IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.09.2025

Coram:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18308 of 2020
and
W.M.P.No.22685 of 2020

N.Vishwapriya, D/o P.Natrajan .. Petitioner

Vs.

1. The Assistant Director,
Office of the Joint Director,
Directorate of Enforcement,
Chennai Zonal Office, 2nd and 3rd Floor,
C-Block, Murugesa Naicker Complex,
84, Greams Road, Chennai-600 006.

2. Dr.V.M.Ganesan, son of Muthuswamy .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent in CEZO-1/12/2013 (KHH), dated 13.02.2020 and quash the same as illegal, incompetent and without jurisdiction.

For petitioner : Mr.Avinash Wadhwani for Mr.V.Raghavachari

For respondents: Mr.S.Sasikumar for R-1

Mr.A.E.Ravichandran for R-2

ORDER

The petitioner has filed the present Writ Petition praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent in CEZO-1/12/2013 (KHH), dated 13.02.2020 and quash the same as illegal, incompetent and without jurisdiction.

2. Brief facts :

(a) The second respondent is the petitioner's husband. A case had been registered against him, involving in transplantation of human organs. The second respondent had contracted in relationship with one Mrs.Rajalakshmi and he had abandoned the petitioner since 2013. The petitioner is staying in the premises along with the petitioner's daughter Ms.Heera Shrivarika. The petitioner is a Dentist and carrying on her professional activity independently.

(b) On registration of the complaint, the officials of the Directorate of Enforcement Office, came to the residence of the petitioner and recorded the statement on 14.02.2014. The petitioner was queried on the property and the petitioner had disclosed the information that was with him. The second respondent had contracted with an illicit link and had been staying away from the petitioner. The petitioner has been abandoned by him.

(c) The petitioner was arrayed as the fourth respondent and an order was passed by the Adjudicating Authority in O.C.No.355 of 2014 on 12.02.2015. The said order confirms the provisional attachment earlier made. The petitioner is conscious of the fact that when an attachment is made, the properties that are incapable, are being dealt with.

(d) The petitioner has not received any communication from the first respondent. Suddenly, the impugned notice was served on the petitioner and she is not aware of any order being passed, directing the occupant to pay for the occupation. A bare perusal of the attachment order makes it clear that Mr.Ganesan (second respondent) was residing in Kerala. Hence, the question of asking him to pay for use and occupation of the subject matter, in controversy, has no relevance.

(e) On 04.06.2015, interim order has been passed, directing the petitioner to deposit Rs.25,000/- per from from February 2015. The petitioner is not a party to the said order. The petitioner has not been arrayed as respondent. The said order indicates that the said Mr.Ganesan had appealed before the Tribunal and sought for interim relief. The Court had passed an order, calling upon him to deposit Rs.25,000/-, which is without jurisdiction.

(f) The first respondent is aware of the fact that the petitioner is in occupation and he had taken statement from the petitioner only indicating the address. Hence, the first respondent cannot claim ignorance of the presence of the petitioner. It is too remote to except Mr.Ganesan to pay any money, as there is every likelihood of the said person interested in sending the petitioner out of the premises.

(g) The said Mr.Ganesan had already filed an application for divorce in O.P.No.197 of 2015 on 08.05.2015 seeking divorce on various grounds. On a perusal of the allegations made in O.P.No.197 of 2015, leaves no room for doubt that the said person did not relish the stay of the petitioner in the premises.

(h) Even if the second respondent had sacrificed the petitioner's interest and also on the petitioner's daughter, it is the obligation of the first respondent to have disclosed the facts before the Court. The very fact that he had concealed it, shows that he had been negligent in discharging his official duties. The consequence of the negligence has a direct impact on the petitioner's legal rights.

(i) The petitioner had contributed for purchase of the property. The petitioner's father had sold his valuables in October 2010 and advanced money for purchase of the property and he had paid Rs.10 lakhs for the said purchase. The petitioner had given her professional income on a regular basis and both of them advanced together for the resources, along with the loan secured from LIC housing and the house was purchased and developed by the petitioner.

(j) The petitioner's husband had moved away from the house, which will not cease the common share holding property. Even assuming it is the property of the petitioner's husband, the law demands the petitioner's husband to provide the petitioner a shelter. The fact that the petitioner's husband had moved away from Salem to Kerala, would not change the character of the petitioner's holding and the petitioner is entitled to occupy the property as of her right.

(k) The petitioner is not a party to any of the legal proceedings and any order passed behind my back, that tends to affect the petitioner, has no legal effect and the same is legally untenable and nullity. The first respondent has ignored the fact that in law, the occupant cannot be forced to part with payment even before the adjudication is complete. No provision either under Sections 5 and 8 of the Prevention of Money Laundering Act, directs the occupant to deposit the money. The said Act only enables the competent authority to direct the owner from dealing with the property. What applies to the Adjudicating Authority applies to the Tribunal and both the Adjudicating Authority and the Tribunal, are bound by the provisions of the Prevention of Money Laundering Act and inasmuch as the statutory norms had been breached, that too, without notice to the affected party, the petitioner is constrained to file this Writ Petition.

(l) The impugned notice does not confer the power on the authority to pass the same under the Prevention of Money Laundering Act. Further, the ownership of the property is not shifted by the attachment, warranting the occupant to pay money for use and occupation.

(m) The second respondent is duty bound to maintain the petitioner and his daughter and they are entitled for a share-holding. The passing of the order, directing the second respondent to pay and invite a default, would only result in affected the statutory rights on the petitioner to reside in the premises and this guaranteed right that emanates from the protection of women under the Domestic Violence Act.

(n) The first respondent is aware that the petitioner is in occupation of the property. Without disclosing the facts to the Court and procuring orders that tends to affect the innocent third parties, which thereby may violate Article 14 of the Constitution of India.

(o) The interim order cannot divest the owner of his right over the property, pending criminal trial.

(p) The first respondent demanded the petitioner to vacate the property and the petitioner is abandoned by the second respondent. The first respondent cannot make the petitioner's position worse, by securing orders that are per-se unconstitutional.

(q) Any order passed by the authority is only in breach of statutory norms, which is a nullity.

Hence, for all the reasons stated above, the petitioner prays to set aside the impugned notice.

3. While drawing and reiterating the attention of this Court to the above facts, learned counsel for the petitioner relied on an order passed by a Division Bench of this Court in W.P.Nos.4297 and 4300 of 2025, dated 15.07.2025 (R.K.M.Powergen Private Limited, represented by its Director Vs. The Assistant Director, Directorate of Enforcement, Government of India, Chennai Zonal Office, Chennai and another), and the Division Bench observed in paragraph 63 that, "unless and until proceeds of crime linked to the predicate offence are shown, ED by virtue of a combined reading of 2(1)(u), 2(1)(p), 3 read with Section 17, does not have the power to proceed further in fine lacks the jurisdiction to proceed further. In the light of the above decision, the impugned order is set aside. W.P.No.4297 of 2025 is allowed with costs ......".

4. Heard both sides and perused the materials available on record.

5. The above said decision of the Division Bench of this Court, is not applicable to the facts of the present case, as the facts in the case on hand, are distinguishable.

6. It is to be noted that the Prevention of Money Laundering Act is an Act to prevent money-laundering and to provide for confiscation of property derived

from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The money laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives are taken by the international community to obviate such threat. The main aim of the enactment of the said Act is to declare the money-laundering as an extraditable offence.

7. As per Section 3 (relating to the offence of money-laundering), whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, shall be guilty of offence of money-laundering.

8. A person shall be guilty of offence of money-laundering, if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one of more of the following processes or activities connected with proceeds of crime, namely, (a) concealment, or (b) possession, or (c) acquisition, or (d) use, or (e)projecting as untainted property, or (f) claiming as untainted property, in any manner whatsoever.

9. In the case on hand, the second respondent-Dr.VM.Ganesan has filed

an appeal before the Appellate Tribunal under PMLA, at New Delhi in PPA-PMLA-856/CHN/2015, under Section 26 of the said Act, and in the Final Order (dated 25.02.2025), it was observed by the Tribunal as follows:

> "5. After hearing the rival submissions, I have given my thoughtful consideration of the same. As per the contention of the appellant, the proceeds of crime should be limited to only Rs.50,000/-, as he is facing trial only in one case pertaining to FIR.No.29/2013 and he has already returned sum of Rs.50,000/- out of Rs.1 lakh. I am not convinced with this submission, as police investigation revealed that he performed at least 81 kidney transplantation surgeries at minimum rate received by him of performing the said illegal surgeries was Rs.1 lakh. Thus, in my view minimum proceeds of crime cannot be less than Rs.81 Lakhs, but more than that. The property sold to appellant G.Thirumal at throwaway price of Rs.67.5 Lakh creates suspicion, in view of the investigation conducted by ED, as mentioned in Para No.10 & 11 of the impugned order, reproduced in the contention of Respondent ED in the preceding para. The property at Sr.No.2 was stated to be purchased for 89.9 Lakhs, out of which some loan amount is still outstanding. The EMI for repaying loan is also from the proceeds of crime. The concerned bank/financial institution will be entitled to recover all the outstanding loan liability against said property in

case of conviction and auction of the property after forfeiture of the same to the Central Government. Therefore, the net worth of the attached properties seems to be quite less than the proceeds of crime. Therefore, question of releasing the said attached properties does not arise.

6. In sequel to my observations in the proceeding para, the present appeals are hereby dismissed being devoid of any merits. However, till the trial in prosecution complaint attains finality, both the sides are hereby directed to maintain status quo, qua the ownership and possession of the properties, as it exists today. Ld. Special Judge, PMLA Court is at liberty to deal with the properties as per law. It is made clear that nothing expressed herein will affect the right of any party in any manner."

10. Further, the impugned notice is only the notice issued at the preliminary stage and the trial has to begin before appropriate Court and the criminal proceedings will lead to conviction/acquittal, as the case may be. The law has to take its own course.

11. The contention regarding violation of Article 14 of the Constitution of India, will not come into play at this nascent stage of issuance of notice by the Enforcement Directorate. Hence, even on this short ground, the Writ Petition will

have to be dismissed at the threshold.

12. According to the learned counsel for the first respondent, the investigation is still further to be done by the Enforcement Directorate and it is too early for this Court to take up this Writ Petition for adjudication on merits at this stage. Hence, the Writ Petition itself is not maintainable, as no grounds are made out to consider the Writ Petition itself. Further, the criminal case is also pending.

13. As against the impugned notice, appeal has already been preferred before the competent authority under the Prevention of Money Laundering Act. The Appellate Tribunal issued direction to not to take any coercive steps against the petitioner.

14. Further, the property in question is owned by the second respondent, but necessary rent should be paid in respect of the property under attachment. Such being the case, the rent has to be necessarily paid in regard to the property in question, before the competent authority and necessarily, rent has to be paid in respect of the property being attached. If such rent is paid, the same shall be kept in a separate account by the Enforcement Tribunal and if the petitioner or the fourth respondent succeeds in the appeal, the necessary rental amount so deposited, shall be refunded in favour of the second respondent in the manner known to law.

15. Hence, for all the reasons stated above, this Court is of the view that

the petitioner is not entitled to quash the impugned notice issued and hence, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

19.09.2025

Index: Yes/no
Speaking Order: Yes/no

Neutral Case Citation: Yes/no

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To

The Assistant Director,
Office of the Joint Director,
Directorate of Enforcement,
Chennai Zonal Office, 2nd and 3rd Floor,
C-Block, Murugesa Naicker Complex,
No.84, Greams Road, Chennai-600 006.

M.DHANDAPANI, J

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