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

In the matter of an Application in the nature of Writs of Certiorari under Article 140 of the 1978 Constitution.

Yagdehigedara Ranjith Rathnayake,
No. 78, Nagodawatta,
Matale.

C.A. (Writ) Application No: 134/2023 **Petitioner**

1. Debt Conciliation Board,
   Vellangollawatta,
   Yanthampalawa,
   Kurunegala.

2. P.S.K. Rathnayake,
   Chairman,
   Debt Conciliation Board,
   Vellangollawatta,
   Yanthampalawa, Kurunegala.

3. J.G.N. Thilakarathna,
   Member,
   Debt Conciliation Board,
   Vellangollawatta,
   Yanthampalawa, Kurunegala.

4. Hettiarachchige Piyawathi,
   No. 78, Nagollagama Road,
   Matale.

5. Hon. Attorney General,
   Attorney General's Department,
   Hulftsdorp,
   Colombo 12.

Respondents

Before: **Hon. Bandula Karunaratha J (P/CA)**

&

Hon. Wickum A. Kaluarachchi, J.

Counsel: P.K. Prince Perera with S.Pamchadsaram for the Petitioner.

Aravinda Atharuponr with M. Alawaththa for the 4th Respondent.

A. Jayakody, SC for the Respondents except 4th Respondent.

Written Submissions: By the Petitioner – 08th December 2023.

By the Respondent – 13th January 2024.

Argued on: 27th November 2023.

Decided on: **02.04.2024**

N. Bandula Karunarathna J. P/CA

The petitioner filed this application seeking to quash the Judgment of the Debt Conciliation Board dated 17.02.2023. Further, the Petitioner seeks from this Court that the application of the 04th respondent, from taking further steps upon the same order to stay until the final determination of this application.

The Petitioner states that the 4th Respondent had submitted an Application dated 19.01.2018 to the Debt Conciliation Board of Colombo under Section 14(1) of the Debt Conciliation Board Act and stated that;

> " නීතිඥ හා ප්‍රසිද්ධ නොතාරිස් ඒ.පී. සිරිල් විමලසේන විසින් ලියා සහතික කරන ලද අංක.11888 හා 2010.07.14 දිනැති සින්නක්කර ඔප්පුව මත රු. ලක්ෂ 3 ක ණය මුදලක් ලබා ගත් බවත්, ඒ සඳහා මාසිකව රු.6000 /- බැගින් වසරකට රු.72000/- ක පොලියක් ගෙවිය යුතු බවත්ය. මෙම ණය මුදල සඳහා දේපල උකස් කර ඇති බවත්,මේ වන විට එම දේපල රු. ලක්ෂ 60 ක් පමණ වටිනා බවත්, මෙම දේපලේ තමා පදිංචි නිවස පිහිටා ඇති බවත් ප්‍රමාණයෙන් පර්චස් 16.41 වේ"

An inquiry before the Debt Conciliation Board was started in the Debt Conciliation Board of Colombo. The 4th Respondent gave evidence before the Debt Conciliation Board of Colombo and stated that the Deed bearing No. 11888 dated 14.07.2010 was attested by Cyril Wimalasena an Attorney-at-Law and Notary Public. The extent of the land is 16.41 perches. Through this Deed she had obtained a loan of Rs.300,000/-. She is residing in this premises from her birth.

She has submitted the electoral register from 2008-2018. She had given the premises to the petitioner on rent for the monthly rental of Rs.5,000/-. Thereafter, it was increased by Rs.1,000/-

She is residing in the part of the house. She objected for the obtaining of electricity by the respondent. She had obtained a loan of Rs.150,000/- from the Sanasa Bank. She had collected some money from her brothers and gone to release the property from the petitioner. But the petitioner had refused to release the property. The Respondent is occupying part of the house.

The position taken by the respondent is that he came to the premises on rent and thereafter he purchased the property. He is now in possession of the premises. Thereafter the Grama Sevaka gave evidence before the Board and on behalf of the 4th Respondent the case was concluded. At the time of concluding the case the State had established other 03 Debt Conciliation Boards in Gampaha, Galle and Kurunegala. Due to that reason this case was transferred to the Debt Conciliation Board of Kurunegala.

The petitioner states that thereafter the proceedings were adopted in the Debt Conciliation Board of Kurunegala. The petitioner gave evidence before the Board and stated that he had obtained the premises on rent on 29.03.2009 and came to the premises for a period of one year. The 4th respondent had said that she was selling the premises. He had purchased the premises to the value of Rs.500,000/-, the Deed No. 11888 was executed and attested by Cyril Wimalasena Notary Public after following the formal procedure. This Deed was attested on 14.07.2010.

