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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ambawalage Sujeewa Priyadarshani Silva,
No. 348, Weniwelpitiya, Haltota.

PETITIONER

CA (Writ) App. No. 675/2024

Vs.

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

2. Hon. Piyasena Ranasinghe,
   Former Chairman of the Debt Conciliation Board,
   C/O Secretary,
   Debt Conciliation Board,
   No. 35A,
   Dr. N.M. Perera Mawatha,
   Colombo 08.

2(a). Hon. T.G. Sumith Aruna Perera,
   Chairman,
   Debt Conciliation Board,
   No. 35A,

Dr. N.M. Perera Mawatha,
Colombo 08.

3. Hon. Padma Palihakkara,
Former Member of the Debt Conciliation Board,
C/O Secretary,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

3(a). Hon. Kelum Kumarasinghe,
Member,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

4. Hon. Milton Marasinghe,
Former Member of the Debt Conciliation Board,
C/O Secretary,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

4(a). Hon. H.U. Kariyawasam,
Member,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

5. Hon. Sarath Chandrasiri Withana,
Former Member of the Debt Conciliation Board,
C/O Secretary,
Debt Conciliation Board,
No. 35A,

Dr. N.M. Perera Mawatha,
Colombo 08.

5(a). Hon. W.P. Sittampalam,
Member,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

6. Hon. Somapala Karunathilake,
Former Member of the Debt Conciliation Board,
C/O Secretary,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

6(a). Hon. K.S. Pathirana,
Member,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

6(b). Hon. Somasiri Pallattarage,
Member,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

6(c). Hon. W.N. Priyadarshani Herath,
Member,
Debt Conciliation Board,
No. 35A,
Dr. N.M. Perera Mawatha,
Colombo 08.

7. D. Subhashini Dayananda,
Secretary,

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

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

9. Chithrapathra Chamila Surangani,
No. 1068,
Water Refinery Mawatha,
Udawalawa.
C/O Chithrapathra Ashoka Kumari,
No. 174/A, Mawathgama Colony,
Haltota.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Shyamal A. Collure with Prabhath S. Amarasinghe for the Petitioner.

Dilantha Sampath, S.C. for the 7th and 8th Respondents.

Asanka D. Mendis instructed by Sandeepani Wijesooriya for the 9th Respondent.

Argued on: 29.04.2026

Delivered on: 10.06.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner became the owner of the land in suit by the document marked as **Y(m)** as way back as in 1998. Later, the Petitioner has mortgaged the said land to the Rural Development Bank and obtained a loan of Rs. 1,200,000/- (One Million Two Hundred Thousand Rupees), subject to the interest of 20% per annum.

The Petitioner asserts that she is engaged in rolling beedi, (which is similar to what people smoke as cigarettes), but popular among rural low-income people, and during the year of 2019, due to her illness, she was unable to make a living and therefore could not service the bank loan, and as such, fell into arrears. Then, the Bank insisted that she should revive the loan in arrears instalments, and thus, she had no other option but to turn to her cousin, who is the 9th Respondent to this Application and is working abroad, to obtain a loan. Thus, the 9th Respondent has given her Rs. 500,000/- (Five Hundred Thousand Rupees) in two instalments, one in cash and other by depositing Rs. 300,000/- (Three Hundred Thousand Rupees) to her account, and in addition to that she also paid some instalments that the Petitioner could not pay.

However, the Petitioner was compelled to execute a transfer deed to secure the said loan; this was done on the promise that she is entitled to redeem the property in suit by paying the borrowed money and paid the instalment. When she had found the money and turned to the 9th Respondent to redeem the property, the 9th Respondent refused to re-transfer it unless she pays Rs. 2,000,000/- (Two Million Rupees).

In the meantime, the Petitioner has made an application to the Debt Conciliation Board, (hereinafter referred to as "the Board") and the 9th Respondent has appeared through her attorney, who is her sister, before the Board and denied that there is a mortgage and took up the position that the said deed by which the Petitioner transferred the property was only an outright transfer. Hence, the Board had to embark upon the usual inquiry to ascertain whether the said deed is a mortgage or an outright transfer.

After the inquiry, the Board has decided that the said deed is an outright transfer and not a mortgage. Thereafter, the Petitioner has made another application under Section 54(1) to revisit the said order of the Board, which was also refused.

Being aggrieved by the said order, the Petitioner has sought to invoke the jurisdiction of this Court by this Application.

After the issuance of formal notice, only the 9th Respondent has filed her Statement of Objections. At the hearing, the following arguments were advanced by the counsel; hence, this judgement.

Arguments

The first argument advanced by Mr. Collure, Counsel for the Petitioner is that the Board has come to an erroneous conclusion despite the overwhelming evidence adduced for and on behalf of the Petitioner-Applicant, who is the debtor.

The second argument advanced by Mr. Collure is that the Board has erred in fact and in law when it failed to evaluate the valuation report and in relation to the consideration passed on the deed.

The third argument is that the Board erred in law when it came to the erroneous conclusion that there is a condition to pay off the bank instalment attached to the deed, which is not written therein, as transpired in evidence.

Finally, Mr. Collure argued that the **Z4** is contrary to Section 54(1) and Section 49 of the Debt Conciliation Ordinance.

Mr. Mendis, Counsel for the 9th Respondent, contended that the Petitioner should have gone before the District Court to establish her title and, without doing so, had instead gone before the Debt Conciliation Board.

Secondly, he argued that there is an inordinate delay between the date of the last order and the filing of the instant application before this Court, as three months have already passed.

Finally, he argued that there has been misrepresentation and suppression of facts, as certain matters have not been adverted to by the Petitioner in this Petition.

The Petitioner's position

According to the Petitioner, the Petitioner had become the owner of the property in extent of 1 Rood 27.31 Perches, by virtue of the Deed bearing No. 328, dated 29.01.1998. Thereafter, the Petitioner states that since she is engaged in rolling (producing) beedi at home, while her husband is a cinnamon peeler, she was compelled to obtain a loan from the Rural Development Bank; thus, she obtained a loan from the said bank in the year 2017. To secure the said loan, she has mortgaged her property in suit to the Bank by the Mortgage Bond marked and annexed to the Petition as **X**.

She asserts that she fell ill in 2019 and was therefore, unable to pay the instalments as agreed; in proof of her illness, the Petitioner has marked and annexed the documents **X2**, **X2(a)** and **X2(b)** to the Petition.

Thereafter, since she was unable to settle the loan and fell into arrears, and because the Bank had insisted, she could only turn to her cousin (the 9th Respondent) and thus, the 9th Respondent was prepared to give her certain amount of money to come out of the debt that she was in. Accordingly, the 9th Respondent had promised to give the Petitioner Rs. 500,000/-, which the Petitioner asserts that the 9th Respondent paid Rs. 200,000/- in cash and the balance Rs. 300,000/- was deposited in the bank and promised to set off the bank instalments by paying the same, thus, she has paid certain instalments to the Bank. Additionally, the 9th Respondent has done so on the promise that the Petitioner mortgaged the property in suit in her favour.

However, instead of a mortgage bond, she was compelled to execute a transfer deed, and when the transfer deed was executed, the 9th Respondent had promised to re-transfer the property on payment of the money.

Further, it was her position that when the Petitioner found the money and turned to the 9th Respondent to redeem the property, she has refused unless she paid the Rs. 2 Million. Thus, the Petitioner has rushed to the Debt Conciliation Board to obtain a relief on the basis that the said transfer is a mortgage bond, though it appears to be an outright transfer. Since the 9th Respondent was not in Sri Lanka, she appeared through her attorney, who is her sister, and denied that it is a mortgage, and it is her position that it is an outright transfer. In the meantime, there had been a 66 Application as well, where the Petitioner was placed in possession by the Magistrate's Court.

Thereafter, the inquiry before the Board was held to ascertain whether the said deed by which the Petitioner was supposed to have transferred the property to the 9th Respondent is in fact an outright transfer or only a mortgage.

After the conclusion of the inquiry where the Petitioner has given evidence and marked the documents **P1** to **P34**, and the 9th Respondent's Power of Attorney has given evidence as adduced in the documents marked as **V1** to **V35**, the Board, by its order marked as **Y(e)**, held that the impugned Transfer Deed bearing No. 2058 and attested by D.G. Thushara L. Gunaratne, is not a mortgage but an outright transfer.

Being aggrieved by the said order, the Petitioner has made an application to the Board to revise its order in terms of Section 54(1). This too was refused by the Board by the order marked as **Y(n)** annexed to the Petition.

Being further aggrieved by the said order, the Petitioner has sought to invoke the writ jurisdiction of this Court to quash the said order of the Debt Conciliation Board.

The 9th Respondent's Objections

The other Respondents to this Application have not filed their Objections, and the 1st to 8th Respondents were represented by the State Counsel, who informed the Court that he will abide by any order given by the Court.

However, the 9th Respondent by her Objections has stated that the Petitioner cannot maintain this Application before this Court in view of the fact that there is an outright transfer executed by the Petitioner in favour of the 9th Respondent.

Further, by the Objections, she has stated that if at all, the Petitioner should go before the District Court and assert her rights, and not before this Court.

Inquiry before the Board

The Board has been called upon at that stage, in terms of Section 21A, to first determine whether the Transfer Deed bearing No. 2058 and attested by D.G. Thushara L. Gunaratne is in fact an outright transfer or a transfer executed in lieu of a mortgage; therefore, whether the transfer is merely a sham transaction. For that purpose, the Board is required to evaluate the evidence in accordance with the following criteria provided in Section 21A(1) of the Ordinance;

(a) Whether the language of the notarial instrument is contained in any other agreement
(b) Whether there is any difference between the sum received as consideration by the transferor from the transferee and the value of the property transferred
(c) Whether there is a continuation of the transferor's possession of the property transferred
(d) Whether the transferor is bound to pay the transferee any interest or any sum which may reasonably considered as interest

The burden to prove that the transfer of the immovable property in question is in fact a mortgage falls on the transferor, who in the instant application is the Petitioner, as per Section 21A(2) of the Ordinance.

I will now consider the evidence adduced by the parties before the Board.

Circumstances that lead to the impugned deed

The Petitioner has given evidence at the inquiry before the Board, and according to her evidence, she had become the owner of the land in suit by virtue of the Deed bearing No. 328 in 1998. She

had purchased the said land, which is in extent of Sixty-Seven Perches, after having raised a loan of Rs. 2 Million from the State Mortgage Bank, which she had later settled.

It was her position that she is engaged in rolling (producing) beedi as her livelihood and her husband is a cinnamon peeler. In 2017, she had obtained a loan of Rs. 1,200,000/- (One Million Two Hundred Thousand Rupees) from the Rural Development Bank to be repayable in instalment, and to secure the said loan, she has mortgaged the said property in suit. After having paid certain instalments, she serviced the loan in order.

However, in 2019, she had suffered a heart ailment and was therefore unable to service the loan further; therefore, she fell into arrears. In proof of her heart ailment, she has marked and produced documents at the inquiry, as reflected in the documents marked **X2**, **X2(a)**, and **X2(b)**.

After a couple months since she fell into arrears, the Bank has insisted that she should immediately repay the loan, and by that time, her cousin, who is the 9th Respondent was employed in Lebanon; therefore, she has turned to her to obtain a loan. Thereafter, the 9th Respondent has promised to give her a loan of Rs. 500,000/- which she has given, Rs. 200,000/- in cash and the balance Rs. 300,000/- was deposited into her account, to meet her expenses that she met during her illness. In addition to that, she has promised to pay certain instalments on the promise that she will secure it through a mortgage, which she has explained in the following manner;

''වැඩිදුර හරස් ප්‍රශ්න:

ප්‍ර:- සාක්ෂිකාරිය තමුන් කලින් දවසේ සාක්ෂි දෙමින් ප්‍රකාශ කලා තමුන්ට මෙම නඩුවේ ණයහිමි විසින් තමන්ගේ මේම ඉඩමට අදාළව ණය මුදලක් ලබා දුන්නා කියලා නේද?

උ:- ඔව්.

ප්‍ර:- කීයක් දුන්නාද?

උ:- රු. ලක්ෂ 2 ක් මගේ අතට දුන්නා. රු. ලක්ෂ 3 ක් මගේ බැංකු ගිණුමට දැම්මා.

ප්‍ර:- එතකොට තමන්ගේ මේ ඉඩම සින්නක්කර ඔප්පුවකින් ඒ අයට ලියලා දීලා තමුන්ට මේ මුදල් ලබා දීමේ තමුන් කියන විදිහට ඒ අයට තිබුණු වාසිය මොකක්ද?

උ:- ඉඩම සින්නක්කරව ලිව්වා නෙමෙයි ගනුදෙනුවක් සඳහායි එහෙම කලේ.

ප්‍ර:- මම අහන්නේ ඒ ගනුදෙනුවෙන් මේ නඩුවේ ඈයහිමි වන වික්‍රමසිංහ විමලා සුරංගනී කියන අයට ලැබෙන ලාභය මොකක්ද?

උ:- මම අසනීප වුණ නිසයි රු.ලක්ෂ 5ක් මම ඉල්ලා ගත්තේ.

ප්‍ර:- දැන් ඒ තැනැත්තිය රැකියාවක් කරලා නේද මුදල් උපයා ගන්නේ?

උ:- ඔව්.

ප්‍ර:- එයාට ලැබෙන ලාභය මොකක්ද?

උ:- ඒ මුදල් ආපසු ගන්න එයාට. මට අසනීප නිසයි එහෙම කලේ. ඇපයට ඔප්පුව ලියලා දෙන්න කිව්වා.

ප්‍ර:- එතකොට සාක්ෂිකාරිය තමුන් දැන් මේ කියන විදිහට මේ ලක්ෂ 5 ක මුදල ලබා ගෙන මේ වෙනකොට කොච්චර කල් වෙනවද?

උ:- අවුරුදු 3 ක් විතර වෙනවා.

ප්‍ර:- තමුන් මේ අදාල ඔප්පුව ලියලා දුන්නේ කොයි කාලේද?

උ:- 2020.02.05 වෙනිදා තමයි ඔප්පුව අත්සන් කලේ.

ප්‍ර:- එතකොට මේ වනවිට වසර 3 ක කාලයක් ගතවෙලා නේද?

උ:- ඔව්.''

However, instead of a mortgage, it is the Petitioner's position that she was compelled to execute a transfer deed, which she has done because the 9th Respondent's son was staying with them for his studies, and he had arranged everything.

Thus, it is her position that when she was able to find the money, the entirety of the property would be retransferred. However, after finding the money, when she went to the 9th Respondent (her cousin) to redeem the property, her cousin has refused to do so and asked for two million Rupees to re-transfer the property. Therefore, the Petitioner had no other option but to go to the Debt Conciliation Board and file an application.

''ප්‍ර:- දැන් තමුන් ඔය දුන්නයි කියන ලක්ෂ 5 වෙනුවෙන් තමන් කීයක් හරි මේ වෙනකොට දීලා තියෙනවද?

උ:- 2021 මම එයාගෙන් ලක්ෂ 5 දෙන්න ඇහුවා. නමුත් එයා මගෙන් ලක්ෂ 20 ක් ඉල්ලුවා ඉඩම ආපහු හරවා ගන්න.

ප්‍ර:- මම තමුන්ට යෝජනා කරනවා තමුන්ලා මේ ඉඩම මේ ණයහිමිට විකුණලා තමයි රු. ලක්ෂ 12 ක මුදලක් ලබා ගත්තේ කියලා?

උ:- නැහැ මම එහෙම වික්කේ නැහැ.''

Further, in her cross examination, when questioned about the payment in instalments by the 9th Respondent, the Petitioner admitted that the 9th Respondent had paid up to a certain point of time, however, she had started to pay again after she had recovered from her illness from 2021.

''මණ්ඩලය විසින්:-

ප්‍ර:- තමන්ට ලක්ෂ 5 ක් නිකම්ම දුන්නද පොළියක් නැතිව?

උ:- මට අසනීප ඉල්ලුවට නැහැ ඒ වෙනකොට ණය වුණා වෙන අයගෙන් ගත්ත ඒවා දෙන්න කිව්වා.

ප්‍ර:- සාක්ෂිකාරිය තමුන් ඔය ඉඩම ලියන අවස්ථාවෙදි ලබාගත්ත මුදලට අමතරව ඒ අය මීට දෙන්න ලැබිච්ච දේවල් තමුන් විසින් බැංකුවලින් අරගත්ත ණය මුදලක් ගෙව්වා නේද?

උ:- ඇය වාරික ගෙවලා දුන්නා. මම අසනීප නිසයි එහෙම කලේ.

ප්‍ර:- සාක්ෂිකාරිය මම තමුන්ට යෝජනා කරනවා 2020 ඉඩම ලියන අවස්ථාවට තමුන්ට රු. ලක්ෂ 12 ක මුදලක් දීලා මේ දක්වා එනම්, අධිකරණ මණ්ඩල නඩු වාරික ණය සැමිය තමුන් තමුන්ගේ අතින් බැංකුවලට ගෙවලා තියෙනවා කියලා?

උ:- නැහැ එය අසත්‍යයක්.

ප්‍ර:- එතකොට තමුන් ගෙවලා තියෙනවාද ඒ ණය මුදල?

උ:- මම අසනීප නිසයි ලක්ෂ 5 ක මුදලක් ගත්තේ. ගිය අවුරුද්දේ මාසේ සිට නැවත මාසයක් මට බැංකුවල ලියුමක් ඉදිරිපත් කරලා මම එය මුදල ගෙවාගෙන යනවා.

ප්‍ර:- ඒ කියන්නේ මේ නඩුවට ණයහිමි විසින් තමුන් විසින් ලබා ගත්ත ණය මුදල වෙනුවෙන් 2022 අගෝස්තු වෙනකම් ඇය වාරික ගෙව්වා කියලා තමුන් පිළිගන්නවාද?

උ:- 2021 අගෝස්තු වෙනකම්."

In addition to her evidence, she has called the valuer who has given evidence, and according to him, when the property was transferred, it was about Rs. 5.8 Million worth. Additionally, at the time he gave evidence, its worth was around Rs. 7.3 Million.

Thereafter, she has called the Electricity Superintendent, who gave evidence to the effect that electricity supply was taken to the property in suit in her husband's name, C. Ananda Silva, and

from October 2021, the electricity bill was zero because no one was occupying the house and nobody has consumed electricity.

Thereafter, the 9th Respondent's sister, who is the power of attorney holder, has given evidence, and according to her, the 9th Respondent had given Rs. 500,000/- (Rs. 200,000/- in cash and the remaining was deposited) and Rs. 1.2 Million was paid; in addition to that, she has also paid certain instalments to the Bank to service the loan obtained by the Petitioner. According to her, now the 9th Respondent's son is occupying the house along with his father. She has marked certain documents issued by the Bank as **V1** to **V35**, to establish that the loan was serviced by her sister. In the cross examination she admitted that the Petitioner has started servicing the loan.

In view of the facts asserted, the complaint by the Petitioner, the Objections taken up by the 9th Respondent, and the arguments advanced on behalf of the parties, the following questions arise for my determination;

(i) Whether the Deed by which the Petitioner is said to have transferred her title to the 9th Respondent is sham or not

(ii) Whether the Petitioner has passed the tests to establish that the said deed is a sham

(iii) Whether the Debt Conciliation Board (the 1st Respondent) and its members erred in fact and in law when they decided that the said deed is an outright transfer

(iv) If so, whether the Petitioner is entitled to relief as prayed for in the Petition

Now I will consider them one at a time.

Did the Petitioner continue to be in possession:

In this case, it is quite clear that the Petitioner has never placed the 9th Respondent or her representative in possession. Her stand is that the 9th Respondent's son was staying with them since

he was studying, and he was the one who arranged the money for the Petitioner to obtain from the 9th Respondent, and to secure the said money, he wanted to have the said deed in favour of his mother. When the Petitioner mentioned those facts in evidence, those facts were never challenged. In fact, it was her position that due to her financial difficulties she had to turn to the 9th Respondent, who had by that time accumulated some money after having secured a foreign employment in Lebanon; therefore, when she turned to her, she had agreed to give the said Rs. 500,000/- and also agreed to pay certain instalments on behalf of the Petitioner.

