

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

In the matter of an application for mandates in the nature of Writs of Certiorari and/or Prohibition and/or Mandamus Under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA-WRT-215/23**

Ambagahapitiyage Don Nadeesh Nuwan Perera.

Presently at No. 21, Vico Figurelli A. Monte Calvario, Napol, Italy, 20134

Represented by

Duly appointed power of attorney holder name Nagagala Athukoralalage Sudharma Manel

No. 304, Pelawatta Road, Bollagala

Gonawala

**Petitioner**

**Vs.**

1. W. Irangani Perera, (Hon. Chairperson)
2. W.C. Pushpamali (Hon. Member)
3. Kusum Pathirana ( Hon. Member)
4. K.H. Premadasa (Hon. Member)
5. K.P. Bandula Ranjith (Hon, member)
6. Subashili Dayananda, (Secretary)

All are at No. 35A, Dr. N.M. Perera  
Mawatha, Colombo 08.

7. Galhenage Kularathna  
No. 53/30, Dharmapala Pedesa  
Rajagiriya,

**Respondents**

**Before :** N. Bandula Karunarathna, P/CA, J.  
B. Sasi Mahendran, J.

**Counsel:** Vijith Singh with Krishantha Kulathunga for the Petitioner  
Saman Liyanage for the 7<sup>th</sup> Respondents.

**Written**

**Submissions:** 19.11.2024 (by the 7<sup>th</sup> Respondent)

**On**

**Judgment On:** 04.12.2024

### **JUDGMENT**

**B. Sasi Mahendran, J.**

The Petitioner has instituted this action by petition dated 26.04.2023 praying inter alia for a writ of Certiorari quashing the decision dated 22nd of February 2023 marked P8, made in the Debt Conciliation Board (hereinafter referred to as 'the Board') case bearing No 44227 and a writ of mandamus compelling the 1<sup>st</sup> to 5<sup>th</sup> Respondents to dismiss the application No. 44227 made by the 7th Respondent.

Briefly, the facts of this case are as follows:

According to the petition, Ambagahapitiyage Don Nadeesh Nuwan Perera has duly appointed Danagala Athukoralalage Sudharma Manel as the power of Attorney holder for this application. The Petitioner states the Petitioner purchased the property in question

by the deed bearing No. 2693 dated 09.04.2008 attested by Hiranya Jayasekara, Notary Public. The Petitioner further states that, after such purchase, upon request of the 7<sup>th</sup> Respondent namely Galhenage Kularathna, the mother of the Petitioner gave the said property on lease by the lease agreement bearing No. 2741 dated 16.05.2008 to the 7<sup>th</sup> Respondent. This was denied by the 7<sup>th</sup> Respondent.

As stated by the Petitioner, after a letter of demand was sent, an action was filed in the District Court of Colombo bearing No. DRE 06/2017 seeking inter alia for an enjoining order. The Petitioner avers that, when the matter came up before the Learned District Judge, the 7<sup>th</sup> Respondent raised an objection that an application was already filed before the Board therefore the District Court has no jurisdiction to maintain the application. However, this objection was overruled. The Petitioner further avers that the 7<sup>th</sup> Respondent appealed against the said Order to the High Court of Civil Appeal in case bearing No. WP/HCCA/76/2017 where the said matter is still pending before the Court. In the meantime, the Petitioner received summons to appear before the Board.

According to the 7<sup>th</sup> Respondent, he has indicated to the Board, that he executed the said deed No. 2693 for a money lending transaction and he never had the intention to transfer the property. The Petitioner states that when the matter was taken up on 22.02.2023, the Petitioner raised the following objections which are reproduced from the petition verbatim:

- a. "Before the Act No 29 of 1999, the application shall be lodged to the Debt Conciliation Board, within 3 years from the date of the execution, and when the application is pending in the Debt Conciliation Board, no civil Court has the Jurisdiction any matter PENDING before the Debt Conciliation Board.
- b. When the application was made after 3 years from the date of the execution, the Debt Conciliation Board rejects the acceptance of the said applications.
- c. The Section 19 of the Debt conciliation Board Ordinance was amended by the Act No 29 of 1999, and inserted the following wordings.
  - (1A) The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such transfer of immovable property as is a mortgage within the meaning of this Ordinance, unless that application is made within three years

of the date of the notarially executed instrument, effecting such transfer:

Provided that nothing in this subsection shall be read or construed as preventing the Board from entertaining after the period referred to in that subsection an application by a debtor who is in possession of the property transferred.

- d. By the said Act No 29 of 1999 or any of the subsequent amendment did not amend the Section 56 of the Debt Conciliation Board Ordinance
- e. Since the Section 19(1A) of the Debt conciliation Board reads "The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such transfer of immovable property as is a mortgage within the meaning of this Ordinance, unless that application is made within three years of the date of the notarially executed instrument, effecting such transfer" the Debt Conciliation Board has no jurisdiction, by operation of law, to entertain an application made after 3 years.
- f. Since the question of possession (relating, to the application made after 3 years) is a matter of fact and the Debt conciliation Board holds an inquiry (commonly known as possessory inquiry) outside the Jurisdiction of the Debt conciliation Board, and such possessory inquiry cannot be considered as an inquiry pending before the Board (As Section 56 of the Debt Conciliation Board reads)"

The Board delivered its Order dated 22.02.2023 marked as P8 stating inter alia that there is no barrier for the application of the 7<sup>th</sup> Respondent to be maintained under Section 56 of the said Act.

In this context, the Petitioner has invoked the jurisdiction of this Court seeking inter alia to quash the said decision marked P8 by a writ of Certiorari.

According to the 7<sup>th</sup> Respondent, he instituted an action bearing No. 66550/06/17 in the Magistrate Court of Colombo under Section 66 (1) of the Primary Procedure Code Act

when the Petitioner tried to disturb the possession of the Respondent. The Magistrate by order dated 08.01.2018 decided that the possession of the Respondent should not be disturbed by the Petitioner. The 7<sup>th</sup> Respondent contends that the Petitioner has not disclosed this fact to this Court.

The main contention of the Petitioner is that the order made by the said Board marked as P8 is unlawful, unreasonable, and irrational thereby invoking the jurisdiction seeking writ of Certiorari to quash the said decision.

According to the Petitioner, the Board has come to the conclusion that they have the jurisdiction to decide this matter. The Petitioner contends that the Respondent has filed this matter after 3 years.

According to the said Order, since the 7<sup>th</sup> Respondent is in continuous possession of the property in dispute, he is not prevented from making the application before the Board in terms of Section 19 (1A) of the said Act as amended which reads as follows:

“(1A) The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such transfer of immovable property as is a mortgage within the meaning of this Ordinance, unless that application is made within three years of the date of the notarially executed instrument, effecting such transfer:

Provided that nothing in this subsection shall be read or construed as preventing the Board from entertaining, after the period referred to in that subsection, an application by a debtor who is in possession of the property transferred.”

In Hilda Perera v. Lawrence Perera 67 NLR 186, His Lordship Tambiah J held that,

“the date from which an application for relief under the Debt Conciliation Ordinance is regarded as pending before the Board is the date when the application is received by the Board and not the date when it is entertained by the Board under Section 19 of the Ordinance.”

In the instant case, the Petitioner has failed to prove that the 7<sup>th</sup> Respondent is not in possession of the property. On the other hand, the 7<sup>th</sup> Respondent has established that he

was in possession throughout, by the order of the Magistrate's Court in the case bearing No. 66550/06/17.

Further, this Court notes that Section 56 of the Act imposes the bar to any person to institute any civil action in the District Court when the matter is pending before the Board.

According to His Lordship Tambiah J, in Hilda Perera v. Lawrence Perera (supra) at page 187,

“The Debt Conciliation Ordinance was enacted to provide for the establishment of a debt conciliation Board and other matters connected with the purposes for which it was established. It was clearly a piece of legislation intended to give relief to debtors. The language of Section 56 of the Ordinance is plain. It states that “no civil court shall entertain any action in respect of any matter pending before the Board.” By the word “matter”, is meant the particulars in the application. In my view, the moment the application is received by the Board, the matters stated in the application are pending before the Board. Thereafter, it is for the Board to decide as to whether they wish to entertain the application or not.”

In the instant application, the Board has correctly applied Section 56 in its decision marked P8.

Therefore, we hold that the decision of the Board is lawful and they have acted within the powers conferred by the Debt Conciliation Act.

Application dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**N. Bandula Karunarathna (P/CA), J.**

**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**