IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-4-2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.11478 of 2015
and
M.P.Nos.1 and 2 of 2015

N.Devaraj .. Petitioner

vs

1.The Joint Director
Directorate of Enforcement
(The Prevention of Money Laundering Act, 2002)
Government of India
Ministry of Finance
Department of Revenue
III Floor, III Block, Shastri Bhawan
No.26, Haddows Road
Chennai 600 006
2.The Deputy Director
Office of the Joint Director
Enforcement Directorate
Chennai Zonal Office
II & III Floor, Murugesa Naicker Complex
No.84, Greams Road
Chennai 600 006. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the Eviction Notice issued by the 2nd respondent in F.No.ECIR No.09 of 2013 dated 26.2.2015, and quashing the same.

For Petitioner : Mr.Prakash Goklaney

For Respondents : Mr.M.Dhandapani

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The first respondent had filed an Original Complaint under Section 5(5) of the Prevention of Money-Laundering Act, 2002 (in short, Money-Laundering Act) against Tvl. S.Muralidharan, R.Chandrasekaran, S.Kumar @ Vijayakumar, N.Devaraj @ N.Devarajan (petitioner herein), V.J.Vijayakumar, S.Elumalai, S.Ravi, R.Punithavathi, D.Senthil, D.Kalaiselvam, M.Usha, Adam Khan @ Aatham Khan, R.Jayanthi, V.J.Sasikala, R.Usha, N.Hema @ Hemamalini, D.Radha, E.Bhuvana, M.Haridoss, M.Gajalakshmi, H.Vijaya Baskar, the Legal Heris of K.Shanmugam and the Branch Manager of Syndicate Bank, Housing Finance Branch, Mylapore, Chennai, and on the basis of the materials placed before the said Complainant, a reasonable belief was recorded and a Provisional Attachment Order No.13/2014 dated 5.9.2014, came to be passed, attaching the eight immovable properties for a period of 180 days.

3.After adjudication, the Adjudicating Authority, New Delhi, constituted under The Prevention of Money-Laundering Act, 2002, has arrived at a prima facie conclusion that the above said persons have committed the Scheduled Offences, generated proceeds of crime and laundered them and further, that the properties attached, are proceeds of crime or value thereof, and are involved in money laundering and by citing the said reasons, the said Authority has confirmed the Provisional Attachment Order and also indicated that the order shall continue during the pendency of the proceedings relating to any offence under the Money-Laundering Act before the Court or under the corresponding law of any other country, before the competent Court of criminal jurisdiction outside India, as the case may be, and become final, after an order of confiscation is passed under Sub-Section (5) to Sub-Section (7) of Section 8 or Section 58 B or Sub-Section 2A or Section 60.

4.The above said private persons, aggrieved by the order dated 7.1.2015, passed by the Adjudicating Authority, filed an appeal under Section 26 of the Money-Laundering Act on 22.2.2015. According to the learned Counsel appearing for the petitioner, the provisions of The Prevention of Money-Laundering (Appeal) Rules, 2005, have been complied with in full.

5.The second respondent herein has issued the impugned notice dated 26.2.2015, stating that the Provisional Order of Attachment was subsequently confirmed by the Adjudicating Authority and in compliance of Section 8(4) of the Money-Laundering Act, he will take possession of the above said property, which shall be at the disposal of the Directorate of Enforcement until further orders and therefore, called upon the petitioner herein and other resident of No.43, Village Street, Thiruvottiyur, Chennai 600 019, to hand over possession of the property to him. The petitioner herein, who received the said notice, has filed the present writ petition challenging legality of the same.

6.The learned Counsel appearing for the petitioner, would contend that challenging the order dated 7.1.2015, passed by the Adjudicating Authority, confirming the Provisional Attachment Order, a statutory appeal has been preferred under Section 26 of the Money-Laundering Act before the Appellate Authority constituted under the said Act, and necessary fees have also been paid and till the appeal is taken up for hearing, further proceedings pursuant to the impugned notice dated 26.2.2015, issued by the second respondent, may be stayed.

7.Per contra, Mr.M.Dhandapani, learned Counsel, who accepted notice on behalf of the respondents, has invited the attention of this Court to Section 8(4) of the Money-Laundering Act and would submit that where the provisional order of attachment made under Section 5(1), has been confirmed under Sub-Section (3), the Director or any other officer authorised by him in this behalf, shall forthwith take possession of the attached property and in exercise of the said power only, the impugned notice came to be issued by the second respondent and would further submit that it is for the petitioner to move the appeal and get appropriate orders.

8.This Court has carefully considered the submissions made by both the learned Counsel and also perused the materials placed before it in the form of typed-set of documents.

9.It is the submission of the learned Counsel appearing for the petitioner, that challenging the legality of the order of confirmation of the Provisional Attachment Order dated 7.1.2015, passed by the Adjudicating Authority, the statutory appeal under Section 26 of the Money-Laundering Act, has been filed on 22.2.2015, and the appeal papers are perfectly in order and he may need some time to either move the appeal, or file an application for stay of the order dated 7.1.2015, passed by the Adjudicating Authority.

10.Be that as it may, the fact remains, challenging the confirmation of Provisional Order of Attachment, the statutory appeal has been preferred by the petitioner and other persons. The impugned notice has been served only on the petitioner and not on any other resident residing in No.43, Village Street, Thiruvottiyur, Chennai 600 019, and even the name of “any other resident” has not been given in the said notice.

11.Chapter VI of the Money-Laundering Act deals with Appellate Tribunal and Section 26 provides for appeal to such Tribunal. A perusal of the same would disclose that though there is no specific provision for moving an application for stay, in the considered opinion of the Court, the Statutory Appellate Authority is having an inherent power to decide the application for stay pending disposal of the appeal, also, or he can take the appeal itself and dispose of the same finally, within six months from the date of filing of the appeal, in terms of Sub-Section (6) of Section 26 of the said Act.

12.In the result, the writ petition is disposed of and the petitioner and other appellants are at liberty to move the appeal filed by them before the Appellate Authority, for hearing and disposal, or in the alternative, move an application for stay pending disposal of the appeal, within a period of four weeks from the date of receipt of a copy of this order and till such time, the second respondent shall defer the proceedings of the impugned notice dated

26.2.2015. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsv
To:
1.The Joint Director
Directorate of Enforcement
(The Prevention of Money Laundering Act, 2002)
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Ministry of Finance
Department of Revenue
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Chennai 600 006.

1 cc to Mr.M.Dhandapani ,Advocate, SR.No.21730
4 cc to Mr.Prakash Goklaney ,Advocate, SR.No.21721 & 21400

W.P.No.11478 of 2015

mp(co)
pmk.27.4.2015