

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0029/2025

DC Colombo

Case No: DSP/97/2021

Hatton National Bank PLC,

Formerly known as Hatton National Bank Ltd

Registered Office at:

No. 479, T.B. Jaya Mawatha,
Colombo 10

Branch Office at:

No. 772A, Main Street,
Kahawaththa

Petitioner

Vs

1. Subasinghe Nishshankage Sarath
Sanjaya Wijesinghe,
No. 85/A, Ambale Mawatha,
Pallegama, Embilipitiya

2. Jonikku Hewage Samitha Gayan
No. 95, 1st Mile Post,
Moraketiya Road
Embilipitiya

Respondents

And Now By and Between

Jonikku Hewage Samitha Gayan,
No. 95, 1st Mile Post,
Moraketiya Road, Embilipitiya

2nd Respondent- Petitioner

Vs.

Hatton National Bank PLC
Formerly known as Hatton National Bank
Limited,

Registered Office at:
No. 479, T B Jaya Mawatha,
Colombo 10

Branch Office at:
No. 772 A,
Main Street, Kahawaththa

Petitioner-Respondent

Subasinghe Nishshankage Sarath Sanjaya
Wijesinghe,
No. 85/A, Ambale Mawatha
Pallegama, Embilipitiya

1st Respondent-Respondent

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

Counsel : Ruwantha Cooray instructed by
N. & S. Associates
for the 2nd Respondent-Petitioner

Priyantha Alagiyawanna with Sajani Piyatissa
Instructed by Kavindu Liyanage
for the Petitioner-Respondent

Argued on : 30-05-2025

Decided on: 02-07-2025

ORDER

R. Gurusinghe, J.

The petitioner-respondent-bank (hereinafter referred to as the Bank) instituted action bearing no. DSP/97/2021 in the District Court of Colombo, in terms of the provisions of section 16 (1) of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990, seeking to evict the respondent from the property described in the schedule to the petition and to recover vacant possession of it. The 2nd respondent-petitioner (hereinafter referred to as the petitioner) filed objections to the application of the Bank on the basis that, the access road described in the Gazette Notification published by the Bank leads to his land.

After inquiry, the Learned Additional District Judge of Colombo, by his order dated 28-07-2023, rejected the 2nd respondent-petitioner's application and allowed an application of the Bank.

The 2nd respondent-petitioner in this *Restitutio-in-Integrum* application seeks to set aside or vary the Order Absolute dated 28-07-2023, marked P4 in the District Court of Colombo in the case of DSP/97/2021, and also an order preventing execution of writ, in respect of the subject matter of the application described in schedule (2) to the petition.

The Certificate of Sale was issued in relation to the property described in the first schedule to this application. The same schedule was referred to in the Certificate of Sale No. 524, dated October 29, 2020. The petitioner's position is that the access to the property referred to in the Gazette Notification dated 15-03-2019, though ostensibly directed to the property described in the schedule to the plaint marked P1 (schedule 1 of the petition), in fact, leads to and affects the petitioners property where the petitioner resides, which is set out in schedule 2 of the petition.

When this application was supported, Learned Counsel for the petitioner stated that the land described in the first schedule to the petition is situated one and a half kilometres away from the land, described in the second schedule, in the petition. The Certificate of Sale issued by the Bank refers to a Survey Plan prepared in 2004, and the boundaries are clearly defined. The writ of possession sought by the bank would be carried out in accordance with the schedule outlined in the Certificate of Sale.

In the Gazette Notification dated 15-03-2019, access to the property is described as follows: "*Proceed from Ambilipitiya clock tower along Middeniya*

Road about 400 meters and turn right onto Wewathura Road. Travel about 200 meters along Wewathura Road and the subject property could be reached at the left side of the road just before the community centre.”

The argument of the petitioner in this application is that, the access described would lead to his land. However, when the application was supported, Counsel for the petitioner himself stated that the land claimed by the petitioner and the land referred to in the Certificate of Sale are situated one and a half kilometres apart.

The argument of the petitioner cannot be accepted. There should be no confusion between the petitioner's land and the land described in the Certificate of Sale. The petitioner has no claim at all to the land described in the first schedule to the petition, which is the land that the Bank seeks to have in vacant possession. We see no good reason to proceed with this application. We refuse to issue formal notice on the respondents.

The application of the 2nd respondent-petitioner is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra, J.
I agree.

Judge of the Court of Appeal.