After the attestation all the original documents pertaining to this land was given to the petitioner by the 4th respondent. The petitioner had not signed a Loan Agreement. He paid the rates in the name of the 4th respondent. The 4th respondent had come to the Board after 08 years, hence it is time barred. He says that he had not cheated the 4th respondent.

The petitioner states that the Learned Judges had delivered the Judgment of this case on 17.02.2023 and held that;

> "ඉල්ලුම්කාරිය මුල සිටම නැවත මෙම ඉඩම තමාට ආපසු පවරා ගැනීමේ අදහසින් සිට ඇති බව තහවුරු වේ. එමෙන්ම මෙලෙස අංක 11888 දරණ ඔප්පුව "සින්නක්කර ඔප්පුවක්" ලෙස ලියා ඇත්තේ තමාට අයත් මෙම නිවස වෙන්දේසි කිරීමෙන් බේරා ගැනීම සඳහා වගඋත්තරකරුගෙන් ණය මුදලක් ලබාගැනීම සඳහා බවද තහවුරු වේ.
>
> මේ අනුව අවසාන ලෙස නිගමනය කළ හැකි වන්නේ ඉල්ලුම්කාරිය මෙම ඉඩම සින්නක්කර ඔප්පුවකින් වගඋත්තරකරුට පවරා ඇති නමුත් එය විකිණීමේ අදහසින් නොව තමා ලබාගත් ණය මුදලට ඇපයක් ලෙස උකස්කරයක ස්වරූපයෙන් බව තීරණය කරමු" ("X 3")

The petitioner states that being aggrieved by the Judgment dated 17.02.2023 he filed this Application in the nature of Writ of Certiorari. The Judgment of the Debt Conciliation Board dated 17.02.2023 is subject to Judicial Review under the grounds stated in paragraphs 7(a) to 7(d) of the Petition. In terms of Article 140 of the Constitution this Court has powers to judicially review the aforesaid judgment. The petitioner states that the Judges of the Debt Conciliation Board had fixed this case for mention on 04.04.2023 for the payment of money. It was argued on behalf of

the Petitioner that unless this Court had issued a Stay Order to Stay the proceeding in the Debt Conciliation Board a grave and irremediable loss would be caused to the Petitioner.

The petitioner states that he has purchased the premises by Deed bearing No. 11888 executed and attested by Cyril Wimalasena Attorney-at-Law and Notary Public. This is an outright transfer. There is no iota of evidence that the Petitioner had paid Rs.6,000/to the 4th Respondent as interest. There was no condition in the Deed of Transfer. After the execution of the Deed on 14.07.2010 all original documents pertaining to the premises in suit was handed over to the Petitioner by the 4th Respondent. The 4th Respondent had not taken any action against the Petitioner. The Petitioner submitted to this Court that under these circumstances the said Deed is a transfer. Therefore, the Judgment of the "Debt Conciliation Board is erroneous in law on the face of record".

The petitioner submits the following items of evidence that were adduced at the trial. The evidence adduced before the Debt Conciliation Board by the Applicant is as follows;

ප්‍ර: මහත්මිය මම තමුන්ට යෝජනා කරනවා අංක 1118 දරණ ඔප්පුව මඟින් මෙම ඉල්ලීමට අදාල ඉඩම සහ නිවස 2010 ජූලි මාසයේ දාහතර වෙනිදා ණයහිමිට වික්කා කියලා?

උ: වික්කේ නෑ. ඇපයට තැබුවේ.

ප්‍ර: පැ 1 ඔප්පුවේ කිසිම තැනක ඇපයක් වශයෙන් තැබුවේ කියලා සඳහන් වෙන්නේ නෑ කියලා මම තමුන්ට යෝජනා කරනවා?

උ: ඔප්පුවේ ලියලා නෑ.

The Applicant had sold her other properties to several persons. These relevant deeds were signed by Notary Cyril Wimalasena.

Evidence of the Applicant is as follows;

ප්‍ර: මේ ඔප්පුවට අදාල මුද්දර ගාස්තු ගෙව්වේ කවුද?

උ: මේ මහත්තයා (ණයහිමි පෙන්වා සිටී).

ප්‍ර: ලක්ෂ තුනක මුදල තමුන්ට ගෙව්වේ ණයහිමි කියලා පිළිගන්නවද?

උ: ඔව්

ප්‍ර: ඔප්පුවට අදාලව මුද්දර ගාස්තු ගෙව්වේ ණයහිමි කියලා පිළිගන්නවද?

උ: ඔව්

ප්‍ර: මෙම ඔප්පුවට සාක්ෂිකාරයෙක් ලෙස තමුන්ගේ ස්වාමි පුරුෂයා අත්සන් කරලා තියෙනවද?

උ: ඔව්

ප්‍ර: මෙම ඉල්ලීමට අදාල ඔප්පුව ලියලා අවුරුදු අටකට පස්සෙද ණය සහන දායක මණ්ඩලයට ඉල්ලුම් පත්‍රයක් ඉදිරිපත් කළේ?

උ: ඔව්.

ප්‍ර: දැන් මහත්මිය මම තමුන්ගෙන් ඇහුවේ මෙම ඉඩමට අදාල මුල් ලේඛණ තියෙන්නේ කවුරු ලඟද කියලා?

උ: රංජිත් මහත්තයා ලඟ

ප්‍ර: කවදද එම ලේඛණ දුන්නේ?

උ: ඔප්පුව ලියපු දවසේම, ඒ වේලාවේම දුන්නේ. පෙරකදෝරු මහත්තයා කිව්වා එයාට දෙන්න කියලා.

ප්‍ර: 2010 ජූලී දාහතර වෙනිදා එම ලේඛණ ඔක්කොම දුන්නද?

උ: ඔව්

ප්‍ර: මුල් ඔප්පු ඔක්කෝම දුන්නද?

උ: ඔව්

ප්‍ර: එතකොට මහත්මිය මෙම ඉඩමට අදාල මුල් ඔප්පු තාමත් වගඋත්තරකරු ලඟ තියෙන්නේ කිව්වොත් පිළිගන්නවාද?

උ: ඔව්

ප්‍ර: මහත්මිය දේපලක් වික්කා කියලා කියන්නේ, සල්ලි අරගෙන දේපලක් විකුණන එකට නේද?

උ: ඔව්

ප්‍ර: එතකොට මහත්මිය පැ 1 ඔප්පුවේ ඇපයක් වශයනේ ඔප්පුව තියලා මුදලක් ගත්තා කියලා සඳහන් කරලා තියෙනවාද?

උ: ඒක මං දන්නේ නෑ.

Evidence of the Respondent is as follows;

ප්‍ර: ටික කාලයක් යන කොට මුදලුත් අරගෙන අල වගා කරන්න කියලා නුවරඑළියේ ගියා. ඉල්ලුම්කාරිය සහ ඇයගේ ස්වාමි පුරුෂයා නුවර එළියේ ගියා. ඒ කාලයේ මම දන්නේ නෑ. සණසට මේ ඉඩම උකස් කරලා තිබිලා සණස බැංකුවේ මේකට නීත්‍යානුකූලව කටයුතු කරන්න ලියුම් එවලා තිබුණා. ඉන් පස්සේ පැමිණිලිකාරිය මේ ඉඩම බේරගන්න බැරි නිසා මට කීවා මිලට ගන්න කියලා. මම බැංකුවේ තිබුණ මුදල ගෙවලා මේක නිදහස් කරගෙන සින්නක්කර ඔප්පුවක් ලියා ගත්තා 2010.07.04.

ප්‍ර: මේ නඩුවේ ඉල්ලුම්කාරිය ප්‍රකාශ කර සිටියාද නිවස සහ ඉඩම විකුණනවා කියලා?

උ: ප්‍රකාශ කළා

ප්‍ර: ඒ අනුව තමා නිවස සහිත ඉඩම මිලදී ගැනීමට කටයුතු කළේ?

උ: ඔව්

ප්‍ර: එතකොට මේක විකුණුම්කරයක්?

උ: විකුණුම්කරයක්

ප්‍ර: මේ විකුණුම්කරය මඟින් ඉඩම සහ නිවස කියන සියලු අයිතිවාසිකම් මේ නඩුවේ ඉල්ලුම්කාරිය විසින් ඔබට පවරා දීමට කටයුතු කළාද?

උ: අසූ ගණන් වල ඉඳලා පරණ ඔප්පු සේරම මං ලඟ තියෙනවා.

ප්‍ර: විමලසේන කියන නීතිඥ මහත්මයා ඉදිරියේ තමා විකුණුම්කරය ලියා අත්සන් කරලා තියෙන්නේ.

උ: ඔව්

ප්‍ර: ඒ විකුණුම්කරය සඳහා මෙහි අත්සන් කරලා තියෙනවා?

උ: ඔව්

ප්‍ර: ඊලඟට සාක්ෂිකාරයෝ දෙන්නෙක් අත්සන් කරලා තියෙනවා?

උ: ඔව්

ප්‍ර: දැනටමත් ව 3 ලෙස ලකුණු කර ඉදිරිපත් කර ඇති ඔප්පුව නීතිමය උපචාර අනුගමනය කර ඇති එකක් කියලා පිළිගන්නවද?

උ: ඔව්

ප්‍ර: මහත්මයා ඔබ ඔප්පුව අත්සන් කරන අවස්ථාවේ ඉඩමට සහ නිවසට අදාල ඔප්පුව, පත් ඉරු සහ ප්ලැන් ඔබට නීතිඥවරයා ඉදිරියේ භාර දුන්නාද?

උ: ඔව් භාර දුන්නා.

ප්‍ර: එසේ භාරදුන් මුල් ඔප්පු ප්ලැන් ඔප්පු ඔබ සතුව සුරක්ෂිතව තිබෙනවා කියලා පිළිගන්නවද?

උ: පිළිගන්නවා

ප්‍ර: දැන් මහත්මයා ඉල්ලුම්කාරිය විසින් ඉදිරිපත් කර තිබෙන ඉල්ලුම් පත්‍රයේ සඳහන් කරලා තියෙනවා රුපියල් ලක්ෂ 3 ක් 5% පොලියට තමා ඔබ මේ නඩුවට අදාල දේපලේ පදිංචි වෙලා ඉන්නේ කියලා?

උ: ඔව්

ප්‍ර: ඔබගේ පදිංචිය සනාථ කරන්න ඔබට පුළුවන්ද?

උ: පුළුවන්

ප්‍ර: මහත්මයා ඔබ මේ විකුණුම්කරයට අමතරව ඉල්ලුම්කාරිය සමඟ මොකක් හරි ණය ගිවිසුමක් අත්සන් කළාද?

උ: නෑ.

ප්‍ර: සාක්ෂි දෙනකොට කියලා තියෙනවා (මේ අවස්ථාවේදී 2018.10.23 වන දින සාක්ෂි සටහන් වල පස්වන පිටුවේ සාක්ෂිවලින් ප්‍රශ්න අසයි) ඔබ මෙහි කුලියට හිටියේ කියලා?

උ: මෙම ඉඩම ලීවාට පස්සේ කුලියට නෙවේ හිටියේ ඊට කලින් කුලියට තමා හිටියේ.

ප්‍ර: ගැටලු ඇති වුණේ ඔබ පොලිය 5% යි කියලා කීවට පස්සේ කියලා යෝජනා කරනවා මොකද කියන්නේ?

උ: මම එහෙම දෙයක් කීවේ නෑ. පැමිණිලිකාරිය තමා පැමිණිලි කරලා තියෙන්නේ මම සියයට පහක පොලියක් අයකරනවා කියලා .

ප්‍ර: ඒ සම්බන්ධයෙන් මොකක්ද වුණේ.

උ: මට මුදල් ගෙවන්න කීවේ නෑ. මම මිලදී ගත්ත නිසා විකුණන්න සුදානම් නෑ .මගේ දරුවොත් එක්ක පදිංචි වෙලා ඉන්නේ.

ප්‍ර: 2019.08.01 වන දින සාක්ෂි සටහන්වල පස්වන පිටේ සඳහන් වෙනවා විකුණන්න මගේ හිතකවත් තිබුණේ නෑ කියලා. ඒ සම්බන්ධයෙන් මොකද කියන්නේ?

උ: මම පිළිගන්නේ නෑ.

ප්‍ර: මහත්තයා අසනීප වෙලා හිටිය නිසා උදව්වකට ලක්ෂ තුනක් දුන්නේ සණස බැංකුවේ ණය ගෙවන්න කියලා. ඔබ ඒ සම්බන්ධයෙන් මොකද කියන්නේ?

උ: ඒක බොරුවක්. එහෙම එකක් නෑ.

ප්‍ර: තවදුරටත් 7 පිටේ සඳහන් වෙනවා මූලික වශයෙන් සණස බැංකුවේ ණය මුදල ගෙවන්න මුදල ඉල්ලා ගත්තේ "පුළුවන් දවසක ගෙවන්න අක්කේ" කියලා ඇපයක් විදියට ඉඩම ලියලා දුන්නා කියලා. ඒ සම්බන්ධයෙන් ඔබ මොකද කියන්නේ?

උ: එහෙම දෙයක් මෙතැන සිද්ධ වුණේ නෑ

ප්‍ර: මේ ලියලා තියෙන ඔප්පුවේ ණය මුදලක් ගැන සඳහන් වෙනවද ඇපයක් වශයෙන්?

උ: කොතනකවත් සඳහන් වෙන්නේ නෑ

ප්‍ර: දැන් මහත්තයා ඉල්ලුම්කාරිය විසින් පොලිසියට පැමිණිල්ලක් දාලා තියෙනවාද?

උ: 2018.01.16 දාලා තියෙනවා.

ප්‍ර: මෙහි සඳහන් වෙනවා කුලී නිවසක් අත්පත් කර ගැනීම කියා ඒ සම්බන්ධයෙන් මොකක්ද කියන්න තියෙන්නේ, තමුන් පිළිගන්නවාද?

උ: පිළිගන්නේ නෑ.

ප්‍ර: තමුන් කුලියට ගිහිල්ලා ඉඩමක් අත්පත් කර ගත්තාද?

උ: එහෙම දෙයක් සිද්ධ වෙලා නෑ

ප්‍ර: බලෙන් අත්පත් කර ගත්තාද?

උ: නෑ.

ප්‍ර: රැවටීමක් කළාද?

උ: රැවටීමක් කළේ නෑ.

ප්‍ර: තමුන් සල්ලි දීලා තමයි ගත්තේ?

උ: ඔව්

ප්‍ර: ඒ අනුව තමයි ඉඩමේ පදිංචි වෙලා ඉන්නේ?

උ: ඔව්

ප්‍ර: මේ පැමිණිල්ල දාලා තමයි ණය සහනදායක මණ්ඩලයට ඇවිත් තියෙන්නේ?

උ: ඔව්

ප්‍ර: එතකොට මහත්මයා ඔබ කීවා මේ නඩුවේ ඉල්ලුම්කාරිය මුදල් අරගෙන ගියා කියලා?

උ: ඔව්

ප්‍ර: මොකද ඔප්පුව ලියලා අවු 8 කට පසු නිසා?

උ: ඔව්

ප්‍ර: ඒ අනුව ඔබ මූලික වශයෙන් ඉල්ලා සිටින්නේ ඉල්ලුම්කාරියගේ ඉල්ලීම නිෂ්ප්‍රභා කරන්න කීවොත් පිළිගන්නවාද?

උ: පිළිගන්නවා

It was the contention of the learned counsel for the Petitioner that this evidence was disregarded by the Learned Judges. It's a misdirection. Hence the impugned judgment is erroneous in law on the face of the record.

The case was heard by two Judges. It was the 2nd and 3rd Respondents.

In terms of Section 8(1) of the Debt Conciliation Board (Amended) Act No. 04 of 2019 it states as follows;

> 8(1) - අමාත්‍යවරයා විසින් නිශ්චය කරනු ලැබිය හැකි පරිදි අමාත්‍යවරයා විසින් පත් කරනු ලබන සභාපතිවරයෙකුගෙන් හා 4 දෙනෙකු නොඉක්මවන්නාවූ ශාඛා මණ්ඩලයකින් සමන්විත විය යුතුය.

This fact is very clear from the case record. The petitioner states that this is a mandatory provision. Hence the impugned Judgment is *ultra vires*.

This Application was heard by two members. It was the Chairman and another Member on 04.01.2022. But Judgment dated 17.02.2023 was signed only by the Chairman of the Board. It should not be done in this manner. Due to this reason, this judgment is *per se* misconceived, because the Quorum of the 1st Respondent Board is three. The Learned Judges had not considered the adduced evidence by the Petitioner properly. Hence it was argued on behalf of the Petitioner that the impugned Judgment is against the Rules of natural justice. The Petitioner states that due to the aforesaid reasons, the Petitioner had denied all his legitimate expectations. The petitioner is the legal owner of the property in suit. But due to this judgment the impugned Deed of Transfer was invalidated.

The 1st Respondent Board was established under Section 2(1) of the Debt Conciliation Board Act No. 39 of 1949. This is a statutory body. Hence this Court is having the jurisdiction to hear this Application. The learned Counsel for the Petitioner argues that the objection raised by the Learned Counsel for the Respondents is untenable in law.

Before invoking the jurisdiction of this Court, the petitioner should act in terms of Section 54 of the above Act.

Section 54 is as follows;

(1) The Board may of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compound debt has been completed, review any order passed by it and pass such other order in reference thereto as it thinks fit.

(2) No order shall be reviewed under subsection (1) unless previous notice of the application or of the intention of the Board to review its order has been served in the prescribed manner on the parties interested in the order which is to be reviewed.

(3) Every order made by the Board under sub section (1) shall not be subject to further review by the Board under that subsection.

(4) If the terms of any settlement under section 30 or section 31 are varied by any order of the Board under subsection (I), the Board shall cause the order to be registered in the manner provided in section 41 for the registration of the duplicate of a settlement, and the provisions of that section shall apply accordingly.

The section 54(1) of the aforesaid Act is not a mandatory section. It is a Directory Provision it says "May" and therefore due to this reason the Petitioner had invoked the jurisdiction of this Court as he had the discretion.

The Petitioner argued that the judgment is fatally flawed. The Learned Judges had not considered an iota of evidence of the Petitioner. The Judges had acted completely and partially towards the 4th Respondent. The Petitioner says that we cannot expect justice fair play from the aforesaid Judges. Also unable to keep trust and reliance on the aforesaid Judges. The Chairman of the 1st

respondent Board is a very experienced High Court Judge. It is the view of the Petitioner that the Learned Chairman had acted maliciously and capricious towards the Petitioner.

In Council of Civil Service Union vs. Minister for the Civil Service 1985 AC 374, Lord Diplock;

> "Identified illegality irrationality and procedure impropriety as being grounds upon which Administrative Action is control by Judicial Review".

Hence, learned counsel for the Petitioner says that the impugned judgment is illegal, irrational and there is a procedural impropriety in reaching the judgment. Therefore, it is subject to Judicial Review.

In Madras City Wine Merchants Association v. State of Tamil Nadu, (1994) 5 SCC 509 held that Legitimate expectation may arise;

i. if there is an express promise given by a public authority; or
ii. because of the existence of a regular practice which the claimant can reasonably expect to continue;
iii. Such an expectation must be reasonable.

In the case of Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale) CA (Writ) 328/2015 CA Minute 19.02.2020 the Court of Appeal simply described the principle of legitimate expectation as follows;

> "... When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities…."

Wade discusses the principle of legitimate expectations as follows:

> "...A further and more satisfactory reason for the protection of legitimate expectations lie in the trust that has been reposed by the citizen in what he has been told or led to believe by the official. Good government depends upon first between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and government becomes a choice between chaos and coercion."

> "...It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made.. " (Page 452)

The meaning and scope of the doctrine of legitimate expectation was considered at length in (Union of India vs. Hindustan Development Corporation) 1994 AIR 988 where it was stated that;

> "Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to a legitimate expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense.

In Kurukulasooriya vs. Edirisinghe and Six Others SC (FR) 577/2009 S.C. Minute 11.01.2011 where it was held that;

> "It would be necessary for the party which claims the benefit of legitimate expectation to show that such expectation arises from a promise or hope given by the authority in question"

In Council of Civil Service Unions v. Minister for the Civil Service {1985} A.C. 374, 408-9 Lord Diplock stated that for a legitimate expectation to arise, the decision;

> "affect [the] other person by depriving him of some benefit or advantage which either {i} he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or {ii} he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

"Such legitimate expectations may arise where a public authority has made a clear, unqualified and unambiguous representation to a particular individual that it will act in a particular way. The burden is on the individual to demonstrate that an unqualified, unambiguous and unqualified representation was made [Clive Lewis, Judicial Remedies in Public Law, 5th Ed., 248 (South Asian Edition)]."

The terms of the representation by the decision-maker must entitle the party to whom it is addressed to expect, legitimately, one of two things:

(a) That a hearing or other appropriate procedure will be afforded before the decision is made. (Procedural Legitimate Expectation); or

(b) That a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied. (Substantive Legitimate Expectation)

Our courts have consistently recognized the concept of procedural legitimate expectation.

In (Sudhakaran v. Bharathi and Others) [1987] 2 Sri. L. R. 243,

(Desmond Perera v. Karunaratne, Commissioner of National Housing) [1994] 3 Sri. L. R. 316(CA}, [1997] 1 Sri. L. R. 148(SC),

(Laub v. Attorney-General) [1995] 2 Sri. L. R. 88,

Multinational Property Development Limited v. Urban Development Authority [1996] 2 Sri. L. R. 51].

The courts have accepted that procedural protection should be given where an individual has a legitimate expectation of procedural protection such as a hearing or a consultation before a decision is made.

The controversy is whether in such situations the individual has a legitimate expectation that the benefit will be granted or continued. This is the question of substantive legitimate expectation.

The traditional objection to the doctrine of substantive legitimate expectation is twofold;

(a) Ultra Vires by fettering the discretion
(b) The principle of legality

The arguments in favour of permitting substantive legitimate expectation are based on the principle of legal certainty. It is said that where a public body makes a promise it is in the interests of good administration that it should act fairly and should implement its promise.

Prior to the Court of Appeal decision in R. v. Secretary of State for the Home Department, ex p Hargreaves [(1997) 1 W.L.R. 906] the weight of authority was in favour of the developing doctrine of substantive legitimate expectations. There was direct support in R v. Secretary of State for the Home Department, exp. Ruddock [1987] 1 W.L.R. 1482 and R. v. Ministry for Agriculture,

Fisheries and Floods, exp Hamble (Offshore) [1995] 2 A E.R. 714 while indirect support could be found in R. v. Secretary of State for the Home Department, exp Khan [1984] 1 W.L.R. 1337.

However, in R. v. Secretary of State for the Home Department, ex p Hargreaves [(1997) 1 W.L.R.906] the court cast a shadow over the doctrine of substantive legitimate expectation by suggesting that it was not for the court to determine the fairness of a minister's decision not to accommodate a reasonable expectation which a policy would thwart, as this amounted to an intrusion into the merits of the decision. It was suggested that on matters of substance Wednesbury is the correct test, and that the doctrine of legitimate expectation, based on fairness, cannot be extended from procedural to substantive matters.

It was for the decision-maker to undertake the balancing act: to decide whether the expectation should be protected or whether the public interest is strong enough to override the expectation. The court would only quash the decision to apply the new policy instead of the old, if it could be shown that the decision maker's judgement to do was irrational, Wednesbury unreasonable; it could not be quashed on the basis of fairness.

The court in R. v. Secretary of State for the Home Department, exp Hargreaves(supra) overrule R. v. Ministry for Agriculture, Fisheries and Floods, exp Hamble (Offshore) (supra) in so far as court said that a balancing exercise should be undertaken by the court.

In R. v. North and East Devon Health Authority, exp. Coughlan [(2000) 2 W.L.R. 622] the question was considered in detail by the Court of Appeal and it was stated that the starting point is to ask what the individual's legitimate expectation was, and suggested that where there is a dispute as to this it is to be determined by the court, with there being at least three possible outcomes with the court taking a different role in respect of each category.

(a) The court may decide the public body only needs to bear in mind its previous policy or assurances, giving it the weight, it thought fit, but no more, before deciding to change course. The court will then only review the decision on conventional Wednesbury grounds.

(b) The court may decide that the representation gives rise to a legitimate expectation of procedural benefit and if so, the court will require the opportunity for consultation to be given unless there is an overriding reason to withdraw from it.

(c) The court will in a proper case, decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the legitimacy of the expectation is established, it is for the court to determine whether there is sufficient overriding interest relied upon for the change of policy or to justify departing from the promise.

The court is undertaking a balancing exercise between the public interest and the individual's interest. This category is a clear acceptance of the doctrine of substantive legitimate expectation. The court defined the type of case of an enforceable expectation of a substantive benefit as

being where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract. Promises rather than policies are more likely to fall within this category.

In Sri Lanka substantive legitimate expectation has been recognized in some cases. [Dayarathna and others v. Minister of Health and Indigenous Medicine and Others [1999] 1 Sri. L. R. 393,

Mowjood v. Pussadeniya [1987] 2 Sri. L. R. 287].

Ultra Vires Representation should not be binding on the body which made it as it would entirely destroy the whole doctrines of ultra vires and separation of powers which are related. In Robertson v. Minister of Pensions [(1949) 1 KB. 227] Lord Denning used the doctrine of estoppel to give relief to an individual who had relied on an unlawful representation. However, the House of Lords in Howell v. Falmouth Boat Construction Co. [(1951) A.C. 837] disapproved of Lord Denning's remarks relating to an ultra vires assurance and its legal consequences.

In Tokyo Cement Company (Lanka) Ltd. vs. Director General of Customs [(2005) BLR 24] the Supreme Court held that the representation must be *intra vires* for there to be a legitimate expectation. Hence the alleged representation on behalf of the Land Reform Commission should have been made by a person or body empowered by law to do so.

It is important to note that Order X3 that is sought to be quashed, made by the Kurunegala Branch Board under the Debt Conciliation Ordinance of 1941, as amended in 2019. This matter came up for hearing on 27/11/2024. As constituted, the application for writ cannot be had and maintained, for the reason that the 'first Respondent' is neither a natural person nor a legal person.

Section 2(1) of the Debt Conciliation Ordinance deals with the constitution and composition of the main board.

Section 8 deals with the constitution and composition of the branch boards.

Very familiar statutory phrases such as 'shall be a body corporate', 'with perpetual succession', 'having a common seal' and 'may sue and be sued' are not to be found in either of those two sections. Thus, the learned Counsel for the Respondents argued that the said 'first Respondent' is not a legal person. It is neither a natural person. Also, the total complement of the members has not been made parties to the writ application. Therefore, the Respondents says that the Application for writ has to be failed.

Another argument raised on behalf of the Respondent was that the Petitioner has failed to demonstrate his claim that the order X3, sought to be quashed, is *ultra vires*. Citing section 8 of the Ordinance, as amended in 2019, the Petition claims that only two members have participated in the order, and therefore it is ultra vires the said section. The constitution and the

composition of the main board is dealt with section in Section 2(1). Its quorum is specified in Section 3(2).
The constitution and composition of a branch board is in section 8 whereas the Ordinance itself does not specify the quorum of a branch board.

