



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.09.2019
DATE OF DECISION : 15.10.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.(MD) No.17114 of 2019

and

W.M.P.(MD)No.13647 of 2019

Mohamed Ibrahim Sait

... Petitioner

Vs.

1.The Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office,
3rd Block, Murugesu Naicker Complex,
84, Greaves Road,
Chennai-600 006.

2.The Registrar / Administrative Officer,
Adjudicating Authority (PMLA),
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi-110 001.

... Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned provisional attachment order in No.3 of 2019 dated 29.03.2019 in File No.ECIR/CEZO/II/16/2017 passed by the first respondent and all further proceedings of the consequential complaint in O.C.No.1130 of 2019 dated 25.04.2019 on the file of the second respondent in respect of properties in Enclosure-II and Enclosure-VII and the consequential show cause notice dated 02.05.2019 issued by the 2nd respondent and quash the same as illegal and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.T.Ramesh
for Mr.S.Saravanakumar

For Respondents : Mr.G.Rajagopalan,
Additional Solicitor General
instructed /assisted by
Mr.R.Vijayarajan
Standing Counsel for R-1
Mr.S.Jeyasingh,
Central Govt. Senior Panel Counsel
for R-2



COMMON ORDER

Subject matter of instant writ petition pertains to a granite quarry, alleged illegal quarrying in areas beyond the licensed patta land and more particularly alleged quarrying in Government poramboke land, besides misstating recovery percentage all of which are said to have caused losses of Rs.58.50 Crores and Rs.21.00 Crores to the Government.

2 Two 'First Information Reports', (hereinafter 'FIRs' in plural and 'FIR' in singular for brevity), namely FIR No.619 of 2012 dated 06.08.2012 and FIR No.21/2015 dated 31.01.2015 were registered in this regard. Details of these two FIRs are as follows :

1.	FIR No.21/15 registered on 31.01.2015 by the District Crime Branch, Madurai under Sections 379, 430, 447, 434, 304(ii) r/w 511 of IPC, Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) Act (TNP(PD&L)) and Sections 3(a) and 4(a) of the Explosive Substances Act.
2	FIR No.619/12 registered by Melur Police Station under Sections 447 and 379 of IPC and Sections 4(1), 4(2)(A), 4(3) and 21(b)(5) of Mines & Minerals (Development and Regulation) Act, 1957 and 3(1) of TNPPDL Act.

3 This Court is informed that investigation is in progress and with regard to one of the FIRs, charge sheet has been filed. It is not in dispute that writ petitioner is the nucleus of these FIRs and charge sheet.

4 In the aforesaid backdrop, first respondent initiated proceedings under 'The Prevention of Money-laundering Act, 2002' (Act 15 of 2003) (hereinafter 'PMLA Act' for brevity) and issued a provisional order of attachment dated 29.03.2019 being provisional order of attachment No.3/2019 in F.No.ECIR/CEZO-II/16/2017 qua some of writ petitioner's immovable properties. To be noted, this provisional order of attachment has been assailed in the instant writ petition and the same shall hereinafter be referred to a 'impugned attachment order'. To be noted, this impugned attachment order is under Section 5(1) of PMLA Act. Pursuant to the impugned attachment order, first respondent filed a complaint before the second respondent which is the adjudicating authority under section 5(5) of PMLA Act. This complaint is OC No.1130/19 dated 25.04.2019 and this complaint under section 5(5) of PMLA Act is also assailed in the instant writ petition. This complaint by first respondent before second respondent shall hereinafter be referred to as 'impugned complaint'.



5 The primary contention on behalf of writ petitioner is that the genesis of the entire matter is a 'show cause notice' ('SCN' for brevity) dated 28.12.2012 issued under the 'Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957)' and 'Tamil Nadu Minor Mineral Concession Rules, 1959' (hereinafter 'MMDR Act' and 'TNMMCR Rules' respectively for brevity, clarity and convenience).

6 Learned counsel for writ petitioner submitted that the aforementioned genesis SCN as well as another SCN dated 13.1.2013 also under MMDR Act and TNMMCR Rules travelled a long way, reached Hon'ble Supreme Court vide SLP(Civil) No.11176 of 2015, etc.,

7 To be noted, Hon'ble Supreme Court dismissed aforementioned SLPs and the relevant portion of the order reads as follows :

"However, we grant three weeks' time to the petitioners to approach the authority concerned, if it is desire, inter alia, taking up all such objections which are available to them, including the grounds raised in these special leave petitions.

The authority concerned shall decide the lis between the parties without being influenced by the affidavit filed before the High Court or any of the observations made by the High Court.

The authority concerned shall complete the entire proceedings within two months time from today."

8 It is submitted by learned counsel for writ petitioner that the recovery percentage issue is at large and the same has not been crystallised. To be noted, this court is informed that reference to recovery percentage is a reference to actual units of granites that are ultimately computed as a percentage of the chunk that is excavated from below the earth. The pivotal submission in this regard is that the impugned attachment order and the consequent impugned complaint are premature as recovery percentage is yet to be crystallised.

9 Mr.T.Ramesh, learned counsel for writ petitioner also submitted that for making the impugned order of attachment, there should be 'reason to believe'. This expression 'reason to believe' has been explained by a learned Single Judge of Delhi High Court in order dated 25.01.2016 in W.P.(C)No.1925 of 2014 in Mahanivesh Oils & Foods Pvt. Ltd. Vs. Directorate of Enforcement. Placing reliance on paragraph 43 of Mahanivesh Oils case, it was submitted that there could not have been any 'reason to believe' that writ petitioner is likely to conceal, transfer or deal with alleged 'proceeds of crime'. To be noted, 'proceeds of crime' within the meaning of PMLA Act.

10 In response to the aforesaid argument, learned Additional Sessions Judge on behalf of respondents made submissions which



can be broadly summarised as follows :

(a)The FIRs do not pertain to recovery percentage alone, but there are other issues such as writ petitioner mining beyond the permitted patta land, more particularly in Government poramboke land;

(b)The alleged loss caused is Rs.58.50 Crores and Rs.21.00 Crores, but the value of the property attached is barely Rs.4 Crores;

(c)Writ petition itself is premature as impugned attachment order is under section 5(1) of PMLA Act as orders have to be passed under Sections 8(1) and 8(2) of PMLA Act regarding confirmation of attachment which has not happened;

(d)Under such circumstances, Hon'ble Single Judge of this Court vide order dated 03.01.2019 in W.P.(MD) Nos.11454, 14860 and 14894 to 14899 of 2018 dismissed writ petitions, matters were carried to Division Bench and Hon'ble Division Bench while issuing notice in intra-court writ appeals, permitted the second respondent to proceed with the hearing of the case, but granted an order of stay only in respect of passing final order. This is vide an interim order dated 06.03.2019 in C.M.P. (MD)Nos.2338 and 2363 to 2368 of 2018. This interim order is operating is learned Solicitor's say.

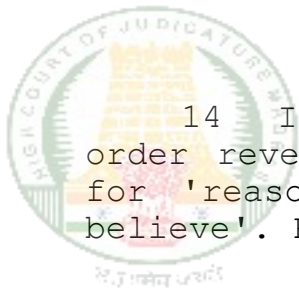
11 This court carefully considered the rival submissions.

12 With regard to the pivotal contention of learned counsel for writ petitioner that recovery percentage aspect is yet to be crystallised, as rightly pointed out by learned Solicitor that is not the only issue qua FIRs and charge sheet.

13 With regard to the contention of learned counsel for writ petitioner on the expression 'reason to believe', a perusal of Mahanivesh Oils case makes it clear that it is clearly distinguishable on facts. Paragraph 3.4 of Mahanivesh Oils case reads as follows :

"3.4 That Section 5(1) of the Act, as in force at the material time, provides that the concerned officer must record his 'reason to believe' that the accused is likely to conceal, transfer or deal with the proceeds of crime in a manner which may result in frustrating any proceedings relating to the confiscation of such proceeds of crime. It was contended that no such reason had been provided in the impugned order which provisionally attached the said property after more than 9 years from the date of commission of the alleged offence. "

(underlining made by this Court to supply emphasis and highlight)



14 In the instant case, a perusal of the impugned attachment order reveals that as many as four paragraphs have been dedicated for 'reason to believe' under the caption 'recording reasons to believe'. Relevant portion reads as follows :

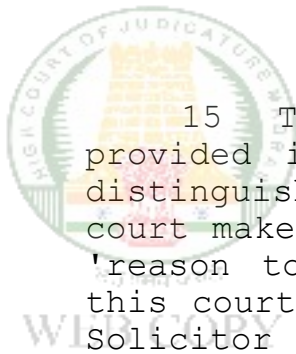
"RECORDING REASONS TO BELIEVE U/S 5(1) OF THE ACT

22.Shri.Mohammed Ibrahim Sait has directly indulged in criminal activities for which two FIRs and subsequent Charge sheet in one FIR was filed by the police authorities and committed scheduled offences u/s 2(1)(x)& (y) of the PMLA and from the scheduled offences he generated proceeds of crime of Rs.21 crores in FIR 619/12 and Rs.58.5 crores in FIR 21/15 totalling to Rs.79.5 crores. These properties purchased by Shri. Mohamed Ibrahim Sait, in his and his family member's names, is directly linked to both the crimes in FIR 619/12 and FIR 21/15 and therefore the properties mentioned in the Schedule above is proposed to be attached as part of the equivalent value of the proceeds of crime by invoking Sec 2(u) of the Prevention of Money Laundering Act, 2002.

23.There are reasons to believe that properties mentioned in the schedule are proceeds of crime involved in money laundering and are likely to be transferred or dealt with any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime. The subject assets may be transferred / disposed off/ encumbered without notice of this department and may result in frustrating any proceedings relating to confiscation of such proceeds of crime.

24.Further, it is also possible that trial of offences, both under the PMLA as also of scheduled offences, may take considerable time and if power of provisional attachment is not exercised here, when there are demands of circumstances and existence of jurisdictional facts, it could result in defeating the very purpose for which PMLA has been enacted. If the immovable properties are transferred and change hands, it could lead to creation of bona-fide third party interest which may make it difficult for the authorities to retrieve the same at a later stage.

25.The immovable properties as detailed in the schedule are likely to be concealed, transferred or dealt with in such a manner that, I have reasons to believe that if no Provisional Attachment Order is passed in this case at this stage, it may result in frustrating the proceedings relating to confiscation under Chapter III of the Prevention of Money Laundering Act, 2002 (15 of 2003)."



15 Therefore, this is not a case where no reasons have been provided in the impugned order. Therefore, case on hand clearly distinguishable on facts qua Mahanivesh Oils case. However, this court makes it clear that no opinion or view is expressed regarding 'reason to believe' adduced in the impugned attachment order, as this court has no difficulty in accepting the contention of learned Solicitor that impugned attachment order is only a provisional attachment order and the same has to be adjudicated upon and an order has to be passed regarding whether properties which are subject matter of attachment are involved in money laundering. Proviso to section 8(2) makes it clear that writ petitioner has to be given an opportunity of being heard to prove that the property is not involved in money laundering. One more distinguishing feature qua facts is, in Mahanivesh Oils case, order of provisional attachment has been made nine years after commission of offence. Above all, Mahanivesh Oils case being a another High Court's order has persuasive value and does not operate as a binding precedent.

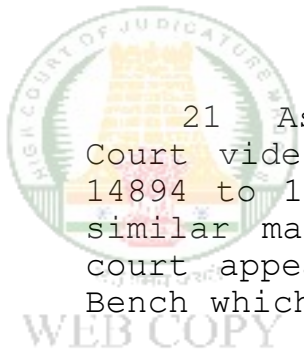
16 This Court finds that the matter does not end there. Even if the adjudication and outcome of the adjudication under section 8 (2) is adverse to the writ petitioner or in other words, even if the impugned attachment order which is provisional, is confirmed, writ petitioner has right of appeal to the appellate authority under section 26 of PMLA Act and thereafter, a further appeal to High / Court under section 42 of PMLA Act. Therefore, there are statutory remedies available under PMLA Act itself qua a hierarchy of Fora. In the instant case, in the factual matrix of this case, these aspects turn heavily on facts and therefore, this court deems it appropriate to hold that it should be best left to the provisions in PMLA Act referred to herein to take their course. To be noted, this logic applies to the impugned complaint also.

17 A perusal of the FIRs and charge sheet reveal that there are certainly other aspects of complaint (other than recovery percentage) as rightly pointed out by learned Solicitor.

18 There is one other aspect of the matter which is of importance.

19 There is no dispute or disagreement that immovable properties of writ petitioner that have been attached vide impugned attachment order are of value of only Rs.4 Crores, whereas the alleged loss is Rs.58.50 Crores and Rs.21.00 Crores. Therefore, even with regard to recovery percentage aspect, to be noted, it is 20 or 25% (as opposed to 80% that has been assumed) and therefore, the value of properties attached cannot be said to be not proportionate.

20 There is yet another aspect of the matter which is of utmost significance and in the considered view of this court, this is of utmost significance as this is the clincher in this matter.



21 As alluded to supra, another Hon'ble Single Judge of this Court vide order dated 03.01.2019 in W.P.(MD)Nos.11454, 14860 and 14894 to 14899 of 2018 has passed a detailed 210 pages order in a similar matter which has been carried in appeal by way of intra court appeals and an interim order granted by a Hon'ble Division Bench which has been referred to supra is operating.

22 Suffice to refer to paragraph 98 of the order made by the Hon'ble Single Judge which reads as follows :

"98. In the conspectus of above discussion, this Court would sum up the following, viz.,

i) That the absence of recording of reasons to believe under Section 5(1) of PMLA, does not result in violation of constitutional right to property of the citizens since it was only a provisional attachment which would be valid only for a maximum period of 180 days or less. Although the Section provides for record of reasons to believe by the authority, failure to record at worst is only a statutory infraction and the same can be pleaded before the Adjudicating Authority. In such circumstances, non-recording of reasons by the Authority initiating action under Section 5 of PMLA becomes curable while initiating action under Section 8 of PMLA by the Adjudicating Authority. It is not in doubt that under PMLA, a full-fledged trial is envisaged before the Adjudicating Authority and any initial infraction could always be rectified. Ultimately, it is the Adjudicating Authority which will confirm the attachment and also will recommend for confiscation of the property when such opportunity is available before the Adjudicating Authority consisting of experts, it cannot be gainsaid by these writ petitioners that their interest is irreparably prejudiced and their constitutional right is violated.

ii) Further, nowhere in the Section itself, it has been stipulated that the reasons must be communicated to the persons. In the absence of such stipulation, these writ petitioners have no right to claim that there should be communication of reasons in the form of show cause notice before ordering provisional attachment. The validity period of provisional attachment is only for a period of 180 days before confirmation by Adjudicating Authority and therefore, the initial order has all the characteristics of show cause notice and no further requirement is contemplated in the statute. As far as the present case on hand is concerned, de hors the above legal finding, this Court finds that the Authority has given reasons in terms of the scheme of Section 5 and to what extent such reasons could ultimately end up in confirmation or not, is for the Adjudicating Authority to determine. It is also for the Adjudicating Authority to order a detailed enquiry to be conducted under



Section 8 of PMLA. Therefore, on merits, this Court finds that submission that the Authority has not recorded reasons is contrary to records and the same is liable to be rejected.

iii) The language used in Section 8(1) of PMLA is different from what it is used in Section 5(1) of PMLA. Both the expressions are different and distinct and the Adjudicating Authority is not required under Section 8(1) to record reasons as in the case of the Authority exercising under Section 5(1) of PMLA which means that the Adjudicating Authority, on the basis of the complaint filed by the initial authority under Sub Section 5 of Section 5 of PMLA, can proceed with the adjudication process on the basis of subjective satisfaction. In any event, the Adjudicating Authority has to follow procedure provided under Section 8 as well as the procedure contemplated under the Adjudicating Authority (Procedure) Regulations 2013. Therefore, the writ petitioners are provided with sufficient opportunities to put forth their plea before the Adjudicating Authority. Moreover, even in the show cause notice issued, it is mentioned that there is compliance of Section 8(1) of PMLA which compliance can be verified by obtaining a copy of the order by making necessary application to the Registry. Therefore, these writ petitioners cannot successfully maintain their complaint before this Court. Hence, this Court is of the considered view that there appears to be no legitimate cause for complaining on this aspect.

iv) The plea of violation of principles of natural justice can be tested on the golden touchstone of prejudice and in this case, no prejudice is occasioned or caused to the writ petitioners since they have multiple alternative remedies as provided under PMLA before the Adjudicating Authority under Section 8; and before the appellate Authority under Section 26; and further appeal before this Court under Section 42 of PMLA. Once multi-layered remedies are provided for effective adjudication of disputes, the plea of violation of principles of natural justice is baseless and unfounded.

v) The contention regarding coram non-judice, that the Adjudicating Authority is manned only by a single Member also cannot be countenanced with reference to explicit provision contained in Section 6 of PMLA and allied provisions, wherein it is provided for formation of Bench by less than three Members. Therefore, the issue of coram non-judice is answered against the writ petitioners, notwithstanding the fact that at the time of pronouncement of this order, the Adjudicating Authority is consisting of three Members.

vi) The plea of alternative remedy is not a bar for the Writ Petition, can it best be a general



proposition of law, but the same cannot be applied to these writ petitions where the statute itself provide for multi layered alternative appellate remedies, one before the Adjudicating Authority, other before the Appellate Tribunal and another before this Court. Moreover, in these cases, there is no violation of any fundamental right nor action by the first respondent can be termed to be wholly unjustified nor there was a wholesale violation of principles of natural justice. In such scenario, this Court is not inclined to transgress beyond its self-imposed limitation not to entertain these writ petitions on the ground of availability of multiple appellate remedies under PMLA.

vii) The contention as regards Rule Nisi is concerned, this Court has dealt with the preliminary objection as to the maintainability of the writ petitions since these writ petitions are challenging the initial action of provisional attachment and show cause notice and in such event, non-production of documents is not material to the adjudication of a purely legal dispute as to the maintainability of the writ petitions.

viii) The plea of non-application of mind must be tested with reference to the factual aspects and the findings as found in the order passed by the initial authority under Section 5(1) of PMLA. It is certainly not open to this Court to render any finding on such factual dispute by interjecting its opinion with the findings of the authority who passed the order under Section 5(1), as such opinion on factual matters does not fall within the domain of judicial review exercised by this Court under Article 226 of the Constitution of India.

ix) The submission regarding illegal quarrying per se may not be one of the scheduled offence, but by such operation it gave rise to several offences which are punishable under the provisions of IPC and other enactments, like Explosive Substances Act, 1908 etc. In the provisional attachment order various offences are enumerated on the basis of final report by the police. Since this argument is being canvassed in all its seriousness, the same may be addressed by the Central Government by initiating appropriate action to have illegal quarrying included in the schedule offences. Illegal quarrying per se is a affront on the rule of law, as it involves systematic plundering of national wealth and resources endangering natural and salubrious human habitat. Such activity will ultimately put the humanity as a whole to the precipice of irredeemable disaster.

x) The submission of non-familiarity of local language by the Adjudicating Authority cannot be a valid ground for this Court to interfere with the impugned



argument is misconceived and the same is without substance."

23 In the light of the discussions thus far and in the light of the submissions made at the hearing, other than saying that recovery percentage aspect did not come up for consideration in the other order, there is no other reason much less convincing reason for this court to take a different view. As the recovery percentage aspect has already been adverted to, addressed and answered supra elsewhere in this order, it is also a matter of judicial discipline that the order made by another Hon'ble Single Judge is applied in the instant case also. In any event, this court is left with the considered view that there is no reason much less compelling reason for this court to take a different view. To be noted, it is submitted by both sides without any disputation or disagreement that this order of Hon'ble Single Judge has been carried in appeal (intra-court appeal) vide W.A.(MD)Nos.283 and 288 to 293 of 2019. It is also not in dispute that the writ appeals are pending. Most importantly, it is not in dispute that this order of Hon'ble Single Judge has not been stayed pending writ appeals. On the contrary, only an order of interim stay restraining adjudicating authority from passing final orders has been granted while making it clear that the adjudicating authority can proceed with the hearing.

24 Therefore, in the light of the discussions thus far, in the considered view of this court, it follows as a sequiter that instant case fits into the detailed and elaborate order made by Hon'ble Single Judge of this court in W.P.(MD)Nos.11454, 14860 and 14894 to 14899 of 2018 and as the said order has neither been stayed nor reversed, instant writ petition cannot but be dismissed. This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

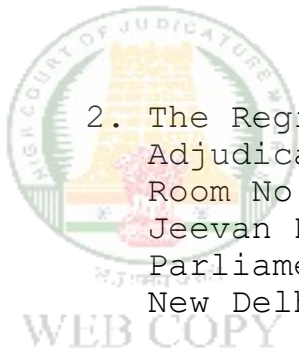
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office,
3rd Block, Murugesu Naicker Complex,
84, Greaves Road,
Chennai-600 006.



2. The Registrar / Administrative Officer,
Adjudicating Authority (PMLA),
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi-110 001.

+1 CC to Mr.S.SARAVANA KUMAR, Advocate (SR-91816[F] dated
15/10/2019)

+1 CC to Mr.R.VIJAYARAJAN, Advocate (SR-91970[F] dated 15/10/2019)

+1 CC to Mr.S.JEYASINGH, Advocate (SR-92251[F] dated 16/10/2019)

order in
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