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

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

C.A. (Writ) Application No: CA/WRIT/660/25

Debt Conciliation Board Application No:GA-185

Baduge Ajith Bandula
"Indunil"
Andaragasyaya, Magama.
Tissamaharama

Petitioner

Vs.

1. Mahinda Pinidiya
   Chairman – Debt Conciliation Board

1A. Dilini Dayarathne
    Chairperson- Debt Conciliation Board

2. G.P. Piyasena
   Member – Debt Conciliation Board

2A. Jaani Nanayakkara
    Member – Debt Conciliation Board

3. K.P.D. Jayantha Gunaratne
   Member – Debt Conciliation Board

4. Debt Conciliation Board

1st to 4th Respondents of:
No. 45A, Crips Road,
Galle

5. Debt Conciliation Board
   No. 35A, Dr. N.M. Perera Mawatha,
   Colombo 08.

6. Hewa Waduge Samanthilaka
   No. 205/05, Mahasenpura,
   Tissamaharama

7. Hon. Attorney General
   Attorney General's Department,
   Colombo 12.

Respondents

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

Counsel : J.P. Gamage with Meleesha Perera
Instructed by Chamara Fernando
for the Petitioner

Prabashini Jayasekara SC,
for the 1st – 5th and 7th Respondents

Sanjeewa Dasanayake with Nithil Fernandopulle
Instructed by Dhammika Jiminige
for the 6th Respondent

Supportedon : 20-05-2026

Decided on: 16-07-2026

ORDER

R. Gurusinghe, J.

The petitioner instituted the present Writ application seeking, *inter alia,* a mandate in the nature of a Writ of Certiorari quashing the Orders dated 19-02-2025, marked P2(b) and P2(c), together with the Order dated 11-03-2025, marked P7. Petitioner further seeks a mandate in the nature of a Writ of Mandamus directing the respondents to dismiss the application for relief under the Debt Conciliation Board (Board), marked P2 (a), submitted by the 6th respondent.

The petitioner states that he purchased from the 6th respondent the land depicted as Lot M in Plan No. 3436 dated 05-02-2006, comprising an extent of 48 perches, for a consideration of Rupees Eight Hundred Thousand only (Rs. 800,000/=). Title to the said property was conveyed to the petitioner by Deed of Transfer No. 90 dated 05-04-2013.

Petitioner states that, after the lapse of over a decade, the 6th respondent, on or around 14-08-2013, submitted an application for relief to the Board pertaining to the said land. Upon inquiry, the Board decided that Deed of Transfer No. 90 constituted a "Sale, Mortgage or Guarantee" and directed that a certificate be issued in terms of Section 29(4) of the Debt Conciliation Ordinance (the Ordinance). Thereafter the petitioner made an application to the Board in terms of Section 54 of the Ordinance seeking a review of the said order. By Order dated 11-03-2025, the Board refused the said application of the petitioner for review.

The Petitioner contends that the application filed by the 6th respondent is barred by section 19A(1) of the Ordinance, as it was not made within three years from the date of the notarially executed instrument. The petitioner further contends that the 6th respondent failed to discharge the burden imposed under Section 21A(2) of the Ordinance as amended, establishing, adducing evidence, that the transfer of the immovable property was is, in reality, a mortgage.

In Paragraph 16 of the petition, the petitioner further avers that the 1st to 5th respondents acted in bad faith and/or failed to consider relevant matters and/or considered irrelevant matters. It is further alleged that they acted in excess of their jurisdiction by entertaining the application "P2a" filed by the 6th respondent despite its inordinate delay of more than a decade.

The petitioner contends that the 1st to 5th respondents have misdirected themselves, failed to consider relevant matters, and considered irrelevant matters in concluding that the petitioner acquired the subject land by conditional transfer or mortgage rather than by outright transfer.

The 6th respondent filed a statement of limited objections in answer to the petitioner's application, raising, *inter alia*, the following preliminary objections:

Paragraph 3.

By way of Preliminary Objections to the Application of the Petitioner, the Respondent states that;

i. The Petitioners have failed to satisfy the conditions to be met for the issuance of Prerogative Writ,

*ii. The Petitioners have failed to challenge the legality, propriety and Regularity of the orders of the 1st to 3rd Respondents marked "**P2b**", "**P2c**" and "**P7**" to the Petition;*

*iii. The Petitioners have failed to demonstrate a miscarriage of justice caused by the orders of the 1st to 3rd Respondents marked "**P2b**", "**P2c**" and "**P7**" to the Petition, that warrants the intervention of Your Lordships' Court;*

iv. The Petitioners have failed to make a full and fair disclosure of all material facts and are guilty of suppression and/or misrepresentation;

v. The Petitioners have failed to come to Your Lordships' Court with clean hands;

vi. The Petitioner's application is aimed at averting the course of justice;

vii. Petitioner's application is liable to be refused for want of uberrima fides;

viii. The Petitioners' application is in ignorance of the doctrine of binding precedent;

ix. The Petitioner's application before Your Lordships' Court is misconceived in law;

x. The Petitioner has sought to impugn disputed facts determined by the 1st to 5th Respondents and/or one or more of the Respondents, by the present Writ Application;

The 6th respondent further submitted the following objections in Paragraph 7 of the statement of limited objection.

Responding the contents of the Petition as a whole the Respondent states that;

i. The Petitioner from the very inception submitted to the jurisdiction of the Debt Conciliation Board,

ii. One of the main matters in issue before the 1st to 3rd Respondents and/or Debt Conciliation Board was to determine as to who was in possession of the subject land;

iii. Strong and cogent evidence was led by the Respondent to prove his possession of the subject land;

iv. In the course of the inquiry, the 1st to 3rd Respondents and/or Debt Conciliation Board gave due prominence to the evidence placed by the Respondent as well as the Petitioner,

*v. Perusal of orders marked "**P2b**" and **P2c"** shows that 1st to 3rd Respondents and/or Debt Conciliation Board have adequately directed its mind to the evidence placed by the Respondent as well as the Petitioner, and*

vi. 1st to 3rd Respondents and/or Debt Conciliation Board inter alia recognized the possession of the Respondent and held in favour of the Respondent.

The petitioner's position is that, upon the expiry of three years from the execution of the deed, the 6th respondent ceased to have any legal entitlement to invoke the jurisdiction of the Board, and accordingly, the Board ought not to have entertained such an application. However, the Ordinance expressly provides that the Board may entertain an application made after the expiration of the prescribed three-year period, provided that the debtor remains in possession of the transferred property. The proviso to Section 19 (A), 1 A of the Ordinance reads 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 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 transfer:
>
> > **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**.

The petitioner further contends that the Board erred in finding that the petitioner acquired the subject land by conditional transfer or mortgage rather than by outright transfer. However, the Ordinance expressly provides that the Board has the authority to determine whether or not such a transfer or a conditional transfer is in reality a mortgage, taking into consideration all the circumstances of the case. Section 21 (A)1 of the Ordinance provides as follows:

> 21A. (1) In any proceedings under this Ordinance in regard to an application relating to a transfer or conditional transfer of immovable property, the Board shall, notwithstanding anything to the contrary in section 2 of the Prevention of Frauds Ordinance (Chapter 70), or sections 91 and 92 of the Evidence Ordinance (Chapter 14) and for the purpose of deciding whether or not such transfer or conditional transfer is in reality a mortgage, take into consideration all the circumstances of the case and in particular the following matters:-
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> (a) the language of the notarial instrument of transfer and where provision in regard to the right of the transferor or any other person to redeem or purchase the property transferred is contained in any other notarial instrument, the language of that other instrument;
>
> (b) any difference between the sum received by the transferor from the transferee and the value of the property transferred;
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> (c) the continuance of the transferor's possession of the property transferred; and
>
> (d) the existence of any agreement in whatever form between the transferor and the transferee whereby the transferor is bound to pay the transferee interest, or any sum which may reasonably be considered to be interest, on the sum received by the transferor from the transferee.
>
> (2) The burden of adducing evidence to show that a transfer of immovable property is in reality a mortgage shall be on the transferor.

An inquiry was conducted before the Board to determine whether the 6th respondent remained in possession of the property that had been transferred to the petitioner. The 6th respondent has also given evidence and called several witnesses in support of his contention that he was in possession of the subject property throughout, notwithstanding the execution of the deed of transfer.

The petitioner also gave evidence and called a witness to prove his possession of the subject property. Upon a consideration of the evidence led by both parties, the Board concluded that the 6th respondent remained in possession of the property. The Board has correctly evaluated the evidence presented by both parties and has reached its decision. The petitioner has failed to demonstrate any compelling grounds warranting judicial interference with that decision of the Board.

Petitioner, in paragraph 16 of the petition, further alleged that the Board had acted in bad faith in reaching its decision. It is well established that an allegation of bad faith against a statutory decision-maker must be established by clear and cogent evidence, and the party advancing such an allegation bears a heavy legal burden of proof.

In Brandix Apparel Solutions Limited vs Kachchakaduge Frank Romeo Fernando, SC Appeal 60/2018 decided on 05.05.2022, Janak De Silva J., held as follows;

However, I note that the application made by the Respondent to the Labour Tribunal does not contain any allegation of bad faith against the Appellant. The burden of proving bad faith on the part of the Appellant, as alleged, was on the Respondent and the burden is heavy. It is an evidentiary principle recognized in administrative law.

The court generally presumes that judicial and public officials discharge their duties honestly and in good faith. In this regard, Illustration (d) of Section 114 of the Evidence Ordinance provides that the Court may presume "that judicial and official acts have been regularly performed." In order to rebut such presumption, the petitioner must prove specific facts demonstrating an intentional, dishonest, or malicious abuse of power. In the present case, the petitioner has failed to place before the Court any material establishing such an abuse of power by the Board.

In the above circumstances, the Court decides that there is no *prima facie* case against the respondents. There are no sufficient grounds to attack the legality of the Board decisions or the reasonableness of the Board decisions. Therefore, the Court refuses to issue formal notice on the respondents.

The application is dismissed.

Judge of the Court of Appeal

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.