IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an Appeal against the order dated 09th October, 2015, of the High Court of the Western Province in the Exercise of its Appellate and Revisionary Jurisdiction [Holden at Colombo] in case bearing No. WP/ HCCA/ Col/ 98/2015 (LA), under and in terms provisions of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

1. Ramya Nirmali Illeperuma
2. Ajith Bhathiya Illeperuma

Appearing by their power of attorney-holder Opheila Eileen Illeperuma, all of No. 141, Ketawallamulla, Colombo 09.

Plaintiffs

S.C. Appeal No.76/2016
SC/HCCA/LA No. .341/15
WP/HCCA/Col/98/2015(LA)
D.C. Colombo Case No. 21371/L

Vs.

1. Sandya Rajapakse, Chairman
   Janatha Estate Development Board.
   No.55/75, Vauxhall Street,
   Colombo 02.

2. Janatha Estate Development Board.
No.55/75, Vauxhall Street,
Colombo 02.

1st &2nd Defendants

And

1. Ramya Nirmali Illeperuma
2. Ajith Bhathiya Illeperuma

Appearing by their power of attorney-holder Opheila Eileen Illeperuma, all of No. 141, Ketawallamulla, Colombo 09.

Plaintiff-Petitioners

Vs.

1. Sandya Rajapakse, Chairman
Janatha Estate Development Board.
No.55/75, Vauxhall Street,
Colombo 02.
2 Janatha Estate Development Board.
No.55/75, Vauxhall Street,
Colombo 02.

1st &2nd Defendant-Respondents.

And then

1. Sandya Rajapakse, Chairman
Janatha Estate Development Board.
No.55/75, Vauxhall Street,
Colombo 02.
2. Janatha Estate Development Board.

No.55/75, Vauxhall Street,
Colombo 02.

1st &2nd Defendant-Respondent-Petitioners.

Vs.

1. Ramya Nirmali Illeperuma
2. Ajith Bhathiya Illeperuma

Appearing by their power of attorney-holder Opheila Eileen Illeperuma, all of No. 141, Ketawallamulla, Colombo 09.

Plaintiff-Petitioner-Respondents

AND NOW

1. Sandya Rajapakse, Chairman
Janatha Estate Development Board.
No.55/75, Vauxhall Street,
Colombo 02.

2. Janatha Estate Development Board.
No.55/75, Vauxhall Street,
Colombo 02.

1st &2nd Defendant-Respondent-Petitioner-Appellants.

-Vs-

1. Ramya Nirmali Illeperuma
2. Ajith Bhathiya Illeperuma

Appearing by their power of attorney-holder Opheila Eileen Illeperuma, all of No. 141, Ketawallamulla, Colombo 09.

Plaintiff-Petitioner-Respondent-Respondents

The Hon. Attorney General,
Attorney General's Department
Colombo 12.
Added-Respondent

BEFORE : **VIJITH K. MALALGODA, PC., J.**
KUMUDINI WICKREMASINGHE, J.
ACHALA WENGAPPULI, J.

COUNSEL : S.A. Parathalingam P.C. with Nishkan Parathalingam and Upeka Sooriya Patabendige instructed by G. G. Arulpragasam for the Defendant-Respondent-Petitioner- Appellant.
R.C. Gooneratne for the Plaintiff-Petitioner-Respondent- -Respondents.
Nirmalan Wigneswaran DSG with Ms. H. Senanayake, SSC for the Added-Respondent.

ARGUED ON : 29th September, 2022

DECIDED ON : 09th August, 2024

****

ACHALA WENGAPPULI, J.

This is an appeal by the 2nd Defendant- Respondent-Petitioner-Appellant, *Janatha Estate Development Board* (the "2nd Defendant"), by which it is sought to challenge the validity of an order made by the High Court of Civil Appeal, in affirming an order of dismissal of an application under Section 839 of the Civil Procedure Code of the District Court. The 2nd Defendant seeks to have the said orders set aside by this Court.

The 1st and 2nd Plaintiff-Petitioner-Respondent-Respondents (the "Plaintiffs"), instituted an action in the District Court of *Colombo* against the then Chairperson and the *Janatha Estate Development Board,* citing them as the 1st and 2nd Defendants respectively. In that action, the Plaintiffs sought a declaration of their title to a land in an extent of 100 acres from *Bohil* estate at *Ketabula* and ejectment of the said defendants therefrom.

In addition, they also sought an award of damages assessed at Rs. 500,000.00 per month, until they are restored in possession of the said 100-acre land. After trial, the District Court held with the Plaintiffs and issued decree as prayed for by them. The 2nd Defendant preferred an appeal against the said judgment. Pending the said appeal, the Plaintiffs sought execution of writ of possession, whilst reserving their right to execute the part of the decree that had been issued for the recovery of damages with costs, at a later stage. During the ensuing inquiry, the 2nd Defendant, by way of a settlement, agreed to place the Plaintiffs in possession of the said 100-acre land.

The 2nd Defendant's appeal against the judgment of the District Court was dismissed for non-prosecution by the High Court of Civil Appeal.

Owing to the failure on the part of the 2nd Defendant to fulfil its part of the terms of settlement, the Plaintiffs sought to execute writ of possession. Multiple legal obstacles were placed by several parties preventing the Plaintiffs from executing the writ of possession and to place them in possession of the land. Thereupon, the Plaintiffs moved Court for issuance of a money decree over their entitlement to damages. The District Court, by its order dated 10.12.2013, issued a writ enabling the Plaintiffs to recover damages, in a sum of Rs. 41,500,000.00, and to

seize monies lying in specified bank accounts maintained by the 2nd Defendant. In addition, the Plaintiffs sought to have the property occupied by the 2nd Defendant at *No.* 5/75*, Vauxhall* Street, *Colombo* 2, seized. The District Court granted the writ. The Registrar of that Court, upon the 2nd Defendant's failure to pay the debt, proceeded to execute the writ. He inserted a notice of auction of the said property in print media after the property was seized.

The 2nd Defendant, thereupon moved the District Court by its application dated 30.03.2015, invoking its jurisdiction under Section 839 seeking to release the said property from seizure. The 2nd Defendant claimed that the property under seizure at No. 5/75*, Vauxhall* Street, *Colombo* 2, is owned not by it but by the Republic of Sri Lanka. The Court, in view of the said factual assertion, issued summons on the Attorney General, before proceeding to investigate into the said application under Section 839. On the day fixed for inquiry however, there was no representation for the State. The Court, nonetheless, commenced the inquiry, as summons was duly served on the Attorney General. During the inquiry, the 1st Plaintiff gave evidence and adduced evidence to indicate that the said property is being possessed and owned by the 2nd Defendant as its own property. The 2nd Defendant, however, was content only with an opportunity to present its position through a set of written submissions, which it did tender to Court after the conclusion of the inquiry. After considering the evidence adduced before it, the District Court dismissed the 2nd Defendant's application. The appeal preferred by the 2nd Defendant against the said order too was dismissed, which made it to seek Leave to Appeal from this Court against the said order.

During the support stage of the 2nd Defendant's application seeking Leave to Appeal, the Attorney General, by way of a petition

addressed to this Court, made an application to intervene. After affording an opportunity for the parties as well as to the intervenient petitioner to make submissions, this Court by its order dated 29.03.2016, permitted the intervention under Article 134(3) of the Constitution and ordered that the Attorney General be named in the caption as an Added-Respondent.

This Court thereupon proceeded to grant leave to appeal on the following questions of law.

The questions of law that were suggested by the 2nd Defendant and accepted by Court

a. Did the High Court of Civil Appeal incorrectly, and not properly considered whether the District Court was duty bound in terms of Sections 241-243 of the Civil Procedure Code to conduct a full and proper investigations or inquiry, in order to fully satisfy itself that the land sought to be seized was not in fact State land, in its order dated 09.10.2015 ?

b. Is the said order incorrect in its understanding of Sections 241,242 and 243 of the Civil Procedure Code ?

c. Did not the High Court of Civil Appeal fully and properly consider the effect of the findings in its said order that in terms of Section 243 of the Civil Procedure Code, the District Court could not hear the Hon. Attorney General unless he was represented on the day fixed for the inquiry into the Appellant's application ?

d. Did the High Court of Civil Appeal fail to consider whether the District Court failed to appreciate that in the facts and circumstances of the case before it, the overriding considerations for that Court was to satisfy itself that the land sought to be sold/auctioned was not a State land ?

Consequential questions of law that were suggested by the Plaintiff and accepted by Court

a. It is admitted that the State made an application to intervene in this action in the District Court of Colombo over the subject matter of this case, that application was refused by that Court on 20.07.2015, the State failed to appeal against the said order, if so, is the said order *Res Judicata* against the State ?

Consequential questions of law that were suggested by the Added Respondent and accepted by Court

a. Is the absolute title of the subject land remains in the State ?
b. If so, as per admission that subject land is a State land, can the subject to be auctioned and be seized in view of the notice marked as "X1" ?

At the hearing of the instant appeal, learned President's Counsel for the 2nd Defendant contended that, prior to the District Court making its order on 24.07.2015 in relation to its application under Section 839, the Attorney General had appeared before the District Court on 20.07.2015, but was precluded from intervening into the investigation on the basis that he failed to appear before that Court on the date of inquiry.

Learned President's Counsel further contended that the said decision of Court resulted in a wrong order, as the Court could have, if it

was so inclined, rejected the submissions of the Attorney General, but only after hearing him. According to him, this is due to the reason that in terms of Section 241, it was incumbent on that Court to cause an investigation to be conducted so as to satisfy itself that the land sought to be seized was at least *ex facie* not State land. The District Court failed to conduct such an investigation or an inquiry into the application of the 2nd Defendant. Owing to that failure, the District Court had completely ignored the submissions made on behalf of the State and thus resulting in an erroneous order.

Learned President's Counsel also submitted that although Sections 241 to 245 refer to two kinds of persons; 'claimant' and 'objector' who could move to have a property under seizure released, there was no complete bar to a judgment debtor for being an objector in appropriate circumstances.

When this order was being challenged before the High Court of Civil Appeal, it was urged on behalf of the 2nd Defendant that the original Court was under a mandatory duty to investigate the claim or objection, as Sections 241 to 245 of the Civil Procedure Code refer to two types of persons ('claimants' and 'objectors'), and particularly to consider the position that the property in question was State land, as a judgment debtor could also be an 'objector' although he could not be a 'claimant'.

Learned President's Counsel submitted that, in making the impugned order, the High Court of Civil Appeal relied on certain pronouncements made by the superior Courts in the judgments of ***Karuppan Chetty v Anthonnnayake Hamine*** 5 NLR 300, ***Ghouse v Mercantile Credit Ltd.,*** (1997) 2 Sri L.R. 127, and ***Chandana Hewavitharana v Urban Development Authority*** (2005) 1 Sri L.R. 107, which, according to learned Counsel, did not decide the question

whether a judgment debtor could also be an 'objector' within the meaning of Sections 241 to 245 of the Civil Procedure Code.

Learned President's Counsel further submitted that these statements ought to have been considered as *obiter dicta*. He therefore contented that the finding arrived at by appellate Court on the basis that the only question to be decided in an investigation under Section 241 was limited to what had been suggested by the Supreme Court in ***Karuppan Chetty v Anthonnnayake Hamine*** (ibid), i.e., whether the 2nd Defendant was in possession of the property at the time of its seizure, and not whether the 2nd Defendant is its owner, is an erroneous one.

Learned Senior State Counsel, on behalf of the added Respondent, submitted that in terms of Section 462 of the Civil Procedure Code, no writ could have been issued against the State and Section 456 states that all actions against the State shall be instituted by or against the Attorney General. In the original action related to the instant appeal, the Attorney General had not been named as a party before the District Court, and the Court issued the said order against the 2nd Defendant, who only had a right to possess the land under seizure, by virtue of a vesting order made under Section 44 of the Land Acquisition Act. Learned Senior State Counsel also submits, as the learned President's Counsel for the 2nd Defendant did, that *Janatha Estates Development Board* falls into category of an 'objector' in terms of Section 243 and had rightfully made a claim in respect of the "State land".

Defending the orders made by the High Court of Civil Appeal as well the District Court, learned Counsel for the Plaintiffs contended that the petition tendered to Court in March 2015, by which the 2nd Defendant sought to restrain the auction of the seized land by the Fiscal, sought no

relief in its prayer to the effect that the subject matter be declared as property belong to the State.

He contended that in terms of Section 44 of the Land Acquisition Act, when a land is vested in a person or a body of persons, other than a local body (as in the case of the 2nd Defendant), the right title and interest in that property passes to that person or a body of persons. Thus, in terms of Section 22 of the said Act, the conveyance, by which the acquiring officer made in favour of the 2nd Defendant, is a disposition which passes title of the land sought to be seized to *Janatha Estates Development Board* .

Perusal of the order of the High Court of Civil Appeal indicates that it had considered three specific contentions that were placed before that Court by the 2nd Defendant, which could be identified as follows:

a. Sections 241 to 245 of the Civil Procedure Code refer to two types of persons (claimants and objectors) and two types of applications (claims and objections),

b. A judgment debtor (although cannot be a claimant) can be an objector, and

c. the District Court was under a mandatory duty to investigate the claim or objections and particularly under a duty to satisfy itself of the position that the land under seizure is not a State land but belonging to the 2nd Defendant as at the date of the seizure.

In proceeding to consider these contentions, the High Court of Civil Appeal commenced its process of reasoning on the observations

made by *Bonser* CJ, in the judgment of ***Karuppan Chetty v Anthonayake Hamine*** (supra) and by *GPS De Silva* CJ in ***Ghouse v Mercantile Credit Limited*** (supra). The High Court of Civil Appeal then stated " … *there are two categories of persons named in the relevant sections as 'claimants' and 'objectors' and also to 'claims' and 'objections'*", and then proceeded to hold "*what is material is the scope of the inquiry but not whether the judgment debtor could have been an objector, which question hence is not determined in this order*." The High Court of Civil Appeal, however, considered the scope of the investigation that could be undertaken by a District Court, in terms of Section 241, and for that purpose, relied on the judgment of ***Karuppan Chetty v Anthonayake Hamine*** (supra) and acted on the statement made to the scope of the inquiry as it is stated that " … *the scope of the inquiry seems to be essentially limited to what the Supreme Court said …*".

It is evident from the above factual narrative, what lies at the core of the complaint of the 2nd Defendant is the refusal of the District Court to consider the fact that the title to the property under seizure, lies in the State. The High Court of Civil Appeal erred in affirming that refusal. Hence the submission of the learned President's Counsel that the District Court was duty bound in terms of Sections 241-243 of the Civil Procedure Code to conduct a "full and proper" investigations or inquiry, in order to "fully" satisfy itself that the land sought to be seized was not in fact a State land.

In my view, before this Court ventures into examine the validity of the contentions presented on the scope of "full and proper" inquiry in Section 241, it is imperative that it considers the nature of proceedings that had taken place before the original Court as the first step. This is because of the very nature of the application of the 2nd Defendant, as well as the nature of the objections raised by the Plaintiffs, which undoubtedly

had an impact in the impugned orders. It would also appraise this Court as to the manner in which the Courts below had set out to deal with the dispute presented for determination.

It is already noted that, after property was seized by the Fiscal, the 2nd Defendant made an application to the District Court under Section 839 and not under Section 241, although the learned President's Counsel contended that the Court should have undertaken a "full and proper" inquiry into its claim under Section 241.

The 2nd Defendant, in the said application claimed that it became aware of the seizure, only upon the arrival of a surveyor to the property under seizure, in order to carry out a survey of the land. It also avers that the land under seizure was only in the possession of the 2nd Defendant at the time of seizure, and that too upon a vesting order issued by the Government Agent bearing reference No. F1/191.

It was further alleged by the 2nd Defendant, that it had no prior notice of the seizure of the said land and, therefore moved Court, upon the "exceptional grounds" that were pleaded therein, it invokes the "revisionary" jurisdiction of that Court. The 2nd Defendant prayed *inter alia* for issuance of notice on the Plaintiffs, name the Attorney General as a party to the proceedings, release the property under seizure, and a stay of further proceedings until a final determination.

The Plaintiffs have promptly resisted the said application by the 2nd Defendant to have the seized property released by filing a Statement of Objections dated 08.04.2015, wherein it was pleaded in relation to the said land that they totally reject the claim that the title of the land lies in the Republic, as the vesting order was made under Section 44 of the Land Acquisition Act confers title to the 2nd Defendant. They also relied on the

lease agreement No. 6952, entered by the 2nd Defendant with "*Kandy Tyre Pvt Ltd*", wherein a part of the land so vested was leased out to that private enterprise. It was further asserted since the seizure of the land on 12.10.2014 by the Fiscal, no action was taken by the 2nd Defendant and therefore the Plaintiffs moved Court to dismiss the application for release from seizure.

After the 2nd Defendant's application under Section 839 was filed, the District Court made order on 01.04.2015 to serve summons on the Attorney General and fixed the inquiry on 29.04.2015. This order was made in view of the claim of the 2nd Defendant that the land under seizure is not owned by it but by the Republic. On 16.04.2015, the scheduled auction of the seized property was suspended by an order of Court, pending the said inquiry.

When the matter was taken up for inquiry on 29.04.2015, it was revealed that the summons was not served on the Attorney General. Consequently, the inquiry was put off until 26.05.2015. Journal Entry No. 144 of 26.05.2015, indicates that the Fiscal had, by then, reported to Court that the Attorney General was served with summons, notifying him of the pending inquiry on 20.05.2015. Notwithstanding the service of summons, there was no representation for the Attorney General at the inquiry, which commenced on 20.05.2015. The proceedings of that day indicate that during inquiry, the 2nd Defendant opted not to adduce any evidence before Court, as mandated by Section 243, whereas the 1st Plaintiff had adduced oral and documentary evidence on her behalf, resisting the application. She tendered a mortgage bond (R2) by which the 2nd Defendant had mortgaged the property under seizure to Bank of Ceylon and, in addition, relied on the agreement of lease, which was already tendered before Court along with her Statement of Objections.

After conclusion of the inquiry, Court indicated that the order would be delivered on 24.07.2015.

On 20.07.2015, another application under Section 839 was made by a private Counsel on behalf of the Attorney General, seeking to intervene into the proceedings as an intervenient petitioner. The Court, by its order dated 20.07.2015, rejected the said application, as the proceedings relating to the inquiry had already been concluded.

Thereupon, the District Court, with its order dated 24.07.2015, found that a claimant or objector, who seeks release of a seized property must adduce evidence to show that at the date of the seizure he had some interest in, or was possessed of the property seized in terms of Section 243. Since no evidence was adduced before that Court by the 2nd Defendant or by the Attorney General to show that the State had some interest in the property seized, it proceeded to dismiss the judgment debtor's application. After the application for intervention was dismissed by Court there was no action taken either by the 2nd Defendant or the Attorney General, to challenge that order.

It is evident from the above, despite the invocation of the inherent powers by the 2nd Defendant by placing reliance on Section 839 in seeking to secure release of a seized property, the District Court had considered the said application as a claim, or an objection, made in respect of a property seized in execution of a writ under Section 241 and had applied the provisions of Section 243 in dealing with same. Provisions of Section 243 made it incumbent upon a claimant or an objector, during an investigation conducted under Section 241, to adduce evidence of his interest in relation to the property already seized. Since the District Court had correctly proceeded to investigate the 2nd Defendant's claim of State's title by making a reference to Section 243, at

the conclusion of that investigation, it could only make an order either allowing or disallowing that claim, in terms of Section 244 or 245.

The said order of dismissal was righty made by the District Court.

In ***Isohamine v Munasinghe*** (1928) 29 NLR 277, it was held by *Garvin* J, with *Dalton* and *Lyall Grant* JJ agreeing, (at p.281);

"[A]t a sitting of the Court for the purpose of investigating a claim duly appointed and of which notice has been given the Court is entitled to proceed judicially to determine the matter of the claim upon a consideration of the evidence where evidence is adduced, and in the absence of evidence when the claimant adduces none, and the order so made is, in my view of these Sections, an order made upon investigation."

Before considering the reasons given by the appellate Court for affirming the said order of dismissal made by the District Court, it is important to consider the contention presented by the 2nd Defendant at this stage as to the scope of an investigation under Section 241.

Section 241 of the Civil Procedure Code is the first of eleven individual Sections that are grouped in for the purpose of laying down the procedure that govern " *Claims to Property Seized*". In the event of any claim being preferred to, or an objection offered against the seizure or sale of any immovable property by the Fiscal, in the execution of a decree or any order passed before the decree, provisions of Section 241 are triggered into action. Once a claim being made or any objection offered against the seizure or sale of any immovable property, a statutory duty is imposed on that Fiscal to report same to the Court, which passed the said decree or order. After such claim or objection is reported, such a Court " … *shall thereupon proceed in a summary manner to investigate such*

a claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he were a party to the action."

Despite imposing a duty on District Court to investigate such a claim or objection, Section 241 does not specifically lay down any parameters, within which such an investigation should be conducted. It is observed that the wording used in Section 241 merely states that the District Court should proceed " … *in a summary manner to investigate such a claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he were a party to the action."*

Learned President's Counsel, in order to be in line with his contention presented to this Court, inserted two additional words in describing the nature of an investigation conducted under Section 241 to read it as a "*full and proper*" investigation into the claim of State land.

With these submissions in mind, I shall now proceed to examine the statutory provisions that are found in Sections 241 to 245 of Civil Procedure Code, which deals with the procedure applicable to " *Claims to Property Seized",* as they might offer an indication as to the scope of such an investigation.

Marginal notes of Sections 241 to 245 do provide an indication as to the arrangement of these statutory provisions. Section 241 relates to the claims made to the Fiscal to be reported to Court and be investigated by that Court. Section 242 requires such claims to be made at the earliest opportunity to Court while Section 243 states that it is for the claimant to adduce evidence. Importantly, Sections 244 deal with when the Court should exercise its discretion to release such property from seizure while Section 245 deals with instances when a Court should disallow such a claim or objection. The decision of Court must be preceded by an

undertaking of summary investigation into a claim or objection, in order to satisfy itself whether such a claim or objection fits into any one or more of the instances specified in Sections 243 and 244.

The most striking feature that could be identified in both these Sections is that, although they deal with many different situations in which a Court could make an order either allowing or disallowing the release of a seized property, the repetitive reference to the word "*possession*".

It is also evident that the two Sections deal with the nexus between the judgment debtor and the claimant or objector, who was in "*possession*" of the property at the time of its seizure. Significantly, none of the two Sections made any reference to the "*title*" of such property in any of them, other than making a reference only to "*an interest*".

Thus, it seems to me that if an objector or a claimant were to be successful in obtaining an order releasing from seizure, such a person must adduce evidence before Court in support that his objection or claim of his interest by satisfying that Court of the existence of one or more instances that are identified and listed out in Section 244. If the Court is satisfied that the objector or claimant was in possession of the property, at the time of its seizure, as the judgment debtor's own property or of some other person, who possessed same in trust or as a tenant of that judgment debtor, it shall disallow that objection or claim.

The statutory provisions that contained in Sections 241 to 245 remained without a significant change being made to them since the enactment of the Civil Procedure Code, except for the period during which Administration of Justice Law No. 44 of 1973 was in operation. Thus, pronouncements that were made by superior Courts on these

Sections since then, indeed provide very persuasive guidance as to the general statutory scheme, in dealing with properties under seizure, even if they could be distinguished from the factual positions from the matter under consideration.

In making the impugned order, the High Court of Civil Appeal had guided itself by adopting the reasoning of the judgment in ***Karuppan Chetty v Anthonnayake Hamine*** (supra), where *Bonser* CJ made several pronouncements regarding the application of Section 241. The reproduced section of the judgment of *Bonser* CJ states (at p. 303) as follows:

> *"[T]hen, when the parties are before the Court on the day of the inquiry, the procedure should be very simple. It must be remembered that the only question is whether the claimant was in possession at the time of the seizure, and not whether the claimant is the owner of the land. If it is found that he is in possession, the Court makes an order to the Fiscal to release the property, but that order determines nothing as to the rights of the parties. It may be that the claimant is in possession of the property, but yet the true owner of the property is the execution-debtor, and the property is therefore executable under the writ. But that question cannot be determined in the claim inquiry. The Code provides that that question shall be determined in a separate action brought under section 247. If the object and scope of the inquiry had been strictly kept in view, the proceedings in this and other cases would have been conducted more summarily than they appear to have been."*(emphasis original)

The appellate Court, after reproducing the said statement, concluded that " … *the scope of the inquiry seems to be essentially limited to*

what the Supreme Court said in the aforesaid paragraph". However, the learned President's Counsel contended that, unlike the instant appeal, the question that arose before *Bonser* CJ for determination was the quantum of costs which were payable by an unsuccessful claimant in an application under Sections 241 and 242. He further contended that the words employed by *Bonser* CJ therefore could not be logically and fairly be taken to mean that in no circumstances the judgment debtor is entitled to fall within the class of persons referred to as the 'objector' in Sections 214-243 and that in no circumstances the judgment debtor entitled to take part in an investigation conducted under Sections 214-243.

The challenge of the 2nd Defendant to the validity of the judgment of the High Court of Civil Appeal therefore is primarily premised on that Court's act of placing reliance on the observation made by *Bonser* CJ in ***Karuppan Chetty v Anthonnayake Hamine*** (supra) in relation to investigations conducted under Section 241 that " … *the only question is whether the claimant was in possession at the time of the seizure, and not whether the claimant is the owner of the land."*

It is already noted that the statutory provisions contained in Section 241, does not contain any indication as the scope of the investigation. This is because the words " *in the event of any claim being preferred to, or objection offered against the seizure or sale*" to the Fiscal " *he shall, as soon as the same is preferred or offered, report the same to the Court*", is indicative of the stage at which such an objection or claim could be made. Obviously, in order to execute the writ, the Fiscal must personally enter the property and the person who is in possession of the same at that point of time, could make a claim or an objection.

The Court of Appeal, in its judgment of ***David Kannangara v Central Finance Ltd.,*** (2004) 2 Sri L.R. 311, considered the question

whether a claimant or objector must state his claim or objection to the Fiscal, to invoke the provisions of Section 241. *Amaratunge* J stated (at p.313) that "*[I]t is true that in terms of Section 241, the fiscal has to report the claim to the Court and an investigation into the claim is to be held thereafter. This is the usual way of commencing an investigation under section 241. However, the terms of Section 241 do not prohibit the making of a claim straight to the Court which ordered the seizing of the property, …*".

If there is a claim or objection made to Fiscal at the time of seizure, such a claim or objection should promptly be reported to Court by him and should be investigated under Section 241. A claimant or an objector could directly make his application to Court seeking release from seizure. However, in terms of Section 242, such a claim or objection must be made at the earliest opportunity and if it appears to that Court that the making of the claim or objection was designedly and unnecessarily delayed with a view to obstruct the ends of justice, it needed not inquire into such a claim or objection.

The observation of *Bonser* CJ that " … *the only question is whether the claimant was in possession at the time of the seizure, and not whether the claimant is the owner of the land*" finds confirmation when one examines the same in the light of the provisions contained in Sections 244 and 245.

Section 244, whilst conferring a discretion on the District Court to release the property seized, states that if it is satisfied that at the time of its seizure the property was <u>not</u>

a. in the possession of the judgment-debtor, or of some person in trust for him, or
b. in the occupancy of a tenant or other person paying rent to him, or

c. on his own account or not as his own property, but on account of or in trust for some other person, although at such time the judgment-debtor was in the possession of the property under seizure,
d. in the possession partly on his own account and partly on account of some other person.

Similarly, the provisions of Section 245 states that if the Court is satisfied that the property was, at the time it was seized,

a. in the possession of the judgment-debtor as his own property, and not on account of any other person or
b. was in the possession of some other person, in trust for the judgment debtor, or
c. in the occupancy of a tenant or other person paying rent to such judgment debtor,

it could make order disallowing such a claim or objection as the District Court did in this particular instance.

It is evident from the wording of the two Sections that the operative criterion in the exercise of the discretion conferred in the Court is the status of the person who is in possession of that property and his relationship of his possession to the judgment debtor. If his possession could be traced back to the judgment debtor, a claim or objection should be disallowed, except for very limited situations as specified in the Section 244, with a view to secure a third-party interest.

What is important in relation to the scope of investigation in terms of Section 241 is that the Court should investigate in summary manner to decide the question whether a claimant or objector had satisfied the Court that his claim or objection falls within any one or more of the

situations envisaged in either Section 244 or Section 245, enabling it to make order either allowing or disallowing the release of the property under seizure.

This is due to the fact that the Civil Procedure Code had specifically provided for a person, who had an interest over the property under seizure but was unsuccessful in satisfying the Court that his claim or objection falls within any one or more of the several instances that were specified in Section 244, could seek redress under Section 247. Section 247 provide for a party against whom an order under Section 244, 245 or 246 is passed, to institute an action within the specified time period of fourteen days "… *to establish the right which he claims to the property in dispute, …*" .

In ***Abraham Singho v Haramanis Appu*** (1933) 34 NLR 328, it was held (at p. 329) that in " … *an action under Section 247, the only issue that can be decided in such an action is whether the claimant is the owner of the property in dispute if he is the plaintiff or whether the property is to be declared liable to be sold in execution of the decree in his favour if the plaintiff is the judgment-creditor* " Thus, in my view, the scope of the investigation under Section 241, is limited to situations that are set out in Sections 244 and 245, where the specific instances in which a Court should allow or disallow a claim or objection presented before it under Section 241 were statutorily laid down.

There appears to be a sound and a pragmatic reason behind the imposition of such limitations on the scope of an investigation under Section 241, by provisions contained in Section 244 and 245, in restricting same only to a summary investigation, and that too to decide as to the nature of possession of the claimant or objector had at the time of the

land under seizure. In ***Isohamine v Munasinghe*** (supra), the Court observed (at p.280) :

> *" The procedure to be followed in the event of any claim being preferred to property seized in execution is contained in sections 241 to 247 of the Code. Generally speaking, under the Civil Procedure Code proceedings in Court must either conform to the rules of regular procedure or of summary procedure. But the procedure in the case of claims is of a special character - it is neither 'regular procedure' nor 'summary procedure'. The Court is required to investigate the claims 'in a summary manner'. The intention is manifest that a claim should be dealt with expeditiously so that the execution of the writ should not be delayed or defeated; and to this end the Court is expressly empowered to refuse to investigate a claim which appears to have been designedly and unnecessarily delayed with a view to obstruct parties."*

The recognition of the necessity to conduct an investigation under Section 241 in a summary manner was a deliberate act on the part of the Legislature so that the execution of the writ obtained by the successful plaintiff in his favour should not otherwise unnecessarily be delayed or defeated. Therefore, I am in respectful agreement with the observation of *Bonser* CJ that in an investigation under Section 241, " … *the only question is whether the claimant was in possession at the time of the seizure, and not whether the claimant is the owner of the land."*

In view of these factors, the conclusion reached by the High Court of Civil Appeal, as to the scope of the investigation under Section 241, by placing reliance on the judgement of ***Karuppan Chetty v Anthonnayake***

Hamine (supra) is a correct one , as it is in line with the scheme set out by the relevant Sections of the Civil Procedure Code.

Thus, if the material placed before Court during an investigation under Section 241, satisfies that Court of the fact that the property at the time of seizure was "*in possession of the judgment-debtor as his own property, and not on account of any other person*", in terms of Section 245, it was incumbent upon that Court to disallow such a claim.

There is no doubt that the property under dispute was in the possession of the 2nd Defendant at the time of its seizure. During the investigation conducted under Section 241, the 2nd Defendant did not adduce any evidence. However, the Plaintiffs tendered evidence during that inquiry to establish that the 2nd Defendant had mortgaged the seized property to Bank of Ceylon, that too, in addition to the lease agreement which was tendered along with their Statement of Objections.

The description of the property that was seized by the Fiscal was described by the 2nd Defendant in its application under Section 839 to be a land consisting of " *Lot Nos. 1 to 9 as depicted in the Plan No. 2477 by licenced surveyor D.D.C. Heendeniya dated 10.12.2004 and authenticated by the Surveyor General*" which are in total extent of 2 Acres 2 Roods 12.25 Perches (which was also depicted in Plan No. 4517 by licence surveyor *U. Abeysuriya* dated 26.07.1997, with identical description of boundaries and the extent).

The 1st Plaintiff tendered an Indenture of Lease No. 6952 (V1), executed by *G. Arthanayaka*, Notary Public, on 31.03.2006, during the said investigation. With the execution of the said lease agreement, the 2nd Defendant had leased out a parcel of land carved out from the contiguous land consisting of " *Lot Nos. 1 to 9 as depicted in the Plan No. 2477 by licenced*

surveyor D.D.C. Heendeniya dated 10.12.2004" in an extent of 24.31 perches by way of a subdivision, in favour of *Kandy Tyre House (Pvt) Ltd.*

In that lease agreement, the 2nd Defendant *Janatha Estates Development Board* claimed it is the " *lawful owner and is seized and possessed of all that allotment of land marked Lot No. 4 in Plan No. 7641 dated 21.06.2005*" which is a part of the " … *contiguous allotments of land depicted in Plan No. 4517 by licence surveyor U. Abeysuriya*".

In addition, the 1st Plaintiff tendered a mortgage bond No. 1605 (V2), through which the 2nd Defendant had pledged "*Lot Nos. 1 to 9 as depicted in the Plan No. 2477 by licenced surveyor D.D.C. Heendeniya dated 10.12.2004"* as security for a primary mortgage " *free from all encumbrances* " and also to " … *cede, assign, setover and assure unto the Bank by way of a primary mortgage free from seizure, charge, lien or any other encumbrances* …".

The 2nd Defendant, sought to counter that evidence only through a document tendered along with its written submissions ("X"), which was tendered to Court only after the investigation was concluded. The said document, bearing the date 23.06.2015, indicates that the *Colombo* Divisional Secretary had issued a vesting order in favour of the 2nd Defendant under Section 44 of the Land Acquisition Act. In that document, the official further "observes" that the Republic had retained the "absolute" ownership of the land, now seized by the Fiscal. The Plaintiffs had no opportunity to challenge that document and its contents. This document could not be considered as an item of "evidence" that had been "adduced" during investigations.

If the position presented by the 2nd Defendant, as reflected in document "X" is correct, in order to succeed in its application for release

from seizure, the 2nd Defendant or any other party should have satisfied the District Court in terms of Section 244, that the land under seizure in its possession was " *on account or in trust*" for the State or " *partly on its own account and partly on the account*" of the State. In view of the material presented before the District Court, it was clearly indicated that the 2nd Defendant was in possession of the property at the time of its seizure by the Fiscal, and that it was "*in possession of the judgment-debtor as his own property, and not on account of any other person*", the District Court was required under Section 245 to make order disallowing the 2nd Defendants claim as it rightly did.

The High Court of Civil Appeal, in dealing with another contention advanced by the 2nd Defendant before that Court, namely, whether the District Court was under a mandatory duty to investigate the position of the Attorney General to satisfy that the property in question is not a State land, but a land belong to the 2nd Defendant as at the date of seizure, proceeded to hold that " … *even if any claim of the State was considered by the District Court, there was a likelihood of the District Court coming to the finding that the property in question belongs to the [2nd] Defendant and not to the State*". I am in agreement with this conclusion for the reasons stated in the preceding paragraphs.

In the absence of any evidence that had been adduced before the District Court to satisfy it that the claim or objection of the 2nd Defendant qualifies to be taken in as any one or more of the criterion, as set out in Section 244, the decision to disallow its claim or objection, was rightly affirmed by the High Court of Civil Appeal. This conclusion is supported by the pronouncement of *Garvin* J in ***Isohamine v Munasinghe*** (supra - at p.281), " … *when the claimant who was bound by law to adduce evidence was not present in person and had not arranged for evidence to be adduced in support*

of his claim, the Court was, I think, entitled in the absence of such evidence to make an order disallowing the claim. For the reasons already stated, that order is in my opinion conclusive when the claimant did not within the period prescribed in Section 14 institute an action to establish the right which he claimed to the property."

The other contention advanced by learned President's Counsel for the 2nd Defendant that that the words employed by *Bonser* CJ could not be logically and fairly be taken to mean that in no circumstances the judgment debtor is entitled to fall within the class of persons referred to as the 'objector' in Sections 214-243 and that in no circumstances the judgment debtor entitled to take part in an investigation conducted under Sections 241 to 243.

This contention need not be considered by this Court as the High Court of Civil Appeal had specifically held in this regard that "… *it does not arise for decision in the present case too, particularly due to the reason given in the preceding passages of this order."* The High Court of Civil Appeal was correct in making the said determination as the 2nd Defendant did not move Court to get its property released from seizure under Section 241.

Thus, the 2nd Defendant did not present itself before the District Court either as an objector or a claimant in terms of Section 241, but instead invoked inherent jurisdiction of Court under Section 839, seeking the release of its property. The 2nd Defendant opted to rely on Section 839, when a specific Section of the Civil Procedure that sets out a specific procedure in which such an application could be made.

The judgment of ***Karonisa V Singho*** 31 NLR 410, is relevant in this context. It was an instance where appeal was preferred from an order of the Commissioner of Requests, who vacated an earlier order of his Court,

whereby the claim of a claimant under section 241 of the Civil Procedure Code had been dismissed for the reason of his absence on the date of inquiry. The claimant made his claim to the Fiscal and had no direct dealing with Court. It was later discovered that the claimant had not been noticed by Court informing him of the date of inquiry. The Claimant moved Court to re-open the investigation under Section 241, which the Court decided to grant under its inherent power. *Dalton* J held (at p.411) that the Court has no inherent power to vacate an order it had made dismissing a claim under Section 241, on account of the absence of the claimant on the day fixed for inquiry and the Claimant should have moved in revision to an appellate Court.

In the instant appeal however, the competency of the 2nd Defendant to have the property released from seizure never arose before the District Court for determination. This is the reason why the High Court of Civil Appeal stated in its order, after making reference to the question whether a judgment debtor could be an objector in terms of Section 241, that " … *it does not arise for decision in the present case …".* The appellate Court made reference to the judgment of ***Ghouse v Mercantile Credit Limited*** (supra) only in respect of the exemption granted to a judgment debtor in terms of Section 218(n) to highlight that " … *even that is not within the scope of the inquiry under Section 241, but it should come within the purview of Sections 343 and 344 of the Code*."

At the concluding stage of this judgment, I turn to consider the contention of the Added Respondent, who claimed that the property under seizure is State land. The Added Respondent sought to establish that claim through documents tendered along with his application marked as "Y1" and "Y2" in this Court. The Added Respondent's application is clearly an attempt to re-open the investigation conducted

by the District Court under Section 241, and that too for the first time before this Court. The Added Respondent did not participate in the appellate proceedings before the High Court of Civil Appeal, nor did he appeal against the refusal of his intervention in the District Court.

I am not convinced at all that he could re-agitate the question of title to the property under seizure by making an attempt to re-open the said investigation, conducted and concluded by the District Court against the 2nd Defendant, for two reasons.

First, in respect of the Added Respondent, the investigation under Section 241 proceeded *ex parte* as summons was duly served. *Wood Renton* J, in ***Muttu Menika v Appuhamy*** (1911) 14 NLR 329, held that a person whose claim was dismissed for default of appearance should not move to re-open the claim inquiry (by explaining the default) on the ground that the order was made *ex parte.*

In a preceding paragraph I have referred to the judgment of ***Karonisa V Singho*** (supra), where it was held that a Court has no inherent power to vacate an order dismissing a claim under Section 241, on account of the absence of the claimant on the day fixed for inquiry. A similar reasoning was adopted in a more recent judgment of ***Marikka v Vanik Incorporation Ltd., and Others*** (2006) 1 Sri L.R. 281.

In the instant appeal, the Added Respondent did not make any attempt to explain his absence on the date of inquiry before the District Court, instead moved this Court to consider the material tendered along with his application to intervene into these proceedings, seeking a declaration of his title to the land under seizure. As already noted, this is clearly an attempt to re-open the inquiry that had been concluded by the original Court, and therefore the contention of the Added Respondent

could not be entertained by this Court, when he had failed to resort to legal remedies that were available to him.

Secondly, Section 247 confers finality to the orders made under Sections 244, 245 and 246. Such an order could be interfered with only if the unsuccessful party to have the property under seizure released, but thereafter proceeded to establish his right, by instituting an action and that too within 14 days from such an order.

Bonser CJ, in ***Ramalingam v Ragunatha Kurukkal Sambantar*** (1895) said (at p.200) that "*… an order made under section 244 is not an appealable order, but that the remedy is under section 247."* In ***Muttu Menika v Appuhamy*** (1911) 14 NLR 329, *Wood Renton* J expressed the view (at p.330) that "*[I]t seems to me that the object of the group of sections concerned with claims to property seized is to secure a summary inquiry into such claims, and to provide that the result of that inquiry shall be decisive as to the rights of parties, subject always to the remedy indicated in section 247"*. More specifically, in ***Isohamine v Munasinghe*** (supra), *Garvin* J stated (at p. 280), "*[I]f at the sitting of the Court or, to use the, language of section 243, " on such investigation " the claimant fails to adduce evidence, the Court can but disallow the claim since the claimant having failed to establish that he had an interest in or was possessed of the property it may surely be inferred that the judgment-debtor and not the claimant is in possession. This is a conclusion at which the Court arrives 'upon such investigation'. There is ample authority for the proposition that an order disallowing a claim in such circumstances is one to which the conclusive character given by section 247 attaches*".

The 2nd Defendant failed to adduce any evidence of its claim during the investigation that the land under seizure is State land. On the contrary, the 1st Plaintiff adduced evidence that the 2nd Defendant held the title to the property under seizure. With the dismissal of that claim,

either the 2nd Defendant or the Attorney General did not take steps to "establish his right" over the land under seizure by instituting action in terms of Section 247.

In this regard, I am fortified in my view with the opinion of *Wood Renton* J, in ***Muttu Menika v Appuhamy*** (supra, at p. 330), " *… where the Legislature has enacted a particular remedy for a grievance in terms which show that it intended that remedy to be the only one open to an aggrieved party, redress cannot be sought by any other form of proceedings. I need not quote the language of Section 247, with which we are all familiar. But it seems to me that the last clause in that Section strongly corroborates the view that I take of the point now under consideration. It is these terms: ' Subject to the result of such action, if any, the order shall be conclusive.' There can be no doubt but that an ex parte order is an order within the meaning of this group of sections, and I think, therefore, that in terms of section 247 it is conclusive, unless the party aggrieved by it brings the action for which that section provides."*

In view of the reasoning contained in the preceding paragraphs, I proceed to answer the Questions of Law on which this appeal was argued before this Court as follows:

<u>The questions of law that were suggested by the 2nd Defendant and accepted by Court</u>

a. Did the High Court of Civil Appeal incorrectly, and not properly considered whether the District Court was duty bound in terms of Sections 241-243 of the Civil Procedure Code to conduct a full and proper investigations or inquiry, in order to fully satisfy itself that the land sought to be seized was not in fact State land, in its order dated 09.10.2015 ? Yes, only if such a

claim is supported by evidence adduced during investigation under Section 241.

b. Is the said order incorrect in its understanding of Sections 241,242 and 243 of the Civil Procedure Code ? No.

e. Did not the High Court of Civil Appeal fully and properly consider the effect of the findings in its said order that in terms of Section 243 of the Civil Procedure Code, the District Court could not hear the Hon. Attorney General unless he was represented on the day fixed for the inquiry into the Appellant's application ? Yes, it did.

f. Did the High Court of Civil Appeal fail to consider whether the District Court failed to appreciate that in the facts and circumstances of the case before it, the overriding considerations for that Court was to satisfy itself that the land sought to be sold/auctioned was not a State land ? No.

Consequential questions of law that were suggested by the Plaintiff and accepted by Court

b. It is admitted that the State made an application to intervene in this action in the District Court of *Colombo* over the subject matter of this case, that application was refused by that Court on 20.07.2015, the State failed to appeal against the said order, if so, is the said order *Res Judicata* against the State ? Yes, only in relation to its intervention.

Consequential questions of law that were suggested by the Added Respondent and accepted by Court

c. Is the absolute title of the subject land remains in the State ? In the absence of any evidence adduced before the District Court, this question does not arise for consideration.
d. If so, as per admission that subject land is a State land, can the subject to be auctioned and be seized in view of the notice marked as "X1" ? Does not arise for consideration in view of the answer to the other Question of Law.

In view of the said answers to the Questions of Law framed by this Court, I proceed to dismiss the appeal of the 2nd Defendant. The judgments of the District Court as well as of the High Court of Civil Appeal are accordingly affirmed. The Plaintiffs are entitled to costs of this appeal.

JUDGE OF THE SUPREME COURT

VIJITH K. MALALGODA, PC., J.

I agree.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT