



ඉඩම් කොමසාරිස් ජනරාල් දෙපාර්තමේන්තුව

காணி ஆணையாளர் நாயகத்தின் திணைக்களம்
LAND COMMISSIONER GENERAL'S DEPARTMENT

නො: 07, හෙක්ටර් කොබ්බෑකඩුව මාවත, කොළඹ 07.
இல: 07, ஹெக்டர் கொப்பெகடுவ மாவத்தை, கொழும்பு 07.
No: 07, Hector Kobbekaduwa Mawatha, Colombo 07.

දුරකථන
දුරකථන
Fax } 2584051

ඊමේල්
E-mail } landcom@landcomdept.lk

මගේ අංකය
MY NO } 4/ප/කල්ල/VI

ඔබේ අංකය
YOUR NO } ඉකො/10/ක/අයි/පොදු/ 2010


දිනය
DATE } 2010.08.24

පළාත් ඉඩම් කොමසාරිස්,
දකුණු පළාත් ඉඩම් කොමසාරිස් දෙපාර්තමේන්තුව,
රුල්ඩිව වවුම,
කාල්ල.

දඬුවම්පත්‍රයක අයිතිය සඳහා කිරීම් සඳහා උපදෙස් ඇතිව.

උක්ත කරුණ සම්බන්ධයෙන් මා අමතන ලද වැඩේ සමාංක හා 2010.07.22 දිනැති ලිපිය සම්බන්ධයෙන්

02. දීමනාපත්‍රයක් හිඟුත් කර පසුදරුම්කරුවෙකු නම් කර නොමැති වුවද බලපත්‍ර අවස්ථාවකදී පසුදරුම්කරු අයිතිවාසිකම් හිමිවන බව ශ්‍රේණිගතකරණයේ අංක: SC/30/2004 දරණ පිස්සුව මහින් තීරණය කර ඇති බැවින්, ඒ අනුව කටයුතු කරන ලෙස මෙයින් කාරුණිකව දන්වා සිටී.


හි. හි. ඩී. ජයසිංහ
හිතපත් ඉඩම් කොමසාරිස්/වැ.බ. (රත්විම)
ඉඩම් කොමසාරිස් ජනරාල් වෙනුවට.

Before : Sriskandarajah, J.

Counsel : Saliya Peiris for the Petitioner.

L.M.K.Arulanandan DSG for 1st, 2nd, 3rd, 4th and 6th Respondents.

Argued &

Decided on : 03.10.2006

Sriskandarajah, J.

The petitioner in this application has sought a writ of certiorari to quash the decision made by the 3rd respondent not to register the petitioner as grantee to the land in question described in the extract marked as P2 the said land in question called "Veralugabawatte" in extent of 1 Rood and 13 Perches depicted in Plan No.1252 prepared by S.Gopalkrishna, Surveyor of the Surveyor General Department of Sri Lanka on 18.9.1970 situated in the Gampaha District of Western Province was originally given on lease on a permit under the Land Development Ordinance to the father of the petitioner, E.A.E.Benedict, the said Benedict nominated as his successor the 5th respondent, his younger son. It is borne out by SR3. Subsequently in 1983, the said property was conveyed to the said Benedict under a grant by His Excellency the President under the "Swarnabhoomi Scheme". The petitioner contended that at the time of the death of his father, the said Benedict has not nominated a successor to the land which was granted to him by his Excellency the President. Therefore the petitioner contended that the succession to the said land which was granted to his father the said Benedict under the "Swarnabhoomi Scheme" has to devolve under section 72 of the Land Development Ordinance.

The learned Deputy Solicitor General who is appearing for 1st, 2nd, 3rd, 4th and 6th Respondents citing the judgment of the Supreme Court in S.C. Application No.30/2004, S.C. Minutes 23.03.2003, submitted that, the Chief Justice held that there is no provision in the Land Development Ordinance which has the effect of annulling the nomination that has been made by a holder of any lot. On an examination of the scheme of the section 19A referred to in 17 itself, it is clear that the permit holder's right fructifies to a grant upon the satisfaction of certain conditions. The conversation of the character of the holding cannot have the effect of annulling the nomination that has been validly made. He further observes that it is clear from the provisions of the law that the change in the nature of the holding from that of a permit to a grant is one process and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made. Learned D.S.G. further submitted that in view of this submission that the petitioner cannot have maintained this application.

Considering the facts and circumstances of this case and the above judgment it is clear that the petitioner's father has nominated the 5th respondent as his successor to the original permit and therefore that nomination stands even after the petitioner's father was granted with the said Swarnabhoomi Grant.

Therefore the petitioner is not entitled to the relief prayed for this application and the Court dismisses this application with its costs.

JUDGE OF THE COURT OF APPEAL

THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.

In the matter of an appeal

S.C. Appeal No. 30/2004

C.A. No. 1039/2000

Mallehe Vidanaralalage Don Agosinno,
No. 122, R.B.I.Ela,
Palugasdamana,
Polonnaruwa.

Petitioner-Respondent

Vs

1. Divisional Secretary,
Thamankaduwa,
Polonnaruwa.
2. Land Commissioner,
Provincial Land Commissioner's
Department,
North-Central Province,
Anuradhapura.
3. Deputy Land Commissioner,
New Town,
Anuradhapura.
4. Hon Attorney-General,
Attorney-General's Department,
Colombo 12.
5. Mallehe Widanaralalage Don
Dayaratne, No 1/122,
R.B.I.Ela, Palugasdamana,
Polonnaruwa.

5th respondent-petitioner.

And between

Application 23.3.2005

S.N.Silva, C.J

This is an appeal from the judgment dated 01.8.2003 of the Court of Appeal. By that judgment the Court of Appeal issued a writ of Certiorari to quash the document P7 dated 27.01.1995 whereby the 1st respondent made order that the petitioner and the 5th respondent would succeed in equal shares to the holding of their deceased father. The decision P7 has been made on the basis of the nomination made by the deceased in document 1R1, being the relevant land ledger in which the entries have been made.

The father of the petitioner and the 5th respondent, was initially the permit holder of the land in question. He has made a nomination by 1R1 in favour of the petitioner and the 5th respondent, on 9.7.1980. He has not amended or varied this nomination during his life time.

The petitioner-respondent being the eldest son, filed an application for a Writ of Certiorari challenging the decision P7 on the basis that subsequent to the nomination, a grant had been issued in favour of his father 1R2 dated 28.5.1986 and that the original nomination does not continue in force. The Court of Appeal has upheld this submission and

held that in the absence of a nomination under the grant, the petitioner-respondent being the eldest son should succeed to the

For this purpose, the Court of Appeal relied on section 37 of the Ordinance which states that the conditions included in any grant shall, as from the date of such grant, run with the land and shall bind the original and all owners thereof. This Section, in our view, cannot apply in relation to a nomination that has been made by the holder indicating his wish as to the persons who should succeed him in respect of his interest. The fact that his interest is converted from that of a permit to a grant cannot make a variation in the wish that has been already indicated by him to the relevant authority. There is no provision in the Land Development Ordinance which has the effect of annulling the nomination that has been made by a holder of any lot. On an examination of the scheme of the sections, in particular, section 19(4) referred to in P7 itself, it is clear that the permit holder, as a right, transmits to a grant upon the satisfaction of certain conditions. The conversion of the character of the holding can not have the effect of annulling the nomination that has been validly made

In these circumstances, we are of the view that the 1st respondent has made the order P7 on a proper application of the relevant provisions and

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Importantly, by giving effect to the wish of the deceased allottee. Our attention has also been drawn to a judgment of the Court of Appeal in Piyasena Vs Wijesinghe and others, 2002-2 -SLR page 242 where the Court of Appeal has taken the same view on the basis that there is a lacuna in the law and that the intention of the allottee should be given effect to. It is clear from the provisions of the law that the change in the nature of the holding from that of a permit to a grant is one process and it should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made. Accordingly, we allow the appeal and set aside the judgment of the Court of Appeal, which quashed the decision contained in document P7. The application for writs of Certiorari and mandamus are dismissed. No costs.

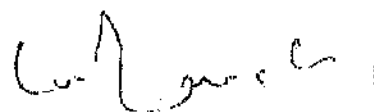
CHIEF JUSTICE

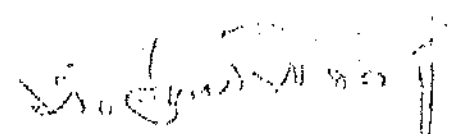
Jayasinghe, J

I agree.

Amarasinghe, J

I agree.


JUDGE OF THE SUPREME COURT


JUDGE OF THE SUPREME COURT