



WEB COPY



Writ Appeal Nos.2137 to 2140 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2024

PRONOUNCED ON : 29.04.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal Nos.2137 to 2140 of 2012
M.P.Nos.2+2+2 of 2012 & M.P.No.1 of 2015**

W.A.Nos.2137 & 2138 of 2012

The Deputy Director,
Directorate of Enforcement,
Prevention of Money Laundering,
Government of India,
3rd Floor, 3rd Block, Shastri Bhawan,
No.26 Haddows Road,
Chennai – 600 006. ... Appellant in W.A.Nos.2137, 2138 & 2140 of
2012

Vs

1.A.Kamarunnisa Ghori ... 1st Respondent in W.A.No.2137 of 2012

1.M.Fahmeetha Ghori ... 1st Respondent in W.A.No.2138 of 2012

2.The Chairperson,
Prevention of Money Laundering,
Union of India, New Delhi.

3.The Inspector of Police,



Writ Appeal Nos.2137 to 2140 of 2012

City Crime Branch,
Crime No.35 of 2010,
Coimbatore City. ... 2nd & 3rd Respondents in W.A.Nos.2137 & 2138/2012
W.A.No.2139 of 2012

1.The Deputy Director,
Directorate of Enforcement,
Shastri Bhawan,
No.26 Haddows Road,
Chennai – 600 006.

2.The Director,
Directorate of Enforcement,
Head Quarters,
New Delhi.

3.The Additional Director (PMLA)
Directorate of Enforcement,
New Delhi.

... Appellants
Vs.

1.Smt.S.Ellammal

2.The Chairperson,
Adjudicating Authority,
Room No.25, 4th Floor,
Jeevan Deep Building,
Parliament Street, New Delhi

3.The Sub Registrar
Office of the Sub Registrar,
Gumidipoondi, Tiruvellore District,
Tamil Nadu.

4.Shri.S.Anbu

...Respondents

W.A.No.2140 of 2012



Writ Appeal Nos.2137 to 2140 of 2012

1.The Deputy Director,
Directorate of Enforcement,
Shastri Bhawan,
No.26 Haddows Road,
Chennai – 600 006.

... Appellants
Vs.

1.Smt.S.Ellammal

2.Adjudicating Authority,
Prevention of Money Laundering Act, 2002
Room No.25, 4th Floor,
Jeevan Deep Building,
Parliament Street, New Delhi.

3.Shri.S.Anbu

...Respondents

COMMON PRAYERS: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 11.07.2012 made in W.P.Nos.1912, 2870, 13421 & 22062 of 2011.

Writ Appeals:-

For Appellants : Mr.S.Saikumar Spl., P.P in
W.A.Nos.2137 & 2138 of 2012

Mr.V.Parivallal Spl., P.P., in
W.a.No.2139 & 2140 of 2012

For Respondents : No Appearance for RR1 to R3 in
W.A.Nos.2137, 2138 & 2140 of 2012



WEB COPY



Writ Appeal Nos.2137 to 2140 of 2012

No Appearance for R4 in
W.A.No.2139 of 2012

COMMON JUDGMENTS

(Judgment of the Court was made by Mr.K.KUMARESH BABU., J)

These Intra Court Appeals have been preferred by the Enforcement Directorate challenging a portion of the order by which the learned Single Judge had directed the Department to put back the respective Writ Petitioners into possession of the properties by holding that “possession”, as envisaged under Section 8(4) of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as “PMLA Act”), would have to be construed as a symbolic/constructive possession.

2. Heard Mr.S.Saikumar, and Mr.V.Parivallal the learned Special Public Prosecutor appearing for the appellants in the respective appeals. In spite of notices to the respondents, none appeared either in person or through counsels.



WEB COPY

3. The learned Special Public Prosecutor appearing for the appellants, at the outset would submit that the learned Single Judge had erred in interpreting the term 'possession' envisaged under an unamended Section 8(4) of the PMLA Act by reading it down. The learned counsels would submit in unison that PMLA Act has been introduced to protect the interest of the State to wipe out the illegal transactions that had taken place. It is also the contention of the counsel that the learned Single Judge erred in not applying the ratio that had been laid down by the Division Bench of the Andhra Pradesh High Court, in which the Division Bench had interpreted the term 'possession' to mean and include taking of actual possession of the property by the Department to prevent wastage or spoilage of the property. They would further submit that a property which had been adjudicated upon by the Adjudicating Authority under the statutory provision unless and until the accused of a schedule offence is acquitted would not get released. On the conviction of an accused, all the properties that had been attached, would be subject to confiscation under the Act, to be dealt with by the Administrator empowered under the Act for the sale of the properties and



for recovery of the amount for the public exchequer. They would further submit that the learned Single Judge had relied upon various provisions of other enactment benefiting the interest of the owner of a property would be affected, if such actual possession is taken pending the trial of the criminal proceeding. They would submit that such view taken by the learned Single Judge goes against the object and the purpose of the PMLA Act. Therefore, they would seek interference of this Court.

4. We have considered the submissions made by the learned Special Public Prosecutor appearing for the appellants and also perused the materials placed on record.

5. These Writ Appeals arise out of two adjudicatory proceedings. Even though a contention as regards to the maintainability of the Writ Petitions were raised before the Writ Court, the learned Single Judge had rejected the same, as the question that was before it, was with regard to the possession. The learned Single Judge had not interfered with the adjudicatory proceedings.



6. It is to be noted that even though the learned Single Judge had re-
jected the contention of the Writ Petitioners as regards to the validity of the
adjudicatory proceedings, they have not filed any independent appeals
challenging the order passed by the learned Single Judge.

7. Be that as it may, the Department has come by way of an ap-
peal against the interpretation given by the learned Single Judge as re-
gards to the term 'possession' envisaged under Section 8(4) of the PMLA
Act and directing the owners to be put back in possession. The learned Sin-
gle Judge had declined to accept the judgment of the Division Bench judg-
ment of the Andhra Pradesh High Court by holding that the said
judgment had not considered the rights available under other enactments to
a person, whose properties were sought to be attached under the PMLA Act.
On that aspect, the learned Single Judge had read the term of 'possession' to
only mean a symbolic or a constructive possession with the Department till
the finalization of the criminal proceedings. In that aspect, it is to be noted
that Section 8 of PMLA Act stood thus as under prior to the amendment in
the year 2013:-



8.Adjudication:- (1) on receipt of a complaint under sub-section (5) of Section 5, or applications made under sub-section (4) of Section 17 or under sub-section (10) of Section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of Section 5, or, seized under Section 17 or Section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money laundering and confiscated by the Central Government.

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:-

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) 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



WEB COPY



Writ Appeal Nos.2137 to 2140 of 2012

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.

(5) Where on conclusion of a trial or any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of



sub-section (3), the Adjudicating Authority shall, after giving an opportunity to the person concerned, make an order confiscating such property. ”

8. A reading of the aforesaid provision particularly, Section 8(4) of the PMLA Act extracted supra, would envisage that the Director or any other officer authorised by him on confirmation of a provisional attachment can take possession of the property attached. It could also be seen that sub-section (4) of Section 8 provides that the attachment or retention of the seized property shall continue during the pendency of the proceedings relating to any scheduled offence and would become final, if the guilt of a person is proved in trial. The learned Single Judge had interpreted the term 'possession' under Section 8(4) to be only constructive possession by holding that the rights of the person whose properties available under any other enactment would be affected, if they are physically dispossessed of the property. This is the main bone of the reasoning that had been assigned by the learned Single Judge in coming to such a conclusion.



9. In that aspect, it would be relevant to note that Section 71 of the PMLA Act has an overriding effect of any other law for the time being that was in force. For better appreciation, the same is extracted hereunder:-

71. Act to have overriding effect:- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

10. The said provision had not been noted by the learned Single Judge nor it had been brought to the notice of the learned Single Judge of existence of such a provision. When an Act by a *non obstante* clause makes it clear that the said provision of the Act will have effect notwithstanding anything inconsistent contained in any other law, then the said enactment would prevail over all the existing laws. Therefore, the reasoning assigned by the learned Single Judge that the term 'possession' if would mean taking actual physical possession would affect the existing right available under any other law would have to fall, in view of Section 71 of the PMLA Act.

11. Pending these Intra Court Appeals, the provisions of the PMLA Act had been amended. Section 8(4) now reads as under:-



(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 property attached under Section 5 or frozen under sub-section (1A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of].

12. Similarly under the Rule making power clauses (ee) to sub-section (2) of Section 73, had been introduced and pursuant to the said Rule Making Power, the Central Government had also notified the Prevention of Money Laundering (taking possession of attachment or property confirmed by the Adjudicating Authority) Rules 2013, under Rule 5 of the said rules manner of taking possession of immovable property had also been enumerated.

13. In view of the subsequent amendment, the PMLA Act empowers the authority under the said enactment can take physical



possession of an immovable property, which had been attached under Section 8(3).

14.The amendment even though subsequently had been made to take physical possession, the same could be only viewed as to achieve the object for which the Act had been made. Further the reasonings given by the Division Bench of the Andhra Pradesh High Court which had been junked by the learned Single Judge for the reasons given by him seems to be the correct proposition of law in view of the amendment carried out by the Parliament in its wisdom.

15. For the foregoing reasons, we are inclined to hold that the order passed by the learned Single Judge in reading down the term “possession” under Section 8(4) of the PMLA Act would have to be interfered with by us and the direction issued by the learned Single Judge to put back the respective Writ Petitioners in actual possession of the property would have to be set aside.



Writ Appeal Nos.2137 to 2140 of 2012

16. In fine, these Writ Appeals are allowed and the direction is-
sued by the learned Single Judge to hand over the actual possession of the
properties to the respective respondents alone is set aside. In all other
aspects, the order of the learned Single Judge is sustained. However, there
shall be no order as to costs. Consequently connected Miscellaneous
Petitions are closed.

(R.S.K.,J.)

(K.B., J.)

29.04.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

pbn



WEB COPY



Writ Appeal Nos.2137 to 2140 of 2012

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

pbn

To

- 1.The Chairperson,
Prevention of Money Laundering,
Union of India, New Delhi.
- 2.The Inspector of Police,
City Crime Branch,
Crime No.35 of 2010,
Coimbatore City.
- 3.The Chairperson,
Adjudicating Authority,
Room No.25, 4th Floor,
Jeevan Deep Building,
Parliament Street, New Delhi
- 4.The Sub Registrar
Office of the Sub Registrar,
Gumidipoondi, Tiruvellore District,
Tamil Nadu.

Writ Appeal Nos.2137 to 2140 of 2012



WEB COPY



Writ Appeal Nos.2137 to 2140 of 2012

29.04.2024