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

In the matter of an application for Mandates in Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

**Case No. CA/WRIT/0337/2022**
**Debit Conciliation Board**
**(Gampaha) Case No.43806**

Walpola Kankanamalage Chandrasinghe
Monaravila,
No. 257/7/1, Kurunegala Road,
Balagalla, Divulapitiya.

**PETITIONER**

**Vs.**

1. Piyaseeli Wickramasinghee Mathurata,
   Chairman of the Debt Conciliation Board,
   Gampaha.

2. C.V. Vijitha Seneviratne (Member).

   2A. D.M. Karunaratne (Member),

   **(SUBSTITUTED-RESPONDENT)**

3. Nandani Ranawaka (Member),
   All three of Debt Conciliation Board,
   Gampaha.

4. Hon. Attorney-General,
   Attorney-General's Department,
   Colombo.

5. Sudusinghe Appuhamilage Kalyani Jayantha,
   No.156/1, Kudagammana,
   Divulapitiya.

6. Sudusinghe Appuhamilage Somasiri Sudusinghe (Deceased).

7. Illankoone Mudiyanselage
   Gnanawathie Illankoone (Deceased).

8. Ramanayake Pedige Deepthika
   Ramanayake,
   No.18/A, Hettiwatta,
   Gorampella.

9. Kanugala Arachchige Sarathchandra
   Kanugala
   (Transferee),
   No.63/65, Dimuthu Mawatha,
   Aluthgama,
   Bogamuwa,
   Kalagedihena.

10. Hathurusinghe Arachcige Niranjala
    Shanthi Kumari Hathurusinghe,
    (Transferee),
    No.120/2, Rassapana,
    Baduragoda.

**RESPONDENTS**

**Before:** **R. Gurusinghe J.**

**&**

**Dr. Sumudu Premachandra J.**

**Counsel**: Dushantha Kularathne with Shanika Samarawickrama instructed by Dannet Nandasinghe for the Petitioner.
Y. Fernando, D.S.G. for the 1st to 4th Respondents.
Chandra Kulatunga instructed by Krishantha Kulatunga for the 5th Respondent.

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**Written Submissions:** By the Petitioner – 5th of May 2025.
By the 5th Respondent – 24th April 2025.

**Argued on** : 03.04.2025.

**Judgement On** : **27.05.2025.**

**Dr. Sumudu Premachandra J.**

1] The Petitioner, by petition dated 15/09/2022, seeks judicial review of decisions made by the 1st to 3rd Respondents dated 22/07/2022 (X15) and dated 06/06/2019(X10) and sought writs of certiorari to quash the above orders and further, issue writs of mandamus compelling 1st to 3rd Respondents to dismiss the application and amended application dated 30/09/2015(X1) and 05/02/2015(X3) of the 5th Respondent respectively. The Petitioner also requests interim relief to stay proceedings before the Debt Conciliation Board ( Sometimes called as the Borad).

2] The dispute arose when the 5th Respondent filed Application No. 43806 under the Debt Conciliation Ordinance on 30/09/2015(X1), and an amended version on 05/02/2016(X3), alleging that the land in issue was transferred as security for a loan and eventually sold through a chain of deeds ( Deeds bearing Nos 25970 dated 03/11/2011, 3583 dated 28/05/2012, 2486 dated 25/09/2013, and 3003 dated 18/09/2015), culminating in the Petitioner's purchase for Rs. 2,000,000/-. The Petitioner says that he is the bona fide purchaser and according to the settled law that 5th Respondent cannot claim constructive trust on it after a chain of transfer deeds.

3] The Petitioner asserts that the application was filed by the 5th Respondent beyond the permissible three-year period under Section 19A(1A) and without serving summons on him, thereby invalidating the proceedings under breach of rules of natural justice. He says that there was no substitution for the 6th and 7th Respondents after the demise of them.

4] The 5th Respondent in response denied all the allegations made by the Petitioner. He has made several preliminary objections that the petition violates the Court of Appeal rules, and the Petitioner is guilty on laches (undue delay), and petition is not filed in good faith, and has not come with clean hands and it omits major documents. The 5th Respondent, further, asserts that the Petitioner cannot invoke writ jurisdiction since the case involves disputed facts, which are not suitable for resolution through a writ jurisdiction.

5] The 5th Respondent's contention is that the impugned decisions made on 06/06/2019 and 22/07/2022 were lawful, valid, and procedurally sound. Moreover, the 5th Respondent says that the 6th and 7th Respondents, who only held life interest to the property, had no valid legal standing after their deaths, thus, the substitution is not sine qua non.

6] I now consider the merits of this application. The dispute centers on a property matter initiated by the 5th Respondent in the Debt Conciliation Board of Gampaha, who claimed to be original owner of the impugned property for sometimes. The Petitioner claims he was never notified of the proceedings, which proceeded ex-parte and thereby the process was procedurally flawed, as no notices were served on him and the Board relied on outdated evidence from the previous Grama Niladhari. The Petitioner said that despite his continuous occupation and investment in the property, the Board awarded possession to the 5th Respondent by order dated 06/06/2019. The main argument was that the Debt Conciliation Board has no jurisdiction to entertain the 5th Respondent's application after an expiry of 3 years.

7] In respect of whether the Board has the jurisdiction to hear and determine the application of the 5th Respondent, the provisions of Debt Conciliation (Amendment) Act, No.29 of 1999 is vital. By section 2, the section 19A of the Debt Conciliation Ordinance (Chapter 81-Original Statute) has been amended as follows;

> *"(1A) The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such transfer of immovable property as it is a mortgage within the meaning of this Ordinance,* ***unless that application is made within three years of the date of the notarially executed instrument, effecting such transfers****:*
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> *Provided that nothing in this subsection shall be read or construed as preventing the* ***Board from entertaining****,* ***after the period referred to in that subsection****, an application by a* ***debtor who is in possession of the Property*** *transferred;"* [Emphasis is added]

8] On careful security of the proceedings of the Debt Conciliation Board; it is clear that the Board has held inquiry with regard to the possession of the 5th Respondent. After that the Board has assumed jurisdiction as a debtor (5th Respondent) is in possession. The Petitioner said that he was not summoned for such an 0inquiry and that blatantly violates the rules of natural justice, the order impugned be vacated under writ jurisdiction of this court.

9] The 5th Respondent asserted that the Petitioner (Last Owner) never had possession of the disputed land and that the Board, relying on evidence from the Grama Niladari, correctly found the 5th Respondent to be in possession. It is claimed that proper notices were issued to the Petitioner and others, who failed to attend the proceedings, and that the Petitioner's delayed objections to the alleged non-service of notices amount to a tacit admission of receipt. The 5th Respondent also accuses the Petitioner and others of acting in collusion to undermine the 5th Respondent's legal title.

10] In relation to whether a writ lies on the breach of natural justice, in ***GUNADASA v. ATTORNEY-GENERAL AND OTHERS,*** [1989] 2 SLR 130, His Lordship A. DE *Z.* GUNAWARDANA, J., held as follows;

> *"1. That the failure to give the petitioner a fair opportunity to "correct or contradict" the material witnesses when they gave evidence,* ***has occasioned a violation of the principles of natural justice****; that a man's defence must always be fairly heard.* ***The non-observance of the said principles of natural justice, would consequently amount to an error on the face of the record, which would attract the remedy of Writ of Certiorari****.*
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> *2.The failure to make available the documents relevant to the defence of the petitioner, at the hearing, amounted to an error on the face of the record, and the Writ of Certiorari would lie in such situations also."* [Emphasis is added]

11] Thus, it is clear that a writ lies on the breach of natural justice. However, this scope was narrowed by in the decision of ***Jayaweera v. Wijeratne*** [1985] 2 SLR 413. In that His Lordship G. P. S. De Silva, J (as he then was) held when the dispute centres on a breach of contract, even breach of natural justice by public authority, a writ would not lie. His Lordship noted;

> *"Where the* ***relationship between the parties is a purely contractual one of a commercial nature neither certiorari nor mandamus will lie*** *to remedy grievances arising from an alleged breach of contract or* ***failure to observe the principles of natural justice even if one of the parties is a public authority****."* [ Emphasis is added]

12]Further, in ***Gawaramanna v. The Tea Research Board*** [2003] 3 SLR 120, His Lordship Sripavan J., (as he then was) influenced by the decision of Jayaweera vs. Wijeratne (supra) observed that;

> *"The powers derived from contract are matters of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power. (Vide Jayaweera v Wijeratna)."*

13] The dispute between the parties are matters for civil suit whether the above mentioned outright transfer deeds are attached to a constructive trust as claimed by the 5th Respondent. On the other hand, it is matter for rei vindicatio in Petitioner's point of view, that is he is the rightful owner. In that event, the decision cannot be made summarily by the writ jurisdiction and in the name of

administration of justice, it attracts full procedural trial. For that, specific remedy is given.

14] In ***Mahanayake v. Chairman Ceylon Petroleum Corporation and Others*** [2005] 2 SLR 193, His Lordship Sriskandarajah J., that when a specific remedy is avail, it shuts any other form of remedy, held that;

> *"When a specific remedy is given by a statute (Industrial Disputes Act), deprives the person who insists upon a remedy of any other form of remedy than that given by the statute."*

15] It is noteworthy to examine the judgment of ***Thajudeen Vs. Sri-Lanka Tea Board***, [1981] 2 SLR 471, where that the court held when the facts are disputed, the writ jurisdiction cannot be invoked. In that, the Court of Appeal held;

> *"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that* ***the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue****. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available."* [Emphasis is added]

16] This stance was similarly explained in ***Mendis v. Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and Others*** [1995] 2 SLR 284, His Lordship S. N. Silva, J. (P/CA) (has he then was) and enunciated;

> *"What is here sought to be done is the enforcement of a Contract of employment, contracts of employment are enforceable by ordinary action and not by judicial review. In the circumstances the dispute as to the contract of employment is* ***solely a matter within the purview of Private Law and not a matter for judicial review****."* [Emphasis is added]

17] Further, in ***Public Interest Law Foundation v. Central Environmental Authority*** CA WRIT, 527/2015 decided on 24.02.2020 His Lordship Mahinda Samayawardhena J. held when the facts are disputed writ cannot lie. His Lordship Noted;

> *"This Court in the exercise of writ jurisdiction cannot decide on administrative decisions* ***where the facts involved are in dispute****.* ***Simply stated, when major facts are in dispute writ will not lie****……****This Court cannot decide whether the Petitioner or the Respondents are correct on this issue****. That is outside the purview of this Court. When this main ground upon which the Petitioner's whole case is based is in dispute, can this case be maintained? I think not."* [ Emphasis is added]

17] Thus, the case in hand is purely to decide whether impugned land is subjected to a trust or not. To exclude a trust, the attendant circumstances to be considered, where under writ jurisdiction, it cannot be done summarily. Matters in Debt Conciliation Boards are related to loans and debts mainly and it is hard to consider truth without evidence. Though, the Board members are appointed on the section 13 of the Debt Conciliation Ordinance, they deemed to be public officers as section says[1], yet, a writ cannot lie.

18] One can argue that the decisions of public authority (the Debt Conciliation Bord in this regard) can be challenged by writ jurisdiction. However, as noted above, if the disputed facts within the contract or subjected to private law and left with specific remedy. My considered view is, it is not matter for writ jurisdiction.

19] For the sake of argument whether the Petitioner was not served, and proceedings should be invalidated, the journal entry No 01, dated 22/01/2016, is much important. In that journal, it clearly says that all parties were noticed by registered post[2]. The item iii of the said journal entry says; **"iii. දෙපාශර්වයට අදාල නොතිසි ලියාපදිංචි තැපැලෙන් යවා ඇත. ආපසු ලැබී නැත."** Thus, both parties were noticed by registered post and no notices were returned. Posting and delivering a letter through the pertinent official department falls under category of official act. (In this case; Postal Department) There is a presumption contained in Section 114(d) of the Evidence Ordinance which enacts that *"judicial and official acts have been regularly performed"*. The rule flows from the maxim *omnia proesumuntur rite et solemniter esse acta*, i.e., all acts are presumed to have been rightly and regularly done. In ***Dharmatilake vs. Brampy Singho*** 40 N.L.R. 497 His Lordship Keuneman J citing the Section 114(d) of the Evidence Ordinance stated that the maxim means that if an official act is proved to have been done, it will be presumed to have been regularly done. In ***S. Seebert Silva v. F. Aronona Silva and 4 others*** ,60 N.L.R. 272, it was held that the Court is entitled to presume that the journal entries made in a case in compliance with

[1] ***"13****. Every member of the Board and of a branch board shall be deemed to be a public servant within the meaning of the Penal Code."*

[2] Vide; section 23(2) Notice of the order under subsection (1) shall be sent by registered post to the applicant, and, where the application is made by a creditor, such notice shall also be sent to the debtor.

the requirements of section 92 of the Civil Procedure Code set out the sequence of events correctly. Similarly, in the case in hand, the journal entries of the Debt Conciliation Board can be presumed it had been journalised in requirements of the law and correct procedure had been followed and postal department had delivered the notices to all parties. This is a rebuttable presumption, if refute, the person who said that he was not served the notice, he should prove it. In this case, there was no such proof. Further, in journal entry 23 V (3) clearly shows;

> "V. පැවරුම්ලාභී: 1....සිටී
> 2...සිටී
> 3 W. K. චන්ද්‍රසිංහ මොණරවිල මයා -සිටී"

20] Thus, the Petitioner was present according to the journal entry 23 dated 31/01/2020, before the Debt Conciliation Board. It is further to be noted that the Petitioner was present at the Debt Conciliation Board-Gampaha on 25/11/2021, 31/01/2022 and 25/03/2022 and he was represented by Mr. Donnet Nandasinghe. Before the Board, the Petitioner had file written submission[3]. Thus, the Petitioner has availed to the jurisdiction of the Borad. On that impugned order dated 22/07/2022, the Borad has drawn the attention of the non-service of notice to the Petitioner and concluded that they were properly served. The Board notes;

> " මෙම නඩුවේ භුක්තිය සම්බන්ධ එක පාශ්‍රීක විමසීම කොළඹ ප්‍රධාන ණය සහනදායක මණ්ඩලය විසින් පවත්වා ඇත්තේ පාශ්‍රීකරුවන් සියලුම දෙනාටම වාර කිහිපයක් දිනය දන්වා ලි.ප. තැ මගින් දැන්වීම් නිකුත් කොට දැන්වීම් ලැබීමෙන් පසුව ඔවුන් මණ්ඩලය ඉදිරියේ පෙනී නොසිටි බැවිනි. **ඔවුන් වෙත ලි.ප.තැ . මගින් යවන ලද ලිපි නැවත නොලැබීමෙන් පෙනීයන්නේ ඔවුන්ට ලිපි ලැබී තිබුනද භුක්තික විමසීම සභාගිවීම ඔවුන් පැහැර හැර ඇති බවය**. ණයකර-ඉල්ලුම්කරු විසින් ඉදිරිපත් කර ඇති ලිපිනයන් නිවැරදි බව ණයකර-ඉල්ලුම්කරු විසින් ඉදිරිපත් කර ඇති ඉල්ලුම් පත්‍රයේ ද 02 වන සහ 03 වන පැවරුම් ලාභීන්ගේ ලිපිනයන් නිවැරදිව ඉදිරිපත් කොට ඇති බව 02 වන හා 03 වන පැවරුම් ලාභීන් විසින් ඉදිරිපත් කර ඇති සමාලෝචන ඉල්ලීමේ ලිපිනයන්ට අවධානය යොමු කිරීමේදී පෙනී යයි. " [Emphasis is added]

21] Thus, this court sees that the impugned order was well considered by the Board Members on non-service and they were satisfied with that the Petitioner was duly served. Further, the dispute is who is entitled to possess and who has the title. This is purely civil dispute. In ***Kalutota Financial Services (Private) Limited vs Parakramasinghe Nishanthi Udayanganee and 3 others***, CA-WRT-113/2024, Decided On: 28.01.2025, His Lordship B. Sasi Mahendran, J. denied the writ stating;

> *"In the instant application, it is disputed as to who is in possession of the property in dispute. Therefore, as established above, a writ cannot be issued by this Court in this instant"*

[3] Vide; pages 239 to 245 of X, the proceedings of the Board

22] In the above circumstances, I do not see any legal basis to issue the Writs of Certiorari and Mandamus as prayed for by the Petitioner. This application is accordingly dismissed with costs.

**Dr. Sumudu Premachandra**

Judge of the Court of Appeal

I agree.

**R. Gurusinghe**

Judge of the Court of Appeal