

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

1. Don Jayantha Weerasinghe  
No. 883/25 C, Uswatte Mawatha,  
Ethul Kotte,  
Kotte.
2. Kotte Real Estate (Pvt.) Ltd.,  
No. 883/25 C, Uswatte Mawatha,  
Ethul Kotte,  
Kotte.

**PETITIONERS**

C.A. 184/2013 (Writ)

Vs.

1. Hatton National Bank PLC  
No. 479, H. N. B. Towers,  
T. B. Jaya Mawatha,  
Colombo 10.
2. Registrar of Lands,  
Registrar General's Department,  
Dam Street,  
Colombo 12.

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** S.S. Sahabandu P.C. with Saliya Matthew for Petitioners

**ARGUED ON:** 07.11.2013

**DECIDED ON:** 10.12.2013

**GOONERATNE J.**

The above application was supported on 07.11.2013 by learned President's Counsel seeking a Writ of Certiorari to quash the certificate of sale (P8) and a Writ of Mandamus to cancel the registration pertaining to the said certificate P8. The 1<sup>st</sup> Petitioner claims to be the owner of the land described in the schedule to the petition by virtue of deeds of transfer and a deed of declaration marked and produced P2, P2A & P2B. By P3 the 2<sup>nd</sup> Petitioner obtained over draft facilities from the 1<sup>st</sup> Respondent Bank in a sum of Rs. 9 million. The above facility was secured by Mortgage Bond P4 which property was in fact mortgaged by the 1<sup>st</sup> Petitioner who claimed to be the owner as aforesaid.

It is also pleaded that on 21.08.2010 the Board of Directors of the first Respondent Bank passed a resolution (P5) under Section 4 of the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990 to auction the above property described in the schedule to the Petition since the Petitioners have defaulted in payment of the sums due on the overdraft facilities. At the hearing of this application for support the learned President's Counsel very correctly did not deny the default of paying the loan by the Petitioners to this application. Learned President's Counsel submitted that the property was to be auctioned and 1<sup>st</sup> Petitioner filed action in the Commercial High Court of Colombo challenging the above auction in H.C (Civil 403/11 MR (P6 plaint). In the petition itself it is disclosed that the High Court initially issued an enjoining order to enjoin the 1<sup>st</sup> Respondent Bank from auctioning the property but after inquiry refused to issue the interim injunction (P7). The Bank had thereafter re-scheduled the auction sale for 01.10.2012. I would refer to some of the matters urged on behalf of the Petitioner as follows:

- (1) Auction sale never held publicly and shrouded in mystery and no publicity given. No bidders and no banners or posters (P10).
- (2) Abuse of statutory powers – contrary to Section 9 of Act No. 4 of 1990 notice of date, time, place not produced.
- (3) Respondent Bank cannot buy the property for themselves at Rs. 1000/=. Said purchase is illegal.

In the above (1) – (3), Petitioner claim a loss of Rs. 20 million and state total outstanding is less than 10 million.

We have considered the position of the Petitioners. There is no doubt that the Petitioners are defaulters of a loan facility. The famous South African Jurist 'Lee' describes this as an extra judicial sale. Since 1990 many Banks have resorted to the provisions of Recovery of Loans by Banks (Special Provisions) Act, which eventually led to significant changes in the law of parate execution, and to facilitate debt recovery. Further it gives power to non-judicial persons (Board of Directors) to take the decision to sell the mortgage property in case of default. The term 'loan' as defined in the Statute includes overdrafts or advance or any other monetary considerations. There are a variety of steps to be taken by the Bank in the process of recovery of debt. If the property is sold, the Board has to execute a certificate of sale. The effect of the certificate of sale is that all rights, title and interest of the borrower and in the property are deemed to have vested with the purchaser. Further it should not be construed to invalidate the certificate for any cause whatsoever or to maintain any right or title or interest to or in the property against the purchaser. It is conclusive proof.

We are of the view that the Petitioners have not urged proper legal and effective grounds to invalidate the certificate of sale P8. There is no basis even to consider the issue of notice. As such we refuse to issue notice.

Application dismissed- no costs.

JUDGE OF THE COURT OF APPEAL

Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL