**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2155 OF 2021**

Esskay Properties and Investments
Private Limited and anr. … Petitioners
V/s.
Union of India and ors. … Respondents

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Mr.Vikram Nankani, Senior Advocate alongwith Mr.Siddharth Mehta, Mr.A.S.Pal, Ms.Eram Qutaishi, Mr.Dhruv Nyaydhish, Mr.Roshil Nichani i/by M/s Mehta & Padamsey, Advocates for the Petitioners.
Mr.Anil Singh, ASG alongwith Mr.Aditya Thakkar, Mr.Shreeram Shirsat, Mr.Amandeep Sva, Ms.Smita Thakur, and Mr.Aakash Pathare, Advocates for the Respondents.

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**CORAM : UJJAL BHUYAN &**
**MADHAV J. JAMDAR, JJ.**
**DATE : OCTOBER 12, 2021.**

**P.C.:-**

Heard Mr.Nankani, learned senior counsel for the petitioners; and Mr.Anil Singh, learned Additional Solicitor General of India for the respondents.

2. This petition under Article 226 of the Constitution of India challenges order dated 7th June, 2021 issued by the Deputy Director, Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India under sub-section (1) of section 5 of the Prevention of Money-Laundering Act, 2002.

3. A perusal of the impugned order would go to show that Central Bureau of Investigation had registered a first information on 25th October, 2017 under various sections of the Indian Penal Code and Prevention of Corruption Act, 1988. On the basis of

information received from the Directorate of Enforcement, New Delhi, the Deputy Director recorded his reasons to believe that petitioner No.2 is in possession of proceeds of crime generated from the offence of money-laundering committed by the accused. Ultimately, the Deputy Director summarized what was discernible from the investigation in the following manner:-(1) Promoters of Sterling/Sandesara Group have been declared as fugitive economic offenders under the Fugitive Economic Offenders Act, 2018 having total outstanding of approximately Rs.14,508 crores payable to Indian banks; (2) Petitioner No.2 got Rs.2 crores in his account and Rs.1 crore in his company's account from the Sterling/Sandesara Group; and (3) These are proceeds of crime and are likely to be concealed or transferred.

3.1 Thus as per the impugned order proceeds of crime to the tune of Rs.3 crores is in possession of petitioner No.2 in contravention of section 3 of the Prevention of Money-Laundering Act, 2002 (briefly "PMLA Act" hereinafter). After noting the schedule of properties at Table No.11 including residential property at Juhu, Mumbai owned by petitioner No.2 and village land, near Bangalore, the Deputy Director passed the impugned order provisionally attaching the said properties for a period of 180 days, further ordering that the same shall not be transferred and disposed of unless specifically permitted to do so by the Deputy Director.

4. Basic challenge of Mr.Nankani, learned senior counsel for the petitioners is that the scheduled properties were acquired much prior to registration of the offence of money-laundering. Therefore, it cannot be said that the properties were acquired on the basis of the tainted money. That apart, from the materials on record, the comparatively small amount of Rs.3 crores certainly

cannot be said to have been received by petitioner No.2 as part of the proceeds of crime. In the absence thereof respondents did not have the jurisdiction to proceed against the petitioners under the PMLA Act. Another submission of Mr.Nankani is that value of the scheduled properties would be approximately Rs.72 crores, whereas according to the respondents themselves petitioner No.2 is in possession of proceeds of crime to the tune of Rs.3 crores. Therefore, such attachment though provisional is disproportionate. In support of his submission Mr.Nankani has referred to section 3 of the PMLA Act and has also tendered before us a compilation of judgments.

5. On the other hand, Mr.Singh, learned Additional Solicitor General submits that writ petition is premature and should not be entertained. He submits that after provisional attachment of the property under section 5(1), matter is now before the adjudicating authority under section 8. Under sub-section (2) of section 8 adjudicating authority has to consider the reply of the aggrieved persons, petitioners in the present case, and consider all relevant materials. Only thereafter an order can be passed as to whether all or any of the properties are involved in money laundering. In case petitioners are aggrieved by any order passed under section 8 there is provision for appeal to the Appellate Tribunal under section 26. Even thereafter there is a provision for further appeal to the High Court under section 42. Mr.Singh submits that petitioners have submitted their reply to the show-cause notice to the adjudicating authority whereafter adjudicating authority has fixed 27th October, 2021 as the date of hearing. In support of his submissions Mr.Singh has placed reliance on a decision of the Supreme Court in **M/s Embassy Property Developments Private Limited Vs. State of Karnataka,** decided on 3rd December, 2019, as well as on a recent decision

of this court in **Sunlight Housing Development Private Limited Vs. Directorate of Enforcement,** dated 23rd August, 2021.

6. In his reply Mr.Nankani has placed reliance on a recent judgment of the Supreme Court in **M/s Magadh Sugar and Energy Limited Vs. State of Bihar,** decided on 24th September, 2021 to buttress his contention that when there is lack of jurisdiction, recourse to Article 226 of the Constitution of India would be available to the aggrieved party. He also submits that Punjab and Haryana High Court in **Seema Garg Vs. Deputy Director, 2020 SCC P&H 378** has held amongst others that property acquired prior to commission of scheduled offence cannot be attached. Petition for special leave to appeal filed by the Directorate of Enforcement against the above decision was dismissed by the Supreme Court on 30th April, 2021. Alternatively, he submits that petitioners may offer bank guarantee covering the amount in question.

7. We have given our anxious consideration to the rival submissions made at the Bar.

8. Consciously we have refrained from delving into the factual narrative as stated in the impugned order of provisional attachment. This is so because we are of the opinion that when the matter is at the stage of adjudication under section 8 of the PMLA Act and adjudication hearing is fixed on 27th October, 2021, we should allow the statutory authority to deal with the matter in accordance with the statute. Of course the point of law raised by Mr.Nankani without adverting to the facts of the present case is an important one and as held by the Punjab and Haryana High Court in **Seema Garg (supra)** is certainly a matter which requires attention of the adjudicating authority. The other aspect

which has also caught our attention is that the properties attached are much more valuable than the alleged proceeds of crime stated to have been in possession of the petitioners. Therefore, we keep all contentions open including offer of bank guarantee which the petitioners may raise at the time of hearing before the adjudicating authority on 27th October, 2021. We hope that the hearing would not be deferred and should be concluded as expeditiously as possible.

9. Writ petition is disposed of.

**(MADHAV J. JAMDAR, J.)** **(UJJAL BHUYAN, J.)**

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