

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR

WP(C) NO. 2259/2022
CM NO. 5649/2022

Reserved on : 21-05-2024
Pronounced on:30.05-2024

1. Dr. Junaid aged 40 years
S/o Mohammad Ashraf Sheikh
R/O H. No. 77 Kanli Bagh Baramulla
And 41 others

Petitioner(s).....

Through: Mr. Jehangir Iqbal Ganai, Sr. Advocate with
Ms. Mehnaz Rather, Mr. Kamil Nazir & Mr.
Syed Faheem, Advocates.

Versus

1. Union of India through Director
Directorate of Enforcement (ED),
Department of Revenue, Ministry of Finance,
North Block, New Delhi and six others.

Respondent(s).....

Through: Mr. T. M. Shamsi, DSGI with
Mr. Faizan, Advocate for R-1 to 3.
Mr. Showkat Ali Khan, Advocate for R-6 &7.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioners are aggrieved of and have assailed the order dated 15-09-2022 passed by the Adjudicating Authority, New Delhi under the Prevention of Money-Laundering Act 2002, [hereafter "the Act of 2002" for short], in terms whereof the provisional attachment order dated 25-03-2022 passed by Respondent No.3 under Section 5(1) of the Act of 2002 has been confirmed.

Factual Matrix:

2. The respondent No.4 is registered as a 'Company Limited by shares' and is engaged in the business of Real Estate. In the year 2014, the respondent-Company issued a public notice in the electronic and print media that it was proposing to construct premium residential apartments at Humhama, Airport Road Srinagar, under the name and style "Palm Springs". It was represented that the project proposed by the respondent-Company was first of its kind in the valley, and would have all the ultra modern facilities. The petitioners, as is claimed by them. after exercising due diligence with regard to viability of the project and having regard to the fact that the housing project proposed by the respondent-Company was being developed by M/S ABL Tech infrastructure (JV), chose the construction link plan offered by the respondent No. 4 and, accordingly, applied for allotment of residential dwelling Units. As is claimed, the petitioners made it sure that the project had the approval of all the competent authorities including NOC from the Revenue Department and building permission by the Municipal Corporation.

3. The petitioners submit that they also deposited the booking amount and were accordingly issued allotment letters by respondent No. 4. The petitioners continued to make payments as per the mode and manner provided in the construction plan. The tri-party agreements were also executed between the petitioners and respondents Nos. 4, 5 and 6. While the petitioners were waiting for the project to be completed so that they could enter their residential units, the Responded No.4, abruptly stopped the construction in the year 2018. The respondent No.4 had been putting forth one excuse or the other for not completing the construction and in the meanwhile the petitioners came to know that respondent company was being

investigated for serious frauds investigated under Section 212 of the Companies Act. The investigation led to filing of a complaint under Section 439(2) read with Sections 436(a)(d)(2) and 421(1) of the Companies Act and Section 50 of the Limited Liability Partnership Act read with Section 193 of the Code of Criminal Procedure before the Court of Learned District and Session Judge-cum-Special Judge (Companies Act), Gurgaon, Haryana. The respondent Company got involved in the criminal litigation and as a result, the construction of the project remained as it was. The home buyers, including some of the petitioners herein, approached this Court by way of WPC 1185/2020 seeking *inter alia* direction to the official respondents therein to take appropriate steps to ensure that the project undertaken by respondent No.4 was completed in a time bound manner and the possession of the dwelling units/Flats handed over to the buyers, including the petitioners. There was also a prayer made in the alternative that the official respondents may take over the project and complete the same expeditiously.

4. In the aforesaid Writ Petition, the Respondent No. 6 filed his reply and submitted that the dispute, which he had with respondent No.4, has been amicably settled out of Court. Having regard to the reply filed by respondent No.6, the Writ Petition was disposed of as having been rendered infructuous, leaving it open to the petitioners therein to come to this Court again, in case respondent No.6 and 9 therein go out of settlement to the prejudice of the petitioners.

5. After the disposal of the Writ Petition and acting upon the settlement, the respondent No. 6 took over the project for its development and started construction through respondent No.7. With the commencement of the construction the respondent Nos. 6 and 7 requested the petitioners and other

home buyers to deposit the installments. The petitioners claim that they deposited the demanded installments. As the construction of Towers A, C, D and E was almost complete, as such the petitioners approached the respondent No.6 for execution of the sale agreements so that they could deposit the balance amount and have the sale deeds executed. The respondent No.6 showed his inability to do so and informed the petitioners that the matter was under investigation of respondent No.3, which had, vide Order No. 03/2022 dated 25-03-2022 provisionally attached the project property by having resort to Section 5(1) of the Act of 2002. The entire land under the project along with two towers (Block B and F) and four Units (G3, G4, G5 and G6) of Block A of the project were provisionally attached by the respondent No.3 on the ground that the project had been raised out of proceeds of crime. As a result of this provisional attachment order, respondent Nos. 5 and 6 have been restrained from transferring, disposing of, parting with or otherwise dealing in any manner whatsoever until or unless specifically permitted to do so.

6. As is evident from reading of the provisional attachment order and the impugned order of confirmation, the respondent No.3 initiated investigation against the founder Director of Adarsh Credit Cooperative Society Ltd [“ACCSL”] and other related persons/firms/entities. The investigation was commenced under the Act of 2002 on the basis of an FIR registered by Special Operation Group, Jaipur, under Sections 120-B, 420, 460, 471 of the IPC on the allegation of cheating the investors/members of ACCSL and diverting the money deposited by various investors in other schemes of the Society. On the basis of the investigation conducted by the respondent No.3, it was concluded that that respondent No.4 had diverted the proceeds of

crime raised through public deposits to the affiliate Cooperative Societies of the ACCSL and invested in moveable and immoveable properties. It is in this background, the respondent No.3 in terms of the provisional attachment order dated 25-03-2022 attached, amongst others, the immoveable property qua the project representing value of entire project land equivalent to proceeds of crime i.e. Rs. 10,02,82,884/- and entire inventory on Block B, F and Unit No. G3, G4, G5 and G6 of Block A, representing value of proceeds of crime i.e. Rs. 10,25,70,396.01. The provisional attachment order passed by respondent No.3 stands subsequently confirmed by the Adjudicating Authority in terms of the order impugned.

Grounds of Challenge:

7. The order impugned is challenged by the petitioners on the following grounds:-

- (i) That the provisional attachment order dated 25-03-2022 passed by respondent No.3 and the order of confirmation dated 15-09-2022 passed by the Adjudicating Authority has been passed without hearing the petitioner, despite the fact that respondent Nos. 2 and 3 were well aware that the petitioners are the affected parties;
- (ii) That attachment of the property representing the proceeds of crime in terms of Section 2(1) (u) of the Act was admittedly restricted to the value equivalent to the proceeds of crime i.e. Rs. 20,28,53,280.01, and, therefore, attachment of the entire land and some of the towers and residential Units by the respondent No.3 was totally illegal and arbitrary as it had deprived the bonafide purchasers/investors, like the petitioners, to make use

of their property after entering into proper sale transactions qua the dwelling units allotted to them in the project;

- (iii) That admittedly the value of land and entire inventory on Block B, F and Unit G3,G4, G5 and G6 of Block A is equivalent to the proceeds of crime and, therefore, it was totally arbitrary on the part of the respondent Nos. 2 and 3 to attach the entire project land and thereby rendering the residential units, which are otherwise not formally attached, totally useless and beyond the reach and use of the petitioners;
- (iv) That the petitioners are neither the accused in the scheduled offences nor are in any manner privy to the transactions relating laundering of proceeds of crime, and, therefore, they cannot be deprived of their right to shelter, which, in terms of Article 21 of the Constitution of India, is a fundamental right guaranteed to the citizens of this country. The petitioners claim that they are the bona fide investors in the allotment of the residential houses and were not aware that the project was being raised through the proceeds of crime generated by the ACCSL;

8. The petition is opposed by the Directorate of Enforcement i.e. respondent No.3. It is submitted that the Directorate of Enforcement, Jaipur Zonal Office, Jaipur, recorded case No. ECIR/01/JPZO/2019 dated 22-03-2019 under the Act of 2002. This case was registered on the basis of registration of FIR No. 24/2018 with the Special Operations Group (SOG), Rajasthan Police, Jaipur against Mukesh Modi the founder director of Adarsh Credit Cooperative Society Ltd and Rahul Modi, its Managing Director. The SOG Jaipur has, after completing the investigation filed he preliminary

charge sheet before the competent Court of law, perusal whereof reveals that the accused persons had committed various offences under IPC and other penal legislations, out of which Sections 120-B, 420, 467 and 471 of IPC are covered under Paragraph 1 of Part A of the Schedule of offences under the Act of 2002. The charge sheet further reveals that the funds of ACCSL, which were collected from public deposits by assuring the public of high returns under various schemes, were later diverted and used by the accused persons for their personal gain and corresponding loss to the ACCSL and a major part of the project in question was raised by these proceeds of crime.

9. Apart from justifying the impugned order, respondents Nos. 1 to 3 have also raised following preliminary objections:-

- (i) That the ECIR has been registered in Jaipur and the order of provisional attachment was passed by respondent No.3 at Jaipur and confirmed by the Adjudicating Authority at Delhi, and, therefore, no part of cause of action has accrued within the territorial jurisdiction of this Court. This Court, therefore, lacks jurisdiction to entertain this petition;
- (ii) That the order impugned is appealable before the Appellate Tribunal and otherwise also the petitioners have ample remedies under the Act and, therefore, they cannot approach this Court invoking its extra ordinary writ jurisdiction vested by Article 226 of the Constitution. It is submitted that the remedies provided under the Act are statutory and equally efficacious.

10. The respondent No. 6 has also filed objections. Mr. Showkat Ali Khan, learned counsel appearing for respondent No.6 made a statement at the Bar that he has instructions from the respondent No. 6 to state that respondent No.6 is ready and willing to deposit the entire amount of alleged proceeds of crime invested in the project, provided the respondent Nos. 1 to 3 release the attached property.

11. Having heard the learned counsel for the parties and perused the material on record, I am of the considered opinion that in view of availability of alternative statutory remedy, which is equally efficacious, the writ petition under Article 226 of the Constitution of India, is not maintainable. The issue of jurisdiction, which was seriously debated by both sides, is thus left totally undecided for the reason that, in the given facts and circumstances of the case, it is not necessary to do so.

12. Indisputably, the petitioners are not named in the FIR registered by SOG, Jaipur against the founder Director and the Managing Director of ACCSL and others connected therewith in respect of commission of Scheduled offences under the Act of 2002. *Prima facie* the claim of the petitioners that they have legitimate interest in the property and have been made to suffer quantifiable loss as a result of impugned order of confirmation of the attachment by the Adjudicating Authority, has substance. As claimed, the petitioners have invested their hard earned money in procuring residential units under construction linked plan floated by respondent No.4. They carried out the exercise diligently to find that the project they were investing in, was being raised without offending any law. They verified the title of the land from the Revenue agencies and also made sure that the construction was being raised with the proper building permission granted by the Municipal

Corporation. It was only after arriving at the satisfaction that the project was being raised in accordance with law, they invested their money for owning one residential unit each on the completion of the project. They have given the details of the payments made by them from time to time to the private respondents. They could not get the sale deeds executed because of the intervening circumstances i.e. registration of an FIR for Scheduled offences by the SOG, Jaipur against the founder Director and the Managing Director and other people connected with ACCSL, which led to the discovery of proceeds of crime having been diverted by the accused persons in various projects, including the project in question. The ED also swung in action and recorded formal ECIR on 22-03-2019 at Zonal Office of ED at Jaipur under the provisions of the Act. During investigation, the trail of the proceeds of crime was traced to the project "Palm Springs" raised at Humhama, Budgam Srinagar. This led to the provisional attachment of the property equivalent to the proceeds of crime invested in the project. It is true that while effecting provisional attachment of the property, the respondent No.3 would have been well advised to attach the property in such a manner that would have secured the property equivalent to proceeds of crime and left the rest of the property for its use and occupation. This would have enabled the builder to meet its commitment with the house buyers, like the petitioners so that they could own and enjoy their dwelling units allotted to them on the basis of construction linked plan floated by respondent No.4. This would have saved the petitioners and other house buyers of their agony of being deprived of their shelter despite having made huge investments and also secured the interest of the Enforcement Directorate, which, in any case was interested to

attach the property equivalent to the actual proceeds of crime invested in the project.

13. Having said that, this Court cannot ignore the provisions of Section 8 of the Act which deals with adjudication of the provisional attachment made by the IO. Section 8 reads thus:-

“8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and
- (c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under subsection (1) of section 5 or retention of property or 3 [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during 1 [investigation for a period not exceeding 2 [three hundred and sixty-five days] or] the pendency of the proceedings relating to any 3 [offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and] 4

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the 5 [Special Court];

[Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during

which the investigation is stayed by any court under any law for the time being in force shall be excluded.]

(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 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) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, 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.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”

14. From perusal of Section 8, it is evident that the Director or any other officer not below the rank of Deputy Director authorized by the Director Enforcement, is authorized to pass an order in writing, provisionally attaching the property raised by any person by the proceeds of crime. The attachment of such property shall not be for a period exceeding 180 days from the date of the order. The order of provisional attachment may be passed by the Director or the authorized officer, as the case may be, after

recording in writing his reasons to believe, on the basis of the material in his possession, that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating the proceedings regarding the confiscation of such proceeds of crime under Chapter III of the Act.

15. The expression ‘proceeds of crime’ is defined under Section 2(1) (u) of the Act which reads thus:-

“**2. Definitions.**—(1) In this Act, unless the context otherwise requires,—

(a).....

.....

(b).....

.....

.....

(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country

Explanation.—For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.”

16. It is thus evident that proceeds of crime means any property derived or obtained by any person directly or indirectly as a result of criminal activity relatable to the Scheduled offences or the value of any such property.

17. In the instant case, the ED has found a sum of Rs. 20,28,53,280.01 invested in the project “Palm Springs” as proceeds of crime. The total investment made in the project is found to be Rs. 41,48,39,786/-, out of which a sum of Rs. 31,22,69,380/- is found to have been raised by the ABL Tech Infrastructure Ltd. against this project. The ED has thus found a total inflow of proceeds of crime to this project as Rs. 10,25,70,396.01. In addition to the entire land under the project valuing Rs. 10,02,82,884/-. The property

equivalent to this amount was, therefore, attachable under Section 5 of the Act of 2002.

18. Be that as it may, the order of provisional attachment passed by respondent No.3 fell for adjudication before the Adjudicating Authority for confirmation. The Adjudicating Authority, after hearing both sides, has passed the impugned order confirming the provisional attachment order passed by the respondent No.3.

19. As is seen from sub-section (1) of Section 8, if the Adjudicating Authority receives a complaint under Section 5(5) of the Act, and has reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of income, earning or assets, out of which or by means of which he has acquired the property attached under Section 5(1) of the Act etc. etc. The proviso 3rd to sub-section (1) prescribes that if the provisionally attached property is claimed by a person other than the person to whom notice has been issued, such person shall also be entitled to an opportunity of being heard to prove that the property is not involved in money-laundering.

20. Obviously, in the instant case the petitioners who had substantial interest in the property attached or at least a part thereof, were not given notice under Section 8(1) of the Act. In terms of third proviso to sub-section (1) of Section 8, the petitioners could have approached the respondent No.2 with the complaint that the property, they have interest in, is not involved in money-laundering. As is contended, the petitioners had no knowledge of the proceedings undertaken by the Adjudicating Authority under Section 8 of the Act. This is though not believable, however, we leave it here and go straight

to sub-section (8) of Section 8. The proviso 2nd to sub-section (8) of Section 8 of the Act clearly provides that the Special Court may, if it thinks fit, consider the claim of the claimant for purposes of restoration of the attached property during trial of the case in such manner as may be prescribed. Sub-section (8) of Section 8, as is apparent from its bare reading, provides remedy to the claimant during the trial of the case and also after the trial when the attached property is confiscated. The first proviso to sub-section (8) of Section 8 clearly lays down that where, after the conclusion of the trial the attached property is confiscated to the Central Government under sub-section (5) of Section 8 of the Act, the Special Court may also direct the Central Government to restore such confiscated property or part thereof to a claimant with legitimate interest in the property, provided such claimant has suffered a quantifiable loss as a result of money-laundering. Proviso 1st further lays down that the Special Court may not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is, otherwise, not involved in the offence of money-laundering. The proviso 2nd added to this Section by Act No. 13 of 2018 with effect from 19-04-2018 provides similar remedy to the claimant during trial of the case also. It is here we are required to make a reference to the Prevention of Money-Laundering (Restoration of Property) Rules, 2016 framed by the Central Government in the exercise of powers conferred by sub-section (1) and Clause (x) of sub-section (2) of Section 73 read with sub-section (8) of Section 8 of the Act of 2002. The expression 'claimant' is defined under clause (b) and reads as under:-

“(b) ‘claimant’ means a person who has acted in good faith and has suffered a quantifiable loss as a result of the offence of Money-laundering despite having taken all reasonable precautions, and is not involved in the offence of money-laundering.”

21. It is thus beyond the pale of any dispute that a person, who has acted in good faith and has suffered a quantifiable loss as a result of the offence of money-laundering, despite having taken all reasonable precautions and is otherwise not involved in money-laundering, would be a claimant entitled to invoke the second proviso to sub-section (8) of Section 8 of the Act of 2002.

22. Admittedly, the petitioners, as per their claim, fall in the category of claimants and are, thus, well within their right to approach the Special Court under the Prevention of Money-Laundering Act at Jaipur, which has taken cognizance of the prosecution complaint bearing No. 06/2021 filed by the Enforcement Directorate on 31-03-2021.

23. Rule 3-A of the Rules of 2016 prescribes the procedure for restoration of the property during trial and is also reproduced with advantage:-

“3-A. Manner of restoration of property during trial.- (1) The Special Court, after framing of the charge under section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it thinks fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

(2) When the property referred to in sub-rule (1) is insufficient to meet the loss suffered by the claimant as a result of the offence of money-laundering, the Special Court, as it thinks fit, may pass an order of restoration of property directing the Central Government, if necessary, to auction such property and disburse on a pro-rata basis in accordance with the share of loss suffered by each claimant and may give custody thereof to such claimant on his executing a bond

undertaking to produce such restored property before the Special Court as and when required for the purposes of sub-section (5) or sub-section (6) or sub-section (7) of section 8 of the Act.

(3) No claimant shall be entitled to claim restoration of the property referred in sub-rule (1) before the Special Court beyond thirty days from the date of publication of the notice referred to in that sub-rule:

Provided that the Special Court may entertain any claim not exceeding further thirty days, upon the satisfaction that the claimant was prevented by sufficient cause.”

24. It is thus abundantly clear that the remedy of the petitioners lies before the Special Court under the Prevention of Money-laundering Act, at Jaipur which has taken cognizance of the case and is seized of the matter. This remedy is available to the petitioners under Section 8 (8) of the Act read with Rule 3-A of the Rules of 2016. The petitioners have deliberately skipped the aforesaid statutory remedy which is equally efficacious and could be availed before the Special Court under Prevention of Money-Laundering Act and have rushed to this Court invoking extraordinary jurisdiction of this Court. That apart, the petitioners, who have substantial interest in the property attached by the respondent No.3 and confirmed by the Adjudicating Authority, have a remedy of approaching the Appellate Tribunal by way of an appeal. Section 26 of the Act of 2002, which provides remedy of appeal, reads thus:

“26. Appeal to Appellate Tribunal.—(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on

which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.”

25. As is provided under sub-section (1) of Section 26, an appeal from the order of the Adjudicating Authority lies before the Appellate Tribunal. It is not only the accused or any person who is found to be in possession of the property raised by proceeds of crime but any person aggrieved by an order of the Adjudicating Authority has the *locus standi* to file an appeal against such order before the Appellate Tribunal. The petitioners are undoubtedly persons aggrieved and thus well within their right to invoke Section 26 of the Act and avail the remedy against the order passed by the Adjudicating Authority.

26. In view of the availability of the statutory remedy of approaching the Special Court under Section 8 (8) of the Act read with Rule 3-A of the Prevention of Money-Laundering (Restoration of Property) Rules, 2016 and filing of an appeal against the order of the Adjudicating Authority before the Appellate Tribunal, I am not inclined to entertain this petition.

27. Learned senior counsel for the petitioners has relied upon several judgments to canvass his point that petition under Article 226 of the Constitution of India is maintainable notwithstanding the availability of equally efficacious alternate remedies.

28. I do not wish to venture into elaborate discussion on the issue of maintainability of the writ petition despite the availability of alternate remedy, as the law on the point is well settled. In **Whirlpool Corporation v. Registrar of Trade Marks Mumbai and others, (1998) 8 SCC 1**, Hon'ble the Supreme Court has authoritatively laid down that writ petition under Article 226 would be maintainable even in the face of availability of equal alternate remedy available to the petitioner where the writ petition is filed for enforcement of fundamental rights; where there has been violation of principles of natural justice; where the order or the proceedings are wholly without jurisdiction; or when the *vires* of an Act of legislation is challenged.

29. At this stage it is apt to refer to the observations made in para 15 by Hon'ble the Supreme Court in **Commissioner of Income Tax and ors v. Chhabil Dass Agarwal, (2014) 1 SCC 603**, which read thus:-

“Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not

entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

30. In the instant case, none of the aforesaid situations exist. The petitioners do not dispute the order of provisional attachment on merits nor have they any *locus standi* to challenge the provisional attachment of the property to the extent it represents the proceeds of crime. The short grievance of the petitioners is that the provisional attachment, as confirmed by the Adjudicating Authority, should be restricted to the land and the dwelling units constructed thereon, the value whereof, is equal to the actual proceeds of crime used in the project in question. In this way, as is contended by the petitioners, most of the dwelling units could be left free to be handed over to the petitioners by the builder upon completion of requisite formalities like execution of sale deeds after receiving the balance premium etc.. May be and *prima facie* it so appears that the Enforcement Directorate could have adopted the aforesaid procedure and attached the properties of the project ‘Palm Springs’ in the manner so as to leave some towers along with land beneath them free from attachment and still secured the amount equivalent to the proceeds of crime invested in the project. This aspect, as is urged by the petitioners before me could very well be highlighted and urged before the Special Court as discussed above in terms of the proviso 2nd to sub section (8)

of Section 8 read with Rule 3-A of the Rules of 2016, for it is well within the powers of the Special Court to modify the order of attachment, confirmed by the Adjudicating Authority, in a manner that addresses the grievance of the petitioners and, at the same time, takes care of the interest of the Enforcement Directorate to secure the property raised from out of proceeds of crime.

31. For all these reasons I am not inclined to entertain this writ petition and the same is, accordingly, dismissed leaving it open to the petitioners to avail the alternate remedies provided under the Act which are not only statutory but are also equally efficacious. Needless to say that in case the petitioners avail the remedy of appeal, the time spent in this Court shall be eschewed from computation of limitation period provided for filing the appeal before the Appellate Tribunal.



(SANJEEV KUMAR)
JUDGE

SRINAGAR:

30.05.2024

Anil Raina, Addl. Registrar/Secy

Whether order is reportable: Yes