

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

W.M. Dhanapala Menike,  
Galkorutuwa, Udahavupe,  
Kahawatte.  
Petitioner

**SC APPEAL NO: SC/APPEAL/166/2017**

**SC LA NO: SC/SPL/LA/258/2016**

**CA NO: CA/WRIT/26/2014**

Vs.

1. Dayananda Colombage,  
Divisional Secretary,  
Divisional Secretariat,  
Kahawatte.
- 1A. Gayani I. Karunarathna,  
Divisional Secretary,  
Divisional Secretariat,  
Kahawatte.
2. R.P.R. Rajapakse,  
Commissioner General of Land,  
Land Commissioner General's  
Department, No. 1200/6,  
Rajamalwatta Road,  
Battaramulla.
3. P. Wasantha,

Assistant Land Commissioner,  
Land Commissioner General's  
Department,  
No. 1200/6, Rajamalwatta Road,  
Battaramulla.

4. Provincial Commissioner General  
of Land,  
Sabaragamuwa Province,  
Office of Provincial Commissioner  
of Land, Provincial Council  
Building, New Town, Ratnapura.
5. Ven. Palmadulla Dhammagaweshi  
Thero, Athugalkanda Aaranya  
Senanasanaya, Lellopitiya Wehera,  
Godakawela.
6. Wellakkutti Mudiyansele  
Wasantha Kumara,  
Welihindawatte, Indiketiya Road,  
Pelmadulla.
7. Registrar of Lands,  
Land Registry, Ratnapura.

Respondents

AND BETWEEN

W. M. Dhanapala Menike,  
Galkorutuwa, Udahavupe,  
Kahawatte.

Petitioner-Appellant

Vs.

1. Dayananda Colombage,  
Divisional Secretary,  
Divisional Secretariat,  
Kahawatte.
- 1A. Gayani I. Karunarathna,  
Divisional Secretary,  
Divisional Secretariat,  
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Senanasanaya,  
Lellopitiya Wehera, Godakawela.

6. Wellakkutti Mudiyansele  
Wasantha Kumara,  
Welihindawatte,  
Indiketiya Road,  
Pelmadulla.
7. Registrar of Lands,  
Land Registry,  
Ratnapura.  
Respondent-Respondents

Before: Buwaneka Aluwihare, P.C., J.  
Kumudini Wickremasinghe, J.  
Mahinda Samayawardhena, J.

Counsel: Ranjan Suwandarathne, P.C., with Dulna de Alwis for the  
Petitioner-Appellant.  
Manohara Jayasinghe, D.S.G., for the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup>  
Respondent-Respondents.  
H. Withanachchi with Shantha Karunadhara and Pasindu  
Widyananda for the 6<sup>th</sup> Respondent-Respondent.

Argued on: 16.01.2023

Written Submissions:

By the Petitioner-Appellant on 20.01.2021

By the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondent-Respondents on  
27.01.2023

By the 6<sup>th</sup> Respondent-Respondent on 15.02.2023

Decided on: 09.11.2023

**Samayawardhena, J.****Background facts**

The father of the Petitioner-Appellant, namely Podi Bandara, was issued two grants in respect of two parcels of land in terms of the Land Development Ordinance, No. 19 of 1935, as amended. His wife predeceased him. They had five children. The first two are sons and the other three are daughters. The eldest son is the 5<sup>th</sup> Respondent. The second son, namely Wickramasekara Bandara, was not a party to this case. The Petitioner is the eldest daughter.

There is a difference between a “permit” and a “grant”.

In terms of section 2 of the Land Development Ordinance, land alienated by grant under the Land Development Ordinance is known as a “holding”.

The “owner” means the owner of a holding whose title thereto is derived from a grant issued in terms of the Ordinance and includes a permit-holder who has paid all sums which he is required to pay under section 19(2) and has complied with all the other conditions specified in the permit.

Section 19(6)(b) enacts that the owner of a holding shall not dispose of such holding except with the prior approval of the Government Agent. However, section 19(7) recognises that the approval of the Divisional Secretary is not required when mortgaging such holding to some institutions including licensed commercial banks. According to section 46, a permit-holder cannot dispose of the land alienated to him on the permit without the written consent of the Government Agent. As section 2 defines, “disposition” means any transaction of whatever nature affecting land or the title thereto, and “title” means right, title, or interest to or in the land or holding.

**Nomination of successors**

A permit-holder or an owner of a holding can nominate a successor to the land or holding under the provisions of the Land Development Ordinance.

Section 49 states:

*Upon the death of a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19, or of an owner of a holding, without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to the land alienated to that permit-holder on the permit or holding or upon the death of such spouse, a person nominated as successor by such permit-holder or owner shall succeed to that land or holding.*

While this section does not specify any condition precedent for succeeding to a parcel of land alienated on a permit, other than the entitlement of the spouse to succeed, section 84 appears to impose an additional requirement. It requires that the successor should obtain a permit from the Government Agent to occupy the land.

Section 84 states:

*Upon the death of a permit-holder who at the time of his or her death was paying annual instalments under section 19 for the land alienated to him or her on the permit, then-*

*(a) if that permit-holder is survived by his or her spouse, the spouse shall be entitled to succeed to that land;*

*(b) if that permit-holder is not survived by his or her spouse or if the spouse does not succeed to the land, any other person who is a duly*

*nominated successor of the deceased permit-holder shall be entitled to succeed to that land on such person obtaining a permit from the Government Agent under the provisions of this Ordinance to occupy that land.*

According to section 51, a permit-holder or owner of a holding cannot nominate any person at his will. He needs to nominate a person who belongs to one of the groups of relatives enumerated in Rule 1 of the Third Schedule of the Ordinance. Section 51 reads as follows:

*No person shall be nominated by the owner of a holding or a permit-holder as his successor unless that person is the spouse of such owner or permit-holder, or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule.*

The procedural provisions in relation to, *inter alia*, nomination of a successor, cancellation of a nomination, and registration thereof are set out in sections 52-67 of the Land Development Ordinance. In addition, there are a number of provisions in the Ordinance regulating the procedure.

### **Right to succession by the spouse**

However, in terms of sections 48A and 48B, the spouse of a permit-holder or an owner of a holding is entitled to succeed to the land or holding solely by virtue of being the spouse, regardless of whether such spouse is nominated as a successor.

*48A(1). 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.*

*(2) 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.*

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

*48B(1). Upon the death of the owner of a holding, the spouse of that owner shall be entitled to succeed to that holding subject to the following conditions:-*

*(a) upon the marriage of such spouse, title to the holding shall devolve on the nominated successor of the deceased owner or, if there was no such nomination, on the person who was entitled to succeed under rule 1 of the Third Schedule;*

*(b) such spouse shall have no power to dispose of that holding;*

*(c) such spouse shall have no power to nominate a successor to that holding;*

*Provided that the aforesaid conditions shall not apply to a spouse who has been nominated by the deceased owner of the holding to succeed to that holding.*

*(2) Any disposition or nomination made by a spouse in contravention of the provisions of subsection (1) shall be invalid.*

### **Succession by the nominated successor**

If the spouse of the deceased permit-holder or owner of the holding is among the living, the nominated successor cannot succeed to the land or holding soon after the death of the permit-holder or owner of the holding. In terms of section 49, the nominated successor can succeed to the land if the spouse fails to succeed or upon the death of the spouse.

### **Failure to succeed by the spouse or nominated successor**

What is meant by failure to succeed by the spouse or nominated successor is stated in section 68. In short, if the spouse “refuses to succeed” or does not enter into possession of the land or holding within six months from the death of the permit-holder or owner, it constitutes “failure of succession”.

68(1). *The spouse of a deceased permit-holder, who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19, or the spouse of an owner, fails to succeed to the land held by such permit-holder on the permit or to the holding of such owner, as the case may be-*

*(a) if such spouse refuses to succeed to that land or holding, or*

*(b) if such spouse does not enter into possession of that land or holding within a period of six months reckoned from the date of the death of such permit-holder or owner.*

*(2) A nominated successor fails to succeed to the land held on a permit by a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner if he refuses to succeed to that land or holding, or, if the nominated successor does not enter into possession of that land or holding within a period of six months reckoned-*

*(i) where such permit-holder or owner dies without leaving behind his or her spouse, from the date of the death of such permit-holder or owner; or*

*(ii) where such permit-holder or owner dies leaving behind his or her spouse, from the date of the failure of such spouse to succeed, such date being reckoned according to the provisions of paragraph (b) of subsection (1), or of the death of such spouse, as the case may be.*

### **Succession by operation of law**

If no successor has been nominated or if the nominated successor fails to succeed or if the nomination of a successor contravenes the provisions of the Ordinance, subject to the spouse being succeeded to the land or

holding, the land or holding shall devolve as prescribed in Rule 1 of the Third Schedule read with section 72 of the Ordinance.

*72. If no successor has been nominated, or if the nominated successor fails to succeed, or if the nomination of a successor contravenes the provisions of this Ordinance, the title to the land alienated on a permit to a permit-holder who at the time of his or her death was paying an annual instalment by virtue of the provisions of section 19 or to the holding of an owner shall, upon the death of such permit-holder or owner without leaving behind his or her spouse, or, where such permit-holder or owner died leaving behind his or her spouse, upon the failure of such spouse to succeed to that land or holding, or upon the death of such spouse, devolve as prescribed in rule 1 of the Third Schedule.*

### **The order of succession**

Prior to the amendment brought in by Act No. 11 of 2022, the devolution of succession was in the following order of priority.

- (a) Sons
- (b) Daughters
- (c) Grandsons
- (d) Granddaughters
- (e) Father
- (f) Mother
- (g) Brothers
- (h) Sisters
- (i) Uncles
- (j) Aunts
- (k) Nephews
- (l) Nieces

Act No. 11 of 2022 eliminated gender-based discrimination in favor of males over females. Following this amendment, devolution in terms of Rule 1 of the Third Schedule shall take place in the following order, the older being preferred to the younger where there are more relatives than one in any group.

- (a) Children
- (b) Grand children
- (c) Parents
- (d) Siblings
- (e) Uncles and aunts
- (f) Nephews and nieces

However, according to Rule 1(d), where any person in the order of priority has developed such land, the title to the holding or the land shall not devolve on the older person but on the person who developed such land.

In terms of section 170, no other law relating to succession of land is applicable in respect of land alienated under the Land Development Ordinance.

### **Failure to succeed by a statutory nominee**

Although section 68 of the Land Development Ordinance provides for the “failure to succeed” by the spouse or nominated successor, it is silent on the failure to succeed by a relative who is entitled to succeed in terms of Rule 1 of the Third Schedule.

What happens if the successor in terms of Rule 1 of the Third Schedule fails to succeed? Rule 2 of the Third Schedule provides the answer:

*If any relative on whom the title to a holding or land devolves under the provisions of these rules is unwilling to succeed to such holding*

*or land, the title thereto shall devolve upon the relative who is next entitled to succeed subject to the provisions of rule 1.*

Rule 2 provides for a situation where a relative is “unwilling to succeed”. This can be distinguished from “failure to succeed”. “Unwilling to succeed” implies a conscious decision to avoid succession, while “failure to succeed” can occur without deliberate intent and may result from various factors. Nevertheless, according to section 68(1)(a), “failure to succeed” includes “refusal to succeed”. “Unwilling to succeed” and “refusal to succeed” connote similar meaning. In summary, failure (අසමත්) to succeed, refusal (ප්‍රතික්ෂේප) to succeed and unwilling (අකමැති) to succeed are not contradictory but complimentary to each other.

There is no indication in Rule 2 for how long the next in line needs to wait to assume that the first in line is “unwilling to succeed” when it is not manifested by a positive act. It cannot be for an unlimited time or until the death of the first person.

In my view, the law applicable to failure to succeed by a spouse or a nominated successor as stated in section 68 shall be applicable when a relative who is entitled to succeed in terms of Rule 1 of the Third Schedule is unwilling to succeed. In the result, if such relative refuses to succeed or does not enter into possession of the land or holding within a period of six months reckoned from the date of the death of the permit holder or owner, it should be regarded as failure to succeed or unwilling to succeed.

### **Failure to succeed by the 5<sup>th</sup> Respondent**

In the instant case, Podi Bandara died without nominating a successor to the holding. In that eventuality, the succession should take place in terms of section 72 read with Rule 1 of the Third Schedule of the Land Development Ordinance. Accordingly, the 5<sup>th</sup> Respondent, being the eldest son of Podi Bandara was to succeed to the holding by operation of

law. However, he did not succeed within six months from the date of the death of Podi Bandara (his father). Wickramasekara Bandara (his younger brother and the second in the family) had been in possession of the holding.

Thereafter, the 5<sup>th</sup> Respondent, nearly one year after the death of his father executed a Deed of Renunciation with the written sanction of the 1<sup>st</sup> Respondent Divisional Secretary manifesting his unwillingness to succeed to the holding. By this Deed the 5<sup>th</sup> Respondent renounced his rights and interests in the holding in favour of Wickramasekara Bandara. Wickramasekara Bandara had also executed a Deed of Declaration (P6) with the written sanction of the 1<sup>st</sup> Respondent Divisional Secretary pursuant to the execution of P5. All these deeds were registered in the Register maintained under the Land Development Ordinance at the Land Registry (P7).

In my view, P5-P7 are all redundant and unnecessary. If the 5<sup>th</sup> Respondent did not succeed within six months of the death of Podi Bandara, Wickramasekara Bandara was entitled to succeed to the holding by operation of law.

However, I will refer to P5. P5 *inter alia* states as follows:

ඉන්ද්‍රිසා සියලු දෙනාම මෙයින් දැනගත යුතුයි.

ඉඩම් සංවර්ධන ආඥාපණන් 162(1) වගන්තිය යටතේ අසවර ලබා ඇති ඉහත කී වෙල්ලක්කට්ටු මුදියන්සේලා ගේ මද්දුම බණ්ඩාර වන මට රත්/ප්‍ර/700 සහ රත්/ප්‍ර/4318 දරණ ස්වර්ණභූමි පත්‍රය යටතේ අයිතිය හිමිවූ මෙහි පහත උපලේඛනයෙහි විස්තර කරන දේපල සහ ඊට අයිති සියලු දෙයින් මා හට සතු සියලුම සියල්ලම මෙයින් අතහැර දැමුවෙමි.

එසේ හෙයින් මෙම අත්හැර දැමීම කාරණ කොට ගෙන එකී දේපල සහ එයට අයිති සියලු දේන් ගැනීමට නිබන්දන අයිතිවාසිකම්, හිමිකම් නොඉල්ලන බවත් එකී දේපල බුක්ති විදින ලබන වෙල්ලක්කට්ටු මුදියන්සේලාගේ වික්‍රමසේකර බණ්ඩාරට හා ඔහුගේ උරුමකරු ලැබුම්කාරාදීන්ටත් ඕනෑම මනාපයන් කර ගැනීමට පුලුවන් මුලු බලය මෙයින් සලස්වාදෙන බවත් මා වෙනුවටත් මාගේ පොල්මස්කාර අද්මිනිස්ත්‍රාධිකාර බලකාර ලැබුම්කාරායන්ටත් සමග මෙයින් ප්‍රකාශ කර ස්ථිර කරමි.

As seen from P11 and P12, the ownership of the holding had thereafter been transferred in the name of Wickramasekara Bandara.

The 5<sup>th</sup> Respondent then entered into monastic life and was ordained as a Bhikkhu.

Wickramasekara Bandara later died unmarried and issueless.

Thereafter, as seen from 1R3(a) and 1R3(c), the Petitioner (the eldest daughter of Podi Bandara and the third in the family) on the one hand and the 5<sup>th</sup> Respondent Bhikkhu (the eldest son of Podi Bandara) on the other, made separate applications to the 1<sup>st</sup> Respondent Divisional Secretary to transfer the holding to them.

### **The decision of the Deputy Land Commissioner**

As a result, the 3<sup>rd</sup> defendant Deputy Land Commissioner has informed the Petitioner by P10 that alienations without the approval of the Divisional Secretary are void; deeds of declarations are unknown to the Land Development Ordinance; Wickramasekara Bandara had not acquired rights to the holdings; and therefore ownership should devolve on the 5<sup>th</sup> Respondent in his lay name as the eldest son of the grantee. P10 reads as follows:

දිමනාපත්‍ර නිකුත් වී ඇති නිසා අයිතිය පිළිබඳ ප්‍රශ්නය ඉඩම් සංවර්ධන ආඥා පනත අනුව විසඳාගත යුතු වේ. ප්‍රාදේශීය ලේකම් අනුමැතිය නොලබා බැහැර කිරීම් සිදු කරනු ලැබුවහොත් ඒවා බල රහිත වේ. ප්‍රකාශන ඔප්පු ගැන නීතියේ සඳහන් නොවන බවත් එවැනි ලේඛණ රජයේ ඉඩම් ආඥා පනතට අනුකූල නොවන බැවින් ඒවා නිත්‍යානුකූල නොමැත. එබැවින් අවිවාහක මියගිය සොයුරාට නිත්‍යානුකූල උරුමය අදාළ තොරතුරු අනුව ලැබී නොමැත. එබැවින් එහි නියම උරුමකරු වැඩිමහල් මද්දුම බණ්ඩාර බැවින් ඒ අනුව ඔහු වෙත උරුම පවරා ඇති බව කාරුණිකව දන්වා සිටිමි.

Thereafter the 1<sup>st</sup> Respondent by P11 and P12 has informed the Land Registrar to register the Certificates of Confirmation of Original Ownership in the lay name of the 5<sup>th</sup> Respondent.

It appears that the 3<sup>rd</sup> Respondent had been under the impression that alienations were effected without the consent of the Divisional Secretary but it was not correct. The 3<sup>rd</sup> Respondent has highlighted only the Deed of Declaration but not the Deed of Renunciation, which preceded it. Even if both the Deed of Renunciation and the Deed of Declaration were declared null and void, it is not correct to say that the second son did not succeed to the holding. When the eldest son failed to succeed or manifested his unwillingness to succeed, the second son became entitled to succession by operation of law.

All in all, the contents/findings/final decision in P10 are inaccurate, misleading and unsustainable in law.

### **Writ application in the Court of Appeal and its decision**

The Petitioner filed a writ application in the Court of Appeal seeking to quash *inter alia* P10-P12 by certiorari. The Court of Appeal held that the Land Development Ordinance does not prohibit the execution of Deeds of Renunciation. It further held that the 5<sup>th</sup> Respondent did not renounce his rights absolutely but did so only in favour of Wickremasekara Bandara, and therefore upon the death of Wickremasekara Bandara, the 5<sup>th</sup> Respondent shall succeed to the holding.

### **Questions of law**

This Court had on 06.02.2017 granted leave to appeal on five questions of law but thereafter on 12.03.2021 has narrowed down the argument to two questions of law in the presence of counsel for all the parties:

- (a) Has the 5<sup>th</sup> Respondent validly renounced his right to succession to the holding in favour of his brother Wickramasekara Bandara by the Deed of Renunciation?

(b) Does the said renunciation prevent the 5<sup>th</sup> Respondent from making any claim in relation to succession of the holding?

### **Renunciation of rights**

I have already stated that when the 5<sup>th</sup> Respondent did not succeed within six months from the death of his father Podi Bandara, in the order of priority, the second son Wickramasekara Bandara should succeed to the holding.

The Land Development Ordinance does not provide for renunciation of right to succession. Significantly, as the Court of Appeal has pointed out, nor does the Land Development Ordinance prohibit it. In *Hevavitharana v. Themis De Silva* (1961) 63 NLR 68 it was stated that Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by law, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed.

The renunciation of right to succession by the 5<sup>th</sup> Respondent by P5, albeit redundant, is valid in law. Such conduct or manifestation can easily be accommodated under “unwilling to succeed”.

### **Estoppel or waiver**

The next question is, can the 5<sup>th</sup> Respondent make a claim for succession again after renouncing his right to it? In my view, he cannot. The doctrine of estoppel and/or doctrine of waiver prevents him from doing so. Of these two doctrines, the former has been the subject of more intense discussion than the latter.

The doctrine of waiver is a legal principle that allows an individual to voluntarily relinquish or abandon a right or benefit that is otherwise available to him.

The doctrine of estoppel stems from the maxim '*allegans contraria non est audiendus*', which means a person establishing contradictory facts shall not be heard. It is evident that this doctrine finds its foundation in equity and justice in that a man should not be allowed to blow hot and cold, approbate and reprobate, and affirm and disaffirm the same to suit the occasion. The doctrine of estoppel is also connected to the doctrine of legitimate expectation, which is primarily a concept within administrative and constitutional law.

For the purpose of this appeal, I will only consider the applicability of doctrine of estoppel.

Spencer Bower and Turner, *The Law Relating to Estoppel by Representation* (3<sup>rd</sup> edn, London Butterworths, 1977) page 4, defines estoppel as follows:

*Where one person (the representor) has made representations to another person (the representee) in words or by acts or conduct, or (being under a duty to speak to the representee) by silence or inaction, with the intention (actual or presumed) and with the result, of inducing the representee on the faith to alter his position to his detriment, the representor, in any litigation which may come afterwards, is estopped from making or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time and in the proper manner, objects thereto.*

Section 115 of the Evidence Ordinance reads as follows:

*When one person has by his declaration, act, or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.*

E.R.S.R. Coomaraswamy, *The Law of Evidence*, Volume I (2<sup>nd</sup> edn, Lake House Investments Ltd Book Publishers, 1989) page 184, sets out the following essential elements for a plea of estoppel to succeed under section 115 of the Evidence Ordinance:

- (a) A representation made by a person by means of a declaration, act or omission (the omission being to act or speak when there was a duty to act or speak)
- (b) The representation must have been made with the intention that it should be acted upon
- (c) Discrepancies between representation then made and the assertion now sought to be made
- (d) The effect of the representation must be to cause or permit the other person to believe the thing to be true
- (e) The effect of the representation must also be that the other person has acted upon such belief (to his detriment or damage)
- (f) The question must arise in the suit or proceeding between the same persons or their respective representatives (privies)

If these six elements are met, Coomaraswamy states, the first person or their representative will be barred from contradicting the veracity of the matter that forms the representation.

In the facts of this case, the argument that the 5<sup>th</sup> Respondent made a qualified renunciation only in favour of his brother is an afterthought.

The fallacy of this argument is made clear when the learned Deputy Solicitor General for the Respondent state officials and the learned counsel for the 6<sup>th</sup> Respondent admit that, if the said brother of the 5<sup>th</sup> Respondent, namely Wickremasekara Bandara, nominated a successor, the 5<sup>th</sup> Respondent or his son the 6<sup>th</sup> Respondent could not have reclaimed succession to the holding.

I am unable to agree with the finding of the Court of Appeal that, since Wickremasekara Bandara died without nominating a successor, the 5<sup>th</sup> Respondent becomes entitled to succession of the holding by operation of Rule 1 of the Third Schedule of the Ordinance. This finding of the Court of Appeal is contradictory to its earlier findings that (a) since the 5<sup>th</sup> Respondent did not succeed to the holding, Wickremasekara Bandara succeeded to it by operation of law, and (b) the Land Development Ordinance does not prohibit renunciation of rights.

All the six elements necessary for a successful plea of estoppel do exist in this case.

In the course of the argument, it was also asserted that even if the 5<sup>th</sup> Respondent renounced his rights and interests in the holding, the 6<sup>th</sup> Respondent, who is the son of the 5<sup>th</sup> Respondent, is not bound by such renunciation. This is covered under the last element of section 115 of the Evidence Ordinance mentioned above, i.e. the question must arise in the suit or proceeding between the same persons or their representatives (privies). In elaborating the last element, Coomaraswamy at page 192 states, "*this means that estoppels are usually binding upon parties and their privies.*" It is further stated that privies can be privies in blood such as heirs, privies by estate such as lessees and assignees, and privies in law such as executors and administrators.

According to Spencer Bower and Turner (op. cit.) at page 116 “representee” is not limited to parties directly involved but includes any party to whose notice the representation should reach as per the intention of the “representor”; this intention may be inferred if the representor had knowledge that such representation would reach the third party in the ordinary course of business.

The 5<sup>th</sup> Respondent made the representation directly to Wickramasekara Bandara. Yet it is reasonable to assume that the act of renouncing interest in the holding is one which would reach the other heirs in the line of succession within his family.

After the renunciation of the right to succession by the 5<sup>th</sup> Respondent in favour of Wickramasekara Bandara and after the death of Wickramasekara Bandara, the Petitioner had a legitimate expectation that she should succeed to the holding according to Rule 1 of the Third Schedule.

If the 5<sup>th</sup> Respondent failed/showed unwillingness/renounced his right to succeed, the 6<sup>th</sup> Respondent being the son of the 5<sup>th</sup> Respondent cannot claim right to succeed in terms of Rule 1 of the Third Schedule of the Land Development Ordinance since *inter alia* (a) the chain of succession had been severed, and (b) by operation of the doctrine of estoppel.

The 6<sup>th</sup> Respondent who is the son of the 5<sup>th</sup> Respondent is bound by the representation made by his father.

### **Conclusion**

For the aforesaid reasons, I answer both questions of law in the affirmative and set aside the judgment of the Court of Appeal.

I quash P10, P11 and P12 by writ of certiorari. The subsequent documents prepared based on them and mentioned in the petition have no force or avail in law.

As the 5<sup>th</sup> Respondent renounced his right to succession, after the death of Wickramasekara Bandara, the Petitioner being the eldest daughter and third child of Podi Bandara, shall succeed to the holding by operation of Rule 1 of the Third Schedule of the Land Development Ordinance.

The appeal is accordingly allowed but without costs.

Judge of the Supreme Court

Buwaneka Aluwihare, P.C., J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court