

**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 writ of Certiorari under and  
in terms of Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka.

1. Galagedarage Dayananda,  
*alias* Dayananda Galagedara,  
No. 75/70, Sandun Uyana,  
Mabulgoda,  
Pannipitiya.

**PETITIONER**

**CA No. CA/Writ/0382/2020**

v.

1. Mrs. Malani Abeywardena Ranathunga,  
Chairman,  
Debt Conciliation Board,  
No. 35A, Dr. N.M. Perera Mawatha,  
Colombo 08.
2. T.D.K. Pujitha Thilakawardena,  
Member,  
Debt Conciliation Board,  
No. 35A, Dr. N.M. Perera Mawatha,  
Colombo 08.
3. K.M. Karunarathna,  
Member,  
Debt Conciliation Board,  
No. 35A, Dr. N.M. Perera Mawatha,

- Colombo 08.
4. K.P. Bandula,  
Member,  
Debt Conciliation Board,  
No. 35A, Dr. N.M. Perera Mawatha,  
Colombo 08.
  5. K.A.P. Rajakaruna,  
Member,  
Debt Conciliation Board,  
No. 35A, Dr. N.M. Perera Mawatha,  
Colombo 08.
  6. Haththimuni Sarath Maithripala De Silva,  
No.2/10, 1<sup>st</sup> lane, Mahamegawaththa,  
Maharagama.
  7. Dadigamuwage Mallika Rathnaseeli,  
No. 218, Hiripitiya,  
Pannipitiya.
  8. Debt Conciliation Board,  
No. 35A, Dr. N.M. Perera Mawatha,  
Colombo 08.

## **RESPONDENTS**

### **BEFORE**

: M. Sampath K. B. Wijeratne J. &  
M. Ahsan. R. Marikar J.

### **COUNSEL**

: Warsha De Silva for the Petitioner.

P. S. Amarasinghe for the 6<sup>th</sup> Respondent.

P. Ranwala for the 7<sup>th</sup> Respondent.

**WRITTEN SUBMISSION ON:** 04.12.2023 (By the Petitioner)  
08.01.2024 (By the 7<sup>th</sup> Respondent)

**DECIDED ON**

**: 09.02.2024**

**M. Sampath K. B. Wijeratne J.**

### **Introduction**

The Petitioner instituted these proceedings seeking *inter-alia*, a writ of *certiorari* quashing the decision of the 1<sup>st</sup> to 5<sup>th</sup> Respondents, namely, the Chairman and the Members of the Debt Conciliation Board dated 7<sup>th</sup> August 2019 ('X 7'). The 7<sup>th</sup> Respondent filed a statement of objection seeking to dismiss the Petitioner's application on the ground that the order marked 'X 7' of the Debt Conciliation Board is valid and correct. The other Respondents did not file objections and the Petitioner filed a counter affidavit in response to the objections filed by the 7<sup>th</sup> Respondent.

The matter was fixed for argument once the pleadings were complete. When the matter was taken up for argument on the 19<sup>th</sup> October 2023, the 6<sup>th</sup> and 7<sup>th</sup> Respondents and the Petitioner agreed to dispose the argument by way of written submissions.

Thereafter, both parties filed their respective written submissions and the matter was fixed for the judgement of Court.

### **Analysis**

Admittedly, the 7<sup>th</sup> Respondent is the original owner of the land in issue. As it was submitted by the Petitioner, the 7<sup>th</sup> Respondent had agreed to transfer the subject matter to the 6<sup>th</sup> Respondent for a sum of Rs. 1,000,000/- and entered into the agreement to sell No. 181 dated 10<sup>th</sup> October 2001 ('X 2'). Subsequently, the deed of transfer No. 312 dated 18<sup>th</sup> November 2002 ('X 3') was executed in favour of the 6<sup>th</sup> Respondent for the agreed-upon value of Rs. 1,000,000.

However, according to the 7<sup>th</sup> Respondent, the 7<sup>th</sup> Respondent borrowed a sum of Rs. 1,250,000/- from the 6<sup>th</sup> Respondent for a specific need and as security, executed the aforementioned deed 'X 3' in favour of the 6<sup>th</sup> Respondent. Nevertheless, deed 'X 3' reflects a consideration of only Rs. 1,000,000/-.

Admittedly, even after the execution of deed 'X 3', the 7<sup>th</sup> Respondent retained possession of the land. The 7<sup>th</sup> Respondent asserts that her continued

occupancy is justified as deed 'X 3' served as security for the funds borrowed from the 6<sup>th</sup> Respondent. Conversely, the Petitioner contends that the 6<sup>th</sup> Respondent permitted the 7<sup>th</sup> Respondent to remain on the property until she secured alternative housing.

According to the 7<sup>th</sup> Respondent, in 2006, after the execution of the deed of transfer 'X 3,' the 7<sup>th</sup> Respondent required Rs. 500,000/- for a specific purpose, and the 6<sup>th</sup> Respondent couldn't provide that amount. Consequently, the 6<sup>th</sup> and 7<sup>th</sup> Respondents decided to sell and transfer the concerned land. Despite their efforts, they were unable to find a buyer for the property. Subsequently, the 6<sup>th</sup> Respondent reached out to the Petitioner, who is not only a neighbour but also a known broker to the 7<sup>th</sup> Respondent. As per the 7<sup>th</sup> Respondent, the Petitioner initially committed to providing Rs. 500,000/- but later, upon communicating with the 6<sup>th</sup> Respondent, raised the amount to Rs. 1,250,000/. Nevertheless, the 7<sup>th</sup> Respondent states the Petitioner only paid Rs. 500,000/- out of the agreed Rs. 1,250,000/-, and for the remaining Rs. 750,000/-, executed Mortgage Bond No. 221 on 15<sup>th</sup> September, 2006.

The parties subsequently agreed to sell the property for Rs. 6,500,000/-, and allocate Rs. 3,500,000/- to the 7<sup>th</sup> Respondent, Rs. 3,000,000/- to the 6<sup>th</sup> Respondent, and a 3% commission to the Petitioner. The 1<sup>st</sup> to 5<sup>th</sup> Respondents, in their impugned order dated 7<sup>th</sup> August 2019 ('X7'), considered evidence of the 6<sup>th</sup> Respondent that the Petitioner had transferred Rs. 500,000/- to the 6<sup>th</sup> Respondent's account on the day the deed was executed. The Petitioner also deposited Rs. 100,000/- into the 6<sup>th</sup> Respondent's account during the pendency of the application before the Debt Conciliation Board.

The Notary who executed deed No. 1828 ('X 4') attested that the consideration of Rs. 1,250,000/- was paid before him. However, the Petitioner himself asserts that the agreed-upon consideration was Rs. 2,000,000/-, yet, he could only provide Rs. 1,250,000/-. In lieu of the outstanding Rs. 750,000/-, Mortgage Bond No. 221, dated 15<sup>th</sup> September 2006 ('X 5') concerning another property, was executed in favour of the 6<sup>th</sup> Respondent. In contrast, the 7<sup>th</sup> Respondent contended that the Petitioner paid only Rs. 500,000/- out of the agreed Rs. 1,250,000/-. Both positions, according to the 1<sup>st</sup> to 5<sup>th</sup> Respondents, do not align with the statement in the attestation of the deed regarding the consideration for the transaction. Accordingly, the conclusion drawn is that, based on the evidence of both parties, the statement regarding the payment of consideration in deed 'X4' cannot be accepted as true.

The Petitioner contends that the 6<sup>th</sup> and 7<sup>th</sup> Respondents, in their application to the Debt Conciliation Board, did not contest the validity of deed No. 1828 ('X 4'). It was further argued that in the application ('X 1'), the 6<sup>th</sup> and 7<sup>th</sup> Respondents identified the deed 'X 4' as an outright transfer. However, in Part V of the application to the Debt Conciliation Board ('X 1'), the 6<sup>th</sup> and 7<sup>th</sup> Respondents specifically mentioned deed No. 1828 ('X 4') as the deed in issue. Consequently, it is evident that the 6<sup>th</sup> and 7<sup>th</sup> Respondents sought relief from the Debt Conciliation Board concerning deed No. 1828 ('X 4'). No relief was sought regarding Mortgage Bond No. 221 ('X 5'), as asserted by the Petitioner.

Therefore, the Petitioner's claim that the 1<sup>st</sup> to 5<sup>th</sup> Respondents, the Chairman, and the Members of the Debt Conciliation Board, awarded reliefs not prayed for by the 6<sup>th</sup> and 7<sup>th</sup> Respondents lacks merit. Additionally, despite the Petitioner's assertion that the 6<sup>th</sup> and 7<sup>th</sup> Respondents described deed No. 1828 ('X 4') as an outright transfer in their application to the Debt Conciliation Board, it is evident from application 'X 1' that they explicitly characterized it as a conditional transfer.

The Petitioner contends that the 6<sup>th</sup> and 7<sup>th</sup> Respondents lack the *locus standi* to file an application under Section 17 of the Debt Conciliation Ordinance. This argument is grounded on the assertion that the 6<sup>th</sup> and 7<sup>th</sup> Respondents are not debtors of the Petitioner; instead, the 6<sup>th</sup> Respondent is considered a secured creditor of the Petitioner under Mortgage Bond No. 221 ('X 5'). Additionally, since the 7<sup>th</sup> Respondent is not a party to the Mortgage Bond, she, too, lacks the legal standing to bring the application before the Debt Conciliation Board.

However, it is important to note, as previously stated in this judgment, that the application by the 6<sup>th</sup> and 7<sup>th</sup> Respondents to the Debt Conciliation Board ('X1') is not based on Mortgage Bond No. 221 ('X 5') but on conditional transfer No. 1828 ('X 4'), to which the 7<sup>th</sup> Respondent is a party. Consequently, the Petitioner's submissions on this matter are deemed to be without merit.

As mentioned earlier in this judgment, even following the execution of deed No. 1828 ('X 4') on 15<sup>th</sup> September, 2006, the 7<sup>th</sup> Respondent retained possession. On the very same day the transfer deed 1828 was executed, the Petitioner entered into a lease agreement with the 7<sup>th</sup> Respondent. It is my opinion that the execution of the lease agreement was a strategic move intended to bypass the reality that deed of transfer No. 1828 ('X 4') was, in fact, executed to secure the funds lent to the 7<sup>th</sup> Respondent.

Even though the 7<sup>th</sup> Respondent signed deed of transfer No. 1828 ('X 4') as a transferor, it's worth noting that the 7<sup>th</sup> Respondent had already transferred her rights to the 6<sup>th</sup> Respondent through deed of transfer No. 312 ('X 3') executed on 18<sup>th</sup> November, 2002.

This sequence of events strongly indicates that deed of transfer No. 312 ('X3') was also executed to secure the loan advanced to the 7<sup>th</sup> Respondent by the 6<sup>th</sup> Respondent, as asserted by the Respondents, rather than being an outright transfer, as argued by the Petitioner.

The 1<sup>st</sup> to 5<sup>th</sup> Respondents have taken into account the discrepancy between the stated consideration for the land and its assessed value at the time. The Respondents presented valuation report marked 'P 8', indicating a land value of one perch extent ranging from Rs. 118,000/- to 200,000/-. In contrast, the Petitioner submitted valuation report 'D 17' valuing the entire land at Rs. 2,150,000/-. Consequently, the Petitioner asserts a perch value of Rs. 65,013/-, significantly lower than the value in 'P 8'. The 1<sup>st</sup> to 5<sup>th</sup> Respondents stated in their decision that the valuer of 'D 17' did not even physically inspect the land. Additionally, despite the Petitioner's claim of an agreed consideration of 2,000,000/-, the deed No. 1828 ('X 4') reflects a consideration of only 1,250,000/-. The 1<sup>st</sup> to 5<sup>th</sup> Respondents concluded that the actual land value surpasses the face value of deed ('X 4') or the purported agreed consideration by the Petitioner.

The Petitioner challenges decision of the 1<sup>st</sup> to 5<sup>th</sup> Respondents ('X 7') in this Court, asserting that it is *ultra-vires*, contains errors on the face of the record, lacks reasoning, and lacks a legal basis. Accordingly, the Petitioner contends that the decision 'X 7' holds no legal force or validity.

In light of the above analysis, I am of the view that the 1<sup>st</sup> to 5<sup>th</sup> Respondents in their impugned order ('X 7') has given sufficient reasons for their conclusion. Moreover, the aforementioned order does not contain material errors on the face of the record. Consequently, the order is not *ultra-vires*.

## **Conclusion**

In view of the reasoning provided in this judgement in respect of the matter in issue, I hold that the Petitioner has failed to establish legitimate grounds that warrants issuing the writ prayed for in paragraph (b) of the prayer of the Petition.

Consequently, I hold that the Petitioner's application must fail. Application dismissed. No costs.

**JUDGE OF THE COURT OF APPEAL**

**M. Ahsan. R. Marikar J.**

I Agree.

**JUDGE OF THE COURT OF APPEAL**