
NISHANTHA PERERA**Vs.****COMMISSIONER GENERAL OF LANDS AND OTHERS**

COURT OF APPEAL
SAMAYAWARDHENA, J.
CA/WRIT/99/2016

Land Development Ordinance, No. 19 of 1935, sections 19(4), 19(6), 48A, 84, 85— Death of the permit holder—Nominated successor—Entitlement of the spouse to succeed to the land and succeeding to the land—Disentitlement of the spouse to nominate a successor—Grant

The petitioner's and the 3rd respondent's father was issued a permit under the Land Development Ordinance, No. 19 of 1935, as amended. The father nominated his eldest son, the 3rd respondent, as the successor. After the death of the father, the mother was issued two grants in terms of section 19(4) read with section 19(6) of the Land Development Ordinance. The mother nominated the petitioner as the successor. Upon the death of the mother, the 1st and 2nd respondents, the Commissioner General of Lands and the Divisional Secretary, decided that the 3rd respondent is the lawful successor to the land.

The petitioner sought (a) to quash by way of a writ of certiorari the above decision and (b) to compel the 1st and 2nd respondents by way of a writ of mandamus to appoint the petitioner as the successor to the grants.

Held:

1. In terms of section 48A(1) of the Land Development Ordinance, upon the death of the permit-holder (the father), the spouse of that permit-holder (the mother) becomes entitled to succeed to the land.
2. Entitlement to succeed to the land and succeeding to the land are two different things.
3. There is no evidence that upon the death of the father, the mother did not succeed to the land in terms of section 84. If the mother did not succeed to the land, the grant could not have been issued to the mother under section 19(4).
4. The issuance of the grant to the mother is not repugnant to the law as provided for by section 48A(2).

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5. In terms of sections 48A(2) and 48A(3), the mother cannot nominate a successor to the land. Upon the death of the mother, the person who was nominated as the successor (the 3rd respondent) by the deceased permit-holder (the father) shall succeed to the land.
 6. In view of section 48A(2)(c), the nominated successor in the permit (the 3rd respondent) could not have succeeded to the land until the death of the grantee (the mother).
 7. The 3rd respondent is entitled to succeed to the land.

APPLICATION for Writs of Certiorari and Mandamus.

Upul Kumarapperuma with Oshini Ruberu for the Petitioner.

Maithree Amarasinghe, S. C., for the 1st and 2nd Respondents.

Jagath Wickremanayake with Migara Doss for the 3rd Respondent.

cur. adv. vult.

May 2, 2019

SAMAYAWARDHENA, J.

The petitioner filed this application against the Commissioner General of Lands, the Divisional Secretary, and his elder brother as the 1st- 3rd respondents respectively, seeking to quash by way of writ of certiorari the decisions P11 and P12 of the 1st and 2nd respondents nominating the 3rd respondent as successor to the Grants P4 and P5; and to compel the 1st and 2nd respondents by way of writ of mandamus to appoint the petitioner as the grantee in succession as per P8 and P9.

The facts that led to the filing of this application are as follows: The petitioner's and the 3rd respondent's father was issued the Permit P2 under the Land Development Ordinance, No. 19 of 1935, as amended. The father nominated his eldest son, the 3rd respondent, as the successor. After the death of the father, the mother was issued with two Grants P4 and P5 in respect of the same land in terms of section 19(4) read with section 19(6) of the Land Development Ordinance. The mother by P8 and P9 nominated the petitioner as the successor. Upon the death of the mother, the eldest son who was nominated by the father in the Permit as the successor informed the 1st and 2nd respondents that he is the lawful successor to the land. This was upheld by the 1st and 2nd respondents. It is this decision of the 1st and 2nd respondents that is being canvassed in this writ application.

The learned counsel for the petitioner concedes that upon the death of a permit-holder, the spouse of that permit-holder becomes entitled to succeed to the land.

Section 48A(1) of the Land Development Ordinance reads as follows:

Upon the death of a permit-holder who at the time of his or her death was required to pay any annual instalments by virtue of the provisions of subsection (2) of section 19, notwithstanding default in the payment of such instalments, the spouse of that permit-holder, whether he or she has or has not been nominated as successor by that permit-holder, shall be entitled to succeed to the land alienated to that permit-holder on the permit and the terms and conditions of that permit shall be applicable to that spouse.

The pivotal argument of the learned counsel for the petitioner is that after the death of the father, the mother who is entitled in law to succeed and the 3rd respondent being the nominated successor of the Permit, failed to take steps to succeed to the land under section 84, and therefore the land in question is deemed to have been surrendered to the State under section 85, and it is on this basis that fresh Grants P4 and P5, which should be considered a fresh transaction between the State and the mother, were issued in the name of the mother, who nominated the petitioner as the successor. Hence the learned counsel submits that the petitioner is the lawful successor.

I regret my inability to agree with that submission. Grants P4 and P5 did not constitute a fresh transaction between the State and the mother. It is the continuation of the same old transaction with the father as the permit-holder.

I accept that entitlement to succeed to the land and succeeding to the land are two different things. (*Vide inter alia* sections 48, 68, 72, 73, 84, 85.) However, the petitioner cannot state that the mother who was entitled to succeed, did not succeed to the land upon the death of her husband. There is no evidence to that effect. If the mother did not succeed to the land, as I will explain later, the Grant could not have been issued under section 19(4) of the Land Development Ordinance.

On the other hand, as I will explain later, in terms of section 48A(2)(c), the nominated successor in the Permit could not have succeeded to the land until the death of the Grantee (the mother).

Then section 48A(2) reads as follows:

If, during the lifetime of the spouse of a deceased permit-holder who has succeeded under subsection (1) to the land alienated on the permit, the terms and conditions of the permit are complied with by such spouse, such spouse shall be entitled to a grant of that land subject to the following conditions: -

a) such spouse shall have no power to dispose of the land alienated by the grant;

b) such spouse shall have no power to nominate a successor to that land;

c) upon the death of such spouse. or upon his or her marriage, the person. who was nominated as successor by the deceased permit-holder or who would have been entitled to succeed as his successor, shall succeed to that land:

Provided that the aforesaid conditions shall not apply to a grant of any land to be made to a spouse who has been nominated by the deceased permit-holder to succeed to the land alienated on the permit.

It is common ground that the deceased permit-holder, the father, did not nominate the mother as the successor. If the spouse was so nominated as the successor, the position is different.

Then section 48A(3) reads as follows:

Any disposition or nomination made by a spouse in contravention of the provisions of subsection (2) shall be invalid.

There is no administrative fault in issuing Grants in the name of the mother as stated by the 1st respondent in P11. Those Grants have been issued, as stated on the Grants themselves. in terms of section 19(4) read with 19(6) of the Land Development Ordinance. This has also to be read and understood with section 48A(2) of the Land Development Ordinance which I quoted above.

Section 19(4) reads as follows:

A permit-holder shall be issued a grant in respect of the land of which he is in occupation

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- a) where he has paid all sums which he is required to pay under subsection (2);
- b) where he has complied with all the other conditions specified in the Schedule to the permit; and
- c) where he has been in occupation of, and fully developed, to the satisfaction of the Government Agent
- i. irrigated land, for a period of three years, or
- ii. high land, for a period of one year:

Provided, however, that the Land Commissioner may issue a grant before the expiry of the aforesaid period where the permit-holder satisfies him that the failure to issue such grant before the expiry of such period would adversely affect the development of such land.

Section 19(6) reads as follows:

Every grant issued under subsection (4) shall contain the conditions that the owner of the holding shall not

- a) *dispose of a divided portion, or an undivided share of the holding which is less in extent than the unit of the sub-division or the minimum fraction specified in the grant; and*
- b) *dispose of such holding except with the prior approval of the Government Agent.*

For the aforesaid reasons, the 3rd respondent shall succeed to the land. The application of the petitioner is dismissed without costs.

Application dismissed.

Judgment by: Mahinda Samayawardhena, J.

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