

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

**C.A. (Writ) Application
No: 0439/2022**

Lokupitiyage Maithridasa,
No. 570, Nawagamuwa South,
Ranala

DC Kaduwela

Case No.: 626/ විභේදන

Applicant-(Debtor)

**Debt Conciliation Board
Application No. 42013**

Vs.

Suriya Arachchi Gamage Chamindalal,
No. 506, Sri Sumanathissa Mawatha,
Nawagamuwa South, Ranala

Respondent (Creditor)

AND NOW BETWEEN

Suriya Arachchi Gamage Chamindalal
No. 506, Sri Sumanathissa Mawatha,
Nawagamuwa South, Ranala

Respondent (Creditor)-Petitioner

Vs

1. Debt Conciliation Board of Colombo,
2. Hon. W. Irangani Perera
The Chairman of the
Debt Conciliation Board
3. Hon. W.G. Pushpamali,
Member of the Debt Conciliation Board

4. Hon. Kusum Pathirana,
Member of the Debt Conciliation Board

All of No. 35A, N.M. Perera Mawatha,
Colombo 08.

Respondents

5. Lokupitiyage Maithridasa,
No. 570, Nawagamuwa South,
Ranala

Applicant-(Debtor) - Respondent

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Vijith Singh with K. Jackson
for the Petitioner

Shantha Karunadhara
for the 5th Respondent

Argued on : 21-11-2025

Decided on : 03-02-2026

JUDGMENT

R. Gurusinghe, J.

The petitioner filed this application seeking *inter alia*,

- (b) Writ of Certiorari quashing the order of the 1st to 4th respondents dated 31-03-2022 marked P17, rejecting the application for reliefs under Section 54 (1) of the Debt Conciliation Board Ordinance (hereinafter referred to as the Ordinance).

- (c) Writ of Certiorari quashing the Order dated 06-07-2018 marked P9 deciding the impugned deed of Transfer bearing no. 15282 was really a mortgage, and Order dated 15-10-2021 marked P12 rejecting the application made by the petitioner under Section 29 (3) of the Ordinance, and Order dated 15-10-2021 marked P13 granting certificate/the issuance of certificate dated 15-10-2021 marked P14 in terms of Section 29 (4) of the Ordinance.
- (d) A Writ of Mandamus directing the 1st to 4th respondents to review their order dated 06-07-2018 marked P9, deciding the impugned deed of transfer bearing no. 15282 was really a mortgage/order dated 15-10-2021 marked P12, rejecting the application made by the petitioner under section 29 (3) of the ordinance and/or Order dated 15-10-2021 marked P13, granting the certificate/the issuance of the certificate dated 15-10-2021 marked P14, under Section 29 (4) of the Ordinance or in the alternative Writ of Mandamus directing 1st to 4th respondents to conduct a re-trial in the application no. 42013.

The 5th respondent filed an application bearing No.42013 before the Debt Conciliation Board (Hereinafter referred to as the “Board”), on 08-04-2011, with regard to a deed bearing No. 15282, stating that, on 16-10-2011 he has obtained a loan of Rs. 150,000/- from Suriarachchi Gamage Chaminda Lal (Petitioner in this application), on the promise that upon repayment of Rs. 150,000/- he would re-transfer the said property back to the 5th respondent. The 5th respondent further stated that, as the creditor insisted on a transfer deed instead of a mortgage, he had to execute a deed of transfer. The 5th Respondent further stated that he had continued possession of the property on the subject matter of the transfer. The 5th Respondent produced a letter signed by the petitioner dated 16/10/2007 stating that Lokupitiyage Maithridasa (5th Respondent) sold a land called Sambudhhdhidelgahawatte in extent 2 Roods and 8.8 Perches for a sum of Rs.150,000/- and when that Rs.150,000/- is repaid to him, he would re-transfer the land to said Lokupitiyage Maithridasa. That document was produced before the Board by the 5th respondent and is marked in this application as P20.

The Board accepted the application of the 5th respondent and issued notice on the respondent in that application, who is the petitioner in this application.

Petitioner states that the petitioner purchased land belonging to the 5th respondent because the petitioner was a relative of the 5th respondent. The petitioner further states that the 5th respondent agreed to sell the land for Rs. 750,000/-, with Rs. 150,000/- payable at the time of execution of the

deed and the balance thereafter. Consequently, the land was transferred to the petitioner by deed of transfer no. 15282 dated 15-10-2002, and the petitioner paid Rs. 150,000/- at the time of executing the deed, and the balance purchase price was paid by obtaining a loan from one Mrs Indrakanthi Ekanayake.

The petitioner states that he allowed the 5th respondent to temporarily use the land for agricultural purposes.

In paragraph 10 of the petition, petitioner states as follows: “the petitioner received several notices from the Debt Conciliation Board and then the petitioner asked regarding those notices from the respondent (petitioner refers to the 5th respondent as the respondent in this petition), and the respondent replied that he instituted with action, in order to avoid other co-owners interference to the land and avoid from being instituting partition action and to establish the possession of the land.”

The paragraphs 11, 12, 13, and 14 of the petition are as follows:

11. “However, later the respondent requested the petitioner to appear before the Debt Conciliation Board and obtain a certified copy and hand it over to the respondent.”
12. “Therefore, as advised by the respondent, the petitioner met an Attorney-at-Law and gave a signed letter to obtain a certified copy of the case record and handed it over to the respondent on or about 26-02-2015.”
13. “Subsequently, the petitioner appeared before the Debt Conciliation Board on 02-03-2015 through the Attorney-at-Law, who instructed the petitioner to obtain a certified copy as advised by the respondent, and after the proceedings, the petitioner accompanied the respondent to his home also.”
14. “Thereafter, the petitioner did not receive any notice from the Debt Conciliation Board through registered post or Grama Niladhari, and all the time the petitioner and respondent were in good terms with each other without any dispute, and the petitioner visited the impugned land once a week and enjoyed the possession of the land.”

Petitioner further states that on or about 04-09-2021, the respondent commenced construction of a temporary hut using roofing sheets. On the

same day, the petitioner lodged a complaint with the police. Thereafter, on 08-10-2021, the petitioner visited the Debt Conciliation Board, obtained a certified copy of the entire case record, and perused the same. Upon perusal, he found that after three years of the execution of the deed, there was an inquiry on the petition 19A, before the Debt Conciliation Board in regard to the possession of the land, and an order was delivered on 15-05-2017, holding that the respondent was in possession of the land and he is entitled to proceed with the action.

The petitioner's complaints in this application are briefly as follows:

- 1) The 1st respondent Board arrived at its decision on ex parte evidence of the respondent, not giving an opportunity to the petitioner to present his case, violating the principles of natural justice, and the 1st respondent Board rejected the petitioner's application by order dated 31-03-2022 for review without a fair hearing.
- 2) The respondent Board had not followed the statutory duty under Section 49 of the Ordinance. The Order dated 31-03-2022 against the petitioner is indefensible, unreasonable, arbitrary, capricious, *mala fide*, and *unfair in violation of the principles of legitimate expectation, natural justice*, and reasonableness.
- 3) The order of the Board dated 31-03-2022 is contrary to the provisions of Section 54 (1) of the Ordinance.
- 4) The Board has not followed the statutory duty stipulated in Section 21 (A) of the Ordinance.
- 5) The Board has not duly discharged its duty in arriving at a reasonable settlement between the parties.
- 6) Orders dated 31-03-2022 rejecting the application for review of the orders dated 06-07-2018 marked P9, deciding the impugned date of transfer no. 15282 was really a mortgage and an order dated 15-10-2021 marked P12, rejecting the application of the petitioner under Section 29 (3) of the ordinance and order dated 15-10-2021 marked P13, granting the certificate dated 15-10-2021 marked P14 in terms of Section 29 (4) of the Ordinance are also grossly indefensible, unreasonable, arbitrary, capricious, *mala fide* and in violation of natural justice and reasonableness and made for extraneous and co-lateral considerations which do not withstand the test of objective scrutiny.

The petitioner states that he is entitled to the relief sought, including Writ of Certiorari and Mandamus, for the following reasons:

- (a) The said decisions of the Respondents or any one or more of them are *ultra vires* and/or illegal and/or unreasonable and/or irrational and/or is an abuse of powers,
- (b) The said decisions are arbitrary and or capricious and/or a blatant violation of the provisions of law,
- (c) The Respondents owe a public and a statutory duty,
- (d) The Respondents acted in excess of their Authority.
- (e) The Petitioner's rights in this regard were denied by the Respondents.
- (f) The Respondents failed to arrive at a settlement as enunciated in the Debt Conciliation Ordinance No. 39 of 1941 as amended.
- (g) The said decision is against the legitimate expectation of the Petitioner.
- (h) There is no alternative remedy that the Petitioner could resort to in relation to its grievances as set out in this Petition except invoking the jurisdiction of this Court.

The petitioner himself admitted, he had received several notices issued by the Debt Conciliation Board. The petitioner had attended the Board once and obtained a certified copy of the proceedings in February 2015. An Attorney-at-Law represented the petitioner before the Board on 02-03-2015. In those circumstances, the petitioner cannot take up a position that the Board had not given him the necessary notices in terms of the provisions of the Ordinance. On 05-07-2011, the Board directed the issuance of notice to the petitioner by registered post. On the next date, 05-09-2011, the record reflects that the respondent in that application was served with notice by registered post, and the registered letter was not returned.

Thereafter, an inquiry was held before the Board regarding the possession of the land. Again, on 05-12-2012, the letter was present, and the creditor was absent. The Board again directed that notice be issued to the creditor by registered post, stating that he may participate in the inquiry into the possession of the land. On behalf of the 5th respondent, the 5th respondent

himself, and the Grama Niladhari testified before the Board. The letter given to the 5th respondent by the Petitioner, which bears the same date as the Deed of Transfer, agrees that once Rs 150,000 is repaid, the petitioner would retransfer the land to the 5th Respondent (P20). The Petitioner's explanation in regard to P20 in this Application is that the 5th Respondent concocted a letter using a signed blank document given by the Petitioner for the purpose of getting fertilizer for the cultivation. Petitioner implicitly admits that the signature appearing on document P20 is his. The Petitioner's signature on P20 was placed immediately after the writing. P20 is not a full-page letter. Upon inspection of the said letter, there is no basis to conclude that P20 was a fabricated letter. The Petitioner was aware of an inquiry before the Board regarding the application of the 5th Respondent.

While that inquiry was pending before the Board, on 02-03-2015, the creditor, the petitioner of this application, was present before the Board, represented by an Attorney-at-Law. As the Grama Niladhari was not present, there was an accusation before the Board seeking further time to call the Grama Niladhari. Proceedings of that date is marked P6. From those proceedings, it is manifest that the petitioner had the knowledge that there was an inquiry before the Board with regard to the possession of the land. Thereafter, the petitioner did not appear before the Board. On 16-05-2017, the Board decided that the debtor in that application was in possession of the land and, therefore, the application could proceed under section 19(A)(1a) of the Ordinance. Thereafter, the 5th respondent gave evidence before the Board, and the Board held that, although on its face it is a transfer, the impugned deed was in reality a mortgage. In that order, the Board has noted that notices under Sections 19A (2) and 19B (1) and (2) were sent to the creditor, and the creditor has not responded. Thereafter, the Board acted under Section 25(1) of the Ordinance. As the creditor did not appear or provide information to the Board, the Board, on 18-09-2018, directed the issuance of a certificate to the debtor under Section 29 of the Ordinance.

The Grama Niladhari of the Nawagamuwa South Division reported to the Board that the petitioner had refused to accept the notices and therefore had pasted them on the front door of the petitioner's house. Since the petitioner had failed to show cause against the grant of a certificate in terms of the Board, the Board issued a certificate.

The petitioner made an application under Section 54 of the Ordinance to review the decision of the Board to issue a certificate to the creditor on 15-10-2021. Section 54 of the Ordinance 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 compounded debt has been completed, whichever date is earlier, 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 subsection (1) shall be final and 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 (1), 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 Board observed that the creditor had not made that application to the Board to review within three months of the issuance of the certificate. An application to review under S.54 of the Ordinance must be made within 3 months of the granting of the Certificate of Settlement. The Board has no authority to entertain an application not made within 3 months of the granting of the Certificate or of the dismissal of the Application. Since the Petitioner's application for review was made after the expiration of 3 months of the granting of the certificate, the Board has no option but to dismiss the Petitioner's application.

From the Petition itself and the proceedings before the Board, it is clear that the Petitioner was notified at every stage of the inquiry at which notice to the Creditor is required under the Ordinance. The petitioner appeared before the Board once and obtained a certified copy of the proceedings in 2015. The

petitioner had full knowledge of the proceedings before the Board. The signature on P 20 by which the petitioner agreed to retransfer the land to the 5th respondent upon repayment of Rs. 150,000/- is genuine. When making orders, the Board has not violated the principles of Natural Justice as alleged by the petitioner. All orders were made in accordance with the legal framework of the Ordinance. None of the orders are illegal. The Board has followed the procedure laid down in the Ordinance. Accordingly, the application is dismissed.

Judge of the Court of Appeal

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.