



Writ Petition No.32533 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

Coram

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

Writ Petition No.32533 of 2022

S.Prasanna

The Managing Director,
The Madura Chemicals Pvt. Ltd.,
Factory at, R.S.No.34/2,
Voluntariate Farm Road,
Thuthipat, Puducherry - 605 502.

... Petitioner

Vs.

1.The Deputy Director,
Directorate of Enforcement,
Government of India,
3rd Floor, 3rd Block,
Shastribavan, Chennai - 600 006.

2.The Adjudicating Authority,
represented by the
Administrative Officer cum Registrar,
The Prevention of Money Laundering Act,
Parliament Street, New Delhi.

3.The Sub-Registrar,
Villianur,



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Puducherry.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the Provisional Attachment Order (PAO) No.01/2021(MDSZO), dated 12.01.2021 issued by the first respondent u/s.5(1) of the PML Act in respect of petitioner's property at land bearing RS.No.34/1A, 34/2, Cadastre No.66/1, 67/1, 66/2, 67/2 measuring to an total extent of 1 hectare 83 ares 65 centiares at Thuttipet Revenue Village, Villianur Commune Panchayath, Village No.24, Puducherry, as lapsed u/s.5(3) of the PML Act and ceased to have effect or force as a consequence of failure on the part of second respondent in passing further order u/s.8(3) of PML Act for extending or confirming Provisional Attachment Order dated 12.01.2021 u/s.5(1) of PML Act on or before 10.07.2021, after such expiry of Provisional Attachment Order, the second respondent, who become Functus Officio passed on a order u/s.8(3) of PML Act dated 22.12.2021 in Original Complaint (OC) 1398/2021 in (PAO) No.01/2021 (MDSZO) dated 12.01.2021, in ECIR/MDSZO/04/2018, confirming the first respondent Provisional Attachment u/s.8(3) of the Act is illegal without jurisdiction and consequential direction, directing the third respondent to register a sale deed if any present by the petitioner in respect of the aforesaid property.

For Petitioner : Mr.P.R.Thiruneelakandan
For Respondents : Mr.Rajnish Pathiyil
Special Public Prosecutor [ED] [R1 & R2]
Mr.S.John J.Raja Singh
Additional Government Pleader [R3]



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ORDER

[Made by **N.ANAND VENKATESH, J.**]

The present writ petition has been filed challenging the confirmation order passed by the second respondent u/s.8(3) of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as “PMLA”] dated 22.12.2021, confirming the provisional attachment order passed by the first respondent u/s.5(1) of PMLA, dated 12.01.2021.

2. The brief facts of the case are that the company named as Madura Chemicals Pvt. Ltd. was established in the year 2013 and one Mathesh and Ananthapandiyan were the Directors of the said company. In the year 2015, the petitioner claims to have acquired the said company and had paid a sum of Rs.75,00,000/- towards the same to the said Mathesh. The further case of the petitioner is that he had availed financial assistance from the Punjab National Bank by mortgaging his property as collateral security.

3. The grievance of the petitioner is that he wanted to settle the loan to the bank and hence, wanted to sell a portion of the property and had



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approached the concerned Sub-Registrar office. At that point of time, the petitioner was informed that there is an attachment order passed by the Directorate of Enforcement and hence, the petitioner cannot deal with the property. On verification, the petitioner found that the provisional order was issued by the first respondent on 12.01.2021 and the confirmation order was passed by the second respondent on 22.12.2021 and all these orders were passed without putting the petitioner on notice. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The learned counsel for the petitioner raised two grounds in order to sustain this writ petition. The first ground that was raised by the learned counsel for the petitioner is that the petitioner was never put on notice either after the provisional attachment order was passed or when the attachment order was confirmed by the Adjudicating Authority. The second ground that was raised by the learned counsel for the petitioner is that the provisional attachment order came to an end on 10.07.2021 after the expiry of 180 days and thereafter, the confirmation order has been passed by the second respondent on 22.12.2021 and such order of confirmation is non-est in the



eye of law and the second respondent lacks jurisdiction to pass such an order.

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5. The learned counsel for the petitioner in order to buttress his submissions, relied upon the following judgments:

- (a) Hiren Panchal and another v. Union of India and others [CDJ 2022 Cal HC 307];
- (b) Vikas WSP Ltd. and others v. Directorate Enforcement and another [2020 OnLine Del 1732]

6. *Per contra*, the learned Special Public Prosecutor submitted that the petitioner cannot maintain the present writ petition since the petitioner has an efficacious alternative remedy u/s.26 of the PMLA wherein the petitioner can file an appeal before the Appellate Tribunal against the Adjudication Order passed by the second respondent. The learned Special Public Prosecutor further submitted that the company *viz.*, Madura Chemicals Pvt. Ltd. was put on notice by the Adjudicating Authority. That apart, a complaint is already pending in Spl.C.C.No.6 of 2021 before the VIII Additional Sessions Judge [CBI Court], Chennai and the company has been arrayed as A26 and the



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above said Mathesh has been arrayed as A28. The learned Special Public Prosecutor submitted that the issue that has been raised by the learned counsel for the petitioner was already considered by this Court in W.P.No.26551 of 2022 [**Subburaj and others v. Directorate of Enforcement and another**] by an order dated 13.10.2022 and this Court did not entertain the writ petition and gave liberty to the petitioner in that case to approach the Appellate Tribunal and work out the remedy. In fine, the learned Special Public Prosecutor sought for dismissal of the writ petition.

7. We have carefully considered the submissions made on either side and perused the materials available on record.

8. The first ground that has been raised by the learned counsel for the petitioner is that Madura Chemicals Pvt. Ltd. was acquired by the petitioner in the year 2015 and that the petitioner was never put on notice either after the provisional attachment order was passed or when the confirmation order was passed by the Adjudicating Authority. We find from records that Madura Chemicals Pvt. Ltd. has been specifically added as a party before the



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Adjudicating Authority and it is represented by the above said Mathesh. We are dealing with a legal persona in the present case and it is enough if notice is issued to the company. The grievance of the petitioner that he did not personally know about this case is a matter to be resolved with Mathesh, who had received money from the petitioner enabling the petitioner to acquire the company. Hence, we are not satisfied with the contention raised by the learned counsel for the petitioner that Madura Chemicals Pvt. Ltd. was never put on notice by the Adjudicating Authority while confirming the provisional attachment order. In any event, we cannot get into this factual issue for the first time while dealing with this writ petition and such factual disputes cannot be adjudicated in a writ petition.

9. The second issue that was raised by the learned counsel for the petitioner is with regard to jurisdiction of the second respondent to pass the confirmation order beyond the period of 180 days. The second respondent apart from dealing with the merits of the case, has justified the passing of the Adjudication Order beyond 180 days by relying upon the various orders passed by the Apex Court extending the period of limitation. For proper appreciation, the relevant portion in the order is extracted hereunder:



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"Although the statutory time limitation period of order under section 8(3) has expired in this case on 10.07.2021, in view of the order dated 23.09.2021 of the Hon'ble Supreme Court of India read with orders dated 23.03.2020, 08.03.2021 & 27.04.2021 of the Hon'ble Supreme Court of India, this order is being passed within the extended time limitation period. The Provisional Attachment Order is confirmed and Complaint is allowed. Appeal against the order lies to the Hon'ble Appellate Tribunal, PMLA New Delhi under section 26 to the PML Act. The appeal may be filed within a period of 45 days from the date of receipt of the order OR within the time limit as applicable, to be ordered by the Hon'ble Supreme Court with respect to the order dated 23/03/2020, 08/03/2021, 27/04/2021 & 23/09/2021 in connection with cognizance for extension of limitation."

10. The learned counsel for the petitioner relied upon the judgment of the Delhi High Court to add weight to his submission that the Adjudicating Authority did not have jurisdiction to pass the confirmation order beyond 180 days. On carefully going through the order passed by the learned Single Judge of the Delhi High Court, we find that the issue on hand was never dealt with by the Delhi High Court and the same is clear from paragraph No.38 of the order, which is extracted hereunder:

"38. In the present case I have intentionally refrained myself from making any comment on whether the period of total lockdown declared by the Central Government, that is from 24.03.2020 to 20.04.2020, can be excluded for computation of the 180 days, as it is not disputed that even on exclusion of this period, the 180 days would have expired on 16.06.2020, the returnable date of the notice issued by the Adjudicating Authority."



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11. Apart from the above, it was also brought to our notice that the order passed by the learned Single Judge has been stayed by the Division Bench of the Delhi High Court in the case of ***Directorate of Enforcement and another v. M/s.Vikas WSP Ltd. & Others [LPA 362/2020 dated 08.01.2021]***.

12. Insofar as the judgment of the Calcutta High Court that was brought to our notice, we find that the Calcutta High Court had mainly relied upon the judgment of the Apex Court in **S.Kasi** case. With utmost respect to the learned Single Judge of the Calcutta High Court, we are not in agreement with the reasoning in the above judgment. The issue that was dealt with by the Apex Court in **S.Kasi** case pertains to the scope of Section 167(2) of Cr.P.C. which is directly referable to Article 21 of the Constitution of India viz., personal liberty of a person. The same cannot be equated while dealing with a property right under Article 300-A of the Constitution of India and the judgment of the Apex Court in **S.Kasi** case cannot be applied to a case involving property right of an individual or a corporate.



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13. When a similar issue was raised before us in W.P.No.26551 of 2022, this Court thought it fit to give liberty to the petitioner therein to raise the same issue before the Appellate Tribunal. We want to maintain consistency and hence, we are inclined to give similar liberty to the petitioner to approach the Appellate Tribunal and agitate his grievance.

14. Our reasoning supra is also supported by the judgment of the Apex Court in ***Prakash Corporates v. Dee Vee Projects Limited [(2022) 5 SCC 112]***. The Apex Court has explained the scope of the order passed in **S.Kasi** case and has categorically held that the same cannot be applied in a matter involving proceedings before a Court. The second respondent was exercising a quasi-judicial function and the ratio in **S.Kasi** case cannot be applied to such a quasi-judicial authority. In any case, we keep this issue open to enable the petitioner to agitate the same before the Appellate Tribunal.

In the result, this Writ Petition is dismissed and liberty is granted to the petitioner to approach the Appellate Tribunal u/s.26 of the PMLA and work out his remedy in accordance with law. No costs.



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[PNP, J.]

[NAV, J.]

06.12.2022

Index: Yes/No
gm

To

1. The Deputy Director,
Directorate of Enforcement,
Government of India,
3rd Floor, 3rd Block,
Shastribavan, Chennai - 600 006.
2. The Administrative Officer cum Registrar,
The Adjudicating Authority,
The Prevention of Money Laundering Act,
Parliament Street, New Delhi.
3. The Sub-Registrar,
Villianur,
Puducherry.
4. The Special Public Prosecutor [ED],
High Court, Madras.

P.N.PRAKASH, J.
and
N.ANAND VENKATESH, J.

gm



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