



WEB COPY



W.P.No.20457 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS. JUSTICE N.MALA

W.P.No.20457 of 2024

K.Shanthi Bai

... Petitioner

Vs.

1. Directorate of Enforcement (Chennai Zone),
2nd & 3rd Floor "C" Block,
Murugesu Naicker Office Complex,
84, Greems Road,
Thousand Lights,
Chennai – 600 006.

2. Joint Directorate of Enforcement,
(Chennai Zone)
2nd & 3rd Floor "C" Block,
Murugesu Naicker Office Complex,
84, Greems Road,
Thousand Lights,
Chennai – 600 006.

3. The Sub Registrar,
Joint II, Kancheepuram,
Sub Register Office,
Kancheepuram – 631 501.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents 1 to 3 to register the documents pending No.17/2021.

For Petitioner

: Mr.V.V.Sairam



W.P.No.20457 of 2024

For Respondents : Mr.P.Sidharthan,
Special Public Prosecutor (ED) (R1&2)
Mr.P.Balathandayudham
Special Government Pleader (R3)

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM, J.)

The Writ of Mandamus has been instituted to direct the respondents 1 to 3 to register the documents pending No.17/2021 under the provisions of the Registration Act.

2. Mr.V.V.Sairam, the learned counsel for the petitioner would mainly contend that the petitioner presented a sale deed on 28.12.2020 for registration before the 3rd respondent, Sub Registrar. The Sub Registrar instead of registering, returned the documents on the ground that the property has been provisionally attached by the Enforcement Directorate. The petitioner contended that no notice was received from the competent authority under the PMLA and therefore, the registration must be proceeded with in accordance with the procedures contemplated under the Registration Act. Since the Sub Registrar not acceded to the request of the petitioner, the present Writ Petition came to be instituted.

3. Mr.V.V.Sairam, the learned counsel for the petitioner would mainly



W.P.No.20457 of 2024

contend that the petitioner had not received any notice from the Enforcement Directorate nor any attachment order. Therefore, she is entitled for the relief of direction to register the Sale Deed presented by her on 28.12.2020. In support of the said contention, the order passed by this Court in W.P.No.898 of 2022 dated 25.04.2022 has been relied upon. In the said case, this Court considered the fact that the attachment order was passed without notice to the Writ Petitioner therein. On that ground the relief was granted. In the present case also, the petitioner had not received any notice. Therefore, direction is to be issued to register the sale deed presented by the petitioner.

4. Mr.P.Sidharthan, the learned Special Public Prosecutor appearing for Enforcement Directorate would oppose by stating that the provisional attachment under Section 5(1) of PMLA was issued by the competent authority in proceedings dated 02.09.2016 in PAO.No.20 of 2016. Thereafter, the said provisional attachment was confirmed by the adjudicating authority under PMLA on 03.02.2017 in OC.636/2016. If at all the petitioner is aggrieved, she has to prefer an appeal under Section 26 of PMLA by approaching the Appellate Tribunal. In this context, the respondents filed counter and paragraph No.6 and 11 of the counter reads as under,

“6. It is respectfully submitted that if the accused has obtained property through criminal



activity and transferred it to another person, the property held by that person can still be subject to attachment or seizure, even if that person is not named as an accused in the FIR. This interpretation aligns with the objectives of the Act of 2002. If a different interpretation were adopted, it could undermine the Act's purpose, as the accused could simply transfer the illicit property to a third party, thereby shielding it from legal action. In such a scenario, the property would escape attachment or seizure because the person holding it is not an accused, defeating the intent of the law. Therefore, even if the holder of the property is not named as an accused, but the property constitutes "proceeds of crime," or if the property is of equivalent value, it would still fall within the definition of "proceeds of crime" and be subject to attachment or seizure.

11. It is humbly submitted that the petition filed before the Hon'ble High Court is not maintainable and the same is liable to be dismissed. The Petitioner is having statutory remedy available under Section 8 of the PMLA, 2002 to raise all the contentions before the Adjudicating Authority. The Petitioner is having alternative remedy to file their objections to the attachment before the Adjudicating Authority and in the event the decision is against him, he can approach the statutory Appellate Tribunal under Section 26(1)



W.P.No.20457 of 2024

of PMLA and even if such appeal is against him, he can approach the Hon'ble High Court and therefore this Petition should not be entertained as the petitioner is having efficacious alternative for redressal of his grievance. The Petitioner did not show any extra ordinary circumstances on situations to bypass and depart from the rule of non-exhaustion of the alternative remedy.”

5. The present Writ petition has not been instituted challenging the order of provisional attachment or the confirmation order issued by the Authorities under PMLA. Therefore, it is unnecessary for this Court to adjudicate the issues relating to the provisional attachment made under Section 5(1) of PMLA.

6. The issues to be considered are, whether the subject property in the sale deed presented by the petitioner has been provisionally attached by the competent authority under the provisions of PMLA or not. Secondly, whether the sale deed presented by the petitioner is registrable under the provisions of the Registration Act, 1908, or not ?

7. As far as the first issue is concerned, the learned Special Public



W.P.No.20457 of 2024

Prosecutor furnished the copy of the order of provisional attachment issued in PAO.No.20 of 2016 dated 02.09.2016 and the confirmation order passed by the Adjudicating Authority in OC.No.636 of 2016 dated 03.02.2017. Therefore, it is made clear that the subject property involved in the sale deed presented for registration, has been provisionally attached by the Enforcement Directorate under the PMLA.

8. Regarding the second issue, this Court has to consider the provisions of the Registration Act. Admittedly, the document was presented on 28.12.2020. When the document was kept pending for registration, the Registration Act was amended and Section 22 B was inserted by the TN Act 41 of 2022 with effect from 18.08.2022. Section 22(B) of the Registration Act enumerates that,

“Notwithstanding anything contained in this Act, the registering officer shall refuse to register the following documents, namely:-

....

(3) document relating to transfer of immovable property by way of sale, gift, lease or otherwise, which is attached permanently or provisionally by a competent authority under any Central Act or State Act for the time being in force or any Court or Tribunal;”



W.P.No.20457 of 2024

WEB COPY

9. The point to be considered is whether this Court in the present Writ Petition can issue a direction to the Sub Registrar to register the sale deed presented by the petitioner under the existing provisions of the Registration Act or not. When it is made clear before this Court that the subject property involved in the sale deed presented has been provisionally attached by the competent authority under PMLA, the document is not registrable in view of Section 22B (3) of the Registration Act, 1908.

10. In view of the said provision, the Sub Registrar has refused to register the sale deed presented by the petitioner for registration. As far as the judgment relied upon by the petitioner is concerned, it was delivered by the Division Bench of this Court prior to the insertion of Section 22B in the Registration Act by the TN Act 41 of 2022. Therefore, the said judgment is of no avail to the petitioner.

11. Though the document was presented prior to the amendment, the registration now sought for by way of Writ proceedings cannot be considered in view of Section 22B(3) of the Registration Act, since it is expressly provided that the Sub Registrar is empowered to refuse the document relating to a sale, if the subject property in the document is provisionally attached by a competent



W.P.No.20457 of 2024

authority under any Central Act or State Act for the time being in force or any Court or Tribunal.

12. When this Court formed an opinion that the subject property in the sale deed has been attached under PMLA and the said provisional attachment has been confirmed by the adjudicating authority, it is left open to the petitioner to approach the Appellate Tribunal under Section 26 of PMLA. As far as the prayer sought for in the present Writ Petition is concerned, if granted, would be violative of Section 22(B)(3) of the Registration Act, 1908. Therefore, the present Writ Petition deserves no merit consideration.

13. Consequently, the Writ Petition stands dismissed. No costs.

[S.M.S., J.]

[N.M., J.]

23.09.2024

Index: Yes/No
Speaking/Non-speaking order
gd



W.P.No.20457 of 2024

WEB COPY

To

1. Directorate of Enforcement (Chennai Zone),
2nd & 3rd Floor “C” Block,
Murugesu Naicker Office Complex,
84, Greems Road,
Thousand Lights,
Chennai – 600 006.

2. Joint Directorate of Enforcement,
(Chennai Zone)
2nd & 3rd Floor “C” Block,
Murugesu Naicker Office Complex,
84, Greems Road,
Thousand Lights,
Chennai – 600 006.

3. The Sub Registrar,
Joint II, Kancheepuram,
Sub Register Office,
Kancheepuram – 631 501.



WEB COPY



W.P.No.20457 of 2024

S.M.SUBRAMANIAM, J.
AND
N.MALA, J.

gd

W.P.No.20457 of 2024

23.09.2024