

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Om Narayan Rai

WPA 29001 of 2024

Bulti Hossain

Vs.

Union of India & Anr.

For the Petitioner : Mr. Apalak Basu
Mr. Nazir Ahmed
Ms. Sanghamitra Mridha
.....Advocates

For the Enforcement : Mr. Vipul Kundalia, Sr. Adv.
Directorate Mr. Anindya Kanan
Mr. Dhirodatto ChaudhuriAdvocates

Heard on : 11.04.2025

Judgment on : 25.04.2025

Om Narayan Rai, J.:-

1. The instant writ petition has been filed assailing notice captioned "Eviction Notice" dated November 19, 2024 issued by the Deputy Director, Directorate of Enforcement under Rule 5(2) of the Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by The Adjudicating Authority) Rules, 2013 (hereafter the "Rules"). The said notice also indicates that it is for taking possession of certain properties mentioned therein under Section

8(4) of the Prevention of Money Laundering Act, 2002 (hereafter “PMLA”). By the said notice the petitioner has been directed to vacate the premises mentioned therein within a period of ten days and hand over possession thereof to the issuer of the notice.

A brief factual recount of the case run in the writ petition:

2. One Mr. Firoj Hossain (the petitioner’s husband) was a Director of M/s. Bharat Krishi Samridhi Industries Limited (hereafter “the said company”). A complaint had been lodged against the said company by one Sk. Mohammad Aziz in Arambagh Police Station alleging that the said company had induced the complainant to become its agent and that the complainant had while working as such agent collected a sum of Rs. 1,00,000/- (Rupees One Lakh) from local people and deposited the same in the said company giving such people (from whom money had been collected) to understand that they would get in return from the company double the amount deposited. It was also alleged in the said complaint that the said company had cheated the complainant and the depositors and had misappropriated the invested amount. On the basis of such complaint Arambagh Police Station Case No.243/2013 dated April 20, 2013 was registered against the said company under Sections 420 and 406 of the Indian Penal Code, 1860.
3. Subsequently the Central Bureau of Investigation (hereafter “CBI”), EO-IV, Kolkata took over the investigation in the said Arambagh Police Station Case No.243/2013 in compliance with an order dated May 9, 2014 passed by the Hon'ble Supreme Court of India in Writ Petition (C) No. 401 of 2013 (Subrato Chatoraj v. Union of India & Ors.).
4. CBI registered FIR No. RC2252017E0002 dated September 24, 2018 against the said company and others upon clubbing two other First Information Reports therewith.

5. On the basis of the aforesaid FIR registered by the CBI, the Kolkata Zonal Office - I of the Enforcement Directorate registered a complaint being ECIR/KLZO-1/18/2021 on March 31, 2021.
6. On or about February 6, 2020, the Enforcement Directorate also filed an application under Section 17(4) of the PMLA inter alia praying for retention of records/properties seized on January 10, 2020. The said application was allowed by the adjudicating authority by its order dated November 12, 2020.
7. Subsequently, on the aforesaid complaint being ECIR/KLZO-1/18/2021, the Deputy Director of Enforcement Directorate passed a Provisional Attachment Order being PAO No. 03/2022 on February 18, 2022.
8. Thereafter, the Enforcement Directorate filed a complaint under Section 5(5) of the PMLA before the Adjudicating Authority. The same was registered as OC No. 1658 of 2022. In the said proceeding being OC No. 1658 of 2022 both the petitioner and her husband had been arraigned.
9. On or about April 1, 2022 a notice under Section 8 of the PMLA was issued to the petitioner to which the petitioner replied on May 14, 2022.
10. Ultimately, the provisional order of attachment being PAO No.03/2022 passed by the Deputy Director of Enforcement Directorate in ECIR No. KLZO/18/2021 was confirmed by the Adjudicating Authority by an order dated August 22, 2022.
11. Feeling aggrieved thereby, the petitioner preferred an appeal before the Appellate Tribunal, jointly with her husband. The Appellate Tribunal then issued a notice to the Enforcement Directorate on January 18, 2023 thereby calling upon the Enforcement Directorate to file its reply to the appeal preferred by the petitioner and her husband within six weeks.
12. Subsequently, in the said appeal which had been preferred by the petitioner and her husband jointly, the Appellate Tribunal passed an order dated November 22, 2023 thereby directing the petitioner to file a separate appeal since joint appeal was not maintainable before the Appellate Tribunal.

13. The petitioner, therefore, filed a separate appeal under Section 26 of the PMLA along with an application seeking stay of the order dated August 22, 2022 passed by the adjudicating authority.
14. During pendency of the said appeal as well as the application seeking stay of the order dated August 22, 2022 passed by the Adjudicating Authority, the petitioner was served with a notice issued under Section 8(4) of the PMLA as well as Rule 5(2) of the Rules.
15. Feeling aggrieved by the aforesaid notice of eviction, the petitioner has approached this Court by filing the present application under Article 226 of the Constitution of India.

Submissions of the petitioner

16. Mr. Apalak Basu, learned Advocate appearing for the petitioner submitted that the impugned notice dated November 19, 2024 is wholly without jurisdiction.
17. Inviting the attention of this Court to the observations of the Hon'ble Supreme Court in paragraphs 179, 180 and 181 in the case of **Vijay Madanlal Choudhary and Others v. Union of India and Others**¹, it was submitted by Mr. Basu that a notice issued under Rule 5(2) of the Rules for taking possession under Section 8(4) of the PMLA could not have been issued by the Respondent Enforcement Directorate before a formal order of confiscation was passed by the Special Court and that a direction under the aforesaid provision for taking possession of a property before any formal order of confiscation was passed should be an exception and not the rule.
18. Mr. Basu further contended that the Hon'ble Supreme Court had in the said case of **Vijay Madanlal**¹ (supra) clearly observed that the provision of Section 8(4) of PMLA should be invoked only in exceptional situation keeping in mind the peculiar facts of the case.

¹(2023) 12 SCC 1

19. It was asserted on behalf of the petitioner that nothing had been brought on record to show that there was any exceptional circumstance or exceptional situation justifying the issuance of an eviction notice or a notice for taking possession of the property under Section 8(4) of the PMLA read with Rule 5(4) of the Rules.
20. Mr. Basu further added that in the case at hand the notice had been issued after a gap of almost 2 years 9 months and the notice did not reflect a single word on exceptional circumstance as mandated by the Hon'ble Supreme Court in the case of ***Vijay Madanlal***¹ (supra).
21. It was further submitted that there was nothing on record to suggest that the conditions of Rule 5(1) of the Rules had been met or complied with. Mr. Basu furthered his argument by stressing that the subject property was in anyway attached and the respondents had brought nothing on record to explain as to why Rule 5 (1) of the Rules was deemed inadequate and why Rule 5(2) of the said Rule had been resorted to.
22. Mr. Basu also assailed the said notice on the ground that the same was cryptic and that it was the duty of the respondent to disclose the exceptional circumstances since the addressee had (has) a right to know the reason of deprivation and Courts too needed to know or at least infer from the material on record the reasons which compelled the Enforcement Directorate to send the impugned notice of eviction.
23. It was further submitted by Mr. Basu that mere confirmation of attachment even if upheld by all Courts would not permit the authority to issue notice under Section 8(4) of the PMLA unless there was an order of confiscation passed by the Special Court under Section 8(6) of the PMLA. It was submitted that such action of the respondents amounted to arbitrary inhibition of the petitioner's property rights in utter violation of the guarantee given by the provisions of Article 300A of the Constitution of India. It was submitted that such constitutional right could not be curtailed without following the due process of law.

Submissions of the respondent

24. Mr. Vipul Kundalia, learned Senior Advocate appearing for the respondents submitted that the instant writ petition was not fit to be entertained. He contended that as the petitioner had already approached the Appellate Tribunal by filing an appeal under Section 26(1) of the PMLA along with an application for stay of the order confirming the provisional attachment passed by the adjudicating authority and as the same were pending adjudication before the said Tribunal, there could be no reason for this Court to intervene at this stage. It was asserted that since the statutory appellate forum was already in seisin of the matter, it would not be proper for this Court to exercise discretion in favour of the writ petitioner by entertaining the petition under the highly prerogative writ jurisdiction of this Court.
25. As regards the submission that the notice did not show as to whether or not there was any exceptional circumstance or situation justifying issuance of the impugned notice of eviction, it was argued by Mr. Kundalia that the question as to whether a case of exceptional nature had been made out or not by the respondent would have to be tested by the Appellate Tribunal only, before whom the petitioner's appeal under Section 26(1) of the PMLA was pending. In order to buttress his aforesaid contention, Mr. Kundalia relied on an unreported judgment of the High Court of Jammu & Kashmir and Ladakh in the case of **Syed Akeel Shah and Anr. v. Directorate of Enforcement &Ors.** in **LPA No. 203/2022; CM No. 5867/2022**. Paragraph 12 of the said judgment was placed to emphasize that the question as to whether a particular case was of exceptional nature or not, could be determined only by the appellate authority at the time of considering the merits of the appeal and not by this Court in exercise of its writ jurisdiction. Relying on the observations made in the same paragraph, it was asserted that it would always be an open for a person apprehending immediate action

against him to approach the Appellate Tribunal and persuade the authority to stay the impugned order of attachment.

26. Mr. Kundalia also cited a judgment rendered by the High Court of Punjab and Haryana in the case of ***Varinder Pal Singh Dhoot v. Union of India and Another***² and relied on Paragraphs 21, 22 and 23 thereof to emphasize that in a similar situation the High Court of Punjab and Haryana had declined to entertain a writ petition and had left the petitioner therein free to approach the Appellate Tribunal for seeking appropriate relief by filing an application in the pending appeal. In the said case the petitioner had been granted liberty to file an application for stay within a period of 3 days and the parties were directed to maintain status quo in respect of the eviction notice till the filing of the appeal.

Reply of the petitioner

27. Mr. Basu, rejoined by submitting that the jurisdiction of the High Court under Article 226 of the Constitution of India would always be available in matters of present nature. It is submitted that the subject matter of challenge before this Court is only a notice issued under Section 8(4) of PMLA read with Rule 5(2) of the Rules for taking possession of the petitioner's properties and not any order passed by the adjudicating authority. It is submitted that issuance of such notice under Section 8(4) of the PMLA is only an administrative or ministerial act and there is no provision of appeal for challenging such notice in the PMLA. It is submitted that in such view of the matter the instant writ petition can always be entertained by this Court and mere pendency of the appeal should not inhibit the writ petition.

Decision of the Court

28. It is now doubtless that this Court's jurisdiction to entertain a writ petition under Article 226 of the Constitution of India against any action or order of

²2024 SCC OnLine P&H 11723

any authority answering the definition of a “State” within the meaning of Article 12 of the Constitution of India remains uninhibited by any other remedy (whether by way of appeal or otherwise) that may be provided against such action or order in any given statute inasmuch writ jurisdiction of this Court under Article 226 of the Constitution of India forms part of the basic structure of the Constitution of India. However writ remedy under Article 226 of the Constitution of India being discretionary in nature, the High Court may be perfectly justified in refusing to exercise its powers under Article 226 of the Constitution of India if the party invoking the same is found to be amply protected by the available statutory remedy in the sense that the statutory remedy is efficacious and not illusory or too onerous to be availed.

29. The principal question that falls for consideration by the Court in view of submissions made by the parties and the material on record is whether or not this Court should exercise discretion in favour of the petitioner and grant the reliefs prayed for.
30. In order to answer this question, the impugned notice issued under Section 8(4) of PMLA and Rule 5(2) of the Rules needs to be analyzed first.
31. Section 8(4) of the PMLA that provides for taking possession of an attached property and which has been referred to in the notice impugned, deserves notice. The same is extracted herein below:

(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.

32. Rule 5(2) of the Rules which prescribes the notice, reads thus:

(2) Where the immovable property confirmed by the Adjudicating Authority is in the form of a land, building, house, flat, etc., and is occupied by the owner, the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property and after issuing of such notice if the premises is not vacated within the stipulated time, such occupant shall be evicted and the possession shall be taken by seeking the assistance of the local Authorities in terms of section 54 of the Act.

33. A meaningful reading of the notice in the light of section 8(4) of the PMLA and Rule 5(2) of the Rules would reveal that the order dated August 22, 2022 passed by the Adjudicating Authority (whereby the Provisional Attachment Order was confirmed) forms the foundation of the impugned eviction notice. The said notice is in effect a statutory consequence of the order dated August 22, 2022 passed by the Adjudicating Authority.
34. Section 26 of the PMLA provides for an appeal against an order passed by the Adjudicating Authority. Although this Court has not been shown any provision whereby the Appellate Tribunal has been vested with power to pass an interim order in an appeal presented before it, yet having noticed the powers that have been granted to the said Tribunal by use of the expression “*pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against*”, this Court is of the view that the Appellate Tribunal would have implied power to grant stay of the order impugned before it. This Court holds so on the authority of the law laid down by the Hon’ble Supreme Court in the case of **ITO v. M.K. MOHD. KUNHI**³ where while considering a somewhat similar situation of absence of a provision expressly empowering the Income Tax Appellate Tribunal to grant interim order of stay in an appeal preferred before it, the Hon’ble Supreme Court held as follows:

6. *The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under Section 254(1) for it may*

³ (1969) 71 ITR 815

pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income Tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, 3rd Edn., Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective.

(Emphasis supplied by underlining)

35. On the same logic, the Appellate Tribunal would also have power to stay the operation of the impugned notice of eviction, which has demonstrably been issued as a consequence of the order confirming the order of attachment.
36. It is not in dispute that the petitioner is already before the Appellate Tribunal by way of an appeal against the said order dated August 22, 2022 passed by the Adjudicating Authority and that an application for stay of the operation of the said order has also been filed by the petitioner in the said appeal. If the order dated August 22, 2022 is stayed the notice dated November 19, 2024 will lose its foundation and crumble immediately. Therefore, this Court is unable to agree with the submission of Mr. Basu that merely because there is no separate provision for appeal against the said notice dated November 19,

2024, the petitioner is remediless and this Court should intervene under Article 226 of the Constitution of India.

37. As regards the submission of Mr. Basu that the impugned notice does not disclose the exceptional circumstances on the basis whereof the petitioner has been sought to be evicted, this Court is of the view that disclosure of such reason is not at all required in the notice to be issued under Rule 5(2) of the Rules. Indeed in terms of the law laid down by the Hon'ble Supreme Court in the case of **Vijay Madanlal¹** (*Supra*), it would be imperative upon the respondent Enforcement Directorate Authorities to demonstrate that there is an exceptional situation justifying taking of possession of the relevant property in terms of section 8(4) of the PMLA but the question as to whether there is any exceptional situation or not, being one of facts, would again fall within the domain of the Appellate Tribunal only. There is no reason for this Court to separately entertain a challenge to the notice of eviction when the same can be easily dealt with by the Appellate Tribunal in the pending appeal itself. This Court is *ad idem* with the view taken by the High Courts of Jammu & Kashmir and Ladakh and Punjab and Haryana, in the judgments cited by Mr. Kundalia, to that effect that the remedy of a person aggrieved by a notice of eviction issued under Section 8(4) of the PMLA read with Rule 5(2) of the Rules of 2013 lies before the Appellate Tribunal only.
38. Insofar as the petitioner's submission that the impugned eviction notice is wholly without jurisdiction, is concerned, this Court is of the *prima facie* view that there is no inherent lack of jurisdiction in issuance of the notice impugned. The reasons therefor are as follows:
- a) The notice has been issued after the confirmation of the order of attachment. Section 8(4) of the PMLA mandates that "*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..... in such manner as may be prescribed”.

- b) The manner of taking possession has been prescribed in Rule 5 of the Rules. Rule 5(2) of the Rules mandates that *“the authorized officer shall issue a notice of eviction of ten days so as to prevent the person from enjoying such property....”*
- c) Therefore prima facie the notice conforms to the provisions of PMLA and the Rules and there does not appear to be an error of jurisdiction in issuance thereof.
- c) In the case at hand the Deputy Director of Enforcement Directorate has issued the notice impugned. It has neither been averred in the writ petition, nor submitted before the Court; far less demonstrated that the Deputy Director of Enforcement Directorate who issued the impugned notice was not authorized to issue the said notice. Therefore this Court is also unable to hold that the notice was issued by an authority lacking jurisdiction.

39. As regards the petitioner’s contention that there is nothing on record to show that the provisions of Rule 5(1) of the Rules have been complied with, this Court is of the prima facie view that non-compliance or belated compliance with the provisions of Rule 5(1) would not at the threshold vitiate a notice under Rule 5(2) of the Rules. Rule 5(1) contemplates notice of the attachment to the Registrar having jurisdiction over the area where the property is situated requiring the Registrar not to transfer or create any interest in the property till further orders are passed. The purpose of such provision is clearly different from that of Rule 5(2). While the former provision is aimed at avoiding/preventing encumbrance and transfer of title, the latter is aimed at securing possession thereof. Both are important but non compliance or belated compliance of one would not vitiate the lawful compliance with the other.
40. The point that the notice impugned has been issued after 2 years 9 months is also not appealing. The statute does not provide for a mandatory time limit

for such notice to be issued. In such situation the length of time taken by the Respondents to issue the notice impugned cannot be taken advantage of by the petitioner in the facts of the present case.

41. The next point urged by Mr. Basu that the notice has been issued prior to the order of confiscation, would definitely stand in case the Respondents fail to demonstrate that exceptional situation exists justifying issuance of the said notice. The test laid down by the Hon'ble Supreme Court in the case of **Vijay Madanlal**¹ (supra) would and must be satisfied but if it can be demonstrated that exceptional situation obtains in the present case the notice would stand vindicated. As already held in the preceding paragraphs such aspect as to whether an exceptional case justifying issuance of the impugned notice has been made out by the Respondents or not would be decided by the Appellate Tribunal. Similarly the other contention of Mr. Basu's that the petitioner's right to property has been infringed, would also gain ground only when it is established that the notice impugned is wholly illegal. Since this Court has not decided on the legality of the notice and has left it to be decided by the Appellate Tribunal (such decision being predicated on the answer to the question as to whether or not exceptional situation exists justifying issuance of the impugned notice), it will be open to the petitioner to take such point before the Appellate Tribunal.
42. This Court, therefore, feels that the petitioner should be left free to approach the Appellate Tribunal and get the hearing of the stay application done expeditiously. Since the petitioner has approached this Court under Article 226 of the Constitution it would be just and proper for this Court to request the Appellate Tribunal before whom the petitioner's appeal under Section 26 of the PMLA is pending to dispose of the petitioner's appeal as expeditiously as possible. Insofar as the petitioner's application for stay of the order dated August 22, 2022 is concerned, this Court would request the Appellate Tribunal to consider the same on priority basis and dispose of the same as expeditiously as possible preferably within a period of 2 months from date.

43. With the aforesaid observations, the writ petition being WPA 29001 of 2024 is disposed of.
44. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(OM NARAYAN RAI, J.)