



W.P.Nos.28454 & 34676 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.01.2024

PRONOUNCED ON: 30.01.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH  
AND  
THE HON'BLE MR.JUSTICE SUNDER MOHAN

**W.P.Nos.28454 and 34676 of 2022**

**WP No.28454 of 2022**

1. Nithesh Chaudhari  
rep. by his Power Agent  
Rajendra Kumar Chaudhari.

2. Ashish Chaudhari  
rep. by his Power Agent  
Rajendra Kumar Chaudhari.

...Petitioners

vs.

1. The Special Director,  
Directorate of Enforcement,  
Shastri Bhavan, 3<sup>rd</sup> Floor, B-Block,  
26, Haddows Road, Chennai – 600 014.

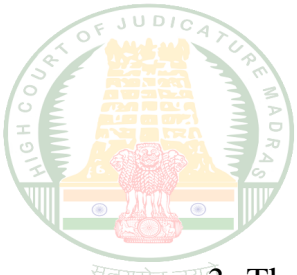
2. The Joint Director,  
Directorate of Enforcement,  
Shastri Bhavan, 3<sup>rd</sup> Floor, B-Block,  
26, Haddows Road, Chennai – 600 014.



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3. The Deputy Director,  
Directorate of Enforcement,  
Shastri Bhavan, 3<sup>rd</sup> Floor, B-Block,  
26, Haddows Road, Chennai – 600 014.

4. Smt.M.Saraswathi

5. Shri R.Devadoss

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Provisional Attachment Order No.07 of 2010 dated 11.10.2010 passed by the 3<sup>rd</sup> respondent and the confirmation order dated 13.08.2012 in OC No.73 of 2010 passed by the Adjudicating Authority and quash the same and consequently direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents to remove the attachment on the property in S.No.686/1 situated at No.144, Vallur Village, Ponneri Taluk, Thiruvallur District.

**WP No.34676 of 2022**

1. Nithesh Chaudhari  
rep. by his Power Agent  
Rajendra Kumar Chaudhari.

2. Ashish Chaudhari  
rep. by his Power Agent  
Rajendra Kumar Chaudhari.

3. Mrs. Jaishree Bhansal

...Petitioners



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vs.

1. The Special Director,  
Directorate of Enforcement,  
Shastri Bhavan, 3<sup>rd</sup> Floor, B-Block,  
26, Haddows Road, Chennai – 600 014.

2. The Joint Director,  
Directorate of Enforcement,  
Shastri Bhavan, 3<sup>rd</sup> Floor, B-Block,  
26, Haddows Road, Chennai – 600 014.

3. The Deputy Director,  
Directorate of Enforcement,  
Shastri Bhavan, 3<sup>rd</sup> Floor, B-Block,  
26, Haddows Road, Chennai – 600 014.

4. The Sub-Registrar,  
O/o. The Sub-Registrar,  
No.21/8, Market Street,  
Kaladipet, Tiruvottiyur,  
Chennai – 600 019.

5. Smt.M.Saraswathi

6. Shri R.Devadoss ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 4<sup>th</sup> respondent to remove the encumbrance caused by the office of the 1<sup>st</sup> to 3<sup>rd</sup> respondents on the properties comprised in S.Nos.689/2 and 690/1 situated at No.144, Vallur Village, Ponneri Taluk, Thiruvallur District and direct the 1<sup>st</sup> to 4<sup>th</sup> respondents to pay appropriate cost for the proceeding this petition.

For Petitioners :: Mr.M.Sricharan Rangarajan, Sr. Counsel



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in both cases for Mr.A.K.Athiban Vijay

WEB COPY For Respondents :: Mr.Rajnish Pathyil (for R1 to R3)  
in both cases Special Public Prosecutor (ED cases)

COMMON ORDER

(Order of the Court was made by SUNDER MOHAN,J.)

By consent, both writ petitions are taken up together, heard, and disposed of by a common order.

2. The brief facts leading to the filing of the above writ petitions, shorn of unnecessary details, are as follows:

(i) The petitioners vide Sale Deeds dated 30.04.2008 registered as Doc.Nos.4316 of 2008 and 4317 of 2008 at the Office of the Sub-Registrar, Thiruvottiyur, purchased from one Mr.A.Narayanan, the agricultural land in S.Nos.686/1, 689/2 (Part) and 690/1 having a total extent of 2.93 Acres of land situated at No.144, Vallur Village, Ponneri Taluk, Thiruvallur District.

(ii) The Writ Petition No.28454 of 2022 is in respect of lands



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comprised in S.No.686/1 measuring an extent of 75 cents.

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(iii) The Writ Petition No.34676 of 2022 is in respect of lands comprised in two survey numbers, viz., S.No.689/2 and 690/1 measuring 1 acre and 53 cents and 65 cents, respectively.

(iv) In the year 2010, various FIRs were filed on the file of E3 Meenjur Police Station against one Devadoss (5<sup>th</sup> respondent in WP No.28454 of 2022 and 6<sup>th</sup> respondent in WP No.34676 of 2022) and his associates for the offence under Sections 419, 420 and 471 IPC. Simultaneously, the Directorate of Enforcement recorded Enforcement Case Information Reports (ECIR) Nos.53 to 56 of 2010 for conducting an investigation under the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA, 2002']. The said Devadoss and one Saraswathi were shown as the accused.

(v) On 11.10.2010, the provisional order of attachment was passed under Section 5(1) of the PMLA 2002, attaching 51 immovable properties that were in the possession of the said Devadoss. Out of the 51 properties,



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the attachment of 7 properties was not confirmed by the adjudicating authority by the order dated 13.08.2012. The provisional attachment in respect of the properties that are subject matter in WP No.34676 of 2022 was not confirmed by the adjudicating authority, whereas the provisional attachment of the property which is the subject matter in WP No.28454 of 2022 was confirmed by the adjudicating authority.

(vi) Aggrieved by the entries made in the encumbrance certificate reflecting the attachment of properties, in which the provisional attachment order was not confirmed, the petitioners have filed WP No.34676 of 2022, seeking removal of the entries in the encumbrance certificate.

(vii) Aggrieved by the fact that no notice was issued before passing the provisional order of attachment in respect of the property in WP No.28454 of 2022, the petitioners have sought a certiorarified mandamus, praying for the quashing of the provisional attachment order dated 11.10.2010.

3. (i) Mr.Sricharan Rangarajan, the learned senior counsel appearing



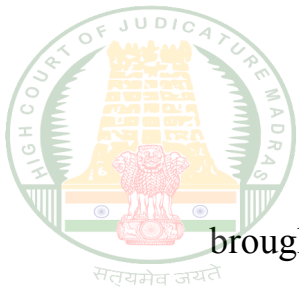


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for the petitioners submitted that, admittedly, the provisional order of attachment in respect of the properties in S.Nos.689/2 and 690/1 covered in WP No.34676 of 2022 was not confirmed by the adjudicating authority and in view of the proviso to Section 5(1)(b) of PMLA 2002, the provisional attachment order is no longer valid, and therefore, the respondents are bound to remove the entries in the encumbrance certificate.

(ii). The learned senior counsel also submitted that they were not aware of the attachment, as the encumbrance certificate that was obtained earlier did not reflect the attachment. However, only in the year 2022, when they had applied for additional facilities from the bank, they came to know about the entries, which reflected the attachment subsequently.

(iii). As regards WP No.28454 of 2022, learned senior counsel for the petitioners submitted that since the adjudicating authority refused to confirm the attachment in respect of seven properties, which were sold prior to the provisional attachment, the same benefit ought to have been extended to the property in S.No.686/1 also (subject matter of WP No.28454 of 2022). However, the fact that the property was sold to the petitioners was not

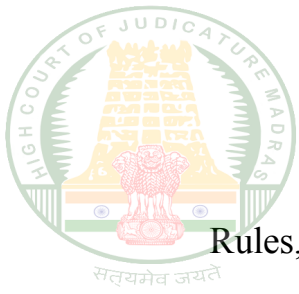


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brought to the notice of the adjudicating authority. Further, the learned senior counsel submitted that in any case, no notice was served on the petitioners under Section 8(1) of the PMLA 2002 before passing the provisional attachment order, although the respondents were aware of the sale made to the petitioners, as the sale is reflected in the encumbrance certificate. Hence, learned senior counsel submitted that the provisional attachment order is liable to be quashed.

4. (i) Mr.Rajnish Pathyil, the learned Special Public Prosecutor (ED), submitted that both the writ petitions are not maintainable; that the petitioners have an effective alternate remedy; that they can approach the authorities concerned under Section 8(2) of the PMLA 2002; that if the petitioners are aggrieved by any action of the adjudicating authority, they can file an appeal before the appellate tribunal under Section 26 of the PMLA 2002; and that further appeal is provided to this Court under Section 42 of the PMLA 2002.

(ii). The learned Special Public Prosecutor also submitted that, as per Rule 3-A of the Prevention of Money-Laundering (Restoration of Property)



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Rules, 2016, the petitioners can also approach the Special Court for the restoration of property that is attached. The learned Special Public Prosecutor submitted that, in view of the fact that effective alternative remedies are available to the petitioners, the petitioners cannot maintain the writ petitions and relied upon the judgments of this Court in support of his submissions.

(iii) The learned Special Public Prosecutor further submitted that there are several factual disputes that can be adjudicated only by the authorities, and therefore, the writ petitions would not be maintainable.

5. We have carefully considered the rival submissions and perused all the materials available on record.

**WP No.34676 of 2022**

6. There is no factual dispute in this writ petition. The provisional attachment order was passed on 11.10.2010 after the petitioners had purchased the property in the year 2008. It is the case of the petitioners that they are *bona fide* purchasers and the respondents have not established that



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it is an 'Accommodation Sale' made by the accused.

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7. The adjudicating authority in the order dated 13.08.2012 had extracted the written submissions of the Deputy Director, the 3<sup>rd</sup> respondent herein, who had stated as follows:

“... The Adjudicating Authority may be pleased to allow the prayers sought in the above-captioned original complaint and to confirm the 44 immovable properties and give us liberty to reinvestigate the transaction of 7 properties mentioned at Serial Nos.2, 13, 27, 28, 29, 41 and 51 of the table at para 10(X) of the complaint dated 18.11.2010.”

8. As stated earlier, the provisional attachment in respect of properties in S.No.689/2 and 690/1 (the subject matter of this writ petition) was not confirmed by the adjudicating authority. Though the 3<sup>rd</sup> respondent sought liberty to re-investigate the transaction of the seven properties, which includes the petitioners' property, the counter is silent about whether any reinvestigation was conducted.



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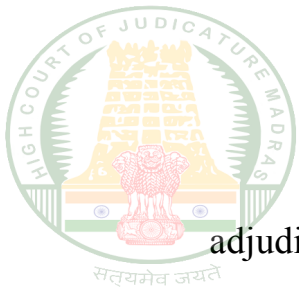
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9. Though the learned Special Public Prosecutor appearing for the Enforcement Directorate submitted that there was an order of interim stay passed by this Court in CrI.O.P.No.2240 of 2011, it is admitted in the counter that the said Criminal Original Petition, challenging the provisional order, was dismissed on 13.07.2012. Even after that, it appears that there has not been any reinvestigation. In such circumstances, we are of the view that the attachment order in respect of the properties concerned in this writ petition is no longer in force, and consequentially, the entries in the encumbrance certificate have to be removed.

10. The 4<sup>th</sup> respondent, viz., the Sub Registrar, Tiruvottiyur, Chennai, is therefore directed to remove the encumbrance forthwith and issue a fresh encumbrance certificate. **The Writ Petition No.34676 of 2022 stands allowed.**

**WP No.28454 of 2022**

11. As regards WP No.28454 of 2022, we find that the fact that the property was sold to the petitioners was not brought to the notice of the



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adjudicating authority. Had it been brought to the notice of the adjudicating authority, the attachment of this property also would not have been confirmed by the adjudicating authority, as there is no difference between this property and the properties comprised in WP No.34676 of 2022, as both were purchased by the petitioners in the year 2008, much before the provisional attachment order.

12. Be that as it may. We also find that before the attachment order was passed, no notice was issued to the petitioners. Under Similar circumstances, this Court in ***R.Amarabalan Vs. The Directorate of Enforcement (Chennai Zone)*** [WP No.898 of 2022 dated 25.04.2022] quashed the provisional attachment order by making the following observations:-

“7. Though an appeal is provided before the Appellate Tribunal for Forfeiture of Property under Sections 25 and 26 of Prevention of Money Laundering Act, 2002 against the confirmation order passed under Section 8 of Prevention of Money Laundering Act, 2002, we are not inclined to send Amarabalan, the petitioner herein there for the following reasons:

(a) He was not a party either in the proceedings under Section 5 or in the proceedings under Section 8 of Prevention



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of Money Laundering Act, 2002;

(b) He was not issued any notice before the provisional order of attachment was passed and also in the confirmation proceedings.

(c) There is no Presiding Officer in the Appellate Tribunal for a long time. Hence an ordinary citizen whose property has been attached behind his back by the authorities should not be made to run from pillar to post.”

13. In the instant case, we may also note that the petitioners have effective alternative remedies, as pointed out by the learned Special Public Prosecutor appearing for the Enforcement Directorate. However, in the peculiar facts and circumstances of the case, we are of the view that the petitioners need not be relegated to approach the authorities or the Special Court concerned since we find *prima facie* that the order passed by the adjudicating authority shows that, the fact that the petitioners purchased the property was not brought to its notice. There is no difference between the property that is the subject matter of this writ petition and the properties which are the subject matter of W.P.No.34676 of 2022. Applying the same logic, the attachment of this property also cannot be sustained. We may also note here that even in the counter, the respondents have not explained how



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the provisional attachment can be sustained on merits, in view of the sale in favour of the petitioners. Since the provisional attachment is not in accordance with the law, all consequential actions cannot be sustained.

14. Therefore, we are of the view that the provisional attachment order is liable to be quashed, and accordingly, the Provisional Attachment Order No.07 of 2010 dated 11.10.2010 passed by the 3<sup>rd</sup> respondent, and the confirmation order dated 13.08.2012 in OC No.73 of 2010 passed by the adjudicating authority, are quashed.

15. However, we make it clear that if the official respondents on further investigation finds that the sale is an 'Accommodation Sale' or otherwise, sham and nominal, it is always open to them to take further action in accordance with law.

**16. With the above observations, W.P.No.28454 of 2022, is allowed.**





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Index : Yes

Speaking Order

Neutral Citation : Yes

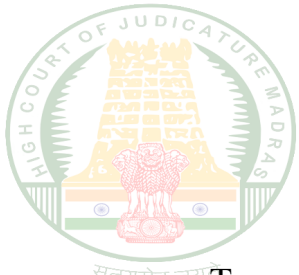


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(M.S.R.,J.)

(S.M.,J.)

30.01.2024



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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Pre-delivery common order in  
W.P.Nos.28454 & 34676 of 2022

30.01.2024