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WP.No.33285 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09..01..2023

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

Writ Petition No.33285 of 2022
and
W.M.P.No.32725 & 33971 of 2022

Shri M.Muruganandam

..... Petitioner

-Versus-

- 1.The Joint Director,
Directorate of Enforcement,
Chennai Zonal Office, Zone-1,
2nd and 3rd Floor, Murugesu Naicker Complex,
84, Greaves Road, Thousand Lights,
Chennai 600 006.
- 2.The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office, Zone-1,
2nd and 3rd Floor, Murugesu Naicker Complex,
84, Greaves Road, Thousand Lights,
Chennai 600 006.
- 3.The Sub-Registrar,
Vembakkam Sub-Registrar Office,
2/249, Pound Street, Vembakkam,
Tiruvannamalai District 604 410.



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4.The Sub-Registrar,
Dusi Sub Registrar Office,
247/3, Main road, Dusi,
Tiruvannamalai District 631 702.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the letters with F.No.ECIR/CEZO-1/06/2018(B) dated 02.05.2018 and the subsequent reminder letter with F.No.ECIR/CEZO-1/06/2018(B) dated 25.05.2022 sent by the office of the 2nd respondent to Offices of the 3rd and 4th respondents and to quash the same and consequently, direct respondents 1 and 2 to accept the Fixed Deposit amounting to Rs.1,57,62,000/- in lieu of the properties illegally encumbered vide the said letters.

*For Petitioner : Mr.Hari Radhakrishnan for
Mr.K.Hemanathan*

*For Respondents : Mr.Rajnish Pathiyil,
Special Public Prosecutor [ED
Cases) for RR1 and 2
Mr.R.Kumaravel,
Additional Government Pleader
for RR3 and 4*

ORDER

[Order of the Court was made by P.N.PRAKASH.J.,]

Challenging the communications of the 2nd respondent in letter F.No.ECIR/CEZO-1/06/2018(BR) dated 02.05.2018 and the subsequent



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reminders dated 25.05.2022 sent by the office of the 2nd respondent to the offices of the 3rd and 4th respondents requesting them not to allow any further transactions in respect of the properties mentioned in the list attached to the communications, the petitioner has come up with the present writ petition.

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

(i) The petitioner and one Balaravichandurudu had a civil dispute which got converted into a criminal complaint and a case in Crime No.83 of 2017 was registered by Central Crime Branch, Chennai, on the complaint of the latter against the former for the offence u/s 420, 294(b) and 506 (ii) of IPC.

(ii) It is reported that the aforesaid FIR has been stayed by this court by order dated 16.03.2018 in CrI.O.P.No.6077 of 2018. While that being so, since the FIR in Cr.No.83 of 2017 disclosed a scheduled offence under the Prevention of Money Laundering Act, 2002 (for short “**the PMLA**”) , the Enforcement Directorate, registered a case in ECIR/CEZO-1/06/2018 and issued two impugned communications dated 02.05.20218 and reminders dated 25.05.2022 to the Sub Registrars viz., respondents 3 and 4 herein, directing them not to register any properties covered under the two



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communications belonging to the petitioner. The petitioner was not put on notice about the same and when he went to the Sub Registrars' Office to sell some of his properties, he was shocked to learn that his properties have been encumbered by the Enforcement Directorate based on the aforesaid two communications. Hence, the petitioner has filed the present Writ Petition.

3. On notice, Enforcement Directorate has filed counter affidavit dated 09.01.2023 wherein in para 3 and 4 they have admitted that they have not passed any provisional orders of attachment u/s 5 of the PMLA till date attaching the aforesaid properties of the petitioner, but they are intending to do so in the future.

4. We are afraid that Enforcement Directorate cannot by way of a communication to the Sub Registrar encumber and attach the properties of the petitioner and thereafter, completely forget about it. The power of the Enforcement Directorate to issue a provisional order of attachment flows from Section 5 of the PMLA and the same has to be confirmed by the adjudicating authority within 180 days thereafter. There is no provision under the PMLA for the Enforcement Directorate to issue communications in lieu of provisional orders of attachment and attach one's properties. Thus,



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the writ petition deserves to be allowed.

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In the result, this Writ Petition is allowed and the communication of the 2nd respondent dated 02.05.2018 vide F.No.ECIR/CEZO-1/06/2018 (BR) and reminder dated 22.05.2022 addressed to the 3rd respondent and communication of the 4th respondent dated 02.05.2018 vide F.No.ECIR/CEZO-1/06/2018 (BR) and reminder dated 22.05.2022 are quashed. It is always open to the Enforcement Directorate to proceed with the matter in accordance with The Prevention of Money Laundering Act, 2022. Consequently, connected MPs stand closed.

(P.N.P., J.) (N.A.V.,J.)
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Index: Yes/No
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To

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7. The Spl. Public Prosecutor (ED Cases),
High Court, Madras.



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AND
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