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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MISC. APPEAL (PMLA) 1/2024 & CM APPL. 1949/2024 STAY)

BRAHMA CITY PRIVATE LIMITED .....PETITIONER

Through: Mr. Siddharth Agarwal, Sr. Adv. with Mr. Sanyat Lodha, Mr. Vishvajeet Singh and Ms. Sanjana Saddy, Advs.

versus

DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT CHANDIGARH .....RESPONDENT

Through: Mr. Anurag Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER

% **16.01.2025**

1. This appeal is directed against the order dated 09 October 2023 passed by the Appellate Tribunal[1] constituted under the Prevention of Money Laundering Act, 2002 ["**PMLA**"] in terms of which an order of status quo which was operating on the appeals preferred by the appellant here on 27 June 2019 has come to be vacated.

2. The appellant had approached the Tribunal pursuant to the affirmation of the **Provisional Attachment Order**[2] passed by the Adjudicating Authority. When the appeal was initially taken up for consideration by the Tribunal, an order of status quo came to be

[1] Tribunal
[2] PAO

passed in the following terms:-

"**ORDER**

09.10.2023

Heard the application to seek vacation of the stay order dated 27th June, 2019. The order is quoted hereunder for ready reference:-

"Fresh appeal has been filed u/s 26 of Prevention of Money Laundering Act, 2002 by the appellant against the order dated 6th June, 2019 passed in O.C. No. 1085/2019.

Despite service of the service, no one appears on behalf of the respondent. Issue notice to the respondent for 16th July, 2019.

Reply, if any, be filed by the next date of hearing after service of the respondent.

The ld. counsel for the appellant states that symbolic possession has been taken by the respondent however actual possession is with the respondent.

In view of the reasons mentioned in the grounds of the appeal and statement made by counsel for the appellant, both the parties shall maintain the status quo, as of today at 11:20A.M, till the next date of hearing.

Order be given dasti to both the parties."

Perusal of the order reveals that according to the Appellant, symbolic possession of the property is with the Respondent. The actual possession is also with the Respondent. It would be relevant to refer subsequent order dated 16thJuly, 2019 and is quoted hereunder:-

"*Mr. Vikas Garg, counsel for the respondent states that reply has been filed yesterday. Copy of the same has been handed over to the counsel for the appellant. Let rejoinder be filed within four weeks.*

List on 4th September, 2019.

Mr. Vikas Garg, counsel for the respondent states that on the last date of hearing wrong submission has been made by ld.counsel for the appellant that only symbolic possession has been taken. On the other hand counsel for the appellant submits that notice was issued on 22ndJune, 2019 and possession was taken on 25thJune, 2019.

In view of the above, status quo shall continue."

The aforesaid order records statement of the Counsel for the Respondent to the effect that notice for possession was issued on 22nd June, 2019 and it was taken on 25th June, 2019.

The Learned Counsel for the Appellant submits that both the orders record incorrect statements of fact. The actual possession of the property is with the Appellant and only symbolic possession is of the Respondent.

The Learned Counsel for the Appellant has admitted that no application was filed to seek modification of the order dated 27th June, 2019 or subsequent order dated 16th July, 2019. It is more so when order dated 27th June, 2019 record a categorical statement of the Appellant.

The matter was listed before the Tribunal from time to time for completion of pleading however after 13th May, 2020, the Tribunal was not functional due to the suspension of work out of Covid-19 and it may be that Tribunal remain non-functional in absence of the appointment of the Chairman and Members.

The Appeal was listed on 14th November, 2022 after appointment of Chairman and Members. None appeared on behalf of the Appellant on the aforesaid date. In the interest of justice, Appeal was adjourned to 23rd February, 2023 instead of dismissing it for default. On the next date of hearing, the Respondent prayed for hearing of the application for vacation of the stay order. It could not be heard in view of the another application for impleadment. It was dismissed for non-prosecution when none appeared on behalf of the applicant."

3. It would also be pertinent to extract the appropriate parts of the PAO which sets out the details with respect to the properties pertaining to the appellant which had come to be attached. Undisputedly, we are concerned with the details of properties set forth in sub paras (i) and (iv) of para 20 of that order and which are reproduced hereunder:-

"20. AND WHEREAS, after having perused the documents available on record and taken into consideration the facts and circumstances of the case and evidence available on record, I have reasons to believe that, proceeds of crime as detailed below, are liable to be attached:-

i. Investigations have revealed that POC to the tune of Rs. 5,99,50,000/- (Five Crore Ninety Nine Lakhs Fifty Thousand Only) has been made to flow by Atul Bansal/ Sona Bansal/ ABW Group into the purchase of 21 Kanal 16 Marlas which was later on converted/exchanged to property consisting of plotted area of3532.712 Sq. Yards. lying with M/s. Krrish Buildtech Pvt. Ltd. (now Brahama City Pvt. Ltd.) as an asset of ABWIL. This one is liable to be attached U/s 5 (1) of PMLA as the property was acquired out of the amount of POC generated through sale of licences obtained in a fraudulent manner by way of connivance bureaucrats of different State Govt. Machinery and further selling of the same to DLF. Non attachment of this property as the proceeds of crime will frustrate the further proceedings under PMLA, 2002. I also have reasons to believe that, if the said properly is not attached, the same is likely to be transferred or dealt with in any manner which may result in frustrating further proceedings under PMLA, 2002.

As per the valuation given by the Authorized representative of M/s. Krrish Buildtech Pvt. Ltd. (now Brahama City Pvt. Ltd.) regarding the plotted area, it has been stated that they have valued the same as Rs.11,00,00,000/-. The POC to the tune of Rs.5,99,50,000/- has been associated with this property by way of purchasing 2.5 Acres of plot initially and dealing it with a manner of a kind of barter trade wherein plotted area of 3532.712 Sq. Yards was allotted to ABW Group concern. This has lead to projecting of POC into an untainted property i.e. plotted area. Therefore, the property i.e. entire plotted area measuring 3532.712Sq. Yards is liable to be attached to the tune of POC flown in the same.

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iv. Investigations have revealed that POC to the tune of Rs 31,92,71,571/- (Thirty One Crores Ninety Two Lakhs Seventy One Thousands Five Hundred Seventy One Only) has been made to flow by Atul Bansal/Sona Bansal) ABW Group into the purchase of the Property/land located in Rectangle No. 19, Killa No.11, *12/1, 19/1,* 20 (Min) & 21 (Min.) Rectangle No. 23,Killa No.5 (Min.) & Rectangle 24, Killa No.1 situated in the Revenue Estate of Village Nangli, Umarpur,Sector 62, Gurgaon, Haryana measuring 62 Kanal 13 Marla (7.83 Acres). This property is mortgaged with Corporation Bank, Jhandewalan Extention Branch, New Delhi *in/*under the name of ABW Infrastructure Ltd. This property is liable to be attached *U/s* 5 (1) of PMLA as the property has been purchased out of POC generated through sale of licences obtained in a fraudulent manner by way of connivance with bureaucrats of different Govt. State Machinery and further selling of the same to DLF. The non attachment of this property as the proceeds of crime will frustrate the further proceedings under PMLA,2002. I also have reasons to believe that, if the said property is not attached, the same is likely to be transferred or dealt with in any manner which may result in frustrating further proceedings under PMLA,2002."

4. It appears that during the currency of the order of status quo which operated on those appeals, the Enforcement Directorate moved the competent court for confiscation pursuant to the applications so made. According to the appellant, on 31 May 2022 an ex parte order of confiscation came to be passed by the competent court. Aggrieved by the aforesaid, the appellant is stated to have approached the High Court of Punjab and Haryana on which petition an order came to be passed granting it liberty to approach the competent court for recall of the said order. Basis the liberty that was so accorded, the appellant approached the Special Court by way of an application seeking recall of the ex parte order dated 31 May 2022.

5. On a consideration of that application the Special Court in its order of 11 November 2024 has overruled the objection taken by the Enforcement Directorate with respect to the maintainability of that application and observed as follows:-

> " 6. In view of what is discussed above, it becomes clear that applicant has approached this court pursuant to the order dated 19.04.2023 passed by Hon'ble High Court on the ground that applicant having not been impleaded as a respondent in the application seeking confiscation filed by ED, was not heard by the court and as such, the factum of *status quo* order dated 27.06.2019 could not be brought to its notice and had it been so, complexion of the case would have been entirely different inasmuch as the properties in question would not have been confiscated. Thus, according to applicant, respondent-ED conveniently concealed the above fact of order of *status quo* from this court and got the properties of the applicant confiscated. What was put-forth before me was that respondent/ED decided not to implead applicant-

company even though it was impleaded as one of the defendants in the application filed by ED before the Adjudicating Authority concerned seeking confirmation of provisional order of attachment and, therefore, in the application, which came to be decided vide order dated 31.05.2022, impleadment of applicant as a respondent was a must. Thus, opportunity of hearing was not afforded to the applicant.

7. It, therefore, becomes clear that present applicant has not been filed under Section 8(8) of PMLA and only in case the order passed under Section 8(7) of PMLA was sought to be got modified by filing an application under Section 8(8) of PMLA, a revision petition under Section 397/401 Cr.P.C. would have lied before Hon'ble High Court as per judgment dated 30.07.2024 passed in CRR-476-2024 and not otherwise. Admittedly, present application is not the one filed under Section 8(8) of PMLA and it has primarily been filed on the ground of violation of principles of natural justice and as such, applicant has a right to maintain the application before this court especially when it has been granted liberty by Hon'ble High Court to do so vide order dated 19.04.2024. It is, therefore, held that application in hand is maintainable in its present form and it cannot be dismissed on the ground of maintainability pleaded by ED. The application needs to be heard and decided on merits. For said purpose, to come up on 03.12.2024."

6. Presently, we are informed by Mr. Jain, learned counsel appearing for the Enforcement Directorate, that the order of the Special Judge dated 11 November 2024 has been assailed by the Enforcement Directorate before the High Court of Punjab and Haryana by way of CRNM 1520/2025 on which notice has been issued by a learned Judge of that Court.

7. We are however presently not concerned with the order of confiscation and which presently is being examined by the Special Judge. It is however pertinent to note that it is ex facie apparent that the order of confiscation came to be made at a time when the order of status quo was operating. This is a fact which has also been noted by the Special Judge itself in paragraph 6 which has been extracted above.

8. The principal question which, therefore, confronts us in this appeal is whether the Tribunal was justified in vacating the order of status quo even though the principal appeal of the appellant remained pending for consideration.

9. The Tribunal has while passing the impugned order observed as follows:-

> "The outcome of the discussion shows that out of 13 plots referred at the item No. 1 of the order of the Attachment, five plots belongs to ABW Infra who is involved in the predicate offence so also the offence under Prevention of Money Laundering Act, 2002. Seven plots (D 270, H 009, G 093, A 062, A 063, A 067, A 064) referred therein does not belong to allottees of the Appellant under the Licence. Only one plot D 267 belongs to one allottee of the Appellant. In the light of the aforesaid, we find reasons to modify the interim order passed by this Tribunal as the Appellant has failed to show its locus in reference to 12 plots out of 13 plots to make out a prima facie case. The status quo order cannot be continued for any of the plots mentioned at item no. 1 of Provisional Attachment then for plot No.D 267 which was allotted by the Appellant and exist in the name of a allottee other than ABW Infra.
>
> It is necessary to mention here that the accused for money laundering is ABW Infra Ltd. and Atul Bansal etc. and five plots belongs to them. In view of the above, a case is not made out for interim order other than for plot No.D 267. The initial order is not speaking, rather passed ex-parte. The analysis of the case has been made after hearing both the parties. A prima facie case could not be proved by the Appellant to continue the order of status quo and accordingly other than for plot No. D 267 stay order dated 27th June and 16th July, 2019 are vacated after keeping right reserve of both the parties to elaborately argue the matter. This order has been passed considering the prima facie case on the basis of the material on record. There was no reason for Tribunal to pass an order of status quo for the property under the attachment for which Appellant has no locus. The attachments has its consequence which may include a bar to alienate the property by either of the parties. The application is disposed of with the aforesaid.
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> List the Appeal on 01st February, 2024."

10. We find ourselves unable to countenance the logic that

underlies that order and the decision to vacate the stay since undisputedly it was the Enforcement Directorate itself that had passed orders of provisional attachment in respect of all properties comprised in sub paras (i) and (iv) of the PAO. The appellant was made a noticee in those proceedings qua those properties only. If the reasoning assigned by the Tribunal, namely, of the appellant having no interest in the properties in respect of which the order of status quo has been lifted were to be accepted, it would impact the very validity of the PAO itself. This since that finding would undoubtedly impact the very basis advocated by the Enforcement Directorate of those properties being proceeds of crime held by the appellant.

11. We also find ourselves unable to ignore the indubitable position of the Enforcement Directorate having sought confiscation of those very properties and which stood comprised in sub paras (i) and (iv) of para 20. It was those properties which have ultimately suffered an order of confiscation on 31 May 2022. This too convinces us to hold that the Tribunal was wholly unjustified in framing the directions impugned before us.

12. On a more fundamental plane, we find no justification in the vacation of the order of status quo which had operated on the appeals right from 2019. It is well settled that the vacation of that injunction would have undoubtedly affected the valuable civil rights which were asserted by the appellant. Unless the properties attached were protected in the interim, the very purpose of pursuing the appeal would have been lost. The Tribunal would have been well advised to bear in mind the following pertinent observations which were made by the Supreme Court in **Mool Chand Yadav Vs. Raza Buland Sugar**

Co. Ltd.[3]

> "**4.** We heard Mr S.N. Kacker, learned counsel for the appellants, and the respondents appeared by Caveat through Mr Manoj Swarup, Advocate. We are not inclined to examine any contention on merits at present, but we would like to take notice of the emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal. If the FAFO is allowed obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav would have to vacate the room and hand over the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr Manoj Swarup, learned Advocate for respondents, that the Court's order cannot be flouted and even a covert disrespect to Court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. Mr Manoj Swarup may be wholly right in submitting that there is intentional flouting of the Court's order. We are not interdicting that finding. But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the Order dated August 6, 1982 directing the appellants to hand over the possession of the room to the respondents till the disposal of the first appeal against that order pending in the High Court of Allahabad. Mr Manoj Swarup requests that both the earlier and later appeals should be heard together as early as possible. We order accordingly and request the High Court if it considers proper in its own discretion to hear both the appeals as expeditiously as possible in order to avoid the continuance of the boiling situation. The appeal stands disposed of. There shall be no order as to costs."

13. Following the decision in *Raza Buland Sugar*, this Court in **Kamlesh and Another Vs. Govt. of NCT of Delhi**[4], in the context of a revisional authority refusing to grant a stay while entertaining a challenge to the principal order in revision, had pertinently observed:-

> "**5.** The Court notes that once the Financial Commissioner had deemed it appropriate to entertain the revision petition, it was

[3] (1982) 3 SCC 484
[4] 2021 SCC OnLine Del 5007

incumbent upon the said Authority to consider the application moved for interim directions. Even if the Financial Commissioner came to conclude that reasons would not justify the grant of any interim relief to the petitioner revisionist ex parte, the law did require and oblige him to record reasons even if they be elementary in character.

6. The Court in the aforesaid backdrop also bears in mind the principles enunciated by the Supreme Court in *Mool Chand Yadav* v. *Raza Buland Sugar Company*, (1982) 3 SCC 484 where their Lordships held thus:—

> "**4.** We heard Mr. S.N. Kacker, learned counsel for the appellants, and the respondents appeared by Caveat through Mr. Manoj Swarup, Advocate. We are not inclined to examine any contention on merits at present, but we would like to take notice of the emerging situation if the operation of the order under appeal is not suspended during the pendency of the appeal. If the FAFO is allowed obviously Mool Chand Yadav would be entitled to continue in possession. Now, if the order is not suspended in order to avoid any action in contempt pending the appeal, Mool Chand Yadav would have to vacate the room and hand over the possession to the respondents in obedience to the Court's order. We are in full agreement with Mr. Manoj Swarup, learned Advocate for respondents, that the Court's order cannot be flouted and even a covert disrespect to Court's order cannot be tolerated. But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal. Mr. Manoj Swarup may be wholly right in submitting that there is intentional flouting of the Court's order. We are not interdicting that finding. <u>But judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended</u>. More so when appeal is admitted. Previous history of litigation cannot be overlooked. And it is not seriously disputed that the whole of the building, Hari Bhawan, except one room in dispute is in possession of the Corporation. We accordingly suspend the operation of the Order dated August 6, 1982 directing the appellants to hand over the possession of the room to the respondents till the disposal of the first appeal against that order pending in the High Court of Allahabad. …………"

> **7.** It was clearly incumbent upon the Financial Commissioner to accord due consideration to the submission of the revisionist that if the order of remand were permitted to operate, the proceedings itself may come to a conclusion during the pendency of the revision. The authority was obliged to consider whether the continued operation of the order impugned in the revision would result in prejudice and harm to the petitioner. In any case, the facts required the Financial Commissioner to consider at least prima facie whether the apprehension as expressed merited the impugned order being placed in abeyance during the pendency of the revision.
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> **8.** In view of the above, the Court is of the considered opinion that the impugned order cannot be sustained and the matter would consequently merit being remanded to the Financial Commissioner for considering the application for stay afresh."

14. While we do not propose to lay down a proposition that a stay must invariably be granted once an appeal is entertained in absolute terms, what we seek to emphasise is that it is the duty of the appellate or revisional authority to ensure that an appropriate measure of protection is granted lest the pendency of the corrective proceedings themselves are rendered otiose. Unless of course, the authority for reasons so recorded comes to the conclusion that an interim order is not merited in the facts and circumstances of the case. In any event, there clearly was no justification to vacate the order while the principal appeal was still being retained for hearing and the Tribunal was not doubting the action of provisional attachment in the hands of the appellant. Consequently, and for all the aforesaid reasons, we find ourselves unable to sustain the order impugned.

15. We accordingly allow the appeal and set aside the order of 09 October 2023. We leave it open to the Tribunal to consider the grant of any interim orders that may be warranted bearing in mind the order of confiscation which has intervened in the meanwhile.

16. All rights and contentions of respective parties on merits are kept open in that respect.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 16, 2025/nd