THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.2084 OF 2018

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

> ***"to issue any appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in issuing the proceedings bearing Provisional Attachment Order No.01/2018 in ECIR/09/HZO/2011, dated 03.01.2018 in relation to 1.55 Acrs (7500 Sq. Yds.) of land earmarked for commercial development, 3.358 Acs (16250 Sq. Yds.) undeveloped land in apartments area and 3.10 Acs (15000 Sq. Yds.) of undeveloped land earmarked for Life Style Villas excluding temple land, out of 50 Acs of land at Survey Nos.117 of TattiAnnaram Village, Hayath Nagar Mandal, Ranga Reddy Dist. TG. (BandlaGuda Project). (Total 38750 Sq. Yds. @ Rs. 8,000/- per Sq. Yd. as per Govt. guideline value) as being ultra vires the provision of Prevention of Money Laundering Act, 2002 apart from being illegal, arbitrary, without jurisdiction and unconstitutional and set aside the same."***

2. Heard Sri S.Niranjan Reddy, learned counsel appearing for the petitioner, Sri K.Laxman, learned Assistant Solicitor General appearing for respondent No.1, and Sri P.S.P.Suresh Kumar, learned Standing Counsel appearing for respondent Nos.2 and 3.

3. In the present writ petition, challenge is to the provisional order of attachment bearing No.01/2018 passed by the office of the Joint Director, Enforcement Directorate, Hyderabad Zonal Office, Basheerbagh, Hyderabad, respondent No.3 herein, under Section 5(1) of the Prevention of Money Laundering Act, 2002 (15 of 2003) read with Rule 3 of the Prevention of Money Laundering (Issuance

of Provisional Attachment Order) Rules, 2013 and Notification No.GSR.441(E), dated 01.07.2005, as amended by GSR No.579, dated 29.08.2013, and in terms of Authorization, dated 07.02.2007, and Technical Circular No.03/2011, dated 27.09.2011, and subsequent Addendum, dated 12.10.2011, issued by the Director, Directorate of Enforcement, New Delhi, I, S.A.Uma Shanker Goud, Joint Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad.

4. It is submitted by the learned senior counsel that the order passed by respondent No.3 is highly illegal, arbitrary and is in total violation of the provisions of the Prevention of Money Laundering Act, 2002.

5. On the other hand, it is submitted by the learned Standing Counsel appearing for respondent Nos.2 and 3 that the present writ petition is not maintainable in view of the availability of alternative remedy under the provisions of the said enactment and in this connection, it would be appropriate to refer to the judgment, dated 16.10.2014, passed in W.P.No.21124 of 2014 by this Court wherein this Court dealt with a similar matter.

6. After elaborately considering the various judgments cited by the learned counsel in the said case, this Court, at paragraph Nos.37, 38 and 40 held as under:-

> ***"37. The petitioners have effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment the person concerned is not dispossessed of the property, but is only prevented from dealing with the property till orders are passed by***

the adjudicating authority under Section 8(2). Against order of the adjudicating authority under Section 8(2), appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to the High Court under Section 42. The statute has provided enough safeguards and layers of redress mechanism. The writ Court cannot go into the merits of the issue at this stage even before the attachment order has become final, investigation is completed and trial concluded and issue of attachment is considered by Adjudicating Authority, first Appellate Authority and second Appellate Authority. It is premature to go into the validity of attachment order at the threshold and even before the Adjudicating Authority considers the issue. It is also to be born in mind that any observations made by the Court would have bearing on the pending investigation and trial.

38. The Joint Director is competent to pass orders of attachment. It is not a case of lack of jurisdiction to Enforcement Directorate. Violation of principles of natural justice at the provisional attachment stage does not arise as statute has not made provision of opportunity of hearing prior to provisional attachment. Decision to attach is based on the assessment by Enforcement Directorate as per material in its possession. It is a tentative decision. Such decision is to be placed before the Adjudicating Authority. Right of hearing is provided before adjudicating authority. Sections 5(1) and 8 are in the statute book and have stood the test of judicial scrutiny. It is not a case of exceptional nature warranting interference by writ Court at the threshold. Not a case of glaring injustice demanding affirmative action notwithstanding an effective statutorily engrafted layers of remedies.

40. Several contentions are urged on merits and on the validity of the power exercised by the Enforcement Directorate to provisionally attach the properties of the petitioners. Since the writ petition is not entertained on the ground that petitioners have effective and efficacious remedy under the Prevention of Money Laundering Act,

2002 (Act 15 of 2010) and the order of Supreme Court dated 25.7.2014, the other contentions are left open."

Following the above said order and for the reasons recorded therein, this Writ Petition is also dismissed in terms thereof. There shall be no order as to costs.

7. Office to enclose a copy of the order, dated 16.10.2014, passed in W.P.No.21124 of 2014 to this order.

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

JUSTICE A.V.SESHA SAI

Date : 25.01.2018
AMD

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

<u>WRIT PETITION No.2084 OF 2018</u>

Date: 25.01.2018

AMD