Section 9(2) of the Ordinance states that the quorum of a branch board shall be prescribed. Thus, the Regulations made under the Ordinance comes into play. The Debt Conciliation Regulations, 1942 [1956 Edition of the Subsidiary Legislations - Volume II page 21] stipulates that the quorum of a branch shall be two where the total complement of members is three, and that the quorum shall be three where the total complement of members is more than three. Thus, the quorum of a branch board invariably has to be either two or three, as the case maybe. The matter as to the quorum of any particular branch board can be determined only in reference to the total complement of the members of such branch board, in this instance, the Kurunegala branch board.

The composition and the quorum being two different aspects. Article 137 of the Constitution [as amended in 2020] provides for the constitution and composition of this Court, but it is Article 146 that has dealt with the quorum aspect. Matters before this Court will have to be dealt with not by all the justices sitting together, but as mandated by the said Article 146.

This Court has no way to ascertain the total complement of members of the Kurnegala branch board. The Application seeking the Writ ought to have provided the material necessary to ascertain and determine the matters alleged as to the Order X3 being *ultra vires*. But there is utter, and dismal, failure in this regard. At page 3 of order X3, in the middle of the 4th line of the second paragraph, and at the very end of the 5th line thereof, the Sinhala words 'theeranaya karamu' have been used. Similarly, the last line in the last page (page 4) also has the same two Sinhala words. These demonstrate that more than one member has participated in the Order X3. On Petitioner's own showing, the very next document annexed, namely X4, also shows that two members have participated in pronouncing the order. Two is the minimum possible according to the Regulations of 1942.

The Petitioner has failed to supply the material to demonstrate the allegation of *ultra vires*.

Therefore, the Application for writ has to be failed.

Conclusion in X3 is based on findings of primary facts. Even in a civil appeal, findings on primary facts should not be lightly be disturbed, unless those findings are perverse. Order X3 has, as amply discernible from its four pages, been arrived at based on very good, valid and plausible reasons. Thus, the findings concerned are in no way perverse. The Petition does not claim, or at least offer any hint, as those findings being perverse. Thus, there is no plausible grounds on which to disturb or upset them.

The Respondents says that the Application for writ has to fail. There is no way in which the Petitioner can blame any other for his own failure. Petitioner will have to blame himself, and not any other.

According to Section 54 of the Debt Conciliation Ordinance, the petitioner had the remedy of making an application within three months to review its order by the Board, but the petitioner failed to do so. When an alternative remedy is available, the petitioner cannot invoke the writ jurisdiction of this court without recourse to the said remedy.

The petitioner cannot maintain this application due to the undue delay.

In support of these arguments the following decided cases are important.

In the case of W.D Dharmasiri Karunaratne and Another V. Debt Conciliation Board of Colombo and Others – CA(Writ) 463/10 decided on 15th June 2012. In this case, the power of the Debt Conciliation Board to decide whether a deed is a transfer or a mortgage has been discussed.

In the case of W. Thenuki Pehansa de Silva V. Kusala Fernando, The Principal, Princess of Wales' College, Moratuwa and Others CA/Writ/103/2019 decided on 17th December 2019.

In the case of Niroshana and Another V. Gunasekera and Another – (2006) 3 Sri L.R. 152 in substantiating his argument that when there is an alternative remedy, without recourse to that remedy, the petitioner cannot invoke the jurisdiction of this court.

Without recourse to the remedy in terms of Section 54 of the Debt Conciliation Ordinance, the petitioner cannot invoke the jurisdiction of this court.

Section 54(1) of the Debt Conciliation Ordinance reads as follows;

> The Board may, of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compounded debt has been completed, review any order passed by it and pass such other in reference thereto as it thinks fit.

In the aforesaid case of Niroshana and Another V. Gunasekera and Another (supra), the petitioner has not sought to review the order granting a certificate to the debtors in terms of Section 54 of the Ordinance before invoking the jurisdiction of the Court of Appeal. Following the decision in Bhambra vs. Director of Customs and Others – (2002) 3 Sri L.R. 240, it was held by the Court of Appeal that the failure of the petitioner to resort to an alternative remedy provided by law precludes the court from intervening and exercising its discretionary powers.

Section 54 of the Ordinance provides for an alternative remedy. The Petitioner has not exhausted this remedy before seeking the discretionary remedy by way of writ. There is not even an explanation in the Petition as to why and or how the Petitioner could not exercise the right

granted by the said section. The Application for writ has to fail. As submitted above repeatedly, the Petitioner will have to blame himself.

Hence, I find no reason to exercise the writ jurisdiction of this court with regard to the instant application. Accordingly, the application for writ prayed for by the petitioner is dismissed without costs.

President of the Court of Appeal

Hon. Wickum A. Kaluarachchi, J.

I agree

Judge of the Court of Appeal