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

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

Raj Rajaratnam,
No. 60, Sutton Place, Apartment 18BN,
New York, New York 10022,
United States of America.

PETITIONER

CA (Writ) App. No. 440/2025

Vs.

1. Dr. P. Nandalal Weerasinghe,
   Governor of the Central Bank of Sri Lanka,
   No. 30, Janadhipathu Mawatha,
   Colombo 01.

2. Mr. W.S. Prasanna,
   Director of Foreign Exchange,
   Department of Foreign Exchange,
   The Central Bank of Sri Lanka,
   No. 30, Janadhipathu Mawatha,
   Colombo 01.

3. Central Bank of Sri Lanka,

No. 30, Janadhipathu Mawatha,
Colombo 01.

4. Nexia Corporate Consultants (Pvt) Ltd,
No. 130, Level 2, Narahenpita-Nawala Road,
Colombo 05.

5. Standard Chartered Bank,
No. 37, York Street,
Colombo 01.

6. Hon. Attorney General,
Attorney General's Department,
No. 159, Hulfsdorp,
Colombo 12.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Dr. Asanga Gunawansa, P.C. with Dilshan Jayasuriya, Dushinka Nelson, Keshika Kamalanesan instructed by Nithi Murugesu Associates for the Petitioner.

Chaya Sri Nammuni, D.S.G. with Prabhashanee Jayasekara, S.C. for the 1st to 3rd and 6th Respondents.

Avindra Rodrigo, P.C. with Shamalie Jayatunga, Tharushi Jayarathne instructed by M.J.S. Fonseka for the 4th Respondent.

Sheshan Gunawardena with Usman Anewer instructed by Paul Rathnayake Associates for the 5th Respondent.

Argued on: 06.11.2025

Delivered on: 02.12.2025

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is a dual citizen of Sri Lanka and United States of America (U.S.A). The Petitioner, having accumulated a large sum of money while being in U.S.A., had sent USD 3,000,000/- (Three Million U.S. Dollars) to the 4th Respondent to purchase a certain amount of shares in the Union Bank in Petitioner's name. The said money had been sent to an account operated by the 4th Respondent in the 5th Respondent bank, who is a body incorporated under the laws of Sri Lanka, which is also capable of suing and being sued in its corporate name; its main business is carrying on the business of a commercial bank as well.

The 4th Respondent is also a body incorporated under the laws of Sri Lanka which is capable of suing and being sued in its corporate name, and it is *inter alia* carrying on a business of company secretaries and business of brokers of the share market as well. It has a license to carry out such business. The 4th Respondent is also registered in the Security Exchange Commission as a broker as well.

For the purpose of purchasing the said shares, the said amount of money had to be converted into Sri Lankan Rupees. In the meantime, at the request of the Petitioner, the 4th Respondent through the 5th Respondent has sought permission of the 1st Respondent to purchase the shares in the Union Bank. However, an investigation had been initiated by the Central Bank since the said amount of money was sent without prior permission under the Exchange Control Act, No. 24 of 1953 (as amended). After the investigation, the Central Bank by the letter marked as **X3** dated 16.11.2007

directed to freeze the said money in the said account, and 5th Respondent is required not to transfer the same.

After investigation, the Government had filed an indictment in the High Court of Colombo against certain other parties who are not before this Court. Nevertheless, the High Court case had ended up in the discharge of the accused from indictment.

However, during the investigations, since the 2nd Respondent had issued a freezing order on the 5th Respondents in respect of the said money lying in an account in the 5th Respondent bank, the money has not being utilised. Therefore, the Petitioner was unable to purchase the said shares with the money, which is still lying in the 5th Respondent bank. Accordingly, now the Petitioner seeks to withdraw that money by seeking to cancel the order contained in **X3** or **1R1** by way of a *Writ of Certiorari, and* compel the Respondents to release the money by way of a *Writ of Mandamus*.

However, after issuing notice, this case came up for arguments before me on 06.11.2025, and the following arguments were advanced by the counsel.

Though the 4th and 5th Respondents have not filed formal objections, the 1st to 3rd Respondents have filed their respective formal objections, and it is their position that since there was an investigation in respect of the said money and the order contained in **1R1** issued by the 2nd Respondent pending investigation. However, after the investigation there had been an indictment that ended up in the indictment of the indicted accused before the High Court; therefore, now the 1st to 3rd Respondents cannot take any decision since there is no proper provision.

Arguments

The first contention advanced by Dr. Gunawansa is that paragraph 3(h) of the Objections is stultified by Section 30(2) of the Foreign Exchange Act, No. 12 of 2017 (hereinafter referred to as

"the 2017 Act"), due to the fact that since the investigations had commenced before the promulgation of the Act under its predecessor the Exchange Control Act; and in terms of Section 30(2) of the 2017 Act, the same investigation will continue as it was continued under the earlier Act, however, the investigations should be concluded or terminated within six months of the commencement of the operation of the 2017 Act. Therefore, no investigation can be conducted thereafter.

As such, since there is no investigation, he argues, that the money should be released to the Petitioner who is has the title to the said money admittedly sent by him. He also argues that freezing order was made after the money came to Sri Lanka but before the conversion into Sri Lankan Rupees, and therefore at the time of filing this Application, he was unaware that **1R1** was in existence, and on it, came forth with the Objections of the 1st Respondent. Therefore, prayer (b) relates to that.

In addition to that, he prayed for prayer (d) as well, compelling the Central Bank to release the money.

Mr. Avindra Rodrigo, learned President's Counsel, associates with the submissions made by Dr. Gunawansa, and he further submits that neither any of the Respondents nor the Petitioner benefits from the frozen money.

The Counsel for the 5th Respondent, Sheshan Gunawardena also associates with the submissions of Dr. Gunawansa, and informs that he will abide by any order of the Court.

Ms. Jayasekara on the other hand contended that, the investigations were over by 2007, and indictments were filed in 2009. Even after the conclusion of the High Court trial, since there is no provision to cancel **1R1**, Ms. Jayasekara moves that Court be pleased to make any suitable order.

However, in the course of her submission, she tried to distinguish a freezing order and a directive given by **1R1**. Her argument is that what is contained in **1R1** is only a directive.

Factual matrix

Now I wish to advert to the factual matrix of this case in chronological order to avoid repetition of facts, and also for easier understanding of the same before I consider the main issue.

The Petitioner is an individual who is a dual citizen of Sri Lanka and the USA. He asserts that he is the founder of a company called "Galleon International Master Fund SPC Limited" (GIMF). The said company had remitted USD 1,000,000/- (One Million Dollars) in 2006, and followed by the Petitioner who had remitted USD 2,000,000/- (Two Million Dollars) in 2007 to the account bearing No. 01112225801, which is operated by the 4th Respondent in the 5th Respondent bank for the purpose of purchasing shares in the Union Bank in the name of the Petitioner, who would be the sole beneficiary of the said shares.

The said account is a SIERA account; however, it transpired that before the remittance, no permission had been obtained by the Petitioner or any other relevant party under the Foreign Exchange Act, to remit the said amount of money. Nevertheless, the said amount of money is lying into the credit of the said account operated by the 4th Respondent who is a company secretary and an agent who, according to the Petitioner, holds the said money for and on behalf of the Petitioner.

After remitting the said money of Three Million US Dollars, the Petitioner had requested the 4th Respondent to cause the 5th Respondent to obtain permission of the Central Bank, or any other relevant authority of the Foreign Exchange Control department of the Central Bank, to permit the

4th Respondent to purchase shares of the Union Bank with the said remitted money, in the name of the Petitioner, after converting the same into Sri Lankan Rupees.

Accordingly, it is an undisputed fact that the 5th Respondent, at the request of the 4th Respondent, had written to the Exchange Controller attached to the Central Bank by the letter marked as **X2** annexed to the original Petition, requesting for the said permission.

However, in between there had been certain correspondence between the parties. Nevertheless, by letter dated 16.11.2007, the 3rd Respondent has decided to investigate into the matter since the said large amount of money had been remitted by the Petitioner without first obtaining permission of the Exchange Controller through a SIERA account. The said letter further directs the 5th Respondent not to allow or permit anybody, including the Petitioner, to transfer or remit the said money to any other account until the investigations are over.

However, after investigations, it is also an undisputed fact that certain three individuals (not the Petitioner) had been indicted before the High Court of Colombo, and the said indictment had been withdrawn without any results. Accordingly, the indicted three individuals have been discharged without any proceedings. However, it is also common ground that neither the Petitioner nor any of the Respondents to this proceedings, including the 4th and 5th Respondents, or any other related officer, has been indicted in the High Court or is wanted for any other criminal offence relating to the said money.

In the meantime, the Petitioner has persisted in his request to the 4th and 5th Respondents, to the other Respondents, namely the Central Bank Governor, and various other authorities, to release his funds for the purpose of allowing him to invest the same in other lucrative business.

Nevertheless, the 1st to 3rd Respondents have turned down the Petitioner's request on the basis that there is no law or provision enabling them to give such permission to the Petitioner, despite the fact that, they had given instructions to the 5th Respondent, directing it not to release the funds until the investigations are completed in 2007. The same letter dated 16.11.2007 is marked by the Petitioner as **X3** and by the Respondents as **1R1**. Therefore, since the requests of the Petitioner has been turned down, the Petitioner has no other option but to institute this Application to obtain *inter alia* the following reliefs;

> *"(b) Grant and issue a Writ of Certiorari quashing the decision said to have been made by the 1st Respondent and/ or the 2nd Respondent and/ or 3rd Respondent not to withdraw and/ or rescind the Directive dated 16th November 2007 thereby preventing the transfer of the said Funds lawfully belonging to the Petitioner, presently maintained in an account in the name of the 4th Respondent, in the 5th Respondent bank, to an account maintained by the Petitioner.*
>
> *(c) Grant and issue a Writ of Prohibition preventing the 1st Respondent and/or the 2nd Respondent and/ or the 3rd Respondent from acting on and/ or relying on the decision said to have been taken by them to not to withdraw and/ or rescind the Directive dated 16th November 2007, thereby preventing the transfer of the said Funds lawfully belonging to the Petitioner, presently maintained in an account in the name of the 4th Respondent, in the 5th Respondent bank, to an account maintained by the Petitioner.*
>
> *(d) Grant and issue a Writ of Mandamus compelling the 1st Respondent and/or the 2nd Respondent and/ or the 3rd Respondent to exercise the power and/ or authority vested in them under Section 9 or any other provision of the Foreign Exchange Act, No. 12 of 2017*

and issue a Directive withdrawing and/ or rescinding the aforesaid Directive dated 16th November 2007, thereby permitting the 4th Respondent to transfer the funds lying to the credit of the aforesaid Account bearing No: 02112225802, maintained in the name of the 4th Respondent, in the 5th Respondent bank, to an account maintained by the Petitioner."

It is also an undisputed fact that the 1st to 3rd Respondents have filed their respective objections and in their prayer they have informed and requested the Court to make any suitable order since they cannot release, permit nor make any order to release the said money lying into the credit account bearing No. 02112225802 of the 5th Respondent bank operated by the 4th Respondent, who holds it for and on behalf of the Petitioner.

For the purpose of further clarity, I wish to mention the reliefs of the 3rd Respondent which was sought from this Court;

"I. Dismiss the Petitioner's Petition in limine; or

II. Dismiss the Petitioner's Petition;

III. Award costs; and

IV. Grant such other and further relied as Your Lordships' Court may deem fit."

Now I will consider the contentions advanced by counsel on either side.

It is the contention of the learned State Counsel, Ms. Jayasekara for and on behalf of the 1st to 3rd and 6th Respondents, that the directions in the letter dated 16.11.2007 was given under Section 38 of the Exchange Control Act, No. 24 of 1953 (as amended). However, the same Act was repealed in 2017 and replaced by the provisions of the Foreign Exchange Act. Nevertheless, there is no transitional provision or any other provision to cater to the occasion; therefore, though the

directions were given under Section 38 of the Exchange Control Act, now, only the provisions of Section 30 of the Foreign Exchange Control Act applies.

However, Section 30 of the Foreign Exchange Act of 2017 is silent in respect of the matter in issue, particularly the directions given by the said letter **1R1** (**X3**). Therefore, having reproduced Section 30, it is her argument that the 1st to 3rd Respondents cannot give any direction regarding the said money, unless the Court gives any direction.

In addition to that, she draws parallel from Section 187 of the Security Exchange Commission Act, where provisions have been made to cater to such situations. Therefore, since there is a lacuna in the existing law, it is her argument that nothing can be done about it by the 1st to 3rd Respondents.

On the other hand, the learned President's Counsel, Dr. Gunawansa, argues that although the direction given by the said letter dated 16.11.2007 was given to freeze the money lying in the account of the 5th Respondent bank operated by the 4th Respondent, and that there is no provision in the present Foreign Exchange Act, Section 30 of the said Act gives certain clues to cater to the situation; where it is provided that the proceedings, investigations, or any other steps taken under Section 38 will have to be concluded within six months from the promulgation of the 2017 Act.

Therefore, it is contented for and on behalf of the Petitioner that since the six months has already lapsed from 2017, now the Court can give *Writ of Mandamus*, quashing the order given in **1R1** (**X3**) issued by the 2nd Respondent, compelling the Petitioner to be entitled to the said money lying in the 5th Respondent bank with interest. He further buttresses his contention by stating that since there is no other legal bar and no money forfeiture has been made, the Court can issue a *Writ of Mandamus* to release the said money.

Now I will consider those two arguments and weigh the same.

As Ms. Jayasekara argued, there is no provision in the present Foreign Exchange Act to cater to the situation. However, as ably argued by Dr. Gunawansa, whatever investigations or proceedings commenced under Section 38 of the Exchange Control Act has to be concluded within six months. Accordingly, the six months had lapsed and the investigations had taken place in 2007, due to the remittance of the money not through a SIERA account, with the permission of the Central Bank Exchange Controller Department.

However, after investigations it has been disclosed that the money has not been sent by no other person other than the Petitioner, who has sent the said money with the intention of purchasing shares in the Union Bank. Since permission was not given by the Exchange Control Authority of the Central Bank to purchase the said shares after converting the Dollars into Sri Lankan Rupees, and the freezing order by letter marked as **1R1** (**X3**), the said money is still lying. Therefore, it is my view that as provided by Section 30 of the Foreign Exchange Act of 2017, all investigations should be concluded by the lapse of six months.

Unreasonableness of the Freezing Order

The Petitioner urges that this Court should also follow the same test of reasonableness enunciated and proposed by His Lordship Justice Obeyesekere in the case of *Colonel U.R. Abeyratne v. Lt. General N.U.M.M.W. Senanayake and Others*[1].

His Lordship Justice Obeyesekere was not inclined to follow the test of reasonableness set out in the *Wednesbury* case[2] as its standard is very high. Additionally, His Lordship declined to follow

[1] (2020) CA (Writ) Application No: 239/2017 [CA Minutes 07.02.2020]
[2] *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223.

the *GCHQ* case[3]; however, His Lordship was inclined to following the rules in the case of *Tameside*[4];

> *"The above reasoning can thus be summarized as follows:*
>
> *(a) The threshold for judicial intervention set by Wednesbury is extremely high. The threshold in GCHQ, being intrinsically linked to Wednesbury has a similarly high threshold;*
>
> *(b) The test laid down in Tameside appears to be more realistic, and balanced, as it acknowledges conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt, as being unreasonable;*
>
> *(c) It is the duty of Courts to consider whether a decision is reasonable in the light of the facts and circumstances of each case.*
>
> *This Court is of the view that Courts must take a more realistic approach in fulfilling its function of probing the quality of decisions and ensuring that assertions made by public authorities are properly substantiated and justified."*[5]

As far as reasonableness is concerned on the part of the 1st to 3rd Respondents, it is my view that the Issuing Authority of the said freezing order by document marked as **1R1** (**X3**) dated 16.11.2007 in terms of Section 38 of the Exchange Control Act; however, the said Act was replaced by the Foreign Exchange Act, No. 12 of 2017. Corresponding provisions are contained in Section 30 of the same; however, it does not provide for the Respondents to release or lift the said freezing order.

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[3] *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374.
[4] *Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside* [1977] AC 1014.
[5] *Colonel U.R. Abeyratne v. Lt. General N.U.M.M.W. Senanayake and Others* [2020]

Nevertheless, if the freezing order is not lifted, the money will remain lying into the credit of the account operated by the 4th Respondent in the 5th Respondent bank without being utilised, and no one can do anything about it. It is an admittedly undisputed fact that the money is held by the 4th Respondent for and on behalf of the Petitioner who is the person who had sent the money; therefore, he is entitled to the same.

Thus, if the 1st to 3rd Respondents do not act reasonably in that behalf, the Court, on the Application of the Petitioner, can issue an order in the nature of a *Writ of Certiorari*, quashing the order contained in **1R1(X3)**, and a *Writ of Mandamus*, compelling the 1st to 3rd Respondents to lift the said freezing order and release the money.

Interpretation of Statutory provisions

Section 30 of the Foreign Exchange Act, No. 12 of 2017 reads as thus;

> *"30. (1) The Exchange Control Act (Chapter 423) is hereby repealed.*
>
> *(2) Notwithstanding the repeal of the aforesaid Act-*
>
> > *(a) all suits, actions and proceedings instituted under the repealed Act and pending on the day immediately prior to the appointed date, shall, with effect from the appointed date, be deemed to be suits, actions and proceedings instituted under the repealed Act and be heard and concluded under that Act; and*
> >
> > *(b)* ***all investigations and inquiries instituted under the repealed Act and pending on the day immediately prior to the appointed date, shall, with effect from the appointed date, be deemed to be investigations and inquiries instituted under the***

repealed Act and shall be concluded under that Act within a period of six months from the appointed date."[6] (Empasis is mine)

In interpreting the above-mentioned section, interpretation must be given on the plain reading of the said provision. Therefore, I follow the literal rule of interpretation as further explained by N.S. Bindra in his book "Interpretation of Statutes" (2017), which reads as thus;

"Literal Rule of Interpretation

The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The legislature must be deemed to have intended what it has said. It is no part of the duty of the court to presume that the legislature meant something other than what it said. If the words of the section are plain and unambiguous, then there is no question of interpretation or construction. The duty of the court then is to implement those provisions with no hesitation. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning, and it is only when such words are capable of two constructions, that the question of giving effect to the policy or object of the Act can legitimately arise."[7]

[6] Section 30 of the Foreign Exchange Act, No. 12 of 2017
[7] N S Bindra, *Interpretation of Statutes* (12th Edn., LexisNexis 2017) 317.

Accordingly, although the Issuing Authority of the said freezing order is not empowered to do anything, the Court can still give directions, first to quash the said freezing order that should have ended six months after the promulgation of the Foreign Exchange Act, No. 12 of 2017, and now since the money remains unutilised and no one has claimed it other than the Petitioner, it is my view that a *Writ of Mandamus* should be issued to release the said money to the Petitioner with the interest thereof.

Conclusion

For the reasons adumbrated above, I grant the reliefs as prayed for in prayers (b), (c), (d) of the Petition.

JUDGE OF THE COURT OF APPEAL