

CWP Nos.36106 & 36099 of 2019 (O&M)

121+120

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 12.12.2019

1. CWP-36106-2019 (O&M)

Aman Gupta and others

... Petitioners

Versus

Deputy Director, Directorate of Enforcement and others

... Respondents

2. CWP-36099-2019 (O&M)

Lt. Col. (Retd.) O.P. Dahiya and others

... Petitioners

Versus

Deputy Director, Directorate of Enforcement and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. R.S. Cheema, Senior Advocate with
Ms. Taranum Cheema, Advocate;
Mr. Pardeep Poonia, Advocate and
Mr. Arshdeep Cheema, Advocate
for the petitioners.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Sanjay Vashisth, Senior Panel Counsel,
for respondent Nos.1 and 2/Union of India.

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of two writ petitions bearing **CWP**
No.36106 of 2019 titled as **“Aman Gupta and others V/s Deputy Director,**
Directorate of Enforcement and others” (hereinafter called 'first petition')
and **CWP No.36099 of 2019** titled as **“Lt. Col. (Retd.) O.P. Dahiya and**

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others V/s Deputy Director, Directorate of Enforcement and others”

(hereinafter called as 'second petition') as the facts and the issues involved are common in both the petitions. However, for the sake of brevity, the facts are being extracted from the first petition.

Petitioners have prayed for the issuance of a writ in the nature of *certiorari* to quash the Provisional Attachment Order No.6/2019 dated 26.08.2019 (Annexure P-14) passed by the Deputy Director, Directorate of Enforcement, Chandigarh, Original Complaint No.1197/2019 filed before the Adjudicating Authority under Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the Act') and to quash the show cause notices dated 01.10.2019 (Annexure P-16) issued by the Adjudicating Authority to the petitioners.

In brief, 14 plots in the Industrial Area Phase I and II, Panchkula, were allotted to the petitioners by respondent No.3/Haryana Shehri Vikas Pradhikaran, in the year 2013. On a complaint, enquiry No.8 dated 07.05.2015 was registered pursuant to a letter dated 06.05.2015 of the Chief Secretary, Government of Haryana, about the illegalities committed in respect of allotment of the plots, violating the established norms. It was found in the enquiry that the allotments were not made as per the HUDA Estate Management Procedure (EMP) 2011 and the interview process committee was not constituted as per Rules of the EMP 2011. Be that as it may, on the basis of enquiry report, a formal FIR No.9 dated 19.12.2015 under Sections 201, 204, 409, 420, 467, 468, 471 & 120-B of the Indian Penal Code and Section 13 of the PC Act, was registered at Police Station, State Vigilance Bureau, Panchkula. At present, the investigation in the said FIR is with the Central Bureau of Investigation. While these proceedings

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were going on, Directorate of Enforcement, after its preliminary enquiry, registered Enforcement Case Information Report (ECIR) bearing No.CDZO/01/2016, Zone Chandigarh, dated 05.04.2016, against the allottees and the officials of respondent No.3. The allegations against the petitioners in the said ECIR are of money laundering.

Pursuant to that, the Deputy Director, Directorate of Enforcement passed an order under Section 5(1) of the Act, on 26.08.2019 recording his reasons for provisionally attaching the property (allotted plots). It was then followed by a complaint dated 23.09.2019 filed under Section 5(5) of the Act before the Adjudicating Authority under the Act. Thereafter, the Adjudicating Authority issued show cause notices dated 01.10.2019 individually to all the allottees in terms of Section 8(1) of the Act calling upon them to indicate their sources of income, earnings or assets, out of which or by means of which properties in question were acquired by them.

Counsel for the petitioners has submitted that pursuant to the notices, they had put in appearance on 14.11.2019 before the Adjudicating Authority and now theses petitions have been filed in this Court, on 10.12.2019, in order to challenge the order of provisional attachment dated 26.08.2019, complaint dated 23.09.2019 and show cause notice dated 01.10.2019.

Mr. R.S. Cheema, learned Senior Counsel assisted by Ms. Taranum Cheema, learned counsel appearing on behalf of the petitioners, has opened his arguments to assail the maintainability of provisional attachment order dated 26.08.2019, on the ground that firstly, the reasons have not been recorded in it by the competent authority to

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invoke the provisions of Section 5(1)(b) of the Act and secondly, there are no reasons for invoking second proviso of Section 5(1) of the Act. In this regard, he has referred to the impugned order dated 26.08.2019, wherein 'reasons to believe' had though been recorded but according to him it is not clear as to what was the urgency for dispensing with the compliance of first proviso of Section 5(1) of the Act.

He has rather submitted that in Clause 7.8 of the impugned provisional order of attachment, the only observation that has been made by the Competent Authority is that “non-attachment is likely to frustrate the proceedings”, whereas it is submitted that frustration of the proceedings must be the result of the proposed action of the petitioners in terms of Section 5(1)(b) of the Act i.e. concealing, transferring or dealing with in any manner, which ultimately result in the frustration of such proceedings.

He has also submitted that the impugned order is a result of non-application of mind because it is without reasons.

At this stage, Mr. S.P. Jain, Addl. Solicitor General of India, assisted by Mr. Sanjay Vashisth, senior panel counsel, appearing on behalf of respondent Nos.1 and 2/Union of India, to whom the advance copy of the writ petition was supplied, has submitted that not only the writ petitions are premature as the petitioners have challenged the show cause notices dated 01.10.2019 after putting in appearance, but also the Competent Authority has given reasons to believe that the property in question deserves to be attached provisionally, so that it may not be concealed, transferred or dealt with in any manner. Dilating the Phrase 'in any other manner', it is submitted that since the petitioners have been delivered the possession of the plots and they may further create third party rights by way of lease and

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raise construction on the land in question.

He has further submitted that since the petitioners have approached this Court after issuance of show cause notices under Section 8(1) of the Act, all their grievances can be addressed before the Adjudicating Authority who would adjudicate the same in terms of Section 8(3) of the Act.

It is further submitted that in case the order of attachment is confirmed, the petitioners have a right to file an appeal under Section 26 of the Act before the Appellate Authority and if they do not feel satisfied with the order of the Appellate Authority, they can still file an appeal before this Court, under Section 42 of the Act, but at this stage, interference by this Court would be pre-judging the issue, which ultimately may come to this Court by way of an appeal.

It is also submitted that if the Adjudicating Authority has the jurisdiction to confirm the order of attachment, which has provisionally been made and has limited span of 180 days, out of which, 120 days have already expired, it would also have the jurisdiction and competence to set aside the order of attachment in case it is found that it violates any provision of law.

In response thereto, Mr. Cheema, learned Senior Counsel, has submitted that though the impugned attachment order is provisional and has limited life of 180 days, but it has no foundation on which it could stand even for a second as it is in contravention of mandatory provisions of Section 5(1)(b) of the Act.

It is also submitted by him that the scope of enquiry before the Adjudicating Authority is limited to the extent that it would give a finding

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on the issue of Proceeds of Crime in terms of provisions of the Act.

We have heard counsel for the parties and perused the paper book with their able assistance.

Argument raised by Mr. Cheema, at the first blush, appears to be attractive, where he has raised an issue with regard to invoking the provisions of Section 5(1)(b) of the Act while dispensing with the first proviso and invoking the second proviso, by the Competent Authority in the absence of any immediate urgency, which has not arisen because of any action/mis-endeavour on the part of the petitioners in dealing with the property in question. We do not deem it appropriate to deal with this argument at this stage. Since the case is at the stage where the matter regarding the attachment of the property in question has taken a back seat because the complaint has been filed under Section 5(5) of the Act by the Competent Authority and on that complaint, the proceedings have already been initiated under Section 8(1) of the Act, in which, the petitioners have already put in appearance and yet to file their replies. We are not giving any finding, at this stage, about the genuineness of the reasons to believe given by the Competent Authority at the time of passing of the provisional order of attachment because the entire matter is now before the Adjudicating Authority, who has to take a call after hearing the parties, in regard to the fact as to whether the petitioners are guilty of an offence committed under the Act on the complaint filed by the Competent Authority before the Adjudicating Authority. The issue shall be considered by the Adjudicating Authority, in regard to the legality/illegality of the attachment order because under Section 8(3) of the Act once the power has been given to the Adjudicating Authority by the Legislature to confirm the attachment order,

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it means that it has the inherent power to cancel the order of attachment, if it is found that the said order is against the provisions of law.

Furthermore, the present writ petition has been filed after the expiry of 120 days out of total 180 days, during which, the provisional order of attachment survives and as per Section 5(4) of the Act, the petitioners are not precluded from the enjoying the property which has been attached under Section 5(1) of the Act.

In view of the aforementioned facts and circumstances, we find that the writ petitions are premature at this stage and in view of the fact that proceedings are pending before the Adjudicating Authority who can look into all the issues, which may be raised by the petitioners in regard to the impugned provisional attachment order dated 26.08.2019 as well.

With these observations, the writ petitions are dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ALKA SARIN)
JUDGE

12.12.2019
Yogesh Sharma

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No