BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:12.03.2025
Delivered on: 21.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.P(MD)No.2173 of 2025
and
W.M.P(MD)No.1555 of 2025

1.P.Balamurugan

2.Sri Balamurugan Salt and Allied Manufacturers,
Represented by its Partner Mr.P.Balamurugan,
Door No.31-A, Emperor Street,
Tuticorin, Tamil Nadu-628 001. ... Petitioners

-Vs-

1.The Directorate of Enforcement,
Represented by
Chennai Zonal Office-II, BSNL
Administrative Building,
Greams Road, Chennai-600 006.

2.The Sub-Registrar,
Perungulam,
No.4/3, Sivankoil Street,
Perungulam, Tamil Nadu-628 752.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent herein to remove/lift the provisional attachment passed by them vide Provisional Attachment Order No. 08/2024 dated 23.12.2024 with respect to the schedule mentioned properties and consequently, direct the 2nd respondent herein to delete the entries pertaining to the provisional attachment made by the 1st respondent in Provisional Attachment Order No.08/2024 dated 23.12.2024 from the encumbrance certificate of the schedule mentioned properties.

For Petitioners	: Mr.Mr.PH.Arvind Pandian, Senior Counsel for Mr.Vaibhav Rangarajan Venkatesh
For R1	: Mr.AR.L.Sundaresan, Additional Solicitor General of India, assisted by Mr.K.Govindarajan, Deputy Solicitor General of India
For R2	: Mr.D.Ghandiraj, Special Government Pleader

O R D E R

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

This writ petition is filed by P.Balamurugan in his personal capacity and as the representative of the partnership firm M/s.Sri Balamurugan Salt and Allied Manufacturers, at Tuticorin.

2.The relief sought in this Writ of Mandamus is to direct the first respondent – Directorate of Enforcement, Chennai Zone, to raise the provisional attachment of the properties purchased by them from M/s.PSG Properties, Melur, through 6 sale deeds between 14.12.2024 and 18.12.2024. Further, to direct the second respondent viz., the Sub-Registrar, Perungulam, to delete the entries pertaining to the provisional attachment made by the Enforcement Directorate in provisional attachment order No: 08/2024 dated 23.12.2024.

3.The counter of the first respondent discloses that, M/s.PSG Properties, Melur and its Directors are accused in the FIR registered by the Melur Police Station in Cr.No.618 of 2012 dated 06.08.2012; FIR registered by Kelavalavu Police Station in Cr.No.160/2012 dated 06.08.2012; FIR registered by Vikkaramangalam Police Station in Cr.No.141 of 2013 dated 20.12.2013; FIR registered by DCB, Madurai in Cr.No.20 of 2015 dated 31.01.2015. The offences are under IPC., Explosive Substances Act, illegal extraction of Mines and Minerals and Public properties destruction. Some of the offences are Scheduled offences under PMLA, 2012.

4.In view of registration of the scheduled offences by the concerned jurisdictional police, the Enforcement Directorate being *prima facie* satisfied that the proceeds of crime in those cases been held, processed or used to launder, had registered Enforcement Case Information Report(ECIR) in ECIR/CEZO-II/06/2019 dated 10.12.2019.

5.In the course of investigation by the Enforcement Directorate, the material collected disclosed that the properties, which were purchased by the writ petitioners were acquired by the persons accused in the scheduled offence cases. Hence, the first respondent - Enforcement Directorate, had sought details from the second respondent – Sub-Registrar, Perungulam, on 01.10.2024 to furnish details about the properties. On receipt of the particulars sought, the first respondent found that, Mr.Periyasami, the Director of PSG Properties during the enquiry, suppressed the possession of about 24 properties. These properties were likely to be transferred to the third parties to frustrate the proceedings related to confiscation of the proceeds of crime under PMLA. Hence, on *prima facie* satisfaction provisional attachment order dated 23.12.2024 been passed. Meanwhile, the properties been purchased by the writ petitioners. After passing the provisional attachment order on 23.12.2014 under section 5(1) of the PMLA, Original Complaint in terms of Section 5(5) of the Act, been filed before the Adjudicating Authority.

6.The learned Senior Counsel Mr.Arvind Pandian, appearing for the writ petitioners submitted that after paying the total sale consideration of Rs.77,28,000/- through Bank, the properties mentioned in the schedule measuring 37.87 acres was purchased by the first petitioner in two sale deeds. Likewise, on payment of Rs.1,67,87,000/- through Bank, totally 55.27.5 acres of land purchased by the Second writ petitioner from PSG Properties. On the dates of purchase(14/12/2024 and 18/12/2024), the properties had no encumbrance. Without notice, the properties of the writ petititoner been attached provisionally by the first respondent, which is violation of the in-build safeguards enshrined under section 5 of PMLA. This violation suffers vice or jurisdictional defects. Further Rule 3(3) of PML(Issuance of Attachment Order) Rules, 2013, cast duty on the ED to issue a copy of the provisional attachment order to all the persons concerned including the persons in possession of the property. In this case, there is gross violation of this rule.

7.The Learned Senior Counsel for the writ petitioners, relying on the Division Bench Judgment of this Court rendered in ***R.Amarabalan –vs- Directorate of Enforcement, Chennai*** in ***WP No: 898/2022,*** which was followed subsequently by another Division Bench in ***Revathi Vijayaragavan –vs- Deputy Director, ED in WP 32981 of 2022***, submitted that under Section 5(1), notice to the person concerned is pre-requisit before passing any order of provisional attachment. Failure to issue notice will render the provisional attachment non-est and the ED cannot proceed further under section 8 of the Act.

8.Per contra, the Learned Additional Solicitor General of India, Mr. AR.L Sunderesan, submitted that, nowhere in section 5 of PMLA or in Rules, notice prior to provisional attachment is contemplated. The subjective satisfaction of the Investigating Officer that the properties suspected to be proceeds of crime is likely to be transferred in any manner, attachment order can be passed and it will be valid for 180 days. Meanwhile, the parties concerned and interested in the property will be put to notice before final adjudication under Section 8 of the Act. The provisions of the Act is well intent. Prior notice to the persons at provisional attachment stage will provide the violators of law an opportunity to screen the proceeds of crime from the reach of the authorities. At the same time, the right of the owners of the property is well protected by providing opportunity to them during the adjudicating proceeding under Section 8 of the Act. The provisional attachment is valid only for 180 days, subject to further condition that the Department should file original complaint within 30 days before the Adjudicating Authority.

9.The learned Additional Solicitor General of India submitted that the petitioners are not benoafide purchasers of the property neither the sale proceeds was transferred innocently by them to the vendor. The investigation has let to disclosure of the fact that the sale consideration alleged to have been paid to the vendor was long prior to the sale deeds indicating that the petitioners knowingly had aided to concealed the crime proceeds and purchasing to project it as untainted property. The Act amounts to an offence under money laundering as defined as under Section 3 of the Act. He would also submitted that the statement of SRO registered under Section 50 of the PMLA Act, on 07.02.2025 discloses that the petitioners were informed about the enquiry conducted by the enforcing Directorate in respect of the properties in the name of M/s.PSG properties. While so, the provisional attachment Order under Section 5(1) made on reasonable believe based on the material cannot be ascertained as ultra virus. He further submitted that the original complaint already been sent to the adjudicating authority as contemplated under Section 5(5) of PMLA and the adjudicating authority has commenced the process in due course. At that time, notice to the petitioners and other persons interested will be sent. The order by the adjudicating authority will be passed only after considering the reply if any to the notice issued under sub-Section(1) of Section (8) of the PMLA.

10.The learned Additional Solicitor General further submitted that the present writ petition is not maintainable when there is a statute provides for the writ petitioner to question the provisional attachment order in the adjudicating proceedings. In support os his argument, learned Additional Solicitor General rely upon the judgment of the Hon'ble Supreme Court in Rajkumar Shivhare -vs- Assistant Director, Directorate of Enforcement and another, reported in (2010) 4 SCC 772.

11.Heard the learned Senior Counsels on either side.

12.The present writ petition is filed challenging the provisional attachment order when the adjudicating proceedings pending before the authority construed under Section 6 of PMLA. The order impugned issued under Section 5(1) of the PMLA, the said Section reads as below:

> "***5. Attachment of property involved in money-laundering.****—4 [(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—*
>
> *(a) any person is in possession of any proceeds of crime; and*
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> *(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any*

proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1),

forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3 [sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority."

13.The precondition required to issue the provisional attachment order is the reasonable believe reduced into writing by the competent officer that some person is in possession of the proceeds of crime and the said proceeds of crime are likely to be concealed, transferred or dealt with any manner which may result in frustrating any proceeds related to confiscation of such proceeds of crime under Chapter III of the PMLA.

14.The yet another condition is that the said property must be in relation to scheduled offence reported and forwarded to the Magistrate or a complaint filed by a person authorised to investigate the offence mentioned in the schedule. The order of provisional attachment issued under Section 5(1) of the PMLA will be inforce 180 days. Once the order of provisional attachment is issued based on the reason believe that the property is a proceeds of crime and likely to be concealed transferred etc., a copy of the order along with material in possession to be sent to the adjudicating authority in a **sealed envelope**(emphasis applied) in the manner prescribed. The provisional attachment does not prevent the person interested from enjoying the property. In this case, the adjudicating authority had already informed about the provisional attachment and it is now for the authority to decide whether the provisional attachment order to be confirmed or not. The writ petitioners has to participate in the enquiry once they receive notice and substantiate their plea that the property attached is not a proceeds of crime and they have neither directly nor indirectly aid, assist, use or conceal the said property with knowledge and intention to project it as untainted property.

15.In the light of Section 24 of the Act, which cast the burden of proof on the person accused on money laundering and the probability of concealment of the crime proceeds loom large against the petitioners. The judgment if any which is contrary to the provision of Section 5(1) of the PMLA casting duty on the enforcement authority to issue prior notice before passing provisional order of attachment is to be considered as obitor.

Section 8 of PMLA is the answer to the plea of the writ petitioners regarding opportunity of hearing before the attachment. The Section 5(1) and Section 8(1) and (2) read together clearly show that the provisional attachment is only to prevent the attempt ofconcealment of the crime proceeds to frustrate confiscation. It is a preventive measure to be done immediately, but at the same time only valid for 180 days. The final order under Section 8 of the PMLA will be passed after affording opportunity to the parties concerned. No where in the statute either in the Act or Rule, notice to parties prior to the provisional attachment is contemplated. While so, there cannot be a interpretation contrary to the law. Hence, the writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[G.J., J.] & [R.P., J.]
21.03.2025

NCC : Yes / No
Index : Yes / No
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To

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Represented by
Chennai Zonal Office-II, BSNL
Administrative Building,
Greams Road, Chennai-600 006.

2.The Sub-Registrar,
Perungulam,
No.4/3, Sivankoil Street,
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