

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. Nos.1625 & 1626 of 2014 and M.P. Nos.1 and 1 of 2014

Dr. V.M. Ganesan ... Appellant in WA No.1625/2014

Dr. G. Thirumal ... Appellant in WA No.1626/2014

vs.

1. The Joint Director
Directorate of Enforcement
(Prevention of Money Laundering Act & FEMA)
Government of India
Ministry of Finance
Department of Revenue
Shastri Bhavan, III Floor
No.26, Haddows Road
Chennai 600 006
2. The Inspector of Police
District Crime Branch
Dharmapuri ... Respondents in WA No.1625/2014
1. The Registrar/Administrative Officer
The Adjudicating Authority,
Prevention of Money Laundering Act (PMLA)
Room No.26, IV Floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001

2. The Joint Director
Directorate of Enforcement
Government of India
III Floor, III Block, Shastri Bhavan
No.26, Haddows Road, Chennai 600 006

... Respondents in WA No.1626/2014

Writ Appeals preferred under Clause 15 of the Letters Patent as against the order dated 17.11.2014 passed in W.P. Nos. 24432 and 28235 of 2014 respectively.

W.P. Nos. 24432 and 28235 of 2014:

Petitions filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records(1) pertaining to the impugned order passed by the first respondent dated 18.08.2014, made in file No.ECIR/CEZO/12/2013 and quash the same.

(2)pertaining to the Provisional Attachment Order in PAO No.12/2014 in File No.ECIR/CEZO/12/2013 dated 18.08.2014 on the file of the second respondent and the consequential notice in OC.No.355/2014 dated 15.09.2014 on the file of the first respondent and quash the same as illegal, incompetent and for consequential orders.

For appellant in
W.A. No.1625 of 2014 : Mr. V. Raghavachari

For appellant in : Mr. A. Ramesh, Sr. Counsel
W.A. No.1626 of 2014 for Mr. R. Jayaprakash

For R1 in WA No.1625 : Mr. Dhandapani
of 2014 and R2 in
WA No.1626/2014

For R2 in WA No. : Mr. P.S. Sivashanmugasundaram
1625/2014 Special Government Pleader

For R1 in
WA No.1626 of 2014 : No appearance

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COMMON JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeals arise from the order dated 17.11.2014 passed in W.P.Nos.24432 and 28235 of 2014.

2. Questioning the legality and validity of the order dated 18.08.2014 passed by the Joint Director, Directorate of Enforcement under Section 5 (1) of the Prevention of Money Laundering Act, 2002 (For short "the PMLA Act"), wherein the immovable properties of Dr.V.M.Ganesan, as scheduled in paragraph 6 of the order, were directed to be provisionally attached for a period of 180 days to the effect that the said properties shall not be transferred, disposed, removed, parted with or otherwise deal with, until or unless specifically permitted to do so, Dr.V.M.Ganesan has come up with W.P.No.24432 of 2014.

3. Against the same order, Mr.G.Thirumal has come up with another W.P.No.28235 of 2014, questioning the said order as well as the show cause notice dated 15.9.2014 issued by the Adjudicating Authority under the PMLA Act, calling upon him to appear before the Adjudicating Authority in person or through an Advocate / authorised representative duly instructed, on 10.11.2014.

4. The learned Single Judge, after having examined all facts of the case and also hearing the learned counsel appearing for parties, came to the conclusion that the provisional order of attachment was legal and valid. With regard to the second question in respect of factual dispute, it was held that the adjudicating authority is competent to consider the same and pass order after dealing with the same property. Thereagainst, the instant appeals have been preferred.

5. During the pendency of the appeals, the Adjudicating Authority, after issuance of the show cause notice, passed the final order on 12.2.2015, holding the prima facie conclusion that the defendant, namely, the petitioners have committed the scheduled offences, generated proceeds of crime and laundered them. It was also held that no doubt the properties attached are proceeds of crime or value thereof and are involved in money laundering.

6. The learned counsel appearing for the writ petitioners / appellants expresses the intention of the appellants herein that the appellants would prefer to question the legality and validity of the said order before the appropriate forum. It is further submitted that

the appellants be permitted to raise all issues available and permissible under the provisions of law.

7. The life of provisional attachment order was 180 days, which had come to an end after the order has been passed by the adjudicating authority. Thus, we are not inclined to go into the question of legality and validity of the provisional attachment order and also further to examine the impugned order passed by the learned Single Judge. However, in the facts of the case, we keep it open to be considered by the appropriate authority at an appropriate stage. We further grant liberty to the appellants to raise all issues permissible under the provisions of law before the appropriate forum, if so advised. The appropriate forum is competent to deal with the matter independently on its own merit, without being influenced by some observations made, if any, in the order dated 17.11.2014 passed by the learned Single Judge.

8. With the aforestated observations, as the issues have become infructuous at this stage, we dispose of both writ appeals. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

vvk/cad

To

1. The Joint Director
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(Prevention of Money Laundering Act & FEMA)
Government of India
Ministry of Finance
Department of Revenue
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3. The Registrar/Administrative Officer
The Adjudicating Authority,
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Room No.26, IV Floor
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Parliament Street
New Delhi 110 001

+1cc to Mr.V.Raghvachari, Advocate, S.R.No.11206
+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.11205
+1cc to the Government Pleader, S.R.No.11655

W.A. Nos.1625 and 1626 of 2014

NM(CO)
CA(06/05/2015)



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