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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-14505-2024

Reserved on: 10.07.2024

Pronounced on: 19.07.2024

VARINDER PAL SINGH DHOOT

.....Petitioner

Versus

UNION OF INDIA AND ANR.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Vinod Ghai, Senior Advocate with
Mr. Harshit Saini, Advocate
Mr. Rahil Mahajan, Advocate and
Mr. Arnav Ghai, Advocate
for the petitioner.

Ms. Promila Nain, Senior Panel Counsel
for the respondents.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein seeks the quashing/setting aside of notice of eviction dated 06.06.2024 (Annexure P-2), as became issued under Section 8 (4) of the Prevention of Money Laundering Act, 2002 (hereinafter for short called as 'the PMLA'), provisions whereof are extracted hereinafter.

“8. *Adjudication.*—

(1) xxxx xxxx

(2) xxxx xxxx

(3) xxxx xxxx

(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*



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him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) xxxx xxxx

(6) xxxx xxxx”

2. The learned counsel for the petitioner submits, that the said eviction notice, is illegal and violative of the settled law, as enunciated by the Apex Court in a verdict rendered in case titled as ***Vijay Madanlal Choudhary Vs. Union of India, (2002) SCC Online SC 929.***

The relevant paragraphs of the said verdict are extracted hereinafter.

73. *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 of 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 respect of offence of money- laundering, the Special Court finds that the offence of money- laundering has not*



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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.

*75. 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.*

*76. 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***



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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 & Anr. vs. G.V. Sudhakar Rao & Ors. vs. State of Bihar & Ors.*, 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.

3. Further, the said view taken by the Apex Court has been reiterated thus in a verdict rendered in case titled as '**Union of India Vs. Ganpati Dealcom Pvt. Ltd. (2023) 3 SCC 315**'. The relevant paragraphs of the said verdict are extracted hereinafter.

17.27. In Vijay Madanlal Choudary & Ors v. Union of India, SLP (Civ.) No. 4634 of 2014 and others, this Court dealt with confiscation proceedings under Section 8 of the Prevention of Money Laundering Act, 2002 ("PMLA") and limited the application of Section 8(4) of PMLA concerning interim possession by authority before conclusion of final trial to exceptional cases. The Court distinguished the earlier cases in view of the unique scheme under the impugned legislation therein. Having perused the said judgment, we are of the opinion that the aforesaid ratio requires further expounding in an appropriate case, without which, much scope is left for arbitrary application.

Brief Facts of the case.

4. The present petitioner is a Tehsildar/Revenue Officer under the Punjab Government. FIR No.13 was registered by Vigilance Bureau, Mohali against the petitioner and others under Sections 409, 420, 465, 466, 467, 471, 120 B IPC and under Sections 7, 7(a) of the Prevention of Corruption Act, 1988. The investigation(s) in the said FIR/scheduled offence were completed and challan was filed on 20.01.2021.

5. While treating FIR No 13 (supra), as a scheduled offence,

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on 30.03 2021, ECIR/JLZO/07/2021 was registered by the Respondent No. 2-ED, Jalandhar for an offence punishable under Section 3 read with Section 4 of the PMLA. The petitioner was arrested by the respondent ED in the present case under the PMLA.

6. During investigation of the said ECIR, on 01.06.2023, the provisional attachment Order No. 08/2023 was passed by the respondent ED under Section 5 (1) of the PMLA, thereby attaching the hereinafter extracted immovable properties of the petitioner, while construing the same to be equivalent value of proceeds of crime.

Sr. No.	Property Description	Name of Registered Owner
1.	50 % share in Residential House No. 1020, Sector 8-C, Chandigarh.	Late Smt. Jasvir Kaur Dhoot (Mother of the petitioner)
2.	30 % share in residential house No. 1020, Sector 8-C, Chandigarh	Smt. Amarjit Kaur Chakkal (Mother-in-law of petitioner)
3.	Residential House No. 5, DC Road, Hoshiarpur.	Late Smt. Jasvir Kaur Dhoot.
4.	Residential House No. 24, DC Road, Hoshiarpur.	Late Smt. Jasvir Kaur Dhoot.
	Residential House No. 25, DC Road, Hoshiarpur.	Late Smt. Jasvir Kaur Dhoot.

7. After completion of investigations which were pending for almost 3 years, Prosecution Complaint dated 16.06.2023 under Section 45 of PMLA was filed by the ED against the petitioner and others. The same was registered as COMA-3-2023. Cognizance was taken by the learned trial Court on the said prosecution complaint and summons were issued to the accused. However, charges have not yet been framed.

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8. On 12.10.2023, in terms of Section 8 (3) of the PMLA, the Adjudicating Authority, PMLA, New Delhi vide Confirmation Order dated 12.10.2023, thus confirmed the Provisional Attachment Order No.08/2023 while observing as under:-

“I, therefore, hereby confirm the attachment of the property made under sub-section (1) of Section 5 of PMLA. I therefore, order that the said Attachment shall continue during pendency of the proceedings relating to any offence under the prevention of Money Laundering Act, 2002 before the Special Court ; and becomes final after an order of confiscation is passed under Sub-Section (5) or Sub-Section (7) of Section 8 of PMLA by the Special Court..”

9. The petitioner in terms of Section 26 of the PMLA filed appeal bearing No. FPA-PMLA/7042/JL/2023 before the Appellate Tribunal, PMLA, New Delhi against the Confirmation Order dated 12.10.2023, as passed by Adjudicating Authority, PMLA New Delhi, thereby allowing OC. No. 2009/2023 and confirming PAO No 08/2023. The said Appeal is pending for 05.08.2024 awaiting ED's Reply to the Appeal.

10. The impugned Notice of Eviction dated 06.06.2024 (Annexure P-2) drawn in terms of Section 8(4) of PMLA was issued to the petitioner, whereby he became directed to vacate the subject properties within 10 days from the date of receipt of the notice.

Submissions of the learned counsel for the petitioner.

11. The ambit & scope of Section 8(4) of PMLA has been read down by the Apex Court in *Vijay Madanlal Choudhary case (supra)* to the effect that Section 8(4) providing for taking possession of the

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attached property ought to be invoked only in '*exceptional situation*' keeping in view the '*special circumstances of the case*'. It was also held that mere confirmation of the provisional attachment order by the Adjudicating Authority, is not enough, for the authorized officer to invoke Section 8(4) and to assume possession vis-a-vis the attached property, especially irrespective of the application of mind vis-a-vis the facts and circumstances of the case.

12. In the present case, the subject Eviction Notice is absolutely non-speaking, cryptic, mechanical and does not spell out any reason whatsoever for invoking the extra ordinary powers under Section 8(4) of PMLA. The trial under PMLA has not even commenced and the case is at the stage of consideration. Hence, in view of the settled position of law laid down by the Hon'ble Supreme Court in ***Ganpati Dealcom case (supra)*** as well as in ***Vijay Madanlal Choudhary (supra)***, there is no scope left with the ED, thus to invoke powers under Section 8(4) of PMLA, especially at the present stage, that too, before the conclusion of the trial, for an offence of money laundering under PMLA Accordingly, the subject Eviction Notice is liable to be set aside or stayed till the time trial under PMLA is not concluded.

Arguments addressed by the learned Senior Panel counsel for the respondent-ED.

13. The investigation in the present case clearly establishes that Varinder Pal Singh Dhoot, was directly involved in the illicit sale of wrongly allotted shares of *Shamlat land* of village Seonk. He received hefty kickbacks in cash and at some instances in bank

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accounts from the purchasers of the land, and also has received shares of sale consideration from sale of *shamlat land* which was sold by Property dealers to the final purchasers. These proceeds were later deposited in different bank accounts maintained by him. Huge amounts were also received by him in cash thus as bribe, and sale proceeds of the disputed *shamlat land*, from various buyers also became subsequently deposited in Bank Accounts in the name of his family members but which were maintained by him besides were further transferred to other accounts in order to layer the proceeds of crime.

14. The Hon'ble Apex Court in its verdict rendered in ***Vijay Madanlal Choudhary and Ors. Vs. UOI and Others (Supra)*** has held that trial of scheduled offence and the trial concerning the offence of Money Laundering, need to proceed independently, even though, it may be tried by the same Special Court as both are distinct and independent offence(s). In that regard, the offence of money laundering is and can be only in relation to the process or activity connected with proceeds of crime and has nothing to do with the criminal activity relating to a scheduled offence as such.

15. Furthermore, the constitutional validity of Section 8 (4) of the PMLA was challenged before the Apex Court in case of ***Vijay Madanlal Choudhary Vs. Union of India (supra)***, wherein, the Hon'ble Supreme Court upheld the constitutional validity of Section 8 (4) of the PMLA. Relevant paragraph whereof is extracted hereinafter.

“74. Indisputably, statutory Rules have been framed by the Central Government in 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

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*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. ”*

16. As per the directions of Hon'ble Supreme Court, possession of the confirmed attached property should be taken in *exceptional circumstances*, inasmuch as, only after careful examination of the facts of the relevant case, thus unfolding that the case of the accused concerned, falls in the exceptional category, rather for therebys possession thereovers becoming assumed by the Enforcement Department. The criteria for determining the existence of exceptional circumstances, is spelt therein in the hereinafter extracted manners.

a) The petitioner is directly involved in concealment, possession, acquisition of proceeds of crime and claiming the same to be untainted property, he is properly enjoying proceeds of crime by way of using attached properties.

b) The petitioner is a habitual offender which is evident from the facts that :-

i) FIR No. 13 dated 02.11.2020 registered for selling shamlat land of village Seonk to the extent of 102 acres.

ii) The petitioner is also an accused in FIR No. 06 dated 08.05.2021 registered by the Vigilance Bureau, for tampering with the revenue records and sale of

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shamlat land of village Majhri. The petitioner as a Government servant being Naib Tehsildar in Department of Revenue adopted a common practice of illicitly selling the *shamlat land* of different villages under his control. He misused the government machinery and gained undue financial benefits.

iii) An enquiry No. 3/2017 for acquiring Disproportionate Assets to his known sources of income is also underway in the Office of Senior Superintendent of Police, Vigilance Bureau, Jalandhar.

c) During investigation, 31 immovable properties are found to be in the name of the petitioner-Varinder Pal Singh Dhoot or his immediate family members. However, only **four properties** have been attached by the Directorate of Enforcement. The petitioner has sufficient alternatives for his residence and other uses, even if the present four properties are taken into possession.

d) The petitioner further sold multiple immovable properties in the year 2019 by way of obtaining power of attorneys in the name of his mother-in-law Amarjit Kaur Chakkal. The petitioner was unable to explain the source of purchase of these immovable properties.

17. Moreover, the petitioner has already availed the alternate remedy under Section 26 of the PMLA by filing appeal before the PMLA Appellate Tribunal against the Confirmation Order dated 12.10.2023. Further, if the petitioner wanted to challenge the impugned notice for eviction, he could have filed a petition before the Appellate

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Tribunal, where his statutory appeal is pending, but he has not availed the appropriate remedy rather has directly approached this Court. The petitioner is trying to avail two remedies at the same time, thereby also the instant writ petition is not maintainable.

18. The taking of possession of confirmed attached properties under Section 8 (4) of the PMLA, does not amount to confiscation, of the said properties. Section 8(5) of the PMLA provides for confiscation of the confirmed attached properties thus on conclusion of the trial, of an offence under the PMLA Act, yet only if the Court finds that the offence of Money Laundering, thus has been committed. The possession of the confirmed attached properties is intended with the view to prevent the accused from enjoying the proceeds of crime.

19. The Directorate has issued notice for eviction under Sub Rule (2) of Rule 5 of the PMLA Rules, 2013, for taking possession of the confirmed attached properties as per the provisions of Section 8(4) of the PMLA, which is duly upheld by the Apex Court. Hence, the impugned notice is appropriate and legal.

Inferences of this Court.

20. Without going into the merits of the submissions (supra), as therebys the authority seized with the subjudice appeal, reared by the present appellant against the confirmation of provisional attachment order, thus would become presented with a *fait accompli*.

21. Rather for the further reasons to be assigned hereinafter, the challenge in the instant proceedings vis-à-vis the impugned eviction notice is premature besides at this stage is a mis-constituted challenge. Initially, for the reasons that the vigor of the arguments (supra), as

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become now raised, rather can be tested on an apposite application becoming filed by the present petitioner before the Appellate Tribunal, PMLA, New Delhi, seized with an appeal directed against the confirmation of the provisional attachment order. Therefore, the demands of justice, require that liberty be reserved to the present petitioner to file an apposite application, in the subjudice appeal, wherebys he may throw a challenge on all permissible premises to the impugned eviction notice.

22. For further securing the ends of justice, it is also deemed fit and appropriate to make a direction upon the Appellate Tribunal, PMLA, New Delhi, to within a period of two months lawfully decide the subjudice appeal as directed against the confirmation of the provisional attachment order. In addition, a further direction is also passed upon the (supra) to initially also on the above stated application, expeditiously pass a lawful order but after hearing all affected persons concerned.

23. The said order shall be passed bearing in mind all the hereinabove underlined principles, as carried in paragraphs No. 73 and 75 of the verdict recorded by the Hon'ble Apex Court in **Vijay Madanlal Choudhary's case (supra)**.

24. The said application be filed within a period of 3 days from today and only till the filing of the said application, the parties are directed to maintain *status quo* in respect of the impugned eviction notice. Subsequently, it is open to the Appellate Tribunal, PMLA, New Delhi, thus to consider the passing of any further *status quo* order, in respect of the impugned eviction notice, necessarily lasting upto the

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making of a lawful adjudication upon the subjudice appeal, as directed against the confirmation of the provisional attachment order.

25. In aftermath, this Court, at this stage finds no merit in the writ petition and with the above observations and directions, the same is dismissed but with liberty aforesaid becoming reserved to the petitioner.

26. No order as to costs.

27. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

19.07.2024

kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No