IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.17444 of 2014
and
M.P.Nos. 1 & 2 of 2014

R.Ravi ... Petitioner

Vs.

1. The Director,
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
Enforcement Directorate,
6th floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.

2. The Chair Person (Adjudicating Authority),
Directorate of Enforcement,
Ministry of Finance Department of Revenue,
Enforcement Directorate,
6th floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.

3. The Assistant Director,
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
Bengaluru Zonal Office,
3rd Floor, Block 'B', BMTC Building,
Shanthi Nagar,
K.H.Road, Bangalore-560 027. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records comprised in File No.ECIR/6/ BZ/2012 dated 24.6.2014 on the file of the 3rd respondent and quash the same.

For Petitioner : Mr.R.N.Amarnath.

For Respondents : Mr.Rajnish Pathiyil.
SPC

O R D E R

The Writ on hand has been instituted challenging the notice dated 24.06.2014 issued by the 3rd respondent to the petitioner for vacating the property.

2. The petitioner states that he had entered into a lease agreement on 03.02.2011 with two persons, namely, Mr.A.T.Raja Singh and Mrs.Noreen Aderson, both being husband and wife respectively, with regard to the property situate at R.S.No.68, New R.S.No.F-2/3, measuring an extent of 0.20 cents together with a building bearing Door No.277 Lake View Road Theetukal Mullikorai Post, Ooty.

3. The agreement for sale was registered as document No.269 2011 on the file of the Joint Sub Registrar - I. The total consideration fixed was a sum of Rs.1,10,00,000/- together with land and building along with furniture and fittings thereon. The petitioner has settled a sum of Rs.70,00,000/- on various dates till 01.03.2011. In view of the fact that the sale deed was not executed by the owner, the petitioner instituted a Civil Suit for specific performance and permanent injunction in O.S.No.35 of 2011 on the file of the learned District Judge, Nilgiris, Ooty.

4. The said suit was decreed in favour of the petitioner on 14.06.2018 and against the said decree, the owner filed an appeal which is pending before First Appellate Court.

5. Under these circumstances, the respondents initiated action against the petitioner based on the fact that a vendor of the petitioner had involved in money laundering and actions were initiated against the vendor of the petitioner and therefore the property was attached by invoking the provisions of the Prevention of Money Laundering Act, 2002 and further actions were continued by issuing orders.

6. The learned counsel for the petitioner reiterated that notice for vacating the property was issued to the petitioner without providing any opportunity and therefore it is a violation of principles of natural Justice and the petitioner being a bonafide purchaser of the subject property, he is entitled for an opportunity even under Section 9 of the Prevention of Money Laundering Act, 2002.

7. The learned counsel for the petitioner states that the suit for specific performance was decreed in favour of the petitioner and the appeal filed by the owner is pending. Thus, the respondents ought to have allowed the petitioner to submit

his defence by filing all necessary documents. Thus, the action initiated by the respondents are not only in violation of the provisions of the Act, but also in violation of the principles of natural Justice.

8. The learned counsel for the respondents objected the said contention by stating that actions were admittedly initiated against the owner of the property under the Prevention of Money Laundering Act.

9. The subject property was attached after confirmation by the Adjudicating Authorities under Section 8 (3) of the Act. Once the Adjudicating Authorities confirmed the attachment under Section 8(3) of the Act, then the authorities are empowered to take possession of the property. In this context, the impugned order has been issued. Thus, there is no infirmity in respect of the order passed by the 3rd respondent.

10. Opportunity of hearing is contemplated both under Section 8 as well as Section 9 of the Act. Under Section 8(2) proviso clause, it is stated 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.

11. When the proviso clause contemplates an opportunity to a person interested, in the present case, undoubtedly, the petitioner is a person interested as he claims that he had purchased the property from the owner and the Civil Suit instituted by him was also ended in his favour. However, the appeal suit is pending.

12. Under these circumstances, the authorities ought to have provided an opportunity to the petitioner to submit all the documents enabling him to establish his case and thereafter take a decision for the purpose of proceeding with the matter. Contrarily, the respondents admitted the possession of the petitioner in the subject property.

13. The learned counsel for the respondents states that the information was gathered from the original owner of the property. In these circumstances, when the department admits the possession of a person in the subject property, the said person is also to be considered as a "person" within the meaning of the Act and an opportunity must be provided for the purpose of submission of documents and to defend his case.

14. Contrarily, the respondents in the present case directly issued a notice of eviction asking the petitioner to vacate the

premises and hand over possession within seven days from the date of receipt of a copy of the notice. Thus, valuable opportunity of defence has been denied to the petitioner and even under the principles of law such an opportunity cannot be denied.

15. Therefore, this Court is of the considered opinion that the order impugned has been passed in violation of principles of natural Justice. Accordingly, the impugned order passed by the 3rd respondent in File No.ECIR/6/BZ/2012 dated 24.06.2014 is quashed and the matter is remitted back to the 3rd respondent for fresh consideration.

16. The 3rd respondent is directed to issue a fresh notice to the petitioner setting out the facts and circumstances, as well as the allegations within a period of four weeks from the date receipt of a copy of this order. On receipt of any such notice from the 3rd respondent, the petitioner is at liberty to submit his explanations, documents, evidences within a period of four weeks from the date of receipt of a copy of the notice from the 3rd respondent.

17. Thereafter, the respondents are directed to provide an opportunity of personal hearing to the Writ Petitioner. The respondents are also directed to complete the process of inquiry and decide the issues on merits and in accordance with law, within a period of three weeks from then.

18. With these observations, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
Enforcement Directorate,
6th floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

2. The Chair Person (Adjudicating Authority),
Directorate of Enforcement,
Ministry of Finance Dept. of Revenue,
Enforcement Directorate,
6th floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

3. The Assistant Director,
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
Bengaluru Zonal Office,
3rd Floor, Block 'B', BMTC Building,
Shanthi Nagar, K.H.Road,
Bangalore-560027.

+1cc to Mr.R.N.Amarnath, Advocate, S.R.No.65204

W.P.No.17444 of 2014

PL[co]
NSK 28/12/2021