

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.83 OF 2018

Naresh Daswani & Anr.

.... Petitioners

versus

The State of Maharashtra & Ors.

... Respondents

.....

- Mr.Subodh Desai a/w Mr.Ravish Mishra i/b. Mr.V.B. Dhingreja, Advocate for the Petitioners.
- Mr.H.S. Venegaonkar, Advocate for Respondent/CBI.
- Mr.V.B. Konde-Deshmukh, Addl.P.P. for the State/Respondent.
- Mr.Mahendra Gawde, PI, CBI present.
- Mr.Sunil Pisharody, Asst. Director, Enforcement Directorate present.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.**
DATE : 03rd MAY, 2018.

P.C. :

1. The above Petition is filed inter alia seeking the relief that the communication/order dated 25/27th January, 2017 and/or any steps/proceedings initiated by the Respondent No.4 for attachment of the flat in question be quashed and set aside.

2. The second relief sought is that the undertaking dated 14/02/2017 of the Petitioners in Writ Petition No.4478/17 to stand vacated/withdrawn and permit the Petitioners to sell the said flat in open market, accept and utilize the sale consideration therefrom without any reference to the Court.
3. The said communication dated 25/27th January 2017 was addressed by the CBI, so as to facilitate the attachment of the properties owned by the Directors/Partners of the accused Company/Firm. The flat in question being Flat No.1001, 10th Floor, in building known as 'Fortune Heritage' in Sargam Co-operative Housing Society Limited, Bandra (West), Mumbai – 400 050, has been purchased by the Petitioners from its estwhile owner one Mr.Amit Shinde for the consideration of Rs.4,21,00,000/-. The said flat was purchased after the pre-sale formalities were completed by the owner Mr.Amit Shinde.
4. It seems that the offence has been registered against the company of the said Amit Shinde, into which the CBI was

investigating. The investigation is now complete and the CBI by the said communication dated 27/01/2017 has forwarded the charge-sheet for investigation under the Prevention of Money Laundering Act, 2002 (PMLA) to the Enforcement Directorate.

5. Insofar as the Enforcement Director is concerned, the learned Counsel Mr.Venegaonkar has tendered a letter dated 26/04/2018 of the Assistant Director Mr.Sunil Pisharody. The penultimate para of the said letter reads thus;

“During the investigation, it is seen that the said accused persons have sold a flat having description of Flat No.1001, 10th Floor, Fortune Heritage, 30th Road, Bandra West, Mumbai – 400050 (in short “the said property”), to one Mr.Naresh Kumar Daswani in 2014. As the said person, viz. Mr.Naresh Kumar Daswani has purchased the said property from his own funds and that he is not found to have any link / association with the accused persons except for this business transaction, the sale of the property has be considered as genuine commercial transaction that took place before the registering of the PMLA case. Therefore, the Enforcement

Directorate office not inclined to proceed for any attachment under PMLA in r/o the said property. However, the department is in the process of attachment of all other properties of the accused held in their name or in their possession at the time of registering the case or acquired after the registering the PMLA case, to cover the amount of POC outstanding.”

6. Hence from reading of the above extract of the said letter, it is disclosed that the Directorate of Enforcement has come to a conclusion that the Petitioner has purchased the said property from his own funds and that he has not found to have any link / association with the accused persons except for the said business transaction of the sale of the said property. According to Directorate of Enforcement, it is a genuine business transaction.

7. The said letter dated 26/04/2018 of Assistant Director is taken on record and marked 'X' for identification. It seems that in the earlier round the Petitioner had given a written undertaking dated 24/02/2017 to this Court in Writ Petition

No.4478/17 which Petition was filed challenging the communication which was addressed by the CBI to the Co-operative Housing Society, wherein the flat was situated, which was to the effect that the Petitioner should not be permitted to effect the transfer or sale of the flat in question. It is in the context of the said undertaking that the Petitioners are seeking relief by way of prayer clause (b).

8. In the light of the affidavit filed by one Mr.Mahendra Gawde, PI, CBI EOW, and especially having regard to what has been stated in paragraph No.8 thereof and also having regard to the communication dated 26/04/2018 addressed by the Assistant Director of Enforcement Directorate to Mr.Venegaonkar, the extract from which we have extracted hereinabove, the relief sought vide prayer clause (a) has been transcended in view of what has been stated by the Directorate of Enforcement in the said letter dated 26/04/2018.

9. In our view therefore, the interest of justice requires

that the Petitioner be granted relief in terms of prayer clause (b).

The Petition is accordingly allowed in terms of prayer clause (b).

10. The undertaking given by the Petitioners in the said Writ Petition No.4478/17 would accordingly stand vacated/withdrawn.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)