IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| **Reserved on** | 08.07.2024 |
| **Pronounced on** | 12.07.2024 |

CORAM :

**THE HONOURABLE MR. JUSTICE M.S. RAMESH**
**AND**
**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

W.P.No.32986 of 2022

Visveswar Vijayagopalan ...Petitioner

***Vs.***

Deputy Director/Authorised Officer,
Office of the Joint Director,
Directorate of Enforcement,
Chennai Zonal Office-I,
3rd Floor, Murugesa Naicker Complex,
No.84, Greams Road,
Chennai-600 006. ...Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent with regard to the impugned order of Provisional Attachment passed by the respondent under Section 5(1) of the Prevention of Money Laundering Act, 2002 vide Provisional Attachment Order No.07/2019 dated 29.05.2019 and was subsequently, confirmed by the adjudicating authority vide O.C.No.1155/2019 in File No.ECIR/CEZO/03/PMLA/2016, dated 26.11.2019 issued under Section 5(1) of the Prevention of Money Laundering Act, 2002 dated 05.11.2019 insofar as the Schedule Property are concerned and quash the same as untenable in law, unreasonable, illegal and further to direct the respondent to hand over the possession to the petitioner.

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| For Petitioner | : Mr.A.Nagarajan<br>for Mr.K.R.Rameshkumar |
| For Respondent | : Mr.P.Sidharthan,<br>Special Public Prosecutor |

**ORDER**

**M.S.RAMESH, J.**

This Writ Petition has been filed seeking quashment of the impugned Provisional Attachment Order No.07/2019 dated 29.05.2019 passed by the respondent, which was subsequently confirmed by the Adjudicating Authority vide O.C.No.1155/2019 in File No.ECIR/CEZO/03/PMLA/2016, dated 26.11.2019, issued under Section 5(1) of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as 'the Act') dated 05.11.2019, insofar as the scheduled property is concerned and further direct the respondent to handover the possession to the petitioner.

2.1. The property, being a house plot bearing No.J6, Akshaya

Garden measuring about 900 sq.ft., comprised in old S.No.577/2A (part), new S.No.577/2A10, Nedungundram Village within the Sub Registration District of Tambaram and registration District of Kancheepuram (hereinafter referred to as 'the subject property'), was originally purchased by one C.Sasi, through an auction under a sale certificate registered as Document No.6688/2016 dated 18.10.2016, on the file of the Sub Registrar, Tambaram. Thereafter, the subject property was sold to one G.T.Subash, through a sale deed registered as Document No.4222/2017 dated 12.07.2017. Ultimately, on 28.11.2018, the subject property was purchased by Visveswar Vijayagopalan/the petitioner herein, through a sale deed registered as Document No.7342/2018, dated 28.11.2018. The name of the petitioner was incorporated in all the revenue records, including Patta No.12018.

2.2. The Directorate of Enforcement, Chennai Zonal Office, had passed a provisional attachment order dated 29.05.2019 under Section 5(1) of the Act, through an order No.7/2019. Subsequently, the attachment was confirmed by the Adjudicating Authority constituted under Section 6 of the Act, through an order in O.C.No.1155/2019 dated 05.11.2019, without any notice to the petitioner herein. On 26.11.2019, a newspaper publication was issued by the Joint Director of the Directorate of Enforcement, apprehending to take possession of the subject property in ECIR/CEZO/03/PMLA/2016 through Form-I under Section 8 (4) of the Act. The petitioner had raised her objections through legal notices sent to the Directorate of Enforcement and since there was no proper response, the present Writ Petition has been filed.

3. Heard Mr.A.Nagarajan, learned counsel for the petitioner and Mr.P.Sidharthan, learned Special Public Prosecutor, for the respondent.

4. The main ground raised by the petitioner is that the subject property was purchased on 28.11.2018, much prior to the provisional attachment order under Section 5 (1) of the Act, which was passed on 29.05.2019, and later confirmed by the Adjudicating authority on 05.11.2019 and since no notice was issued to the petitioner, who was the lawful owner of the property, the attachment itself cannot be legally sustained.

5. We have perused the true copies of the sale deed dated 28.11.2018 duly registered in the name of the petitioner, as well as the

revenue records, including the patta, wherein the petitioner's name has been incorporated. The encumbrance certificate produced by the petitioner for the subject property also discloses the encumbrance of the registered sale deed in favour of the petitioner. Apparently, the authorities under the Act have failed to conduct due diligence over the title of the subject property before passing the provisional attachment order or confirming the same.

6. It is not in dispute that the provisional attachment order made under Section 5(1) of the Act was not served on the petitioner, after the attachment was made by the officials of the Enforcement Directorate. It would be pertinent to point out here that under Rule 3(2) of the Prevention of Money-Laundering (Issuance of Provisional Attachment Order) Rules, 2013 (hereinafter referred to as 'the Rules'), the Authorized Officer is mandated to endorse a copy of the provisional attachment order to all concerned, including the persons in possession of the properties of the Adjudicating Authority. Similarly, the Adjudicating Authority has also not served any notice under Section 8(1) of the Act, calling upon the petitioner to indicate the sources of his income, by means of which, he has acquired the subject property. These facts have

not been denied by the respondent.

7. Under Section 8(1) of the Act, when the Adjudicating Authority receives a complaint under Sub-section 5 of Section 5, he may serve a notice of not less than 30 days on such person, calling upon him to indicate the sources of his income, etc. The first proviso to Section 8(1) mandates service of such notice on any person, who holds the attached property on behalf of any other person also. The second proviso also mandates such service to each and everyone of the persons who jointly hold the attached property. The word employed in both the provisos to Section 8(1) is “shall”. Similarly, under Rule 3(2) of the Rules, the Authorized Officer is mandated to endorse a copy of the provisional attachment order to all the concerned persons, including the persons in possession of the attached properties. Here again, the term employed under the Rules is “shall”. Likewise, Rule 4 also provides for a mandatory procedure for service of notice on the corporate bodies, societies, trusts, etc. When all these provisos and rules are conjointly read with Section 8(1), prudence may require that the term “may” employed in Section 8(1) be read as “shall”.

8. The obligation on the part of the Adjudicating Authority to issue

a show cause notice under Section 8(1) of the Act has also been ratified by an Hon'ble Division Bench of the Bombay High Court in the case of ***Shiv Charan and Others Vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Department of Revenue and Another*** reported in ***2024 SCC OnLine Bom 701.*** This apart, Section 6 (15) of the Act provides for the procedure to be adopted by the Adjudicating Authority, in exercising their powers. As per the said provision, the Adjudicating Authority, shall be guided by the principles of natural justice while discharging their functions under the provisions of the Act.

9. When the records before the Registering Authorities, as well as the Revenue Authorities, reveal that the petitioner herein is the lawful owner of the property, there was a duty cast on the Adjudicating Authority to issue a notice, before confirming the provisional attachment under Section 5 of the Act. In the absence of any such notice, the entire exercise of attaching the petitioner's property, would be in violation of the mandatory requirements of serving the provisional attachment order under Section 5, as well as the prior show cause notice under Section 8(1) of the Act, on the petitioner, apart from violation of the principles of

natural justice and therefore cannot be legally sustainable.

10. In the case of ***R.Amarabalan Vs. Directorate of Enforcement, Chennai and Another*** passed in ***W.P.No.898 of 2022 dated 25.04.2022,*** a Coordinate Bench of this Court had dealt with a similar situation and set aside the attachment over the property therein. The relevant portion of the order reads as follows:

> *"7. Though an appeal is provided before the Appellate Tribunal for Forfeiture of Property under Sections 25 and 26 of Prevention of Money Laundering Act, 2002 against the confirmation order passed under Section 8 of Prevention of Money Laundering Act, 2002, we are not inclined to send Amarabalan, the petitioner herein there for the following reasons:*
>
> > *(a)He was not a party either in the proceedings under Section 5 or in the proceedings under Section 8 of Prevention of Money Laundering Act, 2002;*
> >
> > *(b)He was not issued any notice before the provisional order of attachment was passed and also in the confirmation proceedings.*
> >
> > *(c)There is no Presiding Officer in the Appellate Tribunal for a long time. Hence an*

*ordinary citizen whose property has been attached behind his back by the authorities should not be made to run from pillar to post.*

*8. Taking into consideration the present facts and circumstances of the case, we are of the opinion that the interests of justice would be served if the provisional order of attachment in PAO No.20 of 2016 dated 02.09.2016 as confirmed in OC No.636 of 2016 dated 03.02.2017 are set aside qua the subject property alone and the attachment on the subject property be lifted as no notice was served on Amarabalan in both these proceedings, though the subject property stood in his name as on those two dates."*

11. The aforesaid extract is self explanatory. As such, when the petitioner had lawfully purchased the property on 28.11.2018, much before the Provisional Attachment Order dated 29.05.2019 and has been in peaceful possession and enjoyment of the same, the subsequent attachment under Section 5 (1) of the Act and the confirmation under 6 of the Act, without prior notice, cannot be legally sustained. It is needless to point out here that if the Enforcement Directorate is of the view that any other property belonging to the accused in the predicate offence/ECIR

proceedings requires to be attached to an equal value, as that of the subject property herein, it is always open to them to proceed with such action in accordance with the provisions of the Act.

12. In the light of the above observations and findings, the impugned impugned Provisional Attachment Order No.07/2019 dated 29.05.2019 passed by the respondent, which was subsequently confirmed by the Adjudicating Authority vide O.C.No.1155/2019 in File No.ECIR/CEZO/03/PMLA/2016, dated 26.11.2019, issued under Section 5(1) of the Prevention of Money Laundering Act, 2002, dated 05.11.2019, insofar as it relates to the petitioner's property comprised in old S.No.577/2A (part), new S.No.577/2A10, Nedungundram Village is concerned, are quashed. Consequently, the respondent herein shall handover possession of the property to the petitioner herein, free from all encumbrances made under the Act, within a period of one (1) week from the date of receipt of a copy of this order. Accordingly, this Writ Petition stands allowed. No costs.

**[M.S.R., J] [S.M., J]**
**12.07.2024**

Index:Yes
Neutral Citation:Yes

Speaking
Anu/*hvk*

To

The Deputy Director / Authorised Officer,
Office of the Joint Director,
Directorate of Enforcement,
Chennai Zonal Office-I,
3rd Floor, Murugesa Naicker Complex,
No.84, Greams Road,
Chennai-600 006.

**M.S.RAMESH, J.**
**and**
**SUNDER MOHAN, J.**

Anu/*hvk*

**Pre-delivery order made in**
W.P.No.32986 of 2022

12.07.2024