THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.38504 OF 2016

ORDER:

This writ petition is filed seeking to issue a writ, order or direction, more particularly, one in the nature of writ of mandamus to declare the action of the respondent in issuing provisional attachment order No.03/2016, dated 30.6.2016, attaching the properties of the petitioner herein specified in para No.11 provisionally for a period of 180 days as illegal and arbitrary and consequently, to set aside the attachment order, dated 30.6.2016, issued by the respondent.

2. Case of the petitioner is that she is a housewife and an illiterate and belongs to Scheduled Caste. Her husband purchased Ac.0.10 guntas of agricultural land in Sy.No.223/2A1 for Rs.30,000/- on 6.7.1993 from one Kanthamma with his retirement benefits and since then, they are in peaceful possession and enjoyment of the same without any complaint from anybody. Her son – K.Gunasagar was appointed as Probationary Officer (Direct Recruitment) on 6.3.1995 and joined in the Indian Bank, Kuppam Branch as Assistant Branch Manager in the month of July, 2012 and worked there till 2014. One V.Sridharan, Branch Manager lodged a report on 5.5.2014 raising allegations about misappropriation of funds in different staff accounts to a tune of Rs.2.23 crores and credited the proceeds to his son's savings bank account and siphoned off the funds. Basing on the said report, police, Kuppam registered Crime No.56 of 2014 on 5.5.2014 for the offences punishable under Sections 403, 408, 409, 417 and

420 I.P.C. and his son was remanded to judicial custody and subsequently, released on bail. The said crime is pending for adjudication. While so, on 10.2.2016, she was issued summons for appearance before the Assistant Director, Directorate of Enforcement on 25.2.2016 in connection with the investigation under the provisions of the Prevention of Money Laundering Act, 2002 (15 of 2003) (for short, "the Act") for which, she sent a letter to the Assistant Director, Directorate of Enforcement requesting him time for three months on medical grounds for her appearance. On 30.6.2016, the respondent issued provisional attachment order: 03/2016 vide File No.ECIR/08/HYZO/2014 attaching her properties specified in para No.11 in the above order provisionally for a period of 180 days and that the same shall not be transferred, disposed, removed, parted with or otherwise dealt with until or unless specifically permitted to do so by the officer.

3. Learned counsel for the petitioner contended that the petitioner is not a party to the complaint filed against her son; that the petitioner is a 75 years old and illiterate woman having vision problem; that the petitioner is also bed ridden and she may not be in a position to appear before the concerned authorities at New Delhi; that it is not stated either in the F.I.R. or in the charge sheet or in the depositions of the bank officials that the petitioner is either borrower or guarantor to the loan transactions or she deposited the agriculture land documents to the bank on 31.3.2014 for security to the loan accounts; that the petitioner is living separately and depending on the pension of her husband; that the said provisional attachment is bad in law and hence, prays to set aside the attachment order.

4. Sri P.S.P.Suresh Kumar, learned Standing Counsel appearing for the respondent, submitted that the said attachment was made by the respondent invoking the provision under Section 5(1) of the Act and the same is a provisional attachment; that the respondent has to file an application before the Adjudicating Authority within 180 days and accordingly, the respondent filed an application before the Adjudicating Authority invoking Section 8(1) of the Act and if the petitioner has any grievance, she can approach the concerned Forum and agitate the matter before the concerned Forum.

5. Considering all the facts and circumstances of the case, this Court is of the view that the writ petition can be disposed of with the following direction:

The Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (15 of 2003) is directed not to insist the presence of the petitioner before the said authority for adjudicating the issue and the petitioner is permitted to represent her case through an Advocate placing reliance on all the documents pertaining to the agricultural land, which was purchased by the husband of the petitioner in the year 1993, and the Adjudicating Authority is also directed to dispose of the application of the respondent in accordance with law.

6. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE RAJA ELANGO

9.11.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

<u>WRIT PETITION No.38504 OF 2016</u>

Date: 9.11.2016

AMD