

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

*In the matter of an application for writ of certiorari  
under and in terms of Article 140 of the Constitution  
of the Democratic Socialist Republic of Sri Lanka.*

Attapattu Ralalage Neela Priyadarshani  
Attapattu  
“Dimuthu”,  
Yodha Ela,  
Higurakgoda.

**CA/WRIT/328/2022**

**Petitioner**

Vs.

1. The Officer in Charge  
Financial and Commercial Crimes  
Investigations Unit-3,  
Criminal Investigations Department,  
Colombo 01.
2. The Assistant Superintendent of Police  
Financial and Commercial Crimes  
Investigations Unit,  
Criminal Investigations Department,  
Colombo 01.
3. Coconut Cultivation Board  
9/428, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
4. The Chairman  
Coconut Cultivation Board,  
9/428, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

5. The General Manager  
Coconut Cultivation Board,  
9/428, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
6. Chandana Silva  
Member,  
Coconut Cultivation Board Provident  
Fund,  
Coconut Cultivation Board  
9/428, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Rienzi Arseculeratne, PC with Chamindri Arseculeratne, Punsisi Gamage and  
Eranga Yakandawala for the Petitioner.

Wasantha Perera DSG for the 1<sup>st</sup> to 5<sup>th</sup> Respondents.

**Supported on** : 02.12.2022

**Written Submissions** : Petitioner - 11.01.2023

Respondents - 07.02.2023

**Decided on** : 15.02.2023

**Sobhitha Rajakaruna J.**

The primary relief sought by the Petitioner is for a writ of Certiorari quashing the certificate, marked 'P8(e)', wherein the 2<sup>nd</sup> Respondent has invoked the provisions of the Offences Against Public Property Act No. 12 of 1982, as amended ('Act'). The said 'P8(e)' is a certificate issued in terms of Section 8(1) of the Act by which the 2<sup>nd</sup> Respondent-Assistant Superintendent of Police has certified that the money belonging to the Provident Fund ('Fund') of the Coconut Cultivation Board and the money in credit of the said Fund which is alleged to have been misappropriated by the Petitioner is public property and the value of such public property is above Rs.500,000.00.

What needs consideration of this Court is whether the money lying in credit of the Fund can be considered as public property which comes within the relevant definition of the Act. The Petitioner claims that the Fund has been established in terms of Section 27(1) of Employees' Provident Fund Act No.15 of 1958 (as amended). The Petitioner's contention is that the Fund is a private fund and it is not affiliated to the Employees' Provident Fund established under the said Employees' Provident Fund Act.

The document, marked 'P3', is the constitution of the Fund and in terms of the said constitution, the Coconut Cultivation Board ('Board') being the employer contributes on regular basis to the Fund along with the employees of the Board. Every month contributions by the employees and the employer are being deposited in favour of the Fund in terms of Clause 10(1) of 'P3'.

The argument of the Petitioner is that the money belonging to and earned by the Fund is in trust for the persons to whom the money belongs. Further, the Petitioner contends that the Act does not cover a statutory board acting in the capacity of a trustee holding money belonging to a private entity. The Petitioner relies on the judgement of *Trade Exchange (Ceylon) Ltd vs. Asian Hotels Corporation Ltd (1981) 1 Sri. L.R. 67* where it was held that the Asian Hotels Corporation Ltd cannot be considered as an agent of the government for the mere reason that most of the capital of the said corporation had been contributed by the government or the shares were controlled by the government.

It is abundantly clear that the property of the Statutory Boards and Public Corporations are within the definition of 'public property' under the said Act. The said Board has been incorporated by virtue of the Coconut Development Act No. 46 of 1971 (as amended). Thus, it is no doubt that the money belonging to the Board is well within the purview of the Act and the dicta of the above judgement has no relevancy to the instant Application. Anyhow, the issue here is whether the money held by the Board in the capacity as a trustee or as a guardian would become 'public property' under the Act. Both, the learned President's Counsel for the Petitioner and the learned Deputy Solicitor General for the Respondents made submissions on the above point of law. Now, I must consider whether this Court could resolve this issue at this threshold stage without calling for affidavits of the Respondents.

I should draw my attention carefully once again to the interpretation in respect of the term 'public property' in the Act. The legislature has categorically intended to include the property belonging to 'Banks' also within the definition of public property. The term 'Bank' is further defined in the same interpretation Section 12. 'Bank' means;

- (a) any agency or institution acting on behalf of the Government (whether established under any written law or otherwise) which grants loans, advances or investments, or accepts deposits of money from the public; and
- (b) any other person or body of persons declared by the Minister in charge of the subject of Finance by Order published in the Gazette to be a bank for the purposes of this Act.

I am attracted to two factors of the said definition, Firstly, the Bank referred to therein should be an agency or an institution acting on behalf of the government and secondly, it should be an agency or an institution which, inter alia, accepts deposits of money from the public. According to banking activities in any system of banking, such banks are bound to provide security for the deposits made to the bank by the public. In that sense, the Bank holds such money, among other purposes, as a trust for the benefit of its customers. This, in my view, clearly envisages that the legislature has employed the notion of 'trust' in the relevant Act to identify the monies lying in an account of a bank as public property within the definition of the Act.

Although the law of trust is not directly involved in the issues of the instant Application, I observe that a trust is generally considered as a fiduciary relationship in which one party known as a trustor gives another party, the trustee; the right to hold title to property or assets for the benefit of a third party, the beneficiary. The Clause 34 of the constitution of the Fund stipulates that all investments, all its earnings and income should be kept under safe custody by the Board as the sole guardian of the said trust.

It appears that the money belonging to the Trust is deposited in the current account No.001-1-001-0-1073164 maintained at the Duke Street Branch of People's Bank which is a State Bank. The "B" Reports annexed to the Petition evinced that the relevant accused have allegedly misappropriated the funds lying in the above account which has been solely dedicated for the purposes of the said Trust.

The Fund and the money lying in credit of the said Bank Account has cash contributed by the Board and cash contributed by the employees. This reflects the fact that the account balance of the fund is mixed with public and private money. Hence, a reasonable question arises as to which portion of that money is public property and which portion is private. It is impossible to sever the portion of money contributed to the Trust by the employees from their salaries and the other portion contributed by the Board. The reason that a portion of the money lying in credit of the Trust is private money should not put the Petitioner at an undue advantage. After a wide reading of the relevant legal literature, it is observed that once the property has been transferred to a trust, the trust itself becomes the rightful owner of the total assets.

I am attracted to the below mentioned passage in *'Law of Trust'* by *J. E. Penner (11<sup>th</sup> Edition)* *Oxford 2019 (p.113)*;

*"The traditional terminology for describing the personal liability of both the dishonest assistant and recipient who knowingly deals with the trust property causing a loss is that they become 'liable to account (2.46) as a constructive trustee', because they acquire the same personal liability as the trustee for equivalent breaches of trust."*

In light of the reasons set out above, I hold that the money belongs to the trust and further, the monies lying in credit to aforesaid account of the Bank are public property within the

definition of the Act. The said conclusion of mine should be limited to the circumstances of this case as I have examined only the provisions of the constitution of the Trust and all related laws applicable to the circumstances of the instant Application. Further, I have not examined whether the property belonging to the Employees' Provident Fund created under Employees' Provident Fund Act is 'public property' as this Court is not invited to examine such question.

In view of the foregoing, I take the view that there are no other facts and circumstances of this case which need examination on affidavits of the Respondents at a final hearing. Similarly, I see no reason to examine the other reliefs in the prayer of the Petition since the rest of the reliefs are also based on the substantive issue whether the money belonging to the Fund is public property. Therefore, I proceed to refuse this Application.

*Application is dismissed.*

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**