

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Tenth day of December Two Thousand Twenty One

PRESENT

THE HON`BLE MR.JUSTICE P.N.PRAKASH

AND

THE HON`BLE MRS.JUSTICE R.HEMALATHA

WP.No.13830 of 2021

R.CHINNAKANNAN @ VALLAL RCK [PETITIONER]

Vs

1 THE ADJUDICATING AUTHORITY, [RESPONDENTS]
PREVENTION OF MONEY LAUNDERING ACT,
ROOM NO.26, 4TH FLOOR, JEEVAN DHEEP BUILDING,
PARLIAMENT STREET, NEW DELHI-110 001

2 THE DEPUTY DIRECTOR,
MBZO-I, DIRECTORATE OF ENFORCEMENT,
KAISER-I HIND BUILDING, 3RD FLOOR,
CURRIMBOY ROAD, BALLARD ESTATE, MUMBAI-400 001

Writ Petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue WRIT OF CERTIORARI or any other form of Writ, Order or Direction to call for the records of the 2nd Respondent in PAO No.10/2019 dated 16.08.2019 read with the order dated 07.02.2020 in OC No. 1192/2019 passed by the 1st Respondent and quash the same (in WP.No.13830 of 2021).

Order : This petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.NITHYAESH NATRAJ, Advocate for MR.S.RAVI, Advocate for the petitioner and of M/S.G.HEMA, SPECIAL PUBLIC PROSECUTOR for Enforcement Directorate, the court made the following order:-

Fi 0030247

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

For the sake of convenience, the parties will be referred to by their respective names.

2. The uncontroverted facts in this case are as under :

2.1. One Chinnakannan had purchased a property measuring 10.66 acres of vacant land in Koluthuvancheri village, Kanchipuram District (hereinafter would be referred to as "Sl.No.1 property"), for a sale consideration of Rs.32.34 crores vide four sales deed dated 10.04.2013 registered as document Nos.3475, 3476, 3477 and 3478 of 2013 on the file of the SRO, Chennai (South).

2.2. Apart from the said property, Chinnakannan had also purchased 17.48 acres of vacant land in Koluthuvancheri village, Kanchipuram District (hereinafter would be referred to as "Sl.No.3 property"), for a sale consideration of Rs.65.10 crores vide nine sale deeds that were registered on 14.08.2013 and 04.09.2013. Pertinent it is to state that the said two properties viz., Sl.No.1 property and Sl.No.3 property, stand in the individual name of Chinnakannan. We are referring to the said two properties as Sl.No.1 and Sl.No.3, in order to be in tune with the provisional attachment order of the Enforcement Directorate, wherein, these two properties are shown as Sl.No.1 and Sl.No.3, respectively.

2.3. While that being so, one Hi Tech Housing Projects Pvt. Ltd. (HHPPL) obtained a mortgage loan of Rs.50 crores from Industrial Finance Corporation of India (IFCI), for which Chinnakannan gave his Sl.No.3 property as collateral security.

2.4. It may be relevant to state here that Chinnakannan was not a Director of HHPPL nor was, in any way, associated with the said company. In any event, he had given his property as collateral security for the said company, which, per se, is not illegal. Though Sl.No.3 property was under mortgage with IFCI, Chinnakannan wanted to develop the said property and therefore, he entered into a Joint Development Agreement with Siva Shelters and Constructions Pvt. Ltd. (SSCPL) on 15.12.2017, which company was promoted by Chinnakannan's son Sivasankaran.

2.5. Now, it may be necessary to state certain developments on the sidelines. It is common knowledge that one Infrastructure Leasing and Financial Services (IL&FS) is a mammoth non-banking financial company, with a huge turnover running to several thousands of crores with offices all over India. Admittedly, one IL&FS Financial Services Ltd. (IFIN) is a subsidiary company of IL&FS and it is also into financial services.

