IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.28348 OF 2014
AND M.P.NO.1 OF 2014

1. S.R.Annamalai
2. A.Babu .. Petitioners

Vs

The Deputy Director,
Directorate of Enforcement
(Prevention of Money Laundering Act),
Government of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondent herein to take effective and remedial steps to exclude the first petitioner's property comprised in Survey No.1167/2A (Old S.No.1167/2) measuring an extent of Acres 0.30 cents, through a Sale Deed dated 15.10.2007 registered as Document No.11276 of 2007 on the file of the Sub-Registrar, Thiruvottiyur, Chennai, from the purview of the provisions of Prevention of Money Laundering Act, 2002.

For Petitioners : Mr.M.S.Ramesh

For Respondents : Mr.M.Dhandapani
Central Govt. Standing Counsel



O R D E R

Heard Mr.M.S.Ramesh, learned counsel appearing for the petitioner and Mr.M.Dhandapani, learned Central Government Standing Counsel appearing for the respondent/Department.

2.The petitioner has filed this writ petition praying for issuance of writ of Mandamus to direct the respondents to take effective steps to exclude the first petitioner's property comprised in Survey No.1167/2A (Old S.No.1167/2) which is said to have been purchased by the sale deed dated 15.10.2007 registered as document No.11276 of 2007 on the file of Sub Registrar, Thiruvottiyur, from the purview of the provisions of the Prevention of Money Laundering Act, 2002 (Central Act 15 of 2003) (hereinafter referred to as "the Act").

3. A complaint has been given to the Joint Director, Directorate of Enforcement, under the provisions of the Act against one Mrs.M.Saraswathi and one R.Devadoss and after following due procedure, the complaint has been taken on file in O.C.No.73 of 2010 before the adjudicating authority. The order of provisional attachment was passed and after notice to the parties, the matter was taken up for confirmation of the provisional attachment. It is stated that it came to the notice to the adjudicating authority that out of 51 properties, 8 properties were identified to have been sold by Smt.M.Saraswathi prior to the order of provisional attachment. The list of 8 properties find place in paragraph 9 of the order passed by the adjudicating authority dated 13.08.2012. From paragraph 10 of the said order, it is seen that written submissions were made stating that certain items of properties, namely, properties bearing Sl.Nos.2, 13, 27, 28, 29, 30, 41 and 51 in the list of attached properties in paragraph 10(x) of the complaint were disposed of prior to the order of attachment. Therefore, the adjudicating authority gave time to the complainant to verify the correctness of the said statement. In response, the Deputy Director of Enforcement filed a fresh written submission on 08.08.2012 and submitted that the order of provisional attachment of 44 immovable properties may be confirmed and liberty may be granted to them to re-investigate the transaction in respect of the properties mentioned in Sl.Nos.2, 13, 27, 28, 29, 41 and 51 of the table at paragraph 10(x) of the complaint dated 18.11.2010.

4. The grievance of the petitioners is that they were not heard by the adjudicating authority either at the initial stage or while passing the order of confirmation dated 13.08.2012. It is the further case of the petitioners that the properties were purchased by them much prior to the order of attachment from M.Saraswathi and therefore, the petitioners would pray for a similar treatment be meted out to them as that of those cases.

5. The learned counsel for the respondent Department, by referring to Section 8 of the Act, brought to the notice of this Court that the process which has to be adopted by the adjudicating authority in the matter and it is further pointed out that any person aggrieved by the order passed by the adjudicating authority is entitled to file an appeal before the Appellate Tribunal under Section 26 of the Act. Therefore, it is submitted that even though

the petitioner was not heard in the proceedings, the petitioner is at liberty to move the Appellate Tribunal.

6. Section 8 of the Act deals with the adjudication proceedings and for the purpose of this, it would be relevant to note the proviso under sub-section (2) to Section 8 which provides that if the property is claimed by a person, other than a person to whom notice had been issued, such person shall also to given an opportunity of being heard to prove that the property is not involved in the money laundering. Therefore, a person, who claims the property, but who was not heard by the adjudicating authority, is also required to be heard, if it is claimed by him that the property is not involved in money laundering. The case on hand is one such case. At the stage when the preliminary order was passed, they have not been heard. It appears that no notice was given to them. Therefore, in my view, the petitioners need not exhaust the appellate authority available under the Act, since they have not been given an opportunity to place the materials before the adjudicating authority, who is the fact finding authority. Therefore, this Court is of the view that an opportunity should be granted to the petitioners to approach the adjudicating authority to put forward their submissions.

7. Accordingly, this writ petition is disposed of granting liberty to the petitioners to file an appropriate application before the adjudicating authority under the Act along with a copy of this order setting out all the facts including the averments made in support of their claim. On receipt of the said application, the adjudicating authority shall issue notice to the parties in O.C.No.73 of 2010 calling for response from them and thereafter, to proceed with the matter in accordance with law.

8. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.



Sd/-
Asst.Registrar (Lok adalat)



/true copy/

Sub Asst. Registrar

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To

The Deputy Director,
Directorate of Enforcement
(Prevention of Money Laundering Act),
Government of India,
Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

W.P.NO.28348 OF 2014

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