**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 04.07.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH**
**and**
**THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**W.P.(MD) No.14007 of 2022**

1.R.M.Sivagami Aachi

2.P.L.Muthuveerappan ... Petitioners

-vs-

1.The Deputy Director,
Directorate of Enforcement,
Government of India,
III Floor, C-Block,
Murugesan Naikar Complex,
No.84, Greems Road,
Thousand Lights,
Chennai – 600 006.

2.The Adjudicating Authority,
(Prevention of Money Laundering Act),
IV Floor, Jeevan Deep Building,
Parliament Street,
New Delhi 110001.

3.P.K.M.Selvam

4.S.Shankara Narayanan

5.The Sub Registrar,
Thallakulam,
Madurai District. ... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the entire records in connection with the impugned order dated 09.09.2021 passed by the second respondent in M.A.46/20 confirming the order passed by the first respondent dated 31.05.2017 in original complaint No.674/2017 insofar as the property at Serial Nos.17 and 25 are concerned and quash the same and direct the fifth respondent to remove the entry of attachment made by the first respondent may deem fit and appropriate.

| | | |
|---|---|---|
| For Petitioner | : | Mr.Isaac Mohanlal, Senior Advocate<br>for Mr.R.Karunanidhi |
| For Respondents | : | Mr.R.Vijaya Rajan,<br>Spl. Public Prosecutor for R1, R2<br>Mr.A.K.Manikkam,<br>Spl. Government Pleader for R5 |

**O R D E R**

**(Made by P.N.PRAKASH, J.)**

This writ petition has been filed seeking issuance of a writ of certiorari to quash the impugned notice dated 09.09.2021.

2. The minimum facts that are required for deciding this writ petition are as under:-

2.1 The dispute in this case is in relation to a land measuring 5.75 acres in Survey Nos.91/2-A2, 207/2-A and 91/2A in Kalikappan Village, Madurai District ("the said property" for brevity).

2.2 The petitioners are siblings. According to them, the said property originally belonged to their father, C.Palaniyappa Chettiar, who had settled the property in their favour on 02.03.1966, after which, they were in joint ownership and possession of the said property.

2.3 It is the further case of the petitioners that the said property was given to Muthaiya Thevar and Alagar *via* an oral agreement for cultivation purposes some time in the year 1971. Thus, the said Muthaiya Thevar and Alagar were "cultivating tenants" in the said property.

2.4 After the death of Muthaiya Thevar, a portion of the said property came into the hands of his son Veeranna Thevar. Similarly, on the death of Alagar, the balance portion of the said property came into the possession of his widow Karuppayee.

2.5 Veeranna Thevar executed a makeover deed dated 24.11.2006 for a consideration of Rs.81,000/- (Rupees Eighty One Thousand only) in favour of one P.K.M.Selvam and S.Shankara Narayanan (who are accused in the predicate offence), who were partners in M/s.M.s.Granites.

2.6 Similarly, Karuppayee also executed a makeover deed dated 24.06.2008 for a consideration of Rs.50,000/- (Rupees Fifty Thousand only) in favour of the said P.K.M.Selvam and S.Shankara Narayanan.

2.7 While so, an FIR in Crime No.196 of 2012 was registered against M/s.M.S.Granites for the offences under Sections 447, 379, 406 and 420 IPC r/w Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and other provisions of the Mines and Minerals Development Regulation Act, 1957.

2.8 The said FIR then culminated in a final report dated 19.08.2013 before the Judicial Magistrate, Melur, in which, M/s.M.S.Granites (A7), S.Shankara Narayanan (A2) and P.K.M.Selvam (A4) were shown as accused apart from other persons. Since the police prosecution disclosed a "scheduled offence" under the Prevention of Money Laundering Act, 2002 (in short "the PML Act"), the Enforcement Directorate registered a case under the PML Act and took up investigation in order to find out if M/s.M.S.Granites and other partners had generated any proceeds of crime *via* commission of the alleged criminal activities in Crime No.196 of 2012 and had projected the same as untainted property.

2.9 During the investigation by the Enforcement Directorate, they found that the "said property" was acquired by P.K.M.Selvam and Shankara Narayanan from Veeranna Thevar and Karuppayee through the said makeover deeds with the money generated from the commission of the predicate offence referred to in Crime No.196 of 2012.

2.10 Therefore, the Enforcement Directorate issued a provisional order of attachment dated 22.12.2016 under Section 5 of the PML Act and the matter was referred to the Adjudicating Authority for further orders under Section 8, *ibid.*

2.11 The Adjudicating Authority, by order dated 31.05.2017, confirmed the provisional order of attachment without hearing the petitioners herein. Therefore, the petitioners filed a statutory appeal under Section 26 of the PML Act before the Appellate Tribunal, which was allowed on 24.12.2020 and the matter was remanded to the Adjudicating Authority for fresh disposal in accordance with law after hearing the petitioners, since the Appellate Authority had failed to hear the petitioners, in whose names the said property was standing, even according to the Revenue records.

2.12 Accordingly, the Adjudicating Authority heard the petitioners and by the impugned order dated 09.09.2021, has confirmed the provisional order of attachment, aggrieved by which, the present writ petition has been filed.

3. Heard Mr.Isaac Mohanlal, learned Senior Advocate, appearing for the learned counsel on record for the petitioners and Mr.R.Vijaya Rajan, learned Special Public Prosecutor, appearing for the respondents 1 and 2 and Mr.A.K.Manikkam, learned Special Government Pleader, appearing for the fifth respondent.

4. At the outset, it is pertinent to point out that when a statutory appeal remedy is available under Sections 25 and 26 of the PML Act, it will not be appropriate for the petitioners to approach this Court by filing the present writ petition instead of approaching the Appellate Tribunal.

5. Mr.Isaac Mohanlal, learned Senior Advocate, contended that this Court is not denuded of the power to entertain this writ petition *albeit* the fact that there is an appeal remedy provided under the statute. In support of this submission, he placed strong reliance on the judgment of the Supreme Court in ***Magadh Sugar and Energy Limited v. State of Bihar and Ors., [(2021) SCC Online SC 801]***, wherein, in paragraph No. 32, the Supreme Court has stated as under:-

> *"The issues raised by the appellant are questions of law which require, upon a comprehensive reading of the Bihar Electricity Act, a determination of whether tax can be levied on the supply of electricity by a power generator (which also manufactures sugar) supplying electricity to a distributor; and whether the first respondent has the*

*legislative competence to levy duty on the sale of electricity to an intermediary distributor in view of the decision of this Court in State of AP (supra). The question of whether the appellant is liable to file returns under Sections 6B(1) and 5A of the Act is directly related to the issue of whether the sale of electricity by the appellant to BSEB falls under the charging provisions of Section 3(1). The questions raised by the appellant can be adjudicated without delving into any factual dispute. Thus, the present matter is amenable to the writ jurisdiction of the High Court."*

6. One can have no two opinions on the aforesaid statement of law, in that, the power of the High Court under Article 226 of the Constitution of India does not stand automatically denuded on account of the existence of an appeal remedy in a statute.

7. However, Mr.Isaac Mohanlal contended that when the issue involved is a complex question of law, it could be determined only by the High Court and not by the Appellate Authority.

8. We are unable to countenance this submission for the reason that, there is no such prohibition in the PML Act for the Appellate Authority to decide and determine a complex question of law and fact. When we posed to Mr.Isaac Mohanlal as to what is the complex question of law involved in this case, he raised the query "can the two makeover deeds dated 24.11.2006 and 24.06.2008 be construed by the Adjudicating Authority under the PML Act, as transfer of the ownership of the property merely because the amount that has been shown therein as consideration is proximate to the market value of the property?"

9. Mr.Isaac Mohanlal, learned Senior Advocate, contended that the entire decision of the Adjudicating Authority is based on the above premise and therefore, the above question raised by him could be best decided only by this Court under Article 226 of the Constitution of India and not by the Appellate Tribunal.

10. We carefully considered the aforesaid submission. In effect, it is the contention of Mr.Isaac Mohanlal that the makeover deeds ought not to have been considered as sale deeds, merely based on the consideration amount found therein and eventually, the same cannot be

attached as land belonging to the accused P.K.M.Selvam (A4) and S.Shankara Narayanan (A2).

11. Though at the first blush, this submission of Mr.Isaac Mohanlal did look attractive, but, there is a fundamental fallacy in it inasmuch as, the determination by the Adjudicating Authority under the PML Act is not related to declaration of rights of parties whatsoever. They are purely incidental questions. The scheme of the PML Act is, when the Enforcement Directorate finds a property that has been acquired by a person with the money generated from a criminal activity, Section 5 of PML Act requires them to secure the property as an interim measure and hand over the same to the criminal Court for final adjudication. Nothing more or nothing less. It is an *action in rem* in contradistinction to an *action in persona* which the accused would face both under the prosecution for the predicate offence as well for the prosecution under Section 3 r/w 4 of the PML Act. Admittedly, in this case, the petitioners are not accused either in the predicate offence or under Section 3 r/w 4 of the PML Act.

12. Assuming for a moment that they are the legal owners of the said property and if they found that the said Veeranna Thevar and Karuppayee had, by two makeover deeds, transferred the said property to P.K.M.Selvam and Shankara Narayanan, the remedy is not in this collateral proceedings under the PML Act, but in a suit for declaring the two makeover deeds as null and void. In this case, what the Adjudicating Authority has found is, the two accused, *viz.,* P.K.M.Selvam and Shankara Narayanan have *prima facie* generated proceeds of crime *via* illegal mining referred to in Crime No.196 of 2012 and with the money so generated, they have acquired the said property from Veeranna Thevar and Karuppayee *via* two makeover deeds dated 24.11.2006 and 24.06.2008 and therefore, the said property appears to be proceeds of crime, which has to be protected till a final decision is taken by the criminal Court *qua* the accused in the case. This, in our opinion, could be easily determined by the Tribunal constituted under the PML Act and therefore, the facts of the present case do not pass muster the contingencies laid down in ***Magadh Sugar and Energy Limited*** (*supra*) for the High Court to exercise the powers of the Appellate Tribunal under the PML Act.

13. Mr.Isaac Mohanlal submitted that since the period of limitation for filing the statutory appeal has lapsed, the petitioners may be left remediless.

14. In our opinion, the appeal can also be filed with an application for condonation of delay and in such event, we are confident that the Appellate Tribunal would show indulgence.

15. In the result, this writ petition stands dismissed with liberty to the petitioners to approach the Appellate Tribunal in accordance with law. It is made clear that whatever is stated above is only for the limited purpose of deciding as to whether this Court should entertain this writ petition or not, and the Appellate Tribunal shall proceed with the case of the petitioners without, in any manner, being influenced by what has been stated above. No costs.

**[P.N.P., J.]** **[R.H., J.]**
**04.07.2022**

Index : Yes / No
Internet : Yes / No
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**and**
**R.HEMALATHA, J.**

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