

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

**(1) MP-PMLA-10700/MUM/2023 (Stay)
MP-PMLA-10701/MUM/2023 (Exem.)
FPA-PMLA-5346/MUM/2023**

Shri Praful Patel ... Appellant

**(2) MP-PMLA-10773/MUM/2023 (Stay)
MP-PMLA-10774/MUM/2023 (Exem.)
FPA-PMLA-5384/MUM/2023**

Smt. Varsha Patel ... Appellant

**(3) MP-PMLA-10775/MUM/2023 (Stay)
MP-PMLA-10776/MUM/2023 (Exem.)
FPA-PMLA-5385/MUM/2023**

M/s. Millennium Developers Pvt. Ltd. ... Appellant

Versus

The Deputy Director,
Directorate of Enforcement,
Mumbai.

... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Shri Saurabh Kirpal,
Sr. Advocate
Ayush Jindal, Aditya Agarwal,
Shri Prince Arora, Advocates

For the Respondent : Shri Arjun Sawhney, Advocate

CORAM

**JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN
SHRI BALESH KUMAR : MEMBER**

**FINAL ORDER
03.06.2024**

FPA-PMLA-5346,5384 & 5385/MUM/2023

By these batch of three appeals, a challenge is made to the order dated 05.01.2023 passed by the Adjudicating Authority. The Adjudicating Authority has confirmed the provisional attachment order dated 11.07.2022.

2. The appellants have given brief facts of the case to question the impugned orders. It is stated that they are not named as accused in the FIR No. 83 of 1994 registered on 24.02.1994 against Iqbal Mohammad Memon for the offences under Section 302/307/34 IPC and Section 3/25 of the Arms Act. Apart from the FIR referred to above, many other cases were registered against Iqbal Mohammad Memon alias Iqbal Mirchi at various Police Station for different offences which includes the offence of smuggling of narcotics and running extortion rackets.

3. The respondents registered the ECIR on 26.09.2019 under the Prevention of Money Laundering Act 2002 (for short `the Act of 2002). It is alleged to be after 25 years of registration of the FIR. The appellants were not named in the ECIR. However, they were summoned by sending a notice on 15.10.2019 to record their statements under Section 50 (2) and (3) of the Act of 2002. A detailed reply/representation was submitted along with copies of the relevant documents. The respondents, however, issued a provisional attachment order of the properties belonging to the appellants vide order dated 11.07.2022. The properties attached under 5(1) of the Act of 2002 are as under:

Sr. No.	Name of the Property (Unit No)	Owned by	Address	Area as per Registration office (Sq.Mts)	Value
1.	1301A	Praful Patel HUF	13 th ,Floor, CeejayHouse, Worli,Mumbai	579.7	30,77,16,193
2.	1202B	Praful/Varsha Patel	12 th ,Floor, Ceejay House, Worli,Mumbai	410.19	1,50,17,1379
3.	1301B	Praful Patel	13 th ,Floor, Ceejay House, Worli,Mumbai	87.55	4,65,18,204
4.	1302	Praful/Varsha Patel	13 th ,Floor, Ceejay House, Worli,Mumbai	876.58	32,09,17,691
5.	1402-1502	Varsha/Praful Patel	14 th & 15 th Floor, Ceejay House, Worli,Mumbai	1222.64	44,76.10,949
6.	1402-1502	Varsha/Praful Patel	14 th & 15 th Floor, Ceejay House, Worli,Mumbai	528	21,78,55,437
7.	1401-1501	Millennium Developers Pvt. Ltd. (Unsold Area)	14 th & 15 th Floor, Ceejay House, Worli, Mumbai	1083.714	30,79,85,147
			Total	4788.374	179,87,75000

4. The perusal of the statement quoted above would reveal attachment of the area of 12 to 15 Floors of Ceejay House, Worli, Mumbai. The reason for attachment given by the respondents is that Hazra Iqbal Memon was wife of Iqbal Mohammad Memon and had two sons Asif Iqbal Memon and Junaid Iqbal Memon. They were declared to be fugitive economic offenders under Section 12 of the Fugitive Economic Offenders Act, 2018. The appellant purchased the property from the wife of Iqbal Mirchi and, therefore, the order for attachment was passed ignoring the relevant fact as to how the property came to the appellants.

5. The learned counsel submitted that the appellant family had purchased a property known as Shiv Sagar Estate in 1963 which include a parcel of land unauthorizedly acquired by one M.K. Mohammad later on. It was along with the structure standing thereon. Due to the disputes amongst the owners of

the building Shreeniketan standing on Plot F, a Court Receiver was appointed. The Court Receiver filed a suit against the said M.K. Mohammad which culminated in a Consent Decree between the Court Receiver and Shri M.K. Mohammad on 21.03.1988. It was, *inter alia*, providing that Shri M.K. Mohammad is in absolute and uninterrupted possession on a small portion of Plot F for a period of 25 years thus adverse to the owners and thereby the said Shri M.K. Mohammad shall pay a sum of Rs.7,00,000/- to the Court Receiver in full and final settlement of the claims in Suit No.1318/1980.

6. It is otherwise a fact that the Plot F referred above was under the ownership of the Patel Family and Shri M.K. Mohammad was held to be in adverse possession of a small portion of Plot F on the rear side. He was declared to be the owner of the plot due to adverse possession and a Consent Decree was passed by the Court in Suit No. 1318/1980.

7. Shri M.K. Mohammad registered a deed of assignment on 04.04.1990 to transfer the benefit of the Consent Decree to HazraMemon. The appellants had to recognize the adverse possession but in terms of another order of the Court dated 28.05.1999, the area came to the appellant on giving consideration to HazraMemon under a court decree.

8. It is submitted that a Consent Decree was passed by the Bombay High Court on 28.05.1999 where HazraMemon had agreed to remove herself from Plot F and the tenancy created

similar to other tenants. An agreement for it was executed on 04.11.2004 pursuant to the order of the Bombay High Court.

9. It is a case of the appellants that the property admeasuring 14000 sq. ft owned by appellant was given to HazraMemon in lieu of consideration of Part of Plot F. The area of 14000 Sq. Ft. thereupon owned by HazraMemon was attached by the respondent and attachment therein has been confirmed by the Adjudicating Authority and by this Tribunal.

10. The learned counsel for the appellants submits that HazraMemon occupied 14000 sq. ft. given to her in lieu of the part of Plot F and if at all, proceeds of crime of Iqbal Mirchi was involved therein, the ED has already attached the area of 14000 Sq. Ft. received by HazraMemon in lieu of the part of Plot F belonging to the appellant. It is quite surprising that the respondents not only attached the area of 14000 sq. ft. received by HazraMemon in lieu of the part of Plot F but even attached the property of the appellant. On the attachment of 14000 sq. ft. area of HazraMemon and also the properties in question, it became a case of double attachment, per se illegal.

11. The property of HazraMemon for an area of 14000 Sq. Ft. was provisionally attached and on a challenge before the Tribunal, the order of Adjudicating Authority was upheld by its order dated 28.05.2019. A challenge to the order is pending consideration before the High Court in Writ Petition No.6639/2021.

12. The learned counsel for the appellants further made a reference to the order of the Apex Court dated 21.09.2007 where a direction was given to the Government to remove all restrictions attached to the passport of HazraMemon though the appellant is not much concerned about it. However, the reference of the aforesaid has been given because at the time of attachment of the property, all these facts were ignored by the respondents.

13. It was also in ignorance of the fact that transaction with HazraMemon was pursuant to the orders of the Bombay High Court. It was after a consent Decree for recognition of the adverse possession of M.K. Mohammad. The transaction with HazraMemon was under the aegis of the Court Receiver and the order of the Bombay High Court. It is further submitted that assets alleged to be proceeds of crime is 14000 Sq. Ft. came to HazraMemon under a consent decree and has been attached.

14. In view of the above, the provisional attachment order was passed against the appellants with ulterior motive and out of *mala fides*. It is reflected from the fact that going contrary to the allegations contained in the FIR and ECIR, the respondents alleged construction of building in violation of the FSI permissible under the Municipal laws. The argument in reference to it has been raised in ignorance of the offences in the schedule appended to the Act of 2002. The alleged violation of the FSI for construction of building does not constitute a schedule offence and thus would not come under the purview of

the Enforcement Directorate but only with a view to harass the appellants, a plea in reference to the above violation is taken. This on the face of the record, the ulterior motives of the respondents gets proved.

15. The property decreed in favour of M.K. Mohammad pursuant to his claim of adverse possession admeasuring 1823.53 Sq. Mts. (19628.31 sq. ft.) was settled pursuant to the Consent Decree and Shri M.K. Mohammad was running two restaurants on the said land in illegally constructed structure admeasuring 5700 sq. ft. The adverse possession was got transferred in the year 1990 in the name of HazraMemon in lieu of the payment of Rs.9,00,000/- representing the proceeds of crime out of smuggling of narcotics and running extortion rackets by Iqbal Mirchi. The appellant however received the property on consideration under the decree of the Court and in lieu of consideration which has already been attached affecting it against HazraMemon for 14000 Sq. Ft.

16. Giving the history, it is stated that a multi-storied building, namely, Shreeniketanwas constructed on Plot F by Smt. Shantaben M. Patel and others. The owners of Shreeniketan building appointed M/s Millennium DevelporsPvt. Ltd. for development in which the appellant Praful M. Patel and his wife Varsha Patel were holding shares to the extent of 42.33% and 57.67%. It is after to the consent decree in the year 1999. The developer was required to handover 57000 sq.ft. of the carpet area to the tenants and the owners and accordingly developer

was entitled to use the FSI from the main plot area as well as the area under adverse possession of M.K. Mohammad.

17. The appellant Praful Patel entered into an agreement with HazraMemon in the year 2004 to take over the area of land admeasuring 19628.31 sq. ft. on which temporary structure of 5700 sq. ft. was erected. It was under the Court decree and was in lieu of 14000 sq. ft. built up area in the redeveloped building known as Ceejay House. To simplify the aforesaid, it is submitted that in lieu of the area of 19628.31 sq. ft. along with temporary structure of 5700 sq. ft. came to M.K. Mohammad under the decree of adverse possession and was later on acquired by HazraMemon out of the proceeds of crime of Iqbal Mirchi, was taken over by the appellant Praful Patel on consideration. The allegation is, however, made that the appellants have supported Iqbal Mirchi against whom number of cases were registered and was a fugitive offender without any material thereby the allegations remain for the sake of it. The respondents, however, took note of the fact that HazraMemon has ultimately got a carpet area of 14000 sq. ft. in Ceejay House in lieu of the small part of plot in dispute on which M/s Millennium Developers constructed the building. The area of 14000 Sq. Ft. came to HazraMemon has already been attached and thereby the proceeds of crime was protected but to harass the appellants, the impugned order of attachment followed by its confirmation have been passed against his legally acquired

property. The prayer is accordingly to set aside the impugned orders and allow the appeals.

18. Per contra, the appeal has been contested vehemently by the counsel for the respondents. It is submitted that there is no illegality either in the attachment of the property in question or its confirmation thus interference in both the orders may not be made.

19. Coming to the facts of the case, learned counsel for the respondents submitted that the property in possession of the appellants is nothing but out of the proceeds of crime. Referring to the facts earlier given by the appellants, it is submitted that till the property came to M.K. Mohammad pursuant to Consent Decree on the appointment of Court Receiver, there is no illegality therein, rather the adverse possession of M.K. Mohammad was recognized by the Court thus cannot be questioned. The fact, however, remains that after the property came to M.K. Mohammad pursuant to adverse possession against the owner, the registered deed of assignment was executed on 04.04.1990 between M.K. Mohammad and HazraMemon. The assignment was on the payment of consideration which was out of the proceeds of crime of Iqbal Mirchi who was involved in many cases and was a fugitive offender. The fact aforesaid shows that the property taken by the appellant from HazraMemon was nothing but out of proceeds of crime and thereby rightly attached by the respondents. It is not a case of double attachment only for the reason that 14000

sq. ft. area given to HazraMemon was subject matter of attachment and has been confirmed by the Tribunal by not causing interference in the order of the Adjudicating Authority. The matter may be pending consideration before the High Court but the attachment of 14000 sq. ft. area of HazraMemon does not in any manner affect the attachment of 12 to 15 floors of Ceejay House, Worli, Mumbai occupied by the appellants.

20. The appellants had entered into transaction with HazraMemon to occupy the area which was acquired by her out of the proceeds of crime. Thus, if the appellant has taken over the property acquired by the proceeds of crime, it was rightly subjected to attachment independent to the area of 14000 sq. ft. belonging to HazraMemon. The counsel for the respondents thus prayed for dismissal of the appeal. It is more so when the appellants raised construction of the building on the land in question by violating FSI norms and thereby raised extra construction than permissible. For the aforesaid reason also, the building of 12 to 15 floors has rightly been attached as value thereof. The prayer was accordingly made to dismiss the appeals.

21. We have considered the rival submissions made by the counsel for the parties and scanned the matter carefully.

22. The facts relevant to the case have been given while narrating the arguments of the counsel for the appellants. However, a summary of few facts is given hereunder.

23. It is admitted that an FIR was registered against Iqbal Mohammad Memon alias Iqbal Mirchi on 24.02.1994 by DCB, CID, Mumbai for the offences under Section 302,307 and 34 IPC read with Section 3/25 of the Arms Act. It is also a fact that several other cases were registered against the accused by different Police Station and even Anti-Narcotics Cell, Mumbai for the offence not only under IPC but NDPS Act and Arms Act coupled with Section 3,5 of TADA. However, it is also a fact that the appellant has not been named in the said FIR, rather nothing is brought on record to show even remote connection of the appellant with the crime alleged to have been committed by Iqbal Mirchi against whom cases were registered in different Police Station. The said Iqbal Mirchi purchased many properties at various locations in Maharashtra and abroad apart from other parts of the country with the help of and in the name of his sons Asif Iqbal Memon, Junaid Iqbal Memon and his wife Hazra Memon.

24. The fact relevant to this case is regarding an agreement to take possession of the portion of land with two restaurants formerly known as GURUKRUPA (Fisherman Wharf) and other known as LALIT RESTAURANT from M.K. Mohammad by Iqbal Mirchi in the name of Hazra Memon. The construction of the Restaurants was illegal. However, it has come on record that a Consent Decree recorded in favour of M.K. Mohammad in a suit where Court Receiver was appointed. M.K. Mohammad got possession adverse to the right of the owner on the payment of

Rs.7,00,000/- to the Court Receiver and thereby the property came in favour of M.K. Mohammad pursuant to the Court Decree and it has not been questioned by anyone.

25. It is, however, a fact that previously appellant and others got the share of the land Plot F, 2 (part) and 3 and 1/3 of Worli Division bearing new Survey Nos.3345,3347, 1A/03345, Dr. A.B. Road, Worli, Mumbai pursuant to the Conveyance Deed dated 04.11.1963 executed between Maharaja MadhavaraoJivajiraoScindia of Gwalior (seller) and DevchandChhaganlal Shah to be the purchaser. DevchandChhaganlal Shah sold and transferred the parcel of land of 62485 sq. ft. in aggregate which was formerly known as Shivsagar Estate. It was sub-divided into various plots numbered A to H in terms of a duly sanctioned lay out plan of the plot by the Indenture of Lease dated 07.11.1974 between VasantryaoDattajiDhanwatay and sixty-four others and ShantabenManoharbhair Patel and twenty others registered in the office of the Sub-Registrar of Assurances of Bombay under Serial No. 2798 of 1974. It is also a fact that pursuant to a Deed of Partition effected on 01.04.1974, the said Plot F vested absolutely in favour of one Ramanbhair J. Patel and twelve others as co-owners and as tenants in common thereby each person became absolute owner of his or her share in the said Plot F with exclusion of other persons. It ultimately came to the legal heirs to Mr. PrafulManoharbhair Patel as one of the successor and legal heir. A multi-storeyed building known as Shreeniketanwas

existing on it which was later on demolished and now exists a Ceejay House.

26. On the part of Plot F, a dispute arose amongst ShantabenManoharbai Patel and others, as a result of which a Suit No. 120/1978 was filed before the Bombay High Court for partition amongst the co-owners of the said property i.e. Shreeniketan. By an order dated 13.02.1978 passed by the Bombay High Court, the Court Receiver was appointed and subsequently a Consent Decree was passed on 24.07.1978 to confirm the earlier order dated 13.02.1978. The Court Receiver took charge and possession of the said building.

27. The building Shreeniketan became old and dilapidated thus required extensive repair. By the Consent Order dated 12.03.1999, M/s Millennium Developer Pvt. Ltd. agreed and undertook repairs and reconstruction of the said building entirely at its own costs on the terms provided thereunder.

28. The fact, however, remains that earlier one M.K. Mohammad was found in the adverse possession of part of land for which a Consent Decree was passed on the settlement with the Court Receiver for a sum of Rs.7,00,000/-. The said property i.e. rear portion of Plot F was then assigned by M.K. Mohammad to HazraMemon wife of Iqbal Mirchi having two restaurants referred earlier. The appellants had taken the said parcel of land on the rear side from HazraMemonin line of 14000 Sq. Ft. area under the consent decree of the Court.

29. In view of the above, the proceeds of crime was shifted on the area of 14000 Sq. Ft. taken by HazraMemonin consideration of the plot of land of M.K. Mohammad and it is for that reason alone that the respondents attached the said property of HazraMemon. The respondents failed to consider that on shifting of the proceeds of crime and its attachment by attaching the property of 14000 Sq. Ft. they could not have made further attachment of alleged proceeds in the hands of the appellant. In fact, with exchange of the property and that too under the decree of the Court, the area came to the appellant no more remain to be proceeds of crime otherwise it would be a case of double attachment going against the principles of law. The proceeds of crime came to the HazraMemoni.e. 14000 Sq. Ft. area was attached and the attachment has been confirmed by the Adjudicating Authority followed by further confirmation by this Appellate Tribunal and in that case there was no reason to attach the property belonging to the appellant going against the decree of the court.

30. The appellants cannot be said to be in possession of the property out of the proceeds of crime once it was taken by the appellants on consideration under a Court decree and the consideration given to HazraMemon was subject matter to attachment separately. Once the consideration received by HazraMemon was attached in reference to the FIR and ECIR against Iqbal Mirchi and others, the respondents could not have attached the property belonging to the appellant, otherwise it

would remain nothing but the double attachment of the property in reference to one and same ECIR.

31. The respondents have tried to divert the fact in reference to the alleged violation of FSI to justify the action of attachment. The arguments were made in ignorance of the fact that violation of alleged FSI is not subject matter of FIR and ECIR and it could not have been under the ECIR being not a schedule offence under the Act of 2002. The arguments in this regard shows an exercise not appropriate to the facts of the case and under the provisions of law. The position of facts could have been different if the appellants would have occupied the area taken by M.K. Mohammad and given to HazraMemon under the assignment without consideration and a decree. It could have been subjectmatter of attachment but in the instant case they passed on the consideration and there exists a court decree. In view of the above, attachment of the above area at 12 to 15 floors of Ceejay House cannot be considered to be appropriate and legal. The Adjudicating Authority was required to look into Section 8(2) of the Act of 2002 which is quoted hereunder:

“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 sub-section (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”.

As per Section 8(2), the Adjudicating Authority is required to record its finding that property is involved in money laundering and only on recording of such an opinion, the order of attachment can be confirmed. It cannot be concluded that a property taken on consideration and the Court decree can be said to be involved in the money laundering, rather for that respondents have already taken recourse to attach 14000 sq. ft. area in the hands of HazraMemon. Thus, for all the reasons given above, we quash the impugned orders of attachment so as the order of Adjudicating Authority. With the aforesaid, appeals are allowed.

(JUSTICE MUNISHWAR NATH BHANDARI)
CHAIRMAN

(BALESH KUMAR)
MEMBER

New Delhi
3rd June, 2024
'SRD'