

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

In the matter of an Appeal made in terms of the Section 5C (1) of the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006, against the Judgment dated 13/12/2011 of the High Court (Civil Appeal) of the North Central Province held at Anuradhapura.

Pihille Gedara Heen Banda,
13/4, Kalinga Ela,
Polonnaruwa.

Plaintiff

SC Appeal No: 119/2012
SC/HCCA/LA No: 43/2012
Civil Appellate High Court of
Anuradhapura Case No.
NCPP/HCCA/ARP/794/2010
District Court of Polonnaruwa
Case No. **12494/L/08**

Vs.

Pihille Gedara Punchi Rala,
13/90, Kalinga Ela,
Polonnaruwa.

Defendant

AND BETWEEN

Pihille Gedara Heen Banda,
13/4, Kalinga Ela,
Polonnaruwa.

Plaintiff-Appellant

Vs.

Pihille Gedara Punchi Rala,
13/90, Kalinga Ela,
Polonnaruwa.

Defendant-Respondent

AND BETWEEN

Pihille Gedara Heen Banda,
13/4, Kalinga Ela,
Polonnaruwa.

Plaintiff-Appellant-Appellant

Pihille Gedara Punchi Rala,
13/90, Kalinga Ela,
Polonnaruwa.

**Defendant-Respondent-
Respondent**

AND NOW BETWEEN

1A. Thusitha Chandana Kumara,
1B. Chaminda Jayalath Kumara,
Both of,
13/4, Kalinga Ela,
Polonnaruwa.

**Substituted Plaintiff-Appellant-
Appellant-Petitioners**

Vs.

Pihille Gedara Punchi Rala, (deceased)
13/90, Kalinga Ela,
Polonnaruwa.

1A. Arugoda Pandakkara Gedara Biso Manike,
1B. Nimal Tilakaratne Bandara,
1C. Nandanie Renuka,
1D. Sankya Kumari
All of,
13/90, Kalinga Ela,
Polonnaruwa.

**Substituted Defendant-Respondent-
Respondent-Respondents**

Before: **Justice S. Thurairaja, PC**

 Justice A.L. Shiran Gooneratne

 Justice Mahinda Samayawardhena

Counsel: R. Chula Bandara with Bhagya Gunawardena for the **Appellants.**
L.M.C.D. Bandara for the **Substituted Respondent-Respondent-Respondents.**

Argued on: 05/06/2024

Decided on: 04/09/2024

A.L. Shiran Gooneratne J.

By Plaintiff dated 12/06/2008, the Plaintiff-Appellant-Appellant (hereinafter sometimes referred to as the “Plaintiff-Appellant”) filed action bearing No. 12494/L/08 in the District Court of Polonnaruwa against the Defendant-Respondent-Respondent (“the Defendant-Respondent”), and sought, *inter alia*, a declaration that the Plaintiff-Appellant is the legal owner of the land described in the second schedule to the Plaintiff, pleaded as part of the land morefully described in the first schedule and to eject the Defendant-Respondent from the said land described in the said second schedule to the Plaintiff.

Pihille Gedara Ukku Banda, was issued a State Grant No. po/pr/6681, dated 03/05/1983 under the Land Development Ordinance (L.D.O), in respect of Lot 71 depicted in Plan No. 57 made by the Survey General, situated at 73 B Grama Niladhari Division of Kalinga Ela in the Thamankaduwa Divisional Secretary Division in the Polonnaruwa District. The Plaintiff-Appellant is the younger son of the said Pihille Gedara Ukku Banda, and the Defendant, is the elder son.

Consequent to the death of the said Ukku Banda on 14/01/1987, by letter No. e/6/282/34 dated 13/06/1990, the Government Agent Polonnaruwa transferred the said land to the

Plaintiff, as he was the nominee under the said grant issued to his father Ukku Banda, which was duly registered in the Land Registry of Polonnaruwa.

The Plaintiff contends that the land described in the second schedule which is a part of the first schedule was encroached by the Defendant and is presently in possession illegally and without the authority of the Plaintiff.

In the Answer filed dated 05/12/2008, the Defendant-Respondent admitted that the said original holder of State Grant No. po/pr/668/1, dated 03/05/1983 was Pihille Gedara Ukku Banda. The Defendant-Respondent contends that he was in possession of the land described in the second schedule to the Plaintiff from the time his father was the permit holder of the entire land. He also stated that the Plaintiff-Appellant has not derived legal title to the said land in terms of the L.D.O.

The relief prayed for in the answer by the Defendant was confined to a dismissal of the action and that in the event a judgment is delivered in favour of the Plaintiff, to declare that he is entitled for compensation and his right to possess and enjoy the portion of land until such time compensation payable is fully satisfied.

At the conclusion of the trial, the learned District Judge by Judgment dated 11/05/2010, dismissed the case of the Plaintiff.

Being aggrieved by the said Judgment, the Plaintiff-Appellant by Petition of Appeal dated 28/06/2010, appealed to the Civil Appeal High Court of the North Western Province exercising civil appellate jurisdiction holden in Anuradhapura (“the Civil Appeal High Court”). The Civil Appeal High Court, after hearing, and considering the submissions tendered by both parties, by Judgment dated 13/12/2011, affirmed the said Judgment of the District Court dated 11/05/2010 and dismissed the Appeal.

The Plaintiff-Appellant, by Amended Petition dated 26/06/2012 is before this Court, to set aside the said Judgment dated 13/12/2011, delivered by the Civil Appeal High Court.

By Order dated 06/07/2012, this Court granted leave to appeal on the questions of law set out in paragraph 19 (i) to (vi) of the said Petition. However, when this matter was taken up for argument on 05/06/2024, with the concurrence of the respective counsel, the following questions of law set out in paragraph 19, (v) and (vi), were agreed upon to be answered by this Court;

19 (v) Did their Lordships in the Civil Appeal High Court of Anuradhapura and the learned District Judge of Polonnaruwa err in law by relying upon the provisions of Section 19(4) of the Land Development Ordinance (now repealed) with regard to succession, in spite of the judgment by their Lordships of the Court of Appeal in *Piyasena vs. Wijesinghe*¹ and *M.W.D. Dayaratne vs. M.W.D. Agosinno*,² decided on 23/03/2005, wherein it was concluded that the change in the nature of the holding from that of a permit to a grant is one process and should not be taken as two distinct processes for the purpose of annulling a nomination that has been previously made.

19 (vi) Did their Lordships in Civil Appeal High Court of Anuradhapura and the learned District Judge of Polonnaruwa err in law by applying the provisions of Section 72 of the Land Development Ordinance notwithstanding the fact that the Petitioner had been nominated under the permit issued to the said Ukku Banda and that nomination continues under the grant as the grantee was issued the grant after his demise.

It is common ground that the said grant dated 03/05/1983 was issued to Ukku Banda. The Plaintiff-Appellant was the nominee of Ukku Banda. In terms of Section 26 of the State Lands Ordinance, the said land was registered in the Land Registry of Polonnaruwa on 30/01/1987, which is a mandatory requirement.

¹ 2002 (2) SLR 242.

² SC Appeal No. 30/2004.

The Plaintiff-Appellant contends that the District Court and the Civil Appeal High Court erred in law by applying Section 19(4) of the Land Development Ordinance which is now repealed, and relied upon the ratio decidendi of *Piyasena vs. Wijesinghe*³ and *M.W.D. Dayaratne vs. M.W.D. Agosinno*,⁴ in annulling a nomination that has been previously made.

In *Piyasena vs. Wijesinghe*,⁵ the Court of Appeal considered the question of whether the nomination of a successor under a permit was converted to a nomination made by the grantee as the owner of the land. The Court also considered whether the issuance of a grant changes the status of a permit holder to that of an ‘owner’ who derives title to the land in question and whether the failure to nominate a successor under the grant amounts to a non-nomination and invites the application of the provisions of Section 72, notwithstanding the prior nomination made by the grantee under the permit.

The application of Section 19(4) of the Land Development Ordinance was considered in the context of a permit holder ‘paying all sums and complying with all conditions’ which entitled the permit holder to a grant to be issued in respect of the land.

*M.W.D. Dayaratne vs. M.W.D. Agosinno*⁶ was also decided on similar facts and circumstances.

In *Piyasena vs. Wijesinghe*,⁷ the Court held that, “*the satisfaction of ‘paying all sums and complying with all conditions’ entitles the permit holder to a grant which ‘shall’ be issued in respect of the said land in terms of Section 19(4) of the same Act.*” This pronouncement was made by the Court taking into consideration the provisions in Section 19(4) of the said Act, that at the time of the death of the initial grantee, she was

³ *Piyasena* (n 1).

⁴ *Dayaratne* (n 2).

⁵ *Piyasena* (n 1).

⁶ *Dayaratne* (n 2).

⁷ *Piyasena* (n 1).

entitled to be considered as the ‘owner’ by virtue of the fact that she had been awarded a grant.

In *M.W.D. Dayaratne vs. M.W.D. Agosinno*,⁸ S.N. Silva C.J. has stressed the importance of giving effect to the wish of the original allottee who was already indicated by the grantee to the relevant authority. In the said case this Court prevailed upon the fact 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’.

Therefore, the circumstances in deciding *Piyasena vs. Wijesinghe*⁹ and *M.W.D. Dayaratne vs. M.W.D. Agosinno*,¹⁰ are completely distinguishable to that of the case at hand, for the reasons that;

The ownership of the original land grantee is not in issue in this case. Therefore, there is no application of Section 19(4) to the facts and circumstances of this case.

Although the Plaintiff-Appellant contends that Section 19(4) of the L.D.O. was repealed, it is not so. Section 19(4) remains part of the statute.

Secondly, prior to the death of Ukku Banda, a valid nomination was made to the Plaintiff-Appellant, who was therefore entitled to be nominated as successor.

Thirdly, both cases dealt with a situation of a change in the nature of the holding from that of a permit to a grant.

The Plaintiff-Appellant relied on *M.W.D. Dayaratne vs. M.W.D. Agosinno*,¹¹ to advance his position that, notwithstanding the application of Section 72 of the L.D.O, the Plaintiff-Appellant was nominated under the permit issued to the original permit holder, and such nomination which continues under the grant, is valid in law. In their

⁸ *Dayaratne* (n 2).

⁹ *Piyasena* (n 1).

¹⁰ *Dayaratne* (n 2).

¹¹ *ibid.*

final determinations, the District Court, or the Civil Appeal High Court, did not disturb or interfere with that position taken by the Plaintiff-Appellant.

As pointed out by the Defendant-Respondent, in the District Court Action, no commission was taken out by the Plaintiff-Appellant to demarcate the boundaries of the subject matter nor were steps taken to demonstrate the metes and bounds of the land.

Accordingly, with reference to the main relief prayed for by the Plaintiff-Appellant, which was a declaration that the Plaintiff-Appellant is the legal owner of the land described in the second schedule to the Plaint pleaded as part of the land morefully described in the first schedule to the Plaint and to eject the Defendant-Respondent from the said land described in the said second schedule to the Plaint, the District Court came to a clear finding that the Plaintiff-Appellant has failed to prove that the land described in the second schedule to the Plaint is part of the land described in the first schedule, with which this Court agrees. The Civil Appeal High Court was also of the view that the Judgment of the District Court was entered according to law.

It is also observed that in the District Court, the Defendant-Respondent challenged the Plaintiff-Appellant's right to the land, and asserted that the Plaintiff-Appellant must prove his title to the land described in the second schedule to the Plaint in terms of the L.D.O. In pursuit of the above contention, issues number 7 and 8 raised by the Defendant-Respondent challenging the Plaintiff-Appellant, in proof of title to the said portion of land, was held 'not proved.' Accordingly, both lower courts having dismissed the action of the Plaintiff-Appellant, did not in any manner interfere with the Plaintiff-Appellant's rights as a successor under the grant, nor did they annul any previous nominations or deny the Plaintiff-Appellant's ability to continue under the grant.

As discussed earlier in this Judgment, the Defendant-Respondent's relief was only limited to damages in the event that the Judgement was against him.

In light of the above, it is observed that the questions of law for which leave was granted by this Court by Order dated 06/07/2012, and the two questions of law agreed upon by

the Counsel for the Plaintiff-Appellant on the date of the hearing, do not correlate with the main relief prayed, i.e., a declaration that the land described in the second schedule is part of the first schedule and has been encroached upon by the Defendant-Respondent, who is presently in possession illegally and without the authority of the Plaintiff-Appellant.

In the circumstance, this Court is of the view that, in deciding on this Appeal, the two questions on which leave to appeal to this Court was granted and which have been quoted earlier in this Judgement need not be considered and I answer both questions accordingly.

For these reasons, this Appeal is dismissed. No order for Costs.

Judge of the Supreme Court

S. Thurai Raja, PC, J

I agree

Judge of the Supreme Court

Mahinda Samayawardhena, J

I agree

Judge of the Supreme Court