

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Ali Abdulla Al Suwaidi,
P.O. Box 24547, Doha,
State of Qatar.

Appearing by his Power of Attorney
holder (Sumith Ranwatta) of
No. 28, U. E. Perera Mawatha,
Rajagiriya, Sri Lanka.

CA (Writ) App. No. 259/2024

PETITIONER

Vs.

1. Hatton National Bank PLC,
No. 479, T. B. Jayah Mawatha,
Colombo 10.
2. Alfred Nirmala Kumar,
Branch Manager,
Hatton National Bank PLC,
Kalmunai Branch.
3. Shiromi Halloluwa,
Head of Legal/Board Secretary,

Hatton National Bank PLC,
No. 479, T. B. Jayah Mawatha,
Colombo 10.

4. N. U. Jayasuriya,
Auctioneer and Court Commissioner,
No. 369/1, Dutugemunu Mawatha,
Mawlimada, Kandy.
5. Bio Energy Solution (Private) Limited,
Registered Office,
No. 253, Katugasthota Road, Kandy.
6. Zainulabdeen Mohamed Hairu,
No. 16, Dharmashoka Mawatha,
Kandy.
7. Hirunniza Hairu,
No. 16, Dharmashoka Mawatha,
Kandy.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Ruwantha Coorey for the Petitioner.

Priyantha Alagiyawanna with Sauri Senanayake instructed by Suraj Dissanaike for the 1st

- 4th Respondents.

Supported on: 20.02.2026

Order delivered on: 03.03.2026

Dr. D. F. H. Gunawardhana, J.,

Order

Introduction

The Petitioner is a Qatari national. According to him, the 6th Respondent approached him in the year 2010 and made representations to him to invest in a biomass energy project. Having shown interest in the said project, the Petitioner decided to invest a sum of USD 3,000,000 (Three Million United States Dollars) in the project. As agreed by and between the parties, upon the said investment being made, the 5th Respondent company, which carries on the business of the said project, was to transfer 100% of its shares to the Petitioner, thereby making the Petitioner the sole and 100% shareholder of the company.

However, be that as it is, the project was commenced and infrastructure was constructed. In the meantime, the 5th Respondent had obtained three loans for the purpose of investing in the said infrastructure, from the 1st Respondent Bank. The said infrastructure was constructed on land belonging to the 6th and 7th Respondents, who are also directors of the 5th Respondent company. In order to secure the said loan, with the 5th Respondent being the principal obligor, the 6th and 7th Respondents had mortgaged their property, upon which the said biomass energy project was to be established, as obligors.

Subsequently, the Petitioner discovered that no shares had been allocated to him or entered in the share register, and accordingly a dispute arose between the Petitioner and the 6th and 7th Respondents. As a result, the Petitioner instituted proceedings in the Commercial High Court in respect of the non-allocation and non-issuance of the said shares to him. However, the Petitioner remained a director of the 5th Respondent company throughout.

Nevertheless, in the meantime, as the loan had not been repaid in terms of the agreement, the 1st Respondent bank decided to sell the said property by public auction under the provisions of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (as amended). For that purpose, the 1st Respondent passed a resolution. In the meantime, the Petitioner has come before this Honourable Court seeking, *inter alia*, reliefs preventing the 1st Respondent from proceeding with the said auction, on the basis that no notice was given to the Petitioner prior to passing the said resolution, despite the Petitioner being an interested party who had registered his address.

This was supported before me on 20.02.2026, and the following contentions were advanced by the counsel; hence, this judgement.

Arguments

The Counsel for the Petitioner, Mr. Coorey brought the attention of the Court to the document marked as **P7** annexed to the Petition, by which the Petitioner has brought it to the notice of the 1st Respondent that he has an interest in the mortgaged property where the biomass energy project came up with the money invested by the Petitioner as well, and registered his interest with the 1st Respondent. In addition to that, the 1st Respondent has acknowledged it by the document marked as **P8**. Therefore, Mr. Coorey argued that when the resolution was passed, the 1st Respondent had failed to give notice to such party who had registered his interest by **P7** with the 1st Respondent; thus, the 1st Respondent has violated the provisions set out in Section 2(1)(c) of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (as amended).

On the other hand, Mr. Alagiyawanna argued that the 5th Respondent is the borrower while the 6th and 7th Respondents are the mortgagors, whose immovable property had been mortgaged to the 1st Respondent to raise the loan. The Petitioner is a director, but no share has been allocated or

purchased by the Petitioner, whose name does not appear in the shareholders register, except for the director's register. Therefore, the Petitioner cannot be treated as a party who has any interest in the subject matter. He extended his argument by stating that though the Petitioner claims to have registered his interest by **P7**, which was supposed to have been acknowledged by the 1st Respondent by **P8**, since the Petitioner is not at least a shareholder having a share in the said property, the 1st Respondent is not under a duty to give notice in respect of the resolution proposed to be passed. Therefore, the 1st Respondent's act of not giving notice to the Petitioner is justified.

In addition to that, Mr. Alagiyawanna relies on the principle of *Soleimany v. Soleimany*¹, to buttress his argument that even if a party was a shareholder, shareholders are different from the company as an entity; as such, the Petitioner cannot be heard to say that even if he has a share, he has an interest in the property in suit because the property in suit must be confined to the mortgaged property and nothing else; which is not any business as to where the Petitioner claims to have any interest.

The Petitioner's grievance

The Petitioner in his Petition has stated that he is a Qatari national and that he met the 6th Respondent, who made a presentation regarding an investment in a biomass energy project in Sri Lanka; upon developing an interest in the said project, and after studying the feasibility report thereof, the Petitioner decided to invest a sum of USD 3,000,000 (Three Million United States Dollars) in the project. The said feasibility report together with the BOI approval is marked as **P2(a)** and **P2(b)** in the documents annexed to the Petition. According to the proposal made by the 6th Respondent, upon the Petitioner investing the said amount, 100% of the shares of the company

¹ [1999] Q.B. 785.

incorporated to carry on the business of the biomass energy project, namely the 5th Respondent which was floated for that purpose, were to be transferred to the Petitioner, and thereafter the 6th and 7th Respondents were to manage the affairs of the company for and on behalf of the same while continuing to remain as directors.

The Petitioner has remitted the said sum of money to the 5th Respondent company, and in proof thereof, the Petitioner has annexed the receipts evidencing the remittance of the said sum, which are marked as **P3** document annexed to the Petition.

Thereafter, the Petitioner came to know that the 5th Respondent had raised certain loans, including from the 1st Respondent bank, as revealed in the audited accounts of the 5th Respondent, which the Petitioner has perused. The said audited accounts are annexed to the Petition and marked as **P4**. Thereafter, the Petitioner further came to know that, according to the share list, no shares had been allocated or issued to the Petitioner, despite the fact that a sum of USD 3,000,000 had been remitted by him on the assurance that 100% of the shares of the company would be allocated and transferred in his name. Nevertheless, the share certificate does not reflect any such allocation, and in proof thereof, the Petitioner has annexed the share certificate marked as **P5**.

Subsequently, the Petitioner came to know that the 1st Respondent bank was taking steps to auction the property which had been mortgaged to it by the 6th and 7th Respondents, on which the infrastructure of the said biomass energy project had been established. Accordingly, the Petitioner, through his lawyer, addressed a letter to the 1st Respondent bank, document marked as **P7**, informing the bank that he is an interested party and requesting that he be notified of any resolution passed or steps taken in relation to the proposed auction of the said property.

However, in the meantime, as a dispute had arisen regarding the non-allocation and non-transfer of shares, the Petitioner instituted an action in the Commercial High Court against the 5th, 6th, and 7th Respondents, and the said matter is presently pending. The Petitioner has annexed copies of the relevant pleadings and documents in the said case, which are documents marked as **P6(a)** and **P6(b)** which are annexed to the Petition.

However, despite the notice sent by the Petitioner through his lawyer to the 1st Respondent bank, the bank has taken steps to proceed with the auction of the said property without giving notice to the Petitioner, although the Petitioner claims that he had registered his address as an interested party by the document marked as **P7**. Therefore, the Petitioner states that he ought to have been given prior notice, and that, notwithstanding the same, the bank has proceeded to appoint an auctioneer. Accordingly, prior to the auction taking place, the Petitioner has come before this Honourable Court seeking *inter alia* the following reliefs;

“b) Grant and issue a Mandate in the nature of a Writ of Certiorari, quashing the purported decision/ resolution of the 1st Respondent Bank dated 26th January 2023 to sell/alienate by public auction the properties described in the Schedules hereto which are purportedly mortgaged to the 1st Respondent Bank;

c) Grant and issue a Mandate in the nature of a Writ of Certiorari, quashing the purported Notice of Resolution published by the 1st Respondent Bank in the Gazette bearing No. 2353 dated 6th Oct 2023 marked P9, in terms of section 8 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 to sell/alienate by public auction the properties described in the Schedules hereto which are purportedly mortgaged to the 1st Respondent Bank;

- d) Grant and issue a Mandate in the nature of a Writ of Certiorari, quashing the purported Notice of Sale published by the 1st Respondent Bank marked P10, in the Gazette bearing No. 2375 dated 7th March 2024 to sell/alienate by public auction the properties described in the Schedules hereto which are purportedly mortgaged to the 1st Respondent Bank as set out in the said resolution;*
- e) Call and quash by way of a mandate in the nature of a Writ of Certiorari quashing any and all consequential steps including of steps taken in terms of Section 9 of Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 taken by the 1st Respondent Bank or any of its officers, agents, servants or representatives acting for and under its name pursuant to and in furtherance of the purported resolution of the 1st Respondent Bank made in terms of Section 4 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990, Notice of Resolution in terms of section 8 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 marked P9 and the purported Notice of Sale issued in terms of Section 9 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 marked P10;*
- f) Grant and issue a Writ of Prohibition preventing and /or restraining the 1st Respondent Bank and/or its officers, agents, servants, and representatives from signing and executing a Certificate of Sale in terms of Section 15 and/or from taking any steps thereunder;”*

However, upon notice, the 1st Respondent also appeared and gave an undertaking that, until this Application is formally supported by an order and notice is issued, they will not proceed with the auction.

This Application was supported before me on 20.02.2026, and upon considering the submissions advanced by the parties, it is my view that the main question to be determined is whether the

Petitioner can be treated as an interested party in terms of Section 2(1)(c) of Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (as amended, which reads thus;

“2.(1) Every person- ...

(c) to whom any right, title or interest whatsoever in any property mortgaged to a bank as security for any loan, has passed, whether by voluntary conveyance or by operation of law, shall register with a bank an address to which all notices to him may be addressed.”

Objections

The 1st Respondents have also filed their Limited Objections, alleging that the Petitioner has suppressed certain facts and is therefore guilty of misrepresentation, and that, as such, the Petitioner’s application must be dismissed *in limine*. However, the 1st Respondent has relied upon certain important facts which have been set out in the said Limited Objections. According to the 1st Respondent, the 5th Respondent is an incorporated body, and its certificate of incorporation is annexed to the Objections and marked as **P1**, while the register of directors, as required under Form 20 of the Companies Act, No. 7 of 2007, is annexed and marked as **P2**.

Therefore, it is the 1st Respondent’s contention that the Petitioner was not a director at the time when the loan was granted, nor at the time the mortgage was executed, and also was not a director at the time the resolution was passed; accordingly, the Petitioner cannot be treated as a person having an interest in the mortgaged property, as contemplated in Section 2(1)(c) of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990. In addition, the 1st Respondent has annexed the offer letter submitted by the 5th Respondent for the purpose of obtaining loans and for rescheduling the same, as there had been defaults during the COVID-19 pandemic. The reschedule is in the document marked as **P3**, and the primary mortgage bonds executed by the 6th and 7th

Respondents are marked as **R4(a)** to **R4(c)**; the said mortgage bonds were executed to secure the three loan facilities obtained by the 1st Respondent.

The first loan is the capital loan, the second is a term loan, and the third is a loan on which certain interest is applicable. To cover all three loans, the primary mortgage was executed to secure the repayment of the three loans. Thereafter, the 1st Respondent submitted the ledger maintained in respect of the loan accounts, showing the default by the 5th Respondent, leaving the 1st Respondent with no option but to proceed with *ex parte* execution to recover the outstanding sums. Notice of the same was given by the 1st Respondent to the 5th, 6th, and 7th Respondents, as well as to the other directors, as evidenced in the documents marked **P11**.

In addition to that, the Petitioner has given notice to the public by publishing the same in the newspaper as well as in the Gazette. Accordingly, it is the contention of the 1st Respondent that no notice other than the public notice was required to be given to the Petitioner, since he cannot be treated as a person having an interest in the mortgaged property, as he was neither a director nor a shareholder at the relevant time. In fact, the same argument was advanced by Mr. Alagiyawanna on behalf of the 1st Respondent at the support of this Application, in objection to the arguments advanced by Mr. Coorey.

Whether the Petitioner has an interest in the mortgaged property

Now, I will consider whether the Petitioner can be treated as a person who has an interest and whose address is registered with the 1st Respondent bank to receive notice in terms of Section 2(1)(c) of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990. The Petitioner is neither a director according to the documents marked **R2(1)** and **R2(2)**, because in both the files maintained by the Registrar of Companies, the name of the Petitioner is not mentioned as a director.

Even in the subsequent lists, which reflect changes, neither the Petitioner nor the Petitioner's brother or any other person named in the Petition appears. Therefore, the Petitioner cannot be treated as a director at the time the transaction in question was entered into.

In addition to that, the Petitioner is not a shareholder. Therefore, although the Petitioner sent a document marked as P7 to the 1st Respondent bank prior to the resolution to sell the property by auction for the recovery of the sums due to the 1st Respondent bank, such mere correspondence of a written letter does not constitute registration as an interested party. Secondly, the Petitioner does not fall within the category of a person having an interest in the mortgaged property, as the property admittedly belongs to the 6th and 7th Respondents, and the infrastructure thereon has been effected by the 5th Respondent.

Accordingly, the 5th Respondent owns the infrastructure, while the 6th and 7th Respondents own the property. The proprietors have mortgaged the property, and in fact, have submitted a Section 47 Declaration in terms of the Mortgage Act. Hence, they have relinquished all of their rights, and the Petitioner had no interest in the 5th Respondent company, either as a shareholder or as a director, at the time the relevant transactions took place.

Conclusion

Accordingly, it is my view that the Petitioner is not a party who has an interest; as such, I am compelled to refuse the grant of formal notice and dismiss this Application *in limine*.

JUDGE OF THE COURT OF APPEAL