

PIYASENA
v.
WIJESINGHE & OTHERS

COURT OF APPEAL

J. A. N. DE SILVA, J. (P/CA)

CA NO. 247/99

DECEMBER 07, 1999 AND

MAY 04, 2000

Land Development Ordinance sec. 2, 9, 49, 51, 52, 53, 54, 72 – Nomination of a successor – State Lands Ordinance s. 19 (4), 26 – Registration of grant mandatory.

The petitioner is the eldest son of late B in whose name a permit was issued. B duly nominated the 4th respondent as the successor. Later B was issued two grants in respect of the same lands. The grants were registered at the Land Registry, on 8/9 July, 1996, but never reached B as she died on 17. 11. 1995.

The petitioner contends that, as there was no valid nomination of a successor by B, that he is entitled to be nominated as successor.

Is the failure on the part of B to nominate a successor under the grant amount to a non-nomination and invite the application of s. 72 notwithstanding the prior nomination made by her under the permit?

Held:

- (1) Issuance of a grant changes the status of a permit holder to that of a 'owner' who derives title to the land in question.
- (2) The owner – includes the permit holder who has paid all sums which he is required to pay. The satisfaction of paying all sums and complying with all conditions entitles that permit holder to a grant which 'shall' be issued in terms of s. 19 (4).
- (3) The nomination of a successor under the permit becomes converted to nomination made by her as the owner of the land. At the time of her death B was entitled to be considered as owner by virtue of the fact that she had been awarded a grant.

APPLICATION for a Writ of *Certiorari*.

Chula Bandara with Ms. Rashini Mendis for petitioner

Adrian Perera, SSC for 1 - 3rd respondents.

Gayan Perera with Ms. Prabha Perera for 4th respondent.

Cur. adv. vult.

April 06, 2001

J. A. N. DE SILVA, J. (P/CA)

In this application the petitioner seeks a mandate in the nature of a Writ of *Certiorari* to quash the order dated 04. 02. 1999 made by the 3rd respondent (Commissioner of Lands) refusing to accede to an appeal made by the petitioner to be declared the successor to the land held by his late mother under the Land Development Ordinance. The 4th respondent named by the petitioner is his youngest brother, in whose favour the Commissioner of Lands had made his decision. ¹

The petitioner is the eldest son of late Mrs. B. V. Ukku Bandi in whose name a permit had been issued under the Land Development Ordinance in respect of lots 478 and 479 Yaya 6 Angamuwa. Ukku Bandi had duly nominated the 4th respondent as the successor (*vide* P4 and P5). While this state of affairs was prevailing the said Ukku Bandi was issued two grants in respect of the same lands in 1995 by Her Excellency the President under section 19 of the Ordinance. The said grants bearing numbers 493 and 794 had been registered at the Land Registry, Anuradhapura, on the 8th and 9th July, 1996, respectively. These grants were never received by Ukku Bandi as she died on the 17th of November, 1995. The registration of a grant of State Land by the President is a mandatory requirement in terms of section 26 of the State Lands Ordinance. In these circumstances, the petitioner alleges that there was no valid nomination of a successor ¹⁰ ²⁰

by his mother Ukku Bandi and that he is entitled to be nominated as successor according to rule 1 of the third schedule referred to in section 72 of the Land Development Ordinance. The 3rd respondent by his letter dated 4th February, 1999, marked "P8" had informed the petitioner that the land in grants bearing numbers 493 and 794 be devolved on the 4th respondent who was the nominee appointed under the land permit. It is to be noted that in terms of the Land Development Ordinance, a permit holder is entitled to nominate a³⁰ person or persons to succeed to the ownership of the land after his/her death. Such nomination could be cancelled by the permit holder and a new nomination could be made in terms of the provisions in chapter VII of the Land Development Ordinance. The nomination has to be made in the prescribed form and registered in the Land Registry in terms of section 58 of the Lands Development Ordinance and if it is not registered such nomination is considered to be invalid (*vide* section 58 (1)). The nomination in the permit itself shall stand valid until it is cancelled by the permit holder. Counsel for the petitioner contended that nomination of the 4th respondent found in the permit⁴⁰ is deemed to have been cancelled on the issuance of grants 493 and 794 on the 20th of April, 1995 and 13th June, 1995, respectively.

Counsel further submitted that Ukku Bandi had failed to nominate the 4th respondent or any other person to succeed to the land referred in the grants, although such provisions are found in sections 49, 51, 52, 53 and 54 of the Land Development Ordinance.

The Land Development Ordinance is silent on the question of succession where the death of the grantee intervenes between the date of the grant and subsequent receipt thereof. Counsel for the 4th respondent submitted that as the permit holder had the intention to⁵⁰ give the land to the nominee, viz 4th respondent and that such nomination had not been revoked by the permit holder prior to her death, the 4th respondent should be considered as the person entitled to be nominated under the grants.

On a consideration of the above facts the question to be determined is as follows: "would Ukku Bandi's failure to nominate a successor under the grant amount to a non-nomination and invite the application of the provisions of section 72 notwithstanding the prior nomination made by her under the permit".

It is common ground that the 4th respondent was the nominated 60
successor of Ukku Bandi under the permit and the subsequent grant
to her never reached her until her death. It is to be noted that the
issuance of a grant changes status of a permit holder to that of an
"owner" who derives title to the land in question (see section 2 of
the Ordinance). By the amending Act No. 27 of 1987 this interpretation
of "owner" was extended to also cover "a permit holder who has paid
all sums which he is required to pay . . . and has complied with all
the other conditions specified in the permit". The satisfaction of "paying 60
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 70
of section 19 (4) of the same Act. In view of these provisions it could
be reasonably argued that at the time of her death Ukku Bandi was
entitled to be considered as "owner" by virtue of the fact that she
had been awarded a grant. The fact that the grant never reached
her and also the fact that the execution of the grant was never
conveyed to her cannot be held against her. There are circumstances
in her favour and I hold that the nomination of a successor under
the permit becomes converted to nomination made by her as the owner
of the land. In my view this interpretation is in keeping with the spirit
and intention of the amending Act. A broader definition attributed to 80
the term "owner" and the legal entitlement of a permit holder to be
regarded as such are salutary features of the amendments. In these
circumstances the petitioner's contention that recourse should be
made to section 2 of the Old Ordinance to decide the question of
succession is untenable in law. This application is dismissed without
costs.

Application dismissed.