For that, as security, the nephew of the Petitioner (the son of the 9th Respondent) insisted that there should be a transfer deed executed, which the Petitioner complied with. Accordingly, the Transfer Deed has been executed.

It is also evident that up until October 2021 after the execution of the said transfer deed, the Petitioner and her family members had been in possession of the property in suit. A dispute had arisen between the parties with regard to the possession, and according to the Petitioner, the 9th Respondent's son had been the cause of the said dispute, and he had first made a police complaint over the possession. Then, the Petitioner and her family members were directed to give a statement; according to the Petitioner, when they left to do so, the 9th Respondent's son had locked up the house that he was also staying in and taken the keys. Thereafter, the Petitioner had to leave and is now living next door with her parents.

> *"ප්‍ර:- ඒ අනුව තමුන් පෙර දිනයේ සාක්ෂි දෙමින් ප්‍රකාශ කල ආකාරයට එක්තරා අවස්ථාවකදී 2021 වසරේදී මේ අය මේ නිවසට ආවාද?*
>
> *උ:- ඔව්. පොලිසියේ දෙන්නෙක් ඇවිල්ලා අපිව එලියට අඩගහගෙන ගියා. එවිට ඉෂාර මුණසිංහ මගේ දුව එළියට ඇදලා දාලා යතුර ගත්තා."*

However, the Petitioner's position is that the land appurtenant to the house is in possession and occupied by her son and her cousin.

"මණ්ඩලය විසින්:

ප්‍ර:- කවුද එහෙනම් භුක්ති විඳින්නේ?

උ:- මම. සුනිල් සිල්වා කියලා මස්සිනා කෙනෙක් වගා කටයුතු කරනවා.

ප්‍ර:- මම තමුන්ට කියනවා තමුන් එකිනෙකට වෙනස් සාක්ෂිදෙන සාක්ෂිකාරියක් කියලා මම යෝජනා කරනවා.

උ:- නැහැ. මම කියන්නේ ඇත්ත.

ප්‍ර:- චිත්‍රපති තිළිණ මධුසංඛ සිල්වා කියන්නේ කවුද?

උ:- මගේ පුතා."

This clearly shows that the Petitioner never wanted to give the beneficial interest to the 9th Respondent. In addition to that, there had been a 66 Matter, where the Petitioner had been placed in possession by the learned Magistrate, as reflected in **P32** annexed to the Petition; as such, the Petitioner has fought the said 66 Matter and obtained possession of the property in suit. Therefore, the 9th Respondent had never been in possession although they claim that they are in possession.

Further, the Petitioner has called the Electrical Superintendent of the area, who testified to the effect that the electricity bills are paid and is still under the name of the Petitioner's husband, C. Ananda Silva, and the bills were paid only up till 27.10.2020, and thereafter, the bills had become zero which means that nobody is occupying the house. In fact, if the 9th Respondent claims that they have been paying the electricity bills as the owner; in that event they should have had it transferred in their name, which they have so far not done. Therefore, this also shows that the

Petitioner continues to enjoy that rights as well which the learned Members of the Board failed to consider.

Therefore, it is very clear that the 9th Respondent nor her agents were in possession and that the Petitioner had never intended to transfer the beneficial interests of the property in suit to the 9th Respondent.

The Board has failed to consider and properly appreciate the evidence adduced to the effect that the Petitioner never placed the 9th Respondent in possession, nor was the 9th Respondent or her attorney ever had possession after the execution of the impugned deed. In fact, possession of the house was taken by deception, as transpired in evidence. In addition to that, the Petitioner continues to possess the appurtenant land. Further, even the electricity bills, other than the allegedly stolen bills, are paid by the Petitioner. However, nobody had consumed electricity after the Petitioner left the house and started living with her father next door.

''ප්‍ර:- දැන් සාක්ෂිකාරිය තමුන් මේ නිවසට අදාලව මාසික විදුලි බිලක් එනවා නේද?

උ:- ඔව්.

ප්‍ර:- ඒවා තමුන් ලබාගෙන ගෙවනවද?

උ:- අපි ලබාගෙන තියෙනවා. ලබා ගන්න යනකොට කවුරුහරි ඒක හොරෙන් අරගන්නවා. ගිය මාසෙත් අශෝකා කුමාරි, ජයන්ත කියන පුද්ගලයයි අපි පැමිණිල්ලකට ගිය අවස්ථාවක ලයිට් බිල අරගෙන ගිහිල්ලා තිබ්බා.

ප්‍ර:- දැන් සාක්ෂිකාරිය තමුන් කියන විදිහට තමුන්ට අයිති තමුන්ගේ ස්වාමි පුරුෂයාගේ නමින් එන විදුලි බිල කවුරු හරි හොරෙන් අරගන්නවා කියලද කියන්නේ?

උ:- ඔව්.

ප්‍ර:- තමුන් ඒ ගැන පොලිසියට පැමිණිල්ලක් කරලා තියෙනවද?

උ:- පැමිණිල්ලක් කරන්න ගියේ නැහැ. ලයිට් බිල් මහත්තයාගෙනුත් අපි ලයිට් බිල ගන්න නිසා.

ප්‍ර:- දැන් ඔය තමුන් කියන විදිහට මාස කීයක ලයිට් බිල් ඔය වගේ හොරෙන් අරගෙන තියෙනවද?

උ:- මාස ගණනාවක ඒවා හොරෙන් අරගෙන තියෙනවා.

ප්‍ර:- එතකොට ලයිට් බිල ගෙවන් නැති වුණාම ලයිට් කපලා යන්නේ නැද්ද?

උ:- එයාලා හොරෙන් ගන්න ලයිට් බිල් එයාලා ගෙවනවා.''

Consideration passed:

The next matter that needs to be considered is whether there is a huge discrepancy between the value of the property and the consideration passed.

According to the Petitioner, the Petitioner has only received Rs. 500,000/- from the 9th Respondent. To establish that, she has mentioned in her evidence that she had received Rs. 200,000/- in cash and the 9th Respondent had deposited Rs. 300,000/- in the Petitioner's bank account; in proof of that, she has produced the bank account details in her evidence. This evidence was never controverted, and no evidence was given to contradict the same.

In cross-examination, she has marked documents **P9** to **P30** to establish that she had paid the instalments of the loan regularly up to date till she gave evidence. In addition to that, it was suggested to her that the 9th Respondent had given Rs. 1.2 Million as consideration in addition to the Rs. 500,000/-, which she flatly denied, and when she was questioned as to why the consideration on the Deed was mentioned, her explanation was that since it was mortgaged to the Bank for Rs. 1.2 Million, the lawyer who attested the said deed wanted to put the same amount.

"මණ්ඩලය විසින්:-

ප්‍ර:- ඔබතුමාට ලක්ෂ 12 ක මුදලක් දැම්මේ ඇයි?

උ:- බැංකු ණය ගෙවන්න මගෙන් ඇහුවා බැංකුවෙන් ලක්ෂ කීයක් අරගෙන තියෙනවද කියලා. මම කිව්වා ලක්ෂ 12 ක් අරගෙන තියෙනවා. ඒකට රු. 1,040,000/= ක් ගෙවන්න තියෙනවා කියලා. ඊට පස්සේ ඇහුවා මෙච්චර කීයක්ද දුන්නේ කියලා. මම කිව්වා ලක්ෂ 5 ක මුදලක් බැංකු ප්‍රමාණයක් ගන්නේ කියලා. ඊට පස්සේ ඇහුවා එහෙනම් අවුරුදු 2 ක් 3 ක් ගෙවලා දෙන නිසා ලක්ෂ 12 ක් දැම්මට කමක් නැද්ද ඇහුවා. මම කැමති වුණා.

ප්‍ර:- ඒ අනුව සාක්ෂිකාරිය මේ ඉඩම ලියන අවස්ථාවෙදි මේ ඉඩමෙන් දේපල පැවරීම කලේ නැතැයි යන මුදලක් ලබාගෙන ඉතිරිය බැංකුවලින් ලබාගත් ණය වාරික ඔවුන් විසින් ගෙවීමට පදනම් මත තමා මේ පැවරීම කලේ නේද?"

However, the 9th Respondent's position is that in addition to the said Rs. 500,000/-, they had paid Rs. 1.2 Million when the Deed was signed, but the Petitioner has denied the same. No notary was called to establish that such an amount was passed at the time of the execution of the Deed. In addition to that, when the Petitioner denied it, the burden shifted onto the 9th Respondent to establish by calling witnesses or by producing document as evidence proving that she had in fact withdrawn money or had paid the same by some other means to the Petitioner, which the 9th Respondent has failed to establish.

Therefore, this aspect also has not been considered by the Members of the Board.

Discrepancy between consideration passed and the valuation:

The next matter that needs to be considered is whether there is a huge discrepancy between the consideration passed and the valuation.

According to the valuer who had given evidence, as a qualified valuer who has obtained his qualifications as a valuer, at the time of the execution of the Deed in favour of the 9th Respondent, the value of the property in suit was about Rs. 5.8 Million, and at the time of giving evidence, it was Rs. 7.3 Million. He has calculated so in accordance with the market value, and in fact, the property is in extent of 1 Rood and 67 Perches, which means that 67 Perches property in Bandaragama area is a valuable property. Therefore, just for Rs. 500,000/- now the 9th Respondent is going to receive that property.

It is the position of the 9th Respondent that other than for the said Rs. 500,000/-, the 9th Respondent has only paid certain instalments, and to establish those instalments that the 9th Respondent has paid, the 9th Respondent's power of attorney has marked and annexed certain documents as **V1** to **V35**, which the Petitioner admitted. Therefore, other than for the Rs. 500,000/-, the only other amount of money that was paid in that behalf is for the said instalments; thus, once that is calculated, the entire amount that the Petitioner has to pay the 9th Respondent is calculable.

The proposition that Rs. 1.2 Million was passed as consideration on the impugned deed is only a surmise on which an inference has been drawn by the learned Members of the Board without any iota of evidence to that effect because the 9th Respondent has failed to establish that fact by adducing evidence (oral or documentary) when the Petitioner denied it. Therefore, there is a great error of facts and law when the learned Members of the Board came to their conclusion.

Further, it is the position of the Petitioner that when she went to repay the 9th Respondent, the 9th Respondent had refused and demanded Rs. 1.2 Million, which the Petitioner was not prepared to pay and therefore had to turn to the Board.

Additionally, when the Petitioner had managed to find money and started paying the loan instalment, which she has proved by producing the documents marked as **P1** to **P34** that show that she has been making regular payments, and which the 9th Respondent has not denied and the learned Members of the Board have lost sight of when considering this matter.

Therefore, it is my view that the learned Members of the Debt Conciliation Board have erred in fact and in law when they considered the evidence with regard to the consideration passed and the valuation of the property.

The Board has failed to consider each and every fact in issue, namely the circumstances that led to the execution of the impugned deed and whether the Petitioner surrendered possession after the execution of the impugned deed, as well as the discrepancy between the value of the property, the consideration actually passed, and the consideration stated in the deed. In particular, the reference in the deed to a consideration of 1.2 Million was made at the instance of the attorney-at-law who attested the deed, purportedly on the basis that the value of the mortgage was 1.2 Million; this aspect was not properly evaluated by the Board.

Further, the Petitioner never intended to transfer the beneficial interest, and that is precisely why she, throughout, intended to remain in possession of the property.

"ප්‍ර:- දැන් ණයහිමිට ලද ඔප්පුවේ සඳහන් වෙලා තියෙනව වටිනාකම කීයද?

උ:- ලක්ෂ 12යි.

ප්‍ර:- ඇත්ත වශයෙන්ම තමන්ගේ ස්ථාවරය අනුව තමන්ට ලැබුණේ කියද?

උ:- ලක්ෂ 5 යි.

ප්‍ර:- අනට කීයක් ලැබුණද?

උ:- අතට ලක්ෂ 2 ක් ලැබුණා. ඉතුරු ලක්ෂ 3 මගේ බැංකු ගිණුමට දැම්මා."

In addition to the above, the consideration that actually passed was only Rs.500,000/-. Therefore, I am still unable to understand how the Board decided that, in addition to Rs.500,000/-, a further Rs. 1,200,000/- (One Million Two Hundred Thousand Rupees), also passed as consideration as stated in the deed. The Petitioner has flatly denied this and clearly explained in cross-examination, as I have referred to above, why and how the amount of Rs. 1,200,000/- was inserted as consideration; namely, due to the value of the mortgage she agreed to at that time, without knowing the consequences.

Finally, the Board has failed to appreciate the value of the property and the actual consideration that passed. The Board has further failed to appreciate the fact that the Petitioner never intended to transfer the beneficial interest, although she transferred the title in lieu of a mortgage.

Beneficial interest never transferred

In view of the above factors, it appears that the Petitioner has never intended to transfer the beneficial interest of the property in suit to the 9th Respondent or her agent in her place because she continued to be in possession, and even after she had left the premises, she had started paying the electricity bills which were not stolen. However, after she left the house, no electricity has been consumed. Therefore, even if the 9th Respondent claims that they are in possession, this was established through the evidence of the Electricity Superintendent, who confirmed that nobody has consumed electricity after July 2021. Thus, no beneficial interest has been passed from the Petitioner to the 9th Respondent or her agent.

In this case, it is clear that the Board has not considered the attendant circumstances.

Where the Board has erred

The Board has not analysed the above-mentioned evidence in terms of the provisions of Section 21A of the Ordinance. Instead, in almost the entirety of the order marked as **Y(e)**, the Members of the Board have mainly considered the consideration passed as Rs. 1.2 Million, which they relied on to arrive at their conclusion.

> *"පැ.34 ඔප්පුවේ සඳහන් අන්දමට එම ඔප්පුවේ සඳහන් රුපියල් ලක්ෂ 12ක මුදල ගනුදෙනු කරගත් බව ඉල්ලුම්කාරිය සහ වගඋත්තරකාරිය පිලිගෙන ඇති බැවින් රුපියල් ලක්ෂ 12ක මුදලක් ඉල්ලුම්කාරිය විසින් ලබා ගෙන ඇති බව නිගමනය කල හැකිය."*[1]

In addition to that, on the question of possession, the Members of the Board had this to say;

> *"ඉල්ලුම්කාරිය සාක්ෂි දෙමින් පවසා ඇත්තේ මෙම ඉල්ලුම්පත්‍රයට අදාල ඉඩමේ පිහිටි අංක 347 දරණ නිවසේ 2021.07.18 දින දක්වා පදිංචිව සිටි බවත් වග උත්තරකාරියගේ පුතා වන ඉෂාර යන අය මෙම නිවසේ යතුර ලබා ගත් බවය. ඉල්ලුම්කාරිය ඉල්ලුම්පත්‍රයේ ද සඳහන් කොට ඇත්තේ වගඋත්තරකාරියගේ පුත්‍රයා බලහත්කාරයෙන් මෙම නිවසට ඇතුල් වී ඇති බවය. ඒ අනුව ඉල්ලුම්කාරියට මෙම ඉල්ලුම්පත්‍රයට අදාල ඉඩමේ පිහිටි නිවසේ පදිංචියක් නොමැති බවද පෙනී යයි."*[2]

Based on these factors, the Board had decided to dismiss the application.

For the reasons adumbrated above, the Board has failed to appreciate the essence of the Debt Conciliation Ordinance and its underlying rationale, which is not to assist creditors but rather to support debtors in distress and to facilitate the settlement of debts where debtors are in financial

[1] Page 6 of the document marked as **Y(e)** annexed to the Petition.
[2] Page 6 of the document marked as **Y(e)** annexed to the Petition.

difficulty. In the present case, the Board has lost sight of this main rationale and has effectively acted in favour of the creditor; therefore, they have erred in both fact and in law.

In support of this, I rely on the following dictum of Justice Obeyesekere in the case of *Samarasinghe v. Chairman, Debt Conciliation Board and Others* [2021][3];

> *"The Debt Conciliation Ordinance was introduced in 1941 as a piece of welfare legislation by the colonial legislature to address a pertinent social issue involving civil debts that particularly affected rural and economically disadvantaged communities. Those who required financial assistance were compelled to mortgage immovable property in order to obtain loans and keep paying interest at exorbitant rates until such time as they were able to redeem their properties. These instruments were usually executed as outright transfers, due to the disparity in bargaining power between the creditors and debtors, and because debtors are often desperate to obtain financial assistance and did not have the benefit of access to legal advice to execute a mortgage which protects their rights. This practice led to the eventual loss of property which further widened the gap in society and drove the poor to the depths of poverty (Debt Conciliation Board v. R. D. Hector Jayasiri, 1 Deepali Wijesundera J.).*
>
> *The Debt Conciliation Ordinance was therefore introduced to provide some relief to the debtor in order to prevent capricious, oppressive, and unconscionable conduct on the part of the creditor. The Department of Debt Conciliation was established to provide relief and legal protection for debtors to redeem on concessional installments and low interest rates, immovable properties such as agricultural land or residential premises hypothecated to*

[3] 3 Sri L.R. 539.

obtain a loan on a mortgage or a Deed of Conditional Transfer (Parliamentary Debates of 4th August 1999; speech made by the Minister of Justice when introducing the amendment to the Ordinance). The culture of informally mortgaging immovable property for the purpose of obtaining loans exists to date, particularly due to the inability to obtain loans from the formal banking and financial sector."

Writ lies

Based on the reasons adumberated above, it is my view that a *Writ of Certiorari* lies against the Respondents as the Board has failed to properly consider and analyse the evidence placed before it in terms of Section 21A of the Ordinance.

I rely on the following passage found in Wade and Forsyth's classic textbook, "Administrative Law";

"A certiorari would be issued to call up the records of justices of the peace and commissioners for examination in the King's Bench. Failure to return the record into the High Court was punishable as contempt and, in the seventeenth century, many commissioners of sewers were fined and incarcerated for disobedience." If any legal defects were found in the records, the decisions were quashed. At first, there was much quashing for defects of form on the record, i.e. for error on the face. However, later, as the doctrine of ultra vires developed, that became the dominant principle of control. Nowadays, the quashing order is used to bring up into the High Court the decision of some inferior tribunal or authority in order to be investigated. If the decision does not pass the test, it is

quashed-that is to say, it is declared completely invalid and, for this reason, it should not be respected."[4]

Since a writ in the nature of Certiorari is issued, further I issue a *Writ of Mandamus* to compel the Board to proceed with the application to settle the debt or issue a certificate in terms of Section 32 of the Ordinance.

In support of this, I further rely on the following passage found in the authoritative textbook of Wade and Forsyth, "Administrative Law";

"The essence of a mandatory order is that it is a royal command, issued in the name of the Crown from the Court of King's Bench (now the King's Bench Division of the High Court), ordering the performance of a public legal duty. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may also be used by one public authority against another. While the quashing and prohibiting orders deal with wrongful action, the mandatory order deals with wrongful inaction. Together, the prerogative remedies cover the field of governmental powers and duties."[5]

[4] Wade, W., & Forsyth, C. (12th Edition, Oxford University Press 2023). *Administrative Law*, Part VII Chapter 16, p. 482.
[5] Wade, W., & Forsyth, C. (12th Edition, Oxford University Press 2023). *Administrative Law*, Part VII Chapter 16, p. 493.

Conclusion

Accordingly, since the transfer is a sham, it cannot be sustained; therefore, a *Writ of Certiorari* is issued to quash the decision of the Board. Thus, the Board and its members are hereby directed to proceed to follow the procedure to settle the debt in terms of Section 25 of the Ordinance. As such, I declare that the impugned deed is not an outright transfer and was executed in way of a mortgage, and grant the relief as prayed for in prayers *(c), (d)*, and *(e)* of the Petition.

JUDGE OF THE COURT OF APPEAL