HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

Case Number	**Writ Appeal No.483/2021**
Parties Name	Abhay Nigam & Others Vs. Union of India & Others
Date of Judgment	**18th June, 2021**
Bench	**Division Bench:** Hon'ble The Chief Justice Justice Sujoy Paul
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri R.S. Chhabra, learned counsel for the appellants. Shri Milind Phadke, learned Assistant Solicitor General for the respondents.
Law laid down	***The Prevention of Money Laundering Act 2002 - Section 5 – Attachment of Property –** The attachment order passed by Competent Authority in exercise of power under Section 5 is tentative/provisional in nature. Thus, the "reason to believe" in passing such order is also provisional in nature subject to its confirmation by the "adjudicating authority". ***Section 8 of The Prevention of Money Laundering Act 2002 –** The adjudicating authority is under a statutory obligation to examine the complaint preferred under Section 5(5) of the Act and assign "reason to believe". If adjudicating authority has "reason to believe" that any person has committed an offence, after putting him to notice, obtaining reply and hearing the aggrieved person, adjudicating authority needs to pass an order recording a finding whether all or any of properties referred in the notice are involved in money laundering. ***Interpretation of statutes –** The text and context both must be seen to understand and interpret a statutory provision. The scheme and object of the statute can be best understood if text and context are properly taken into account while interpreting the provision. ***The Prevention of Money Laundering Act 2002-** It provides 3 tiers of redressal mechanism. The attachment order passed by invoking Section 5(1) needs to be confirmed by the adjudicating authority. A further appeal is provided before appellate Tribunal. Another appeal under Section 49 is available before the High Court. In

	view of effective statutory mechanism available to the appellants, interference was declined. The appellant may raise all possible grounds including the ground of "discrimination" before the adjudicating authority. The adjudicating authority is directed to take into account said grounds and pass appropriate order within stipulated time. ***Section 24 & 26 of the Prohibition of *Benami* Property Transactions Act, 1988 and Section 5 & 8 of the Prevention of Money Laundering Act, 2002 –** The scheme of both the provisions compared. The legislative intent and scheme ingrained in both the provisions of said enactments appears to be *pari materia*. The Writ Court and Division Bench in a case dealing with Act of 1988 declined interference at the stage of issuance of attachment order and permitted the petitioner therein to raise all possible grounds before the "adjudicating authority". Same course is followed here in the instant case.
Significant paragraph numbers	12 to 18

O R D E R
(Delivered on this 18th day of June, 2021)

Sujoy Paul, J.

In this Writ Appeal filed under Section 2 of Madhya Pradesh Uchha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, the appellants have called in question the legality, validity and propriety of order passed by the writ court in WP No.7819/2021 dated 06.04.2021.

2. In nut shell, the appellants' case is that they have purchased plots in Empire Wild Flower Colony through various registered sale deeds and registered agreement to sell. The appellants invested their lifetime savings for purchase of plots after seeking permission of different statutory bodies such as Town & Country Planning, Indore Municipal Corporation, RERA etc. The respondents issued the impugned provisional attachment order dated 25.02.2021 whereby

plots aforesaid purchased by appellants were attached. However, no such action was taken against 98 similarly situated plot holders which amounts to hostile discrimination with appellants. As a consequence of attachment of their property, the appellants are deprived to enjoy their property which hits Article 300 A of the constitution.

3. Shri R.S. Chhabra, learned counsel for appellants urged that the plots in question were not purchased by using *proceeds of crime* and, therefore, the provisions of The Prevention of Money Laundering Act, 2002 (for short "PML Act") are not applicable to them. Sec.8 can be made applicable only against the person against whom complaint has been made u/S.5(5) or an application has been preferred u/S.17(4) or 18(10) of the said Act whereas no such complaint or application was preferred by anybody. In this backdrop, alternative remedy was not an absolute bar for the appellants.

4. By taking this Court to the pleadings of writ petition (para 5.7), it is urged that learned Single Judge has erred in holding that there was no pleading regarding those 98 plots for which sale deeds have been executed, but no action has been taken in relation to said plots. Lastly, it is submitted that Sec.5(1) of the PML Act contains an expression *"reason to believe"* which is different from *"reason to suspect"*. In order to believe something there must be some definite material and mere suspicion cannot be the foundation of *"reason to believe"*. Reliance is placed on the judgment of Supreme Court in the case of ***Jyoti Prasad v/s State of Haryana (1993) Supp. (2) SCC 497*** and ***Mohd. Aslam Merchant v/s Competent Authority (2008) 14 SCC 186***.

5. On the strength of aforesaid arguments, Shri Chhabra, learned counsel for appellants submits that order of learned Writ Court may be set aside and Writ Appeal may be allowed. In support of aforesaid submissions, Shri Chhabra has also filed written submissions and

supplementary submission.

6. Shri Phadke, learned Asstt. Solicitor General appearing for the respondents supported the impugned order and submits that learned Single Judge has rightly held that appellant has an inhouse remedy under the PML Act. The impugned order of attachment of property is only a "provisional order". The appellants can take all possible grounds before the adjudicating authority who will look into the matter and will decide the same in accordance with law. The contentions are supported by filing written arguments. Reliance has been placed by Shri Phadke on following judgments : ***The Deputy Director Directorate of Enforcement Delhi v/s Axis Bank & Others (CRI.A143/2018 & Cri.M.A.2262/2018)***, ***Special Director & Another v***/s ***Mohd. Ghulam Ghouse & Another [Appeal (Cri.) No.35/2004]***, ***Authorized Officer, State Bank of Travancore & Another v/s Mathew K.C. (Civil Appeal No.1281/2018)***, ***Commissioner of Income Tax & Others v/s Chhabil Dass Agrawal, (2014) 1 SCC 603***, ***Genpact India Private Limited v/s Deputy Commissioner of Income Tax & Another, (2019) 11 JT 488*** and ***Raj Kumar Shivhare v/s Assistant Director Directorate of Enforcement & Another (Civil Appeal No.3221/2010)***.

7. Parties confined their arguments to the extent indicated above.

8. We have heard learned counsel for parties at length and perused the record.

9. Before dealing with rival contentions, we deem it proper to take into account the relevant provisions of PML Act, 2002. Relevant portion of Section 5(1) of the PML Act, 2002 reads as under:-

> **5. Attachment of property involved in money-laundering. —**
> (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for

the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

(Emphasis supplied)

Section 5(5) of the PML Act, 2002 makes it clear that order of attachment of competent authority shall be provisional in nature and said authority is under a statutory obligation to file a complaint before the adjudicating authority within 30 days from the date of attachment.

10. Section 8(1) of the PML Act, 2002 reads as under:-

"**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."

(Emphasis supplied)

The aforesaid provision makes it obligatory for adjudicating authority to examine the complaint and if he has *"reason to believe"* that any person has committed an offence, it may serve a notice to said person calling upon him to indicate the sources of income, earning or assets. It may also issue show-cause notice to such person. After obtaining reply, the adjudicating authority under Section 8(2) of the PML Act is required to consider the reply, hear the aggrieved person and after taking into account all relevant materials, pass an order recording a finding whether all or any of properties referred to in the notice issued under sub-section (1) are involved in money laundering.

11. A microscopic and conjoint reading of Sections 5 and 8 of the MPL Act leaves no room for any doubt that orders of attachment issued by invoking Section 5 is 'provisional' in nature. Thus, the attachment order passed by the competent authority and *"reason to believe"* therefor is also tentative / provisional in nature subject to confirmation by the adjudicating authority.

12. The golden principle of statutory interpretation is that interpretation must depend upon the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted ***[see : (1987) 1 SCC 424 (RBI v/s Peerless General Finance & Investment Co. Ltd.)]***.

Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., such an approach would be *"to see the skin and miss the soul"*. Whereas, *"The judicial key to construction is the composite perception of the deha and dehi of the provision."*

[see : (1977) 2 SCC 256 (Board of Mining Examination v/s Ramjee)].

13. Thus, Sections 5 and 8 needs to be understood and interpreted as per intention and scheme of the PML Act, 2002. The Act provides three tiers of redressal mechanism. The order passed in exercise of power conferred under Section 5(1) of the PML Act, 2002 needs to be confirmed by the adjudicating authority. In that event, a further appeal is provided before the Appellate Tribunal. Section 49 provides further appeal to the High Court. We find support in our view in ***: (2015) SCC OnLine Delhi 7625 (Rai Foundation v/s The Director, Directorate of Enforcement & Others)]***. Relevant portion reads thus:-

> "11. A perusal of Section 5 of the Act makes it clear that the order passed under sub-section 1 is a provisional measure and valid for maximum period of 180 days. The provisional attachment has to be approved by the Adjudicating Authority after proper adjudication within 180 days. The act envisages three layers of the grievance redressal in addition to safeguards incorporated in Section 5(1) of the Act. The Adjudicating Authority may confirm or set aside the provisional attachment order on the basis of material produced by the parties before it. If Adjudicating Authority confirms the order of provisional attachment, the Act envisages appeal before the Appellate Tribunal. Section 42 of the Act provides further appeal to the High Court. **Thus, it is clear that petitioner has an effective alternative remedy upto the High Court by way of adjudicating proceedings, appeal to the Appellate Tribunal and finally, appeal to the High Court. Petitioner can raise all the pleas *including that of the jurisdiction* before the Adjudicating Authority**."
>
> (Emphasis supplied)

Reference may be made to ***Wave Hospitality Private Limited v/s Union of India & Others, 2019 SCC OnLine Del 8855***, the Delhi High Court further held that:

> "we are of the considered view that it is not appropriate for us to interfere into the matter when petitioner can very well show-cause to the provisional attachment order passed, demonstrate its bona fides before the competent adjudicating authority and after the competent adjudicating authority passes an appropriate order, the same can be challenged in accordance with law and therefore conscious of the fact that various writ

> petitions challenging the constitutional validity of the said provisions are pending before this Court and we had granted some interim relief in this case, at this stage, looking to the totality of the facts and circumstances of the case, we are not inclined to exercise our extraordinary jurisdiction and interfere into the matter".
>
> (Emphasis supplied)

Similar view is taken by Gujrat High Court in ***Neptune Overseas Limited v/s H.S. Jain & Others, 2014 SCC OnLine Guj 2790***.

In the case of ***Axis Bank (supra)***, the Delhi High Court came to hold that:

> "the provisional attachment of the property by the Enforcement Officer is an executive action. The law mandatorily required its scrutiny by independent entity called adjudicating authority which is vested with *quasi judicial* powers. As noted above the complaint under Section 5(5) of the PMLA by the enforcement officer comes before the adjudicating authority for *"confirmation"* of the attachment order."
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> (Emphasis supplied)

14. Shri R.S. Chhabra, learned counsel for the appellants placed reliance on the judgment of Supreme Court in ***Jyoti Prasad and Mohd. Aslam Merchant (supra)***. In these judgments, the Court has interpreted the provisions of different statutes namely Indian Penal Code (I.P.C.) and Narcotic Drugs and Psychotropic Substances Act, 1985. In those cases, the impugned order / action was not founded upon any action which was provisional in nature, whereas in the instant case, the order of attachment is 'provisional' in nature, validity of which shall be examined by the adjudicating authority. Hence said judgments are of no assistance to the appellants.

15. The matter may be viewed from another angle. The Prohibition of Benami Property Transactions of 1988 (Act of 1988) u/S.24(3) provides power of provisional attachment. The said provisional attachment needs to be confirmed by the "adjudicating

authority" u/S. 26 of the said Act. In WP No.10280/2017 (***Kailash Asudani Vs. Commissionr of Income Tax***) the petitioner assailed the provisional attachment order on the ground that the property in question was not a *benami* property and without proper application of mind and in absence of adequate material, the order of provisional attachment was passed. This Court declined interference by holding that:-

> "The order impugned is provisional/tentative in nature. It is subject to judicial review by adjudicating authority. If order of adjudicating authority goes against the petitioner, the further forums of judicial review of said order is available to the petitioner before the appellate tribunal and then before this Court. Hence, against the tentative/provisional order, no interference is warranted by this court at this stage. As per the scheme of the Act, the petitioner can raise all possible grounds before the adjudicating authority. The adjudicating authority is best suited and statutorily obliged to consider all relevant aspects. Thus, at this stage no case is made out for interference."
>
> (Emphasis supplied)

16. This order of writ court was unsuccessfully challenged by petitioner therein by filing WA No.704/2017. The division bench declined interference by recording that:-

> "We do not find any merit in the present appeal. **It is the Adjudicating Authority who is to decide the question of Benami nature of the property**. The proceedings under Section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property as Benami is required to be passed by Adjudicating Authority under Section 26 of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law."
>
> (Emphasis supplied)

17. Following the principles laid down, another bench of Principal

Seat in WP No.3957/2019 and 3963/2019 [***Simmant Kohli Vs. Union of India & Ors***] relegated the petitioner to avail the remedy available before adjudicating authority.

18. If Scheme ingrained in Sec.24 and 26 of the Act of 1988 is compared with the PML Act, it will be clear that the Scheme is almost *pari materia.* For this reason also, we deem it proper to hold that "adjudicating authority" is best suited and statutorily obliged to consider the validity of provisional attachment order and the case put forth by the present appellants.

19. We will be failing in our duty if argument of Shri R.S. Chhabra based on para – 5.7 of the writ petition are not considered. It is contended that the appellants pleaded with accuracy and precision that they are similarly situated qua 98 plot holders against whom no action has been taken by the competent authority. Thus, appellants were subjected to hostile discrimination. We find substance in the argument of learned counsel for the appellants that despite specific pleading contained in para – 5.7 of the writ petition, learned Single Judge has erroneously held that there is no such foundation in the pleadings of the writ petition. The appellants can very well to raise this relevant ground before the adjudicating authority and the said authority shall be obliged to take into account this ground while taking a decision.

20. As noticed above, the order of provisional attachment is not a final order and the appellants have a remedy to raise all the pleas *including that of jurisdiction of attaching authority* and discrimination before the adjudicating authority. Thus, we are only inclined to hold that in the event these points are raised by the appellants before the adjudicating authority, the adjudicating authority shall take into account these grounds and shall pass appropriate order in accordance with law expeditiously preferably within 30 days from the date such

plea is taken by the appellants.

With the aforesaid and without expressing any opinion on the merits of the case, the Writ Appeal is disposed of.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(SUJOY PAUL)
J U D G E

Ravi