

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

Senarath Kusumsiri Perera
Balasuriya,
No.362, High Level Road,
Pannipitiya.
Petitioner

- A. Sumanaseeli Perera Balasuriya,
No.94, Kendaliyadda Paluwa
Ganemulla.
- B. Nayanaseeli Rajaratne (nee
Balasuriya),
No.442/3, Shiromini Mawatha,
Godigamuwa,
Maharagama.
Substituted-Petitioners

CASE NO: CA/WRIT/315/2013

Vs.

1. People's Bank,
No.75, Sir Chittampalam A.
Gardiner Mawatha,
Colombo 02.

2. K.W.M.M. Sarojini,
Inquiring Officer / Senior Legal
Officer / Manager,
Land Redemption Department,
People's Bank,
No.220, Dean's Road,
Maradana,
Colombo 10.
3. Heeralu Arachchige Dona
Swarnaseeli,
No.15, Angamuwa,
Padukka.
4. Ariyasiri Wickremasinghe,
No.57, St. Peter's Estate,
Imagiriya,
Ingiriya.
5. Gamini Senarath,
Chairman,
People's Bank.
6. Jehan P. Amaratunga,
Director,
People's Bank.
7. Lakshi Kumari Sangakkara,
Director,
People's Bank.
8. Dharma N. Gammampila,
Director,
People's Bank.
9. Pawara Dassanayake,
Director,
People's Bank.

10. G.K.D. Amarawardene,
Director,
People's Bank.
11. R.M.P. Ratnayake,
Director,
People's Bank.
12. Piyadasa Kudabalage,
Director,
People's Bank.

The 5th and 7th-12th Respondents
are the previous Directors of the
People's Bank,
No.75, Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

13. Hemasiri Fernando,
14. G.D. Chandra Ekanayake,
15. K. Felician J.C.W. Perera,
16. Aminda M. Perera,
17. T.M.D. Anton S. Hemantha,
18. M.H. Jamaldeen,
19. T.M.K.B. Tennakoon,
20. K. Rajendran,

The 6th and 13th-20th
Respondents are all present
Directors of the People's Bank,
No.75, Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

21. Nissanka Nanayakkara,
Chairman,
22. K.D.N. Ranjith Asoka,
23. Nilanka Mevan Peiris,
24. A.M.P.M.B. Atapattu,
25. Naomal Fernando,
26. Lahiru Pathmalal

The 21st-26th Respondents are all
previous Directors of the People's
Bank, No.75, Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

27. Sujeewa Rajapakse,
Chairman,
28. Kumar Gunawardane,
29. Sudharshan Ahangama,
30. Isuru Balapatabenthige,
31. Malin Ranasinghe,
32. Keerthi Gunathilake,
33. Manjula Wellalage,
34. K.A. Wimalenthiraraj,

The 27th-34th Respondents are all
present Directors of the People's
Bank, No.75, Sir Chittampalam A.
Gardiner Mawatha, Colombo 02.

Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Ranjan Suwandarathne, P.C., with Anil
Rajakaruna for the Petitioner.
Kushan D’Alwis, P.C., with Prasanna de Silva
for the 1st and 5th-20th Respondents.
Roshan Dayaratne with Pubudu Perera for the
4th Respondent.

Argued on: 16.10.2020

Decided on: 16.11.2020

Mahinda Samayawardhena, J.

The Petitioner made an application to the 1st Respondent People’s Bank under part VIII of the Finance Act, No. 11 of 1963, as amended, pleading acquisition of the subject land by the Bank, in order to redeem the land alienated by the Petitioner to the 3rd Respondent on a conditional transfer, which the 3rd Respondent had thereafter transferred to the 4th Respondent.

Section 71(3) of the Finance Act reads:

The question whether any premises which the Bank is authorized to acquire under this Part of this Act should or should not be acquired shall be determined by the Bank and every such determination of the Bank shall be final and conclusive and shall not be called in question in any court.

It is common ground that such a determination by the Bank is subject to judicial review.

Section 71(3A) of the Act reads:

For the purposes of making a determination under subsection (3), the Bank shall cause an inquiry to be held into the application by an inquiring officer appointed by the Bank. The inquiring officer appointed by the Bank shall give the owner of the premises to which the application relates and the person making the application an opportunity of being heard either in person or by an agent authorized in that behalf, and shall have all the powers of a District Court (a) to summon and compel the attendance of witnesses; (b) to compel the production of documents; and (c) to administer any oath or affirmation to witnesses.

Section 71(3A) alone goes to show the seriousness of the inquiry and the weight attached to the findings and recommendations of the inquiring officer, notwithstanding the ultimate decision is taken by the Board of Directors of the Bank.

The Bank appointed the 2nd Respondent, the Senior Legal Officer cum Manager of the Land Redemption Department of the Bank, as the inquiring officer.

The application relevant to this case was made by the Petitioner to the Bank in 2004 and, after seven years of a full-blown inquiry, the inquiring officer held in favour of the Petitioner and recommended to the Board of Directors of the Bank by A17 that the land be acquired.

The 4th Respondent had previously come before this Court by way of a writ application against this recommendation but later withdrew the same on the basis that the application was premature, as the Board would ultimately take the final decision.

After the withdrawal of the said writ application, unknown to the Petitioner, the 4th Respondent by R15 complained against the findings of the inquiring officer of the Bank to the Financial Ombudsman. The R15 complaint was copied only to the Chairman of the Bank and the Petitioner was left in the dark.

What happened thereafter is described by the Bank in its statement of objections in the following manner:

16. The 1st Respondent was noticed of an inquiry to be held on 26.06.2013 by the Financial Ombudsman into the complaint made by the 4th Respondent and accordingly, the 1st Respondent attended the inquiry held by the Financial Ombudsman on 26.06.2013.

17. At the inquiry, the Financial Ombudsman raised concerns with regard to some of the evidence and disagreed with the findings thereon at the inquiry held by the 2nd Respondent and recommended that the application of the Petitioner to the 1st Respondent for acquisition be dismissed.

18. Consequently, the 5th to 12th Respondents concluded that the inquiry and recommendation of the 2nd Respondent was inconclusive and directed the 1st Respondent to re-inquire into the application of the Petitioner to redeem the property in question by mainly addressing the concerns

raised by the Financial Ombudsman and thereafter to make a recommendation.

The Financial Ombudsman's recommendation is marked R16 by the Bank and A24 by the Petitioner.

It is clear the Financial Ombudsman made his recommendation against the Petitioner without giving a hearing to the Petitioner, in grave violation of the fundamental principles of natural justice.

The Bank was given notice of the inquiry to be held on 26.06.2013 and the Financial Ombudsman, having gone through some of the evidence led at the inquiry, disagreed with the findings of the inquiring officer and recommended on the same day that the Petitioner's application to the Bank be dismissed. I do not think the course of action followed by the Financial Ombudsman is correct. The Financial Ombudsman cannot sit on appeal against the findings of the inquiring officer. It is on this recommendation of the Financial Ombudsman alone that the Board of Directors of the Bank decided to re-inquire into the application of the Petitioner. This decision of the Board of Directors is erroneous.

A22 is the notice sent by the new inquiring officer in relation to the re-inquiry.

It is not the submission of learned President's Counsel for the Petitioner that the Board of Directors of the Bank should blindly ratify the recommendations of the inquiring officer. Learned President's Counsel admits that the Board can take an independent view, having taken into account the findings and recommendations of the inquiring officer.

The Board cannot totally disregard the findings and recommendations of the inquiring officer made after an *inter parte* inquiry and act only on the findings and recommendations of the Financial Ombudsman who disagreed with the findings and recommendations of the inquiring officer. The Board is not bound by the findings or observations of the Financial Ombudsman.

By filing this application, the Petitioner seeks the following main reliefs:

(b) to issue a writ in the nature of a writ of certiorari against the 1st and 5th to 12th Respondents quashing the decision contained in exhibit A22 dated 18th Sept 2013,

(c) to make an order [by mandamus] directing the 5th to 12th Respondents [the Board of Directors of the Bank] to consider the entire evidence led at the inquiry in relation to the application made by the Petitioner and to arrive at a decision adopting the recommendations contained in the decision of the 2nd Respondent dated 21st Sept 2011 marked A17 and/or to make an appropriate order after considering the factual evidence led at the inquiry held before the 2nd Respondent.

I have no doubt the Petitioner is entitled to these two reliefs. I grant the two reliefs to the Petitioner with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal