

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

In the matter of an Application for the issue
of a writ in the nature of a writ of Certiorari,
Mandamus & Prohibition.

H.I.C.S.Hewavitharana,
No. 49,1st Lane, Dippitigoda Road,
Dalugama, Kelaniya.

Petitioner

C.A.Writ Application No.873/2008

Vs

1. Swarnathilake Peiris Wickremaratne

Siriwardene, 396, Galle Road,

Thalpitiya, Wadduwa.

2. A.Dayantha De Alwis,

Chairman,

Debt Conciliation Board,

And three (03) others

Respondents

BEFORE : **S. SRISKANDARAJAH, J.**

COUNSEL : **V.Kulatunga**
for the Petitioner.
Dr.Almeida Gunaratne PC with Lasitha
Chaminda,
for the 1st Respondent.
Milinda Gunatilake SSC
For 2nd to 5th Respondent

Argued on : 07.02.2011
Decided on : 30.01.2012

S.Sriskandarajah J,

The Petitioner submitted that one T.P.Wickramaratne Siriwardena executed a deed of transfer No.388 dated 01.01.2001 attested by Mr.Titus Padmasiri, Notary Public in favour of the Petitioner, reserving the right to re purchase the land in issue within 3 years and subject to the payment of 5% monthly interest on the purchase price of Rs.450,000/-. The said Wickramaratne Siriwardena subsequently sold the same land to the 1st Respondent by Deed No.1222 dated 25.04.2002 attested by Kanthi Munagamaarachchi, Notary Public. Thereafter the 1st Respondent who was not a party to the transfer of the above land by deed No.388 made an application dated 15.04.2004 to the Debt Conciliation Board to redeem the said land. An objection of the Petitioner that the 1st Respondent cannot be considered as a debtor under the Debt Conciliation Board Act was rejected by the Board by its order dated 25.09.2008. The Petitioner in this application is seeking to quash the said order by way of Writ of Certiorari on the basis that the said order is ultra vires, capricious and erroneous in law and is consequent to a miss-interpretation of Section 64 of the Debt Conciliation Board Act.

The Conditional Transfer is defined in Section 64 of the Debt Conciliation Ordinance as follows:

"conditional transfer of immovable property" means any transfer, sale, or alienation of immovable property which is effected by a notarial instrument and which, by virtue of such instrument or any other notarial instrument, is subject to the right of the person by whom the property was transferred, sold or alienated or of any other person to redeem or purchase the property within a period specified in such instrument or such other instrument;

It is an admitted fact that the deed of transfer No.388 dated 01.01.2001 attested by Mr.Titus Padmasiri, Notary Public in favour of the Petitioner falls within the definition of Conditional transfer defined under Section 64 of the said Act.

The Petitioner submitted that the vendor to the deed bearing No.388 had fraudulently and illegally transferred his right to the property in dispute to the 1st Respondent by deed bearing No.1222 dated 25.04.2002 but the 1st Respondent has not got any right, title or interest based on the said deed bearing No 1222 since the title to the property had already been passed by the earlier deed No.388.

The purpose of the Act is clearly envisaged in Section 19A(1) of the Debt Conciliation Board Act. It states that a debt purporting to be secured by a conditional transfer of immovable property is a mortgage within the meaning of this Ordinance. In the given circumstances by operation of law the Petitioner has not got title to the said property by the conditional transfer deed No. 388 but the amount paid for the conditional transfer is secured by a mortgage over the said property. Therefore the transfer of the said property by the owner of the property to the 1st Respondent is valid subject to the said mortgage. As the right to redemption was transferred to the 1st Respondent by the deed No 1222 the 1st Respondent falls under the definition of "debtor" in the Debt Conciliation Board Act. The debtor is defined as follows:

"debtor" means a person -

- (i) who has created a mortgage or charge over any immovable property or any part thereof and whose debts in respect of such property exceed the prescribed amount; or
- (ii) who is a transferee of a right of redemption on a conditional transfer, and includes the heirs, executors and administrators of such person.

The 1st Respondent being the transferee of the conditional transfer has the required standing to file an application under Section 14 of the Debt Conciliation Board Act. Therefore the decision of the Board rejecting the

objection by its order dated 25.09.2008 marked (H) is a valid decision under the said law. Hence I dismiss this application without costs.

President of the Court of Appeal