

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 02nd September, 2015**

+ W.P.(C) 8266/2015

FARIDA BEGUM BISWAS

..... Petitioner

Through: Mr. Farook M. Razack, Sr. Advocate
with Mr. Faisal Farook and Mr.
Shubail Farook, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC,
Mr. Raj Kumar Dahiya and Mr. T.P.
Singh, Advocates for R-1 to R-3.

+ W.P.(C) 8359/2015

BARIK BISWAS

..... Petitioner

Through: Mr. Gopal Subramaniam, Sr.
Advocate with Mr. Faisal Farook and
Mr. Shubail Farook, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC,
Mr. Raj Kumar Dahiya and Mr. T.P.
Singh, Advocates for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

C.M. Appl. No.17415/2015 in W.P. (C) No.8266/2015

C.M. Appl. No.17724/2015 in W.P. (C) No.8359/2015

Exemption is allowed subject to all just exceptions.

The applications stand disposed of.

W.P.(C) No.8266/2015 & W.P.(C) No.8359/2015

1. By way of present petitions under Article 226 of the Constitution of India the petitioners seek quashing of show cause notice dated 19.06.2015 in O.C. No. 501/2015 under Section 8 of the Prevention of Money Laundering Act, 2002 (for short “PMLA”) issued by respondent No.3 and the provisional attachment order bearing F.No. KLZO/03/2015/AD(AKS)/NKM/3742 dated 21.05.2015 under Section 5 of the PMLA issued by the respondent No.2.

2. Since both these petitions have arisen out of the same show cause notice and involves common question of law therefore, both the petitions are taken up together.

3. The facts as borne out from W.P.(C) No. 8266/2015 are that on 08.03.2014, officers of Directorate of Revenue Intelligence (for short “DRI”), Kolkata intercepted one Toyota Fortuner Car on Taki road, near Beliaghata Bill, North 24 Parganas. At the time of interception the petitioner’s husband (petitioner in 8359/2015) was present in that car and the same was being driven by Mr. Mokesed Mondal. A total 44.659 Kgs of Gold of foreign origin (containing 12 pcs. of gold Bars and 280 pcs. of Gold Biscuits) valued at 13.56 crores was recovered and seized by the officers of DRI. A show cause notice under Section 124 of the Customs Act, 1962 was issued to the petitioner’s husband and to Mr. Moksed Mandal. Thereafter, a case under the PMLA was initiated against the petitioner’s husband and the same is now pending before the learned Chief Judge City Sessions Court and Special Court under PMLA. On 21.05.2015 the petitioner received a provisional attachment order, in terms of which,

she was informed that various movable and immovable properties attributed to her and her family members have been provisionally attached by the respondent No.2 under Section 5 of the PMLA. Thereafter, on 19.06.2015, a notice to show cause was issued by the respondent No.3 under Section 8 of the PMLA to the petitioner herein amongst others.

4. Learned senior counsel for the petitioner submits that the impugned notice to show cause dated 19.06.2015 issued by respondent No.3 under Section 8 of the PMLA and the impugned Provisional Attachment Order dated 21.05.2015 issued by the respondent No.2 under Section 5(1) of the PMLA are illegal, arbitrary and malafide and have been issued without following the procedure established under the PMLA, and as such, the same are violative of petitioner's rights as guaranteed under Article 21 of the Constitution of India. He further submits that the notice to show cause dated 19.06.2015 has been issued without there being any "reason to believe" that (i) the person concerned has committed an offence under Section 3 i.e., offence of money-laundering, or (ii) the person concerned is in possession of proceeds of crime. The aforesaid two pre-conditions, which are mandatory in nature for issuance of a notice under section 8 of the PMLA, are conspicuous by their absence in the instant case, and as such, the resultant notice impugned herein is liable to be set aside by this Court. He also submits that the order dated 21.05.2015 and the notice to show cause dated 19.06.2015 impugned herein have been issued in great haste without application of mind by the makers of the same and are premature.

5. Before examining the merits of the case it is necessary to consider relevant provisions of the PMLA. The term 'proceeds of crime' has been

defined in Sub-section u) of Section 2 (1) of the PMLA, which reads as under: -

“(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country];

Section 3 – Offence of money-laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

Section 5 - Attachment of property involved in money-laundering

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973(2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.].

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.--For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all

persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Section 8. Adjudication.-

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime] it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized [or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after-

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall--

(a) continue during the pendency of the proceedings relating to any [offence under this Act before a 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]

[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the [Special Court];]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section

(1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.].

[(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.]

[(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions

and is not involved in the offence of money laundering.]

Section 26. Appeals to Appellate Tribunal.-

(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any [reporting entity] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.”

6. Prevention of Money Laundering Act was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. On a plain reading of the aforementioned sections, it is clear that under Section 2 (u) of PMLA any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence is proceeds of crime.

7. Section 3 of PMLA, prescribes the offence of money laundering and its punishment is prescribed under Section 4 of PMLA. To attract the provisions of Section 3 of PMLA, it is necessary that the person is indulged in proceeds of crime. Further, in terms of Section 5 of PMLA where the Director or any other officer not below the rank of Deputy Director authorised by the Director, has reason to believe, on the basis of material in his possession that any person is in possession of proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner, he may provisionally attach such proceeds of crime based on the said material reasons to believe that are to be given in writing. After every order of such attachment the Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under subsection (1), forward a copy of the order, along with the material in his possession, to the adjudicating authority. The provisional attachment under Section 5(1) of PMLA is only a cautious and tentative step and only becomes effective after an order is passed by the adjudicating authority under Section 8 of PMLA.

8. In terms of Section 8 of the PMLA, the Adjudicating Authority independently considers the issue of such attachment and if it has reason to believe that the person is in possession of proceeds of crime, he shall issue show cause notice to such person. The accused is entitled to explain the sources of income, earning or assets, out of which or by means of which he has acquired the property, lead evidence and furnish any other information in his possession to justify the legitimate means of acquiring the properties in dispute. It is only after taking all the submissions of the accused and documents brought on record to establish the sources of his property so attached that the adjudicating authority takes a final decision on the same.

9. Any person aggrieved by an order made by the Adjudicating Authority under Section 8 of PMLA can avail the remedy of appeal under Section 26 of PMLA to the Appellate Tribunal, whereby again the accused person is given an ample amount of opportunity of being heard, before any orders are passed. It is only when a person is aggrieved by the decision or order of the Appellate Tribunal that he may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him. The remedy of appeal under Section 42 of PMLA is in the nature of second appeal.

10. Further, it is a settled law that a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same *inter alia* appears to have been without jurisdiction as has been held by the Supreme Court in '**State of Uttar Pradesh v. Brahm Datt Sharma and Anr.**', (1987) 2 SCR 444. While the jurisdiction of this Court to entertain the petitions cannot be, and is not,

barred, it depends upon the discretion of this Court, while exercising jurisdiction under Article 226 of the Constitution of India, to grant or refuse the relief sought for. It is subject to certain restrictions which the High Court must impose on itself as a measure of self-discipline. The expression "for any other purpose" in Article 226 makes the jurisdiction of the High Courts more extensive, but yet its exercise is with certain restraints and within certain parameters. The High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The very amplitude of the jurisdiction exercised under Article 226 of the Constitution of India demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, and is not to be issued as a matter of course.

11. In the instant case, the petitioners have received show cause notice dated 19.06.2015 under Section 8 of the PMLA in O.C. No. 501/2015 and the provisional attachment order dated 21.05.2015 under Section 5 of the PMLA issued by the respondent No.2. The action of coming to this Court is premature and therefore, this Court is of the view that since the petitioners have effective and efficacious remedy under PMLA, necessitating institution of the petition by invoking extraordinary jurisdiction of this Court is not appropriate at this stage. If this Court were to enter into the merits of this case at this stage, it would amount to scuttling the statutorily engrafted mechanism i.e. PMLA.

12. In view of the aforesaid discussion, I am not inclined to entertain the present petitions and the same are hereby dismissed.

C.M. Appl. No.17414/2015 in W.P. (C) No.8266/2015
C.M. Appl. No.17723/2015 in W.P. (C) No.8359/2015

The applications are dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

SEPTEMBER 02, 2015

hs