

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of Certiorari, Prohibition and
Mandamus.

Arpatha Gamage Anoma,
No. 101/01/A, Duwawatta Road,
Thumbowila, Piliyandala.

PETITIONER

Court of Appeal Case No:
CA/WRIT/152/2024

Vs.

1. W. Irangani Perera,
Hon. Chairperson,
2. W.C. Pushpamali,
Hon. Member,
3. K.H. Premadasa,
Hon. Member,
4. K.P. Bandula Ranjith,
Hon. Member,
5. Kusum Pathirana,
Hon. Member,
6. Subashini Dayananda,
Secretary,

All are at
No. 35A, Dr. N.M. Perera Mawatha,
Colombo 08.

7. Mallikarachchige Padmasiri
Wijethunga,
No. 07, Jayamali Fashion,
Chilaw Road, Marawila.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Vijith Singh with K. Jackson for the Petitioner.
Viran Fernando with Sahiru Jayasinghe instructed by S.G.A.
Gunasekara for the 7th Respondent.

Argued on: 04.11.2025 and 14.11.2025.

Written Submissions: For the Petitioner on 12.01.2026.
For the 7th Respondent on 23.01.2026.

Decided on: 27.03.2026.

Mayadunne Corea J

The Petitioner in this Writ Application sought, *inter alia*, the following reliefs:

- “b) *Grant a Writ of Certiorari quashing the decision marked ‘A6’ dated 16th November 2023 made by the 1st, 2nd, 3rd, 4th and 5th Respondents*
- c) *Grant a Writ of Mandamus compelling the 1st to 5th Respondents to review the decision as prayed for (in the application dated 23rd October 2023), under and in terms of section 54 of the Debt Conciliation Board and*

- i) *To review the decision marked A4 dated 24th of August 2023 based on the grounds more fully described in paragraph 06 of the Application dated 23rd October 2023*
- ii) *To dismiss the application made by the 7th Respondent.*
- d) *Grant a Writ of Mandamus against the 1st to 5th Respondents or any one or more of them to decide that the Petitioner is in possession of the land in dispute.*

In the alternative to the above and/or addition to the above:

- e) *Grant a Writ of Certiorari quashing the decision marked 'A4' dated 24th of August 2023 made by the 1st, 2nd, 3rd and 4th Respondents.*
- f) *Grant a Writ of Mandamus to dismiss the application of the 7th Respondent with or without costs."*

Subsequent to the Petition being supported, objections were filed only by the 7th Respondent. Further submissions were also made by the Petitioner and the 7th Respondent.

The facts of the case briefly are as follows. The Petitioner states that she purchased a property from the 7th Respondent and took possession of the said property. Nevertheless, the 7th Respondent had filed an application under the Debt Conciliation Ordinance, No. 39 of 1941 (hereinafter sometimes referred to as "the Ordinance") stating that the transfer of the property to the Petitioner was a mortgage as opposed to a transfer. Following an inquiry, the 1st to 4th Respondents decided that the deed was executed as security for a mortgage bond (A4). The Petitioner applied for a review of the said order. However, the Debt Conciliation Board (hereinafter referred to as "the Board") dismissed the said application (A6). Hence, this Writ Application.

The Petitioner's contention

The Petitioner challenged the acts of the Respondents on the following grounds:

- The Respondents failed to consider the relevant material.
- The Respondents failed to give reasons for the decision in A6.

- The acts of the Respondents are unlawful, unreasonable, irrational, *ultra vires*, lacks transparency, contrary to natural justice, in violation of the legitimate expectations of the Petitioner.

The Respondent's contention

The 7th Respondent raised the following objections:

- The order made pursuant to section 54 is in accordance with the law.
- The original order (A4) of the Debt Conciliation Board is in accordance with the law.
- Delay
- The Petitioner failed to disclose any grounds to impugn the decision marked A4.
- The Petitioner attempts to convert the instant application into an appeal against the decision of the Debt Conciliation Board.
- The Petitioner relies on disputed facts.

Analysis

Let me now consider the Petitioner's contention with the Respondents' objections.

The 7th Respondent made an application to the Debt Conciliation Board marked as A3 dated 25.09.2012 requiring the Board to declare that the deed of transfer no. 2797 dated 12.08.2010 (marked as A1) is not a deed of transfer but a mortgage. It was the contention of the 7th Respondent, who was the applicant before the Board, that she had obtained a loan in the sum of Rs. 800,000 and, as a security for the said loan, had mortgaged her land on the understanding that upon repayment of the loan, the land will be retransferred to her. The Petitioner contended that the said land had been sold for the said sum of Rs. 1,000,000 and the 7th Respondent had executed a deed of transfer and not a mortgage bond. However, the said deed bears the value of Rs. 800,000.

The Debt Conciliation Board conducted a preliminary inquiry where both parties were present, and evidence was adduced. The Board came to the finding that the said deed operates as a mortgage. The order of the Board dated 24.08.2023 is marked and tendered

as A4. The Petitioner being aggrieved by the said decision had tendered an application under section 54(1) of the Debt Conciliation Ordinance seeking a review of the said order.

The Petitioner's main contention is that being aggrieved by the Board's order marked and tendered as A4, the Petitioner had preferred a petition to the Board to have the order reviewed. This application made pursuant to section 54(1) of the Ordinance is marked as A5. The said application seeking for a review dated 23.10.2023, had been taken up for hearing on the same date and the 7th Respondent had raised an objection on failure to comply with the provisions of section 54(2), namely, on the basis that the required notice to review had not been given. Subsequent to the objection being taken, the Petitioner's Counsel submitted that they would give the notice and the copy of the petition to the 7th Respondent's Counsel. Thereafter, time was sought to support the Petitioner's application and for the 7th Respondent to file objections. Hence, the Board had adjourned the hearing to 16.11.2023. When the matter was taken up on that date, the Board dismissed the application pursuant to section 54(1) of the Debt Conciliation Ordinance (A6), against which, the Petitioner has filed this Writ application.

Rejection of the review application

I have considered the order marked A6 where the Debt Conciliation Board had come to the conclusion to reject the review application pursuant to section 54(1). This would be an appropriate opportunity to consider section 54(1) of the Debt Conciliation Ordinance which reads as follows;

“The Board may, of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compounded debt has been completed, whichever date is earlier, review any order passed by it and pass such other order in reference thereto as it thinks fit.”

As per the said section, the power of review of the Board has to be invoked within three months of making the order. The preliminary order made by the Board was to consider whether the alleged deed no. 2797 is a deed of transfer or whether it is a mortgage. The said order marked as A4 had been made on 24.08.2023, and on 23.10.2023 the Petitioner tendered an application to review the order marked A4 on the ground enumerated thereon

in the application. As the application for review was made on 23.10.2023, I observe the said application has been filed within the permitted period of three months as required by section 54(1) of the Ordinance. However, the learned Counsel for the 7th Respondent contended that the power of review of the Board is limited in scope. It was his contention that, as stated in the said section, orders that can be reviewed are only on the instances strictly enumerated therein. Accordingly, I observe that revivable orders are orders made by the Board dismissing an application, granting a certificate, approving a settlement, or before the payment of a compounded debt is completed. Hence, it was his contention that other than in the instances contemplated, no order can be reviewed by the Board. In response, the learned Counsel for the Petitioner submitted that the Board had erred in law in arriving at the said conclusion, as section 54 of the Ordinance permits the review of any order made by the Board, and in this regard relied on section 54(1) of the Ordinance.

It is common ground that an inquiry had been held. Subsequent to evidence being tendered at the said inquiry, the Board decided that, although deed no. 2797 was executed on the basis of a deed of transfer, it is in fact only a mortgage, and accordingly, ordered steps to be taken under sections 25(1) (a), (b) and (c). I observe that the Petitioner has tendered this Writ application against the said order.

At this stage, upon considering the provisions of the Debt Conciliation Ordinance, I observe that pursuant to the notice published under section 25(1) of the Ordinance, where the Board is of the opinion that it is desirable to attempt a settlement, it is required to proceed in terms of section 26 of the Ordinance. However, at the conclusion of the preliminary hearing of the application, if the Board is of the opinion that it is not desirable to affect the settlement, the Board has the power to dismiss the application pursuant to section 24.

The Board can fix the matter for hearing upon the receipt of the statements containing the particulars of debt as called for under section 25(1) read with section 28 of the Ordinance. Thereafter, at the conclusion, the Board may act pursuant to section 29 and issue a certificate under that section or proceed under section 32 of the Ordinance and dismiss the application under section 32(1). It appears that the Board has the power to act under section 32(1) at any stage of the proceedings, or as stated earlier, the Board can affect an amicable settlement pursuant to the provisions of section 30 of the Ordinance.

To summarise, it appears that section 54(1) deals with the orders the Board can make under the abovementioned provisions pertaining to dismissal of an application, granting of a certificate, or on the approval of a settlement. The last limb of the said section contemplates a situation where the Board can review any order passed by it before the payment of a compounded debt is completed. Hence, I observe that the argument of the 7th Respondent is that what is permissible under the Act to review are the instances that are stated above, namely to reiterate again; the dismissal of an application, granting a certificate or approving a certificate before the payment of the compounded debt is completed. Hence, the power of review of the Board is limited to the abovementioned instances. Let me now consider whether the order made on 24.08.2023 marked as A4 falls into any of the above-mentioned categories. The said order relates to the preliminary hearing to ascertain whether the deed no. 2797 is a mortgage or a transfer, and at the conclusion the Board had held that it is a mortgage. Hence, the said order does not fall within the abovementioned categories.

The learned Counsel for the Petitioner strenuously contended that as per the wording of section 54(1), “*any order passed by it*” can be reviewed. On a close examination of the Ordinance, I am not inclined to agree with the said contention. If I am to accede to the contention of the Petitioner, the legislature could have easily stated so and given the said power of review to any orders under section 54 of the Ordinance. However, the legislature in its wisdom has specified four categories of orders under the stipulated subsection.

In the case of ***Rangana Prasad Weerasooriya v. Weerasooriya Arachchige Ariyawathie Mangalika*** CA Writ 174/20 decided on 21.03.2023, the Court held that:

“It is apparent that Section 54 of the Ordinance gives power to the Board to review the aforesaid orders of dismissing an application, granting a certificate or approving a settlement. Other than that, Section 54 gives power to the board to review an order made before the payment of the compounded debt is completed. That is, any order made with regard to the payment of the debt could be reviewed by the Board before completing the payment of the compounded debt.

Therefore, as the learned Counsel for the 1st respondent correctly contended, an order made only on those four instances could be reviewed in terms of Section 54 of the Ordinance. The order made following the preliminary hearing in determining whether the deed bearing No.1512 is a mortgage or not does not fall within the aforementioned four instances. Although the learned Counsel for the petitioner advanced an argument that the words “any order” mean any order made at any time from the filing of the application to the stage of the debt being completely paid, I regret that I am unable to agree with that contention. If the contention of the

learned Counsel for the petitioner is accepted, it is apparent that enumerating the aforementioned four instances in Section 54(1) serve no purpose. Hence, it is evident that “any order” means any order relating to the aforesaid four instances.”

In my view, when the legislature has specified the above-mentioned four categories of orders it must be construed to mean that the power of review is limited only to the said categories of orders. Upon inquiry the learned Counsel for the Petitioner was not in a position to respond to the question posed as to why the legislature had not used the words “any order” without restricting the same.

Hence, Petitioner’s submission that the dismissal of the application for non-compliance with section 54(1) is bad in law is not tenable. It was also contended that the Board in rejecting the application had not given sufficient reasons. However, in examining the order A6, I find that the Board has specifically stated that the application for review was dismissed under section 54(1). In my view, the Board provided the reason for the dismissal by stating the provision under which they acted upon.

Let me now consider the second contention of the Petitioner which is a direct attack on the preliminary order made by the Board marked and tendered as A4. In addressing the Petitioner’s first contention, I have held that the Board’s power of review was exercised correctly. Accordingly, the said order of the Board must prevail. However, for completeness, I will proceed to consider the Petitioner’s arguments pertaining to the order marked and tendered as A4. In venturing to the said exercise, I am mindful of the fact that this is a Writ application and not an appeal.

The Petitioner contends that the order A4 is bad in law as in the said order, the Board failed to evaluate the evidence adduced and failed to determine the issue of possession of the property. At this stage I am also mindful of the fact that the best forum to adjudicate on the evidence is the Board before whom witnesses testified and documents were tendered. Upon considering the order marked A4, I observe that the Board had in fact considered the issue of possession. In particular, the Board had before it evidence of one Narendra Munaweera, who stated that the land the Petitioner is alleged to have purchased forms part of a larger land, and that he is in possession of a portion thereof on which he maintains a garage. It appears that in the evidence tendered, Narendra Munaweera had stated that it was he who introduced the Petitioner to the 7th Respondent for the purposes of obtaining a loan, and further had stated that he was not concerned about the execution of a deed of transfer which

included the garage he is operating as it was intended to remain in force only until such time as the loan was repaid.

I observe that the Board had also considered the valuation stated in the deed and the valuation of the land. Even though, it had been contended that the valuation report was rejected by the Board, in the 7th Respondent's evidence she herself has stated that the value of the land is much higher than that mentioned on the deed.

Further, the Board has also considered that the fees in connection with the deed (ඔප්පු ගාස්තු) had been paid by the 7th Respondent. Hence, the Board had come to the conclusion that if the transaction was a transfer, the fees in connection with the deed would be borne by the purchaser and not by the seller.

I observe from the order that the Board considered the possession of Narendra Munaweera, and also noted that, although the deed contemplated certain boundaries, such boundaries were not clearly defined. It appears that the Board had also considered the utility bills that were tendered to the Board and had dismissed it since none of the said documents had been proved. Hence, the Board had come to the conclusion that, the tendered documents were not sufficient to impugn the 7th Respondent's possession and that the deed no.2797 was a mortgage and not a transfer.

Although the Petitioner had attempted to impugn the evidence tendered, as I have stated above, this is a Writ application and not an appeal and hence, the role of this Court is not to consider what is right or wrong, but to *consider whether it is legal or illegal*.

In coming to the said conclusion, I am mindful of the decision of the House of Lords in ***Chief Constable of North Wales Police v. Evans (1982) 1 WLR 1155*** where it was held

“judicial review is concerned not with the decision but with the decision-making process. Unless that restriction on the power of the Court is observed, the Court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.” The Court further went on to state that *“the judicial review as the words imply is not an appeal of a decision but a review of the manner in which a decision was made”*.

H.W.R. Wade and C.F. Forsyth in their book ‘Administrative Law’ (11th edn) at page 26, states as follows:

“The system of judicial review is radically different from the system of appeals. When hearing an appeal Court is concerned with the merits of a decision; is it correct? When subjecting some administrative act or order to judicial review, the Court is concerned with its legality, is it within the limits of the powers granted? On an appeal the question is ‘right or wrong’. On review the question is lawful or unlawful”.

In ***Kalamzoo Industries Limited vs. Ministry of Labour and Vocational Training (1998) 1 SLR 235***, an application was made for judicial review against an award by an industrial arbitrator, and the Court held as follows:

“This court must keep prominently in forefront that it is exercising in this instance a very limited jurisdiction quite distinct from the exercise of appellate jurisdiction. Relief by way of certiorari in relation to an award made by an arbitrator will be forthcoming to quash such an award only if the arbitrator wholly or in part assumes a jurisdiction which he does not have or exceeds that which he has or acts contrary to principles of natural justice or pronounces an award which is eminently irrational or unreasonable or is guilty of an illegality. The remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order and if the arbitrator's award was not set aside in whole or in part, it had to be allowed to stand unreversed”.

I have considered the Petition and I observe that the Petitioner is impugning the evidence led before the Board. The learned Counsel for the Petitioner at the hearing too, strenuously attempted to challenge the evidence and its credibility. As I have observed above, the said attempt serves little purpose for the Petitioner as this is a Writ application and not an appeal.

Prayers of the Petitioner

By prayer (b), the Petitioner is seeking to quash the decision marked as A6 dated 16.11.2023. As I have stated above, the power of review under section 54(1) is limited. The Petitioner’s application therefore, cannot be entertained under the said section, which has been stated in the document marked A6. Accordingly, the Petitioner’s prayer (b) has to fail.

For the above-stated reasons, the Petitioner's prayer (c) too has to fail. As I have observed above, the Board had considered the question of possession of the land in dispute. The Board has considered the fact that the land in dispute was part of a larger land, that the larger land had been occupied by Narendra Munaweera, that the land in dispute does not have demarcated boundaries and also considered the documents submitted, especially R5, R8 to R20 and come to its conclusion on the possession. Hence, the Petitioner's prayer (d) has to fail. As the Petitioner's main three reliefs ought to fail, the alternative reliefs sought also have to fail.

Conclusion

Accordingly, for the reasons stated above, I am unable to agree with the contentions of the learned Counsel for the Petitioner and I refuse to grant the reliefs prayed for in the Petition and proceed to dismiss this Writ application. Costs are to be borne by the respective parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal