

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CJ Court

LPA No.203/2022
CM No.5867/2022

LPA No.204/2022
CM No.5869/2022

SYED AKEEL SHAH
SYED ADEEL SHAH

...APPELLANT(S)

Through: - Mr. Syed Faisal Qadri, Sr. Advocate, with
Mr. Salih Pirzada, Advocate.

Vs.

DIRECTORATE OF ENFORCEMENT
& ORS.

...RESPONDENT(S)

Through: - Mr. T. M. Shamsi, DSGI.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT(ORAL)

20.10.2022

Sanjay Dhar 'J'

1) By this common judgment, we propose to decide two Letters Patent Appeals filed against two separate judgments dated 18th October, 2022, passed by learned Writ Court in WP(C) No.2269/2022 and WP(C) No.2270/2022. In both these cases common question of law which arose for consideration is whether for the purpose of taking possession of the property attached

under Section 5 or frozen under sub-section 1-A of Section 17 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA), the Director or any other officer authorized by him has to wait for the expiry of the period of limitation for filing appeal against the attachment order that has been confirmed in terms of sub-section (3) of Section 8 of the PMLA for taking its possession in terms of Section 8(4) of the PMLA.

2) The learned Writ Court has vide the impugned judgments answered the aforesaid question in negative by holding that the Director or the authorized officer is not bound to wait till the expiry of the period of limitation for filing appeal for the purpose of taking action in terms of Section 8(4) of the PMLA.

3) Before adverting to the rival contentions advanced by learned counsel for the parties, it would be apt to give a brief background of the facts leading to the filing of the instant appeal.

4) It appears that the respondents initiated investigation under the provisions of the PMLA against Shri Rahul Grover and others on the basis of two FIRs bearing Nos.RCCHG0512018S006 and 007 dated 16.10.2018, registered by the Special Crime Branch,

Central Bureau of Investigation, Chandigarh. These FIRs pertain to offences under Section 3 and 4 of the Arms Act read with Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act and Section 120-B of RPC. During the investigation, it came to the fore that the appellants herein were found to have indulged in issuance and renewal of arms licences in contravention of the provisions of the Arms Act in lieu of payment of monetary considerations to the Government employees. After analyzing the bank accounts of both the appellants, it was found that they had purchased immovable property in the form of 05 marls of land each at Village Chinoor, Jammu. The source of payments used for purchasing the land and raising construction over the land, according to the respondents, is the illegal funds which they had received in lieu of issuance of arms licences.

5) A provisional attachment order of the aforesaid two properties was issued by the competent authority i.e., Deputy Director Enforcement Directorate, Jammu on 31st March, 2022. The said attachment order was confirmed by the competent authority in terms of its order dated 16th September, 2022. After passing of the aforesaid order of confirmation of provisional attachment in terms of Section 8(3) of the PMLA by the Adjudicating Authority, notice

dated 23.09.2022 was issued by the Assistant Director, Directorate of Enforcement, Jammu, in exercise of its powers under Section 8(4) of the PMLA, whereby the appellants were directed to vacate the attached properties within ten days of receipt of the notice. Two separate notices were issued to the appellants and the same became subject matter of challenge before the Writ Court by way of two separate writ petitions, particulars whereof have been given hereinbefore. As already noted, the learned Writ Court dismissed both the writ petitions and repelled the challenge thrown to the impugned notices. The judgments passed by the Writ Court in the aforesaid two writ petitions are under challenge before us.

6) We have heard learned counsel for the parties and perused the impugned judgment passed by the Writ Court, the grounds of appeal and the record of the case.

7) As already noted, the only question which is under consideration before us is whether it was open to the authorized officer to issue the impugned notices of eviction against the appellants without waiting for the expiry of period of limitation for filing appeal against the order of attachment passed in terms of Section 8(3) of PMLA.

