

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, Prohibition and Mandamus in terms of Article 140 read with Article 126(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/162/2022

1. Mr. A.M.N.B Attanayaka
2. Mrs. M.K.K.A.G.S.K. Marakawatta

Both of
No. 802, Morayaya,
Minipe.

PETITIONERS

Vs.

1. People's Bank
Head office,
No.75, Sir Chittampalam A
Gardiner Mawatha,
Colombo 02.
2. Mr. Sujeewa Rajapakse,
Chairman,
People's Bank,
Head Office, No.75, Chittampalam A.
Gardiner Mawatha,
Colombo 02.
3. Mr. Kumara Gunawardena,
Director – Board of Directors
- 3A. Ms. Visakha Amarasekere
Director – Board of Directors
4. Mr. Sudarshana Ahangama,
Director – Board of Directors
- 4A. Mr. Dushmantha Thotawatta
Director – Board of Directors
5. Mr. Isuru Balapatabendi,
Director – Board of Directors.
6. Mr. Keerthi Goonatillake,

Director – Board of Directors

- 6A. Mr. A. M. P. M. B. Attapattu,
Director – Board of Directors
7. Mr. Manju Wellalage
Director – Board of Directors
8. Mrs. Badhranie Jayawardhana
Director – Board of Directors
- 8A. Mr. Udeni Samararatne
Director – Board of Directors
9. Mr. K.A. Wimalenthirarajah
Director – Board of Directors
- 9A. Mr. Dushan Soza
Director – Board of Directors
3rd to 9th and 3A, 4A, 6A, 8A and 9A
Respondents
-All of People’s Bank
C/O The Secretary to the Board
Head Office,
No. 75, Chittampalam A. Gardiner
Mawatha, Colombo 02.
10. Central Bank of Sri Lanka,
P.O. Box 590,
Colombo 01.
11. Mr. Premasiri Waduge,
Licensed Auctioneer,
“Uthpala”, Sandagiriwatta,
Gampaha.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Chanaka Weerasekara with S. Nanayakkara and Kasun Weerasekara instructed by Ramzi Bacha Associates for the Petitioners.

Kaushalya Nawaratne, PC with Eshan Sandungahawatta instructed by Vishaka Gunapala for the 1st to 9th Respondents.

Supported on: 25.06.2025

Decided on: 01.08.2025

Mahen Gopallawa J.

In the instant application, the Petitioners have impugned the action taken by the 1st Respondent Bank (hereinafter referred to as “the Bank”) and its officers to resort to “parate execution” under the People’s Bank Act No. 29 of 1961, as amended by Act No. 32 of 1986, to recover the amounts in default on the loans advanced by the Bank to the Petitioners.

The 1st Petitioner had obtained five (5) loans from the Hasalaka Branch of the Bank, with the 2nd Petitioner, who is his wife, being a joint-borrower in respect of two loans. Two properties owned by the 1st Petitioner, are described in paragraph 5(d) of the petition, had been mortgaged to the Bank. The Petitioners have annexed the Loan Agreements marked as ‘P4A’ to ‘P4E’.

Particulars of the said loans as set out in paragraph 10 of the petition is as follows;

	Loan No.	Bond No.	Value of Loan Obtained	Date of Agreement
01	140-8001000002350 (Joint Loan)	3130	Rs. 1,000,000/-	09/11/2011
02	140-8001000004517	3933	Rs. 1,800,000/-	23/09/2013
03	140-8001000005848	4115	Rs. 1,200,000/-	10/04/2014
04	140-8001000007845	4669	Rs. 2,579,842.27	06/11/2015
05	140-80010000010323	7406	Rs. 4,925,866.23	19/03/2020

It is evident from the petition and the limited objections of the Bank that the Petitioners had fallen into arrears in the repayment of loans, and, on or about February 2015, requested the Bank to reschedule all outstanding loans. The Petitioners sought a further loan, which was to be utilized as working capital. Accordingly, the Bank had agreed to reschedule the loans¹ and advanced a further loan for a sum of Rs. 5,000,000/-,² upon provision of security for the same.

The Bank contends that Petitioners had defaulted in the repayment of the loans, even after the rescheduling of such facilities. After several reminders, the Board of Directors of the Bank unanimously adopted a resolution on 31.08.2021 (“the Board Resolution”) to auction the property mortgaged as security to recover the amounts under section 29D of the People’s Bank Act (as amended). The auction was also scheduled for 06.05.2022. As per the pleadings and documents filed by the parties, the Board Resolution had been published in the Government

¹ Vide documents marked ‘P10A’ and ‘P10B’ and ‘R10(a)’ to ‘R10(d)’.

² A copy of the Mortgage Bond for the rescheduled loan bearing No. 7406 was filed by the Bank marked ‘R9’.

Gazette dated 22.10.2021³ and in newspapers on the same date in the Sinhala, Tamil and English languages⁴ (referred to in the petition as the “Notice of Resolution”). The Petitioners had been informed of the said Resolution and a copy of same had been provided by the Bank by letter dated 01.11.2021.⁵ Thereafter, the Notice of Sale under section 29D read with section 29G of the People’s Bank Act (as amended) had been published in the Government Gazette dated 12.04.2022⁶ and in newspapers on the same date in all three languages.⁷ The Bank further disclosed that, subsequent to the adoption of the Board Resolution, the Board of Directors had granted approval for a change of auctioneer as reflected in the Board Minutes.⁸ It is pertinent to note that the auction scheduled for 06.05.2022 had been cancelled pursuant to the interim order made by this Court on 06.05.2022 to maintain the *status quo*.

In the instant application, the Petitioners have sought, *inter alia*, writs of Certiorari to quash the aforementioned Board Resolution and Notice of such Board Resolution (‘P11A’ and ‘P11B’), Notice of Sale (‘P13B’) and, in the event the auction is conducted, to quash the outcome of same and the certificate of sale. The Petitioners have also sought writs of Prohibition to restrain the Bank from acting upon the Notice of Resolution and the Notice of Sale and writs of Mandamus to compel the Bank to implement concessions that the Petitioners are entitled to under the Central Bank Directives/Circulars⁹ and to give a full, detailed and transparent statement of account of the loans. The 10th Substituted-Respondent, namely, the Central Bank of Sri Lanka, was released from the proceedings on 19.06.2024.

In the Board Resolution dated 31.08.2021, the following amounts are stated to be in arrears in respect of the aforementioned 5 loans advanced to the Petitioners;

	Loan No.	Bond No.	Amount Due
01	140- 8001000002350 (Joint Loan)	3130	Rs. 515,641.34
02	140- 8001000004517	3933	Rs. 1,488,844.28
03	140- 8001000005848	4115	Rs. 1,125,943.85
04	140- 8001000007845	4669	Rs. 2,400,000/-
05	140- 80010000010323	7406	Rs. 5,000,000/-

³ Vide documents marked P11B/R19(a).

⁴ Vide documents marked ‘P11A’/‘R18’, ‘R18(a)’ and ‘R18(b)’.

⁵ Vide documents marked ‘P11C’/‘R19’.

⁶ Vide document marked ‘R20(d)’.

⁷ Vide documents marked ‘P13B’/‘R20(a), ‘R20(b)’ and ‘R20(c)’.

⁸ Vide documents marked ‘R23’ and ‘R24’ of the limited objections of the Bank.

⁹ Vide documents marked ‘P8A’, ‘P8B’ and ‘P9A’-‘P9D’.

While not expressly stated, it is assumed that the aforementioned amounts refer to the principal amounts in arrears, since specific and distinct reference to interest due on the loans have been made in the said Board Resolution.

When this application was taken up for support, the learned Counsel for the Petitioners sought to impugn the validity of the Board Resolution on the basis that such Resolution was contrary to the provisions of section 5A of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 (as amended). Section 5A of the said Act, which was introduced by the Amendment Act No. 1 of 2011 to the principal enactment, provides as follows;

5A. (1) No action shall be initiated in terms of section 3 of the principal enactment for the recovery of any loan in respect of which default is made, nor shall any steps be taken in terms of section 4 or section 5 of the aforesaid Act, where the amount of such loan is less than rupees five million:

Provided however, at the time of default when calculating the amount due and owing to the Bank on the loan granted to such defaulter, the interest accrued on such loan and any penalty imposed thereon, shall not be taken into consideration.

(2) The provisions of section 5A of this Act, shall also apply in relation to any bank established by an Incorporation Order made under the provisions of any written law for the time being in force, notwithstanding any provisions relating to the recovery of loans by any such bank.

Section 5A was further amended by the Amendment Act No. 19 of 2011 in the following manner;

2. The Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 is hereby amended in section 5A thereof, by the substitution for the word “amount” wherever such word appears in that section, of the words “principal amount borrowed”.

The learned Counsel for the Petitioners argued that the aforementioned provisions of section 5A of the Recovery of Loans by Banks (Special Provisions) Act were applicable to and binding upon the Bank. In this regard, it is observed that, whenever default is made on the payment of a loan secured by a mortgage, the People’s Bank Act (as amended) under section 29A vests discretion with the Board to either appoint a manager to take possession of the mortgaged property as specified in section 29B or to authorize the sale of such mortgaged property as specified in section 29D thereof. In the instant case, the Board has exercised the option conferred by section 29D of the said Act.

In support of his contention, the learned Counsel for the Petitioners also sought to rely on the decision of a seven-member Divisional Bench of the Supreme Court in ***Sunpac Engineers (Private) Limited and another v. DFCC Bank PLC and others***.¹⁰ In the said appeal, the Court considered the issue whether the provisions of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (as amended) applied to any property mortgaged to the bank as security for any loan in respect of which default has been made, irrespective of whether the mortgagor was the borrower or a third party. The Bank of Ceylon and the People’s Bank had intervened in the proceedings and raised the following question of law (question of law no. 4):

¹⁰ SC Appeal No. 11/2021, decided on 13.11.2023

“is any property (movable or immovable) mortgaged to the Bank of Ceylon or People’s Bank as security for any loan as the case may be, in respect of which default has been made within the meaning of the Bank of Ceylon Ordinance, No. 53 of 1938, as amended, and the People’s Bank Act, No. 29 of 1961, liable to be auctioned in terms of the respective Acts?”¹¹ The said question had been answered in the affirmative and it was held that the Bank of Ceylon Ordinance (as amended) and the People’s Bank Act (as amended) apply to any property mortgaged to the said banks as security for any loan in respect of which default has been made regardless of whether the mortgagor is the borrower or a third party.¹² Considering the *ratio decidendi* and the specific question of law raised by the State Banks in the said case, I am of the view that the relevance of such decision requires further scrutiny.

The learned Counsel for the Petitioners concluded that, since none of the principal amounts due in the five loans mentioned in the Board Resolution exceeded the threshold limit of Rupees Five Million (Rs.5,000,000/=), the said Resolution was *ultra vires* and bad in law. He further submitted that, if the Board Resolution was illegal, all other subsequent and consequential steps taken too were tainted with such illegality and had no force or effect in law.

In response, the position taken up by the learned President’s Counsel for the Bank was that the Petitioners were not entitled to rely on the argument based on section 5A of the Recovery of Loans by Banks (Special Provisions) Act (as amended) as it had not been pleaded in the petition and they have not sought judicial review on this ground.

The learned President’s Counsel also submitted that the Bank had fully addressed the grounds of review mentioned in the petition in its limited objections dated 06.06.2022. In summary, it had been stated in the said limited objections, *inter alia*, that the Central Bank Circulars in relation to COVID-19 relief packages had no application to the instant application since that facilities obtained by the Petitioners had been in the non-performing category since the year 2014, well before the pandemic; that the Notice of Sale had been published in the Gazette, as evidenced by R20D; the Board had granted approval for the change of auctioneer; and that the Bank had complied with all procedural requisites in terms of the People’s Bank Act. Accordingly, the learned President’s Counsel moved that notice be refused and the application be dismissed.

It is observed that despite such argument being made when the matter was taken up for support, the Petitioners have not sought to impugn the validity of the Board Resolution on the basis that such Resolution was contrary to the provisions of section 5A of the Recovery of Loans by Banks (Special Provisions) Act. In such circumstances, the issue that arises for consideration is whether the Court is strictly constrained by the grounds of review set out in the pleadings or not.

