IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.6329 of 2013 & 13609 of 2014 &

M.P.No.1 of 2013, 7063 of 2020 in W.P.No.6329 of 2013 &

M.P.Nos.1, 2 & 3 of 2014 in W.P.No.13609 of 2014

1. Dr.A.Md.Kalifa [Deceased]
2. Misiriya Kalifa
3. Razia Fatima
4. Mohamed Raghib

[P2 to P4 substituted as LRs of deceased sole petitioner vide Order dated 15.11.2022 made in WMP.No. 29070 of 2022 in W.P.No.6329 of 2013 by NSKJ]

... Petitioners in both WPs.

Vs

<u>W.P.No.6329 of 2013</u>

1. The Assistant Director [The Prevention of Money-Laundering Act, 2002],
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
Government of India Shashtri Bhavan,
3rd Floor, 3rd Block, No.26, Haddows Road,
Chennai – 600 006.

2. T.Badrinarayana

3. R.Sudha

W.P.No.13609 of 2014

1. The Assistant Director [The Prevention of Money-Laundering Act, 2002],
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
Government of India Shashtri Bhavan,
3rd Floor, 3rd Block, No.26, Haddows Road,
Chennai – 600 006.

2. The Deputy Director,
Director of Enforcement,
Government of India, Haddows Road,
Chennai – 600 006.

3. T.Badrinarayana

4. R.Sudha ... Respondents

Prayer in W.P.No.6329 of 2013 : Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records in possession Notice dated 26.11.2012 with reference F.No.ECIR/07/CZO/The Prevention of Money-Laundering Act, 2002/2009 issued by the first respondent and quash the same and also to direct the first respondent not to proceed against the property at New No.16, Old No.3, Porur Somasundaram Street, North Usman Road, T.Nagar, Chennai – 600 017 pursuant to the confirmation of Order of attachment in O.C.No.142 of 2012 dated 04.09.2012.

Prayer in W.P.No.13609 of 2014 :- Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records in Form III Possession Notice dated 06.05.2014 issued by the second respondent and quash the same.

For Petitioners in both WPs : Mr.B.Kumar, Senior Counsel for Mr.R.Mubarak Basha

For Respondents : Mr.Rajnish Pathiyil, CGSC – R1 in W.P. No.6329 of 2013 & R1 & R2 in W.P.No. 13609 of 2014

No appearance – R2 & R3 in W.P.No. 6329 of 2013 & R3 & R4 in W.P.No. 13609 of 2014.

COMMON ORDER

The Writ Petition in 6329 of 2013 has been filed to quash the possession Notice dated 26.11.2012 issued by the first respondent and also to direct the first respondent not to proceed against the property at New No.16, Old No.3, Porur Somasundaram Street, North Usman Road, T.Nagar, Chennai – 600 017 pursuant to the confirmation of Order of attachment in O.C.No.142 of 2012 dated 04.09.2012.

2. The Writ Petition in 13609 of 2014 has been filed to quash the Form III Possession Notice dated 06.05.2014 issued by the second respondent.

3. It is the case of the petitioner that one Lakshmibai Ammal is the original owner of the property situated at Plot No.15, Old No.7, New No.16, Porur Somasundara Mudaliar Street, Zamin Mambalam, T.Nagar, Chennai- 600 017 by virtue of purchase on 19.07.1948 by way of a registered document No.621 of 1948. The petitioner's father-in-law was a tenant from the very inception and running 'Imperial Beverages' in the said premises. The said Lakshmibai Ammal wanted to sell a portion of the property and therefore there was an oral agreement between the parties for the sale of the property and the entire sale consideration has been paid to the Lakshmibai Ammal. In the meanwhile, the said Lakshmibai Ammal passed away around 1986. In the year 2010, when the petitioner went to pay the property tax, he came to know that the same has been paid by some third party. On enquiry, it came to light that the third respondent executed a sale deed on 30.11.2010 in favour of the second respondent.

Thereafter, the first respondent initiated a proceedings under the Prevention of Money-Laundering Act, 2002 against the third respondent and an interim attachment has been passed under section 5 of the Prevention of Money-Laundering Act, 2002. Thereafter, a possession notice has been issued to the petitioner for eviction of the petitioner from the premises. The same has been challenged in this Writ Petition.

4. The learned counsel appearing for the petitioner submitted that though the property originally belonged to one Lakshmibai Ammal, she has no legal heirs. There was an oral agreement between the said Lakshmibai Ammal and the petitioner' father-in-law and the entire sale consideration has been paid and before the sale has been registered, the said Lakshmibai Ammal died in the year 1986. Thereafter, some documents have been created by the second respondent as if she is the legal heir of the said Lakshmibai Ammal and dealt with the property and sold the property to the third respondent. Now proceedings have been initiated against the second respondent on the ground that the said proceeds is out of the crime and in the same process, interim attachment of the property has been passed under Section 5 The Prevention of Money-Laundering Act, 2002

and thereafter, final attachment has been made under Section 8 of the The Prevention of Money-Laundering Act, 2002 and a notice has also been issued. It is the contention of the petitioner that even while final attachment has been made, no notice has been issued to the petitioner. If the petitioner has been issued proper notice, they would have established their right in the property. At any event, only symbolic possession can be taken and not the physical possession. It is his contention that even the final attachment Order has not been served to the petitioner.

5. Whereas, it is the contention of the learned counsel for the respondents, that there is no provision whatsoever in law to serve notice to the petitioner since the petitioner is neither a registered lessee or having any title over the property. As per Rule 5 of the Prevention of Money-Laundering Act, 2002, notice is required only for taking possession and prior to that no notice, whatsoever, is required. Hence, it is his contention that the petitioner is not the owner of the property. Therefore, the question of serving notice during the provisional attachment and final attachment does not arise at all. If at all the petitioners are aggrieved by the Order, they have to file an appeal as per Section 26 of the Prevention of Money-

Laundering Act, 2002. Therefore, the notice issued for taking possession cannot be challenged in this Writ Petition.

6. I have perused entire materials. It is not in dispute that a criminal proceedings is also pending for forgery of the documents. It is also not disputed that document said to have been executed by the third respondent is forged by impersonation. In fact, she claimed to be the daughter of the original owner Lakshmibai Ammal and dealt with the property. These facts have not been disputed. On the basis of the above forgery and impersonation, the property has been purchased by the third respondent, against whom proceedings have been initiated under the Prevention of Money-Laundering Act, 2002 and for the offences under sections Prevention of Corruption Act. These aspects have also not been disputed. Based on the above said documents, proceedings has been initiated. Accordingly, provisional attachment has been made under Section 5 of the Prevention of Money-Laundering Act, 2002 which has been confirmed under Section 8 of the Prevention of Money-Laundering Act, 2002 and the impugned Order has been served on the petitioner for eviction.

7. It is relevant to note that it is an admitted case of the respondent

that no notice whatsoever has been served for provisional attachment or for final attachment. Though it is stated that it is not contemplated as per the Act, the fact remains that no such notice has been served. Sub Clause 2, 3, 4 of Rule 8 of the Prevention of Money-Laundering Act, 2002 reads as follows :

> 8. The Adjudicating Authority shall, after—
>
> (a) considering the reply, if any, to the notice issued under sub- section (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 record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(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 attached property.

8. The above Section makes it very clear that if other than the owner, anybody claim as a tenant, notice is required only when the lease is registered under Section 17 of the Registration Act. In all other cases, notice for eviction to be issued as per Sub Clause 4 of Section of 5 of The Prevention of Money-Laundering Act, 2002 for eviction. Be that as it may.

9. The facts and circumstances of the case would reveal that the very property has been divested by the creating false documents, which has not been disputed. The property has been attached in the proceedings initiated

against the second and third respondents. According to the petitioner, they are in possession of the property under some oral arrangement from the very inception and there was also an oral agreement for sale between the original owner and themselves. The factum of their possession is not disputed. In such view of the matter, this Court is of the view that as the possession of the petitioner has not been disputed by the Department, any Order evicting or taking away their possession, will certainly affect the right of a person and such person would be an aggrieved person and they will certainly fall under the ambit of Section 26 of The Prevention of Money-Laundering Act, 2002. They can very well challenge the action of the respondent by filing an appeal.

10. Considering the facts and circumstances of the case, as the petitioners are certainly aggrieved persons, they are entitled to file an appeal and establish their stand before the appellate authority. It is for the petitioner to establish their right over the property before the appellate authority. Till such appeal is decided, the petitioners cannot be evicted and the notice served on them shall be put on hold till the disposal of the appeal. In such view of the matter, the respondent is directed to serve a

copy of the Order of attachment passed under section 8 of the Prevention of Money-Laundering Act, 2002 enabling the petitioner to file an appeal before the Appellate Tribunal as per Section 26 of The Prevention of Money-Laundering Act, 2002. Such an appeal shall be filed within 45 days from the date of receipt of a copy of the attachment Order passed under Section 8 of the Prevention of Money-Laundering Act, 2002. The Appellate Tribunal may considering the facts and circumstances, decide the appeal. As the petitioners pursuing their remedy bonafidely in this Writ Petition and further fact that a copy of the final attachment Order has not been served on the petitioner, the Appellate Tribunal may liberally consider the delay.

11. With the above observations, these Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

02.12.2022

vrc

To

1. The Assistant Director [PMLA],
   Directorate of Enforcement,
   Ministry of Finance, Department of Revenue,
   Government of India Shashtri Bhavan,
   3rd Floor, 3rd Block, No.26, Haddows Road,
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2. The Deputy Director,
   Director of Enforcement,
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N.SATHISH KUMAR, J.

vrc

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