8) The learned counsel for the appellants has argued that if the appellants are evicted from the attached properties even before the consideration of their appeal by the appellate authority, the statutory right of appeal given to them in terms of Section 26 of the PMLA would become redundant. It has been further argued that the Supreme Court has, in the case of **Vijay Mandal Choudhary & Ors. Vs, Union of India & Ors.** 2022 LiveLaw (SC) 633, while testing the vires of sub-section (4) of Section 8 of the PMLA, clearly laid down that taking possession of the property 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. It is urged that there were no exceptional circumstances prevailing in the instant case, as such, taking of action in terms of Section 8(4) of the PMLA by the respondents cannot be countenanced in law.

9) There is no dispute to the legal position that the Supreme Court in **Vijay Mandal Choudhary's** case (supra) has upheld the vires of the provisions contain in Section 8(4) of the PMLA. The said provision authorizes the Director or any other officer to take possession of the property regarding which provisional order of attachment has been confirmed. As per the Rule 5(2) of the Prevention

of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority), Rules, 2013 (hereinafter referred to as the Rules of 2013), once the attachment of immovable property has been confirmed by the Adjudicating Authority and it is found to be in possession of the owner, the authorized officer has to issue a notice of eviction of ten days so as to prevent the person from enjoying such property and if such person does not vacate the property within the stipulated time, he has to be evicted by taking possession thereof. Section 26 of the PMLA gives a right of appeal to the aggrieved person against an order made by the Adjudicating Authority and the said appeal has to be filed within a period of 45 days from the date a copy of the order is received by the aggrieved person.

10) A conjoint reading of all these three provisions brings to the fore that while an aggrieved person has a right of appeal against the order of attachment passed by the Adjudicating Authority which the aggrieved person has to avail within 45 days of receipt of order of attachment, the authorized officer or the Director has the jurisdiction to forthwith take possession of the property attached. The expression “forthwith” is of great significance, inasmuch as it gives power to the Director or authorized officer to

immediately proceed against the person whose property has been attached by virtue of order of Adjudicating Authority. The jurisdiction to proceed under Section 8(4) of the PMLA would come into play immediately upon passing of the order of attachment by the Adjudicating Authority. There is no scope to interpret the provisions contained in Section 8(4) and Section 26 of the PMLA and Rule 5(2) of the Rules of 2013 to hold that for taking action under Section 8(4) of the PMLA, the authorized officer has to await the expiry of period of limitation i.e., 45 days.

11) The order of confirmation of attachment passed by the Adjudicating Authority is just like a decree of a civil court which becomes executable the moment it is drawn. Just like execution of a decree of civil court is not to await the period of limitation for filing an appeal before the appellate court, similarly, an order passed under Section 8(3) of the PMLA is to be acted upon immediately and it cannot await the expiry of period of limitation for filing appeal against the said order. Thus, the respondents were well within their powers to issue the impugned notice, which is in tune with the legal position as discernible from the provisions contained in Sections 8 and 26 of the PMLA read with Rule 5(2) of the Rules of 2013.

12) Next it has been contended by learned counsel for the appellants that as per the ratio laid down by the Supreme Court in **Vijay Mandal Choudhary's** case, resort to action under Section 8(4) of the PMLA should be only by way of an exception and not as a rule. There can be no dispute to the legal position in this regard, as has been clearly spelled out by the Supreme Court in the aforesaid case but the question whether a particular case is of exceptional nature or not, can be determined only by the appellate authority at the time of considering the merits of the appeal and not by this Court in exercise of its writ jurisdiction. If at all the appellants apprehend an immediate action against them by the respondents, which apprehension is certainly borne out from the record, it is open to them to immediately approach the appellate authority and persuade the said authority to stay the impugned order of attachment. They cannot bypass the remedy of appeal by invoking the writ jurisdiction of this Court simply by laying challenge to the proceedings which are essentially offshoot of the order passed by the Adjudicating Authority, which is appealable under Section 26 of the PMLA.

13) For the foregoing reasons, we do not find any ground to interfere in the impugned judgments passed by the learned Writ Court. The same are well-reasoned and lucid

and deserve to be upheld. The appeals lack merit and are, accordingly, dismissed

(SANJAY DHAR)
JUDGE

(ALI MOHAMMAD MAGREY)
CHIEF JUSTICE

Srinagar
20.10.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

