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W.P.No.26741 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.26741 of 2022
and
W.M.P.No.25796 of 2022

M/s.Jain Housing & Construction Ltd.,
(presently M/s Jain Housing)
Represented by its Managing Director,
Thiru.Sandeep Mehta
No.99/98, Habibullah Road,
T.Nagar, Chennai - 600 017.

... Petitioner

Vs.

Directorate of Enforcement,
Represented by Assistant Director,
2nd and 3rd Floor, C Block,
Murugesu Naicker Office Complex,
No.84, Greaves Road, Thousand Lights,
Chennai - 600 006.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari, to call for the entire records in connection with the
summon No.PMLA/SUMMON/CEO/2022/658 issued by the respondent dated



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08.07.2022 and F.no.ECIR/CEZO-1/50/2022 and quash the same as illegal and

unconstitutional.

For Petitioner : Mr.S.Kamalesh Kannan

For Respondent : Mr.Rajnish Pathiyil
Special Public Prosecutor

ORDER

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

The writ petition has been instituted questioning the validity of Summon issued by the Assistant Director of Directorate of Enforcement in proceedings dated 08.07.2023.

2. The impugned Summon has been issued in exercise of the powers conferred upon the Authority under sub-Section (2) and sub-Section (3) of Section 50 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA Act').

3. Section 50 of the PMLA Act enumerates **powers of Authorities regarding Summons, production of documents and to give evidence**, etc., Sub-Section (1), (2) and (3) are extracted hereunder:



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“(1) The Director shall, for the purpose of section 12, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection’*
- (b) enforcing the attendance of any person, including any officer of a[reporting entity] and examining him on oath;*
- (c) compelling the production of records;*
- (d) receiving evidence on affidavits;*
- (e) issuing commission for examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Direction shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the person so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.”

4. The Director shall, for the purpose of Section 12, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit. Therefore in order to ascertain the complete facts, summons are issued. Therefore, the said summon would not provide a cause for instituting a writ proceedings.



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5. No writ against show cause notice/summon/enquiry notice is entertainable in a routine manner.

6. Such summons can be challenged only if issued by an incompetent Authority having no jurisdiction or tainted with the allegations of malafides. Even in case of raising an allegation of malafides, the Authority against whom such allegations are raised are to be impleaded as respondents in their personal capacity. In the absence of any one of these grounds, no writ proceedings are entertainable against summon/show cause notice/enquiry notice. Adjudication of disputed facts are impermissible in a writ proceedings, more specifically if instituted against summons. High Court cannot make any finding at the preliminary stage, which would cause prejudice to either of the parties and may result in miscarriage of justice. Therefore, it is always preferable by allowing the competent Authority to adjudicate the issues instead of going into the merits in a writ proceedings filed challenging summons/show cause notices.

7. Sub-section (4) to Section 50 stipulates “Every proceedings under Sub-Sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code (45 of 1860).”



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8. That being the nature of the proceedings and summons issued, the petitioner has to appear and defend his case by availing the opportunities to be provided by the competent Authority. It is for the petitioner to prove his innocence through documents and evidences. Contrarily, the writ petitioner cannot file a writ petition in order to escape from the clutches of enquiry proceedings.

9. The practice of litigant filing writ petition after writ petition challenging each summons, notices and proceedings at no circumstances be encouraged by the Courts. The recent practice prevailing amongst the economic offenders noticed by this Court is that the writ petitions are filed challenging each and every proceedings and they are attempting to increase the longevity of the litigations with a fond hope that all such issues can be buried on account of efflux of time. Such a mind-set of the persons, who all are subjected to such proceedings cannot be encouraged by the Courts.

10. Flimsy grounds are mostly raised. High Courts are expected to dispose of such writ petitions without giving long rope to the litigants to make any attempt to seek exoneration from the proceedings. It is the belief that judicial delay will bury the issues. Such an idea if prevails in the mind of persons are to be



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thwarted by the Court by disposing of the writ petitions within a reasonable period of time. Even in case, where interim orders are granted on account of *prima facie* case made out, the final disposal of such cases are to be taken up in an expeditious manner.

11. Article 226 (3) of the Constitution of India in unequivocal terms states as follows:

“Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1) without:-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”



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12. The spirit of Article 226 (3) is to be implemented by the High Court especially when interim orders are granted. No party shall be allowed to take undue advantage of the interim order by keeping the matters pending for long years and attempting to escape from clutches of law.”

13. The Registry, High Court also shall ensure that such matters where interim orders are granted are listed periodically, so as to ensure that the Courts dispose of matters on priority basis. When it is a constitutional mandate, the Courts are expected to thrive hard to dispose of such matters, where interim orders are granted and non-disposal would cause prejudice to either of the parties.

14. In the present case, Mr.S.Kamalesh Kannan, the learned Counsel for the petitioner raised several grounds, which all are relatable to disputed facts on merits. He made a ground that the offences contemplated are not falling under predicate offence under the schedule to PMLA.

15. *Per Contra*, Mr.Rajnish Pathiyil, the learned Special Public



Prosecutor would oppose by relying on the counter affidavit filed by the respondent, which reads as under:

“5. It is noteworthy from the scheme of the Environment (Protection) Act, 1986, there are only three Sections i.e. Sec. 7, 8 & 9 for violation of the said Act for which Penalty can be levied as well as Prosecution can be lodged under the omnibus provision namely Sec.15 of the said Act.

Section 7, Section 8 and Section 15 of the said Act read as follows:

“7. Persons carrying on industry operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards. – No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

8. Persons handling hazardous substances to comply with procedural safeguards.- No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.- (1)



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Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in Sub-Section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.”

6. Apart from Section 7 and Section 8; the only other Section 9 under the said Act provides for compliance, whereas rest of the Sections of the Acts are governing power and procedure under the said Act of 1986. Section 9 of the Act reads as under:

“9. Furnishing of information to authorities and agencies in certain cases.-



(1) Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith-

(a) intimate the fact of such occurrence or apprehension of such occurrence; and

(b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed

(2) On receipt of information with respect to the fact or apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

(3) The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person



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concerned as arrears of land revenue or of public demand.”

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16. Therefore, the petitioner/company is at liberty to raise all the grounds on merits including the legal grounds to defend its case.

17. With the above liberty, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [V.S.G., J.]
12.08.2024

veda
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

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2nd and 3rd Floor, C Block,
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