Fi 0030248

2.6. It appears that IFIN had sanctioned a loan of Rs.175 crores on 20.02.2018 and 21.02.2018 to SSCPL, but, only a sum of Rs.50 crores was actually disbursed in the following manner viz., a sum of Rs.33.70 crores was directly transferred by IFIN to IFCI, for releasing the mortgage of Sl.No.3 property of Chinnakannan; and the balance sum of Rs.16.30 crores was paid by IFIN to five parties who were nominated by SSCPL. Thus, admittedly, SSCPL had actually received only a sum of Rs.50 crores as against the sanction of Rs.175 crores from IFIN.

2.7. In this background, IL&FS financial bubble burst sometime in 2018, when depositors started reclaiming their deposits, which led to a financial crisis and consequently, FIRs were registered. The 1st FIR was registered by the Economic Offences Wing, New Delhi on 06.12.2018 in Crime No.253 of 2018 against 22 accused of IL&FS for the offences under Sections 120-B, 409, 467, 468 and 471 IPC.

2.8. It may be relevant to state here that in this prosecution, neither Chinnakannan nor his son Sivasankaran is an accused. Since the said FIR disclosed a predicate offence set out in the schedule to the PML Act, the Enforcement Directorate registered an ECIR on 19.02.2019 in ECIR/MBZO-I/2019 and went about smelling for the "proceeds of crime".

2.9. In this petition, we are now concerned with the provisional attachment orders that were passed by the Enforcement Directorate, Chennai qua Sl.Nos.1, 3 and 5 properties of Chinnakannan. In the earlier part of this order, we have mentioned about only two properties viz., Sl.No.1 and 3 and not Sl.No.5 property and therefore, it is imperative to state what Sl.No.5 property is. Sl.No.5 property refers to movable properties connected with Chinnakannan viz., his bank accounts.

2.10. To continue the storyline, the Enforcement Directorate, Mumbai, passed a provisional order of attachment dated 16.08.2019, attaching Sl.Nos.1, 3 and 5 properties of Chinnakannan, on the premise that these properties were purchased by Chinnakannan, out of the proceeds of crime that were generated from the fraud that occurred in IL&FS. The provisional order of attachment was referred to the Adjudicating Authority under Section 8(1) of the PML Act and Chinnakannan participated in the adjudication proceedings.

2.11. Chinnakannan laid bare before the Adjudicating Authority that Sl.Nos.1 and 3 properties were purchased by him, after selling his shares in Fresh & Honest Coffee Vending Pvt. Ltd. on 25.05.2007 for Rs.178 crores to Lavazza, Netherland BV and with that money, he had purchased the immovable properties in Sl.Nos.1 and 3 and the movable properties of bank deposit in Sl.No.5. He also produced the sale deeds of Sl.Nos.1 and 3 properties, which show that the

Fi 0030249

immovable properties were purchased in the year 2013 itself. The Adjudicating Authority, by order dated 07.02.2020, gave clear findings in favour of Chinnakannan in the discussion portion. However, in the operative portion of the order, he has confirmed the order of provisional attachment. It may be relevant to state a few paragraphs from the said order dated 07.02.2020 :

"12. Careful examination of the Provisional Attachment Order dt.16.08.2019 reveals that the Deputy Director has indicated the reasonable belief formed by him in para 9 to 13 of the Provisional Attachment Order. The said relevant para 9 to 13 are reproduced below. It can be seen that the Deputy Director has formed the reasonable belief and/or can be said to have formed the reasonable belief with regard to the possession of the proceeds of crime by the Defendants, (subject to dealing hereafter with the submissions made by the Defendants in that regard). However the Deputy Director has not formed any reasonable belief that 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 Chapter-III of PMLA. It was essential for the Deputy Director to form the reasonable belief with regard to Section 5(1)(b) of PMLA based on the material available to him, and provide reasons thereof. It may be noted that even assumingly the second proviso was to be invoked, it was essential for the Deputy Director to form the reasonable belief on the basis of material in his possession that if such property involved in money-laundering is not attached immediately under Chapter-III of PMLA, the non-attachment of the property is likely to frustrate any proceeding under this Act. Formation of such reasonable belief is also absent in the aforesaid paragraphs of the PAO. Thus, the Provisional Attachment Order as passed and served to the Defendants fails to show entertainment of such mandatory reasonable belief which was required to be formed and also the reasons thereof; which renders the provisional attachment order as illegal being not in compliance of the requirement of the Section 5(1)(b) of PMLA. The observations and the findings herein given shall be thus applicable to all the Defendants, including D-5.

... Reasonable belief is formed by the Deputy Director Enforcement Directorate in para 12 of PAO that the property mentioned at Sr.No.1 of the schedule above (pages 18 to 20 of PAO) was procured by Sh.Vallal RCK, father of Sh.C.Sivasankaran, from the amount that he received from the part of loan received in M/s.Siva Industries & Holdings Ltd. (mentioned in para 7.11 & 13 above). However it is

Fi 0030250

seen that there is no para 7.11 & 13 in the PAO. The said reasonable belief is mentioned in para 12 of PAO and hence there could not have been para 13 above the said para 12. It is therefore not clear as to what loans the Deputy Director was referring to having been obtained from Siva Industries and Holdings Ltd. and as to what amount Sh.Valla RCK received from M/s.Siva Industries and Holdings Ltd. The reasonable belief, therefore appears to be not sustainable as the same being not meaningful.

As against the said provisional attachment of property admeasuring 10.66 acres of vacant land situated in the village of Koluthuvancheri, the D-1 has submitted that the same was acquired for a consideration of Rs.32.34 crores. It is submitted that D-1 had received amount of Rs.178 crores by undertaking sale of Honest Coffee Vending Business, out of which he lent loan of Rs.100 crores to M/s.Hightech Housing Projects Pvt. Ltd. It is pointed out that D-1 had extended another loan of Rs.20 crores to M/s.Shanmuga Housing and Constructions. The loan was repaid by Shanmuga Housing and Constructions on 10.10.2018 and 23.03.2013. It is shown that High Tech Housing Projects Pvt. Ltd. had repaid a sum of Rs.11 crore on 23.03.2013. It is pointed out that through Siva Industries & Holdings Ltd. though M/s.Vantage had transferred Rs.21 crores to Hitech Housing Projects Pvt. Ltd., the said Hitech Housing Projects Pvt. Ltd. had transferred Rs.11 crores to defendant No.1 and Rs.10 crores to M/s.Shanmuga Housing & Constructions. It is submitted that such transfers were only coincidental and not a sham activity. It is further submitted that the investigation has not taken into account the fact that defendant No.1 had already lent Rs.100 crore to Hitech Housing Projects Pvt. Ltd. and Rs.20 crores to Shanmuga Housing & Constructions. It is therefore contended as such the property had been acquired only out of licit sources. The Deputy Director has not shown that Sh.Vallal RCK received any loan from IFIN, no specific flowchart is given by the Enforcement Directorate as to Sh.Vallal RCK being beneficiary of any loan from IFIN or any diverted loan. The Deputy Director ought to have clearly placed the evidence, if any in this regard. The attachment of the properties of Sh.Vallal RCK as the same being direct or indirect proceeds of crime is not justified by the material referred in the PAO. However as the investigation with regard to the money laundering is stated to be ongoing, the Provisional Attachment Order is not vacated at this stage.

Fi 0030251

It is the case of the Enforcement Directorate that the property mentioned at Sr.No.3 of the schedule [Siva Shelters and Constructions Pvt. Ltd.(D-4)] was released from IFCI by making payment from the loan received in M/s.Siva Shelters and Constructions Pvt. Ltd. The Deputy Director has attached the said property at Sr.3 as direct proceeds of crime. The Deputy Director in PAO (page No.20 para 12 of PAO) has referred "(mentioned in para 7.10 above)". However there is no paragraph 7.10 in PAO itself above para 12. The reasonable belief, therefore appears to be not sustainable as the same being not meaningful. The case of the D-4 appears to be they have availed loan of Rs.50crore from IFIN but sufficient properties of D-1 was mortgaged. Submission of readiness and willingness to repay the outstanding amount need to be appropriately placed by D-4. The Deputy Director have attached the said property at Sr.No.3 as direct proceeds of crime. The same is based on the reasonable belief above referred."

Thus, this is a case of operation success but, patient collapsed.

2.12. Be that as it may, Chinnakannan preferred an appeal, No.FPA-PMLA/3496/MUM/2020 on 29.02.2020 before the Appellate Tribunal for Prevention of Money Laundering, New Delhi and in the said appeal, an order of *status quo* was passed on 09.03.2020. Since Chinnakannan is 93 years old and he had already entered into a Joint Development Agreement for development of Sl.No.3 property, he prayed before the Appellate Tribunal for early disposal of his appeal, but in vain.

2.13. Since the Appellate Tribunal was not taking up his appeal, he filed W.P.No.2665 of 2021 before this Court, for a direction to the Tribunal to dispose of his appeal within a reasonable time. This Court issued the following directions in the said writ petition on 22.02.2021 :

"5. The learned counsel for the petitioner called our attention to an Office Order dated 12.02.2021 issued by the Tribunal wherein, it is stated thus :

"In the above circumstances, this Tribunal will have limited functioning from 15.02.2021 to 26.02.2021 in urgent matters including High Court directed matters only."

6. That apart under Section 26(6) of the PMLA 2002, the Tribunal is required to expeditiously dispose of the appeals, preferably within six months from the date of filing of the appeal.

Fi 0030252

7. In the light of the above discussion, we, instead of using the expression 'direct', request the second respondent-Appellate Tribunal for Prevention of Money Laundering to dispose of the appeal in Appeal No.FPA-PMLA/3496/MUM/2020 within a period of two months from the date of receipt of a copy of this order. Accordingly, this writ petition is disposed of. No costs."

Since vacancies arose in the Appellate Tribunal on the retirement of its Members, the appeal of Chinnakannan went into a limbo. Fearing that he may not be able to enjoy the fruits of his labour within his lifetime, he has once again approached this Court.

3. Heard Mr.Nithyaesh Natraj, learned counsel representing Mr.S.Ravi, learned counsel for Chinnakannan and Mrs.G.Hema, learned Special Public Prosecutor for Enforcement Directorate.

4. The fact remains that the Central Government has not appointed a Member in the Appellate Tribunal, despite the exhortations of the Hon'ble Chief Justice of India, several times in the open Court. No party can be left remediless. We were adjourning this case from time to time, in the fond hope that one day or the other, the Central Government would appoint Members in the Appellate Tribunal, but, we found no light in the end of the tunnel.

5. Under normal circumstances, a writ Court cannot usurp to itself the jurisdiction of another Tribunal, but, in extraordinary cases as in the present case, the writ Court should not shirk its responsibility and drive a nonagenarian to a non-functional Tribunal

6. To recapitulate the facts, the Enforcement Directorate has provisionally attached Sl.Nos.1, 3 and 5 properties of Chinnakannan. As far as Sl.No.1 property is concerned, the Enforcement Directorate has not been able to place any material before the Adjudicating Authority that the said property was purchased by Chinnakannan on 10.04.2013 with the monies of IL&FS or its subsidiaries. Similarly, in respect of Sl.No.3 property, there is no material to show that this property was purchased by Chinnakannan in the year 2013 with the proceeds of crime of IL&FS. Admittedly, IL&FS ran into rough weather only in the year 2018. However, it is not the case of the Enforcement Directorate that Chinnakannan had obtained loans from IL&FS or from its subsidiaries in the year 2013 and had purchased Sl.Nos.1 and 3 properties.

7. The gravamen of the allegations of the Enforcement Directorate is that Chinnakannan had given his Sl.No.3 property as collateral security with IFCI, for the loan that was given to HHPPL. Chinnakannan's son Sivasankaran, who is the promoter of SSCPL, had applied for a loan in the year 2018 with IFIN and a sum of Rs.175

Fi 0030253

crores was sanctioned to SSCPL. When it came to the actual disbursement, only a sum of Rs.50 crores was disbursed, out of which, Rs.33.70 crores was directly disbursed to IFCI to release Sl.No.3 property of Chinnakannan from the mortgage. The release of the mortgage, according to the Enforcement Directorate, amounts to dealing with the proceeds of crime and therefore, they have attached Sl.No.3 property.

8. Mrs.Hema, strenuously tried to establish that the proceeds of crime from IFIN have been indirectly used by Chinnakannan, for getting his property released from mortgage. Similarly, she contended that even the Sl.No.1 property which was purchased in the year 2013, was also from the proceeds of crime of IL&FS, for which, even before the Adjudicating Authority, the Enforcement Directorate had not placed any satisfactory materials. However, we are not giving any finding on this issue, for the simple reason that Mr.Nithyaesh Natraj came forward with a reasonable proposal, which according to us, is worthy of acceptance and would result in a win-win situation, both for Chinnakannan as well the Enforcement Directorate.

9. The proposal put forth by Mr.Nithyaesh Natraj has been set out in paragraphs No.8, 9 and 10 of the additional affidavit dated 29.07.2021 of Chinnakannan, which run as under :

"8. However, being a respectable and **super senior citizen of 93 years** with a **passion for his dream project and in the interest of buying peace**, the petitioner humbly goes a step further through this Additional Affidavit to **offer an additional deposit of Rs.50.0 Cr. for the third part of alleged proceeds of crime (equivalent to the loan amount disbursed by IFIN to M/s.Siva Shelters & Construction Pvt. Ltd.)**, totalling to **Rs.58.08 Cr.** instead of Rs.8.08 Cr. which was initially offered to deposit in the earlier Affidavit, without prejudice to his contention in his submissions in the writ petition and right to defend himself in the case, as per the working given below :

Sl.No.	Particulars	Value
a.	Alleged proceeds of crime against the petitioner vide para 7.12 of original complaint	Rs.21.00 Cr.
b.	Value of the movable property attached in Sl.No.5 to the schedule of properties of original complaint	Rs.12.92 Cr.
c.	Amount already offered to deposit by the petitioner	Rs.21.00 Cr.

Fi 0030254

Sl.No.	Particulars	Value
d.	Actual amount to be deposited (a - b)	Rs.8.08 Cr.
e.	Additional deposit offered now for Third part of alleged proceeds of crime vide para 7.11 of original complaint	Rs.50.00 Cr.
f.	Total deposit offered by the petitioner (d + e)	Rs.58.08 Cr.

9. The above offer leaves the 2nd respondent to hold a total deposit of Rs.71.00 Cr. (12.92 + 58.08) as against the value of alleged proceeds of crime of Rs.71.00 Cr.

10. The petitioner prays leave of the Hon'ble Court for the following modus of operation for deposit of the said Rs.58.08 Cr.

Step 1 : Petitioner deposits Rs.8.08 Cr. as may be directed by the Hon'ble Court, aggregating to Rs.21.0 Cr. along with the attached movable property of Rs.12.92 Cr. (in Sl.No.5 to the schedule of properties of original complaint)

Step 2 : The 2nd respondent releases the immovable property (10.66 acres) in Sl.No.1 to the schedule of properties of original complaint.

Step 3 : The petitioner mobilizes Rs.50.0 Cr. from out of the immovable property (10.66 acres) in Sl.No.1 to the schedule of properties of original complaint.

Step 4 : The petitioner deposits the balance of Rs.50.0 Cr. as may be directed by the Hon'ble Court, within three months from the date of release of immovable property in Sl.No.1 to the schedule of properties of original complaint.

Step 5 : The 2nd respondent releases the immovable property (17.48 acres) in Sl.No.3 to the schedule of properties of original complaint.

Step 6 : The petitioner is facilitated to realise his dream project as pleaded in the writ petition.

10. Mrs.Hema, learned counsel for the Enforcement Directorate stated that interest on interest is getting accrued over the attached properties and therefore, as on March 2019, the value of Sl.Nos.1 and 3 properties should be Rs.121.45 crores and Rs.182.90 crores, respectively. We outrightly reject this plea as fanciful and imaginary. What Chinnakannan seeks now is, he wants release of Sl.Nos.1 and 3 properties from attachment, in lieu of which, he has come forward with a deposit schedule. We permit Chinnakannan to comply with the undertaking that has been given by him in paragraph No.10 of his additional affidavit dated 29.07.2021.

11. Accordingly, we issue the following directions :

(a)Chinnakannan shall deposit Rs.8.08 crores in the Special Court, PMLA, Mumbai in PMLA Spl. Case No.6 of 2019 within four weeks from today. The learned Special Judge, may, in his discretion, redeposit the amount in an interest bearing account;

(b)On such deposit, the 2nd respondent shall release the attachment order qua Sl.No.1 property viz., 10.66 acres of vacant land in Koluthuvancheri village, Kanchipuram District.

12. Further orders will be passed by this Court, after the aforesaid directions are complied with.

Post this matter on 21.01.2022.

-sd/-

10/12/2021

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Ureether 17/12/2021
Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE ADJUDICATING AUTHORITY,
PREVENTION OF MONEY LAUNDERING ACT,
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CURRIMBOY ROAD, BALLARD ESTATE, MUMBAI-400 001

Fi 0030256

3 THE ADDITIONAL SESSIONS JUDGE,
GREATER BOMBAY, (DESIGNATED COURT FOR
THE PMLA CASES)

C.C. to M/S.NITHYAESH AND VAIBHAV, Advocate SR.NO.7322/2021

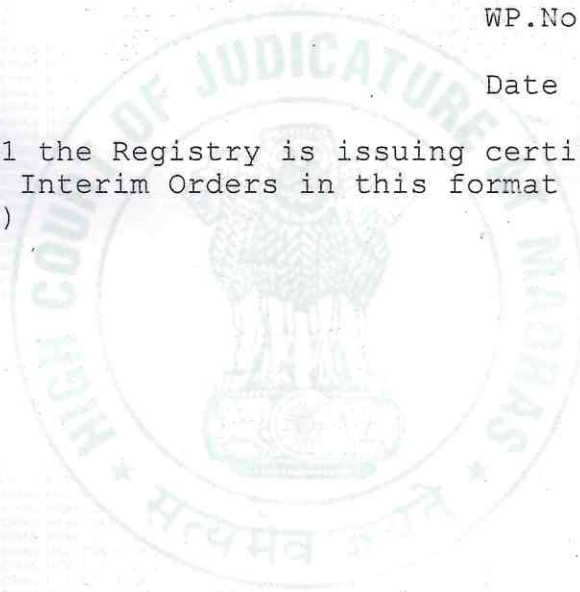
C.C. to M/S.G.HEMA, Advocate SR.NO.7389/2021

Order

in
WP.No.13830 of 2021

Date :10/12/2021

From 26.2.2001 the Registry is issuing certified
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PA (17/12/2021)



Fi 0030851

SECTIONAL

ADDITIONAL

W. NO. 17/2021

HIGH COURT OF MADRAS	
S. R. No.	7322
Section	10/12/2021
Appointed	17/12/2021
Copy of	17/12/2021
17/12/2021	17/12/2021
S. R. Officer C. S. Section	