

**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 a writ of
certiorari, mandamus and prohibition
under Article 140 of the Constitution
of the Democratic Socialist Republic
of Sri Lanka.*

Seylan Bank PLC,
Seylan Towers.
No. 90, Galle Road,
Colombo 03.

PETITIONER

CA (Writ) Application 226 /2017

Vs.

1. Dr. R.H.S. Samarathunge,
Secretary to the Treasury,
Ministry of Finance
Colombo 01.
- 1A. Dr. S.A. Attygalle,
Secretary to the Treasury,
Ministry of Finance
Colombo 01.
2. Hon. Mangala Samaraweera,
Hon. Minister of Finance
Ministry of Finance
The Secretariat
Colombo 01.
- 2A. Hon. Mahinda Rajapaksha
Hon. Minister of Finance,
Economic Affairs and Policy
Development,
Ministry of Finance
The Secretariate
Colombo 01.

3. P. Santhisegaram
Chairman,
Compensation Tribunal
4. P.W. Seneratne
Member
Compensation Tribunal
5. Mr. Sunil Fernando,
Member,
Compensation Tribunal.

All Members of the
Compensation Tribunal In
terms of Revival of
Underperforming Enterprises
or Underutilized Assets Act
No. 43 of 2011.

Tax Appeals Commission,
49/14, Galle Road,
Colombo 3.

New Address

Valuation Department
No. 748, Maradana Road,
Colombo 10.

6. Mr. Kalinga Indatissa, PC,
Competent Authority in terms
of Revival of
Underperforming Enterprises
or Underutilized Assets Act
No. 43 of 2011.

Tax Appeals Commission,
49/14, Galle Road,
Colombo 3.

New Address

Tax Appeals Commission,
Rotunda Towers,

6th Floor
No. 109, Galle Road,
Colombo 03.

7. Bank of Ceylon,
No.1 Bank of Ceylon Square,
Bank of Ceylon Mawatha,
Colombo 01.

8. Hon. Attorney General
Attorney General's
Department,
Colombo 12

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Romesh De Silva, PC with Harith Mel for the Petitioner.

Parinda Ranasinghe, ASG with Nayomi Kahawita, SC for the
Respondents.

Argued on: 25.02.2021.

Decided on: 04.10.2021.

K.K.A.V. SWARNADHIPATHI. J.

In November 2011, Revival of Underperforming Enterprise or Underutilized Assets Act No. 43 of 2011 was passed. The primary purpose of this Act was to vest all underperforming Enterprises and underutilized Assets set out in schedules I and II to the Act for and on behalf of the Government of Sri Lanka in the 1st Respondent. The Petitioner, Seylan Bank PLC states that item No. 14 to Schedule II, known as Ceylinco Leisure Properties, was also vested on the 1st Respondent under Act No 23 of 2011. Accordingly, the 6th Respondent was appointed as the competent Authority to the property mentioned above.

Further, the cabinet of ministers appointed 3rd – 5th Respondents as the compensation tribunal. At the time of vesting, the Petitioner Bank had granted a loan in the form of a mortgage to the property, which belongs to the Urban Development Authority who had leased out the property to Ceylinco Homes International Limited (Lotus Tower). The said lessee had borrowed money as a loan from the Petitioner bank with the consent of the Urban Development Authority. To prove the lease between the Urban Development Authority and the Ceylinco Homes International (Lotus Tower) Limited, the Petitioner had produced documents P5 and P6, the consent of the UDA for the loan. The Mortgage Bond was marked as P7.

As of 31st December 2011, a sum of LKR 3,410,654,094.65 was due from Ceylinco Homes International (Lotus Tower) on the mortgage for this amount, the Petitioner made a claim under Act No. 43 of 2011 to the 3rd to 6th Respondents. After an inquiry, the 3rd - 6th Respondents awarded compensation to the Petitioner in the sum of LKR 2,146,415,239.80 on 20th November 2013. In proof of awarding of the compensation, document P14 was produced by the Petitioner.

In terms of Act 43 of 2011, it is the duty of the 1st Respondent to pay the compensation awarded for and on behalf of the Government of Sri Lanka. The 3rd – 5th Respondents too are liable to settle the compensation awarded. Therefore, the Petitioner requester from 1st and 3rd -5th Respondents by letter dated 29th January 2014 to pay the money. The said letter was addressed to the Chief Valuer. Meanwhile, the Petitioner had intervened in case No: SC/FR262/2009 as some issues was contested in the said case.

In the above said case, the Supreme Court, by an order dated 23rd July 2014, directed the compensation Tribunal to make immediate payment in settlement of the claim that the tribunal has determined.

According to the documents forwarded to this Court and considering the written submissions of the Petitioner, 3rd -5th Respondents is evident that the 3rd-5th Respondents and the predecessor to the 1st Respondent had failed to comply with the Supreme Court order. The Petitioner states that after repeated inquiries by the petitioner, the 1st and 3rd - 5th Respondents agreed to pay the compensation by or

about January 2015. However, the Petitioner states that the 1st, 3rd -5th Respondents failed to comply with the Supreme Court order, gravely prejudicing the Petitioner Bank and its stakeholders.

In the above, the Petitioner contended that the 1st, 3rd – 5th Respondents have a statutory duty to pay the Petitioner the sum of LKR 2,146,415,239.80. Accordingly, the Petitioner inter alia seeking the following relief:

- b) a mandate - writ of mandamus compelling the 1st and or 3rd to 5th Respondents to pay the Petitioner bank a sum of LKR 2,146,415,239. 80 together with legal interest from the 20th of November 2013 onward till payment in full.
- c) an interim order a sum of LKR 2,146,415,239/80 and accruing interest in a separate account for and on behalf of the Government of Sri Lanka pending the defer mention of this application.

By an affidavit dated 27th August 2019, a Senior Manager of the Recovery Department of the Petitioner Bank informed Court that the Petitioner was in receipt of the following payments in respect of the monies due to the Petitioner Bank by way of correspondence addressed by one M.L. Suresh Tharanga, Secretary to the Office of the Compensation Tribunal:

- a. LKR 500,000,000/- by correspondence dated 27th September 2017
 - b. LKR 250,000,000/- 7th November 2017
 - c. LKR 50,000,000/- 7th December 2017
 - d. LKR 250,000,000/- 31st December 2017
 - e. LKR 15,309,389.57 - 31st December 2017
 - f. LKR 100,000,000/- 14th March 2018
 - g. LKR 14,628,000/- 31st December 2018
- (Vide documents marked P24 to P30).

Therefore, a total of LKR 1,179,937,389.87 has been paid out of LKR 2,146,415,239.80. At the time of the argument, parties concerned agreed that the above-mentioned money had been settled. No party disputed the fact that the compensation awarded was for a sum of LKR 2,146,415,239.80.

When all parties had agreed on the sum to be paid, there remains no question that the money should be paid. In this instance, the Petitioner himself has acknowledged receiving a sum of LKR 1,179,937,389.57. It was argued that if a part is paid, it is the duty to pay the balance. The part payment was made after filling this case. Therefore, the balance should also be paid. The Respondents have not denied the responsibility of the payment, or the amount awarded.

Therefore, I am of the view that the writ of *mandamus* compelling the 1st and, 3rd to 5th Respondents to pay the Petitioner bank a sum of LKR 966,477,849.93. should be issued.

Accordingly, this Court issue a writ of *mandamus* against the 1st and, 3rd to 5th Respondents to pay the Petitioner bank (limiting to) a sum of LKR 966,477,849.93.

Application allowed.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal