HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.Nos.5245, 5263, 5290, 5292, 5293, 5294, 5295, 5296 & 5297 of 2017

COMMON ORDER

With the consent of learned counsel appearing for the parties, all these writ petitions are disposed of, without issuing notice to the 5th respondent, who is none other than the 4th respondent by name.

Challenging the common order dated 20.12.2016 passed in W.P.No.44816 of 2016 & batch, by the learned Single Judge, W.A.No.1501 of 2016 & batch were filed before a Division Bench of this Court and the same were disposed of on 5.1.2017 by setting aside the common order and remanding the writ petitions to the learned Single Judge for disposal in accordance with law. With regard to the immovable properties, the Division Bench observed as under:

> **"Insofar as the immovable properties are concerned, Rule 5 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by the Adjudicating Authority) Rules, 2013 (the "2013" Rules for short) prescribes the manner in which its possession must be taken. The appellants herein are permitted to take action in accordance with Rule 5 of the 2013 Rules subject, however, to the condition that they shall not forcibly take delivery of these immovable properties, from the respondents-writ petitioners, before 31.01.2017."**

Thereafter, this Court disposed of W.P.No.44761 of 2016 & batch on 31.1.2017, extending the order of injunction granted by the Division Bench till 10.2.2017 and directing the appellate

authority to dispose of the stay applications in the pending appeals on or before 10.02.2017 and also giving liberty to the appellate authority, if those applications were not disposed of by that date, to pass appropriate orders keeping in view the circumstances of the case.

It appears that after disposal of the writ petitions, as aforesaid by this Court, the respondents issued notices in Form No.1 in purported exercise of power under Sub-rule (1) of Rule 6 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by the Adjudicating Authority) Rules, 2013 (for short "the Rules"). The said notices are under challenge in the present batch of writ petitions.

Learned counsel appearing for the respondents submits that the impugned notices were issued pursuant to Rule-5 of the Rules without taking any possession of the property.

Learned counsel appearing for the petitioners submits that the said fact was brought to the notice of this Court on 15.2.2017 itself and hence, the cases were adjourned to today.

Today, the 3rd respondent filed an affidavit to the following effect:

> "I submit that Enforcement Directorate has issued notices as permitted by Hon'ble Division Bench and as extended by this Hon'ble Court in the original writ petitions. The Enforcement Directorate has strictly complied with the directions in Writ Appeals and Writ Petitions. The Enforcement Directorate has not taken possession of any immovable property except publishing the notices in Form-1 appended to 2013 Rules. Further, it is not the complaint of the writ petitioners that they were been dispossessed from their properties and possession was taken.

> **Hence, it is clear that Enforcement of Directorate has not violated any of the directions given by this Hon'ble Court in Writ Appeal or Writ Petition. It is to submit that the Enforcement Directorate has not taken any physical possession of any property of writ petitioners except issuing notices as per Form-1 and Rule 6 of 2013 Rules."**

After filing the affidavit, learned counsel appearing for the petitioners raised an objection that the impugned notices create a mis-apprehension in the minds of the persons, who are in possession of the property and that the respondents ought not to have issued notices in violation of the orders passed by the Division Bench and that of the learned Single Judge, when the matters are pending adjudication before the appellate authority.

Learned counsel appearing for the respondents clarified the same stating that notices in Form-1 were issued only under Rule 6 (1) of the Rules in a prescribed format before exercising the power under Rule 5 of the Rules.

The issue with regard to tenability of issuance of notices before taking action under Rule 5 of the Rules, is not being adjudicated in these batch of writ petitions as the applications for stay are pending before the appellate authority and the status of the cases as on today, is recorded based on the statements made by the learned counsel appearing for both the parties. But, one fact is clear that the petitioners are not dispossessed from their properties and possession was not taken.

In the light of the above facts and in the view of the contentions raised with regard to the consequences of issuing

notices in Form No.1 in exercise of Sub-rule (1) of Rule 6 of the Rules, the contentions of the learned counsel appearing for the petitioners as well as the respondents are left to be adjudicated before the appellate authority, where the appeals and applications for stay are pending.

Accordingly, all the Writ Petitions are disposed of. No costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

22nd February, 2017
rkk

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते