

**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.*

Haththara Gedara Nishad Dananjaya
Sandakelum,
Track 12/9,
Kalinga Ela, Polonnaruwa.

CA (Writ) App. No. 522/2025

PETITIONER

Vs.

1. H.G. Upali Seneviratne Bandara,
No. 12/9, Damana Gemunupura,
Kalinga Ela, Polonnaruwa.
2. W.D.M. Indika Karunaratne,
Divisional Secretariat
Thamankaduwa,
Divisional Secretariat,
New Town, Polonnaruwa.
3. Mr. Chandana Ranaweera
Arachchi,
Commissioner General of Land,
Commissioner of Land
Department,
No. 7, Gregory Road,

Colombo 07.

4. Mr. L.D. Lal Kantha,
Minister of Agriculture, Livestock,
Land and Irrigation,
Ministry of Agriculture, Livestock,
Land and Irrigation,
Mihikatha Medura,
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
5. Mr. D. P. Wickremasinghe,
Secretary,
Ministry of Agriculture, Livestock,
Land and Irrigation,
Mihikatha Medura,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
6. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp, Colombo 12.

RESPONDENTS

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

Counsel:

Lakshan Dias with Rifana Nijam instructed by Dayani Panditharathne for the Petitioner.

Chamara Nanayakkarawasam with Apoorva Nanayakkara for the 1st Respondent.

Amasara Gajadeera, S.C. for all the Respondents except 1st Respondent.

Supported on: 16.01.2026

Order delivered on: 24.03.2026

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

Order

Introduction

The Petitioner is the grandson of the original grantee, H.G. Mudiyanse, of the two parcels of land, which had been granted to the original grantee in terms of Section 19(4) of the Land Development Ordinance (hereinafter referred to as ‘the Ordinance’) by the Head of State, and the said grantee, Mudiyanse, had nominated his eldest son as the successor.

However, after original grantee’s death, his wife succeeded to the rights of the original grantee. In the meantime, the nominee Jayasuriya Banda died prior to the death of his mother. The original grantee’s wife (the mother) died in 2022. The Petitioner sought to succeed to rights of Jayasuriya Banda being his eldest son. In those circumstances, when the Petitioner claimed to succeed to the rights of the original grantee, the officials refused to accept him as the successor, which is reflected in the document marked **P13(a)** annexed to the Petition. He challenges the same in this Application.

This was supported on 16.01.2026 and the following arguments were advanced by the respective counsel.

Arguments

Mr. Lakshan Dias argues that **P13(a)** is erroneous when compared with **P16(a)**, since the Land Commissioner has accepted the Petitioner, by **P16(a)**, as the real successor to the original grantee’s rights as the grandson of the original grantee, whose son, Jayasuriya Banda, had first succeeded to the original grantee’s rights. Consequently, on the death of the said Jayasuriya Banda, the Petitioner should succeed; therefore, **P16(a)** should prevail over **P13(a)**.

On the other hand, Ms. Gajadeera argued that Jayasuriya Banda could not have succeeded though he was nominated as the successor when his mother, the spouse of the original grantee Mudiyanse, survived until her death in 2022. In the meantime, Jayasuriya Banda had pre-deceased Dingiri Manike, the spouse of the original grantee; therefore, he had not succeeded to the rights of the original grantee, Mudiyanse. Therefore, the Petitioner could not have succeeded to the rights of the original grantee, Mudiyanse, or the rights of Jayasuriya Banda.

She further argued that then the rights should devolve in terms of Section 73 read with the Third Schedule of the Land Development Ordinance; therefore, according to the seniority in age of the siblings of Jayasuriya and according to the prevailing law, only the male children of Appuhamy can succeed. However, in reply, Mr. Dias argued that the nominated successor was Jayasuriya, and therefore, after Appuhamy's death, Jayasuriya's succession should have been accepted and should have taken place, despite the spouse of the original grantee continuing to live.

Death of original grantee

One H.G. Mudiyanse had been issued with two grants bearing numbers 3477 and 10471 in respect of two parcels of land; and the said H.G. Mudiyanse had nominated his eldest son, H.G. Jausuriya Banda, as his successor, as evidenced by **P2(a)** and **P2(b)**. This nomination is also reflected in the document marked as **P8**. The said Mudiyanse had since died; as his wife, Dingiri Manike, survived him, she became entitled to the life interest in the two properties in suit.

However, the original grantee's spouse, Dingiri Manike, also passed away on 11.03.2022; prior to her death, their son, Jayasuriya Banda, who had been nominated as Mudiyanse's successor at the age of just 14, had also died on 17.08.1998 as per **P14(b)**.

‘P16(a)’ was erroneous

However, Mudiyanse’s grandson, who is the Petitioner, made an application to succeed to the rights of his father on the assumption that he should, in turn, succeed to the rights of his grandfather, Mudiyanse, the grantee.

The document marked as **P16(a)** is dated 17.09.2009 and authored by the Divisional Secretary of Thamankaduwa addressed to the Land Registrar of Polonnaruwa; according to that, Jayasuriya Banda had already died and since Dingiri Manike, who is the spouse of the original grantee, Mudiyanse, had refused to succeed, Jayasuriya Banda’s son, who is the Petitioner to this Application, should succeed as the eldest male child of Jayasuriya Banda (the nominee to succeed).

Thereafter, several inquiries were held, and nevertheless, there is no evidence to establish that Jayasuriya Banda ever succeeded to the rights of the original grantee, who was his father, who had died on 23.12.1996 as reflected in **P14(b)** which is a letter dated 06.07.2006. In addition to that, it is also mentioned therein that Jayasuriya Banda had died in 17.08.1998. In between there is no evidence to say that Jayasuriya Banda, as the eldest child of the original grantee and nominated as the successor, had ever succeeded to the said rights. In that scenario, Section 68 will come into operate, which reads thus;

“68.(1) The spouse of a deceased 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 the spouse of an owner, fails to succeed to the land held by such permit-holder on the permit or to the holding of such owner, as the case may be-

(a) if such spouse refuses to succeed to that land or holding, or

(b) if such spouse does not enter into possession of that land or holding within a period of six months reckoned from the date of the death of such permit-holder or owner.

(2) A nominated successor fails to succeed to the land held on a permit by a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner if he refuses to succeed to that land or holding, or, if the nominated successor does not enter into possession of that land or holding within a period of six months reckoned-

(i) where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the death of such permit-holder or owner; or

(ii) where such permit-holder or owner dies leaving behind his or her spouse, from the date of the failure of such spouse to succeed, such date being reckoned according to the provisions of paragraph (b) of subsection (1), or of the death of such spouse, as the case may be.” [Emphasis is mine]

Therefore, the decision reflected in **P16(a)** was erroneously taken.

Correct legal position is reflected in ‘P13(a)’

In this case, as the Petitioner’s own document **P14(a)** indicates that the original grantee’s spouse refuses to succeed, but she appears to have resided in the land where the ancestral house is situated, which is indicated in **P14(b)**, despite her refusal to succeed. Additionally, within a short period before the original grantee’s death, Jayasuriya Banda has also never succeeded on the death of his father. Therefore, Section 72 comes into play, which reads thus;

*“72. If no successor has been nominated, or **if the nominated successor fails to succeed,** or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit- holder or owner died leaving behind his or her spouse, **upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.**”* [Emphasis is mine]

Accordingly, only then the 1st Respondent is eligible to succeed. As such, the decision of the Commissioner of Lands to accept the 1st Respondent as the successor to the rights of the original grantee is justified. Therefore, **P13(a)** is justified.

Further, I wish to state that the line of succession, as promulgated in the Land Development Act prior to the amendment in 2022, was based on the premise that male children would assist the father or mother, mainly the father, in developing the land in suit. Therefore, according to the lines of succession, males are entitled to succeed in order of seniority.

Conclusion

In those circumstances, there is no *prima facie* case made out by the Petitioner to issue notice. Accordingly, I refuse the issuance of formal notice and dismiss this Application *in limine* without cost.

JUDGE OF THE COURT OF APPEAL