

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

In the matter of an application, a mandate in the nature of a Writ of Certiorari and a Writ of Prohibition in terms of Article 140 of the Constitution.

1. D.H.A. Swarnalatha de Silva
2. Vidya Sammani Senadeera
3. Purnima Prabodanee Senadeera

All of "Dhammika Nivasa"
Telwatta.

PETITIONER

Vs.

CA Writ Application No. 225/2014

1. Mathara Gunasingha Arachchige
Premalatha Samarakarathna
232, Horana Road, Piliyandala.

ADDED 1A. Menaka Mindu Samaratne
ADDED 1B. Gayan Dinesh Kumara Samaratne

2. Don. David Jagoda
No. 73/14, Sri Dharamarama Road,
Ratmalana.

3. Peoples' Bank
No: 75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 1.

4. Sarojini Gabadage
Inquiring Officer,
Land Redemption Department,
Peoples' Bank, 220, Deans Road,
Colombo 10.
5. Mr. Gamini Senarath
Chairman, Peoples' Bank.
- ADDED 5A. Mr. Hemasiri Fernando
Chairman, Peoples' Bank.
- ADDED 5B. Mr. Nissanka Nanayakkara P.C
Chairman, Peoples' Bank.
- ADDED 5C. Mr. Sujeewa Rajapaksha
Chairman, Peoples' Bank.
- ADDED 5D. Professor Narada Fernando
Chairman, Peoples' Bank.
6. Mr. Jehan Ameratunga
Director, Peoples' Bank.
- ADDED 6A. Mr. Hemasiri Fernando
Director, Peoples' Bank.
- ADDED 6B. Malindu Ranasinghe
Director, Peoples' Bank.
- ADDED 6C. Ms. Visakha Amarasekere
- ADDED 6D. Mr. Chandana Guniyangoda
Director, Peoples' Bank.
7. Mrs. Lakshmi Sangakkara
Director, Peoples' Bank.
- ADDED 7A. Mr. Chrishmal Waransuriya

- Director, Peoples' Bank.
- ADDED 7B. Dr. Aminda M. Perera
 Director, Peoples' Bank.
- ADDED 7C. Mr. Keerthi Goonatilake
 Director, Peoples' Bank.
- ADDED 7D. Mr. Jayantha Thilakarathne
 Director, Peoples' Bank.
8. Mrs. Dharma Gammanpila
 Director, Peoples' Bank.
- ADDED 8A. Ms. G.D.C. Ekanayake
 Director, Peoples' Bank.
- ADDED 8B. Mr. Nilanka Mevan Pieris
 Director, Peoples' Bank.
- ADDED 8C. Mr. Sudarshan Ahamgama
 Director, Peoples' Bank.
- ADDED 8D. Mr. Bradley Emerson
 Director, Peoples' Bank.
9. Mr. Pawan Dissanayake
 Director, Peoples' Bank.
- ADDED 9A. Mr. Janaka Sugathadasa
 Director, Peoples' Bank.
- ADDED 9B. Mr. T.D. Anton S.Hemantha
 Director, Peoples' Bank.
- ADDED 9C. Mr. A.M.P.M.B. Atapattu
 Director, Peoples' Bank.
- ADDED 9D. Mr. Isuru Balapatabendi

- Director, Peoples' Bank.
- ADDED 9E. Dr. Ahilan Kadirgamar
 Director, Peoples' Bank.
10. Mr. G.K.D. Amarawardena
 Director, Peoples' Bank.
- ADDED 10A. Mr. R.W.D.A.G. Rajasekera
 Director, Peoples' Bank.
- ADDED 10B. Mr. M.H.Jamaldeen
 Director, Peoples' Bank.
- ADDED 10C. K.D.N. Ranjith Asoka
 Director, Peoples' Bank.
- ADDED 10D. Kumar Gunawardena
 Director, Peoples' Bank.
- ADDED 10E. Ms. Gillian Edwards
 Director, Peoples' Bank.
11. Mr. R.M.P. Ratnayake
 Director, Peoples' Bank.
- ADDED 11A. Mr. Felician Perera
 Director, Peoples' Bank.
- ADDED 11B. Neomal Fernando
 Director, Peoples' Bank.
- ADDED 11C. Manjula Wellalage
 Director, Peoples' Bank.
- ADDED 11D. Mr. Sanjaya Bandara
 Director, Peoples' Bank.

12. Mr. Piyadasa Kudabalage
Director, Peoples' Bank.
- ADDED 12A. Mr. Sanjaya Galaboda
Director, Peoples' Bank.
- ADDED 12B. Mr. T.M.K. B.Tennekkon
Director, Peoples' Bank.
- ADDED 12C. Lahiri Pathmalal
Director, Peoples' Bank.
- ADDED 12D. K.A. Vimalenthirajah
Director, Peoples' Bank.
13. Hon. Attorney-General
Attorney-General's Department,
Colombo 12.
- ADDED 14. Hon. Ravi Karunananayake
Minister of Finance,
Ministry of Finance & Planning,
Secretariat Building, Colombo 1.
- ADDED 14A. Hon. Mangala Samaraweera
Minister of Finance,
Ministry of Finance & Planning,
Secretariat Building, Colombo 1.
- ADDED 15. Mr. K. Rajendran
Director, Peoples' Bank,
No.75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 1.
- ADDED 15A. Mr. M.S. Asoka Muthumala
- ADDED 15B. Mrs. Bhadranie Jayawardhana
Director, Peoples' Bank,

No.75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 1.

(The present directors of the Peoples
Bank consist of 5D, the Chairman and
6D,7D,8D,9E,10E,11D and 12D
Respondents)

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| ADDED | 16. Hon. Kabir Hashim
Minister of Public Enterprise and
Development,
13 th Floor, West Tower,
World Trade Centre,
Echelon Square, Colombo 1. |
| ADDED | 16A. Hon. Lakshman Kiriella
Minister of Public Enterprise and Kandy
Development,
Level 36, East Tower, World Trade
Centre,
Echelon Square, Colombo 1. |
| ADDED | 16B. Hon. Mahinda Rajapaksa
Prime Minister, Minister of Finance,
Economy and Policy Development,
Minister of Buddhasasana, Cultural and
Religious Affairs Minister of Urban
Development, Water supply and Housing
Facilities Ministry of Finance & Planning,
Secretariat Building, Colombo 1. |
| ADDED | 16C. Hon. Basil Rajapaksa
Minister of Finance,
Ministry of Finance & Planning,
Secretariat Building, Colombo 1. |
| ADDED | 16D. Hon. Ranil Wickramasinghe
Prime Minister,
Minister of Finance, |

Ministry of Finance & Planning,
Secretariat Building, Colombo 1.

RESPONDENTS

Before	:	Dhammadika Ganepola, J. Adithya Patabendige, J.
Counsel	:	Faisz Mustapha, P.C. Thushani Machado for the Petitioners. Vidura Gunaratne with Shakila Perera for the 1A and 1B Respondents. Hirosha Munasinghe with Diana Rodrigo for the 3 rd and 4 th Respondents. Abigail Jayakody, S.C. for the State.
Argued on	:	24.10.2025
Written Submissions tendered on	:	3 rd , 4 th , 5 th to 12 th and 15 th Respondent : 03.12.2025 13 th and 16 th D Respondents : 07.01.2026
Decided on	:	29.01.2026

Dhammadika Ganepola, J.

The instant application has been filed by the Petitioners invoking the Writ jurisdiction of this Court *inter alia* by way of Writs of Certiorari to quash the determination of the 3rd to 5th and 12th Respondents as evident from the document dated 24.12.2013 marked P35 and the vesting order published in the Gazette Notification bearing No. 1893 dated 17.12.2014 marked P37 and, a Writ of Prohibition preventing the said Respondents

from taking any steps in respect of the subject land and premises under the Section 72(4) of the Finance Act.

The 1st Respondent was the one-time owner of the subject land and premises who had conveyed such premises to the 2nd Respondent by Deed No.852 dated 07.07.1993 marked P2, subject to the condition that the 1st Respondent would redeem the premises within one year upon the payment of the principal sum and the interest at the rate of 36%. The 2nd Respondent had transferred said property to one Dadallage Herbert de Silva Senadeera (hereinafter sometimes referred to as Senadeera), the late husband of the 1st Petitioner and the late father of the 2nd and 3rd Petitioners, by Deed No. 177 dated 14.09.1994, marked P1.

Since the 1st Respondent continued to be in possession of the premises, said Senadeera had instituted an action before the District Court of Panadura bearing No. 1501/L, seeking a declaration that he be declared the owner of the subject land and an ejectment of the 1st Respondent from the premises. While the said action was pending, the 1st Respondent had made an application to the Department of Land Redemption of the People's Bank under Finance Act No. 11 of 1963 to redeem the subject premises. While an inquiry pertinent to the said application was pending before the 4th Respondent, the judgement of the case bearing No. 1501/L had been delivered in favour of said Senadeera. After the conclusion of the aforesaid inquiry before the Bank, the 4th Respondent, by his Order dated 21.11.2011 marked P28, had recommended the Board of Directors of the 3rd Respondent Bank to acquire the subject premises in favour of the 3rd Respondent Bank.

At the same time, said Senadeera had filed the Writ application bearing No. 8/2012 seeking the Court to quash the said recommendations to acquire the subject premises as reflected in P28. Nevertheless, the same had been dismissed by the judgement dated 18.07.2013, marked P30, on the basis that the said writ application was premature, as the inquiring officer had made only recommendations and the Board of Directors of the 3rd Respondent Bank had not yet made any determination. While the matters remained as such, said Senadeera had passed away on 10.12.2013.

However, being aggrieved by the judgement in the case bearing No. 1501/L, the 1st Respondent had preferred an appeal to the Civil Appellate High Court, and the said appeal had been dismissed. It is stated that the Leave to Appeal application, which had been preferred against the said decision bearing No. SC HC CALA 39/2014 is presently pending before the Supreme Court. Upon perusal of the said leave to appeal application, on or about 24.12.2013, the Petitioners had come to know that the Board of Directors of the Bank had made a determination in terms of Section 71(4)(a), and (b) of the Finance Act to acquire the subject premises. Further, the 3rd Respondent has notified the Registrar of Lands of Mount Lavinia that the subject premises are to be acquired under Section 71(4)(a), and (b) of the Finance Act by notice marked P35. The Petitioners claim that the said determination made by the Board of Directors of the 3rd Respondent to acquire the premises in issue reflected in P35 is illegal, irrational and is of no force or avail in law on the grounds pleaded.

When this matter was taken up for argument, parties made oral submissions. The learned Counsel for the 3rd to 4th Respondents and the learned State Counsel for the 13th Respondent advanced several arguments, including the Petitioners' failure to disclose material facts with uberrima fide. The Petitioners state in the Petition that the writ application bearing No. 8/2012, which was filed challenging the recommendations[P28] of the 4th Respondent, was dismissed on the basis that the application was premature as the inquiring officer had only made recommendations. However, the Respondents submit that the Petitioners failed to disclose the fact that the judgement of the Writ Application bearing No. 8/2012 asserted the merits as well. Upon perusal of the aforesaid judgement marked as P30, it appears that in addition to the pronouncement related to the prematurity of the application, the Court of Appeal has also held as follows:

"... in the above circumstances the final decision is made by the Board of Directors of the Bank and in this case the 2nd Respondent the Inquiring Officer has only made the recommendation the 3rd Respondent Bank and this is not a final decision or determination

for the petitioner to challenge by way of a writ of certiorari and, as this application is premature, this Court upholds the preliminary objection of the Respondents”

“Even on the merits of this application, the Respondents have satisfied that the application is made within time and the inquiring officer who is empowered to determine the question of faith has come to the finding that the 1st Respondent’s income during the preceding 3 years immediately preceding the date on which the application was made was less than Rs.100,000/-. As this is a question of fact and this question of fact was determined by the 2nd Respondent after receiving the documentary and oral evidence, in these circumstances, the Petitioner cannot claim that he was not given a fair hearing in the said proceedings. In the given circumstances, the Petitioner has not established any illegality or irrationality or procedural irregularity in the proceedings before the 2nd Respondent. Therefore, this Court, for the reasons aforesaid, dismisses this application without costs.”

In view of the above pronouncement, this Court views that the said application was not dismissed merely upon a preliminary objection that the said application was premature, as pleaded by the Petitioners in their pleadings. It appears that the Court has also focused upon the merits of the matter as well. Therefore, the conclusion that this Court could arrive at in a complete reading of the said judgement is that the said application had been dismissed pursuant to consideration of the merits of the application.

However, it is observed that the Petitioners have failed to draw the attention of this Court to the fact that the judgement asserted the merits as well.

It is common ground that the Petitioners have not appealed against the Judgement of the Writ Application bearing No. 8/2012. Therefore, the finality of said judgement is unchallenged, and the proceedings held before the Inquiring Officer of the 3rd Respondent Bank and the recommendations made therein could be considered as valid in law.

The 2nd Respondent Inquiring Officer in the Writ Application bearing No. 8/2012 is the very same Inquiring Officer who is the 4th Respondent of the instant application. The inquiry referred to in both applications is the same. Therefore, it is obvious that the determination evinced by P35 and the Vesting Order, which are in dispute, are based on the same recommendations made by the 4th Respondent Inquiring Officer. The Petitioners have filed this application, moving this Court to quash the determination as contained in document P35 and the Vesting Order published in the impugned Gazette P37. Based on the doctrine of finality and as well the existence of the determination of the Writ Application bearing No. 8/2012, the Petitioners are not entitled to challenge the validity of the determination evinced by P35 and the Vesting Order published in the impugned Gazette P37, which were issued based on the recommendation made by the 4th Respondent pursuant to an inquiry held under Section 71 of the Finance Act.

Although the Petitioners do not directly challenge the recommendations of the Inquiring Officer in the instant application, the Petitioners challenge the validity of the determination evinced by P35 and the Vesting Order published in the impugned Gazette P37, mainly based on the irregularities of proceedings held before the Inquiring Officer as specified in the amended Petition. Therefore, it is obvious that without challenging the validity of the findings and the recommendations of the Inquiring Officer, the Petitioner cannot succeed in the present application. However, this Court has previously determined that the Petitioners have failed to demonstrate any illegality, irrationality, or procedural irregularity in the proceedings before the Inquiring Officer related to Writ application No. 8/2012. Since the Petitioners have not challenged said findings in the Writ application bearing No. 8/2012, the Petitioners are not entitled to have a second bite of the cherry by challenging such a recommendation indirectly in the instant application. This Court shall not facilitate such an endeavour.

However, the Petitioners advanced another argument that the said determination evinced by P35 and the Vesting Order published in the

impugned Gazette P37 were made without jurisdiction and thus are *ultra vires*.

Upon consideration of Section 71(4) of the Finance Act, it appears that where the Bank has determined that any premises shall be acquired, the provision requires the Bank to make a determination to such effect and to notify such determination to the owner and the relevant Registrar of Land. The said section is as follows:

"71(4) Where the Bank has determined that any premises shall be acquired for the purposes of this Part of this Act, the Bank shall-

(a) notify such determination to the owner of such premises; and

(b) cause a notice to be delivered or transmitted to the proper Registrar of Lands for registration, setting out the prescribed particulars relating to those premises and stating that those premises are to be acquired under this Part of this Act.

Every notice under paragraph (b) shall be registered by the Registrar of Lands in the manner provided in the Registration of Documents Ordinance for the registration of an instrument affecting or relating to land and shall be deemed for such purposes to be an instrument affecting or relating to the premises the prescribed particulars of which are set out in such notice."

The Petitioners contend that no determination has been made by the Bank to acquire the subject matter and that no evidence substantiates the consideration of the recommendation made by the 4th Respondent by its Order marked P28 by the Bank, and no reasons have been given for any alleged decision of the Bank.

However, as per the document marked R14 dated 26.11.2013 annexed to the Statement of Objections filed by the 3rd and 5th to 12th Respondents, it is evident that the Board of Directors of the 3rd Respondent Bank has proceeded to make a determination through a memorandum in respect of the premises numbered DR 292, and accordingly the relevant approval

has been granted by the Board of Directors therein on 24.12.2013 [see the bottom right hand corner of the R14]. Further, the impugned Notice marked P35 issued by the Bank under Section 71(4) of the Finance Act also specifies that the Bank has determined on 24.12.2013 to acquire the impugned premises. Therefore, I am not inclined to accept the position of the Petitioners that there is no determination made by the 3rd Respondent under Section 71(4) of the Finance Act.

The purpose of holding an inquiry by an Inquiring Officer appointed by the Bank, as set out in Section 71(3A) of the Finance Act, is to facilitate a determination by the Bank. Therefore, once the Inquiring Officer has made his recommendation, there is no necessity of giving reasons once again for the determination unless the Bank holds otherwise. Therefore, in the circumstances, it could be presumed that such approval given by the Board of Directors of the Bank affirms the reasons given by the Inquiring Officer for arriving at such a recommendation and that the Board of Directors bases its determination on such reasons stipulated in the recommendation. Accordingly, the argument formulated by the Petitioner that no reasons have been given for any alleged decision of the Bank for its determination cannot sustain.

The Petitioners submit that the Bank has not complied with the mandatory requirement specified in Subsection 71(4)(a) of the Finance Act, which requires the Bank to 'notify the determination to the owner'. **In People's Bank vs. Hetti Kankanamalage Gunasinghe SC Appeal No. 77/15 decided on 13.07.2017**, the Supreme Court has considered the mandatory effect and the necessity of compliance with the provisions of Part VIII of the Finance Act.

"The Finance Act Part VIII seems to have made special provisions for a special purpose with regard to the rights of persons who transfer their land on conditions and failing to perform that condition, lose their land to others. The law has granted seemingly very special power to the People's Bank. The procedure is specifically provided, and each step in the course of the way up to taking possession of the land from the person in whose ownership the land remains, has been laid down. The

provisions of law which are mandatory in nature have to be complied with.”

The Petitioners claim that no notice of determination was served on the Petitioners' predecessor, Senadeera, under said Section 71(4)(a). The Bank has only notified the Land Registry in terms of Section 71(4)(b). Nowhere in the Statement of Objections or Submissions, the Respondent have stated that they have notified the determination to the owner of the premises in issue as required in Section 71(4)(a). Further, no documentary proof of such has been submitted by the Respondents to that extent.

In **Ratnasabapathy Thiruarudchelvam v. Murugupillai Sinnarajah CA (Writ Application No. 242/2017; CA Minutes of 22nd July 2019**, the Court considered the consequences of non-compliance with the above requirement. It was held as follows:

“This Court is of the view that compliance with section 71(4) is a vital step in the acquisition process stipulated in Part VIII of the Act and that this is the only opportunity that a person affected by the said determination would have, of being informed of the reasons for the decision of the Bank, prior to the Minister making a vesting order in terms of Section 72. As held by Lord Diplock, susceptibility to judicial review under the head ‘procedural impropriety’ covers the failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. Therefore, non-compliance with such a step would render the entire process illegal and liable to be quashed by way of a Writ of Certiorari.”

Furthermore, at page 185 of Administrative Law, 11th edition, Professor Wade and Forsyth states as follows:

“Procedural safeguards, which are so often imposed for the benefit of persons affected by the exercise of administrative powers, are normally regarded as mandatory, so that it is fatal to disregard them.

It is imperative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty's subjects. Public Bodies and Ministers must be compelled to observe the law; and it is essential that bureaucracy should be kept in its place."

As mentioned above, the Bank has failed to serve copies of the said determination on the Petitioners. Such non-compliance constitutes a procedural irregularity and renders the Bank's actions unlawful in the circumstances. It is further noted that the Bank has only effected notification to the Land Registry pursuant to section 71(4)(b) of the Finance Act.

In light of the above circumstances, it is evident that the Petitioners established a procedural irregularity in the process adopted due to the non-compliance with Section 71(4)(a).

Further, Section 72 of the Finance Act stipulates that any such determination for acquisition shall be notified to the Minister. Section 72 reads as follows.

72(1) Where the Bank has determined that any premises shall be acquired for the purposes of this Part of this Act, the Chairman of the Board of Directors of the Bank shall cause such determination to be notified to the Minister.

(2) Upon being notified of the determination of the Bank in respect of any premises, the Minister may, by order (hereinafter in this Part of this Act referred to as a 'vesting Order') published in the Gazette, vest in the Bank, with effect from such date as shall be specified in the Order, the premises to which such determination relates.

(3) Where a vesting Order under subsection (2) in regard to any premises is published in the Gazette, such premises shall, with effect from the date specified in the Order under that subsection, vest absolutely in the Bank free from all encumbrances.

Moreover, the Respondents submit that the determination was communicated to the Secretary of the Minister of Finance by letter marked R15. Upon perusal of the document marked 'R15', it is evident that it merely outlines the general procedure relating to the acquisition of premises under Sections 71 and 72 of the Finance Act. Yet, it is my view that the said document fails to comply with the procedural requirements prescribed under Section 72(1) of the Finance Act. Moreover, the Finance Minister could not have acted under Section 72(2) of the said Act and made the consequential vesting order in the absence of such notification of determination by the 3rd Respondent Bank. Such failure establishes procedural irregularity in the process adopted by the Respondents. Accordingly, I'm of the view that, whereas the aforementioned determination was communicated by means of letter R15, the mandatory procedure with regard to the notification of determination prescribed by law ought to be followed by the Respondents in this regard.

Considering the foregoing, I am inclined to grant the relief (c) of the Petition of the Petitioner. However, this order should not prevent the Bank from taking steps in terms of the applicable legal provisions to acquire the premises in dispute based on the abovementioned determination and upon the Publication of a fresh vesting order following the due procedure according to law. I make no order for cost.

Application is partly allowed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal