

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.6158 of 2017

and WMP.No.6628 of 2017

P.Gowshika Boopathi

.. Petitioner

vs.

1.The Appellate Tribunal under the
Prevention of Money Laundering Act,
New Delhi.

2.The Adjudicating Authority under the
Prevention of Money Laundering Act,
New Delhi.

3.The Assistant Director,
Office of the Joint Director,
Enforcement Directorate, Government of India,
Chennai Zonal Office,
2nd and 3rd Floor, Murugesu Naicker Complex,
No.84, Greaves Road, Chennai-600 006.

4.The Joint Director,
Office of the Joint Director,
Enforcement Directorate, Government of India,
Chennai Zonal Office,
2nd and 3rd Floor, Murugesu Naicker Complex,
No.84, Greaves Road, Chennai-600 006.

5. T.Muthu

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 3rd respondent herein in File No.ECIR/09/CEZO/2012 dated 28.02.2017 and quash the same and consequently direct the respondents 1 to 3 herein not to evict the petitioner from the property in Door No.W-547, 6th Street, C-Sector, Anna Nagar West, Chennai-600 101 till the appeal before the first respondent Appellate Tribunal is disposed of.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.AL.Gandhimathi

For Respondents : Mr.N.Ramesh,
Special Government Pleader for R3 and
R4
for Enforcement Directorate

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The Central Crime Branch, Chennai City registered a case in Crime No.225 of 2011 against the petitioner and one M.Ravi, S/o.Vinayagam, for the alleged commission of offences under Sections 465, 468 r/w. 471 and 420 IPC. Subsequently, the fourth respondent had invoked the provisions of the Prevention of Money Laundering Act, 2002 [in short "PMLA Act"] and an order of provisional attachment of various assets dated 23.03.2015 was passed by the fourth respondent under Section 5 (1) of the said Act. The fourth respondent has also filed a original complaint in O.C.No.442/2015 before the second respondent under Section 5(5) of the PMLA Act against the petitioner, his wife and also against the Manager of M/s.Vijaya Bank Limited, Mount Road, Chennai.

3. The second respondent, after giving opportunity and hearing the rival submissions and on perusal of the records, vide order dated 06.06.2016, arrived at a prima facie conclusion that the respondents/defendants have committed the Scheduled Offences, generated proceeds of crime and laundered them and the properties attached are proceeds of crime or value thereof and are involved in money laundering and therefore, confirmed the order of provisional attachment.

4. The petitioner and his wife, aggrieved by the said order passed by the second respondent in confirming the provisional attachment, filed an appeal before the first respondent in FPAPM.1403-CHN/2016 and pending disposal of the appeal, filed an application for stay in MP PMLA-2633/AHD/2016 and also filed yet another application in MP PMLA-2634/AHD/2016. The first respondent/Appellate Tribunal took up the stay applications along with the main appeal on 13.02.2017 and in the main appeal had noted that as no one has appeared on behalf of the appellant directed that a copy of the reply be sent to the appellant as well as the learned counsel for the appellant and in the stay petition, took note of the fact that the learned counsel for the respondent accepted notice and sought time to file counter and therefore, granted four weeks time to file counter with an advance copy to the counsel for the appellant, who shall file rejoinder within four weeks thereafter and directed the listing of the matter on 18.04.2017. Thereafter, the petitioner was issued

with the impugned notice of eviction dated 28.02.2017, calling upon the present occupants of immovable property measuring 3600 sq.ft. land with building covered under Survey No.140/Part, 74 located at "Amudha Illam", W-547, 6th Street, C-Sector, Anna Nagar West Extension, Chennai-1, registered in the name of the petitioner and his wife and to vacate the said premises within 15 days from the date of receipt of the notice and handover possession. Challenging the legality of the same, the present writ petition is filed.

5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner has invited the attention of this Court to the affidavit filed in support of this writ petition and the typed set of documents and would submit that admittedly, the appeal against the order passed by the second respondent/Adjudicating Authority is pending before the first respondent and pendency of the appeal, application for stay in MP PMLA-2633/AHD/2016 and it has been entertained and on the request made by the learned counsel for the respondent, namely the Deputy Director, Directorate of Enforcement, Chennai, time was granted to file counter and thereafter the appellant to file rejoinder and the matter was directed to be listed on 18.04.2017 and in all fairness, the fourth respondent ought to have waited till that time and without waiting for disposal of the petition for stay, urgently proceeding to take possession of the property in which the petitioner and family members are residing and prays for appropriate orders. It is the further submission of the learned Senior Counsel appearing for the petitioner that the petitioner is suffering due to paralysis and coronary artery disease and living with stunt in the heart and is still under treatment to cure his paralysis and that apart, the immovable property is also mortgaged with M/s.Vijaya Bank and as such, the question of alienating or creating any third party right, does not arise at all.

6. Per contra, Mr.N.Ramesh, learned counsel who accepts notice on behalf of the respondents 3 and 4 has invited the attention of this Court to the provisions of the Prevention of Money-Laundering Act, 2002 as well as the Prevention of Money-Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 and would submit that pending disposal of the appeal, there is no provision of staying the operation of the order passed by the second respondent/Adjudicating Authority and though the petition for stay has been entertained by the first respondent/Appellate Tribunal, the petitioner failed to obtain any interim orders and therefore, it is open to the fourth respondent to take possession of the attached assets and prays for dismissal of this writ petition.

7. This Court paid its best attention to the rival submissions and also perused the entire materials placed before it.

8. It is a well settled legal position that the first appeal is a matter of statutory right and though there is no provision for stay, inherent power is vested with the Appellate Authority to grant interim order protecting the interest of the parties, pending disposal of the appeal. The appeal to the Appellate Tribunal is provided under Chapter 6 of PMLA Act and though under Section 26 of the said Act, there is no express provision for filing petition for stay, in the light of the settled legal position, the Appellate Tribunal has rightly entered petition for stay and at the request of the learned counsel for the respondent, namely the Deputy Director of Enforcement Directorate, Chennai, granted time till 18.04.2017 to file counter with a liberty to file a rejoinder.

9. It is also pertinent to point out at this juncture that provisional order of attachment has also been made absolute and it is the submission of the learned Senior Counsel appearing for the petitioner that the immovable property has also been mortgaged with M/s.Vijaya Bank, Mount Road, Chennai. The learned Senior Counsel appearing for the petitioner, on instructions, would submit that the petitioner will not further encumber or alienate or create any third party right in respect of the immovable property, which is the subject matter of attachment and the said submission, on instructions, is placed on record.

10. In the light of the fact that petition for stay has been posted on 18.04.2017 by the first respondent and taking into consideration the averment made by the petitioner in para 11 of the affidavit that he is suffering from paralysis and coronary artery disease and living with stunt in the heart and is still under treatment to cure his paralysis and that he along with his family are residing in the premises in question, this Court is of the view that till 18.04.2017 further proceedings in pursuant to the impugned notice of eviction dated 28.02.2017 in F.No.ECIR/09/CEZO/2012 passed by the third respondent is to be deferred.

11. Though the petitioner prays for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the third respondent to defer further proceedings in pursuant to the impugned notice of eviction dated 28.02.2017 in F.No.ECIR/09/CEZO/2012 till 18.04.2017 i.e., till the date of hearing of the stay petition before the first respondent/Appellate Tribunal.

12. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The Appellate Tribunal under the Prevention of Money Laundering Act, New Delhi.
 - 2.The Adjudicating Authority under the Prevention of Money Laundering Act, New Delhi.
 - 3.The Assistant Director,
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2nd and 3rd Floor, Murugesha Naicker Complex,
No.84, Greams Road, Chennai-600 006.
- +1 cc to M/s.A.V.Ganthimathi,advocate,sr.16002
- +1 cc to m/s.M.Udhayakumar,advocate,sr.16402
- +1 cc to Mr.N.Ramesh,Specil Public Prosecutor, sr.15840.
- +1 cc to m/s.M.Udhayakumar,advocate,sr.16402 dt. (24/03/2017)

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