

**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 and  
Mandamus under Article 140 of the  
Constitution

1. Lanka Geeganage Nandawathie
2. Lanka Geeganage Nimal

Both of 1 Canal  
Pannagamuwa, Weerawila.

**PETITIONERS**

**CA (Writ) Application No. 291/2017**

Vs.

- 1) D.L. Kalinga Priyawansa,  
Divisional Secretary,  
Tissamaharama.
- 2) M.G. Dayananda,  
1 Ela Mahindapura,  
Pannegamuwa, Weerawila.
- 3) The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Harsha Soza, P.C, with Srihan Samaranayake for the  
Petitioners

Ms. Kanishka De Silva Balapatabendi, Senior State  
Counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents

Jagath Wickramanayake, P.C, for the 2<sup>nd</sup> Respondent

**Written Submissions:** Tendered on behalf of the Petitioners on 7<sup>th</sup>  
December 2018 and 15<sup>th</sup> February 2019

Tendered on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents on  
29<sup>th</sup> January 2019

Tendered on behalf of the 2<sup>nd</sup> Respondent on 29<sup>th</sup>  
January 2019

**Decided on:** 28<sup>th</sup> June 2019

**Arjuna Obeyesekere, J**

When this matter was taken up on 8<sup>th</sup> May 2019, the learned Counsel for all parties moved that judgment be delivered by this Court, on the written submissions that have already been tendered by the parties.

The issue that arises for determination in this application is whether the 1<sup>st</sup> Petitioner is entitled to succeed to a land in respect of which a permit had been issued under the provisions of the Land Development Ordinance to a person by the name of Lanka Geeganage Charlis.

The facts of this matter very briefly are as follows.

It is admitted between the parties that the State had issued permit No. 6088 to Lanka Geeganage Charlis. Although a copy of the permit has not been tendered by the Petitioners, a copy of the Land ledger pertaining to the said permit has been annexed to the petition marked 'X1'. This Court has examined 'X1' and observes that the total extent given by the said permit is 5A 2R 20P, comprising of a low land identified as Lot No. 476 in Final Village Plan No. 1 in extent of 4A 2R 30P, a high land identified as Lot No. 465 in the same plan in extent of 3R 30P and the adjoining high land identified as Lot No. 466 in extent of 1A 1R 31P.

The Petitioners state that Charlis had married Heenhamy and that they had three children from the said marriage. According to the Petitioners, two of the said children have passed away while the surviving son, Mendias has not been named as a party to this application. The Petitioners states that Charlis had a mistress, Nonahamy from whom Charlis had 9 children. The 1<sup>st</sup> Petitioner is a daughter of Charlis and Nonahamy. The Petitioners states further that in 1971, Charlis had contracted another marriage to Cecilia while Heenhamy was alive.

By an affidavit dated 4<sup>th</sup> August 1971, produced by the 1<sup>st</sup> Respondent marked '1R1', Charlis had affirmed to the following:

“රත්නගමුවේ පනපදයෙන් අයි.එස්.පී.පී. 1 ලොට් 476 දරණ ඉ. ලේ. 6088 දරණ බල පත්‍රය පිට මට ලැබී ඇති අක්කර 7 රූ. 0 ප. 11 පමණක් ගොඩ සහ මඩ ඉඩම්වල පසු අයිතියට මා විසින් කිසිවෙකු පත් කර නැත. එම නිසා ඉහත සඳහන් කරන ලද ඉඩමේ පසු

අයිතිසට මගේ භාර්යාව වන ගොයි ගොඩ ගමගේ සිසිලියානා නැමැති අය පත් තර දෙන ලෙස මෙයින් ඉල්ලමි.”

It is not clear whether the aforesaid affidavit relates only to the paddy land in extent of 4A 2R 30P, in view of the reference only to Lot No. 476 or whether it extends to the high land as well. This Court must also observe that 'X1' contains an endorsement to the effect that Lot No. 466 had been transferred to Nonahamy. However, it appears that all steps taken thereafter that has now given rise to this application relates to the paddy land only.

Charlis had passed away on 1<sup>st</sup> February 1972. It appears from 'X1' that the name of Charlis had been struck off from the land ledger and the name of Cecilia has been substituted as the permit holder on 4<sup>th</sup> May 1972. Although it is not in dispute that Cecilia had been issued a permit, neither party has produced a copy of a permit said to have been issued to Cecilia. There is a further endorsement on 'X1' made in 2012 stating that, “ඉ. සං. ආ. පනතේ 106, 109 නියෝග යටතේ LOT 476 යටතේ වූ අක්කර 04 යි රැඩ් 02 යි පර්: 30 ක් වූ ඉඩම අවලංගු කරන ලදී (කුඹුර)”. It appears from this entry that the permit given to Cecilia had been cancelled during her lifetime, a position which has been disputed by the 2<sup>nd</sup> Respondent.

The Petitioners state that Heenahmy had filed Case No. 309/D against Cecilia in the District Court of Hambantota and that the learned District Judge, by his judgment delivered on 19<sup>th</sup> July 1973, annexed to the petition marked 'X8' had declared that Heenahmy is the lawful wife of Charlis and had further declared as null and void, the marriage between Charlis and Cecilia.

The said judgment had been affirmed by the Supreme Court by its judgment dated 1<sup>st</sup> July 1975, annexed to the petition marked 'X8a'.

In April 1990, Lanka Geeganage David, a son of Charlis and Heenhamy had filed Case No. L/1119 in the District Court of Hambantota against Cecilia and the Divisional Secretary of Hambantota, seeking *inter alia* to cancel the permit issued to Cecilia in respect of Lot No. 476 and Lot No. 465, and a declaration that the said land should devolve on him under and in terms of the Land Development Ordinance. This Court has examined the amended plaint which has been annexed to the petition marked 'X9a' and observes that the cause of action pleaded therein is that Cecilia was given the permit by virtue of her marriage to Charlis and as the said marriage has now been declared null and void, that David is entitled to succeed to the said land by virtue of being the eldest son of Charlis. After a full trial, the learned District Judge, Tissamaharama had dismissed the said action by his judgment dated 29<sup>th</sup> March 2001, annexed to the petition marked as 'X9c'. It is not in dispute that an appeal has not been lodged against the said judgment.

It appears that commencing from April 2011, the 1<sup>st</sup> Petitioner has been agitating that a permit be issued to her in respect of the said land by virtue of her being a daughter of Charlis. As observed earlier, there is an endorsement in 'X1' that the permit given to Cecilia had been cancelled in 2012. Cecilia had passed away in 2017.

While the request of the 1<sup>st</sup> Petitioner that she be recognized as the successor was under consideration, the 1<sup>st</sup> Respondent, by his letter dated 31<sup>st</sup> August

2016 annexed to the petition marked 'X21', had informed the Officer – in – Charge of the Tissamaharama Police as follows:

“02. LL 6088 යන බලපත්‍ර අංකය යටතේ මේ වන විට මෙම ඉඩම සම්බන්ධ ආරවුල විසඳීමට අදාළ කටයුතු සිදුකරමින් පවතී.

03. දැනට මෙම කුඹුරු ඉඩම එම්.පී. දයානන්ද යන අය විසින් වගා කටයුතු සිදු කරන බවට අදාළ ගොවි සංවිධානය සහ කෘෂිකර්ම පර්යේෂණ හා නිෂ්පාදන සහකාර විසින් සනාථ කර ඇති බැවින් ද ගොවිපන සේවා කාරක සභාව ගො.සේ/2 (අ) කුචිතාන්සියට අනුව මොහු විසින් මෙම කුඹුරු ඉඩමට ආදාළ අක්කර බදු ගෙවා ඇති බව සනාථ වන බැවින් ද, ඉහත නම් සඳහන් කළ එම්.පී. දයානන්ද යන අයට මෙම ඉඩමේ වගා කටයුතු කිරීම සඳහා පවතින බාධාවන් ඉවත් කරදෙන ලෙස කාරුණිකව දන්වමි.”

Being dissatisfied with the said communication, the Petitioners have filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the aforementioned decision of the 1<sup>st</sup> Respondent contained in 'X21';
- b) A Writ of Mandamus to compel the 1<sup>st</sup> Respondent to issue a permit in respect of the land that had been previously given by a permit to Lanka Geeganage Charlis.

'X21' recognises that M.P.Dayananda is in occupation of the paddy land and that steps are underway to resolve the 'dispute' in relation to permit No. 6088 issued to Charlis. It appears to this Court that the purpose of the final paragraph in 'X21' is to maintain the status quo, until a final decision is arrived at with regard to the dispute that has arisen with regard to the land that is the

subject matter of Permit No. 6088. It is an interim measure which recognises the fact that the land is presently being cultivated by the 2<sup>nd</sup> Respondent, who is a son of Cecilia. This Court does not see any illegality in this decision, especially since the Petitioners have not been in occupation of the said land and no evidence has been provided to this Court that she cultivated the said land and/or that she has been dispossessed by the 2<sup>nd</sup> Respondent. In these circumstances, this Court does not see any legal basis to issue the Writ of Certiorari prayed for.

The Petitioners have complained to this Court that the 1<sup>st</sup> Respondent has failed to conduct an inquiry to determine who should succeed to the said land. As observed earlier, the first paragraph of 'X21' makes it clear that 'X21' has been issued as an interim measure. The 1<sup>st</sup> Respondent must conduct an inquiry in order to determine who is entitled to be issued a permit in respect of the land referred to in Permit No. 6088. It appears to this Court that the prayer for the aforementioned Writ of Mandamus has been sought probably due to the failure on the part of the 1<sup>st</sup> Respondent to conduct a proper inquiry.

The application of the Petitioners for a Writ of Mandamus that a permit be issued to her is on the basis that she is a daughter of Charlis. However, the Respondents have set out in their Statement of Objections the reasons why the Petitioners are not entitled to a permit. It is the view of this Court that the person who is entitled to be issued a permit in respect of the land referred to in Permit No. 6088 is a matter that should be considered and determined by the 1<sup>st</sup> Respondent, after affording a hearing to all parties including the 1<sup>st</sup> Petitioner, the 2<sup>nd</sup> Respondent and Mendias, who is the surviving son from the marriage between Charlis and Heenhamy. Hence, while this Court does not see

any legal basis to issue the Writ of Mandamus prayed for, this Court directs the 1<sup>st</sup> Respondent to conduct an inquiry and resolve the dispute with regard to succession to the land referred to in Permit No. 6088, within four months from the date of this judgment.

Subject to the above, this application is dismissed, without costs.

**Judge of the Court of Appeal**