

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 Mandamus, Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA-WRT-379/23

Ananda Senarathna Bandara Jayasundara

Ulpatha Road, Madatugama

Petitioner

Vs.

1. Ms.Wasantha Perera, Secretary
Ministry of Justice, Prison affairs and
Constitutional Reforms,
No 19, Sri Sanjaraja Mawatha , Colomo 10.
2. P.S.K. Rathnayake
Hon. President
Debt Conciliation Boar
No. 147, Welangolla Road, Yanthampalawa
Kurunegala
3. J.G.N. Thilakarathna
Hon. Member
Debt Conciliation Board
No. 147, Welangolla Road, Yanthampalawa
Kurunegala
4. Secretary

Debt Conciliation Board
No. 147, Welangolla Road, Yanthampalawa
Kurunegala

5. Alahakoon Mudiyanseelage Jayanthi ,
Anulawathie
No. 100/7 Wendesiwanththa, Yapagama
Dambulla.

Respondents

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

Counsel: Chanaka Kulathunga for the Petitioners
Abigail Jayakody, SC for the 1st – 4th Respondents .
Anil Silva, PC with Sarith Wadugedara for the 5th Respondent

Argued On: 04.12.2024

Written

Submissions: 10.01.2025 (by the Petitioner)

On

Decided On: 28.01.2025

JUDGMENT

B. Sasi Mahendran, J.

The Petitioner instituted this application by the petition dated 11.07.2023 seeking *inter alia* a writ of Certiorari to quash the decision dated 01.03.2023 marked P5 on the basis that the said order was signed only by one person and a writ of Mandamus to compel the 2nd, 3rd and 4th Respondents to consider the possession of the Petitioner in terms of the law.

The relevant facts of this case are as follows:

The Petitioner states that the Petitioner became the owner of the land in question by the deed bearing No. 1760 dated 20.09.2000 attested by I.G. Munasinghe, Notary Public. The Petitioner further states that the Petitioner filed an application in the Debt Conciliation Board dated 19.09.2012. After such application, the Petitioner was directed to prove the possession according to which the Petitioner marked several documents and several parties gave evidence.

Through evidence, the Petitioner revealed that he was in possession when the application was made to the Debt Conciliation Board and that in the police complaint, the applicant specifically prayed not to enter into the possession till the determination of the matter but on or around 23.10.2015, the Respondent forcibly entered into the land and started a car sale. Further, the Grama Niladhari certificate confirmed the possession of the applicant. The Petitioner further avers that the Board delivered its order on 12.07.2019 and decided in terms of Sections 19(2) and 19(aa) (1) (2) of the Debt Conciliation Board that the Petitioner is in possession of the land. Being aggrieved by the said order, the 5th Respondent filed a writ application bearing No. 152/21. The Court of Appeal made an order dated 21.10.2022 quashing the decision made on 12.07.2019 directing the Board to consider all the evidence led before it and make an appropriate order. The Petitioner avers

that thereafter, the order dated 01.03.2023 marked P5 was made inter alia deciding that the burden is on the applicant to prove the possession as at the date of application, the Grama Niladhari did not confirm the type of possession of the applicant and the deed marked 8313 is executed as a security for the money borrowed from the 5th Respondent. The Petitioner contends that the said order marked P5 is made and signed only by the 2nd Respondent which is contrary to Section 3 of the Debt Conciliation Board and thus ultra vires.

In this context, the Petitioner has invoked the writ jurisdiction of this Court seeking *inter alia* to quash the said order marked P5.

When we peruse P5, it is true that the particular order was signed by the Chairman of the Board. Nevertheless, after a careful perusal of the order, the following excerpt can be considered as important.

“ඔප්පුවේ සඳහන් කරුණු අනුව භුක්තියද ලබා දී ඇති බව සඳහන් වන බැවින් එම භුක්තිය එලෙස ලබා දුන් පසුවද තමා එම භුක්තිය රඳවා ගෙන සිටි බව ප්‍රබල සාක්ෂි මත ඔප්පුකිරීමේ භාරය ඉල්ලුම්කරුට තිබේ ඇතත් මණ්ඩලය සැඟිමකට පත් වී ඇති පරිදි එම වගකීම ඉල්ලුම්කරු විසින් ඔප්පුකර නැති බව තීරණය කරමු. ඉහත තත්ත්වය යටතේ මෙම ඉල්ලීම ඉදිරියට පවත්වා ගෙන යාමට බලය නොමැති බැවින් ඉල්ලීම නිෂ්ප්‍රභා කරමු.”

Further, we observe that on page 243 of the brief, before the said order was made on 01.03.2023, at 9.30, the Chairman, and one of the Members named Tillakaratne were present when the order was pronounced.

During the argument stage, the Counsel for the Respondents brought to the notice of the Court of the Debt Conciliation Regulations with regard to the necessity of quorum. According to Section 7 (a) of the said regulation, there is no necessity for all the members to be present for an inquiry. Therefore, we hold that, the order delivered on 01.03.2023 is in accordance with the law. Thus, there is no reason for this Court to quash the said Order.

We dismiss the application with costs of Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna,J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL