of the 6th Respondent marked as P11B*
- d) Grant and issue an order in the nature of a Writ of Certiorari quashing the decisions of the 1st Respondent and one or more of the other Respondents to implement the nomination of the 6th Respondent whilst the 5th Respondent is amongst the living*
- e) Grant and issue an order in the nature of a Writ of Mandamus directing one or more of the 1st to 4th Respondents to conduct a fresh inquiry pertaining to the legality of the nomination of the 6th Respondent concerning the subject land*
- f) Grant and issue an order in the nature of a Writ of Mandamus directing one or more of the 1st to 4th Respondents to award a permit to the 1st Petitioner in respect of the subject land after the cessation of life interest of the 5th Respondent.”*

The facts of this application in brief are as follows. In or about 1988, the 1st Petitioner’s father, one M.G. Nandasena, came into possession of and cultivated the land described as lot no. 484 in the final village plan no. 696. Thereafter, in 1991, Nandasena was issued with a permit under the Land Development Ordinance, No. 19 of 1935 (hereinafter referred to as ‘LDO’) in respect of the said land. Upon receipt of this permit, it is alleged that Nandasena invited the 1st Petitioner, her husband (A.M. Karunasena) and her children (the 2nd and 3rd Respondents) to reside in the land.

Nandasena had nominated his wife, the 5th Respondent, as successor to the said land. Subsequently, it is further alleged that Nandasena cancelled the aforesaid nomination and nominated the 1st Petitioner as successor.

As at the time of making this application, the 1st Respondent had informed that the official docket relating to the land could not be found in the Divisional Secretariat Office, and the colonisation officer recommended that the 1st Respondent implement the nomination by opening a fresh docket. Further, the 1st Respondent took the position that the official copy of the permit was missing and entered the nomination of the 1st Petitioner on a copy of the permit issued to the 1st Petitioner's father (P12).

Subsequently, the 6th Respondent, a sister of the 1st Petitioner, claimed rights over the Eastern portion of the land on the basis that their father Nandasena had cancelled the 1st Petitioner's nomination and had affected a fresh nomination by naming both the 1st Petitioner and 6th Respondent as successors to equal shares. The 1st Respondent had approved this nomination (P11 and P11B). Hence, this Writ Application.

The Petitioners' contention

The Petitioners contend that the Respondents have acted arbitrarily, unreasonably and illegally, in breach of the principles of natural justice, and in violation of the provisions of the LDO especially when they cancelled the nomination of the 1st Petitioner and approved the fresh nomination including the 6th Respondent when the spouse of the original permit holder is still alive.

The Respondents' contention

The Respondents have raised the following objections:

- The Petitioners have no *locus standi*.
- The Petitioners are guilty of laches.
- The Petitioners have failed to explore the alternative remedies.
- The Petitioners have suppressed and misrepresented material facts.
- The Petitioners have failed to come before the Court with clean hands.

Analysis

I will consider the Petitioners' contentions along with the objections raised by the Respondents.

For a better understanding, let me first consider the sequence of events. It is common ground that Nandasena was the original permit holder who possessed the permit marked and tendered as P2 dated 10.01.1991. In the said permit, he had nominated his wife as successor.

Thereafter, Nandasena had made a request by letter dated 29.06.2017 (R1) to name the 1st Petitioner as the successor. Upon the said request being made, the Divisional Secretary made inquiries and, after obtaining the report from the Grama Sevaka, allowed the request and named the Petitioner as the successor. It is submitted that when the Divisional Secretary was taking steps to cancel the original nomination and nominate the 1st Petitioner, it had been found that the file copy of the original permit issued to Nandasena was not in the possession of the Divisional Secretary. Accordingly, the Divisional Secretary has obtained a copy of the said permit from Nandasena and substituted the said copy in the docket maintained by the Divisional Secretary. The 1st to 4th Respondents submitted the said copy, which effected the substitution, marked as R4 and R5.

Subsequently, in the same year, on 28.12.2017, i.e., just few months after the Petitioner was named as the nominated successor, Nandasena had made another request to change the said nomination and in the said letter it appears that the said Nandasena had made a request to include both of his daughters, namely the 1st Petitioner and the 6th Respondent as nominated successors.

The said request is marked and tendered as P14, and is signed with the name Nandasena. Although the Petitioners alleged that this letter is not a genuine letter, there is no material tendered to Court to establish the said allegation. The 1st Petitioner also in her Petition attempted to suggest that the said letter is not in compliance with section 56(1) of the LDO, and hence, the validation of the said nomination cannot be sustained. This argument militates against the Petitioner's own nomination as the 1st Petitioner herself has failed to tender to this Court any material to demonstrate that the nomination made in her favour is also in compliance with section 56(1) LDO.

Upon calling for a report from the Grama Sevaka, the same Grama Sevaka who gave the report recommending the Petitioner to be the nominated successor in the place of the Nandasena's wife had once again given a report recommending both the daughters to be named as successors.

I observe the Divisional Secretary's first letter recommending the 1st Petitioner to be nominated as a successor is dated 05.08.2017. However, 4 months later, the same Divisional Secretary, acting on Nandasena's request nominated both daughters by letter dated 28.12.20217 marked as R6. Thereafter, a report was called for by the colonisation officer in January 2018, whereby the colonisation officer on 02.01.2018 also recommended the request of Nandasena to nominate both daughters as successors. It appears that while these applications were pending, Nandasena had made an application (marked as R8) to obtain a copy of his land permit as it had been misplaced. The said letter is dated 10.01.2018. On 08.01.2018, Nandasena had lodged a police complaint too stating that the said permit was misplaced. On 10.01.2018 Nandasena had made a formal application to obtain a copy of the original permit. This application has been tendered along with an affidavit. Thereafter, the Divisional Secretary had approved the issuance of a copy of the permit to Nandasena and also on 06.02.2018 approved the Petitioner as well as the 6th Respondent as the nominated successors.

As per the amended permit, which is marked as R4, I observe that the names K.B. Wallihami and the 1st Petitioner's name both have been struck off and the 6th Respondent's name and the Petitioner's name have been inserted. In the said permit it can be observed that the 6th Respondent had been given half of the land from the Eastern portion and, half of the land from the Western portion had been given to the 1st Petitioner. As per the document marked as R5, both these amendments have been registered in the land ledger. Hence, it is observed that by 06.02.2018, the 1st Petitioner as well as 6th Respondent have been named as nominated successors to the land. This would be an appropriate time to examine the provisions of the LDO pertaining to the nomination of a successor and also about the cancellation of the said nomination.

Nomination of a successor

While section 51 of the LDO imposes a bar on the permit holder on nomination of successors, section 52 of the Ordinance contemplates the conditions applicable to nomination. While section 52(2) empowers the permit holder to nominate more than one person as a nominated successor provided, it doesn't contradict the conditions of a grant of a permit. Section 52(2) reads as follows:

“More persons than one may be nominated by the owner of a holding or a permit-holder as successors to the holding or land alienated on the permit provided that such nomination does not contravene the conditions of the grant or permit.”

In the latter nomination made by the permit holder, he nominated his two daughters and also requested that the land be divided between the Eastern and Western parts. Accordingly, he was legally entitled to nominate two people provided that there was no bar, and that it does not violate the conditions of the permit. No such violation has been brought to our notice. Section 53 of the LDO allows a permit holder to cancel any nomination and section 54 empowers the permit holder to renominate a person even if that person's nomination has been cancelled.

In this instance, this Court observes that by the document marked as R5 the nominations of the Petitioner and the 6th Respondent have been registered in the land ledger, and the said amended nomination of the 1st Petitioner and the 6th Respondent has also been endorsed in the copy of the permit R4. It is common ground that both the nominations have been made while the original permit holder was alive. Whether such nominations have been registered while the original permit holder was alive or not is not clear from the documents that were tendered to this Court. In the original permit where both the 1st Petitioner's and the 6th Respondent's names are inserted, the date appears to be 20th September. However, whether the year is 2017 or 2019 is not clear.

In the document marked as R5 too, the date where the amendment had been done, and the year of amendment is not clear. Hence, I will refrain from making any comment on the said ground. However, it is sufficient to observe that the request for nomination of the Petitioner and the 6th Respondent had been made by the original permit holder in 2017 within 4 months of him nominating the 1st Petitioner, and the Divisional Secretary has followed the same procedure of calling for observation of Grama Sevaka and colonisation officer and upon receipt of the same has registered the new nomination in the land ledger. These nominations were done while the spouse of the original permit holder was occupying another land.

Let me now consider the main ground urged at the argument by the 1st Petitioner. The 1st Petitioner's main ground as averred in paragraph 35 of the Petition reads as follows;

*“...the Petitioners state that the decision and/or directions and/or actions and/or inactions of the 1st Respondent and one or more of the other Respondents to cancel nomination of the 1st Petitioner marked as **P11a** and **P12** and to approve the purported nomination in favour of the 6th Respondent marked as **P11b** and to implement the nominations while the spouse of the original permit holder is in the living is unfair, illegal and ultra vires of the imperative provisions of the Land Development Ordinance...”*

Upon examination, I observe that P11A is an entry stating that the copy of the permit required to affect the nomination was not available in the docket, and therefore a copy of the permit obtained from the original permit holder has been approved under paragraph 5. On the same entries in page 4 of the docket there is an entry to the effect that the permit holder had sought to nominate both the children. On examining the provisions pertaining to the cancellation of nominations, in my view, the 1st Petitioner has failed to impugn the nomination of the 1st Petitioner and the 6th Respondent by establishing any illegality in the said nomination. Thus, the contention that this nomination is bad in law, cannot be sustained. It appears as per P14 that, the original permit holder has requested to vary the nominations by cancelling the sole nomination of the 1st Petitioner and nominating both the 1st Petitioner and the 6th Respondent. Hence, the request for cancellation and nomination has been made in the same letter. As per P11, a copy of the docket, the nomination and cancellation had been approved before the death of the original permit holder (P11B).

It is further observed that if the registration of the second nomination of the 1st Petitioner is bad in law, the same applies to the first nomination done four months prior when the 1st Petitioner was nominated. Hence, if I am to accept the 1st Petitioner's contention, both nominations have to be bad in law. Thus, in my view the 1st Petitioner has failed to establish how the second nomination becomes bad in law when it was done in the same manner as the first nomination.

The 1st Petitioner submits that implementation of nomination while the spouse of the original permit holder is alive, is illegal and *ultra vires*. This Court observes that while the 6th Respondent had made a request to succeed following the death of the permit holder, the 1st Petitioner has failed to tender to Court the so-called invitation made by the original permit holder for the 1st Petitioner to come and reside on the land while the original permit holder was alive. In the absence of such, the 1st Petitioner herself had come into occupation when the spouse of the original permit holder was alive.

The Petitioners have submitted documents P1(b) and P1(c), two birth certificates of 2nd and 3rd Petitioners; and documents P5, P6(i), P6(ii), P6(iii), P6(iv), P6(v), P6(vi), P7 and P8 to demonstrate that the Petitioners are in possession of land depicted in the permit. However, the said permit marked P2 which was issued in 1991 does not contain an assessment number, while the documents tendered with the above markings identify the land with assessment number. In the absence of any material to show that the land referred to in the permit bears the same assessment number, I am of the view that the 1st Petitioner has failed to produce any document establishing a connection between the document referred to above and the land depicted in the permit. In absence of such document, whether the said marked documents refer to the land depicted in the permit is not established.

Be that as it may, I also observe that, if the Petitioners' contention is that the 6th Respondent succeeded to the land during the lifetime of the spouse of original permit holder, then in the absence of tendering any material which demonstrates that original permit holder had invited the Petitioners to the land and that the Petitioner was in possession of the land has to militate against the said contention as once the original permit holder expires, it is the spouse who has to succeed to possession.

However, the spouse of the original permit holder had tendered a letter to the Divisional Secretary whereby she has said she is residing at a separate land and has no intention to succeed to the land and has no objection that the land be divided between two daughters. In the circumstances, the 1st Petitioner's contention cannot succeed.

Dispute between the Petitioner and 6th Respondent pertaining to possession of land

It is common ground that original permit holder Nandasena had died after the impugned nomination, namely, the nomination of the two daughters. The document marked as P13, demonstrates that Nandasena had died on 23.02.2018. It is also observed that the 6th Respondent is the older daughter while the 1st Petitioner is the younger daughter of the deceased Nandasena. However, it appears that subsequently, a dispute had arisen between the Petitioner and the 6th Respondent which culminated in an inquiry by the Divisional Secretary. On 11.10.2021, the 1st Petitioner has written to the Divisional Secretary whereby she had conceded that the 6th Respondent had also been nominated to 1 acre of land from the Western boundary of her house. The said paragraph of the said letter reads as follows;

“මා පදිංචි නිවසට අදාළ ඉඩමේ නැගෙනහිර මායිම් දෙස අක්කරයක් මගේ සහෝදරිය වන එම්. ජී. රංජනී ප්‍රියංවදා වන අයටද බටහිර මායිමේ අක්කරයක් මා හටද පසු උරුමය කර ඇත.”

She has further submitted that although she is not objecting to the 6th Respondent being given 1 acre by the father, she is not satisfied as to how the land is to be demarcated. She has pleaded with the Divisional Secretary to demarcate the land in such a way which should satisfy her as well as the 6th Respondent.

“ඔබ තුමා ඉඩම් බලධාරිය ලෙසද, අහිංසක මිනිසුන්ගේ යුක්තියේ ප්‍රතිරූපය බැවින් මා දැවෙන මේ ගැටලුවට සාදාරනයක් ඉටුවන අයුරින් ඉඩම වෙන්කර බලපත්‍ර වෙන්කොට සහෝදරියගේ අපේක්ෂාවද ඉටු කර දෙන මෙන් බුදුන් වදින දෑත් එක්කොට වැද අයද කරුනාවෙන් ඉල්ලා සිටිමි.”

The said letter is marked as R13. Subsequently on 16.10.2021, the Divisional Secretary had called for a report from the Grama Niladhari of the division and the said report is marked as R15. In the said report, the Grama Niladhari has also reiterated that the 1st Petitioner does not object to the allocation of 1 acre of land to the 6th Respondent. However, she is not satisfied with the method of demarcation and has recommended that the land be divided in a manner that would satisfy both parties.

Thereafter by R16, the Divisional Secretary has called for an inquiry. The spouse of permit holder, the 1st Petitioner and the 6th Respondent had participated in the said inquiry. Subsequent to the inquiry, there is a note which states that the parties had come to an amicable settlement and the inquiry proceedings had concluded whereby all three participants; the spouse, the 1st Petitioner and the 6th Respondent signed. Thereby, by R18 the Petitioner and the 6th Respondent jointly had sought permission to survey the land to affect the said partition. This request had been recommended by the Grama Niladhari and by document marked as R19, the Divisional Secretary has approved the said survey. The learned State Counsel contended that the dispute between the parties had accordingly been settled, the land surveyed and demarcated. Further, the learned State Counsel submitted that a survey had been conducted, the boundaries were demarcated and a permanent fence erected in the said land which is demonstrated by the document marked and tendered as R20. Keeping it as it may, I will now consider the objections of the Respondents. The Respondents strenuously contended that the Petitioners, in invoking the jurisdiction of this Court, have failed to come with clean hands.

Suppression and misrepresentation of material facts

The learned State Counsel submitted that the Petitioners have failed to disclose and have suppressed that on the 1st Petitioner's request an inquiry was conducted and at the said inquiry she had consented for the demarcation of the land. Further, she has failed to disclose the existence of the documents marked as R13, R16, R17, R18. This Court observes that the said documents reflect the complaint and concerns of the 1st Petitioner, who by way of a complaint made to the Divisional Secretary on 11.10.2021, specifically stated that she does not object to the nomination of the 6th Respondent or to the granting of 1 acre of land in accordance with the original permit holder's nomination. I observe the letter had been signed by the 1st Petitioner herself. Further, the 1st Petitioner had participated at the inquiry and had signed agreeing to the settlement suggested whereby both the Petitioner and the 6th Respondent had made a joint application requesting to survey and demarcate the land. None of this has been disclosed by the Petitioner.

Upon inquiry, the learned Counsel for the 1st Petitioner submitted that the 1st Petitioner had agreed to the said terms due to a threat from the 1st Respondent. However, the 1st Petitioner has failed to establish the said threat by any independent evidence. Further, I observe if there was a threat then the 1st Petitioner would not have stated that she is objecting only to the manner in which demarcation is done. The learned State Counsel vehemently denied this suggestion of the threat and submitted that there was no requirement for the 1st Respondent to side with either party as he had only discharged his duties as the Divisional Secretary. In my view, if the 1st Petitioner was subjected to a threat to come to a settlement, the Petitioner always had an opportunity to complain of the threat to the police or the higher authorities. The settlement was entered in 2021. The 1st Petitioner had filed this action in 2023 which is nearly after 2 years. Even during the two years the 1st Petitioner had never lodged a complaint with the police or with the higher authorities. In the absence of any independent material to establish a threat, I am not inclined to accept the 1st Petitioner's version of events and in any event in view of the learned State Counsel's submission denying such a threat, it becomes a material fact in dispute.

I further observe that the 1st Petitioner herself has written a letter dated 11.10.2021. The inquiry had taken place on 25.10.2021 which is ten days subsequent to the 1st Petitioner making a request to have an inquiry pertaining to the demarcation of the land but has specifically stated that she has no objection for the nomination of the 6th Respondent and the 6th Respondent getting half of the land. The 1st Petitioner didn't impugn these documents. Hence, in my view, it was a duty of the Petitioners to disclose the existence of the documents which the Petitioners have failed to do and I hold that this is a suppression of material facts which creates a reasonable doubt on the *uberrima fides* of the 1st Petitioner. It is a trite law that if a party failed to invoke the Writ jurisdiction of this Court with **clean hands**, the said party disentitles himself from the reliefs sought. In coming to this conclusion, I have considered the following judgements.

As enumerated in the case of *W. S. Alponso Appuhami v. Hettiarachchi* 77 NLR Pathirana J stated;

“The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington - Ex-parte Princess Edmond de Poignac – (1917) Kings Bench Division 486. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts

material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination”.

In **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors AIR 2004 SC 2421**
Ruma Pal J. held;

“As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken.”

The importance of coming to Court with clean hands was also stressed in the case of **Orient Peal Hotels v. Cey Nor Foundation Limited & others CA Writ 266/2018 decided on 02.08.2021** where it was held;

“It is settled law that a party seeking prerogative reliefs should come to court with clean hands. The expression is derived from one of equity’s maxims – He who comes to Equity must come with clean hands”

In my view, whether or not the Petitioner was threatened, she had not invoked the jurisdiction of this Court with clean hands and this Court has constantly held that all material necessary for the proper adjudication of a matter must be fully disclosed by the party seeking the reliefs. In this instance, the 1st Petitioner’s lack of objection, to the nomination together with her request to hold an inquiry into the demarcation and her subsequent request for a survey, ought to have been disclosed. The 1st Petitioner, for the reasons best known to her, has failed to disclose the existence of the said documents until the Respondents tendered them with objections. In my view, this alone disentitles the Petitioners from obtaining any reliefs. Hence, the objections on suppression of material facts, the lack of *uberrima fides* and failure to invoke the jurisdiction of this Court with clean hands must succeed.

The attention of this Court was drawn to the document marked and tendered as P16. This Court observes the said document is a plaint filed by the 1st Petitioner against the 6th Respondent in the District Court of Anuradhapura. It was brought to the attention of the Court that in paragraph 8 of the said plaint, the 1st Petitioner has taken a stance contrary to the documents marked as R13 to R18. In the said plaint, the 1st Petitioner has alleged that the 6th Respondent had forcibly entered into the land possessed by the 1st Petitioner and in the said paragraph the 1st Petitioner had also alleged that the Divisional Secretary has failed to conduct an inquiry pertaining to the 1st Petitioner's complaint about the unlawful encroachment by the 6th Respondent. It was brought to the attention of this Court the Divisional Secretary has failed to conduct an inquiry pertaining to the Petitioner's complaint about the unlawful encroachment of the 6th Respondent. In the said District Court case, the 1st Petitioner had never disclosed the nomination of the 6th Respondent and has never disclosed the inquiry conducted by the Divisional Secretary upon her own complaint. On the contrary, she alleged that the Divisional Secretary had failed to conduct an inquiry regarding the 1st Petitioner's complaint about the unlawful encroachment of the 6th Respondent. She has never disclosed that parties had agreed to carry out a mutual survey. As submitted, this clearly demonstrates the lack of *uberrima fides* of the 1st Petitioner. As correctly submitted by the Counsel for the 6th Respondent, this clearly demonstrates the conduct of the 1st Petitioner and the intention of her to suppress and misrepresent material facts. The learned Counsel for the Petitioner not only failed to address the Court on this issue, but also failed to inform the Court of the proceedings of the District Court case.

After the conclusion of arguments, both parties sought to file synopsis of their submissions. However, this Court finds that the 1st Petitioner has filed a written submission whereby the 1st Petitioner has brought up several new grounds that had never been argued before this Court thus, depriving the Respondents of the opportunity to answer the same. In my view, this conduct cannot be condoned. Hence, it is our considered view that new grounds alleged without permission of Court and without giving opportunity for Respondents to answer specially after the conclusion of arguments, should not be considered. It is trite law that each party coming before Court must know the case against him. A Petitioner should not conduct themselves in such a way to deprive Respondents to answer by bringing in completely new material which they had the opportunity to bring up while presenting their case or even at the hearing stage. In any event, having already held that the Petitioners are in breach of *uberrima fides* and has failed to invoke the Writ jurisdiction of this Court with clean hands, thereby disentitling them from the reliefs sought, I do not wish to consider the said grounds.

Delay

It appears that the nomination of the 6th Respondent has been made in the year 2017 (P14). The Petitioner's father, the original permit holder died in 2018. The dispute pertaining to the demarcation of the land had arisen in the year 2021. The decision to demarcate has been made in the year 2021, and the Petitioner has filed this application only in October, 2023 which is nearly 6 years after the nomination and 2 years after the parties at the inquiry had agreed to the demarcation. The 1st Petitioner has failed to explain this delay.

In *Dissanayake v. Fernando* (1986) 71 NLR 356 His Lordship Weeramantry J., enunciated that “*where there has been a delay in seeking relief by way of certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court*”. Further in *Gunasekera v. Weerakoon* 73 NLR 262 His Lordship Sirimane J., held that “*the application should be refused because the Petitioner was guilty of undue delay in making the application. In the said matter, a delay of 7 months was considered to be ‘too long’*”. A similar line of thinking was adopted in the *Abdul Rahuman v. Mayor of Colombo* 69 NLR 453, and *Wijegoonawardena v. Kularatne* 51 NLR 453.

In my view, delay defeats a Petitioner's request for the reliefs sought. Accordingly, I uphold the objection of the learned State Counsel pertaining to delay. I will now consider the prayers of the Petitioners.

The prayers of the Petitioners

By prayer (b), the Petitioners are seeking a Writ of Certiorari to quash the decision of the 1st Respondent in cancelling the nomination of the 1st Petitioner marked as P11A and P12. The entry marked as P11A pertains to the displacement of the original permit and reconstructing a permit by using the original permit holder's copy. Hence, the Petitioners' prayer pertaining to P11A is misconceived. I have considered the document P12. In P12, the spouse's name as the nominator has been cancelled and the 1st the Petitioner's name had been inserted. However, the Petitioners have failed to establish the illegality of the two entries. Therefore, prayer (b) has to fail.

By prayer (c), the Petitioners have also sought to quash the entry marked P11B. The entry in P11B states that the material has been tendered in requesting to nominate both

the daughters as permit holders and is dated 06.02.2018. The Petitioners have failed to establish any illegality of the said entry in requesting to quash the same by way of a Writ of Certiorari. I also observe the said entry is dated 06.02.2018 and the Petitioners are seeking to quash this entry by a petition that has been filed on 18.10.2023 which is after the lapse of 5 years. As stated above, the Petitioners have failed to explain the delay and hence, this prayer has to fail.

By prayer (d), the Petitioners are seeking a Writ of Certiorari to quash the decision of the 1st Respondent and one or more of the other Respondents to implement the nomination of the 6th Respondent while the spouse of the permit holder is among the living. Upon a plain reading, it is clear that the Petitioners are not sure as to who has made the said decision. In any event, the Petitioners have failed to tender to this Court the decision to implement the nomination of the 6th Respondent. Hence, the decision sought to be quashed is not before Court. In any event, I also observe even as at 2021, at the inquiry held before the Divisional Secretary, the spouse of the original permit holder had clearly stated that she doesn't wish to succeed to the land and has requested to divide it among the 1st Petitioner and the 6th Respondent and hence, this prayer is misconceived in law and has to fail.

The Petitioners by prayer (e) are seeking a Writ of Mandamus to direct the 1st to 4th Respondents to conduct a fresh inquiry pertaining to the legality of the nomination of the 6th Respondent. As I have stated above, the nomination has been made in 2017 while the original permit holder was alive. The Petitioners by this prayer are seeking to hold a fresh inquiry to consider the legality of the nomination subsequent to the death of the original permit holder and after the lapse of nearly 5 years. Hence, for the reasons I have stated above and also due to the delay, this prayer has to fail.

By prayer (f), the Petitioners are seeking a Writ of Mandamus directing the 1st to 4th Respondents to award the permit to the 1st Petitioner in respect of the subject land after the ceasing of life interest of the 5th Respondent. This prayer has to fail as the 5th Respondent herself has said that she has no intention to succeed in the capacity of the spouse of the deceased permit holder and also in view of the fact that the Petitioners have failed to impugn the legality of the nomination of the 6th Respondent by the original permit holder.

Conclusion

I have considered the submissions made and the material submitted to this Court. In my view, the 1st Petitioner by her own conduct had disentitled herself from obtaining the reliefs prayed for. Accordingly, for the above-stated reasons I refuse to grant the reliefs sought and proceed to dismiss this Writ application without costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal