IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09-02-2016

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THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 41033 to 41035 of 2015
&
M.P.No.1&2 of 2015 (6.Nos)

S. Kumar @ Vijayakumar .. Petitioner in WP 41033/2015

S. Ravi .. Petitioner in WP 41034/2015

N. Devarajan .. Petitioner in WP 41035/2015

Versus

1. Enforcement Directorate
   rep. by its Joint Director
   of Enforcement
   (Prevention of Money Laundering
   Act 2002) 3rd Floor, 3rd Block
   Shastri Bhavan
   No.26, Haddows Road
   Chennai - 600 006

2. Deputy Director
   O/o. Joint Director
   Chennai Zonal Office
   2nd and 3rd Floor, 'C' Block
   Murugesa Naicker Complex
   No.84, Greams Road
   Thousand Lights
   Chennai - 600 006

3. The Adjudicating Authority
   Prevention of Money Laundering
   Room No.25, 4th Floor
   Jeevan Deep Building
   Parliament Street
   New Delhi - 110 001

4. The Appellate Tribunal (PMLA)
   4th Floor, Loknayak Bhavan
   Khan Market
   New Delhi .. Respondents/in all WPs.

Petitions filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the impugned order in F.No. ECIR /09/2013 dated 16.12.2015 issued by the second respondent and quash the same.

For Petitioners:Mr. P. Kumaresan
in all the Writ Petitions

For Respondent :Ms. G. Hema
Central Government Standing Counsel
in all the Writ Petitions

COMMON ORDER

The issue involved in all these writ petitions arise out of one and the same proceedings. The respondents in all these writ petitions are one and the same. The counsel appearing for both sides have advanced common arguments in support of their respective contentions. Therefore, the writ petitions are taken up for hearing jointly and are disposed of by this common order.

2. The petitioners have filed these writ petitions aggrieved by the notices dated 16.12.2015 issued by the second respondent by which the second respondent has given an ultimatum to the petitioners to handover the vacant possession of the properties owned by them, which are morefully covered in the adjudication proceedings initiated against them, on the strength of a provisional order of attachment passed by the competent authority.

3. The background facts which led to the institution of these writ petitions are as follows:- On the basis of a complaint registered in Original Complaint No. 359 of 2014 against the petitioners, a case was registered by the Central Bureau of Investigation and after conclusion of the investigation, a charge sheet was filed. Thereafter, the first respondent has passed a provisional order of attachment of the properties of the respective petitioners as contemplated under Section 5 (1) of Prevention of Money Laundering Act, 2002 (Act 15 of 2003) vide provisional attachment order No.13 of 2014 dated 05.09.2014. Aggrieved by the same, the petitioners have filed an appeal before the third respondent. The third respondent, by an order dated 07.01.2015, rejected the appeal filed by the petitioners. The petitioners have preferred a further appeal before the fourth respondent on legal and factual grounds. According to the petitioners, the fourth respondent did not adjudicate the appeal on merits, but dismissed it on 28.07.2015 on the sole ground that a single appeal is not maintainable in relation to all the properties. In other words, according to the fourth respondent, separate appeals have to be filed in relation to each and every one of the properties attached by the enforcement authorities. Challenging the order dated 28.07.2015 of the fourth respondent, the petitioners have filed WP No. 37626 of 2015 and it is pending before this Court. When the writ petition is pending, the second respondent has issued the impugned notice calling upon the petitioners to vacate the occupants occupying the respective properties in question so as to enable them to take possession of the same and to dispose of the properties in auction sale. Aggrieved by the impugned notices dated

16.12.2015, the petitioners have filed the present writ petitions.

4. The learned counsel appearing for the petitioners would contend that the impugned notices issued by the second respondent is unwarranted inasmuch as the adjudication proceedings has not reached finality and it is pending in the form of writ petition before this Court. Further, the fourth respondent has not adjudicated the appeal on merits, but simply rejected it on the ground that a single appeal in relation to all the properties attached by the enforcement officials is not maintainable. Therefore, according to the learned counsel for the petitioners, the second respondent has issued the impugned notices in haste without waiting for the conclusion of the adjudication proceedings. On that ground, the learned counsel for the petitioners prayed this Court to allow these writ petitions.

5. Per contra, the learned Standing counsel for the respondents would contend that the criminal proceedings came to be launched against the petitioners and others at the instance of Syndicate Bank. The charge against the petitioners is that they have entered into a criminal conspiracy, colluded together and misused their official position to grant housing loans to ineligible persons. According to the complainant-Bank, the housing loan has been granted in favour of ineligible borrowers and such borrowers, in collusion with the petitioners and others, have mis-utilised the amount for their personal benefits thereby causing huge loss to the bank. After conducting a thorough enquiry, in order to recover the loan amount, the various properties purchased by the petitioners and others out of the misappropriated amount were attached by the enforcement directorate to realise the amount. After complying with due process of law, a provisional order of attachment was made and it was confirmed by the adjudicating authority. Therefore, the enforcement officials are entitled to take possession of the properties covered under the adjudication order. Even in the writ petition No. 37626 of 2015, this Court has not granted any interim stay and therefore, there is no embargo for the enforcement directorate to take possession of the properties. Therefore, according to the learned standing counsel for the respondents, the second respondent is justified in issuing the notices, which are impugned in this writ petition. As regards the order passed by the appellate authority, the appellate authority is wholly justified in dismissing the appeal when a single appeal was preferred by 20 appellants in relation to various properties attached by the enforcement directorate. The learned standing counsel for the respondents therefore would submit that the impugned notices are legally sustainable and she prayed for dismissal of the writ petitions.

6. I heard the counsel for both sides and perused the materials on record. It is seen from the order dated 28.07.2015 of the appellate authority that the appellate authority has not adjudicated the appeal on merits. Even

during the course of arguments in the appeal, a plea was raised on behalf of the appellants to afford them an opportunity to cure the defects by taking necessary steps, but the appellate authority refused to entertain such a plea. The petitioners have therefore filed WP No. 37626 of 2015 before this Court challenging the order dated 28.07.2015 of the fourth respondent and it is pending. Pending WP No. 37626 of 2015, the second respondent has issued the impugned notices. As rightly pointed out by the learned counsel for the petitioners, the adjudication proceedings initiated against the petitioners has not concluded and it is yet to reach a finality. However, I am not inclined to go in to the correctness or otherwise of the order dated 28.07.2015 passed by the appellate authority inasmuch as it is the subject matter of challenge in WP No. 37626 of 2015 filed by the petitioners before this Court and the said writ petition is pending. In such circumstancess, the second respondent ought to have waited for the outcome of WP No. 37626 of 2015 instead of issuing the impugned notices calling upon the petitioners to handover the vacant possession of the property. It is also seen from the records that when the above writ petitions were taken up for admission on 29.12.2015, this Court granted an order of status-quo and it was subsequently extended on 25.01.2016. In such circumstances, I am of the view that instead of setting aside the notices, which are impugned in these writ petitions, a direction can be issued to the second respondent to keep the impugned notices in abeyance and it shall be given effect to subject to the outcome of WP No. 37626 of 2015 filed before this Court.

7. With the above observation, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Director of Enforcement,
Enforcement Directorate
(Prevention of Money Laundering Act 2002)
3rd Floor, 3rd Block
Shastri Bhavan
No.26, Haddows Road
Chennai - 600 006

2. The Deputy Director
O/o. Joint Director
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New Delhi

+ 1 cc to M/s. P. Kumaresan, Advocate SR.8441

WP Nos. 41033 to 41035/2015

MP(CO)
Eu 26.02.16