

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

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

**CA (Writ) Application No: 409/2019**

1. Lasitha Abeygunasekara,
2. Sinha Consortium Private Limited,

Both of  
No. 119, Wellawaya Road, Moneragala.

**PETITIONERS**

Vs.

1. National Development Bank PLC,  
No. 40, Navam Mawatha, Colombo 2.
2. Kavan Ratnayake,  
Chairman.
3. Ashok Pathirage,  
Deputy Chairman.
4. Dimantha Seneviratne,  
Director.

5. Dinal Phillips, P.C.,  
Director
6. Sriyan Cooray,  
Director.
7. Bernard Sinniah,  
Director.
8. E.A.Rathnaseela,  
Director.
9. Dr. D. Panditharatne,  
Director.

2<sup>nd</sup> – 9<sup>th</sup> Respondents all of  
National Development Bank PLC,  
No. 40, Navam Mawatha, Colombo 2.

10. Prageeth Karunatileke,  
Secretary,  
Divisional Secretariat,  
Wellawaya, Moneragala.
11. D.S.Padmakulasuriya  
Secretary,  
Divisional Secretariat,  
Hulandawa, Moneragala.
12. Urban Development Authority,  
6<sup>th</sup> and 7<sup>th</sup> Floors,  
'Sethsiripaya', Battaramulla.

#### RESPONDENTS

**Before:** Yasantha Kodagoda, P.C., J/ President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Upul Kumarapperuma with Ms. Sharleen Fernando  
for the Petitioners

Geethaka Goonewardene, P.C., with Chanaka  
Weerasekara for the 1<sup>st</sup> – 9<sup>th</sup> Respondents

Sachintha Dias, State Counsel for the 12<sup>th</sup> Respondent

**Supported on:** 25<sup>th</sup> October 2019

**Written Submissions:** Tendered on behalf of the 1<sup>st</sup> – 9<sup>th</sup> Respondents on  
25<sup>th</sup> October 2019

**Decided on:** 29<sup>th</sup> October 2019

**Arjuna Obeyesekere, J**

The Petitioners have filed this application, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent to sell by *parate execution* the property mortgaged by the 1<sup>st</sup> Petitioner as security for the loans obtained by the Petitioners;
- (b) A Writ of Prohibition preventing the 1<sup>st</sup> Respondent from taking steps under the Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990, as amended (the Act) until an amended sub-division plan excluding a river reservation is approved by the 10<sup>th</sup> – 12<sup>th</sup> Respondents.

The facts of this matter very briefly are as follows.

The 1<sup>st</sup> Petitioner is the sole proprietor of Sinhasiri Hardware. The 2<sup>nd</sup> Petitioner is a company duly incorporated under the Companies Act No. 7 of 2007. The Petitioners state that they are customers of the 1<sup>st</sup> Respondent, National Development Bank and that in order to meet their financial requirements, they have obtained several financial facilities from the 1<sup>st</sup> Respondent. The Petitioners admit that as security for the said facilities, the 1<sup>st</sup> Petitioner mortgaged a property owned by him. Copies of the Mortgage Bonds executed in favour of the 1<sup>st</sup> Respondent have been annexed to the petition marked 'P4(i)' – 'P4(xi)'.

The Petitioners state that the Board of Directors of the 1<sup>st</sup> Respondent had passed three resolutions on 23<sup>rd</sup> July 2019, annexed to the petition marked 'P10(i)' – 'P10(iii)', under the provisions of the Act, authorising the sale of the said property mortgaged to the 1<sup>st</sup> Respondent, in order to recover *inter alia* a sum of Rs. 126,855,828.42 and Rs. 17,306,397.48 due to the 1<sup>st</sup> Respondent from the Petitioners. This Court observes that the Petitioners:

- (a) are not contesting the fact that they are in default of their obligations under the loan agreements:
- (b) are not denying that the said sums of money are due and payable to the 1<sup>st</sup> Respondent; and
- (c) are not alleging that the 1<sup>st</sup> Respondent has acted unreasonably or have not followed the procedure laid down in the said Act, when passing the aforementioned resolutions.

The grievance of the Petitioners that was presented to this Court arises in the following manner. The Petitioners have annexed to the petition marked 'P5', Plan No. 5785 depicting the property mortgaged to the 1<sup>st</sup> Respondent. This Court has examined 'P5' and observes that the said land is bounded on the East and South by State land, on the North by a road and on the West by the Hulandawa Oya. This Court has examined Deed No. 5608 annexed to the petition marked 'P3(iv)' by which the 1<sup>st</sup> Petitioner has purchased part of the property and observes that at the time the 1<sup>st</sup> Petitioner purchased the said property, the Western boundary consisted of a reservation adjoining the said Hulandawa Oya.

By 2018, the Petitioners were in default of their financial obligations to the 1<sup>st</sup> Respondent. Thus, the 1<sup>st</sup> Petitioner, with the intention of selling part of the land to satisfy the said debt, had sought approval of the 12<sup>th</sup> Respondent, the Urban Development Authority to sub-divide the said land. By letter dated 7<sup>th</sup> June 2019 annexed to the petition marked 'P9', the 12<sup>th</sup> Respondent had informed the 1<sup>st</sup> Petitioner that the reservation alongside the said Hulandawa Oya should be 30 metres and to submit an amended plan demarcating the said reservation of 30 metres.

The learned Counsel for the Petitioners submitted that the aforementioned reservation is State land and that the 1<sup>st</sup> Respondent, by passing a resolution to sell the entire property that has been mortgaged to it by 'P4(i)' – 'P4(xi)' including the reservation, is attempting to sell State land. The learned President's Counsel for the 1<sup>st</sup> – 9<sup>th</sup> Respondents denied that the said reservation is State land.

The issue that needs to be addressed at this stage therefore is whether the said reservation is State land. In support of his argument, the learned Counsel

for the Petitioners drew the attention of this Court to Section 49(1) of the State Lands Ordinance, the relevant portions of which reads as follows:

*“Subject as hereinafter provided, the Minister may, by Notification published in the Gazette, declare that any State land is constituted a State reservation for any one or more of the following public purposes:*

*(2) the protection of springs, tanks, reservoirs, lakes, ponds, lagoons, creeks, canals, aqueducts, elas, channels (whether natural or artificial), paddy fields and land suitable for paddy cultivation*

*Provided that no State land shall be so constituted a State reservation unless that land:*

- a) has been surveyed and depicted on a plan prepared by or under the authority of the Surveyor-General; and*
- (b) has been declared to be the property of the State under the Land Settlement Ordinance or under any enactment repealed by Ordinance No. 20 of 1931 ; or*
- (c) has been declared to be the property of the State by a decree of court in a reference case under the Waste Lands Ordinances, 1897 to 1903; or*
- (d) has been acquired by the State under the provisions of the Land Acquisition Ordinance, 1876, or the Land Acquisition Act; or*

*(e) has been resumed by the State under the provisions of the Lands Resumption Ordinance."*

This Court, having considered the above provisions of Section 49, is of the view that for a land to be declared a State reservation, it must first be a State land. If the reservation running alongside the Hulandawa Oya is to be considered as State land, the said reservation must first be acquired under the provisions of the Land Acquisition Act and thereafter a notification shall be made by the Minister declaring that the said reservation is a State reservation. Admittedly, none of the above has been done and therefore, the reservation running alongside the Hulandawa Oya continues to be private land.

In the above circumstances, this Court does not see any merit in the argument of the Petitioners and for that reason, does not see any legal basis to issue notices on the Respondents. This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**

**Yasantha Kodagoda, P.C., J/ President of the Court of Appeal**

I agree

**President of the Court of Appeal**