The jurisprudence of this Court on writ applications discloses decisions on both sides of the divide. For instance, the Court insisted on strict conformity with the pleadings in ***Okanda Finance***

¹¹ Vide judgment of Samayawardhena J at p 8

¹² Ibid at pp 53-54

Ltd. v. Director, Department of Supervision of Non-Bank Financial Institutions and others,¹³ which held that (per Marsoof, J. P/CA (as he then was));

*As noted at the outset, for the disposal of this application it is not necessary for this court to decide or express any opinion as to whether Okanda Finance was or is in fact engaged in finance business. The only issue for this court is whether the notices dated 25th September 2002 (P14) and 27th September 2002 (P15) issued by the 1st respondent ought to be quashed on the basis that for the reasons urged by Okanda Finance the 1st respondent was not entitled to call for the information and documents set out in the third paragraph of the letter dated 12th September 2002 (P6) sent by the 1st respondent calling for certain documents and information. However, this would appear to be an exercise in futility as Okanda Finance cannot impugn P6 without a prayer for the quashing of the order contained in the letter marked P6. As pointed out by this court in *Culasubadhra v. The University of Colombo*¹⁴ in writ applications such as this, a ground not pleaded cannot be set up in the course of the hearing.¹⁵*

However, there are a line of authorities in which this Court has been amenable to consider and grant relief upon grounds or bases not averred in the pleadings as well, including **Wickremasinghe v. Chandrananda De Silva, Secretary Ministry of Defence and others**,¹⁶ wherein it was held as follows (per Gunawardana, J);

That justice is blind does not mean judges should not be clear sighted. Besides, as stated above as well under the judicial review procedure the court exercises a supervisory jurisdiction. A court exercising such supervisory powers can inspect and even direct. Under the judicial review procedure, far from being confined to the matters averred in the petition, the court is less inhibited and is free to adopt a more interventionist attitude - not with a view to withholding or denying relief but with a view to grant it when justice of the case demands that such a course of action be adopted. As Confucius said whilst good had to be recompensed with good, even evil has to be recompensed with justice.¹⁷

Such issue was addressed and answered in **Thirimavithana v. Urban Development Authority and Others**¹⁸ as well, in the following terms (per Sisira De Abrew, J);

Even if the petitioners have not come to court on the basis that the UDA had failed to follow the procedure laid down in law, if it is brought to the notice of court that the respondents have taken decisions after violating the procedure so laid down and without following the mandatory requirements, can the court, exercising supervisory jurisdiction over the decisions made by the Public Bodies, turn a blind eye to such decisions? The answer is no.¹⁹

In the instant case, it is observed that the aforementioned ground which is not pleaded but which the Petitioners seek to rely upon raises a substantial question of law relating to the legal validity

¹³ [2004] 2 Sri LR 60

¹⁴ [1985] 1 Sri LR 244 at 264.

¹⁵ *Ibid*, at p 85

¹⁶ [2001] Sri LR 333

¹⁷ *Ibid*, at p 353

¹⁸ [2010] 2 Sri L.R. 274

¹⁹ *Ibid*, pp 274-275

of the Board Resolution, which has a direct bearing upon the entitlement of the Petitioners to the reliefs prayed for in the petition. In such circumstances, I am inclined to consider such ground relied upon by the Petitioner and I am also the view that the question of law raised therein merits the issuance of notice in the instant application. Since the Petitioners had given notice that such ground would be relied upon in their motion dated 28.09.2022 at the stage of support, I am of the view that no significant prejudice has been caused to the Respondents in responding to same. The Respondents could further respond to such issue at the stage of argument.

Conclusion and Orders of Court

Considering the submissions made by learned Counsel for the parties and the reasons set out herein, I hold that the Petitioner has been able to establish a *prima facie* case for the issuance of notice. Accordingly, I am inclined to issue formal notice on 1st to 9A Respondents.

When this application taken up for support, the learned Counsel for the Petitioners also sought interim relief as per paragraph (aa) to the prayer of the petition. However, I observe that the date for the auction set out in the Notice of Sale, namely, 06.05.2022, has elapsed, and as such, no effect can be given thereto any longer. In their limited objections, Respondents too have stated that the auction was cancelled. Learned Counsel for the parties further confirmed that no fresh Notice of Sale or date for an auction has been issued. In such circumstances, I am of the view that it is not necessary for this Court to consider grant of interim relief, at this stage.

I further state that the several legal objections raised by the Respondents in their limited objections and by the learned President's Counsel will be considered when the instant application is taken up for hearing.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal