IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M. VENUGOPAL

C.M.A. No.1451 of 2015
M.P.No.1 of 2015

Dr.V.M.Ganesh .. Appellant/ Appellant

v.

1. The Registrar,
Appellate Tribunal,
Prevention of Money Laundering,
Department of Revenue,
'A' Wing, 4th Floor,
Lok Nayak Bhawan,
Khan Market, New Delhi 110 003.

2. The Adjudicating Authority,
Prevention of Money Laundering,
Department of Revenue,
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street, New Delhi 110 001.

3. The Joint Director,
Directorate of Enforcement,
Government of India,
3rd Floor, 3rd Block,
Shastri Bhavan,
No.26, Haddows Road,
Chennai 600 006. .. Respondents

Prayer: Appeal under Section 42 of the Prevention of Money Laundering Act, 2002, against the order passed in MP-PMLA-1745/CHN/2015 in FPA-PMLA-856/CHN/2015, dated 04.06.2015, on the file of the Appellate Tribunal, Prevention of Money Laundering Act at New Delhi.

For Appellant : Mr.R.Jayaprakash

For Respondents : Mr.N.Ramesh
Spl pp for R3

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Instant Civil Miscellaneous Appeal is against the order, made in MP-PMLA-1745/CHN/2015 in FPA-PMLA-856/CHN/2015, dated 04.06.2015, on the file of the Appellate Tribunal, Prevention of Money Laundering Act at New Delhi.

2. It is the case of the appellant that he was an accused in Crime in FIR No.28/13, dated 10.06.2013; 29/13 dated 12.06.2013; and 31/13 dated 14.06.2013, along with 10 others, for the alleged offences under Section 294 (b), 406, 420, 465, 468, 471, 197, 419, 506 (ii) of the Indian Penal Code, 1860 read with Section 19 of the Transplantation of Human Organs Act, 1994 (hereinafter referred to as 'TOHO Act'), which is pending investigation on the file of the CBCID, Chennai.

3. The appellant, who is the 3rd accused in FIR No.29/13, received Rs.1,00,000/- from one Kathavarayan (Informant) for kidney transplantation for his father, namely, Ayyar and at a later point of time, refused to conduct the operation and after repeated demands, the appellant paid Rs.50,000/- to Kathavarayan and refused to pay the remaining Rs.50,000/-. During 2009-2013, the appellant as a Nephrologist took part in the post transplantation care of 81 patients at Salem Vinayaga Mission Hospital and received a tainted professional income of Rs.81 lakhs and purchased 2 properties in Salem, one in 2011 and another in 2013.

4. The appellant filed Crl.O.P.No.17736 of 2013, before this Court, challenging the proceedings in Crime No.29 of 2013 registered against him. The Joint Director of Enforcement Directorate, after perusing records, formed an opinion that the appellant and one Dr.Thirumal were in possession of 2 properties, acquired through tainted money. Thereafter, on 18th August' 2014, under Section 5(1) of the Act, an order of provisional attachment was passed. The said provisional order was challenged by the appellant before this Court, in W.P.No. 22235 of 2014, which came to be dismissed, with a direction to the adjudicating

authority to decide on merits. Aggrieved over the same, W.A.No.1626 of 2014 has been filed and the said writ Appeal was also disposed of as infructuous, since orders had been passed by the Adjudicating Authority in the meantime.

5. It is the further case of the appellant that ECIR was already registered on 15th November, 2013, on the basis of the earlier FIR's registered and enquiry ensued. After forming satisfaction, a case in O.C.No.355/2014, under Section 5(5) of PMLA was prepared by the Joint Director and a complaint was forwarded to the Adjudicating Authority, along with the documents and statements recorded during the course of investigation. The appellant filed his reply on the basis of the show cause notice, under Section 8(1) and taken all his stands to proving the procedural lacunas in the abovesaid O.C.

6. In the mean time, this Court, vide order, dated 18.02.2015, made in Crl.O.P.No.17736 of 2013, held that the police authorities has no jurisdiction to register a case and to investigate under the Transplantation of Human Organs Act, 1994 and further directed the police authorities to hand over the file to the appropriate authority notified under the TOHO Act. The Adjudicating Authority, after conducting enquiry, passed an order, confirming the provisional attachment order passed by the Joint Director, dated 12.02.2015, without considering any points raised by the appellant herein. At this juncture, the Assistant Director, Office of the Joint Director, Enforcement Directorate, Chennai Zonal Office, Chennai, 3rd respondent therein had issued a notice for taking possession on 08.04.2015.

7. Thereafter, again on 18.05.2015, the 3rd respondent issued a notice of eviction to vacate the property, where his family is living. If the appellant and his family is evicted from the property, he would suffer irreparable loss and great hardship. Therefore, he filed M.P.No.1745 of 2015 in Appeal No.856 of 2015, for stay of dispossession of the appellant from the property, measuring 2625 Sq.Ft., land and building in Door No.248, Karkana Street, Meyanur Village, Salem.

8. Before the Appellate Tribunal, the appellant contended that he is staying in the premises, along with his wife and she is in a family way. On instructions, the learned counsel appearing for the appellant submitted that he does not have any other suitable residential

accommodation and in case, he would be evicted from the premises, they would be in the streets and they would be put to serious hardships. Consequently, balance of convenience is in favour of the appellant in case of dispossession.

9. Before the Appellate Tribunal, learned counsel for the appellant submitted that the charges for use and occupation of the premises, in respect of which, the notice for eviction has been issued shall be about Rs.10,000/- to Rs.15,000 per month, however, nothing has been produced to show, as what would be the reasonable charges for use and occupation of such premises. In the above circumstances, the appellant has prayed to grant stay of dispossession of the appellant and his family members from the said premises, comprising 2525 Sq. Ft. land and building in Door No. 248, karkana street, Meyanur village, Salem, on the applicant depositing charges at the rate of Rs.25,000/- per month from February, 2015 and the arrear of charges be deposited by 15th July' 2015. At that juncture, Considering the facts and circumstances of the case, the Appellate Tribunal, by order, dated 04.06.2015, ordered as follows:

> "Future charges for use and occupation of the premises be also deposited by 15th day of subsequent English Calendar month. The amounts deposited by the applicant be kept in a fixed deposit for such amount for such period as may be deemed appropriate by the respondent. The respondent shall keep fixed deposit receipt alive during the pendency of the appeal. The amount so deposited along with interest shall be subject to outcome of the present appeal.
>
> The applicant shall not create any 3rd party right encumbrance or transfer possession of property in any manner during the pendency of the appeal."

10. Aggrieved by the order, dated 04.06.2015, the present Civil Miscellaneous Appeal is filed on the following grounds,

> "(i) That the Appellate Tribunal has failed to consider that this Court after detailed discussion as to the right of an individual and the concept of possession had held that only after the conclusion of the trial under the

Prevention of Money Laundering Act, the question of confiscation and possession would arise. When it is so, the act of the respondents is premature and warrants condemnation from this Court.

(ii) That the condition imposed by the Appellate Tribunal is one without jurisdiction and on this ground alone, the order is liable to be setaside.

(iii) That the order passed by the Appellate Tribunal would deliberately offends Article 14, 19, 21 and 300 A of the Constitution of India, 1950.

(iv) That the Appellate Tribunal ought to have seen that the 3rd respondent is not at having any authority to disturb the physical possession of the property. When it is so, it warrants this Court's interference for rescuing me from this tragedy."

11. The respondents have filed a counter affidavit, contending inter alia that a criminal case was registered by the District Crime Branch, Police Department, Dharmapuri District, in Crime No.29 of 2013 against four persons, including Dr V.M. Ganesan, for indulging in transplantation of kidney resorting to illegal means by forging the identity of the donor, fabricating documents, etc, for the offences charged of having committed under Sections 294(b), 406, 420, 465, 468, 471, 197, 419, 506 (ii) of IPC 1860 read with Section 19 of Transplantation of Human Organs Act 1994, prohibiting commercial dealings in human organs. Sections 420, 471, 419 of IPC 1860 and section 19 of Transplantation of Human Organs Act 1994 are the scheduled offences in terms of clause (y) of sub-section (1) of section 2 of the Prevention of Money laundering Act, 2002 (hereinafter referred to as the PMLA). Hence, the Directorate of Enforcement, Chennai Zonal Office registered an Enforcement Case Information Report in ECIR.No.12/CEZO/PMLA/2013 on 15.11.2013 and initiated Money Laundering Investigation.

12. The respondents have further submitted that the Joint Director of Enforcement Directorate, Chennai Zonal Office, based on the facts, circumstances and evidences on record, formed an opinion and reason to believe that the appellant herein purchased the two immovable properties out of the proceeds of crime and that one of the immovable properties has been transferred to an accomplice viz., Dr

G. Thirumal and the another, likely to be concealed, transferred or dealt with in any manner that would frustrate the proceedings relating to confiscation of such proceeds of crime and hence, under the powers vested under the provisions of Section 5(1) of the PMLA, issued the Provisional Attachment, under Order (PAO) No.12/2014, dated 18.08.2014 and subsequently, a complaint was filed on 02.09.2014 before the Adjudicating Authority (PMLA), New Delhi, under sub-section (5) of section 5 of the PMLA in O.C.No.355/2014.

13. The respondents have further submitted that the appellant filed W.P.No.24432 of 2014, against the provisional Attachment Order passed by the 3rd Respondent herein and this Court, vide order, dated 17.11.2014, while disposing of the same, directed the appellant to appear before the Adjudicating Authority to present their case. Writ appeal filed against W.P.No.24432 of 2014, was also dismissed on 27.02.2015, with a liberty to the appellant to raise all issues permissible under the provisions of law before the appropriate forum, if so advised.

14. The Adjudicating Authority, after conducting hearing/enquiry held on 10.11.2014, 11.11.2014, 11.12.2014 & 11.02.2015 and considering all the points raised by the appellant herein, passed an order in O.C.No.355/2015, dated 12.02.2015, confirming the provisional attachment order passed by the Joint Director, Chennai. In terms of Section 26 of the PMLA, the appellant filed an appeal before the Hon'ble Appellate Tribunal, PMLA in FPA-PMLA 856/CHN/2015 against the order of the Adjudicating Authority, PMLA, New Delhi on 17.04.2015 and the same was pending for orders.

15. In the above circumstances, the respondents have further submitted that as there was no stay against the order of the Adjudicating Authority, PMLA, New Delhi, action has been initiated to take possession of the attached immovable property, in term of Subsection (4) of Section 8 of PMLA read with Rule 6 of the PML (Taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013 by issue of notice in Form-I (Notice for taking possession of the immovable property) on the appellants under acknowledgement. The taking of possession notice in Form-I was also published in local newspapers both English through “The Hindu” and in regional language through “Dinamalar” on 10.05.2015. As the premises of the property in the appeal herein, was found occupied by the appellant's family, a Notice of eviction, dated 18.05.2015, was served on the appellant. Further, the

premise was identified and the notice for possession in Form-I was pasted on the front portion/main door of the attached property in the presence of independent witnesses, under Mahazar dated 02.06.2015.

16. The respondents have further submitted that being aggrieved by the action taken by the respondent-department, in terms of Sub-section (4) of Section 8 of PMLA read with Rule 6 of the PML (Taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013, in taking possession of the confirmed attached immovable property filed a stay miscellaneous petition on 02.06.2015, under MP-PMLA-1745/CHN/2015 in FPA-PMLA 856/CHN/2015, before Hon'ble Appellate Tribunal, PMLA, New Delhi against the notice of eviction, dated 18.05.2015. The Appellate Tribunal, PMLA, New Delhi, vide order in MP-PMLA-1745/CHN/2015 in FPA-PMLA 856/CHN/2015, dated 04.06.2015, passed an interim order to the miscellaneous petition in favour of the appellant to stay the dispossession of the property, subjected the appellant to deposit charges at the rate of Rs.25,000/- per month from February, 2015, along with arrears by 15th July, 2015 and posted the appeal for further hearing on 23.07.2015. During the hearing held on 23.07.2015 before the Appellate Tribunal, PMLA, New Delhi, the appellant has contended that the possession of the confirmed attachment of the immovable properties have already been completed on 02.06.2015, in terms of Sub-section (4) of Section 8 of PMLA read with Rule 6 of the PML (Taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013. The appellant has not complied with the interim order of the Hon'ble Appellate Tribunal, New Delhi. Hence, the Appellate Tribunal, New Delhi posted the appeal for hearing on 16.09.2015.

17. The respondents have further contended that by virtue Sub-section (4) of Section 8 of PMLA read with Rule 6 of the PML (Taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013 the third respondent herein has duly exercised the powers vested under the PMLA to take possession of the immovable property confirmed by the Adjudicating Authority, PMLA, New Delhi, vide order, dated 12.02.2015.

18. The respondents have further submitted that the appellant has neither challenged the validity of the procedures prescribed for taking possession under the PMLA

nor challenged the PMLA directing the Director or any other officer authorized by him for forthwith taking the possession of the property confirmed attachment by the Adjudicating Authority, PMLA New Delhi. Therefore, in terms of the power conferred by Section 8(4) to dispossess a person in possession of the proceeds of crime or the property acquired from out of the proceeds of crime, even before the conviction of the accused, is absolutely valid and justified. As per the PMLA, it is the mandate of the Director of Enforcement or any other officer authorized by him to take possession of the property involved in the act of money laundering which in this case is the property of the appellant.

19. The respondents have further submitted that in terms of Section 26 of the PMLA, the appellant only filed a miscellaneous petition on 02.06.2015, before the Appellate Tribunal, PMLA, New Delhi vide MP-PMLA-1745/CHN/2015 in FPA-PMLA 856/CHN/2015, to stay the notice of Eviction dated 18.05.2015 to vacate the property and also prayed to stay all further proceedings pursuant to the order passed in OC No.355/2014 dated 12.02.2015 on the file of the Adjudicating Authority, PMLA, New Delhi pending disposal of the appeal. The Hon'ble Appellate Tribunal, New Delhi vide order dated 04.06.2015 disposed the miscellaneous petition with the balance of convenience in favour of the appellant with the condition subjecting the appellant to deposit Rs. 25,000/- per month from February, 2015 along with arrears, by 15th July 2015 until disposal of the appeal. Without satisfying the decision or order of the Appellate Tribunal, the appellant has approached this Court under Section 42 of the PMLA, without any question of law or fact arising out of the said order and therefore, the contention of the appellant is not sustainable, as the Appellate Tribunal, PMLA has acted within the boundaries of its Jurisdiction as provided under the PMLA.

20. It is the further contention of the respondents that the mandate for dispossession after confirmation of attachment, is intended by the legislative scheme. The apparent purpose for dispossession under Section 8(4) is to prevent wastage or spoilage of property and the dissipation of its value, till the stage of confiscation. The right to property is not a fundamental right in terms of Article 14, 19 and 21 of the Constitution of India. Though it is a Constitutional right in terms of Article 300-A, by the well accepted principle of 'void for vagueness' which applies to

invalidate irredeemably ambiguous statutory provisions which does not affect personal liberties within the constitutional prohibition of ex post-facto laws enjoined by Art.20(2) of the Constitution of India. The Constitutional Bench of Hon'ble Supreme Court of India in Amratlal Prajivandas v. Attorney General for India, challenging the validity of SAFEMA, held that Section 3(c) of the legislation defined 'illegally acquired property' as any property acquired whether before or after the commencement of SAFEMA, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law which the Parliament has the power to make.

21. It is submitted that by virtue Sub-section (4) of Section 8 of PMLA read with Rule 6 of the PML (Taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013 the third respondent herein has duly exercised the powers vested under Sub-section (2) of section 5 of the PMLA and Rule 6 of PML (Taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2013 which reads as, "where the immovable property confirmed by the Adjudicating Authority is in the form of land, building, house, flat etc., and is occupied by the owner, the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property and after issuing of such notice if the premises is not vacated within the stipulated time, such occupant shall be evicted and the possession shall be taken by seeking the assistant of the local authorities in terms of Section 54 of the Act, and therefore, the contention raised by the appellant are devoid of merits.

22. Supporting the grounds raised in this appeal, Mr.R.Jayaprakash, learned counsel appearing for the appellant submitted that only after the completion of the trial in the money laundering case, taking over possession can be done. He referred to sub-Section (5) of Section 8 of the Act, which states that, "where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government."

23. In support of the prayer to set aside the impugned order in this appeal, learned counsel for the appellant placed reliance on the decision of this Court in A.Kamarunnisa Ghori v. The Chairperson, Prevention of Money Laundering reported in 2012 (4) CTC 608.

24. Reiterating the averments made in the counter affidavit, Mr.M.Dhandapani, learned counsel for the respondents have made submissions.

Heard the learned counsel for the parties and perused the materials available on record.

25. Before adverting to the merits of the case, let us consider provisions in the Prevention of the Money-Laundering Act, 2002 and the rules made thereunder. Section 8 of the Act, deals with adjudication and the same is reproduced hereunder:

> "8. Adjudication:- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:
>
> Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:
>
> Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.
>
> (2) The Adjudicating Authority shall, after-

(a) considering the reply, if any, to the notice issued under subsection (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall-

(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub- section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority (4) 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 (lA) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded , the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under subsection (3)of section 8, shall pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money laundering after having regard to the material placed before it."

26. In exercise of the powers conferred by sub-section (1) read with clause (ee) of subsection (2) of section 73 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Government have introduced Prevention of Money-laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013, relating to the procedure and manner of taking possession of attached or frozen properties confirmed by the Adjudicating Authority. Relevant rules are extracted hereunder:

"3. Procedure relating to possession.— Where the provisional order of attachment made under sub-section (1) of section 5 of the Act or order for retention of property or records seized or frozen under section 17 or section 18 has been confirmed by the Adjudicating Authority under sub-section (3) of section 8, the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property or record in the manner prescribed in these rules.

4. Manner of taking possession of movable property:-

(1) Where the attached property confirmed under sub-section (3) of section 8 of the Act is a movable property, the authorized officer shall take physical possession of such property and deposit it in a warehouse or a storage place.

(2) Where the attached property confirmed by the Adjudicating Authority, is liable to speedy and natural decay or the expense of maintenance is likely to exceed its value, the authorized officer shall sell such property with the leave of the concerned Special Court or Adjudicating Authority, as the case may be, and deposit the sale proceeds in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalised bank in fixed deposit and retain the receipt thereof:

Provided that where the owner of the property furnishes the fixed deposit receipt of a nationalised bank equivalent to the value of property in the name of Director of Enforcement, the authorised officer may accept and retain such fixed deposit receipt as security and send a report to the Special Court or Adjudicating Authority, as the case may be, for information and appropriate action:

Provided further that where the movable property is a mode of conveyance of any description, the authorised officer, after obtaining its valuation report from the Motor Licensing Authority or any other authority, as the case may be, may accept and retain the fixed deposit receipt of a nationalised bank equivalent to the value of the movable property as security in the name of Director of Enforcement and send a report to the Special Court or Adjudicating Authority, as the case may be, for information and appropriate action.

(3) Where the attached property confirmed by the Adjudicating Authority consists of cash, government or other securities or bullion or jewellery or other valuables, the authorized

officer shall cause to deposit it in a locker in the name of the Director of Enforcement or in the form of fixed deposit receipt, as the case may be, in State Bank of India or its subsidiaries or in any nationalised bank and retain the receipt thereof.

(4) Where the attached property confirmed by the Adjudicating Authority is in the form of shares, debentures, units of mutual fund or instruments, the authorised officer shall cause to get such shares, debentures, units of Mutual Fund or instruments to be transferred in favour of the Director of Enforcement.

(5) Where the property confirmed by the Adjudicating Authority is in the form of money lying in a bank or a financial institution, the Authorized Officer shall issue a direction to the bank or financial institution, as the case may be, to transfer and credit the money to the account of the Directorate of Enforcement.

5. Manner of taking possession of immovable property.—

(1) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., a notice shall be issued to the Registrar having jurisdiction of the area alongwith the provisional attachment order and order of the Adjudicating Authority confirming such attachment requiring the Registrar not to transfer or create any interest in such property until further orders and a copy [Reg. 3 The Prevention of Money-laundering (Taking Possession of Attached or 123 Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 of the order confirming the attachment shall be affixed at a conspicuous part of the property;

(2) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is occupied by the owner, the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property and after issuing of such notice if the premises is not vacated within the stipulated time, such occupant shall be evicted and the possession shall be taken by seeking the

assistance of the local Authorities in terms of section 54 of the Act;

(3) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is given on lease or rent to a third party which is registered in accordance with the provisions of section 17 of the Registration Act, 1908, the authorized officer shall issue a direction to the occupant to pay the lease amount or rent in the form of Demand Draft payable to the Directorate of Enforcement;

(4) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is given on lease or rent to any third party where the registration is optional in accordance with the provision of section 18 of the Registration Act, 1908, the authorized officer shall proceed to get the premises vacated and the possession shall be taken by seeking the assistance of local Authorities in terms of section 54 of the Act;

(5) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is under joint ownership, the authorized officer may accept the equivalent value of fixed deposit to the extent of the value of the share of the concerned person in the property estimated by the authorized officer, to be involved in money laundering; and

(6) Where the immovable property confirmed by the Adjudicating Authority is in the form or nature of productive asset or an establishment which is producing goods or a factory, etc., and where the manufacturing process or activity is being carried out, the authorized officer may take possession with a direction to the person in-charge of the concerned establishment or factory that gross income and any other monetary benefits which accrue there from shall be deposited in the account of the Directorate of Enforcement.

6. Mode of serving of notice.—

(1) The authorized officer shall serve a notice on all the concerned parties for taking possession of immovable property in Form I,

appended to these rules and affix the same at conspicuous part of such property and shall also be served by publication in a local newspaper.

(2) The authorized officer, for taking possession of property which is in the nature of productive asset, shall serve a notice on all concerned parties in Form II, appended to these rules and affix the same at conspicuous part of such property and such notice shall also be published in a local newspaper."

27. Reported decision relied on by the learned counsel for the appellant, has been stayed by the Hon'ble First Bench of this Court in M.P.No.1 of 2012 in W.A.No.2137 of 2012 and M.P.Nos.2 to 2 of 2012 in W.A.No.2138 to 2140 of 2012, and therefore it would not lend any support to the case of the appellant.

28. Section 8(3) of the abovesaid Act, read thus:-

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall-

29. Procedure relating possession and manner of taking possession, as set out in the foregoing paragraphs, are reproduced,

Rule 3 of the abovesaid rules, reads thus:-

3. Procedure relating to possession.— Where the provisional order of attachment made under sub-section (1) of section 5 of the Act or order for retention of property or records seized or frozen under section 17 or section 18 has been confirmed by the Adjudicating Authority under sub-section (3) of section 8, the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property or record in the manner prescribed in these rules.

Rule 4(1) of the abovesaid rules, reads thus:-

> 4. Manner of taking possession of movable property:-
> (1) Where the attached property confirmed under sub-section (3) of section 8 of the Act is a movable property, the authorized officer shall take physical possession of such property and deposit it in a warehouse or a storage place.

30. Sub Section 5 of the Act, deals with the power of the adjudicating authority on the conclusion of a trial, to confiscate the property, and it has no reliable to the case on hand. Attachment and confiscation are different. Attachment of the property has been confirmed by the adjudicating authority, as per the statutory provisions. Therefore in terms of rules 8(3) and 8(4) of the abovesaid rules, physical possession of the attached property has to be taken. However, considering the difficulty expressed, the Appellate Tribunal, has passed a considered order dated 04.06.2015.

31. Considering the facts and circumstances, there is no ground to interfere with the order. Hence, order made in MP-PMLA-1745/CHN/2015 in FPA-PMLA-856/CHN/2015, dated 04.06.2015, is sustained. Civil Miscellaneous Appeal is dismissed. Arrears of amount, as ordered in MP-PMLA-1745/CHN/2015 in FPA-PMLA-856/CHN/2015, dated 04.06.2015, to be deposited within two months, from the date of receipt of copy of this order. Appellant shall continue to deposit, as ordered.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

skm
To
1. The Registrar,
Appellate Tribunal,
Prevention of Money Laundering,
Department of Revenue,
'A' Wing, 4th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110 003.

2. The Adjudicating Authority,
Prevention of Money Laundering,
Department of Revenue,
Room No.26, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi 110 001.

3. The Joint Director,
Directorate of Enforcement,
Government of India,
3rd Floor, 3rd Block, Shastri Bhavan,
No.26, Haddows Road, Chennai 600 006.

+1cc to Mr.N.Ramesh , Advocate SR.No. 41859
+1cc to Mr.R.Jayaprakash , Advocate SR.No. 42194

C.M.A. No.1451 of 2015

A.SK(04/06/2019)