

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/2/2020

C O R A M

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.3176 of 2020

Triad Trading Services P Ltd

Flat No.2, F 1 Kalyan Atkinson Road

Vepery

Chennai 600 007.

...Petitioner

Vs

1. Union of India
rep. By its Secretary
Department of Revenue
Ministry of Finance (Revenue)
No.128 A North Block
New Delhi 110 001.

2. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
III Floor, C Block
Murugesu Naicker Complex
No.84 Greaves Road
Chennai 600 006.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration, declaring as ultra vires the provisions of Section 8 (4) of the Prevention of Money Laundering Act, 2002 and the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by Adjudicating Authority) Rules 2013 being the Rules thereunder and strike down the same.

For petitioner ... Mr.R.Subramaniam

For respondents ... Mr.N.Ramesh

Special Public Prosecutor
(Enforcement Directorate)
for R.2

O R D E R

SUBRAMONIUM PRASAD, J

Prayer in the instant writ petition is for a declaration, declaring as ultra vires the provisions of Section 8 (4) of the Prevention of Money Laundering Act, 2002 (herein after called as the Act) and the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by Adjudicating Authority) Rules, 2013, (hereinafter called as the Rules) as being unjust, manifestly arbitrary and therefore, violative of Article 14 of the Constitution of India.

2. In Section 3 of the Act, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.

3. Section 5 of the Act, provides that where an Officer not below the rank of Deputy Director has reason to believe on the basis of the material in his possession that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, he may order for a provisional attachment of such property for a period not exceeding 180 days.

4. The order passed under Section 5 (1) comes up for consideration before the Adjudicating Authority who is appointed under Section 6 of the Act. Section 6 of the Act provides that a person shall not be qualified as a member of the Adjudicating Authority in the field of law unless he is qualified to be appointed as a District Judge or has been a member of the Indian Legal Service and has held a post in Grade - I of that service. In the field of Finance, Accountancy or Administration, the member must possess such qualifications as may be prescribed.

5. Section 8 provides that on receipt of a complaint, under Section 5 (5), or applications made under Section 17 (4) or Section 18 (10) 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 on such person calling upon him to indicate the source of his income, earning or assets out of which or by means of which he has acquired the property attached under Section 5 (1) or seized or frozen under Section 17 or 18. Sub-Section 2 of Section 18

provides that after considering the reply to the notice sent by the authority to the person concerned and after hearing the aggrieved person and the Director appointed under Section 49 (1) of the Act, and after taking into account all the relevant material decides as to whether the properties referred to in the notice issued under sub-Section 1 of Section 8 are involved in the offence of Money Laundering. Where the Adjudicating Authority decides that the property is involved in the offence of Money Laundering, then an order is passed under sub-Section 3 of Section 8 confirming the provisional attachment of the property made under Section 5 (1). Sub-Section (4) of Section 8 of the Act, provides that where the provisional order of attachment gets confirmed, the Director or any other Officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5, in a manner that is prescribed. For this purpose, the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by Adjudicating Authority) Rules 2013 have been framed. Under these Rules, where the attachment order had been confirmed by the adjudicating authority for an immovable property, the authorised 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 in time, the occupant is evicted and possession is taken with the assistance of local authorities in terms of Section 54 of the Act.

6. The petitioner Company has been arrayed as fifth accused in C.C.No.4 of 2018 on the file of the Principal Sessions Judge in the designated Special Court for Prevention of Money Laundering Act cases in respect of offences under the Act. The said criminal case has arisen out of ECIR/CEZO/8/2014, on the file of the Assistant Director, Directorate of Enforcement, Chennai Zonal Office. Case in ECIR No.8 of 2014 was registered on 26/9/2014 by the Assistant Director in the office of the Joint Director, Enforcement Directorate, Chennai Zonal Office. Based on a complaint by Bank of Baroda, Central Bureau of Investigation, Bank Securities & Fraud Division, registered a case of criminal conspiracy, cheating and criminal misconduct against one R.Subramanian, Managing Director, M/s. Subiksha Trading Services Limited, K.P.Vairavan, the then AGM and Branch Head, Bank of Baroda, Corporate Financial Services Branch, Chennai and M/s. Subiksha Trading Services Ltd., having its registered office at No.146, II Floor, R.K.Mutt Road, Mandaveli, Chennai, vide FIR No.18/2013, dated 26/7/2013. After the investigation, CBI had filed a charge sheet in C.C.No.9635 of 2014 dated 13/8/2014 against the said accused for having caused a loss of 77.39 crores to Bank of Baroda, for offences under Sections 120 (B), 420 of the Indian Penal Code which are Scheduled Offences, as defined under Section 2 (1) (y) of

Prevention of Money Laundering Act, 2002. On the basis of FIR and the documents, the office of the Assistant Director, formed an opinion that a prima facie case for an offence of Money Laundering under the Act had been made out. This resulted in initiation of investigation of offence of Money Laundering under Section 3 of the Act.

7. A provisional attachment order was passed which included the properties of the appellant. It was found that money stipend from the Bank had been routed through the account of the appellant. The properties belonging to the petitioner Company were attached as it was one of the group Companies of the said R.Subramaniam. Subsequently, the adjudicating authority initiated proceedings for making the attachment order absolute for taking over the properties on which provisional attachment order under Section 5 of the Prevention of Money Laundering Act had been passed. The adjudicating authority found that the lands for which the provisional attachment had been passed are all proceeds of crime. The relevant portion of the order reads as under:-

"18. As per the provisions of Section 2 (1) (u) of PMLA, 2002 "Proceeds of crime" means any property derived or obtained, directly, or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property. In the instant case, the default loan amount of Rs.75 crores, which amounts to "Proceeds of crime" were purposely integrated/mingled with the other amounts of M/s. STSL and the proceeds of crime are not clearly distinguishable. In absence of disclosure of properties acquired by Shri.R.Subramaniam either in his name or in the name of the group companies of STSL, it is relevant that any such movable or immovable property available either with M/s. STSL and R.Subramanian, which are equivalent to the proceeds of crime amounting to Rs.75 crores, would constitute proceeds of crime. Accordingly, in the instant case, in terms of Section 2 (1) (u) of PMLA, 2002, the properties held in the name of M/s. STSL and their Managing Director, Shri R.Subramanian as well as in the name of his group of companies would constitute the "Proceeds of Crime".

19. Investigation conducted with regard to the properties acquired in the name of STSL, R.Subramanian and his group of companies revealed that an immovable property of 10.4 acres of land at Marakanam village, Villupuram District, acquired by R.Subramanian and available in the name of one of

his group companies M/s.TTSL and Shri.R.Subramanian, has kept the same untainted in the name of one of his group companies M/s.TTSL. Investigation further revealed that an immovable property in the form of Residential house is available in the name of his wife Smt.Srividya Subramanian, at No.2/583, Singaravelar Main Road, I Cross Street, Chinna Neelankarai, Chennai 41.

20. Verification conducted with the records of the 10.4 acres of landed property at Markanam revealed the following:

a. the property at 10.4 acres of land at Marakanam Vilalge, Vilupuram District was initially purchased by Smt.Srividya Subramanian, wife of Shri.R.Subramanian, who had purchased the land in small parcels in the year 2004.

b. Smt.Srividya Subramanian and her husband Shri.R.Subramanian entered into a partnership deed in the name of "ARESS INVESTMENTS" in the year 2008. As per the covenants, this property goes to the partnership deed.

c. In the year 2009 the said partnership deed was dissolved with mutual consent and the rights of the property were given back to Shri.R.Subramanian as per the covenants.

d. As per the documents available, an Arbitration Order dated 18/1/2010 was issued by Shri R.Hariharan, Company Secretary, Executive Director of M/s. Viswapriya Financial Services, one of the main Companies promoted by R.Subramanian. The contents of the said arbitration order says that R.Subramanian took a loan of Rs.5.50 crores from a partnership firm TIL in his personal capacity in the year 2008 and that the loan amount was not repaid. Since the loan amount was not paid, TIL under a deed of novation dated 4/2009 had transferred the loans and liabilities to M/s. Triad Trading Services Limited, another group company of R.Subramanian. Since R.Subramanian was not able to pay the amount along with interest, a compromise was arrived between M/s. Triad Trading and R.Subramanian to accept the full and

final settlement of the dues for a consideration of Rs.3.25 crores of which Rs.75 lacs would be paid by transfer of conveyance of 10.4 acres of Marakanam property on or before 31/3/2010; that the balance amount of Rs.2.50 cores would be paid back by borrower R.Subramanian along with interest.

e. The entire process had been designed by R.Subramanian in order to escape the attachment order of the DRT, Chennai in the non-repayment of loan of Rs.50 crores given by Bank of India, Chennai who had filed OA Application before the DRT-II, Chennai, for recovery of the loan amount. BOI filed an interim application before the DRT-II, Chennai for attachment of this property - 10.4 acres of land at Marakanam and obtained an ex parte order for the attachment of the said on 26/4/2013. Based on this an EC was created in the records of Sub-Registrar's office Marakkanam. Sensing that the said property would be attached by Bank of India on the orders of DRT-II, Chennai, R.Subramanian appeared to have created the records retrospectively as if he obtained a loan of Rs.5.50 crores from his group Company TIL, a partnership Company, deed of novation dated 1/4/2009 to transfer the loan liabilities to another group company TTSL, arbitration order dated 18/1/2020 which facilitates transfer of the said property to TTSL. Based on the said arbitration order an Executive Petition (EP) was filed before the Hon'ble District Judge, Villupuram by TTSL and on the orders of the Hon'ble Court, the property was transferred to TTSL vide sale deed dated 12/6/2014.

f. As per the report of jurisdictional DRO, Chennai the stamp paper of the said sale deed dated 12/6/2014 was in the name of KASIR ARUL ANANDA and not in the name of TTSL as mentioned in the said stamp paper and hence it appears that the said deed document is not valid.

(g). S.Shri Augustine and Shri.R.Venkataramanan, the two current Directors of TTSL and as per the ROC they are Directors w.e.f.10/8/2014 and 14/3/2015 had stated that they were employees of TTSL and that they are not aware of the details of TTSL and signed all the documents relating TTSL at the instance of R.Subramanian.

h. Shri Augustine, Director of TTSL who signed the sale deed documents on 12/6/2014 is not Director of the Company as per the DIR-12 report filed with ROC (he is director w.e.f.10/8/2014) and hence it appears that the said sale deed document is not valid.

(i). The following observations confirm that the entire process was a stage managed by R.Subramanian on sensing the clutches of attachment initiated by Bank of India against the 10.40 acres of land at Marakanam.

. Shri Augustine was a not a director on the details of registration on 12/6/2014.

. The stamp paper of the said deed is not in the name of TTSL as mentioned

. There is no mentioning of payment details in the arbitration order for such a huge loan of Rs.5.50 crores that too from a partnership company TIL.

. Both the directors had stated that everything was done by R.Subramanian using their name and the property belonged to R.Subramanian.

21. Verification conducted with respect to the residential property at Chinna Neelankarai revealed the following:

a. a residential house in the name of his wife Smt.Srividya Subramaniam at No.2/583, Singaravelar Main Road, I Cross Street, Chinna Neelankarai, Chennai 41 was initially purchased by R.Subramanian in the year 1998.

b. Smt.Srividya Subramanian, wife of R.Subramanian and R.Subramanian entered into a partnership deed in the name of "ARESS INVESTMENTS" in the year 2008. As per the covenants this property goes to the partnership deed.

c. In the year 2009, the said partnership deed was dissolved as per mutual consent and the rights of the residential property was given back to Smt.Srividhya Subramanian as per the covenants.

d. In 2013 State Bank of India issued an attachment order on 25/4/2013 registered as document (others) No.5/2013 in the SRO, Neelankarai, Chennai 41.

e. During the examination under the provisions of Section 50 (2) & (3) of PMLA, 2002, R. Subramanian, statement dated 2/10/2015 stated that the above residential property was purchased by his father Shri.Ramanathan. But encumbrance records show no such transaction.

22. In view of the foregoing facts, the said 10.4 acres of land at Marakanam in the name of TTSL, acquired by Shri.R.Subramanian and the residential house in 19.50 cents of land in Neelankarai Vilalge in the name his wife Smt.Srividya Subramanian (currently under the attachment of Bank of India) which are in the form of proceed of crime involved in the crime committed by STSL and R.Subramanian, in defrauding Bank of Baroda in obtaining loan amounting to Rs.77.39 crores.

23. As stated above, Lands held in the name of M/s.Triad Trading Services Limited totally valued as Rs.75 lakhs (Guideline value being Rs.1.90 Crores) and the residential property in the name of Smt.Srividya Subramanian, wife of R.Subramanian valued at Rs.10.50 lacs (Guideline value being Rs.2.55 Crores) have been identified as the properties acquired and enjoyed by R.Subramanian in the name of others. The certified records pertaining to these landed properties have been obtained from the jurisdictional Sub-Registrar, Marakkanam and the sub-Registral, Neelankarai respectively. The details of immovable properties acquired as above, which tantamount to the value of the part of the proceeds of crime involved in the Charge sheet in File No.RC-4(E)/2013 CBI/BS & FC, Bangalore in C.C.No.9635/2014 dated 13/8/2014 is illustrated below:-

24. The investigation conducted under the provisions of PMLA, 2002 primarily revealed that:

a) STSL and R.Subramanian suppressed the details of sundry creditors in the stock statement, not submitted the quarterly progress reports, External Rating, Balance-sheet, etc., for the period 2007-08, utility certificate for phase-IV expansion, submitted and manipulated utility certificate for phase-V expansion to the bank authorities and not cooperated for post sanction verification of the loan, thus fraudulently violated the conditions of Cash Credit loan and Term loan.

b) STSL and R.Subramanian had mentioned raising of money through equity in their documents even after their application for IPO being rejected in January, 2008.

c) As per the bank transaction statements, the loan amounts were placed and integrated in the regular business transaction, routed between different group companies and hence utility of the loan funds being clearly distinguishable, thus diverted for other than the declared purpose. STSL did not file any balance-sheet after the period 2006-07 and also after the receipt of the loan funds. And hence in the absence of audited financials certifying the expenditure of term loan funds, the default loan amount is the proceeds of crime of Rs.77.39 Crores, which is in conformation to the definition of proceeds of crime within the meaning of Section 2(1) (u) of the PMLA, 2002.

d) -----

e) STSL had not accumulated any assets in the name of the company in order to hide the proceeds of the crime as discussed above, whereas the immovable property of 10.4 acres of land as detailed earlier which has been kept by R.Subramanian untainted in the name of his group company TTSL and the residential property in the name of his wife Shri.R.Subramanian (presently under attachment by Bank of India) as detailed in Para 14 above, are part value of the Proceeds of Crime estimated to Rs.77.39 Crores in terms of Section 2(1)(u) of PMLA, 2002 read with the definition of "Property" as defined under Section 2(1)(v) of the PMLA, 2002.

f) There is every likelihood that the immovable properties as mentioned earlier totally to the tune of Rs.85.50 lakhs (Guideline value Rs.4.45 Crores), in the name of M/s.Triad Trading Services Limited and Smt.Srividya Subramanian, wife of Shri R.Subramanian, being transferred or dealt with in any manner, which may result in frustrating further proceedings relating to confiscation of such proceeds of crime, under the provisions of PMLA, 2002."

8. Based on the above mentioned findings, the adjudicating authority came to a conclusion that there are reasons to believe that the properties are proceeds in crime/transfer are dealt with all the accused and this would frustrate the proceedings relating to confiscation of proceeds of crime and are not attached immediately further proceedings are likely to be frustrated.

9. The Adjudicating Authority, therefore, confirmed the provisional attachment under Section 8 (3) of the Act. The consequence of passing a final order of attachment i.e., 8 (3) of the Act is that under Section 8 (4) be taken for taking possession of the properties. As stated above, the Rules prescribe that if the property is in occupation of any person including the owner, then the person in occupation of the property has to be evicted by resorting to the Prevention of Money Laundering Act. The petitioner therefore, challenges Section 8 (4) of the said Rules stating that it amounts to depletion of property rights and is in violation of 300 A of the Constitution of India.

10. Heard Mr.R.Subramanian, learned counsel for the petitioner and Mr.N.Ramesh, learned Special Public Prosecutor for the respondents.

11. It has been contended by Mr.R.Subramanian, learned counsel for the petitioner that till it is not finally decided that the property attached is a proceed of crime, the occupant cannot be denied the possession and enjoyment of the property. It is argued that the provisions of the Act and the Rules framed thereunder by which the owner has been forcefully evicted is manifestly arbitrary. According to the petitioner, there is no nexus between the object sought to be achieved and the Rules framed and that the Rules are therefore, manifestly arbitrary. It is further contended that attachment has been defined under Section 2 (1) (d) of the Act and the purpose of attachment is only prohibition of transfer, conversion, disposition or movement of property. He would state that once the property is attached, there is no possibility of transfer, conversion or disposition or movement of such property and therefore, there is no necessity of evicting the owner of the property from the premises.

12. It is further stated that a person who is in lawful occupation of the property cannot be deprived of the enjoyment of the property till it is not decided with such property are proceeds of crime. He would further argue that the order of adjudicating authority is at best only an administrative order and by an administrative order, a person cannot be deprived of his legal right to enjoy the property. He would argue that neither the Criminal Law Amendment Ordinance 1944, which enables attachment pending criminal trial in respect of offences set out in schedule thereto or the provisions of CPC provided for taking over possession of the property before conclusion of the proceedings. The records would show that the petitioner had filed W.P.No.8576 of 2016 before the High Court of Delhi for the very same relief. After making some arguments, the petitioner sought permission to withdraw the writ petition with liberty to file a writ petition on the same cause of action in an appropriate Court. With this liberty, writ petition was permitted to be withdrawn.

13. Prevention of Money Laundering Act was brought to prevent Money Laundering and Confiscation of Property derived from or involved in Money Laundering the statement of object and reasons of the Act which is important for the adjudication issue reads as under:-

Preamble: The preamble to the Act states the object and purpose of the law. The "Statement of Objects and Reasons" which was appended to the Bill as introduced in the Lok Sabha on 29th October, 1999 reads as under -

"Statement of Objects and Reasons

It is being realised, world over, that money-

laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:

(a). The United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for preventing of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b). The Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.

(c). The Financial Action Task Force held in Paris from 14 to 16 July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are -

- (i). declaration of laundering of monies earned through serious crimes, a criminal offence
- (ii). to work out modalities of disclosure by financial institutions regarding reportable transactions
- (iii). confiscation of the proceeds of crime
- (iv). declaring money-laundering to be an extraditable offence and
- (v). promoting international co-operation in investigation of money-laundering

(d). The Police Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No.S-17/2 of 23rd February 1990, inter alia calls upon the member States to develop mechanism to prevent financial institution from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e). The United Nations in the Special Session on Countering World Drug Problem together concluded on 8 to 10 June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

In view of an urgent need for the enactment of a comprehensive legislation inter alia, for

preventing money-laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering, etc., the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendation of the Standing Committee accepted by the Central Government are that:

(a). the expressions 'banking company' and 'person' may be defined:

(b). in Part I of the Schedule under Indian Penal Code, the word, 'offence' under Section 477 A relating to falsification of accounts should be omitted;

(c). 'knowingly' be inserted in clause 3 (b) relating to the definition of money-laundering.

(d). the banking companies, financial institutions and intermediaries should be required to furnish information of transactions to the director instead of Commissioner of Income-tax

(e). the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries

(f). a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested before the gazetted officer or Magistrate

(g). the words 'unless otherwise proved to the satisfaction of the authority concerned may be inserted in clause 22 relating to presumption on inter-connected transactions

(h). vacancy in the office of the Chairperson of the Appellate Tribunal, by reason of his death, resignation or otherwise, the seniormost member shall act as the Chairperson of this Act to fill the vacancy, enter upon his office;

(i). the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under Section 288 of the Income-tax Act, 1961

(j). the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine or rupees fifty thousand or both;

(k). the word 'good faith' may be incorporated in the clause relating to bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill

In addition to above recommendations of the Standing Committee, the Central Government purposes to:

(a). relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm;

(b). levy of fine for default of non-compliance of the issue of summons, etc.

(c). make provisions for having reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the transfer of funds involved in money-laundering kept outside the country and extraction of the accused persons from abroad.

The Bill seeks to achieve the above objects.

From the above, it is clear that the law seeks to prevent money-laundering which in plain terms means the preventing legitimising of the money earned through illegal and criminal activities by investments in movable and immovable properties. The need for a law on the subject has been the focus of the Government world over in recent times and that of the U.N also, because the scourge of money-laundering has threatened to wreck the foundations of the States and undermine their sovereignty even. The terrorist outfits and smuggling gangs have been depending upon money laundering to finance their operations and it is known that money for such operations are arranged through laundering. Many such illegal outfits have set up ostensibly legal front organisations. The money generated through illegal activities is ultimately inducted and integrated with legitimate money and its species like movable and immovable property. Thus certain economic offences, commercial frauds, crimes like murder, extortion have contributed to money-laundering in a significant manner. The perpetrators of such heinous crimes should not be allowed to enjoy the fruits of the money that passed under the activity and therefore, the present enactment is intended to deprive the property which is related to the proceeds of specific crimes listed in the Schedule to the Act."

14. The relevant provisions which are relevant are extracted.

Section 2 (d):- "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order."

Section 3. Offence of money-Laundering.-Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

Section 5 (1) : Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

(2). The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment Explanation.- For the purposes of this sub-section "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

Section 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 1[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 (1A) 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.

(8). Where a property stands confiscated to the Central Government under sub-Section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money-laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable

precautions and is not involved in the offence of money-laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed."

Section 24: Burden of Proof: In any proceeding relating to proceeds of crime under this Act,- (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

15. A reading of the above mentioned provisions would show that the Act was brought in to ensure that proceeds of crime are attached and offenders who participate and assist in the commission of crime do not enjoy the benefits of the property which is relatable to the proceeds of the crime. The Prevention of Money Laundering Act, indicates to make Money Laundering an offence under Section 3 and proceeds for punishment which extends to imprisonment. The Act envisages attachment of all properties involved in the offence of Money Laundering and the proceeds of such crime falls within the scope of the Act. It is well known that perpetrators of crime try to conceal the proceeds of crime and the purpose of the Act is to trace these properties and deprive the perpetrators who are involved in crime or assist in committing of the crime or assist in concealing the proceeds of the crime from enjoying the property. The Prevention of Money Laundering Act is a complete code in itself which defines the offence, the scheme of attachment of properties which are involved in the offence of Money Laundering and the hierarchy of authorities before which the matters can be taken.

16. The final order of attachment is passed after due hearing is given to all the parties concerned. Further Order under Section 8 (3) of the Act by which attachment becomes final is subject to an appeal to the Appellate Tribunal under Section 26 of the Prevention of Money Laundering Act. The chairman of the Appellate Tribunal is a sitting or a former Judge of the Supreme Court of India or a High Court or a person who is qualified to be a Judge of the High Court. Order of the Tribunal is subject to a further appeal to a High Court or any question of law or fact, under Section 42 of the Act. This order of adjudication under Section 8 (3) is amenable to

challenge before the appellate Tribunal under Section 26 and to a further challenge to the High Court under Section 42 of the Act. There are adequate safeguards before the order of attachment attains finality. Once the order under Section 8 (3) attains finality and the opinion of the adjudicating authority that the property must be restrained from being dealt with by the owner of the proceeds gets finalised, the procedure under Section 8 (4) is followed for securing the property. Section 8 (5) provides that on the conclusion of the trial of an offence under Money Laundering Act, the Special Court finds that the offence of Money Laundering has been committed, it shall order that such property involved in Money Laundering or which has been used for commission of the offence of Money Laundering stand confiscated to the Central Government. Section 8 (8) provides that where a property stands confiscated to the Central Government under sub-Section (5), can be restored to the claimant from whom the property was taken away by the offender who had legitimate interest in the property. Section 9 provides that after the order of confiscation is made all rights and title in the property shall vest absolutely in the Central Government free from all encumbrances.

17. A perusal of the scheme of the Act would show that attachment under Section 8 of the Act does not automatically per se extinguish all rights. Subject to the outcome of trial, it can be restored. The property is only taken away to ensure that properties are not disposed of. The question is whether eviction of the occupant of the property provided under the Rules is violative of Article 14 of the Constitution of India and does it amount to depriving a person of his property rights guaranteed under Article 300 A of the Constitution of India.

18. The Hon'ble Supreme Court in YOGENDRA KUMAR JAISWAL VS. STATE OF BIHAR {(2016) 3 SCC - 183}, has observed as under:-

"151. We are absolutely conscious that the said judgment was delivered in a different context. What is prohibited under Article 20(1) is imposition of greater punishment that might have been imposed and prohibition of a conviction of any person for violation of law at the time of commission of the act. We repeat at the cost of repetition that confiscation being not a punishment does not come in either of the categories. Thus viewed, the property of an accused facing trial under the 1988 Act could be attached and there can be administration by third party of the said property and eventual forfeiture after conviction. The term "attachment" has been understood by this Court in Kerala State Financial Enterprises Ltd. v. Official Liquidator [Kerala

State Financial Enterprises Ltd. v. Official Liquidator, (2006) 10 SCC 709] in the following manner: (SCC p. 713, para 11)

"11. The word 'attachment' would only mean 'taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it'. It is used for two purposes: (i) to compel the appearance of a defendant; and (ii) to seize and hold his property for the payment of the debt. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court."

152. The legislature has thought it proper to change the nature and character of the interim measure. The property obtained by ill-gotten gains, if prima facie found to be such by the authorised officer, is to be confiscated. An accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated by illegal means. That being the litmus test, the filament of reasoning has to rest in favour of confiscation and not against it. Therefore, we are of the considered view that the provision does not violate any constitutional assurance."

19. The Act has been made to combat a special problem which is plaguing the country. The instant Act was brought about to prevent legitimising of the money earned through illegal and criminal activities by investments in movable and immovable properties. It had come to light that terrorist outfits and smuggling gangs have been depending upon the money laundering to finance their operations and the money for such operations are arranged through laundering. The Statement of Object and Reasons reads that money generated through illegal activities is ultimately inducted and integrated with legitimate money, resulting in purchasing of movable and immovable property. The object of the Act is that holders of properties acquired out of proceeds of crime should not be allowed to enjoy the fruits of that money which had been acquired through criminal activities and the Act was intended to deprive the persons who have acquired the property from enjoying the property which has been generated through proceeds of specific crimes listed in the schedule of the Act. It therefore, cannot be said that there is no nexus between Section

8 (4) of the Act r/w, The Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 with the object, i.e., sought to be achieved by the Act. Contention of the learned counsel that the Act is manifestly arbitrary, cannot be accepted. Merely passing an order restraining the sale of disposing of the property was not sufficient to achieve the object of the Act. An owner of property purchased by processing proceeds of crime cannot said to have any interest over the property which has been purchased by using tainted money. The property also has to be secured to meet the object of the Act and for this purpose, the procedure prescribed under the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by Adjudicating Authority) Rules, 2013, cannot be said to be manifestly arbitrary. Section 24 of the Act provides that in case of person charge with the offence of money laundering under Section 3 of the Act, the Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering. Section 24 therefore, imposes the burden on the accused to prove that the property is not acquired by the tainted money and in this regard, therefore, the accused has to either show that the property has been acquired by legitimate source of funds. In view of this presumption, which is contained in Section 24 of the Act, it cannot be said that Rule 4 and 5 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by Adjudicating Authority) Rules, 2013, which has been framed for achieving the directions issued under Section 8 (4) of the Act is manifestly arbitrary.

The Hon'ble Supreme Court in Y.S. Jagan Mohan Reddy v. CBI [Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439, has observed as under:-

"34. ... The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

20. When an attempt is made to project proceeds of crime as untainted money and also when the burden of proof is on the accused to show that the property has not been purchased out of the proceeds of crime, it cannot be said that the mandate given by the Act and the Rules to evict the person in whose name the property stands from the property is manifestly arbitrary.

21. The Hon'ble Supreme Court in SHAYARA BANO Vs. UNION OF INDIA {(2017) 9 SCC -1} has held that test of manifest arbitrariness to invalidate legislation under Article 14 of the Constitution of India must be something done by the legislature capriciously, irrationally and/or without adequate determining principle and also when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. Paragraph 101 of the said judgment reads as under:-

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

22. Keeping in view of the object sought to be achieved by the Act, it cannot be said that Section 8 (4) r/w. Rule 5 of the said Rules which provides for attachment of property purchase out of proceeds of crime or from an offence under Section 3 of the Money Laundering Act, cannot be said to be manifestly arbitrary. The purpose is to deprive the purportor of the crime or any person involved in an offence of Money Laundering from enjoying the property. Such being the object, challenge to Section as being manifestly arbitrary, cannot be sustained.

23. The challenge that Section 8 (4) of the said Act r/w., the Rules, deprives a person of their right to property and are violative of Article 300-A of the Constitution of India is also not sustainable. Article 300-A, is extracted below.

"300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."

It is settled law that Article 300-A ensures that no person shall be deprived of their property, except in accordance with law. In the case of *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC, the Hon'ble Supreme Court explained the meaning of the expression, "deprivation of the property of a person," as under:

"48. The word 'property' used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent....."
" (emphasis supplied)

Article 300-A protects the private property of a person from Executive Action. The Hon'ble Supreme Court in *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1 has held as under:

"168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law.

169. This Court in *State of W.B. v. Vishnunarayan and Associates (P) Ltd.* (2002) 4 SCC - 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive

officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights.

170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of "public purpose" and "compensation" in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of List III Entry 42, as well and, hence, would apply when the validity of a statute is in question."

24. A reading of the above, would show that Article 300A, is attracted to those situations where the property of a person is acquired only by an administrative/executive order, and not on the basis of any law, validly made. However, even legislations which have the effect of depriving a person of his property rights without any object whatsoever also can be challenged that such legislations are violative of the Constitutional mandate under Article 300 A. The purpose for bringing out the Act and the object sought to be achieved has been discussed in the earlier portions of the judgment. A person who has purchased the property using proceeds of crime cannot said to have any interest in the property and the protection under Article 300 A cannot be pressed into service by a perpetrator of a crime. As discussed earlier, provisional attachment is under Section 5 (1) of the Act. The Adjudicating Authority while exercising its powers under Section 8 confirms the attachment after hearing all the parties. The order confirming the attachment is appealable to the Tribunal under Section 26 of the Act and a further appeal lies to the High Court. The property is confiscated only after the criminal Court finds that the offence under Section 3 of the Act has been committed. Mere order of attachment cannot be said to be violative of Article 300 A of the Constitution of India. The challenge on this score cannot be accepted.

25. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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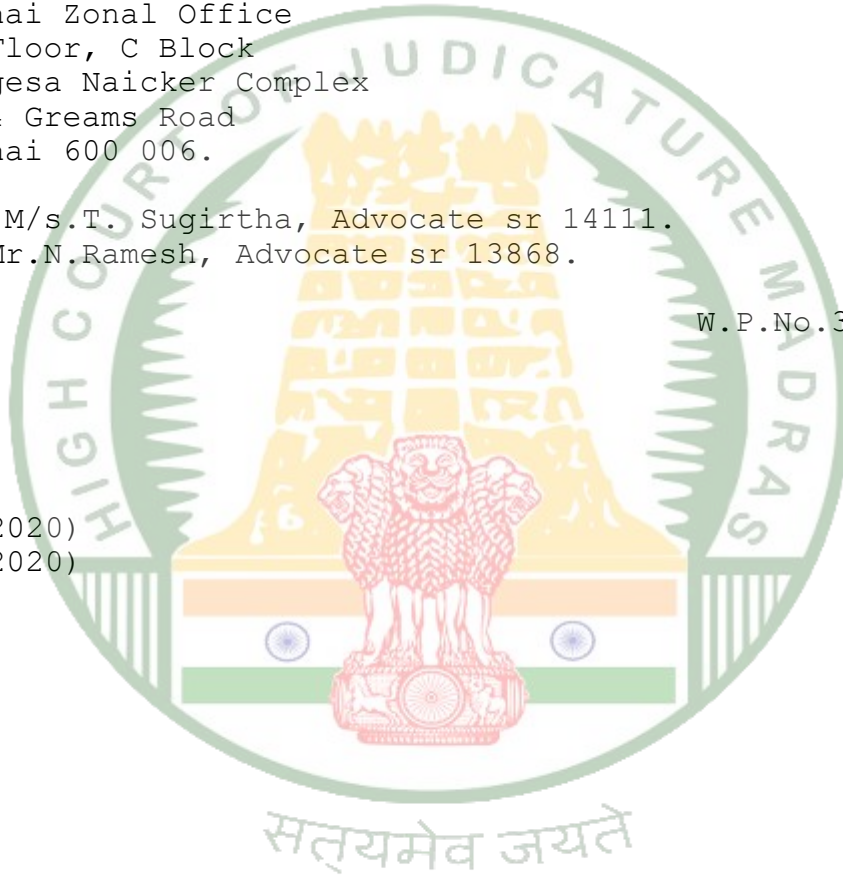
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W.P.No.3176 of 2020

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