

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P.No.42048 OF 2022**

**Between:**

Dhara Prasad & another

... **Petitioners**

**And**

Union of India & another

... **Respondents**

**JUDGMENT PRONOUNCED ON: 03.06.2024**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes  
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes  
see the fair copy of the Judgment?

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P.No.42048 OF 2022****% 03.06.2024****Between:**

# Dhara Prasad &amp; another

**... Petitioners****And**

\$ Union of India &amp; another

**... Respondents**

&lt; Gist:

&gt; Head Note:

**! Counsel for the Petitioner** : Mr.Pasham Mohith**^ Counsel for Respondents** : Mr.Gadi Praveen Kumar  
for R1  
Mr.Anil Prasad Tiwari,  
for R2.

? Cases Referred:

- (1) Special Leave Petition (Criminal) No.4634/2014, SCC
- (2) R/Special Criminal Application No.9001 of 2021
- (3) Crl.Ptn.No.1072/2021

**THE HON'BLE MRS. JUSTICE SUREPALLI NANDA****W.P. No.42048 OF 2022****ORDER:**

Heard Mr.Pasham Mohith, learned counsel appearing on behalf of the petitioners, Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India, appearing on behalf of respondent No.1 and Mr.Anil Prasad Tiwari, learned counsel appearing on behalf of respondent No.2.

**PRAYER:**

2. **The Petitioners approached the Court seeking prayer as under :**

"...to issue a Writ of Mandamus by declaring the action of the Respondent No.2 in issuing the Form I Notice vide F. No. ECIR/CEZO-I/09/2021 dated 10.10.2022 to take possession of Petitioners properties as illegal, arbitrary, ultravires and in violation of Article 14 and 21 Constitution of India and set aside the same..."

3. **PERUSED THE RECORD :**

**A) The impugned Notice F.No.ECIR/CEZO-I/09/2021 dated 10.10.2022 reads as under :**

**FORM I**

[sub-rule (1) of rule 6 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicating Authority) Rules, 2013]

**NOTICE FOR TAKING POSSESSION UNDER SUB-SECTION (4) OF SECTION (8) OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 READ WITH RULE 5 OF THE PREVENTION OF MONEY LAUNDERING (TAKING POSSESSION OF ATTACHED OR FROZEN PROPERTIES CONFIRMED BY ADJUDICATING AUTHORITY) RULES, 2013**

Whereas the immovable properties mentioned in the annexure have been provisionally attached under sub-section (1) of Section 5 of the Prevention of Money Laundering Act, 2002 (15 of 2003) vide Provisional Attachment Order No. 06/2022 dated 28.02.2022 issued by the Deputy Director of the Directorate of Enforcement, Chennai Zonal Office-I, Chennai.

Whereas the said Provisional Attachment Order was subsequently confirmed by the Adjudicating Authority constituted under Section 6 of the Act, vide order dated 22.08.2022 in O.C. No. 1663/2022.

Whereas, in compliance of the provisions contained under sub-section (4) of the Section 8 of the Act (15 of 2003), the undersigned has taken possession of the said properties, which shall be at the disposal of the Directorate of Enforcement until further order and such properties shall be kept intact by all concerned for further proceedings under the Act; and

I, Dr. Rama Gopala Reddy K., Deputy Director, Directorate of Enforcement, Chennai Zonal Office-I, Chennai, therefore, order that all concerned are hereby prohibited and restrained until further order of the undersigned from transferring or charging the aforesaid properties by sale, gift, mortgage, pledge, or otherwise in any manner whatsoever and that all persons be and that they are hereby prohibited and restrained from receiving the same by purchase, gift, mortgage, pledge or otherwise in any manner whatsoever.

Issued on this 10<sup>th</sup> Day of October, 2022

**B) Counter affidavit has been filed by the 2<sup>nd</sup>**

**Respondent, in particular, at Paras 11, 21 read as under:**

**“11.** With regard to the averments of the petitioner in para 2 of the affidavit, it is humbly submitted that as per Section 8(4) in The Prevention of Money-Laundering Act, 2002(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 attached property. From the above, it is clear that the 2<sup>nd</sup> respondent herein, had acted according to the procedure established by law.

**21.** With regard to the averments of the petitioner in para 15 and 17 of the affidavit, it is humbly submitted that as per Section 8(4) of PMLA, it is clear that once the O.C is confirmed by the Adjudicating Authority then the 2<sup>nd</sup> Respondent herein may take possession of the property

attached. It is in this regard, the impugned order has been issued."

**C) This Court on 01.12.2022 passed orders in the favour of the Petitioners directing the Respondent No.2 not to give effect to the impugned Notice dated 17.11.2022, the said order is in force as on date.**

**3. The case of the Petitioners in brief as per the averments made in the affidavit filed by the Petitioners in support of the present writ petition is as under :**

i) It is the case of the petitioners that upon a complaint lodged by one V. Dinakar on 02.01.2020 a complaint has been registered against the Petitioners vide FIR No.3 of 2020 punishable for offences U/s.420, 409 and 477-A IPC against the Petitioner No.1. Based on the said FIR the Central Bureau of Investigation registered an FIR vide FIR No.RCMA1 2020 A0001, dated 03.02.2020 against the Petitioner and 6 others for offences U/s.409 and 420 r/w 120-B of IPC and Sections 13(2) r/w 13(1)(a) of Prevention of Corruption Act, 1988 (As Amended in 2018). Corresponding to the said FIR the Enforcement Directorate had registered an ECIR vide ECIR No. CEZO-1/09/2021, dated

15.03.2021 under the Prevention of Money Laundering Act, 2002 and a Show Cause Notice dated 01.04.2022 was issued calling upon the Petitioner to indicate the source of income, earnings or assets as per the Provisions of Sec.8 of the PML Act, 2002 and after recording the statements of the Petitioners, the Deputy Director, Directorate of Enforcement has passed Provisional Attachment Order No.6/2022, dated 28.02.2022 attaching the properties of the Petitioners and subsequently filed the complaint U/s.5(5) of the PMLA, 2002 vide Original Complaint No.1663/2022 and the Petitioners had filed their replies duly intimating that the Petitioners have purchased the subject properties by investing the monthly incomes and the funds/hand loans procured from different persons as such the properties are not liable for attachment. However the adjudicating Authority, New Delhi vide Orders dated 22.08.2022 has confirmed the Provisional Attachment Orders No.6 of 2022 and allowed the O.C.No.1663/2022.

ii) It is further the case of the Petitioners that aggrieved by the orders dated 22.08.2022 the Petitioners had filed an Appeal on 17.10.2022 before the Appellate Tribunal under PMLA, 2002, New Delhi, and the Respondent No.2 issued Notice U/s.8(4) of

PMLA, 2002, dated 10.10.2022 duly informing the Petitioners that in compliance of the provisions contained U/s.8(4) of PMLA, 2002, the Respondent No.2 had taken possession of the Petitioners properties and the same will be kept at the disposal of the Directorate of Enforcement until further orders. **Aggrieved by the same Petitioners approached the Court by filing the present writ petition and this Court granted interim directions in favour of the Petitioners directing the 2<sup>nd</sup> Respondent not to give effect to the Notice dated 17.11.2022 and the said order is in force as on date.**

4. **The learned counsel appearing on behalf of the Petitioners mainly puts-forth the following submissions :**

- (i) The issuance of notice for taking possession U/s.8(4) of the PMLA, 2002 is illegal, arbitrary, unconstitutional.
- (ii) Section 8(4) of the PMLA, 2002 can be invoked only in an exception situation wherein the orders of the adjudicating Authority are not honoured and followed by the concerned.
- iii) In the present case Petitioners co-operated with the whole process of adjudication thoroughly and have been exercising their rights legally and had never evaded the process of law and hence the impugned notice issued by the



2<sup>nd</sup> Respondent dated 10.10.2022 is totally unwarranted and uncalled for.

iv) Petitioners are in lawful possession and enjoyment of the subject properties and are eking their livelihood from the said properties.

v) There is no order of confiscation of subject properties of the Petitioners passed against the Petitioners and hence the impugned notice dated 10.10.2022 intimating taking of possession of the Petitioners subject properties is without any requirement under law.

vi) Petitioners have protection U/s.5(4) of the PMLA 2002 and therefore the impugned notice is violative of fundamental rights.

vii) Section 8(4) of the PMLA 2002 can be resorted to only by way of an exception and not as a rule.

Placing reliance on the aforesaid submissions the learned Counsel for the Petitioners contended that the Writ Petition has to be allowed as prayed for.

**5. The counter affidavit has been filed on behalf of 2<sup>nd</sup> Respondent and placing reliance on the averments made in the counter affidavit filed on behalf of the 2<sup>nd</sup> Respondent**

**the learned counsel appearing on behalf of the 2<sup>nd</sup>**

**Respondent mainly puts-forth the following submissions :**

i) As per Sec.8(4) in Prevention of Money Laundering Act, 2002 where the provisional order of attachment is made under Sub-Sec.(1) of Section 5, and has been confirmed under Sub-Sec.(3), the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the attached property, the 2<sup>nd</sup> Respondent had acted according to the procedure established by law.

ii) The purpose of the Prevention of Money Laundering Act, 2002 is to deprive the offenders of money laundering from enjoying the fruits of the crime committed by them, therefore the order impugned had been passed.

iii) The Petitioners herein are enjoying the fruits of crime every day and the properties acquired out of money laundering are being used to generate further proceeds of crime, hence the action of the 2<sup>nd</sup> Respondent is just and proper.

Based on the aforesaid submissions the learned Counsel for the Respondents contends that the Writ Petition needs to be dismissed.

**DISCUSSION AND CONCLUSION :**

6. A bare perusal of the impugned Notice in Form 1, dated 10.10.2022 issued by the 2<sup>nd</sup> Respondent indicates that a Provisional Attachment Order No.06/2022, dated 28.02.2022 had been issued against the Petitioners by the Deputy Director of the Directorate of Enforcement, Chennai, Zonal Office-1, Chennai, and the subject immovable properties mentioned in the annexure had been provisionally attached under Sub-Section (1) of Section 5 of the Prevention of Money Laundering Act, 2002 (15 of 2003) and the said Provisional Attachment Order was subsequently confirmed by the Adjudicating Authority constituted U/s. 6 of the Act vide Order dated 22.08.2022 in OC No.1663/2022, and in compliance of the provisions contained under Sub-Sec.(4) of Section 8 of the Act 15 of 2003, the Authorized Officer, Directorate of Enforcement, Chennai Zonal Office-I, took possession of the subject properties which shall be at the disposal of the Directorate of Enforcement until further orders and the said properties shall be kept intact by all concerned for further proceedings under the Act and accordingly the 2<sup>nd</sup> Respondent issued the impugned Notice in Form-1, dated 10.10.2022 intimating the same to the Petitioners.

7. **Section 5(4) of Prevention of Money-Laundering Act, 2002, reads as under :**

**“5. Attachment of property involved in money-laundering.**

**5(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.”**

This Court opines that PMLA, 2002 itself is an independent Act containing the procedure and guidelines for adjudication, attachment and confiscation of properties. A bare perusal of Sec.5(4) of the PMLA, 2002 (referred to and extracted above) clearly indicates that the said section expressly provides protection to the interested persons that is the Petitioners herein in the enjoyment of the subject immovable property attached under sub-sec.(1) of Sec.5. **In the present case admittedly the record and the counter affidavit does not indicate any orders of confiscation of subject properties having been passed against the Petitioners herein directing confiscation of the subject properties and before such order is passed by the**

Special Court the impugned notice of the 2<sup>nd</sup> Respondent dated 10.10.2022 indicates taking over of physical possession of the subject properties held by the Petitioners without assigning any reasons except stating that Provisional Order of Attachment had been passed against the Petitioners dated 28.02.2022 U/s.5, Sub-Sec.(1) and the same had been confirmed by the Adjudicating Authority constituted U/s.6 of the Act vide order dated 22.08.2022 in O.C.No.1663/2022 and the 2<sup>nd</sup> Respondent in compliance of the provisions contained under Sub-Sec.(4) of Section 8 of the Act 15 of 2003 had taken possession of the subject properties. This Court opines that the action of the 2<sup>nd</sup> Respondent is not only contrary to Sec.5(4) of PMLA, 2002, but is also a case of miscarriage of justice, since the Petitioners are deprived of their protection provided under Sub-Section (4) of Section 5 of PMLA, 2002 and the same is in violation of Petitioners fundamental rights, since Sec.8(4) of PMLA, 2002 can be resorted to only by way of an exception and not as a rule since the powers U/s.8(4) of PMLA, 2002 are discretionary powers which have to be used sparingly only in peculiar circumstances.

**8. The observations of the Apex Court in Special Leave Petition (Criminal) No.4634/2014 decided on 27.07.2022 in particular paragraphs 304 and 305 read as under :**

**“304.** The other grievance of the petitioners is in reference to the stipulation in sub- section (4) of Section 8 providing for taking possession of the property. This provision ought to be invoked only in exceptional situation keeping in mind the peculiar facts of the case. **In that, merely because the provisional attachment order passed under Section 5(1) is confirmed, it does not follow that the property stands confiscated; and until an order of confiscation is formally passed, there is no reason to hasten the process of taking possession of such property. The principle set out in Section 5(4) of the 2002 Act needs to be extended even after confirmation of provisional attachment order until a formal confiscation order is passed.** Section 5(4) clearly states that nothing in Section 5 including the order is provisional attachment shall prevent the person interested in the enjoyment of immovable property attached under sub-section (1) from such enjoyment. The need to take possession of the attached property would arise only for giving effect to the order of confiscation. This is also because sub-section (6) of Section 8 postulates that where on conclusion of a trial under the 2002 Act which is obviously in offence of money-laundering, the Special Court finds that the offence of money-laundering has not taken place or the

property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it. Once the possession of the property is taken in terms of sub-section (4) and the finding in favour of the person is rendered by the Special Court thereafter and during the interregnum if the property changes hands and title vest in some third party, it would result in civil consequences even to third party. That is certainly avoidable unless it is absolutely necessary in the peculiar facts of a particular case so as to invoke the option available under sub-section (4) of Section 8.

**305.** Indisputably, statutory Rules have been framed by the Central Government exercise of powers under Section 73 of the 2002 Act regarding the manner of taking possession of attached or frozen properties confirmed by the Adjudicating Authority in 2013, and also regarding restoration of confiscated property in 2019. Suffice it to observe that direction under Section 8(4) for taking possession of the property in question before a formal order of confiscation is passed merely on the basis of confirmation of provisional attachment order, should be an exception and not a rule. That issue will have to be considered on case-to-case basis. Upon such harmonious construction of the relevant provisions, it is not possible to countenance challenge to the validity of sub-section (4) of Section 8 of the 2002 Act."

**9. Para 29 of the order dated 28.03.2022 of the High Court of Gujarat at Ahmedabad, in R/Special Criminal**

**Application No.9001 of 2021 in Hemanshu Rajnikanth Shah Vs. Assistant Director, Directorate of Enforcement, dealing with plea of non-maintainability of a petition on the ground of availability of alternative efficacious remedy held that when the Respondent Authorities have not acted in accordance of the provisions of the enactment in question the same is not acceptable, in the said para is observed as under :**

“29. In light of the settled law and applying to the facts of the present case, the authorities while exercising their powers under Sections 5 and 8 of the Act, 2002 did not apply his mind properly and **the impugned order is passed against the mandate of Section 5 of the Act as there was no material before him to come to a conclusion that the properties are derived or acquired from the criminal activity** and therefore, the action of the authority suffers from arbitrariness and the order impugned having been passed without authority of law. Therefore, the petition is maintainable on two counts i.e., (i) at the relevant point of time, the post of appellate authority was vacant and (ii) the respondent authorities have not acted in accordance with the provisions of the enactment in question. Thus, the plea of non-maintainability of petition on the ground of availability of alternative efficacious remedy is not acceptable.”



**10. The Division Bench of High Court of State of Telangana in Crl.Ptn.No.1072/2021 decided on 08.09.2022 in Jagati Publication Ltd., Vs. Enforcement Directorate, at Paras 29 and 30 observed as under :**

“29. While on Vijay Madanlal Choudhary (supra), we may also refer to what the Supreme Court has said regarding taking over physical possession of property. It is in that context, Supreme Court referred to various provisions of Section 8 of the PMLA and held that physical dispossession of the person from the property concerned is unwarranted in every case. It is an extreme and drastic action and should not be resorted to until a formal order of confiscation is passed. It is possible that the Special Court in the trial concerning money laundering offence may decide the issue in favour of the person in possession of the property as not being proceeds of crime or for any other valid ground. Before such order is passed by the Special Court, it would be a case of serious miscarriage of justice, if not abuse of process to take physical possession of the property held by such person. Paragraphs 306 and 307 of the report are extracted as under:

306. The learned counsel appearing for the Union of India, had invited our attention to the recommendations made by FATF in 2003 and 2012 to justify the provision under consideration. The fact that non-conviction based confiscation model is permissible, it does not warrant an extreme and drastic action of physical dispossession of the person from the property in every case which can

be industrial/commercial/business and also residential property, until a formal order of confiscation is passed under Section 8(5) or 8(7) of the 2002 Act. As demonstrated earlier, it is possible that the Special Court in the trial concerning money-laundering offence may eventually decide the issue in favour of the person in possession of the property as not being proceeds of crime or for any other valid ground. Before such order is passed by the Special Court, it would be a case of serious miscarriage of justice, if not abuse of process to take physical possession of the property held by such person. Further, it would serve no purpose by hastening the process of taking possession of the property and then returning the same back to the same person at a later date pursuant to the order passed by the Court of competent jurisdiction. Moreover, for the view taken by us while interpreting Section 3 of the 2002 Act regarding the offence of money-laundering, it can proceed only if it is established that the person has directly or indirectly derived or obtained proceeds of crime as a result of criminal activity relating to or relatable to a scheduled offence or was involved in any process or activity connected with proceeds of crime.

307. It is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of his acquittal or discharge in connection with the scheduled offence. Resultantly, we would sum up by observing that the provision in the form of Section 8(4) can be resorted to only by way of an exception and not as a rule. The analogy drawn by the Union of India on the basis of decisions of this Court in *Divisional Forest Officer v. G.V. Sudhakar Rao* MANU/SC/0069/1985: (1985) 4 SCC 573, *Biswanath Bhattacharya v. Union of India* MANU/SC/0046/2014: (2014) 4 SCC 392, *Yogendra Kumar Jaiswal v. State of Bihar* MANU/ SC / 1441 / 2015 : (2016) 3 SCC 183, will be of no avail in the context of the scheme of attachment, confiscation and vesting of proceeds of

crime in the Central Government provided for in the 2002 Act.

**30.** Thus, Supreme Court expressed the view that it is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of acquittal or discharge of the person in connection with the scheduled offence. The above decision of the Supreme Court has now cleared the legal position. It succinctly sums up that offence under Section 3 is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. In the event of acquittal of the person concerned or being absolved from the allegation of criminal activity relating to scheduled offence and if it is established that crime property in the concerned case is rightly owned and possessed by the concerned person, such a property by no stretch of imagination can be termed as crime property. In fact, Supreme Court has explained that if in the trial in connection with the scheduled offence, the person concerned is acquitted then the Court would be obliged to direct return of such property as belonging to him. It would then be paradoxical to still regard such property as proceeds of crime despite acquittal by a Court of competent jurisdiction."

**11. This Court opines that the Judgments relied upon by the learned counsel appearing on behalf of the respondents**

**do not have any application to the facts of the present case.**

**12. Taking into consideration :**

i) the above said facts and circumstances of the case,

ii) the observations in the judgments referred to and extracted above, and which are again enlisted hereunder:

(a) Order of Apex Court in Special Leave Petition (Criminal) No.4634/2014 decided on 27.07.2022,

(b) Order dated 28.03.2022 of the High Court of Gujarat at Ahmedabad, in R/Special Criminal Application No.9001 of 2021 in Hemanshu Rajnikanth Shah Vs. Assistant Director, Directorate of Enforcement,

(c) Order of Division Bench of High Court of State of Telangana in CrI.Ptn.No.1072/2021 dated 08.09.2022 in Jagati Publication Ltd., Vs. Enforcement Directorate,

iii) the interim orders of this court dated 01.12.2022 which are in force as on date directing the 2<sup>nd</sup> Respondent not to give effect to the Notice dated 17.11.2022.

iv) the averments made at para 11 and 21 of the counter affidavit filed by the 2<sup>nd</sup> Respondent,

v) The contents of the Notice impugned dated 10.10.2022 passed by the 2<sup>nd</sup> Respondent which is bereft of reasons, which clearly indicate that the Notice impugned passed by the 2<sup>nd</sup> Respondent dated 10.10.2022 is without any justification and unreasonable.

The writ petition is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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SUREPALLI NANDA, J

Date: 03.06.2024

**Note :** L.R. Copy to be marked.  
B/o. Yvkr