

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

In the matter of an application for a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

E.I. & M (Pvt) Limited
257, Grandpass Road,
Colombo 14.

PETITIONER

CA/Writ/825/2024

Vs.

Hatton National Bank PLC
479, T.B. Jayah Mawatha,
Colombo.

RESPONDENT

Before : Dhammika Ganepola, J.

Counsel : Kuvera de Zoysa, P.C. with Samuditha Kumarasinghe for the Petitioner.
Palitha Kumarasinghe, P.C. with Priyantha

Alagiyawanna instructed by Chaminda
Dheerasinghe for the Respondent.

Supported on : 20.05.2025

Written Submissions : Petitioner : 16.06.2025

tendered on Respondent : 16.06.2025

Ordered on : 17.07.2025

Dhammika Ganepola, J.

The Petitioner in this application is a duly incorporated company with its head office located in Grandpass. The Petitioner has obtained several financial facilities from the Respondent by mortgaging three adjacent lands, including the land in Grandpass on which its head office is situated, to secure the above financial facilities. However, it is stated that due to the economic downturn, the Petitioner defaulted on settling such financial liabilities. The Petitioner requested the Respondent to keep the property in the Grandpass, which is worth about Rs. 4.441 billion on or around 2018, as the security in respect of all facilities granted to the Petitioner Company and release the other properties from their mortgages as a settlement. However, Respondent informed that in order to release other properties, money had to be paid. Thereafter, the Respondent bank passed a resolution under the Recovery of Loans by the Bank (Special Provisions) Act No. 4 of 1990 to sell the Grandpass property by public auction and published the aforesaid resolution in the Gazette dated 12.07.2019 and the newspapers dated 19.07.2019. As per the amount due was Rs.1,013,104,259.05. It is said that the Petitioner offered to transfer one of the lands comprising the Grandpass property to the Respondent without auction in lieu of all the dues, as the value there of

would have been sufficient to recover all the dues of the Petitioner Company, including the amount mentioned in the resolution. However, without accepting such a suggestion, the Respondent scheduled the auction for 29.08.2019.

Thereafter, the Petitioner challenged the Respondent's decision to auction the three properties in the Commercial High Court in the case bearing No. 567/19/MR, seeking inter alia enjoining order and an interim injunction restraining the Respondent from conducting the auction based on a commercially unreasonable transition, which was refused by order dated 12.02.2020. Although the Petitioner filed a leave to appeal application in the Supreme Court against the above order, the Respondent scheduled the auction to sell the property on 18.03.2020. Since it was during the COVID-19 epidemic, the Government declared the 17th to 19th March 2020 as public holidays to assist the quarantine process to avoid the spread of Coronavirus.

However, despite the declaration of 18.03.2020 as a public holiday by the Government as such, the Respondent claims to have held the above auctions outside the Grandpass property and as no bidders had assembled, the Respondent claims to have purchased the properties for Rs.1000.00 and one certificate of sale had been entered in respect of all 3 lands (X 89. Hereinafter, the Respondent, acting under Section 16(1) of the Recovery of Loans by the Bank (Special Provisions) Act No. 4 of 1990 obtained an eviction order in the case bearing No.DSP- 00171-20 in the District Court of Colombo against the Petitioner to vacate the above properties.

In the instant application the Petitioner seeks inter alia in the nature of the Writs of Certiorari quashing the certificate of sale marked 89 and all the steps taken by the Respondent based on the above certificate of sale and the interim order restraining the Respondent from taking any steps to execute the writ in the said case No.DSP- 00171-20 and /or disposed of the properties mentioned in the certificate of sale.

The Petitioner argues that the certificate of the sale should be quashed for several reasons, namely, that the alleged sale was conducted following

three auctions held on a quarantine holiday. There was no need for the auctions, as the Petitioner offered to transfer one of the three parcels of land instead of all outstanding dues. There are no provisions that allow for one certificate of sale to cover three lands auctioned at different times. Furthermore, the certification of sale does not specify the consideration paid by the Respondent for each parcel of land, and the conduct of the Petitioner is against the Petitioner's legitimate expectations.

When this matter was taken up for support on 20.05.2025, the learned President's Counsel made submissions in support of the application. The learned President's Counsel for the Respondent made submissions opposing the application. Further, both parties filed written submissions. This order pertains to the issuance of notice and the interim reliefs prayed for. As discussed by this Court in Prof. D.G. Harendra de Silva & Others v. Hon. Pavithra Wanniarachchi, Minister of Health & Others, CA/WRIT/422/2020, decided on 01.02.2022, the judges must be satisfied that there is a proper basis for claiming judicial review and it is incorrect to grant permission/issue notice without identifying an appropriate issue upon which the case can properly proceed (see R v. Social Security Commissioner ex p. Pattni (1993) 5 Admin LR 219 at 223G). Further, the Court should consider whether the case is suitable for full investigation at a hearing at which all parties have been given notice based on an arguable question.

In the instant application, the Respondent submits that during the auction held on 18.03.2020, since no other bidders were to purchase the impugned properties over and above the upset price, the Respondent bank purchased the properties. It is on the common ground that 18.03.2020 had been declared a public holiday by the Government.

Section 4 of the Recovery of Loans by Banks (Special Provisions) Act stipulates that to recover any amount due on a defaulted loan, the bank may authorise the sale of any mortgaged property through a public auction. The said Section is as follows.

4. Subject to the provisions of Section 7 the Board may by resolution to be recorded in writing authorize any person specified in the

resolution to sell by public auction any property mortgaged to the bank as security for any loan in respect of which default has been made in order to recover the whole of the unpaid portion of such loan, and the interest due thereon upto the date of the sale, together with the money and costs recoverable under section 13.

Further, the learned counsel for the Respondent submits that Section 9 of the Recovery of Loans by Banks (Special Provisions)Act does not impose a bar against holding public auctions on Saturdays, Sundays and public holidays, and the bank has an unrestricted discretion to decide the date, time and place of auction.

However, the Petitioner contends that the auction was held on a public holiday, which was declared to support the quarantine process on corona virus as specified in the Extraordinary Gazette No.2167/7 dated 17.03.2020. Hence, the day that the auction was held cannot be considered as a mere public holiday.

Although there is no bar to hold a public auction on public holidays, the purpose of holding a public auction specified in the above Section 9 has to be taken into consideration. It is apparent that once a Statute provides provisions to sell property in a public auction, intention of the legislature is to achieve the highest bid for it. Accordingly, public attendance is highly appreciated. Could the access to the public be guaranteed by having an auction on a public holiday, which was declared by the Government to facilitate the quarantine process on Coronavirus during an endemic period? Hence, could the purpose be achieved as per the intention of the legislature by having an auction without access to the public? Therefore, it is necessary to see whether the relevant statutory provisions have been properly complied with and whether any adverse effects have occurred due to the holding of a public auction on a public holiday which was declared to facilitate the quarantine process on corona virus. It is important to note that the judicial review is concerned with the decision-making process.

The Respondent further submits that the Petitioner is not entitled to challenge the auction as the Respondent is obliged to pay if any excess

after recovering monies due when the property mortgage is resold as per Section 18 of the Recovery of Loans by Banks (Special Provisions) Act. However, the Act does not provide provisions for public auction of any sale pursuant to a bank that has purchased any property sold for default in payment of a loan. Hence, in the circumstances, another question arises whether a reasonable price for the property could be obtained even at such a stage. It is observed that the Petitioner stated that the amount due from the Petitioner to the Respondent was Rs. 1,013,104,259.05 and the actual value of the respective three properties amounts to approximately Rs. 5 billion.

In S. Ravindra Karunananayake v. Attorney General & others, CA/Writ/63/2020 decided on 07.07.2020, it was held;

“Whether there’s an arguable ground for judicial review includes whether there is some properly arguable vitiating flaw, such as unlawfulness, unfairness, or unreasonableness. The vitiating ground must be arguably material to the impugned decision. That decision must be arguably amenable to judicial review. – see R v. Chief Rabbi ex p. Wachmann (1992) 1 WLR 1036 at 1037H”

In light of the above findings, I am of the view that the Petitioner has made out an arguable case which this Court warrants to issue formal notices on the Respondent. Accordingly, the Court is inclined to issue formal notices on the Respondent.

Further, the Respondent has taken up several other defences, such as delay and laches. It is my view that such ground could be considered at the stage of hearing.

After considering the issuance of notice, the question arises whether this Court should grant the interim relief sought by the Petitioner. The Petitioner seeks an interim order restraining the Respondent from selling or disposing of the properties mentioned in the Certificate of Sale. This Court is guided by the principle of balance of convenience, which favours the Petitioner. In the circumstances, I am of the view that the Petitioner’s application would be rendered nugatory unless this Court issues interim relief as prayed for in prayer of the Petition. Accordingly, interim relief is

issued as prayed for in the prayer of the Petition until the final determination of this application.

Judge of the Court of Appeal