HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.4985, 21733 AND 21914 OF 2014

COMMON ORDER:

Heard Sri C.Tulasi Krishna, Sri Tarun G. Reddy and Sri M. Rama Raju for petitioners in these three writ petitions and Sri P.S.P.Suresh Kumar for 2nd respondent.

The petitioners in these three writ petitions are different individuals and respondents 1 and 2 are common. The lessors through whom the right to possession is claimed, are arrayed as respondent Nos. 3 to 6 or respondent No.3 respectively. The prayers in these writ petitions and the points for consideration are similar. Hence the writ petitions disposed of by this common order.

Before adverting to the writ prayers, the Court finds it convenient to state the subject matter of each one of these writ petitions and also person/company through whom the right of lease or possession is claimed by petitioners.

W.P.No.4985 of 2014

The petitioner claims possession as cultivating tenant of Ac.145-71 cents in Sy.Nos.1, 107/7, 106, 108, 109/1, 109/2 and 112 situated at Vemavaram and Anuru Villages, Thadongi Mandal, East Godavari District.

The petitioner challenges proceedings No.ECIR/I/HZO/2009/2971 dated 19.12.2013 ordering eviction of the petitioner, as illegal and violative of the Prevention of Money Laundering Act, 2002 (for short 'PMLA 2002').

W.P.No.21733 of 2014

The petitioner claims possession as tenant of land measuring 840 sq. yards, Plot No.48, Sy.No.174 situated at Gundla Pochampally Village, Medchal Mandal, Ranga Reddy District.

The petitioner challenges proceedings No.ECIR/I/HZO/2009 dated 24.07.2014 evicting the petitioner, as illegal and violative of the PMLA 2002.

W.P.No.21914 of 2014

The petitioner claims possession as tenant of land measuring 700 sq. yards, Plot No.58, Sy.No.174 situated at Gundla Pochampally Village, Medchal Mandal, Ranga Reddy District.

The petitioner challenges proceedings No.ECIR/I/HZO/2009 dated 24.07.2014 evicting the petitioner as illegal and violative of the PMLA 2002.

Averments in W.P. No.4985 of 2014:

One K.Annapurna Kumari wife of K.S.S.Prasada Raju claims to be an agriculturist and earning the livelihood by carrying out agricultural operations. The petitioner states that for the benefit of herself and her family members, she entered into an agreement for carrying out agricultural activities on kaul basis with 3rd respondent and claims to be in possession of Acs.145-71 cents in Sy.Nos.1, 107/7, 106, 108, 109/1, 109/2 and 112.

Paragraph '5' of the affidavit alleges that petitioner after entering into agreement for taking the land on kaul in September, 2009, for a period of ten years with her family members invested considerable amount for the purpose of levelling the land brought under cultivation and they have been cultivating the subject matter.

It is important to notice at this stage of narration that the petitioner does not refer to date on which the lease agreement was entered into, but month is stated as September, 2009 and it is also her case that so called arrangement or agreement with the 3rd respondent is not evidenced through registered deed. Annexures filed along with the writ affidavit substantially relate to the correspondence or the order communicated by 2nd respondent. In other words, the basic document on which the petitioner is relying on is not filed along with writ petition.

<u>Averments in W.P.No.21733 of 2014</u>:

One R.Gajapati Kumar Raju S/o.V.Rama Raju alleges that the petitioner entered into lease arrangement with 3rd respondent (B.Teja Raju S/o. B.Ramalinga Raju) for an independent Villa with built up area of 4500 sq. ft. in an extent of 840 sq. yards in Plot No.48 in Sy.No.174 of Gundla Pochampally Village, Medchal Mandal, Ranga Reddy District. The lease deed is filed as annexure P-1. Annexure P-1 (dated 05.03.2010) is an unregistered and executed on a hundred rupees non-judicial stamp paper. Annexure P-1 is for six years subject to other terms and conditions referred in annexure P-1.

Averments in W.P.No.21914 of 2014:

One D.Rajesh S/o.D.Satyanarayana Raju avers that he entered into a lease arrangement with 3rd respondent (B.Rama Raju, S/o.B.Ramalinga Raju) in respect of an independent Villa with a built up area of approximately 4500 sq. ft. in the land measuring 700 sq. yards covered by Plot No.58 in Sy. No.174 of Gundla Pochampally Village, Medchal Mandal, Ranga Reddy District. The lease arrangement dated 15.03.2010 is filed as annexure P-1. The lease is for a period of six years subject to other terms and conditions stated in P-1.

With the above prelude, this Court now refers to a few orders passed by 2nd respondent which resulted in attracting the jurisdiction of 2nd respondent under the PMLA 2002.

On 08.01.2009, B.Ramalinga Raju made a few revelations which have bearing on the conduct of business and also the veracity of statements disclosed by M/s.Satyam Computers Limited in its balance sheets etc. On 09.01.2009, basing on the disclosures and other information, CID registered FIR against the Managing Director and Directors of Satyam Computers.

On the strength of registration of a crime on 09.01.2009, on 23.01.2009 the Enforcement Directorate registered Enforcement Case Information Register against the Managing Director and Directors of Satyam Computers under Sections 3 and 4 of the

PMLA 2002. On 20.02.2009, the FIR was transferred to CBI. On 07.04.2009, 22.11.2009 and 07.01.2010, CBI filed charge-sheet and supplementary charge-sheets against seven accused under the provisions of IPC. On 30.03.2010, the Joint Director of Enforcement Directorate under Section 5 of the PMLA 2002 passed order provisionally attaching all the properties allegedly involved or acquired by committing offences under the PMLA 2002. According to the rigor of Section 5 of the PMLA 2002, on 19.04.2010, the complaint was filed before the Adjudicating Authority to confirm the provisional attachment order dated 30.03.2010. On 21.07.2010, the Adjudicating Authority under Sub-Section (4) of Section 8 of the PMLA 2002 confirmed the attachment order dated 30.03.2010 passed by Joint Director of Enforcement Directorate. The respondents in pursuance of confirmation orders claim to have taken possession on 29.03.2011. The 2nd respondent on 19.12.2013 and 24.07.2014 issued notices to occupants other than the persons who are shown as accused in pending cases under the PMLA-2002 of the subject matter of writ petitions to vacate from the properties covered by respective notices as the properties in the custody and possession of Enforcement Directorate under the PMLA 2002.

The above dates and events are referred to from the xerox copies produced by Sri P.S.P.Suresh Kumar for appreciating the contentions or objections raised by the learned counsel for petitioners.

At this juncture, this Court is also informed that substantive proceedings under IPC or PMLA 2002 are pending before Special Court/this Court and therefore, it is made clear that except for understanding the background in which the claim on continuation of possession is made by petitioners and resisted by respondents, the above dates are referred to.

The case of petitioners is that the 2nd respondent stepped into the shoes of the respective lessors, therefore, at best, and on account of atornment of tenancy, the possession of petitioners is protected against 2nd respondent and the eviction is illegal and unconstitutional. The 2nd respondent issued proceedings dated 19.12.2013 and 24.07.2014 asking the petitioners to vacate within 60 days from the property covered by the notice failing which steps under Section 54 of the PMLA 2002 will be taken.

To complete the narration, it is appropriate to excerpt the operative portion of notice dated 19.12.2013:

> "Complying the orders of the Prevention of Money Laundering Adjudicating Authority in the above OC No.48/2010, the Directorate has taken possession of the above said properties on 29.3.2011 by drawing panchanama in the presence of panch witnesses. A copy of the notice about taking possession of the properties was affixed to the poles which were erected in respect of each property. Subsequent to the attachment and taking possession of the scheduled properties, the first amongst you depositing the lease amounts half-yearly from March 2011 to the Department account.
>
> As per Section 8(4) of Prevention of Money Laundering Act and as per the Central Government notified Rules vide Gazette Notification GSR No.558(E) dt.19.08.2013 for taking possession of the attached or frozen properties confirmed by

> the Adjudicating Authority, the authorized officer shall forthwith take possession of the attached properties by evicting the occupants as the lease deed entered in between first amongst you with the 2-5 amongst you is unregistered.
>
> Therefore you are hereby called upon to vacate the premises within 60 days after receipt of this Notice failing which you will be vacated with the assistance of local authorities in terms of Section 54 of the Act."
>
> (Emphasis added)

According to petitioners, the notice issued by 2nd respondent is grossly arbitrary, unenforceable, unreasonable, capricious and violative of Articles 14 and 21 of the Constitution of India. The petitioners make comparison with an analogous provision in Securitization and Reconstruction of Financial Assets Act, 2002 and contend that the jurisdiction to take over under that Act is restricted to i.e an obligation accepted by lessors and the subsisting right of petitioner granted by lessors. According to petitioners, the notices issued are unenforceable in law and the petitioners apprehend taking possession by 2nd respondent by using police force. Hence, the writ petitions.

This Court granted interim order protecting possession of petitioners. The respondents filed counter affidavit and petitions to vacate the interim order.

The 2nd respondent on introductory facts pleaded by petitioners replies that the lease agreements or arrangements relied on by petitioners are not registered documents. The amounts alleged to have been spent are firstly denied and secondly the spending is contested by stating that no proof of having incurred huge expenditure is filed along with the writ affidavits hence these are mere claims. The 2nd respondent refers to provisional attachment order No.1/2010 dated 30.03.2010 in ECIR No.01/HZO/2009 and the order of adjudicating authority confirming provisional attachment vide order dated 21.07.2010 in O.C. No.48 of 2010. Therefore, according to 2nd respondent on 29.03.2011 under Section 8(4) of the PMLA 2002 possession has been taken over and recorded in the presence of revenue officials. Therefore, on 20.04.2011, Smt.K.Annapurana Kumari informed the 2nd respondent about the alleged arrangement pleaded by her.

The 2nd respondent asserts that the 2nd respondent never recognized either kaul or tenancy arrangement with K.Annapurna Kumari. The 2nd respondent replies to the unilateral payment of lease amount by petitioner that it is not creating any right in petitioner.

On the grounds urged by petitioner either by reference to atornment of tenancy or taking over of subsisting right of lessors, the reply reads thus :-

> "I submit that the contention of the petitioner in para No.8 that the 2nd respondent stepped into the shoes of the 3rd and 6th respondents and the concept of atornment of tenancy would come in is absolutely false and the same is not applicable to the facts of the case. The office of 2nd respondent is not coming into the shoes of the 3rd and 6th respondent and the office of the 2nd respondent is discharging the statutory functions under the provisions of "Prevention of Money Laundering Act'. Hence, the question of the 2nd respondent continuing the tenancy does not arise

> and the concept of atornment of tenancy will not come into play, since the office of 2nd respondent is not concerned with the tenancy or other leasehold rights. As per the orders of the Adjudicating Authority and as confirmed by the appellate authority, the subject property is part of Crime proceeds and rightly the same was attached. Hence, the question of the recognizing the petitioner's lease hold rights more particularly when the lease is un-registered does not arise and the writ petition is liable to be dismissed."

The 3rd respondent refers to the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 and relies on Rule 5 to draw the distinction between pre and post rules 2013. For appreciating the legal ground raised by respondents, this Court refers to Rule 2 of Rules 2013, which deals with the date of coming into force as the date of publication of Rules in the official gazette. In other wards, the case of 2nd respondent is that on 29.03.2011 possession of properties covered by attachment order was taken under Section 8(4) of the PMLA 2002 with the assistance provided under Section 54. The 2nd respondent treats the petitioners as occupants of property subjected to attachment etc. under various proceedings under the PMLA 2002. Therefore, the *de jure* or *de facto* is presumed to be with respondents.

According to 2nd respondent, the PMLA 2002 contemplates dispossession of accused or his assets involved in money laundering till the offence of money laundering is finally decided by the competent Court. According to 2nd respondent, the petitioners come within the purview of associates of main accused and the petitioners are not entitled to retain possession of respective subject properties.

The 2nd respondent refers to the scheme, statement and objects of the PMLA 2002 and contends that the Act in intended to prevent money laundering and also to provide confiscation of property derived from or involved in money laundering and for matters concerned there with and incidental thereto.

The 2nd respondent asserts that the provisional order attachment dated 30.03.2010 is followed by order of confirmation dated 21.07.2010 by the adjudicating authority. The effect of orders dated 29.03.2011 is that the property covered by or involved in money laundering is required to be in possession of Enforcing Agency and steps are in consonance with one of the objects of the PMLA 2002 in preventing enjoyment of fruits of investment allegedly made from money laundering.

The 2nd respondent further avers that the PMLA 2002 provides for dispossessing the accused from assets or property involved in money laundering till the offence of money laundering is finally decided by the competent Court. According to 2nd respondent, for the limited purpose of appreciating the tenor of petitioners' case, the petitioners could at best be treated as associates of main accused. As per the Scheme of the Act, after the person involved in the scheduled offence is convicted, the PMLA 2002 provides for confiscation of proceeds of crime to the Central Government. The

PMLA 2002 is aimed to prevent money laundering and provides confiscation of property derived from or involved in money laundering and for matters concerned therewith and incidental thereto. Therefore, the steps taken for removing the petitioners from occupation is in accordance with the provisions of the PMLA 2002 and the Rules made thereunder. The petitioners do not have right to continue to have possession of subject property. Without prejudice to above objections, it is specifically stated that the alleged lease is unregistered one and claiming protection of possession under unregistered lease arrangement for 10 years is illegal and impermissible. The 2nd respondent states that the right claimed by the petitioners is unenforceable under Article 226 of the Constitution of India. The 2nd respondent objects to maintainability of the writ petition on the ground that the petitioners have effective alternative remedy under Section 42 of the PMLA 2002.

The counter affidavits filed in W.P. Nos.21733 of 2014 and 21914 of 2014 substantially reiterate the stand taken in W.P. No.4985 of 2014. Hence, not referred once again.

Before proceeding further, it is useful to explain the status of owners/lessors from whom the alleged substantive right to uninterrupted possession is claimed by petitioners. K.Annapurna Kumari, petitioner in W.P. No.4985 of 2014 claims to be a tenant of respondent Nos.3 to 6 private limited companies. R.Gajapathi Kumar Raju, petitioner in W.P. No.21733 of 2014 claims from respondent No.3/ B.Teja Raju. D.Rajesh, petitioner in W.P. No.21914 of 2014 claims from R.3 therein/B.Rama Raju.

The case of 2nd respondent is that respondent Nos.3 to 6 in W.P. No.4985 of 2014 are shell companies of accused in the F.I.R. registered on 09.01.2009 and are shown as persons interested/accused in the crime registered by the 2nd respondent. Similarly, respondent No.3 in W.P. Nos.21914 and 21733 of 2014 are accused in FIR lodged on 09.01.2009 and also accused in the crime registered by 2nd respondent under the PMLA 2002. The case of 2nd respondent is that the subject matter of these writ petitions is one of the items covered by provisional attachment and also the order of adjudicating authority dated 21.07.2010.

Sri C.Tulasi Krishna, Sri M.Ramaraju and Sri Tarun G. Reddy contend that the possession of petitioners of respective extents claimed by them is protected under an arrangement with the land owner(s). The arrangement is anterior to either provisional attachment order dated 30.03.2010 or the order of adjudicating authority dated 21.07.2010. Therefore, by the time, the attachment is effected, the 2nd respondent is entitled only to the amount agreed to be paid by respective lessees under the arrangement to lessors, but not possession. Hence the 2nd respondent can receive the agreed rent, but not to seek eviction from petition land.

The counsel contend that since the right claimed by petitioners is not disputed by lessors/owners, the attempt to vacate the petitioners from enjoyment by recourse to Section 54 of the PMLA 2002 is *ex-facie* illegal, arbitrary and unsustainable. The continuation of petitioners is by way of enjoyers subject to the agreed terms and conditions and they may be allowed to continue to enjoy the property on the same terms pending final adjudication. Continuance of petitioners to enjoy the property does not and will not in any way hamper the ongoing proceedings under the PMLA 2002. To prove *bona fides* that the agreed obligation is consistently discharged by the petitioners, the petitioners rely on the unilateral payment of lease amount paid to 2nd respondent. In the light of above contentions, counsel firstly pray for setting aside the proceedings referred in the respective writ prayers and/or alternatively pray for continuing the possession of petitioners of respective properties subject to other proceedings under the PMLA 2002.

Per contra, Sri P.S.P. Suresh Kumar vehemently contends that the challenge to proceedings dated Nos. ECIR/1/HZ0/2009/2971 dated 19.12.2013, ECIR/1/HZO/2009 dated 24.07.2014 and ECIR/1/HZO/2009 dated 24.07.2014 is misconceived and the writ prayers are completely not maintainable under Article 226 of Constitution of India. According to him, even assuming without admitting, the petitioners if, have grievance against the orders impugned in the writ petitions, the petitioners have effective remedy of appeal under Section 42 of the PMLA 2002. The counsel by adverting to the facts of the writ petitions contends that the dates on which the lease arrangement has been entered into cannot and could not be looked at in isolation, for the FIR by CID was filed on 09.01.2009. The 2nd respondent gets jurisdiction subject to satisfying a few requirements under the PMLA 2002 and in the case on hand, the jurisdiction to invoke the provisions of the PMLA

2002 began with the Enforcement Directorate registering Enforcement Case Information Register against the accused persons. Therefore, the dates relied on by the petitioners clearly show that when the whole issue is under investigation, the transactions on which the petitioners are relying upon are brought into existence and these transactions are bristled with any amount of satisfaction. According to him, having regard to the scheme of prevention of enjoyment of fruits from investments made from Money Laundering into various companies and into the hands of several individuals, these transactions are either shoddy or shadow to the larger scheme sought to be prevented and penalised under the PMLA 2002. The 2nd respondent followed the procedure both under Sections 5 and 8 of the PMLA 2002 and all the 332 accused have received notices and the confirmation order was passed on 21.07.2010. According to him, once the provisional attachment is confirmed by the adjudicating authority, Section 8(4) of the PMLA 2002 is automatically operated. Thereafter, deprivation of enjoyment of property which is subject matter of investigation, enquiry or confiscation is initiated in the case registered under the PMLA 2002. He contends that one of the objects of prevention of money laundering is to effectively and physically prevent enjoyment of fruits of the properties which the accused purchased from the income received from the alleged money laundering. He further contends that the documents relied on by the petitioners are *prima facie* inadmissible in law and this Court even in the exercise of jurisdiction under Article 226 of the Constitution of India particularly, having regard to the nature of enquiry and the depth of allegations against shell companies or Directors of Satyam, if considers these spacious pleas, then every property which is under confirmed attachment order can easily be subjected to claim or litigation resulting in opening another shadow to the money laundering and continue to enjoy the property. He relies on decision in B.Rama Raju v. Union of India[1] for appreciating the scope and object of the PMLA 2002. The statement of objects and reasons, areas of operation of Sections 5 and 8 etc. considered by the Division Bench do have bearing in considering the writ prayers. He further contends that if this Court considers the alternative prayer of continuing petitioners to retain possession, the same amounts to exercising the jurisdiction of this Court under Article 226 of the Constitution of India to prevent the authorities having jurisdiction from performing their functions or obligations in the manner prescribed by enactment and secondly amounts to encouraging parallel adjudication under Article 226 of the Constitution of India by passing the PMLA 2002.

On the payments made by the petitioners, he contends that firstly the atornment of lease is neither accepted nor recognised by the 2nd respondent. Unilateral payments made by petitioners particularly, after possession was taken under Section 8(4) on 29.03.2011. The payments by petitioners cannot and could not be treated as acquiescence by 2nd respondent for any purpose. The payments made by the petitioners are unilateral and particularly,

[1] 2011 (3) ALT 443 (DB)

the jurisdiction of officers under the PMLA 2002 operates in all together different sphere and purpose, the payments made will not result in recognising any status of petitioners vis-à-vis the subject matter of writ petitions for enforcing their right. He prays for allowing the authorities to proceed under Section 54 and the steps taken under Section 54 amount to acting in accordance with law.

I have heard at great length the counsel appearing for the parties. The writ prayers seek protection of possession claimed by petitioners against respondents or allow petitioners to continue to remain in possession of properties claimed by them under lease arrangement. Neither the writ prayers nor the reply of 2nd respondent can any way be taken up except with full seriousness. To understand the scope, object and purpose of the PMLA 2002 instead of independently referring to the PMLA 2002, scheme etc., this Court finds it useful to refer to the following paragraphs in B.Rama Raju's case (3rd respondent in W.P. No.21914 of 2014) v. Union of India (supra)

> "23. On the afore-stated scheme the provisions of the Act, the prosecution under the Act; and attachment and eventual confiscation proceedings are distinct proceedings. These two sets of proceedings may be initiated against the same person if he is accused of the offence of money-laundering. Even when a person is not so accused, the property in his possession may be proceeded against for attachment and confiscation, on a satisfaction by the appropriate and competent authority that such property constitutes proceeds of crime.
>
> xxxx

42. The SAFEMA ; The NDPS Act, 1985 ; The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ; and the Benami Transactions (Prohibition) Act, 1988 are illustrations of statutes that incorporate provisions for forfeiture, confiscation or acquisition without compensation, of property derived, acquired, possessed or dealt within contravention of specified legislative prescriptions. The Act is a later statute to the aforementioned Acts and specifically targets the perceived evil of money-laundering. The category of offences enumerated in Parts A, B and C of the Schedule of the Act elucidate the legislative intent that the several offences and the unlawful gains/wealth derived therefrom by malfeasant(s) are targeted and confiscated, including from others when the property being the derivative of criminal activity is laundered through one or more layered transactions and finds its way to the ownership, control or possession of non-offenders as well; but in respect of scheduled offences.

43. The object of the Act is to prevent money-laundering and connected activities and confiscation of "proceeds of crime" and preventing legitimising of the money earned through illegal and criminal activities by investments in movable and immovable properties often involving layering of the money generated through illegal activities, i.e., by inducting and integrating the money with legitimate money and its species like movable and immovable property. Therefore, it is that the Act defines the expression "proceeds of crime" expansively to sub-serve the broad objectives of the Act. We thus do not find any infirmity in the provisions of the Act.
xxxx

102. At the stage of confirmation of provisional attachment however, the person in ownership, control or possession of property is provided an opportunity to show cause why all or part of such property be not declared to be involved in money-laundering and confiscated by the Central Government. The person interested in the

property is required by notice to indicate the source of his income, earning or assets, out of which or by means of which he has acquired the property provisionally attached or seized. An order confirming the provisional attachment, as already noticed, may be passed only on the adjudicating authority being satisfied, on considering the material on record including the material or evidence furnished in response to the notice issued under section 8(1) ; the reply furnished in response thereto ; and taking all and other relevant material into consideration, to record a finding that the property or so much of it, is involved in money-laundering.

103. Only at the confirmation stage is taking possession of the attached property legislatively enjoined [section 8(4)]. The reason for the prescription as to dispossession is apparent. The apparent purpose is also vouchsafed in the counter of the respondents and the contentions of learned counsel Sri Rajeev Awasthi. The satisfaction as to the provisional attached property constituting proceeds of crime involved in money-laundering is arrived at by the adjudicating authority after considering a fuller basket of information, material and evidence which includes a showing by a person concerned with the property. From the legislative scheme, in particular of section 8, we infer that dispossession from immovable property is prescribed under section 8(4) to prevent wastage or spoilage of the property and thus dissipation of its value so as to preserve the integrity and value of the property till the stage of confiscation. Thus construed the provisions of section 8(4) are neither arbitrary nor disproportionate to the object sought to be achieved by the provisions of the Act. The provisions of section 8(4) are reasonable and unimpeachable. The challenge to section 8 of the Act must therefore fail."

The petitioners claim a right through respondent Nos.3 to 6 or respondent No.3 as the case may be, who are accused in the case pending investigation and trial under the PMLA 2002. The mode, manner and method of exercising jurisdiction under Sections 5 and 8 together with vires of the Act have been unsuccessful, and steps under the PMLA 2002 are taken up by 2nd respondent. After first two important rounds namely, provisional attachment dated 30.03.2010 and order confirming provisional attachment on 21.07.2010 as late as, June, 2011, the petitioners claim a right to possession through lease arrangement. As already noted, the lease arrangement pleaded is certainly after the cloud has shrouded on the activities of the accused in the crime registered on 09.01.2009 and subsequent registration of Enforcement Case by the 2nd respondent. These dates are merely referred for the purpose of appreciating the conduct of petitioners in enforcing a right in a matter of serious implication and ramification. Be that as it may, the annexures relied on by petitioners are unregistered lease arrangement (deed), the right claimed or transferred under an unregistered lease deed is for more than 11 months and not disputed by the counsel for the petitioners. The lease deed even as on date remains more like *ipse dixit* assertion by petitioners. The lessors/accused under the PMLA 2002 remain ex-parte in these proceedings and there is nothing on record to verify whether the lessors while participating in the enquiry under Section 8(4) of the PMLA 2002 have referred to any of these transactions now relied on by petitioners. It is matter of record that at the time of alleged execution of lease arrangement, the accused in the crime registered by CID and also the case registered by Enforcement Directorate, several Directors were suffering from more than one disability of free participation, much less voluntarily part possession by creating third party interest on the properties held by them subjected to attachment under the PMLA 2002. The sequence of events stated by petitioners appears to be improbable, since this Court is not adjudicating on legality of orders passed under Section 8(4) of the PMLA 2002, further deliberation is not undertaken, except to note that the assertion of petitioners that a right or a subsisting right is created is without merit and warrants rejection. This Court refrains from expressing further view in this behalf. Therefore, the very documents on which the petitioners rely upon, this Court has difficulty in recognising the right claimed by the petitioners, much less protect the right or possession alternatively pleaded by petitioners in exercise of jurisdiction under Article 226 of the Constitution of India.

This Court is of the further view that the PMLA 2002 through the Schedule read with Section 2 sub-section (4) embraces distinct offences alleged perpetrated under several enactments and the provisions are applied during the course of investigation to prevent the accused from enjoying the properties acquired through money laundering and thereby prevent continuous enjoyment of alleged investment made viz., of movable or immovable property through money laundering. The offences under different enactments have different manifestations and siphoning of income by committing such offences under various enactments referred therein. The PMLA 2002 is comprehensive provides of opportunity of hearing before primary authorities, appeal etc. to aggrieved persons. In these writ petitions, the petitioners are challenging the order calling upon the petitioners to vacate the possession of properties already under the control of respondent No.2 pursuant to orders under Section 8(4). The prayer, if considered amounts to defeating the mandate of Section 8 of the PMLA 2002 and that the jurisdiction of Article 226 is exercised to prevent the authorities from discharging the functions and duties under the PMLA 2002. It is well established that the prayer for Mandamus is not available to prevent or intercept a statutory authority from discharging its functions or duties under a statute. Further, by entertaining these prayers under Article 226, parallel adjudication is undertaken and this Court is of the view that while the issues are substantially protected before the authorities/Court under the PMLA 2002, those authorities are allowed to discharge their duties. The scheme of the PMLA 2002 starts with registration of enforcement case, provisional attachment, confirmation of attachment order, adjudication, first appeal, second appeal and upon conviction, confiscation of property attached under Section 5 of the PMLA 2002.

Section 8(4) which reads as follows:

> "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."

is one of the first steps undertaken in discharging the functions and powers by the authorities under the PMLA 2002. The petitioners are governed by the law as on the date of orders passed under Section 5(5) and 8(4) and therefore by operation of Section 8(4) read with possession claimed to have been taken on 29.03.2011 and without any resistance thereafter by the accused in the Enforcement Case, the steps taken by the 2nd respondent are one in the nature of removing the occupation of persons without right and title and for such eventualities Section 54 authorises the 2nd respondent to take the assistance of one or the other authorities specified therein. The proceedings, dated 19.12.2013 and 24.07.2014 are steps taken in accordance with law and are legal and valid.

This Court, for the above reasons, is not persuaded to exercise its jurisdiction under Article 226 of the Constitution of India either for protecting the right claimed by the petitioners or the alternative prayer to allow petitioners to remain in possession of respective properties claimed by them.

The writ petitions fail and according dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date: 11.10.2017
Prv/Stp