

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

In the matter of an application for a mandate in the nature of writ of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ranasinghe Arachchige Wajira
24/159. Gothami Road,
Borella.

Petitioner

CA [Writ] No: 276/2012

Debt Conciliation No. 40576

Vs.

- 1 Debt Conciliation Board
- 2 Hon. Malini Abeywardana Ranatunga
- 3 Hon. Piyasena Samararatne
- 4 Hon. M.A.N.S Gunawardana
- 5 Hon. D.M Sarachchandra
- 6 Hon. K.A.G Rajakaruna

All of No. 80, Adikarana Mawatha,
Colombo 12

Respondents

7. H.W. Sankalpika Karunaratne
 8. R.P Indrasiri
- Both of No. 14/A/1, Koshena Road, Malabe

Applicant-Respondents

BEFORE : Deepali Wijesundera J.
L.U Jayasuriya J.

COUNSEL : W.D Weerathna for the Petitioner
N. Kahawila S.C for the 1st to 6th Respondents
Shyamal A. Collure with A.P Jayaweera for the 7th
and the 8th Respondents

ARGUED ON : 27th June, 2016

DECIDED ON : 28th February, 2016

L.U Jayasuriya J.

The petitioner has filed this application seeking a Writ of Certiorari to quash the decision of the 1st Respondent dated 05.01.2012 produced and marked as P.10.

When this case was taken up for argument, it was urged on behalf of the Applicant Respondents that the Petitioner's Application ought to be dismissed in-limine in view of the preliminary objections taken up by them.

The objections were, that the Petitioner's Application is mis-conceived in law as this court could not exercise Writ Jurisdiction where there is a dispute with regards to the facts.

Also, it was stated that the Petitioner is guilty of laches and the Petition is defective.

The Petitioner claims that she purchased the Land in issue for a consideration of Rs. 75000/- and the 7th and the 8th Respondents state that it was a conditional transfer by deed No.229 dated 31.01.2000.

The Petitioner's argument was that the Application to the 1st Respondent was filed three years after the execution of the deed No,209 and consistently maintained that the application to the 1st Respondent is time barred.

Section 2(1) A of the Debt Recovery Act No.29 of 1999 reads thus:

“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 evidence lead at the inquiry before the 1st Respondent which has been marked as P.7 shows that by leading evidence before the Board, the 7th and the 8th Respondents have satisfied that they were in possession of the said land even after the date of transfer.

Thus, there is prima-facie evidence to establish that the 7th and the 8th Respondents were in possession in the corpus at the time, when the application was tendered to the Board.

The 1st Respondent has taken this fact into account in making the order produced and marked as P10.

The remedy by way of Certiorari cannot be made use of to, correct errors or to substitute a correct order for a wrong order. It is pertinent to refer to the principles laid down by Prof. H.W.R Wade on “Administrative Law” 12th Edition at pages 34 to 35 wherein the learned author states:

“Judicial review is radically different from the system of appeals. When hearing an appeal, the court is concerned with the merits of the decision under Appeal. But in judicial review, the court is

concerned with its legality. On appeal, the question is right or wrong. On review the question is lawful or unlawful...

Judicial review is a fundamentally different operation. Instead of substituting its own decisions for that of some other body, as happens when an appeal is allowed, a court, on review, is concerned only with whether the act or order under attack should be allowed to stand or not.”

The order marked P10 is a well-considered decision which has been made within the purview of the provision of proviso to section 2(1) of the said Act.

Hence the interim order is not amenable to be quashed by way of a writ.

For the aforesaid reasons, the application is dismissed with costs fixed at Rs. 50,000/-

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL